

# Submission on discussion document: Insurance contract law review

## Your name and organisation

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Organisation	Shine Lawyers NZ

## Responses to discussion document questions

### Regarding the objectives of the review

1	Are these the right objectives to have in mind? <i>[Insert response here]</i>
2	Do you have alternative or additional suggestions? <i>[Insert response here]</i>

### Regarding disclosure obligations and remedies for non-disclosure

3	<p>Are consumers aware of their duty of disclosure?</p> <p><i>No – commonly they are told by their advisor to limit disclosure to “the big stuff”. This leads to under reporting.</i></p> <p><i>The scope of the questions within medical disclosure forms are too broad. Questionnaire asks the consumer to make a judgement decision. They naturally recall large more severe incidence of ill health. They do not recall if they have EVER:</i></p> <p><i>had any signs or symptoms of, or been tested or treated for, or diagnosed with the following...</i></p> <p><i>Other insures use the term “suffer” does that mean that you have to be under a diagnosis, receiving treatment, under medication or just receiving counselling?</i></p> <p><i>The insurer is in a far better position to determine whether an illness is pertinent to the customers insurance risk.</i></p> <p><i>Insurers have that expertise when they review a claim. They then request an insured’s full medical file from a GP and review it line by line. Why can’t they do that when they take on the risk.</i></p>
4	Do consumers understand that their duty of disclosure goes beyond the questions that an insurer may ask?

	<i>No</i>
5	Can consumers accurately assess what a prudent underwriter considers to be a material risk?  <i>Clearly not.</i>
6	Do consumers understand the potential consequences of breaching their duty of disclosure?  <i>No</i>
7	Does the consumer always know more about their own risks than the insurer? In what circumstances might they not? How might advances in technology affect this?  <i>No. People do not recall their entire medical history. The GP notes commonly do not reflect that persons recall. If GP notes are available why are they not reviewed by the insurer prior to cover being offered.</i>
8	Are there examples where breach of the duty of disclosure has led to disproportionate consequences for the consumer? Please give specific examples if you are aware of them.  <i>Yes.</i>
9	Should unintentional non-disclosure (i.e. a mistake or ignorance) be treated differently from intentional non-disclosure (i.e. fraud)? If so, how could this practically be done?  <i>Yes. Can occur under the increase burden of proof which currently exists for incidence of fraud. Insurer must have onus of proof.</i>
10	Should the remedy available to the insurer be more proportionate to the harm suffered by the insurer?  <i>They don't suffer harm – they right the risk. They just don't pay out when they should.</i>
11	Should non-disclosure be treated differently from misrepresentation?  <i>Yes.</i>
12	Should different classes of insureds (e.g. businesses, consumers, local government etc.) be treated differently? Why or why not?  <i>No.</i>
13	In your experience, do insurers typically choose to avoid claims when they discover that an insured has not disclosed something? Or do they treat non-disclosure on a case-by-case basis?  <i>Yes. Every claim looks at this as a tick box exercise. Where in fact it is their own insurance policy against paying out. They get rewarded for making obscure broad and difficult to understand disclosure questionnaires that provide ample room for innocent non disclosure.</i>
14	What factors does an insurer take into account when responding to instances of non-disclosure? Does this process vary to that taken in response to instances where the insurer

discovers the insured has misrepresented information?

*[Insert response here]*

## Regarding conduct and supervision

15

What do you think fair treatment looks like from both an insurer's and consumer's perspective? What behaviours and obligations should each party have during the lifecycle of an insurance contract that would constitute fair treatment?

Open dialogue.

16

To what extent is the gap between ICP 19 and the status quo in New Zealand (as identified by the IMF) a concern?

*[Insert response here]*

17

Does the lack of oversight over the full insurance policy 'lifecycle' pose a significant risk to purchasers of insurance?

*[Insert response here]*

18

What has your experience been of the claims handling process? Please comment particularly on:

- timeliness the information from the claims handler about:
  - timeframes and updates on timeframes
  - reasons for declining the claim (if relevant)
  - how you can complain if declined
- The handling of complaints (if relevant)

*Claims are handled very poorly. Minor claims take up to 5 months to process. Complex claims take years. The process has no oversight and the consumer is powerless to compel the insurer to respond.*

19

Have you ever felt pressured to accept an offer of settlement from an insurance company? If so, please provide specific examples.

*Yes. The constant imbalance between the bargaining power of insurer and insured. Access to justice issues means people accept lower pay outs because they don't have the means to fight it.*

20

When purchasing (or considering the purchase of) insurance, have you been subject to 'pressure sales' tactics?

Yes.

21

What evidence is there of insurers or insurance intermediaries mis-selling unsuitable

	insurance products in New Zealand?
	<i>Policies not fit for purpose. I had a tetraplegic client who had life insurance – but carve out for anything related to tetraplegia. So, cover is meaningless.</i> Income protection cover for people who are not employed.
22	Are sales incentives causing poor outcomes for purchasers of insurance? Please provide examples if possible.
	<i>Yes. Churn leads to non disclosure. Agent does not want to tell insurer about medical conditions as this will lead to client walking away. If they disclose then insurer may put loading. Client will go to another provided. They want to get their commission quickly. People don't like insurance sales people and want to get the interview over quickly</i>
23	Does the insurance industry appropriately manage the conflicts of interest and possible flow on consequences that can be associated with sales incentives?
	<i>No.</i>

