



COVERSHEET

Minister	Hon Andrew Bayly	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Contracts of Insurance Bill: Approval for Introduction	Date to be published	23 May 2024

List of documents that have been proactively released		
Date	Title	Author
April 2024	Contracts of Insurance Bill: Approval for Introduction	Office of Minister of Commerce and Consumer Affairs
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Information redacted

YES

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Some information has been withheld for the reason of Confidential advice to Government.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Business Committee

Contracts of Insurance Bill: Approval for Introduction

Proposal

- 1 This paper seeks:
 - 1.1 policy approval for changes to reform insurance contract law set out in Part A of Annex One of this paper;
 - 1.2 approval for the introduction of the Contracts of Insurance Bill (the **Bill**).

Policy

Purpose

- 2 The Bill gives effect to a 25 November 2019 Cabinet decision to reform insurance contract law, and to consolidate and modernise existing insurance legislation in New Zealand [DEV-19-MIN-0311, CAB-19-MIN-0620 refer].
- 3 An exposure draft of the Bill was consulted on from February to May 2022. Submitters were supportive of the objectives of the Bill and, at a high-level, the general approach taken in the exposure draft Bill to implementing Cabinet's policy decisions. I am seeking Cabinet's approval to make some changes to the Bill in response to feedback.
- 4 From my discussions with industry groups, it is apparent that current arrangements are not fit for purpose and that there are wide-ranging concerns to address. I have worked closely with industry to manage these concerns, and make changes as appropriate. I am confident as a result that the Bill will be well-received by industry, as well as making a positive difference for consumers.
- 5 The purpose of the Bill is to ensure that insurance contract law facilitates well-functioning insurance markets for both insurers and policyholders. It seeks to enable consumers and businesses to effectively protect themselves against risk, while minimising costs and impacts on insurers' willingness to provide insurance in New Zealand.

Why the Bill is needed

- 6 The law that governs insurance contracts in New Zealand consists of various pieces of legislation and case law. A number of long-standing issues have been identified with New Zealand's insurance contract law, including:

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- 6.1. Consumers are sometimes unable to make an insurance claim for losses just because they innocently did not disclose matters to the insurer which they were unaware they had to disclose.
 - 6.2. A number of terms in insurance contracts cannot be declared “unfair” under the Fair Trading Act 1986 (FTA) due to specific exceptions that only apply to insurance contracts.
 - 6.3. Unlike many other jurisdictions, New Zealand has no legal requirements in relation to the presentation of insurance policies in order to help consumers understand and compare different insurance products.
 - 6.4. The law is fragmented across six different Acts, some over 100 years old, and would benefit from consolidation and modernisation.
- 7 Insurance contract law reforms have been long awaited and there is consensus across industry and consumer groups that these are needed.
- 8 This Bill has been in development for six years and follows extensive consultation with stakeholders and a series of reviews, including recommendations for improvements made by the Law Commission.
- 9 The Bill has been informed by similar reforms in Australia and the UK.

Overview of the Bill

- 10 The core provisions in the Bill are outlined below.

Disclosure duties

- 11 The Bill reforms the policyholder’s duty of disclosure by:
- 11.1. changing the duty for consumers so that they are required to take reasonable care not to make a misrepresentation.
 - 11.2. changing the duty for non-consumers so that they are required to make a fair presentation of risk.
 - 11.3. changing insurers’ remedies for non-disclosure and misrepresentation to provide proportionate consequences based on how the insurer would have reacted to the information at application time, and whether the policyholder intended to mislead or deceive the insurer or was reckless or careless.
- 12 The Bill requires insurers to notify policyholders of the duty of disclosure and its consequences, and about whether the insurer is likely to access third party information (e.g. medical records) and when.
- 13 The Bill modifies the law relating to the duty of utmost good faith that all insurance contracts are based on. Pre-contract disclosure duties on

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policyholders, and the insurer's remedies for breaches, will only be those set out in the Bill.

- 14 The Bill also imposes a new duty on intermediaries to pass on material information to insurers. An intermediary may be required to pay compensation if they breach this. The parties can contract out of this duty.

Unfair contract terms

- 15 The Bill removes insurance-specific exceptions from the unfair contract terms provisions in the FTA and instead clarifies which insurance terms are part of the "main subject matter" of the contract (which cannot be declared unfair).

