FINANCIAL SERVICES FEDERATION

Review of Insurance Contract Law

Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
P O Box 1473
WELLINGTON 6140 By email to: insurancereview@mbie.govt.nz

Thank you for the opportunity for the Financial Services Federation ("FSF") to submit on the Issues Paper as part of the review of Insurance Contract Law in New Zealand.

By way of background, the FSF is the industry body representing the responsible and ethical finance and leasing providers of New Zealand. We have nearly sixty members and associates providing financing, leasing, and credit-related insurance products to more than 2 million New Zealanders. Our affiliate members include internationally recognised legal and consulting partners. A list of our members is attached as Appendix A.

As stated above, some of our members provide credit-related insurance products to our members and other financial services providers. The FSF believes that, sold responsibly, appropriate credit-related insurance products are an essential part of responsible lending as they provide a means for consumers to protect their risk when they take on debt or purchase an asset under a finance contract.

The following submission is made on the basis that it represents the views of the responsible credit-related insurance providers who are members of the FSF and as such only responds to those questions which are particularly relevant to that group. Where a question is not seen as relevant to this group, no response has been provided.

1. Are these the right objectives to have in mind?

Yes.

2. Do you have alternative or additional suggestions?

No.

3. Are consumers aware of their duty of disclosure?

FSF's credit-related insurance provider members report that in their experience, New Zealand consumers are aware that they have a duty to honestly answer questions put to them by insurers to make disclosure but that they might not understand the need to disclose relevant matters if they are not directly asked a question by the insurer that would elicit these. FSF's credit-related insurance provider members feel that insurers should be more specific about what sorts of matters should be disclosed on application.

4. Do consumers understand that their duty of disclosure goes beyond the questions that an insurer may ask?

See answer to question 3. In addition to the above answer, FSF credit-related insurance provider members submit that it needs to be made clearer by insurers to consumers that there is sometimes a need for ongoing disclosure during the lifetime of a policy, particularly if the policy is one which comes up for regular renewal such as that of a motor vehicle insurance policy. Events occurring during the lifetime of such a policy, such as receipt of a speeding ticket, are relevant to the insured risk and therefore should be disclosed at renewal but this an obligation of which consumers are often unaware until they come to claim on a policy.

5. Can consumers accurately assess what a prudent underwriter considers to be a material risk?

No. FSF credit-related insurance provider members believe that this needs to be made clearer to consumers by the insurer. The FSF also submits that different insurance products require more stringent underwriting procedures depending on the inherent risk the insurer is taking on so that the underwriting standards for credit-related insurance products are quite different (and potentially less onerous) than those for a life or house insurance product.

6. Do consumers understand the potential consequences of breaching their duty of disclosure?

FSF credit-related insurance provider members submit that, in their experience, consumers probably have a basic understanding that breaching their duty of disclosure might result in a claim not being met but not to the extent that the entire policy could be avoided.

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?

FSF credit-related insurance provider members submit that consumers obviously know their own circumstances better than the insurer possibly can but knowing how these might relate to the insurance policy and possible exclusions from the policy needs to be clearly explained by the insurer from the outset.

As an example from a credit-related insurance perspective, technological advances in motor vehicles can be factored into the product design of a mechanical breakdown policy but the consumer knows more about the maintenance history etc of an individual vehicle being insured.

Clearly also consumers know more about their pre-existing conditions and collecting data about these are critical for insurers which is done better by personal interaction.

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.

Yes. Any non-disclosure can void the policy.

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?

FSF submits that consideration should be given to adopting the UK model where non-disclosure is not about whether it was intentional or unintentional but rather relates to the amount of harm caused and limits the remedy to issues directly related to disclosure or non-disclosure. The test being what is material versus what the consumer understands about what they should have disclosed.

10. Should the remedy available to the insurer be more proportionate to the harm suffered by the insurer?

Yes.

11. Should non-disclosure be treated differently from misrepresentation?

FSF submits that there is a fine line between unintentional non-disclosure and misrepresentation. FSF credit-related insurance provider members report that a rule of thumb used in the insurance industry is that if the non-disclosure relates to an event or issue that occurred within 24 months of the consumer taking out the policy, they would know or ought to have known that it needed to be disclosed and if it is beyond that they are given the benefit of the doubt that they could have forgotten about it.

