

Ministry of Business, Innovation and Employment  
By email: [insurancereview@mbie.govt.nz](mailto:insurancereview@mbie.govt.nz).

3 May 2022

Kei te rangatira tēnā koe,

### **Submission on Insurance Contracts Bill exposure draft**

Thank you for the opportunity to comment on the exposure draft of the Insurance Contracts Bill. We support the purpose of this review to ensure our law is fair and provides appropriate protection for consumers.

The Banking Ombudsman Scheme was established in 1992 and is an approved financial dispute resolution scheme under the Financial Services Providers (Registration and Dispute Resolution) Act 2008. We provide a free and independent service for customers of our members: registered banks, their subsidiaries and related companies, and certain non-bank deposit takers that meet our membership criteria. We resolve and prevent complaints to improve banking for our communities.

In July 2018 and June 2019, we wrote to MBIE as part of this review, outlining the types of insurance complaints made to our office. We noted that the most common reason for a dispute (ie, a formal investigation by our office into a complaint) was a decision by a bank to decline an insurance claim due to alleged non-disclosure.

We supported the adoption of a duty to “take reasonable care not to make a misrepresentation”, as this represented a fairer onus on consumers than the present requirement, and options which would enable both parties to be returned to the position they would have been in if they had had all of the information at the time of the application. We are therefore pleased to see these included in the draft Insurance Contracts Bill.

We also supported the proposal to introduce a statutory requirement for insurers to warn consumers of their disclosure duty and its consequences before a contract is entered into. As we noted in our June 2019 submission, the application process can be overwhelming and confusing, and in our view, written advice is preferable to verbal.

In terms of accessing medical information, we supported the proposal for insurers to inform an insured of the information they will access. We note the present draft Bill requires insurers to “inform the policyholder orally or in writing of whether (and, if so, the extent to which) the insurer may access and take into account the information to which the consent relates” (our emphasis).



However, page 17 of the consultation paper says “the insurer must inform consumers of the information the insurer *will likely* access” (our emphasis). In our experience, consumers sometimes misunderstand the extent of the enquiries an insurer may make to their medical practitioner and may not disclose matters they believe will be revealed in their medical records. We consider there would be value in insurers being clear with consumers about what particular information they will be accessing (if any).

## **Conclusion**

We support the content of the Insurance Contract Bill and applaud the Government on its efforts to review New Zealand’s insurance law to ensure the regime is fair and in line with international best practice.

Please do not hesitate to contact us if you have any queries about any aspect of our submission.

Nāku noa, nā  
Privacy of natural persons

**Nicola Sladden**  
Banking Ombudsman