### Regarding exceptions from the Fair Trading Act's unfair contract terms provisions

24	Are you aware of instances where the current exceptions for insurance contracts from the unfair contract terms provisions under the Fair Trading Act are causing problems for consumers? If so, please give examples.
	<i>[Insert response here]</i>
25	More generally, are there terms in insurance contracts that you consider to be unfair? If so, why do you consider them to be unfair?
	<i>Income protection policies. <a href="https://www.interest.co.nz/opinion/94618/lawyer-welcomes-insurance-contracts-law-review-citing-policies-give-insurers">https://www.interest.co.nz/opinion/94618/lawyer-welcomes-insurance-contracts-law-review-citing-policies-give-insurers</a></i>
26	Why are each of the specific exceptions outlined in the Fair Trading Act needed in order to protect the “legitimate interests of the insurer”?
	<i>[Insert response here]</i>
27	What would the effect be if there were no exceptions? Please support your answer with evidence.
	<i>[Insert response here]</i>

### Regarding difficulties comparing and changing providers and policies

28	Is it difficult for consumers to find, understand and compare information about insurance
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	<p>policies and premiums? If so, why?</p> <p><i>[Insert response here]</i></p>
29	<p>Does the level of information about insurance policies and premiums that consumers are able to access and assess differ depending on the type of insurance? E.g. life, health, house and contents, car insurance etc.</p> <p><i>[Insert response here]</i></p>
30	<p>What barriers exist that make it difficult for consumers to switch between providers?</p> <p><i>[Insert response here]</i></p>
31	<p>Do these barriers to switching differ depending on the type of insurance? E.g. life, health, house and contents, car insurance etc.</p> <p><i>[Insert response here]</i></p>
32	<p>What, if anything, should the government do to make it easier for consumers to access information on insurance policies, compare policies, make informed decisions and switch between providers?</p> <p><i>[Insert response here]</i></p>

### Regarding third party access to liability insurance monies

33	<p>Do you agree that the operation of section 9 of the Law Reform Act 1936 (LRA) has caused problems in New Zealand?</p> <p><i>[Insert response here]</i></p>
34	<p>What are the most significant problems with the operation of section 9 of the LRA that any reform should address?</p> <p><i>[Insert response here]</i></p>
35	<p>What has been the consequence of the problems with section 9 of the LRA?</p> <p><i>[Insert response here]</i></p>
36	<p>If you agree that there are problems with section 9 of the LRA, what options should be considered to address them?</p> <p><i>[Insert response here]</i></p>

### Regarding failure to notify claims within time limits

37	<p>Do you agree that the operation of section 9 of the Insurance Law Reform Act 1977 (ILRA) has</p>
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	caused problems for “claims made” policies in New Zealand?
	<i>[Insert response here]</i>
38	What has been the consequence of the problems with section 9 of the ILRA?
	<i>[Insert response here]</i>
39	If you agree that there are problems with section 9 of the ILRA, what options should be considered to address them?
	<i>[Insert response here]</i>

### Regarding exclusions that have no causal link to loss

40	Do you consider the operation of section 11 of the Insurance Law Reform Act 1977 (ILRA) to be problematic? If so, why and what has been the consequence of this?
	<i>[Insert response here]</i>
41	The Law Commission proposed reform in relation to exclusions relating to the characteristics of the operator of a vehicle, aircraft or chattel; the geographic area in which the loss must occur; and whether a vehicle, aircraft or chattel was used for a commercial purpose. Do you agree that these are the areas where the operation of section 11 of the ILRA is problematic? Do you consider it to be problematic in any other areas?
	<i>[Insert response here]</i>
42	If you agree that there are problems with section 11 of the ILRA, what options should be considered to address them?
	<i>[Insert response here]</i>

### Regarding registration of assignments of life insurance policies

43	Do you agree that the registration system for assignment of life insurance policies still requires reform?
	<i>[Insert response here]</i>
44	If you agree that there are problems with the registration system for assignment of life insurance policies, what options should be considered to address them?
	<i>[Insert response here]</i>

### Regarding responsibility for intermediaries' actions

45	Do you consider there to be problems with the current position in relation to whether an
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	insurer or consumer bears the responsibility for an intermediary's failures? If possible, please give examples of situations where this has caused problems.
	<i>[Insert response here]</i>
46	If you consider there to be problems, are they related to who the intermediary is deemed to be an agent of? Or the lack of a requirement for the intermediary to disclose their agency status to the consumer? Or both?
	<i>[Insert response here]</i>
47	If you consider there to be problems, what options should be considered to address them?
	<i>[Insert response here]</i>

### Regarding insurance intermediaries – Deferral of payments / investment of money

48	Do you agree that the current position in relation to the deferral of payments of premiums by intermediaries has caused problems?
	<i>[Insert response here]</i>
49	If you agree that there are problems, what options should be considered to address them?
	<i>[Insert response here]</i>

### Other miscellaneous questions

50	Are there any provisions in the six Acts under consideration that are redundant and should be repealed outright? If so, please explain why.
	<i>[Insert response here]</i>
51	Are there elements of the common law that would be useful to codify? If so, what are these and what are the pros and cons of codifying them?
	<i>[Insert response here]</i>
52	Are there other areas of law where the interface with insurance contract law needs to be considered? If so, please outline what these are and what the issues are.
	<i>[Insert response here]</i>
53	Is there anything further the government should consider when seeking to consolidate the six Acts into one?
	<i>[Insert response here]</i>

## Other comments

We welcome any other comments that you may have.

/I also welcome review of the following:

<https://www.interest.co.nz/opinion/94618/lawyer-welcomes-insurance-contracts-law-review-citing-policies-give-insurers>

<https://www.lawsociety.org.nz/practice-resources/practice-areas/insurance-law/mental-health-and-insurance>

<https://www.interest.co.nz/opinion/89348/lawyer-concerned-insurers-archaic-practice-good-faith-risks-seeing-society-take>

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