Understanding and comparing insurance policies

- 16 To help consumers better understand and choose between insurance policies, the Bill amends the Financial Markets Conduct Act 2013 (**FMC Act**) to require contracts to be worded and presented in a clear, concise and effective manner. The Bill enables regulations to prescribe specific presentation requirements and specific information that insurers must make publicly available.

Payment of claims in a reasonable time

- 17 The Bill provides that if a policyholder makes a claim, the insurer must pay any sums due within a reasonable time. This is helpful for transparency and certainty.

Carrying over and updating existing legislation

- 18 The Bill carries over and updates provisions from Part 3 of the Law Reform Act 1936, Insurance Law Reform Act 1977 and Insurance Law Reform Act 1985. This includes:
- 18.1. Imposing a new time limit for making claims under claims-made liability policies, to enable insurers to better estimate their risk exposure at the end of a policy term.
 - 18.2. Providing that certain policy exclusions are not subject to an existing rule that an insurer must accept a claim if a policy exclusion applies but did not cause or contribute to the loss.
 - 18.3. Allowing a third party who has been wronged by a policyholder to claim directly against the policyholder's insurer. This replaces an existing statutory charge mechanism, due to multiple issues with how this operates.
- 19 The Bill also carries over and updates provisions of the Insurance Intermediaries Act 1994, and the Life Insurance Act 1908. Some provisions that are no longer needed have not been carried over.

Relationship to other legislation

- 20 The Financial Markets (Conduct of Institutions) Amendment Act 2022 (**CoFI Act**) amends the FMC Act to introduce a conduct regime from 31 March 2025 for financial institutions, including insurers, that requires them to treat consumers fairly. This will apply when insurers are designing and offering insurance products, and to the ongoing relationship with policyholders, including handling insurance claims. This complements the provisions of the Bill.
- 21 The CoFI Act will require insurers to be licensed by the Financial Markets Authority (**FMA**) to act as a financial institution. Certain obligations under the Bill will constitute market services licensee obligations under the FMC Act for insurers (once licensed), and for intermediaries that are licensed financial advice providers. This means the FMA can use a range of supervisory powers to enforce compliance.
- 22 I will soon publicly consult on proposals to improve CoFI. These improvements are not expected to impact on the Bill. Any impacts identified in feedback can be considered by the Select Committee.

Cabinet's agreement

- 23 I am seeking Cabinet's agreement to matters set out in Part A of Annex One. Some of these changes are in response to feedback on the exposure draft of the Bill.
- 24 Cabinet previously authorised me to take further decisions consistent with the decisions in the minute under DEV-19-MIN-0311. Part B of Annex One provides details of decisions I have made that will be reflected in the Bill.
- 25 I have also made other minor or technical changes to the Bill to address feedback.

Impact analysis

Regulatory Impact Statement

- 26 The Treasury's Regulatory Impact Analysis team has determined that the proposals in Annex One are exempt from the requirement to provide a Regulatory Impact Statement. The exemptions are on the grounds that the proposals have no or only minor impacts on businesses, individuals, and not-for-profit entities in the context of decisions on the wider framework. Some of the proposals have also been addressed by previous impact analysis [DEV-19-MIN-0311, CAB-19-MIN-0620 refer].¹

¹ A regulatory impact statement (RIS) was submitted at the time Cabinet approval was sought to reform insurance contract law. This earlier RIS is available here: [Impact Statement: Insurance contract law reforms \(mbie.govt.nz\)](#)

Financial implications

- 27 Implementation of the Bill and ongoing monitoring work will likely create costs for the FMA. In a past funding and levy review, the FMA consulted on costs of between \$1.1-\$1.7 million annually to implement the Bill. Feedback from industry was that funding considerations should be considered at a later stage of the legislative process. I will continue to monitor cost implications for the FMA and I will come back to Cabinet to seek agreement for any changes to FMA funding.

Compliance

- 28 I consider the Bill complies with:
- 28.1. the principles of the Treaty of Waitangi;
 - 28.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
 - 28.3. the disclosure statement requirements (a disclosure statement for the Bill has been prepared and is attached to this paper in Annex Two);
 - 28.4. the principles and guidelines set out in the Privacy Act 2020; and
 - 28.5. the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Consultation

- 29 The following agencies were consulted on this Cabinet paper: the FMA, the Treasury, Ministry of Justice, Ministry of Foreign Affairs and Trade, the Commerce Commission, Te Puni Kōkiri, and the Reserve Bank of New Zealand.
- 30 An issues paper was published in May 2018 and an options paper was published in April 2019. An exposure draft of the Bill was publicly consulted on from February to May 2022, with further targeted consultation undertaken in July 2023.

