

## Legislative Statement: Contracts of Insurance Bill

Presented to the House of Representatives in accordance with Standing Order 272

### Overview

The Contracts of Insurance Bill reforms insurance contract law to consolidate and modernise insurance legislation in New Zealand. The purpose of the Bill is to ensure that insurance contract law facilitates well-functioning insurance markets for insurers and policyholders. It aims to enable consumers and businesses to effectively protect themselves against risk, while minimising costs and impacts on insurers' willingness to provide insurance coverage in New Zealand.

The Financial Markets Authority will monitor and enforce compliance with the Bill.

### Reforming disclosure duties

The Bill reforms the existing law for disclosures by policyholders to insurers before an insurance contract is entered into or varied. Currently, the law requires policyholders to tell insurers anything which would influence the judgement of a prudent insurer in setting the premium or deciding whether to provide cover. If a policyholder breaches this duty, the insurer may avoid the policy and refuse all claims under it.

The Bill reforms policyholders' disclosure duties to:

- Provide that policyholders under consumer insurance contracts have a duty to take reasonable care not to make a misrepresentation to the insurer. Whether a consumer has complied with the duty may depend on different factors such as how clear and specific any questions the insurer asked of the policyholder were.
- Provide that policyholders under non-consumer insurance contracts have a duty to make a fair presentation of the risk.

Consumer contracts are defined objectively, (i.e. those ordinarily entered into, wholly or predominantly, for personal or domestic purposes) to give certainty to insurers.

The Bill also:

- Provides the insurer with remedies for breaches of the disclosure duties. The available remedy varies based on how the insurer would have responded to the information at the time of entry into the contract (or variation of it), and whether the policyholder's misrepresentation or breach was deliberate or reckless. In summary:

<i>Breach was deliberate or reckless</i>	Insurer may avoid the contract, refuse all claims, and not return the premium.
<i>Breach was careless (neither deliberate nor reckless), and without it the insurer would not have entered into the contract on any terms</i>	Insurer may avoid the contract, refuse all claims, but must return the premium.

<i>Breach was careless, and without it the insurer would have entered into the contract on different terms</i>	Insurer may treat the contract as if it had been entered into on those different terms, and reduce proportionately the amount paid on a claim.
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- Introduces a new duty requiring intermediaries to pass on representations, or disclose material information, to insurers. Other contractual arrangements may instead be agreed in place of this duty.
- Requires insurers to clearly inform policyholders of:
  - the disclosure rules and the consequences of failing to comply
  - whether the insurer is likely to access third party information, such as medical records, and when.
- Introduces a new requirement for insurers to pay out on claims within a reasonable time.
- Modifies the law relating to the duty of utmost good faith that all insurance contracts are based on. Policyholders' disclosure duties, and insurers' remedies for breaches, will only be those set out in the Bill. The duty of utmost good faith can otherwise continue to develop under the common law.

## **Modernising and consolidating existing legislation**

The Bill carries over provisions under 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. The Bill makes changes in places to modernise the law, and to reform it. The changes include:

- Providing that claims-made policies can require a claim to be made in a certain time: within 90 days of the period for which the insurer has accepted the risk. A claims-made policy is a contract where the period during which an insurer is liable to pay a claim is determined by when: the claim is made, or matters giving rise to a claim are notified to the insurer.
- Providing that certain policy exclusions 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. For example, insurers will now be able to rely on provision that excludes loss when a vehicle is being used for commercial purposes (other than those permitted by the contract).
- If a third party suffers loss because of an insolvent policyholder, allowing the third party to claim directly against the policyholder's insurer. This replaces an existing statutory charge mechanism, due to multiple issues with how this operates.
- Making insurers liable to pay interest on death claims under life policies from the 31st day after notification of the death. Existing law provides for interest to be payable from the 91st day after death.
- Increasing the limit on the amount payable under life insurance policies for minors under 10 to \$15,000 plus CPI adjustments. The limit under existing law is \$2,000.

## **Understanding insurance policies**

The Bill amends the Financial Markets Conduct Act 2013 to require insurers to help policyholders to understand insurance contracts by:

- Requiring insurance contracts to be worded and presented in a clear, concise, and effective manner.
- Enabling regulations to prescribe requirements relating to the form and presentation of insurance contracts.
- Enabling regulations to require insurers to make information publicly available (for example, information about claim acceptance rates, the length of time to settle claims, complaints made against the insurer).

## **Unfair contract terms regime**

The Fair Trading Act 1986 (FTA) prohibits unfair terms in standard form consumer and small business contracts. However, the FTA contains a list of terms in insurance contracts that cannot be declared unfair. The Bill repeals this list and instead specifies which insurance terms are part of the main subject matter of the contract (which cannot be declared unfair).

The Bill also amends the FTA by:

- Adjusting the threshold for bringing small trade insurance contracts into the unfair contracts regime to cover contracts with an annual value of \$20,000 (down from \$250,000), measured by annual premiums paid.
- Amending the current 1 April 2025 backstop date for including small trade insurance contracts in the unfair contract terms regime to instead align with the commencement provision under the Bill.