From: s 9(2)(a)
To: Insurance Review
Subject: I SUPPORT AND SUBMIT THIS SUBMISSION TO THE INSURANCE CONTRACT LAW REVIEW
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SUBMISSION BY EMPOWERED CHRISTCHURCH/SOUTH BRIGHTON RESIDENTS' ASSOCIATION ON THE INSURANCE CONTRACT LAW REVIEW

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General:

Insurance plays a crucial role in New Zealand society, yet the New Zealand insurance industry is largely unregulated. It is dominated by two large Australian groups, Suncorp and IAG, with just one local insurer of any significance (Tower). The submission will look at insurance contract law from the perspective of the Canterbury Earthquake Sequence and the enormous problems relating to insurance contracts that have emerged during the recovery. The enforcement of insurance contracts is closely tied to the mechanisms available to adjudicate them, so consideration is also given to the "fast track" earthquake list that was established for the High Court and to the separation of powers and the apparent absence of checks and balances in New Zealand between the executive and the judiciary.

Legislation

The stated purposes of the Insurance (Prudential Supervision) Act 2010 are to promote the maintenance of a sound and efficient insurance sector and to promote public confidence in the insurance sector.

The collapse of insurer AMI following the first two earthquakes in the Canterbury Earthquake Sequence (CES), and the dominance in the market of the two Australian insurance groups illustrate that the first purpose has not been met.

As regards the second purpose, the many insurance disputes after 2011, and the large number of insurance claims filed in the High Court as at June 2018, the problems caused by the use of exemptions and the MBIE guides, and the ongoing scandals encompassing the EQC and Southern Response, have seriously damaged the reputation of insurers in the South Island. Public confidence in the insurance sector is at an all-time low in Canterbury and the future role of the EQC is a matter of public debate. The reputational damage is ongoing and will require many years to repair.

Insurance cases in law

A total of 1,119 earthquake insurance cases, with claims well in excess of $1bn have

been brought before the NZ High Court, yet only 28 cases have been disposed by judgment. Very few precedents have been set, despite this being one of the alleged original purposes of the list. A complex and time-consuming Earthquake List process has been put in place, which has had the effect of reducing the number of cases reaching court through escalating claimant costs and extending court schedules. No serious additional resources have been allocated to the High Court to expedite processing, and information that would highlight how dysfunctional the system is has been carefully contained or in some cases withheld.
Recommendation: In the absence of the promised insurance tribunal, adequate resources should be given to the High Court to deal with the current backlog of cases. Alternative dispute resolution mechanisms should be abandoned,as they do not set precedents. Low-income claimants should be given financial support to allow them access to justice.

Self-regulation
The principles of the Fair Insurance Code, which is published by the Insurance Council of New Zealand (ICNZ), have been largely ignored in the context of the Canterbury Earthquake Sequence and other recent earthquake events. MBIE guides that fall well short of contract standards have been used to settle house insurance claims. Damage has been denied or under-scoped and many hundreds of earthquake claims remain unsettled more than seven years after the claim event. Independent regulation is urgently needed to enforce the principles of utmost good faith and prompt and fair claims settlement.
Recommendation: An insurance regulator should be established to monitor insurer performance and impose sanctions for such things as pressure sales, undue delay, contract violations and deceptive advertising.

Government conflict of interest
The New Zealand government, through the Accident Compensation Commission, held almost 10% of the shares of Tower Insurance, but recently reduced this to 7%. Particular in view of the government liabilities through EQC and the AMI run-off company, Southern Response, there should be no government investment in private insurance companies. Otherwise there is a conflict of interest on the part of the government. Reducing insurance claims liabilities by delay-deny-defend tactics and by obstructing claimants' access to justice simultaneously reduces government liability. This partly explains the introduction and application of MBIE guides that met neither the standard of the Earthquake Commission Act 1993, nor the standards of the insurance contract, the protracted Earthquake List process and the seven-year accumulation of earthquake cases in the New Zealand High Court.
Recommendation: To avoid a conflict of interest, the government should refrain from investments in private insurance companies.