Binding on the Crown

- 31 In Part A of Annex One I seek Cabinet's agreement that the Bill binds the Crown.

Amendments

- 32 The Bill will:
- 32.1. amend the FTA in relation to unfair contract terms

- 32.2. amend the FMC Act in relation to the presentation requirements for insurance contracts
- 32.3. repeal certain redundant provisions of the Marine Insurance Act 1908
- 32.4. amend the Financial Markets Authority Act to reflect the Financial Markets Authority taking responsibility for monitoring and enforcing the Bill
- 32.5. disapply aspects of the Contract and Commercial Law Act 2017 in relation to contracts of insurance.

Associated regulations

- 33 The Bill contains regulation-making powers to support the rest of the Bill, including carrying over regulation-making powers from the Insurance Intermediaries Act 1994. The Bill also provides for the power to make regulations under the FMC Act relating to the form and presentation of insurance contracts, and to require insurers to make certain information available.
- 34 I do not propose to make a significant number of supporting regulations at this time. I will consider making regulations to prescribe standard form wording for notifications by insurers to policyholders.

Commencement of legislation

- 35 The Bill will come into force on a date or dates set by Order in Council, but no later than three years after the date of Royal assent. This allows the timing of commencement to take into account insurers' preparation for, or recent implementation of, the requirements imposed on them under CoFI; and ensures that there is an appropriate amount of time for insurers to prepare for the changes arising from the Bill.

Parliamentary stages

- 36 I intend to introduce the Contracts of Insurance Bill on 2 May.
- 37 I propose the Bill be referred to the Finance and Expenditure committee for a period of four months. I consider that a four month Select Committee process is appropriate as the Bill has had extensive consultation including an exposure draft.

- 38 Confidential advice to Government

Communications

- 39 I intend to issue a press release when the Bill is introduced.

Proactive release

- 40 This paper will be published on MBIE's website, subject to withholdings as appropriate under the Official Information Act 1982.

Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

- 1 **note** that the Contracts of Insurance Bill reforms insurance contract law, and consolidates and modernises existing insurance legislation in New Zealand;

Policy approvals

- 2 **agree** to the policy matters set out in Part A of Annex One;
- 3 **note** the matters set out in Part B of Annex One;

Introduction of the Contracts of Insurance Bill

Confidential advice to Government



- 5 **agree** that the Parliamentary Counsel Office can make additional minor or technical drafting changes prior to introduction of the Bill;
- 6 **approve** the Contracts of Insurance Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 7 **agree** that the Contracts of Insurance Bill be introduced on 2 May;
- 8 **agree** that the government propose that the Bill be:
- 8.1. referred to the Finance and Expenditure committee for consideration;
- 8.2. enacted by December 2024.

Authorised for lodgement

Hon Andrew Bayly

Minister of Commerce and Consumer Affairs

Annex One: Matters for Cabinet to Consider and Note

Part A: Matters I recommend Cabinet agree to

Topic	Cabinet policy decision [DEV-19-MIN-0311]	Reason for proposal	Policy proposal
Bind the Crown.	Cabinet has not yet agreed that the bill binds the Crown.	Legislation should apply to the Crown unless there is good reason for it not to do so. There is no good reason for the Bill to not bind the Crown.	The Bill binds the Crown.
Unfair contract terms: Removing insurance-specific exclusions in the FTA.	<p>The FTA prohibits unfair terms in standard form consumer and small business contracts. Most insurance terms are currently excluded from a prohibition on unfair contract terms in the FTA.</p> <p>Cabinet agreed to remove the insurance-specific exceptions and instead clarify how the generic exemptions apply to insurance. Cabinet agreed that exposure draft of the Bill would consult on two options for this clarification.</p>	<p>Feedback from insurers emphasised the need for certainty that they can rely on contractual terms. Insurers may otherwise increase premiums to account for the risk that they could be required to pay out claims in circumstances which they did not intend to cover. This could also impact reinsurers' appetite to offer reinsurance in New Zealand.</p> <p>The CoFI Act's principle to treat consumers fairly may provide some protection against the use of unfair contract terms in insurance contracts.</p>	<p>The Bill clarifies how the generic FTA exemptions apply to insurance by defining the main subject matter of the insurance in broad terms (i.e. terms that define the risk accepted by the insurer).</p> <p>This will provide insurers with certainty that they can rely on contractual terms relating to the risk accepted by the insurer, and avoid the risk of increased premiums for policyholders.</p>
Intermediary duty to pass on	Cabinet agreed that the Bill would introduce a new duty for	Feedback from intermediaries indicated that they strongly oppose	The Bill retains the duty but adds an ability for parties to contract

