

New Zealand: Insurance under Scrutiny

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Significant changes to insurance law and insurance regulation are on the horizon in New Zealand. We set out below updates on the ongoing reviews and summaries of the confirmed changes.

Insurance (Prudential Supervision) Act 2010 (IPSA) Reforms

The Reserve Bank of New Zealand – Te Pūtea Matua (RBNZ) is reviewing the prudential regulation and supervision of

entities carrying on insurance business in New Zealand, including:

- The scope of IPSA for overseas insurers;
- Policyholder security;
- Enforcement and distress management; and
- Governance, supervisory process and disclosure.

In 2023, RBNZ will issue a final “omnibus consultation” setting out all proposed changes.



Natural Hazards Insurance Act 2023 (NHIA)

The NHIA comes into force on 1 July 2024 to replace the Earthquake Commission Act 1993 (EQC Act) and overhaul the Earthquake Commission (EQC).

EQC provides first loss cover (up to NZ USD300,000) to residential homeowners who suffer damage or loss caused by a "natural hazard". EQC is a government entity funded by levies collected by private insurers and guaranteed by the government.

The EQC Act/NHIA covers loss or damage caused by earthquakes, landslips, volcanoes, tsunamis and hydrothermal activity, but not other natural hazard risks such as floods and storms. With recent extreme weather events such as Cyclone Gabrielle seeing industry loss estimates exceeding NZ USD1.5 billion, it remains to be seen whether the government will face calls to expand the scope of natural hazard cover.

Managing climate-related risks

The recent floods in the upper North Island and Cyclone Gabrielle have prompted RBNZ to draft proposed new guidance for the financial sector on managing climate related risks.

This new guidance will apply to all RBNZ's regulated entities, including licensed insurers, and recommends that those entities develop their own climate-related scenario capabilities and manage climate-related risks within their own broader risk management frameworks. 'Submissions on the proposed new guidance closed 7 June 2023'.

Insurance contract law review

The outcome from the Ministry for Business, Innovation and Employment's Insurance Contract Law Review and consultation on an Exposure Draft Bill of last year are expected later in 2023 and include the following key proposals:

1. Amending and codifying policyholder disclosure obligations:
 - For consumers "to take reasonable care not to make a misrepresentation" and requiring insurers to ask targeted questions for information considered material.
 - For non-consumers "to make a fair presentation of risk".
2. Prescribing remedies available to insurers where policyholders have breached disclosure obligations that are proportional between the nature of the breach and the remedy.
3. New duties on insurers to:
 - Inform policyholders:
 - Of their disclosure duties and consequences for breaching them;
 - That the insurer may rely on third-party information; and
 - Require consumer insurance contracts to be "worded and presented in a clear, concise, and effective manner."
4. Increase the Financial Markets Authority's powers to monitor and enforce compliance.

Unfair contract terms (UCT)

Recently enacted amendments of the Fair Trading Act 1986 empower courts to determine

that clauses in consumer or small trade contracts are UCTs. A term can be declared unfair only if it:

- Causes a significant imbalance between the parties;
- Is not reasonably necessary to protect legitimate interests; and
- Would cause detriment to a party.

In summary

These provisions apply to:

- New consumer insurance contracts entered after 17 March 2015. However, it should be noted that for these new insurance contracts some terms are deemed to be reasonably necessary for protecting the interests of the insurer and therefore are exempted from being declared UCT;
- New small trade contracts entered into after 1 April 2025. Small trade contracts are those where both parties are in trade, and which do not comprise or form part of a trading relationship (between those parties) exceeding the annual value threshold of NZ USD250,000 when the relationship first arises.

These provisions do not apply to:

- Consumer insurance contracts entered before 17 March 2015 (including any renewals or variations of those contracts); and
- Small trade insurance contracts entered before 1 April 2025.

The Insurance Contract Law Review is considering options to strengthen protections for consumers that may include removing the current exemptions that exist for insurance contracts.

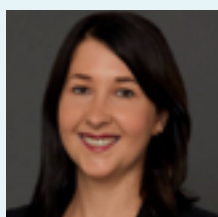
About the authors



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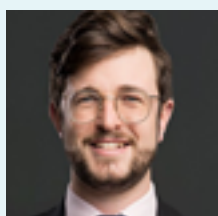
Rachel Taylor is a Corporate Partner at global law firm, DLA Piper. She has more than 30 years' experience advising clients in the financial services and insurance sectors.

Rachel focuses on the consumer law aspects of insurance offerings. She specialises in new product design compliance and conduct, and provides general commercial and corporate advice to assist with business and governance needs at executive and board level. Rachel advises listed companies and other public issuers, insurers, trustees, Crown entities, registrars and other corporates.



Emma Moran

Emma Moran is a Litigation and Regulatory Partner at global law firm, DLA Piper. She is an experienced litigator who specialises in advising on, and resolving disputes, particularly in the insurance, construction, and life sciences sectors. Emma has acted for both insurers and insureds in a range of claims including professional liability and indemnity, weathertightness and building, healthcare and local government. She has appeared as counsel in New Zealand courts at all levels and before specialist tribunals.



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Anneke Wilson

Anneke is an Associate in the Corporate team at global law firm, DLA Piper. She has a particular focus on the regulation and governance of insurers and how different product offerings can be made under the Insurance (Prudential Supervision) Act 2010 (IPSA), and other relevant consumer law.

Anneke also actively advises businesses on the establishment of international entities and corporate governance structures in New Zealand and can provide advice on restructuring strategies when necessary.