Disclosure obligations for policyholders
Cases of contractual disagreements between insurer and insured regularly feature on consumer programmes on TV and radio. Some of the behaviours highlighted have included a refusal to meet or avoidance of a justified claim, undue delay, and the question of what constitutes material information that the insured is meant to disclose. Insurance claims have been denied on the basis that past medical information, that the insured could not be expected to remember, was not disclosed at the time the product was purchased.

Recommendation: Applications for insurance should ask specific questions on relevant conditions, rather than open questions, such as “Are there any other conditions you have suffered from in the past 20 years”, where theprospective insured cannot reasonably be expected to remember all details over such a long period.

Technical issues that have been identified by the Law Commission and insurance industry

One of the stated aims of the Insurance Contract Law review is to ensure that insurers and insureds are able to transact with confidence at all points of the lifecycle of an insurance policy. As Canterbury earthquake insurance claims have shown, the point in the product life cycle where trust and confidence break down is when a major claim is made. A claims settlement process that lasts seven years is seriously flawed. Insureds have reported having four or five different case managers, being laughed at on the telephone when making complaints, and being subjected to endless excuses and delays. Elderly and vulnerable claimants report being subjected to verbal and psychological pressure to cash settle their claim.

Recommendation: Strict regulation is required to end such practices.

Gaps in New Zealand’s regulation of insurers’ conduct

With so many insurance claims still unsettled after 7 years, a maximum period for the settlement of insurance claims must be ensured, or at the very least the principle of prompt and fair settlement. The insurance industry has failed to regulate itself and its self-styled Fair Insurance Code has been repeatedly violated without consequences. Given the varying complexity of insurance claims, a single statutory time limit for claims settlement would be impractical. What is needed instead is a monitoring authority with the power to impose sanctions on insurers for unjustified delay, in tandem with improved, and more importantly speedy, access to justice for policyholders.

The scope of terms defined to be not “unfair contract terms” under the Fair Trading Act 1986

Section 26A (3) Fair Trading Act 1986 should be amended to include all insurance contracts from the date of the next renewal following a court ruling on a matter of insurance. Insurance contracts are no different from other types of commercial contracts and do not deserve special treatment.

Consumers’ ability to find and compare prices and policies.

At present, anyone looking for an insurance policy must rely on advertising, brokers or word of mouth in the search for cover.

Recommendation: The establishment of an online platform to allow comparisons between the different policies, prices and conditions offered by different providers would represent a significant improvement in terms of consumer choice ~~would~~[delete]. Up to now, this has been blocked by the large insurance companies. Such a platform would increase competition and improve consumer choice.

Policy wordings

The international trend in developed countries over recent decades has been towards the use of simplified English in insurance policy wordings, with clear definitions of all the major terms. Insurance companies in New Zealand have only recently followed suit, but many disputes have arisen because of badly worded and poorly defined contracts. Examples include the terms “as new”/”as when new”, and “area insured”, which are not properly defined in policies. Even new policies since the changeover to sum insured covers after the Canterbury earthquakes use vague and undefined terms such as repair or replacement “to the standard of the

last improvement". The Canterbury earthquake recovery has featured many cases where a repair or rebuildof properties has not been to the contract standard. The standard of remediation should be clearly and concisely defined in each insurance contract.

Recommendation: All insurance policies should contain clear and unequivocal definitions of key terms and conditions and set out precisely what the insurer guarantees to do in the event of a loss. This needs to be supervised by the regulator, since,as thousands of Canterbury claims have illustrated, the cover promised by the policy is often not delivered.

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General:

SUBMISSION BY EMPOWERED CHRISTCHURCH/SOUTH BRIGHTON RESIDENTS' ASSOCIATION ON THE INSURANCE CONTRACT LAW REVIEW Insurance plays a crucial role in New Zealand society, yet the New Zealand insurance industry is largely unregulated. It is dominated by two large Australian groups, Suncorp and IAG, with just one local insurer of any significance (Tower). The submission will look at insurance contract law from the perspective of the Canterbury Earthquake Sequence and the enormous problems relating to insurance contracts that have emerged during the recovery. The enforcement of insurance contracts is closely tied to the mechanisms available to adjudicate them, so consideration is also given to the "fast track" earthquake list that was established for the High Court and to the separation of powers and the apparent absence of checks and balances in New Zealand between the executive and the judiciary.

Kind regards

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