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Topic	Cabinet policy decision [DEV-19-MIN-0311]	Reason for proposal	Policy proposal
information.	intermediaries to pass on material information disclosed to relevant staff that insurers are deemed to know. The Bill allows the Court to order that an intermediary compensate an insurer for failure to pass on information.	the new duty, submitting that this is already addressed by existing contractual arrangements, exposes them to excessive risk that is disproportionate (compared to commission sizes) and may conflict with client duties. Insurers support it.	out of this. This sets a legislative benchmark and backstop that material information should be passed on, while recognising that commercial parties can contractually agree on these matters.

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Topic	Cabinet policy decision [DEV-19-MIN-0311]	Reason for proposal	Policy proposal
<p>Penalties and enforcement powers.</p>	<p>Cabinet determined that the Minister of Commerce and Consumer Affairs:</p> <ul style="list-style-type: none"> could make decisions on penalties and enforcement tools to be included in the exposure draft Bill would seek final Cabinet decisions on these matters when seeking approval to introduce the Bill. 	<p>A) The offence provisions in existing legislation are outdated.</p> <p>B) The FMA needs the ability to enforce requirements for contracts to be clear and concise. The proposed approach was included in the exposure draft of the Bill and is consistent with the approach to product disclosure statement requirements in the FMC Act.</p> <p>C) The Bill needs to provide for consequences for breach of:</p> <ul style="list-style-type: none"> insurers' duty to give policyholders certain information brokers' duty to pass on payouts to policyholders brokers' client account obligations. <p>The proposed consequences were included in the exposure draft of the Bill.</p>	<p>Offences in existing legislation are carried over to the Bill and modernised in accordance with modern legislative design. Where appropriate, a defence of 'reasonable excuse', and a 'mental element' are added to offences. The maximum fines are increased to take into the account the decrease in the value of money over time.</p> <p>The Bill provides that the FMA has 'stop order' powers to prohibit an insurer from using a type of contract that breaches the obligation to word and present contracts in a clear, concise and effective manner. Stop orders are a standard part of FMA's regulatory toolkit and familiar to financial markets participants. These powers will for example enable the FMA to pause provision of an insurance product while it engages with the insurer on improvements. Breach of any associated requirements</p>

Topic	Cabinet policy decision [DEV-19-MIN-0311]	Reason for proposal	Policy proposal
			<p>specified in regulations - relating to the presentation of policies and publication of information - carries potential civil liability (including liability for a fine).</p> <p>Breach of certain notification requirements on insurers, and obligations on brokers in relation to client accounts and money, also carries potential civil liability.</p>

Topic	Cabinet policy decision [DEV-19-MIN-0311]	Reason for proposal	Policy proposal
<p>Unfair contract terms: application to small trade insurance contracts.</p>	<p>No previous Cabinet decision.</p>	<p>The Fair Trading Amendment Act 2021 extended the application of the unfair contract terms regime to small trade contracts, being contracts with an annual value of up to \$250,000.</p> <p>Insurers submitted that the \$250,000 annual value threshold would cover extremely large business insurance contracts covering tens of millions of dollars of risk insured, going well beyond the intent to cover “small trade” contracts. Indications from one insurer are that approximately 85-95 per cent of policies will be captured by a \$20,000 threshold.</p>	<p>The Bill amends the FTA to lower the annual value threshold for small trade insurance contracts to \$20,000.</p> <p>This lower threshold is more appropriate to reflect the policy intention to cover “small trade” contracts.</p>

Topic	Cabinet policy decision [DEV-19-MIN-0311]	Reason for proposal	Policy proposal
<p>Unfair contract terms: commencement of extension to small trade insurance contracts.</p>	<p>No previous Cabinet decision.</p>	<p>The application of the unfair contract terms regime to small trade insurance contracts under the FTA is not in force until 1 April 2025 (or an earlier date specified by Order in Council).</p> <p>The intention behind this approach was that the application to small trade insurance contracts would be brought into force alongside the changes to the unfair contract terms exceptions under the Bill, so that insurers do not need to review their small trade insurance contracts twice. However, the Bill has progressed more slowly than originally anticipated.</p>	<p>The Bill amends the backstop date for the extension of the unfair contract terms regime to small trade insurance contracts to 3 years after the date of Royal assent of the Contracts of Insurance Act (or an earlier date specified by Order in Council).</p> <p>This aligns with the commencement provision under the Bill, ensuring these changes can be brought in at the same time.</p>

