

November 2024

**FSC Debrief – [Contracts of Insurance Act](#)**




**Background:**

Commencing with its introduction in April 2023 to its Royal Assent on 15 November 2024, the [Contracts of Insurance Bill](#) was an omnibus bill seeking to enable consumers and businesses to effectively protect themselves against risk, while minimising costs and impacts on insurers' willingness to provide insurance in New Zealand.

This bill followed on from the previous work undertaken by MBIE. Key reforms included:

- Disclosure duties and insurer’s remedies for misrepresentations
- Unfair contract terms
- Understanding and comparing insurance policies
- Consolidation and modernisation of existing legislation
- Payment of claims in reasonable time

**Note:** The Bill was divided by Committee of whole House on 07 Nov 2024. The Contracts of Insurance (Repeals and Amendments) Bill was divided from the Contracts of Insurance bill. [The Contracts of Insurance \(Repeals and Amendments\) Act](#) amends other legislation.

Clause of the Bill or issue	FSC Submission Recommendation	<u>Final Act</u>	<b>Outcome indicator</b>  Poor  Medium  Good
Disclose duties and insurer’s remedies for misrepresentation			
Clause 10: Meaning of consumer insurance contract and non-consumer insurance contract	Amend the definition of consumer and non-consumer insurance contracts to clarify that the assessment is undertaken at the time when the contract is entered into and that it would be unaffected by future events.	Section 10 in the Act remains unchanged from the Bill.	




Clause 14: Policyholder must take reasonable care	This clause does not recognise that the policyholder and the life assured are not always the same person and potentially fails to create a sufficient obligation on customers.	The point of policyholder and life assured is not captured in section 13 of the Act.	
Clause 19: Failure to answer or obviously incomplete or irrelevant answer	We suggest that clause 19 (mere failure to answer is not a misrepresentation) is included as one of the “matters to be taken into account” in clause 15.	Select Committee recommended moving the content of clause 19 into clause 15 and adjusting the wording. The Committee’s proposed amendment reflects that the policy intent is to place the onus on the insurer to take additional steps if a non-answer is given, or an obviously incomplete or irrelevant answer.  The new section 14 matters that may be taken into account (d):  if the policyholder failed to answer a question or gave an obviously incomplete or irrelevant answer to a question, what steps the insurer took in response to that failure or answer.	
Clause 21: Insurance on life of another	Additional wording be added to clause 21 to clarify that the duty of reasonable care in clause 14 also applies in respect of clause 21 (namely in respect of the life assured), as well as additional wording to reflect that clause 21 also applies in respect of health policies.	The Select Committee Report recommend amending clause 21 to include health insurance contracts.  The new section 17, Life or health insurance in relation to individual who is not party to contract reflects these recommendations.	
Schedule 2 - Insurer’s Remedies for qualifying misrepresentation or breach			
Clause 4: Insurer would not have	This risks the unintended consequence of an	The Act did not include this addition.	

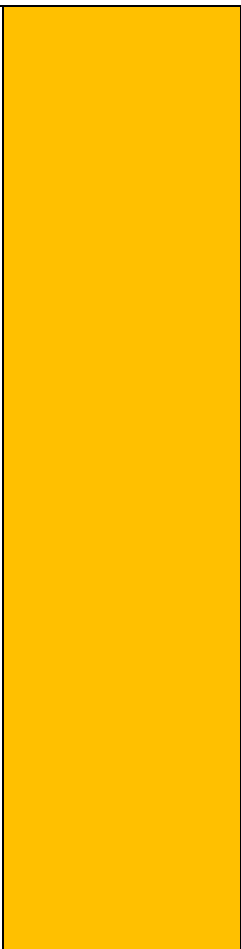
<p>entered into contract</p>	<p>increase in premiums for all the policyholders who present their risks accurately as insurers costs will increase.</p> <p><u>Suggested drafting:</u></p> <p>(b) must in that event return the premiums paid <b>less any amounts paid on a claim under the contract.</b></p>		
<p>Clause 5: Insurer would have entered into contract on different terms</p>	<p>Clause 5 should include the ability for the insurer to charge a higher premium to reflect the actual risk covered even if there is no claim being made and/or allow for an insurer to recover the missed premium from the policyholder where the misrepresentation is discovered at a time where no claim is lodged.</p>	<p>Select Committee recommend the following changes:</p> <p>Clause 5(2)(a): clarify that the insurer may charge a higher premium for the remainder of the contract. If the insurer does this, they can no longer reduce proportionately the amount to be paid on a claim.</p> <p>Clause 5(2)(b): include an example of how the insurer may reduce proportionately the amount to be paid on a claim (see clause 5(3)).</p> <p>These recommendations have been made in the Act.</p> <p>In addition, Section 13 of the Act includes a new sub-section (3):</p> <p>A misrepresentation made dishonestly must always be taken as showing lack of reasonable care.</p>	
<p>Unfair contract terms</p>			
<p>176 New section 46KA inserted (Other matters relating to insurance contracts)</p> <p>46KA Other matters relating to</p>	<p>Our concern is with the removal of ‘a term that provides for the payment of premium’ from the list of terms excluded from the unfair contract terms as upfront pricing of an insurance contract is complex and not</p>	<p>Contracts of Insurance (Repeals and Amendments) Act section 10, new section 46KA inserted:</p> <p>(b) relates to the amount of a premium payable under a life policy or a contract of health insurance;</p>	