12. Should different classes of insureds (e.g. businesses, consumers, local government etc.) be treated differently? Why or why not?

No.

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?

FSF submits that insurers consider non-disclosure on a case-by-case basis and can use the rule of thumb as suggested in answer to question 11 above.

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?

FSF submits that the factors their credit-related insurance provider members take into account include whether the insured should have known or ought to have known about the instances of non-disclosure and how that non-disclosure relates to the materiality of the claim.

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?

FSF submits that insurers should say what they do and do what they say. They need to be explicit about what is covered under each policy and treat each claim fairly. Insurers should provide clear, plain English documentation and be upfront and clear about what is and is not covered under each policy. Please refer to the FSF's Responsible Credit-Related Insurance Code which was written to help consumers to understand the benefit to them of having protection for themselves and/or their asset(s) when taking on credit, what they can typically be covered for, their rights and obligations and how they can expect to be treated by responsible insurance providers.

The FSF also refers to the Insurance Council of New Zealand's Fair Insurance Code for their members.

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

The FSF submits that for credit-related insurance products in particular ICP 19 should not be of concern. The provision of credit-related insurance products is governed by the Credit Contracts and Consumer Finance Act 2003 ("CCCFA"). The Responsible Lending Code which gives guidance to providers of consumer credit contracts and credit-related insurance products as to how they should best meet their responsible lending obligations Under the CCCFA has an entire chapter devoted to the provision of credit-related insurance products.

The FSF therefore believes that the regulatory framework provided by the CCCFA and the Responsible Lending Code has been specifically set up to address these issues in respect to the provision of credit-related insurance products. FSF credit-related insurance provider members also report that the quality of products and the cover provided is higher for the price paid for such products in New Zealand than is the case in Australia.

FSF's credit-related insurance provider members also disclose all the relevant remedies and law applicable to the policy being sold in their policy documents. Credit-related insurance providers must belong to an external disputes resolution service such as the Insurance and Financial Services Ombudsman or Financial Services Complaints Limited to whom consumers may complain if they have any issues with the insurer's conduct.

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

As submitted under question 16 above, there is oversight for credit-related insurance products during their "lifecycle" by virtue of the fact that consumers have access to independent disputes resolution bodies to make a complaint and seek redress at any time throughout the life of the policy. Most insurance policy types do not have a renewal mechanism so the only interaction the consumer has with the insurer is at application and then at claim. The exception to this is for motor vehicles which are usually issued on an annual renewal cycle. The risk here is more to insurers if the insured does not disclose changes in the vehicle's circumstances such as failure to keep it adequately maintained.

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

- **Timeliness of 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)**

FSF's credit-related insurance members document their claims processes in their policy documents and these are provided upfront at point of sale. They are specific and timeframed and clearly explain the process of how to make a claim and what to do if a claim is declined (such as to seek redress through the independent complaints process provided by the insurer's disputes resolution scheme).

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

Not applicable.

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

Not applicable.

21. What evidence is there of insurers or insurance intermediaries mis-selling unsuitable insurance products in New Zealand?

The FSF submits that there is no evidence that any of their credit-related insurance provider members "mis-sell" or provide unsuitable insurance products. Where any such instances might occur for this type of product, there is a need for the regulator – in this case the Commerce Commission – to take action to enforce the provisions of the CCCFA as well as the option for the consumer to seek redress through the insurers' disputes resolution scheme. Statistics available from each of the two disputes resolution schemes mentioned above would show that the number of complaints (or even enquiries which do not result in a complaint investigation) relating to the provision of credit-related insurance is negligible to none.

22. Are sales incentives causing poor outcomes for purchasers of insurance? Please provide examples if possible.

The FSF submits that the amount of any incentives applying to the sale of credit-related insurance products is very small and therefore do not influence the possible mis-selling of these types of products. The incentive is for providers to sell appropriate products to provide the appropriate levels of protection related to the credit contract which is a liability for the consumer. Credit-related insurances provide protection for both the consumer and the finance provider.

The CCCFA deals with credit-related insurance products and the fact that those sold must be fit for purpose and also allows for enforcement action to be taken by the regulator if they are not reasonable.

23. Does the insurance industry appropriately manage the conflicts of interest and possible flow on consequences that can be associated with sales incentives?

Please refer to the answer to question 22 above.

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.

The FSF's credit-related insurance provider members are not aware of any instances where the current exceptions for insurance contracts from the unfair contract terms provisions under the Fair Trading Act are causing problems for their consumers. The requirements for disclosure under the policy document cover all those areas that are exceptions under S 46L of the Fair Trading Act.

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?

No.

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"?

The FSF submits that when dealing with an insurance policy, everyone is unique to the circumstances of the policy holder. Insurers use different rating factors to assess the risk of each policy holder such as age, health, in the case of motor vehicle insurance where the vehicle is stored and many other such factors. All insurers are licenced in New Zealand and the capital requirements for these licences require insurers to comprehensively understand their risk and ensure that they price for this accordingly.

27. What would the effect be if there were no exceptions? Please support your answer with evidence.

The FSF submits that if there were no such exceptions this could create more issues for insurers with fraud. Insurance policies are designed to meet policy holders' specific needs and therefore have many features not found in other types of contracts. However most insurance policies use standard forms which contain "boilerplate" language, language that is standard across a wide variety of different types of insurance policies but differentiated by the application of exclusions.

28. Is it difficult for consumers to find, understand and compare information about insurance policies and premiums? If so, why?

The FSF submits that finding information on insurance policies and premiums is easy, however every consumer is different, their circumstances are different and their needs for insurance are different. Insurance policies differ significantly from one policy to another in terms of credibility of underwriter, claims settlement reputation, qualification for cover, benefits and quantification of benefits, claim limits, limitations, exclusions and excesses, all in addition to price. Comparison sites, unfortunately, generally compare pricing, which is very dangerous with regard to insurance as sales and marketing techniques will generally provide the lowest rate with least benefits. Some insurers focus on cheapest price and others focus on best quality product.

29. 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.

Please refer to the answer to question 28 above.

30. What barriers exist that make it difficult for consumers to switch between providers?

The FSF submits that the barriers are more to do with whether consumers are receiving the best possible advice and service when they consider switching between providers and products.

Consumers can cancel policies at any time during the term of a policy but the insurer cannot so they need to consider what benefit they are receiving from switching. For credit-related insurance products it is not difficult for consumers to switch from one policy to another but this is not the case with life or health insurance products where a condition may now exist that did not when the original policy was taken out but would not subsequently be insurable.

31. Do these barriers to switching differ depending on the type of insurance? E.g. life, health, house and contents, car insurance etc.

Please refer to the answer to question 30 above.

32. 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?

The FSF submits that responsible insurance providers such as its credit-related insurance provider members already do make it as easy as possible for consumers to access information on their policies, to compare policies and to make informed decisions and switch between providers if they should want to. They have a duty of disclosure to consumers, they provide their policy wordings on their websites and they are subject to the provisions of the CCCFA as already mentioned.

33. Do you agree that the operation of section 9 of the Law Reform Act 1936 (LRA) has caused problems in New Zealand?

Not applicable.

34. What are the most significant problems with the operation of section 9 of the LRA that any reform should address?

Not applicable.

35. What has been the consequence of the problems with section 9 of the LRA?

Not applicable.

36. If you agree that there are problems with section 9 of the LRA, what options should be considered to address them?

Not applicable.

37. Do you agree that the operation of section 9 of the Insurance Law Reform Act 1977 (ILRA) has caused problems for "claims made" policies in New Zealand?

This is not applicable to providers of credit-related insurance products.

38. What has been the consequence of the problems with section 9 of the ILRA?

Not applicable.

39. If you agree that there are problems with section 9 of the ILRA, what options should be considered to address them?

Not applicable.

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?

Not applicable.

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?

Not applicable.

42. If you agree that there are problems with section 11 of the ILRA, what options should be considered to address them?

Not applicable.

43. Do you agree that the registration system for assignment of life insurance policies still requires reform?

Not applicable.

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?

Not applicable.

45. Do you consider there to be problems with the current position in relation to whether an insurer or consumer bears the responsibility for an intermediary's failures? If possible, please give examples of situations where this has caused problems.

The FSF submits that they do not consider there to be problems with the current position in relation to whether the insurer or consumer bears the responsibility for an intermediary's failures. In the case of credit-related insurance products, FSF's members have agency agreements with their intermediaries to act on their behalf to issue policies and receive premiums. If there is a problem with a particular intermediary these are not passed on to the consumer as they are the insurer's liability and the insurer acts as if they had received the premiums to provide the appropriate consumer protection.

These agency agreements are managed by the insurers who have to stand behind those who are selling their products to ensure that intermediaries act in accordance with all relevant law including the CCCFA.

The intermediary acts as an agent of the insurer so the insurer is liable for the actions of the intermediary.

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?

Please refer to the answer to question 45 above.

47. If you consider there to be problems, what options should be considered to address them?

Please refer to the answer to question 45 above.

48. Do you agree that the current position in relation to the deferral of payments of premiums by intermediaries has caused problems?

The FSF submits that there may have been a few isolated incidents where this has occurred and consumers have been disadvantaged as a result but responsible insurance providers look after consumers. However there is a difference between a broker and an agent in that a client is a client of a broker rather than the insurer (which is the case under an agency agreement). Even so, this creates more issues for the insurer to manage than it does for the consumer.

49. If you agree that there are problems, what options should be considered to address them?

Please refer to the answer to question 48 above.

50. Are there any provisions in the six Acts under consideration that are redundant and should be repealed outright? If so, please explain why.

No.

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?

No.

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.

No.

53. Is there anything further government should consider when seeking to consolidate the six Acts into one?

The FSF submits that government should bear in mind that the New Zealand market is not the same as that in other jurisdictions – particularly for the provision of credit-related insurance products – and therefore New Zealand should not just follow what happens overseas. The New Zealand market is well-regulated for these types of product and there exists a well-regulated risk management framework for all types of insurance.

For credit-related insurance products, the consumer has 3 lines of defence: the claims process, the claims audit process and recourse for consumers through external disputes resolution. Insurers are also rated by external ratings agencies and are supervised by the Reserve Bank of New Zealand particularly with respect to having adequate prudential ratios.

In addition, credit-related insurance products are regulated by the CCCFA as New Zealand has learned from overseas experience.

Finally the FSF refers once again to the FSF's Responsible Credit-Related Insurance Code to which its members adhere and other examples of the way in which the New Zealand market is different such as the application of the Responsible Lending Code and the Insurance Council's Fair Insurance Code.

Thank you once again for the opportunity to submit on this matter. Please do not hesitate to contact me if there is anything further you wish to discuss.

Lyn McMorran
EXECUTIVE DIRECTOR

FSF Membership List as at 1 April 2018
Appendix A

Debenture Issuers - (NBDT) Non-Bank Deposit Takers	Vehicle Lenders	Finance Company Diversified Lenders	Credit Reporting Other	Insurance	Affiliate Members
<u>Rated</u> Asset Finance (B) <u>Non-Rated</u> Mutual Credit Finance Gold Band Finance ➢ Loan Co	BMW Financial Services ➢ Mini ➢ Alphera Financial Services Branded Financial Services Community Financial Services European Financial Services Go Car Finance Ltd Honda Financial Services Mercedes-Benz Financial Motor Trade Finance Nissan Financial Services NZ Ltd ➢ Mitsubishi Motors Financial Services ➢ Skyline Car Finance Onyx Finance Limited Toyota Finance NZ Yamaha Motor Finance <u>Leasing Providers</u> Custom Fleet Fleet Partners NZ Ltd ORIX NZ SG Fleet Lease Plan	L & F Ltd ➢ Speirs Finance ➢ YooGo Avanti Finance Caterpillar Financial Services NZ Ltd CentraCorp Finance 2000 Finance Now ➢ The Warehouse Financial Services Flexi Cards Future Finance Geneva Finance Home Direct Instant Finance ➢ Fair City ➢ My Finance John Deere Financial Latitude Financial Pioneer Finance ➢ Personal Finance South Pacific Loans Thorn Group Financial Services Ltd Turners Automotive Group	Equifax (prev Veda) Centrix <u>Debt Collection Agencies</u> Baycorp (NZ) Illion (prev Dun & Bradstreet (NZ) Limited	Autosure Protecta Insurance Provident Insurance Corporation Ltd Southsure Assurance	American Express International (NZ) Ltd AML Solutions Buddle Findlay Chapman Tripp EY Finzsoft KPMG Paul Davies Law Ltd PWC Simpson Western FinTech NZ HPD Software Ltd Total : 56 members