Cabinet policy decision [DEV-19-MIN-0311]	Reason for proposal	Policy proposal
<p>Implied term that any pay out of a claim must be made within a reasonable time.</p>	<p>No previous Cabinet decision.</p>	<p>A statutory provision requiring insurers to pay any sums due within a reasonable period of time would be helpful for transparency and certainty.</p> <p>A similar provision to what I propose exists in the UK.</p>
		<p>The Bill provides it is an implied term of every contract that the insurer must pay any sums due in respect of the claim within a reasonable time.</p> <p>A reasonable time includes a reasonable time to investigate and assess the claim. What is reasonable will depend on all the relevant circumstances. Specific examples of what may need to be taken into account include: size and complexity of the claim, and factors outside the insurer’s control.</p> <p>The provision states that damages (as well as interest) may be an available remedy for an unreasonable delay in paying out.</p>

Part B: Matters for Cabinet to note

Topic	Matter ([DEV-19-MIN-0311] relates to any Cabinet decisions mentioned)
FMA's remit for monitoring and enforcement.	<p>The intention is for the FMA to be the regulator responsible for monitoring and enforcing compliance with the Bill. To reflect this, Cabinet agreed that specified provisions that imposed duties on insurers would be expressly brought within the FMA's remit (i.e. duties for insurers to notify policyholders of certain matters, and requirements for the presentation and wording of insurance policies). Other provisions that imposed duties on policyholders or have contractual remedies were not specifically included on the basis that a regulator would not need to take enforcement action on these.</p> <p>I have decided that the Bill should be less prescriptive and provide for the Bill as a whole to be brought within the FMA's remit, rather than specifying particular sections. This better reflects the FMA's responsibility for overseeing the regime as a whole and monitoring and enforcing compliance with the Bill, and recognises the FMA's role in providing guidance and engaging with insurers on the legislation generally. The FMA is supportive of this approach.</p>
Increased risk exclusions.	<p>Cabinet agreed to introduce a regulation-making power to add to the list of policy exclusions that are not subject to a rule that an insurer must accept a claim if a policy exclusion applies but did not cause or contribute to the loss.</p> <p>I have decided that a regulation-making power to add further types of exclusions is not required. Feedback has not identified any additional potential circumstances that may need to be added to the existing list. If a particular issue is identified, I consider this would be more appropriately progressed in a Regulatory Systems Amendment Bill vehicle rather than regulations.</p>
Limits on life insurance payments for minors.	<p>The Life Insurance Act 1908 limits the payment amount for life insurance policies for minors under 10 years old to \$2000 plus the interest-adjusted total amount of premiums paid under the policy. This is generally insufficient to cover funeral costs. Cabinet agreed to change the limit to \$10,000 plus CPI adjustment.</p> <p>I have decided to change the limit to \$15,000 plus CPI adjustment. Feedback indicated that \$10,000 would still be insufficient. Given inflation and the Bill being unlikely to be in force until sometime after 2025, it is broadly consistent with the Cabinet decision to make the limit \$15,000.</p>

Topic	Matter ([DEV-19-MIN-0311] relates to any Cabinet decisions mentioned)
Definition of “consumer insurance contract” in the CoFI Act and the Bill.	<p>“Consumer insurance contract” was defined in the exposure draft of the Bill as ‘a contract of insurance entered into by a policyholder wholly or predominantly for personal, domestic, or household purposes’.</p> <p>I have decided the definition in the Bill, and the equivalent definition in the Financial Markets (Conduct of Institutions) Amendment Act 2022, will include an objective element. Amending the definition to include an objective element (e.g. a contract of insurance ‘ordinarily entered into’...) would provide greater clarity and certainty for insurers, allowing them to classify policies in advance. The CoFI Act definition is amended to avoid unjustified inconsistency and compliance cost.</p>

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Annex Two: Departmental Disclosure Statement: Contracts of Insurance Bill

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Departmental Disclosure Statement

Contracts of Insurance Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

11 April 2024

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Part One: General Policy Statement

This Bill is an omnibus Bill that amends more than one Act and is introduced under Standing Order 267(1)(a) because the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. That single broad policy is to reform insurance contract law and to consolidate and modernise existing insurance legislation in New Zealand.