insurance contracts	necessarily known and transparent at the outset of the contract.  <u>Suggested drafting:</u>  (2) (e) provides for the payment of [the] premium; or		
Understanding and comparing insurance policies			
Amendments to Financial Markets Conduct Act 2013  Subpart 6B clauses 447 A, B and C	Publicly available information (as required in 447C) could, without appropriate financial advice, be unhelpful or in fact harmful to consumers.	No changes appear to have been made in the Contracts of Insurance (Repeals and Amendments) Act	
Clause 188: Section 546 of the Financial Markets Conduct Act (Regulations for purposes of Part 6 (market services))	The regulation making power introduced by the amendment to section 546 of the Financial Markets Conduct Act should be clarified so that regulations must be made in respect of certain types of contracts of insurance and not all contracts of insurance generally.  Also, regulations should not be able to limit the length of a contract of insurance.	No changes appear to have been made in the Contracts of Insurance (Repeals and Amendments) Act	
Payment of claims in a reasonable time			
Clause 70: Implied term about payment of claims	<u>Suggested drafting:</u>  (3)(c) (c) when the insurer receives all necessary information to be able to investigate and assess the claim (taking into account the co-operation of the policyholder and others in providing the information)	Section 66: Implied term about payment of claims  (2) A reasonable time includes a reasonable time to investigate and assess the claim (including to gather information for those purposes).  The red indicates new text from the Bill.	

	<p><i>Remedies: 4(b) was deleted and a new (5) was added:</i></p> <p>(5) Policy benefits subject to section 123 shall be exempt from the application of this section.</p>	The remedies deletion and inclusion of new (5) not adopted.	
Application to contracts of reinsurance			
Clause 6(1): Meaning of contract of insurance	Clause 6(1) of the Bill should be amended to exclude contracts of reinsurance.	<p>The Select Committed recommended amending clause 6 to explicitly exclude contracts of reinsurance:</p> <p>Section 6(3) of the Act states the following are not contracts of insurance for the purposes of this Act: (b) a contract of reinsurance.</p>	
Interest payable after death			
Clause 123: Interest payable beginning on 31st day after date of notification of death	<p>If section 123 remains as it is (which we do not support), then we consider section 123(3) should be amended as follows:</p> <p>"In this section, the <b>date of notification</b> is the date on which the insurer first receives written or oral notice of death <i>from the policyholder, beneficiary, next of kin or executor of the estate.</i>"</p>	No changes to section 123 were made in the Act.	

**Supplementary Submission Genetics**

Issue	FSC Submission Recommendation	Final Act	Outcome indicator
			<p> Poor</p> <p> Medium</p> <p> Good</p>

<p>“Genetic discrimination” in life and health insurance and the inclusion of genetics in the Bill</p>	<p>The FSC submitted that it was not appropriate to address the issue of genetic testing in the Bill.</p> <p>If the government considers that a regulatory process may be required, then we strongly encourage that it would be more appropriate for this to be picked up by officials as a separate, discrete piece of work with a comprehensive review to be undertaken. Such a review would include engagement with the industry and other relevant stakeholders and when consulted, with an appropriate amount of time allowed to develop a suitable approach for this complex issue to ensure the impact is understood</p>	<p>The Select Committee Report pointed out that existing law is mostly silent on this issue, and there is no government policy on genetic discrimination. The Committee noted that a cautionary approach to genetic testing is needed to avoid undue genetic discrimination.</p> <p>The Report concluded with a recommendation of inserting new regulation making powers, (new Subpart 5—Genetic testing) to prohibit or regulate the conduct of insurers in relation to genetic testing. It also noted that they would expect the Minister to conduct a full policy development and consultation process.</p> <p>Section 84(5) also provides a definition of genetic test.</p>	
--------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------

**Further information and next steps:**

The Act has been added to MBIE’s work programme to provide Regulations and implementation (early 2025) and further policy decisions on genetics are anticipated to be announced. FMA is considering whether or not to issue Guidance. The FSC provided feedback to FMA that insurers will need time to work through the implementation of the Act which given its nature will take a significant amount of time and resource. We noted that we do not consider guidance from the FMA on any matters in this space appropriate as this would be unenforceable in court and an insurer could follow FMA guidance and the court still find against an insurer. We noted that Regulatory powers may be an area of focus.