



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Insurance Contract Law Reforms	Date to be published	4 December 2019

List of documents that have been proactively released		
Date	Title	Author
20 November 2019	<i>Insurance Contract Law Reforms</i>	<i>Office of the Minister of Commerce and Consumer Affairs</i>
20 November 2019	<i>DEV-19-MIN-0311</i>	<i>Cabinet Office</i>
November 2019	<i>Impact Statement: Insurance contract law reforms</i>	<i>MBIE</i>

Information redacted

YES

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Cabinet Economic Development Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Insurance Contract Law Reforms

Portfolio Commerce and Consumer Affairs

On 20 November 2019, the Cabinet Economic Development Committee (DEV):

Background

- 1 **noted** that in April 2019, DEV agreed to the release of an options paper seeking feedback on options for addressing various issues with New Zealand's insurance contract law [DEV-19-MIN-0082];

Policyholders' duty of disclosure

- 2 **agreed** to change policyholders' duty to disclose material information so that the duty for consumers is to take reasonable care not to make a misrepresentation;
- 3 **agreed** to change the disclosure duty for non-consumers so that they are required to make a fair presentation of risk;
- 4 **agreed** to change the remedies for non-disclosure and misrepresentation for both consumers and non-consumers to provide proportionate consequences based on how the insurer would have reacted to the information at application time, and whether the policyholders intended to mislead or deceive the insurer or were reckless;
- 5 **agreed** to require insurers to inform policyholders of the duty of disclosure and its consequences before they enter the contract;
- 6 **agreed** that if an insurer seeks permission to access medical or other third party records about a consumer, the insurer must inform consumers of the types of third party information they are likely to access and when this is likely to happen;

Unfair contract terms

- 7 **agreed** to remove insurance-specific exemptions from the unfair contract terms provisions in the Fair Trading Act 1986 and clarify how the generic exemptions apply to insurance;
- 8 **agreed** for the Minister of Commerce and Consumer Affairs (the Minister) to consult as part of an exposure draft Bill on two different options for clarifying how the generic exemptions apply to insurance:
 - 8.1 provisions that define the main subject matter of insurance contracts in narrow terms (i.e. to describe the thing that is insured e.g. a house, a car, the life of a person); or

8.2 provisions that define the main subject matter of insurance contracts in broad terms (i.e. terms that define the risk accepted by the insurer);

9 **agreed** that the Financial Markets Authority share responsibility with the Commerce Commission for enforcing compliance with the unfair contract terms provisions in relation to contracts for financial services or relation to financial advice products;

Comparing and understanding consumer insurance policies

10 **agreed** to require consumer insurance policies to be presented and worded clearly to help with consumer understanding;

11 **agreed** to allow for regulations to prescribe specific presentation requirements in relation to consumer insurance policies, for the purpose of improving understanding of insurance policies;

12 **agreed** to allow for regulations to prescribe that insurers must publish certain information in a prescribed format in relation to consumer insurance policies, to assist consumers with choosing an insurance provider and to promote transparency;

13 **noted** that further work will be undertaken to determine any form and presentation requirements to be prescribed in regulations;

Duty of utmost good faith

14 **agreed** that the duty of utmost good faith be codified in legislation and will apply to both parties in an insurance contract;

Miscellaneous and legislative implications

15 **agreed** to the further policy changes set out in Annex 2 of the paper under DEV-19-SUB-0311;

16 **agreed** that the Financial Markets Authority be responsible for monitoring and enforcing compliance with the requirements referred to in paragraphs 5-6 and 10-12;

17 **authorised** the Minister to make decisions on penalty and enforcement tools to be included in an exposure draft Bill in relation to failure to comply with the requirements proposed in this paper under DEV-19-SUB-0311;

18 **invited** the Minister to issue drafting instructions to the Parliamentary Counsel Office to give effect to the decisions above;

19 **authorised** the Minister to approve and release an exposure draft Bill and related commentary for public consultation;

20 **authorised** the Minister to take further decisions consistent with the decisions in the minute under DEV-19-MIN-0311 on any issues which arise during the drafting process.

Jack Petterson
Committee Secretary

Hard-copy distribution: (see over)

Present:

Hon Grant Robertson (Chair)
Hon Phil Twyford
Hon Dr Megan Woods
Hon David Parker
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Iain Lees-Galloway
Hon Jenny Salesa
Hon Damien O'Connor
Hon Kris Faafoi
Hon James Shaw
Hon Eugenie Sage

Officials present from:

Office of the Prime Minister
Officials Committee for DEV

Hard-copy distribution:

Minister of Commerce and Consumer Affairs

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