Purpose of Bill

The purpose of this Bill is to ensure that insurance contract law is effective for facilitating well-functioning insurance markets for both insurers and policyholders. It seeks to enable consumers and businesses to effectively protect themselves against risk, while minimising costs and impacts on insurers' willingness to provide insurance in New Zealand.

Insurance contract law reform, consolidation, and modernisation

Insurance contracts are governed by various pieces of legislation and case law. At present the law is fragmented across 6 different Acts, some over 100 years old, and would benefit from consolidation and modernisation.

Insurance contract law reforms have been long awaited and there is consensus across industry and consumer groups that these changes are needed.

A series of reviews including by the Law Commission have identified a number of long-standing issues with insurance contract law, which are addressed by this Bill. The Bill has also been informed by similar reforms that have been made to Australian and United Kingdom insurance legislation.

Disclosure duties and insurer's remedies for misrepresentations

Consumers are sometimes unable to make an insurance claim for losses because they innocently did not disclose matters to the insurer that they were unaware they had to disclose.

The Bill reforms the law relating to the disclosure of information by policyholders to insurers before an insurance contract is entered into or varied as follows:

- policyholders under consumer insurance contracts have a duty to take reasonable care not to make a misrepresentation to the insurer:
- policyholders under non-consumer insurance contracts have a duty to make a fair presentation of the risk.

The Bill also –

- modifies the law relating to the duty of utmost good faith that all insurance contracts are based on. Pre-contract disclosure duties on policyholders, and the insurer's remedies for breach, will only be those set out in the Bill:
- ensures the insurer's remedies for misrepresentations and breaches provide proportionate consequences based on how the insurer would have responded to the information at the time of entry into the contract, and whether the policyholder's misrepresentation or breach was deliberate or reckless.

Unfair contract terms

A number of terms in insurance contracts cannot be declared “unfair” under the Fair Trading Act 1986 due to insurance-specific exceptions.

The Bill removes insurance-specific exceptions from the unfair contract terms provisions in the Fair Trading Act 1986 and instead clarifies which insurance terms are part of the “main subject matter” of the contract (which cannot be declared unfair).

Understanding and comparing insurance policies

Unlike many other jurisdictions, New Zealand has no legal requirements in relation to the presentation of insurance policies to help consumers to understand and compare insurance products.

The Bill amends the Financial Markets Conduct Act 2013 to require insurance contracts to be worded and presented in a clear, concise, and effective manner.

Consolidation and modernisation of existing legislation

The Bill brings together different requirements from across the Life Insurance Act 1908, Part 3 of the Law Reform Act 1936, the Insurance Law Reform Act 1977, the Insurance Law Reform Act 1985, and the Insurance Intermediaries Act 1994. These include the following:

- modifying provisions relating to when time limits for making claims are binding on policyholders to better take into account claims-made policies:
- providing that certain policy exclusions are not subject to a rule that insurers cannot rely on an exclusion to deny a claim if the exclusion did not cause or contribute to the loss:
- allowing a third party who has been wronged by a policyholder to claim directly against the policyholder’s insurer. This replaces an existing statutory charge mechanism, due to multiple issues with how this operates.

Payment of claims in a reasonable time

The Bill provides that if a policyholder makes a claim, the insurer must pay any sums due within a reasonable time.

Intention to divide Bill

It is intended that the Bill will be divided by the select committee or at the committee of the whole House stage into separate Bills as follows:

- *Parts 1 to 6 and Schedules 1 to 3* will become the Contracts of Insurance Bill:
- *Part 7 and Schedules 4 to 6* will become the Contracts of Insurance (Repeals and Amendments) Bill.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
MBIE 2018 review of insurance contract law, including consultation on an issues paper: https://www.mbie.govt.nz/have-your-say/insurance-contract-law-review/	
Law Commission 1998 project on insurance law: https://www.lawcom.govt.nz/our-work/insurance-law/	
Law Commission 2003 project on life insurance: https://www.lawcom.govt.nz/our-work/life-insurance/	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
Impact Statement: Insurance contract law reforms, MBIE, November 2019. A copy can be accessed here: https://www.mbie.govt.nz/dmsdocument/7480-impact-statement-insurance-contract-law-reforms-proactiverelease-pdf .	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
MBIE's Regulatory Impact Assessment Panel assessed the RIS as follows: Meets the criteria necessary for Ministers to make informed decisions on the proposals in the Cabinet paper.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	YES
<p>Exemptions have been granted by The Treasury from RIS requirements for Cabinet policy approvals following the exposure draft consultation. Changes covered by the exemptions include, for example, moderating the thresholds for bringing in small trade insurance contracts into the unfair contracts regime and to make payment within reasonable time an implied term of insurance contracts. The exemptions are on the grounds that:</p> <ul style="list-style-type: none"> • the proposals have no or only minor impacts on businesses, individuals, and not-for-profit entities in the context of decisions on the wider framework • some of the proposals have also been addressed by previous impact analysis. 	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>The MBIE RIS relies on a range of qualitative data to assess the impacts of the proposed options, including anecdotal evidence from public submissions. Limited quantitative evidence of the problems identified or quantitative assessments of the costs and benefits of the options was available.</p> <p>The MBIE RIS provides analysis on where the costs of the reforms fall. It signals that insurers will likely face moderate-to-high initial costs to implement the proposals. However, the proposals are not expected to significantly increase costs on an ongoing basis.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>The potential costs or benefits are impacted by the level of effective compliance with obligations or standards.</p> <p>The level of compliance is expected to determine the benefits that accrue to consumers over the long term from the improvement resulting from more reasonable disclosure rules and greater clarity over contract terms and of their and insurers' respective duties.</p> <p>MBIE's RIS expected that the Financial Markets Authority will have an increase in costs including the costs of monitoring and enforcement as well as developing guidance.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

New Zealand is not bound by an international treaty in relation to the matters in this Bill. MFAT considers the Bill is consistent with New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

MBIE considers that the Bill is consistent with the principles of the Treaty of Waitangi. Te Arawhiti was consulted. It is comfortable with MBIE's assessment. Te Puni Kōkiri was consulted. It did not identify any particular impacts on Māori in the bill.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by the Ministry of Justice is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible here: <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/>.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<p>The Bill applies existing civil liability provisions from sections 56 and 58 and under section 449 of the Financial Markets Conduct Act in the event of a contravention of certain duties:</p> <ul style="list-style-type: none"> • insurers' duties to inform policy holders of certain matters (Part 2, subpart 6) • brokers' duties in relation to payments due to policy holders (replacing the current criminal liability) (clause 108) • brokers' duty to establish and maintain an insurance broking client account (replacing the current criminal liability) (clause 110) • insurer's duties to comply with requirements in regulations relating to the form and presentation of an insurance contract (clause 183, new section 447B Financial Markets Conduct Act, and clause 185(1)). <p>The Bill carries over and modernises current offences. It makes it an offence:</p> <ul style="list-style-type: none"> • to issue a form or proposal for insurance that contains, or purports to be, an application for shares in the company with fines on conviction not exceeding \$50,000 for a company and \$10,000 for a company director (clause 99). • for a broker to contravene their duties in relation to premiums, without reasonable excuse, with liability on conviction to a fine not exceeding \$5,000 for an individual or \$10,000 in any other case (clause 104) • for a life insurer to fail to comply (without reasonable excuse) with requirements in clauses 123-139, with liability on conviction to a fine not exceeding \$50,000 (clause 142) • for a life insurer to knowingly breach clauses 149, 150 or 151(1) for life insurers, with liability to a conviction to a fine not exceeding \$50,000 (clause 152(1)). • to knowingly attempt to defeat the provisions of the Bill concerning payments on the death of minors, with liability to a fine of not exceeding \$20,000 (clause 152(2)). 	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
The Ministry of Justice was consulted and is comfortable with the penalties and offences in the Bill.	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
Clauses 66 and 67 (Duty for specified intermediary in relation to a consumer insurance contract or a non-consumer insurance contract) requires intermediaries that receive commission from an insurer to pass on material information that the insurer is deemed to know. This may include personal information that has been disclosed to an intermediary by a consumer.	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The Office of the Privacy Commissioner was consulted on the exposure draft of the Bill and subsequently on an updated version of the duty to pass on information. The Office of the Privacy Commissioner provided feedback on the duty and was comfortable in view of the response provided that the privacy risk had been considered and was assessed by MBIE to be low in practice.</p>	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>Three phases of public consultation have been undertaken by MBIE in the development of the policy and drafting of the Bill:</p> <ul style="list-style-type: none"> • Consultation on the insurance contract law issues in April – July 2018. MBIE prepared an issues paper and invited public submissions. • Consultation on options to address insurance contract law issues in April – June 2019. MBIE prepared a paper outlining options to address the insurance contract law issues that had been identified, public submissions on the paper were invited. • Consultation on an exposure draft of the Bill in February – May 2022. <p>Feedback indicated there is consensus across industry and consumer groups that the reforms made by the Bill are needed. There was support for the objectives of the Bill and the general approach taken in the exposure draft Bill to addressing the policy issues.</p> <p>MBIE also conducted further targeted consultation in August 2023 with industry groups such as the Insurance Council of New Zealand, the Financial Services Council, and the Insurance Brokers Association of New Zealand, and their feedback has been taken into account.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
<p>Clause 165(1)(e) provides for regulations to be made by Order in Council to amend the amount in clause 149(1)(b). This power to amend the Act by regulation is necessary to future-proof clause 149(1)(b), which includes a nominal monetary figure (\$15,000), against inflation over time. Regulations can only be made on the recommendation of the Minister (clause 165(2)). Before recommending the Minister must be satisfied that any amendment is necessary or desirable to take into account any increase in the Consumer Price Index (clause 165(5)).</p> <p>Clause 165(1)(c) provides that regulations can be made by Order in Council that declare that the definition of consumer insurance contract, or non-consumer insurance contract, includes or does not include a particular kind of contract of insurance. In the event that uncertainty arises about how a particular kind of contract is to be categorised, clause 165(1)(c) can provide certainty to policy holders and insurers. Regulations can only be made on the recommendation of the Minister (clause 165(2)). Under clause 165(3), the Minister must, before recommending such regulations:</p> <ul style="list-style-type: none">(a) consult the FMA; and(b) have regard to the economic substance of the contracts of insurance to which the declaration will relate; and(c) be satisfied that the declaration is necessary or desirable in order to promote either or both of the matters in section 3(a) or (b), which are:<ul style="list-style-type: none">(a) promoting the confident and informed participation of insurers, policyholders, and other participants in the New Zealand insurance market;(b) ensuring that the provisions included in contracts of insurance, and the practices of insurers in relation to those contracts, operate fairly. <p>The purpose and effect of clause 165(1)(c) is similar to section 562 of the Financial Markets Conduct Act 2013. Section 562 gives the FMA the ability to declare that a financial product is a financial product of a particular kind.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>Clause 165 of the Bill provides a power to make secondary legislation (by Order in Council) for the following purposes:</p> <ul style="list-style-type: none"> • providing for anything this Act says may or must be provided for by regulations (clause 165(1)(a)) • prescribing, for the purposes of any provision of this Act that requires a thing to be done in a manner prescribed by the regulations, the manner in which the thing must be done, including prescribing— <ul style="list-style-type: none"> (i) by whom, when, where, and how the thing must be done: (ii) the form that must be used in connection with doing the thing: (iii) what information or other evidence or documents must be provided in connection with the thing: (iv) requirements with which information, evidence, or documents that are provided in connection with the thing must comply (clause 165(1)(b)) • prescribing matters for the purposes of section 125(b) (which relates to interest payable for contracts of life insurance in respect of assets related money) (clause 165(1)(d)) • providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act (clause 165(1)(f)). <p>This secondary legislation is necessary to provide for the efficient operation of the legislation such as clarifying detailed matters of when, where and how things must be done in a way that can be flexible and adjust over time as needed.</p> <p>The regulation power under clause 165(1)(d) is subject to safeguards. Regulations can only be made on the recommendation of the Minister (clause 165(2)). Before recommending the Minister must be satisfied that the regulations are consistent with objectives specified in clause 165(4).</p> <p>Clause 166 of the Bill also provides a power to make secondary legislation (by Order in Council) for the following purposes in relation to Part 4 of the Bill:</p> <ul style="list-style-type: none"> (a) specifying the duties and obligations of brokers in relation to insurance broking client accounts, including obligations to make payments into those accounts: (b) providing for the protection of money deposited in insurance broking client accounts or invested from claims by persons other than the person for whom, or on whose behalf, the money is held: (c) restricting the combining of any insurance broking client account with any other account or the combining of any property in which money from such an account is invested with any other property: (d) providing for the audit, review, and inspection of the accounts and records kept by brokers: (e) exempting any broker, or class of broker, from any requirements relating to any such audit, review, or inspection: (f) stating which provisions of regulations made under this section (if any) are Part 6 services provisions for the purposes of the FMCA (see section 449(4) and Part 8 of that Act, in which Part 6 services provisions are specified to be civil liability provisions). <p>Secondary legislation made under the bill must be presented to the House or Representatives and may be disallowed by the House of Representatives.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO