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Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
Wellington

By email: insurancereview@mbie.govt.nz

Review of Insurance Contract Law – Issues Paper

The New Zealand Law Society welcomes the opportunity to comment on MBIE's May 2018 Issues Paper: *Review of Insurance Contract Law* (Issues Paper). The Law Society's responses to the Issues Paper questions are set out below.

Objectives of the Review

Q1: Are these the right objectives to have in mind?

Q2: Do you have alternative or additional suggestions?

The objectives of the review are to ensure that:

1. Insurers and insureds are able to transact with confidence at all points in the lifecycle of an insurance policy; and
2. Interactions between insurers and insureds are fair, efficient and transparent at all points in the lifecycle of an insurance policy.[1]

For the reasons set out below, the Law Society considers that these objectives, which are modelled on the two main purposes of the Financial Markets Act 2013,[2] do not adequately acknowledge the unique nature of insurance contracts and insurance business.

Insurance contracts do not fit well with objectives modelled on the main purposes of the Financial Markets Conduct Act 2013 (FMC Act). The FMC Act seeks to address the information asymmetry between market participants and consumers. A consumer will know less about an FMC Act financial product, particularly the risks of that product, than the product provider. To rebalance the information asymmetry between provider and consumer, the FMC Act requires disclosure of information and can impose other protections, such as licensing. Information asymmetry that disadvantages the consumer provides the justification for regulation of securities and is inherent in the purposes of the FMC Act.

When the product being provided is insurance, there may be a reversal in the direction of the information asymmetry. The customer is likely to have significantly more information about the risk that forms the basis of the insurance than the insurer. This is particularly the case for life and health

1 Issues Paper, at paragraphs 14-17.
2 Ibid, at paragraph 18.

insurance. (The Law Society addresses below the consumer's ability to appreciate what factors might be relevant to risk.)

This potential reversal of the usual direction of information asymmetry needs to be reflected in the objectives of the review, which should reflect the unique nature of insurance contracts and insurance business. This is particularly important as a central part of the review is to consider the flow of information between the customer and the insurer.

Disclosure obligations and remedies for non-disclosure

Q3: Are consumers aware of their duty of disclosure?

Consumers are often not aware of their duty of disclosure, as noted in the Issues Paper,[3] and evidenced by the number of duty of disclosure-related disputes between insurers and their customers. Examples of such disputes can be found by reviewing the case studies on the Insurance & Financial Services Ombudsman (IFSO) website.[4]

Q4: Do consumers understand that their duty of disclosure goes beyond the questions that an insurer may ask?

The IFSO case studies illustrate that consumers typically do not understand that the duty of disclosure goes beyond answering the questions that an insurer may ask. The duty of disclosure is archaic, and contrary to the approach taken by modern regulators. The result is that consumers are particularly vulnerable. They expect to be provided information as they would if insurance were regulated by the FMC Act or Financial Advisers Act 2008 (FAA). Instead they are bound by duties that developed to protect commercial parties in the insurance market of 18th century London.[5] The duty of disclosure is particularly concerning because there is no legal requirement to inform consumers of the existence of the duty.

Q5: Can consumers accurately assess what a prudent underwriter considers to be a material risk?

As the Issues Paper notes:

> *The test of materiality is subjective; what may be considered "material" to a prudent underwriter may not be to the policyholder, and vice versa. An ordinary consumer cannot be expected to know what circumstances would influence a prudent underwriter.*[6]

Accordingly, it is not feasible to expect consumers to accurately assess what is material to a prudent underwriter.

Q6: Do consumers understand the potential consequences of breaching their duty of disclosure?

It is evident from the IFSO case studies referred to above that consumers do not understand the potential consequences for breaching disclosure obligations. As highlighted in the Issues Paper, the consequences can be disproportionate.[7]

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3 At paragraph 54.

4 https://ifsosite.secure.force.com/casenotesearch (using the search term "duty of disclosure").

5 See Lord Mansfield's judgment in *Carter v Boehm* (1766) 3 Burr 1905, as codified with modifications in section 18(1) of the Marine Insurance Act 1908.

6 Paragraph 49.

7 See paragraphs 57 and 58 of the Issues Paper.

Q7: 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?

In most cases the consumer will know more about the risk than the insurer, but it will depend on the subject of the insurance and the risks insured against. However, the following points can be made in relation to standard consumer insurance policies that cover:

- Property – insurers can access significant information about the risks to that property, for example the risk of earthquakes or flooding. Simple questions could identify other factors pertinent to assessing the risk. For example, how many previous claims have you made?
- Health and Life – some health and life insurance is not underwritten, so insurers do not require any information from a consumer before providing cover. Simple questions or the provision of health records could provide additional information about whether a customer is overweight, has high blood pressure or other health issues.
- Motor vehicles – simple questions could provide much of the information pertinent to assessing the risk, for example information about speeding penalties and criminal convictions.

Insurers must be able to assess risk through the underwriting process, otherwise there will be a decline in the quality and availability of insurance available to New Zealanders. Further, providing information to the insurer may lead to cheaper insurance for a consumer if that consumer is low risk. The relevant concern, however, is the overarching duty of disclosure that exists in addition to the duty not to misrepresent information in answer to specific questions.

Q8: 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.

The remedy of avoidance – which enables an insurer to avoid a claim where a material fact has not been disclosed, even if the disclosure of the material fact would not have made them decline cover[8] – is archaic and is not appropriate for instances of innocent non-disclosure.

Q9: 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?

It is important that unintentional non-disclosure is treated differently from intentional non-disclosure to discourage fraud. It is very easy for a consumer to make an innocent non-disclosure. For example, a doctor does not show the patient the contents of the doctor's notes and so the patient is unaware of the content of the notes and may not understand or remember what the doctor has said. If an insurer wishes to rely on the detailed contents of medical notes at claim time, it may be appropriate for the insurer to review the notes before inception of the policy while underwriting the risk. Alternatively, the UK approach, which provides no remedy for innocent misrepresentation and a proportionate remedy for careless misrepresentation (as discussed at Q10 below), should be considered.

Insurance cover generally accepts the risk that consumers are careless, for example a house and contents policy will respond to a flood caused by a young parent leaving a bath running to overflowing. A motor vehicle policy will respond where an accident is caused by driver inattention. Insurers generally accept the risk that people make careless mistakes and so it would be appropriate to allow a proportionate response accordingly.

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8 As explained at paragraph 57 of the Issues Paper.

Q10: Should the remedy available to the insurer be more proportionate to the harm suffered by the insurer?

There would be significant advantages to adopting the proportionate remedies that were introduced by the UK's Consumer Insurance (Disclosure and Representations) Act 2012 for careless misrepresentation.

Proportionate remedies may not be appropriate where the misrepresentation is deliberate or reckless. In such cases, an approach similar to that in the UK might be preferred, where honest or reasonable misrepresentations are not grounds to deny a claim, and where deliberate or reckless misrepresentations may enable an insurer to avoid the policy and refuse the claim and any subsequent claims.

Q11: Should non-disclosure be treated differently from misrepresentation?

At present, it is arguable that every non-disclosure is a representation that there is no information to disclose. In the Law Society's view, in consumer cases there are no grounds to maintain the duty of disclosure. A preferable approach would be to replace the duty to disclose material circumstances relating to the proposed cover, with a duty not to make a misrepresentation during pre-contractual negotiations. The onus is then on the insurer to ask relevant questions.

Q12: Should different classes of insureds (e.g. businesses, consumers, local government etc.) be treated differently? Why or why not?

Consideration could be given to including small businesses as consumers. Large entities, including local government, will have insurance experts to assist them tailor an insurance programme. Small New Zealand business owners are unlikely to have more insurance expertise than a consumer.

Q13: 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?

The Law Society is not in a position to comment on this question.

Q14: 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?

This question requires information from insurance companies that the Law Society does not hold.

Conduct and Supervision

Q15: 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?

Fair treatment for insurers involves a fair presentation of the risk and fair and predictable dispute resolution mechanisms.

Fair treatment for consumers is likely to go beyond legal requirements. Generally, the Insurance Core Principle (ICP) 19's fair treatment of customer standards appear to be appropriate. The

Financial Markets Authority guide to conduct is also a good place to start when considering additional regulatory requirements.[9]

In the context of the review of the FAA, the Law Society previously submitted that the financial advice regime should include a clear distinction between "sales" and "financial advice".[10] This distinction was not included in the Financial Services Legislation Amendment Bill (FSLA Bill). Accordingly, there is significant work to be done in identifying which parts of the ICP 19 standards are covered by the FSLA Bill.

It is arguable that the definition of "financial advice" in the FSLA Bill is so wide as to catch sales activity. In our view it would be more appropriate to regulate the sale of insurance and other products separately from the financial advice regime.

Q16: To what extent is the gap between ICP 19 and the status quo in New Zealand (as identified by the IMF) a concern?

The gap between ICP 19 and the status quo in New Zealand is a concern and it is appropriate that it is investigated further. It is not necessary for New Zealand to adopt all of the ICP standards in full, because there may be particular reasons why international best practice is not appropriate in New Zealand. If the ICP 19 standards are not to be followed, the reason why a particular standard is not appropriate for the New Zealand context should be clearly articulated and recorded.

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission)[11] has uncovered significant misconduct in the Australian market. This suggests that it is only by actively inquiring into the conduct of institutions that misconduct is revealed. The Law Society is not suggesting that a similar Royal Commission is necessary in New Zealand, but regulators and government departments need to be given sufficient resources to properly manage the gap between the International Association of Insurance Supervisors (IAIS) standards and the New Zealand status quo.

We note that the "gap" applies not only to insurance, but to consumer lending. There may be good grounds to consider requiring any provider of a financial product or service to hold a licence, to enable regulators to take more effective action to protect consumers.

Q17: Does the lack of oversight over the full insurance policy 'lifecycle' pose a significant risk to purchasers of insurance?

Much of the insurance policy lifecycle is subject to oversight. But that oversight is fragmented and unconnected; as noted in the Issues Paper, no regulator has oversight of insurance and insurance intermediaries' conduct during the full insurance policy lifecycle.[12] Insurance is a unique industry. Only a well-resourced regulator with specialist insurance skills would be able to properly oversee the insurance industry.

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9 https://fma.govt.nz/compliance/guidance-library/a-guide-to-the-fmas-view-of-conduct/

10 http://www.lawsociety.org.nz/__data/assets/pdf_file/0010/98929/I-MBIE-FAA-Options-Paper-Parts-12-29-2-16.pdf

11 See https://financialservices.royalcommission.gov.au/Pages/default.aspx

12 Issues Paper, paragraph 64.

Q18: What has your experience been of the claims handling process?

The Law Society is not in a position to comment on this question.

Q19: Have you ever felt pressured to accept an offer of settlement from an insurance company? If so, please provide specific examples.

The Law Society is not in a position to respond to this question, but notes that the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (Rules) set minimum standards, which require that lawyers acting for insurers are professional in their dealings with unrepresented clients. Where a client is represented by a lawyer, the Rules require that dealings are between lawyers and are carried out with appropriate professional respect and courtesy. The purpose of these provisions is to protect clients from feeling pressure, such as the pressure to accept settlement offers.

Q20: When purchasing (or considering the purchase of) insurance, have you been subject to 'pressure sales' tactics?

The mis-selling of personal protection insurance in the UK and the evidence presented to the Royal Commission in Australia show that the financial services sector is susceptible to pressure sales.

It may be appropriate for a New Zealand regulator or government department to carry out thematic reviews to gather better information about the sale of insurance products. Focus should be given to areas that have been vulnerable to mis-selling in other jurisdictions, for example where products are targeted at vulnerable people or are bundled with other products.

Q21: What evidence is there of insurers or insurance intermediaries mis-selling unsuitable insurance products in New Zealand?

The lessons from the Royal Commission include that it is only by thoroughly investigating an industry that poor conduct comes to light. On that basis, New Zealand regulators should consider further investigations in areas identified by the Royal Commission and thematic work by the Australian Securities and Investments Commission (ASIC) such as that on:

- vertically integrated organisations[13]
- funeral insurance[14]
- the relationship between sales practices, product design and culture; and [15]
- claims handling.[16]

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13 https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-562-financial-advice-vertically-integrated-institutions-and-conflicts-of-interest/

14 https://asic.gov.au/about-asic/media-centre/find-a-media-release/2015-releases/15-315mr-asic-report-on-funeral-insurance-highlights-increasing-premiums-and-high-cancellation-rates/

15 https://download.asic.gov.au/media/4262823/peter-kell-speech-finity-insurance-director-forum-published-17-may-2017.pdf

16 Ibid.

Q22: Are sales incentives causing poor outcomes for purchasers of insurance? Please provide examples if possible.

The Law Society refers to the submission of the Reserve Bank on the Options Paper issued during the review of the FAA, which raises concern about commission.[17]

Q23: Does the insurance industry appropriately manage the conflicts of interest and possible flow on consequences that can be associated with sales incentives?

The Law Society notes that the Financial Markets Authority has raised concerns regarding the appropriate management of conflicts of interests.[18] The Royal Commission revelations suggest that even in Australia, where there is a more closely supervised financial services sector, conflicts of interest continue to cause problems.

Exceptions to the Fair Trading Act's unfair contract terms provisions

Q24: 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 unfair contract terms provisions of the Fair Trading Act only took effect on 17 March 2015. More time should be given to assess the effectiveness of the changes before further reviewing the legislation. It would be useful if that review could release figures as to action taken by the Commerce Commission since introduction of these provisions.

There is public concern about whether consumers are treated fairly under standard term contracts. It is a policy decision for the government whether it is appropriate to deal with that concern through licensing of consumer lenders and insurers or through strengthening the regime for unfair contract terms.

Q25: More generally, are there terms in insurance contracts that you consider to be unfair? If so, why do you consider them to be unfair?

Insurance contracts are complex and a review of insurance contract wording would probably conclude that insurance contract terms could be more transparent.

It should be acknowledged, however, that at the point the insurance contract is entered into, it may not be possible to list all the risks the contract will cover. There may need to be a degree of ambiguity in the wording because insurance is designed to take the risk of life's uncertainties.

Q26: 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 Fair Trading Act 1986 (FTA) prohibits unfair contract terms in standard form contracts, including insurance contracts. However, a term that is reasonably necessary to protect the legitimate interests

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17 http://www.mbie.govt.nz/info-services/business/business-law/financial-advisers/review-of-financial-advisers-act-2008/options-paper/options-paper-submissions/RBNZ.pdf

18 See FMA reports: https://fma.govt.nz/assets/Reports/_versions/10815/Conflicted-remuneration-in-the-life-and-health-insurance-industry.1.pdf; https://fma.govt.nz/assets/Reports/_versions/8923/160322-Replacing-life-insurance-who-benefits.2.pdf; https://fma.govt.nz/assets/Reports/_versions/10637/180322-FMA-update-on-inquiries-into-insurance-replacement-business.2.pdf; https://fma.govt.nz/assets/Reports/151117-Sales-and-advice-report.pdf;

of the party who would be advantaged is not an unfair contract term.[19] There is a rebuttable presumption that a term in a consumer contract is not reasonably necessary (the onus being on the advantaged party to prove otherwise).[20] However there are a number of specific terms in insurance contracts that *must* be taken to be reasonably necessary to protect the legitimate interests of insurers, and which cannot be declared to be unfair contract terms. These are set out in section 46L(4).

The Law Society does not express a view on whether each of the insurance contract terms in section 46L(4) is reasonably necessary to protect insurers' legitimate interests, but notes that for consumer contracts generally, the Commerce Commission may apply to court under section 46I seeking a declaration that a contract term is unfair. Under section 46K, the court may not declare a term to be an unfair contract term to the extent that it:

- defines the main subject matter of the contract; or
- sets the upfront price payable under the contract.[21]

The following insurance contract terms specified in section 46L(4) could reasonably be described as defining the subject matter of the contract:

- section 46L(4)(a) – a term that identifies the uncertain event or that otherwise specifies the subject matter insured or the risk insured against;
- section 46L(4)(b) – a term that specifies the sum or sums insured or assured;
- section 46L(4)(c) – a term that excludes or limits the liability of the insurer to indemnify the insured on the happening of certain events or on the existence of certain circumstances;
- section 46L(4)(f) – a term relating to the duty of utmost good faith that applies to parties to a contract of insurance; and
- section 46L(4)(g) – a term specifying requirements for disclosure, or relating to the effect of non-disclosure or misrepresentation, by the insured.

A term that provides for the payment of the premium (section 46L(4)(e)) is a term that sets the upfront price payable under the contract.

The final aspect of the exclusion relates to claims. Under section 46L(4)(d), the court cannot declare a contract term to be unfair where that term:

> *describes the basis on which claims may be settled or that specifies any contributory sum due from, or amount to be borne by, an insured in the event of a claim under the contract of insurance.*

Such a term does not identify the subject matter nor the upfront price of the contract. Accordingly, evidence must be provided that it is reasonably necessary to protect the legitimate interests of

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19 Section 46L(1)(b)

20 Section 46L(3)

21 Upfront price is defined in section 46K(2) as the consideration (including any consideration that is contingent upon the occurrence or non-occurrence of a particular event) payable under the contract, but only to the extent that the consideration is set out in a term that is transparent.

insurers. In considering that evidence it may be useful to also consider recent work by ASIC on claims handling.[22]

Q27: What would the effect be if there were no exceptions? Please support your answer with evidence.

Consideration should be given to the effectiveness of the unfair contract terms provisions of the Fair Trading Act 1986. Research on the number of actions taken by the Commerce Commission under section 46I may illustrate how useful this section is in protecting consumers. If section 46I is not being used to protect consumers, taking away the exemption may have little practical effect. However, such a change may have an indirect effect on the pricing of insurance and reinsurance contracts. On that basis, if the reason for considering these provisions is to give good outcomes for consumers, there may be grounds for considering protecting consumers with a properly resourced insurance regulator, rather than relying on the unfair contract terms provisions.

Difficulties comparing and changing providers and policies (Q28-32)

The Law Society has no comment on these questions.

Third party access to liability insurance monies

Q33: Do you agree that the operation of section 9 of the Law Reform Act 1936 (LRA) has caused problems in New Zealand?

As noted in the Issues Paper, section 9 of the LRA creates a charge over an insured's liability insurance money in favour of a wronged third party, and enables the third party to have direct access to the insurance money in the event of the insured's insolvency.[23] The Law Society acknowledges the problems identified with the operation of section 9, which include:

- difficulties prioritising multiple charges where the insurance policy limit is insufficient to fully satisfy each claim, particularly where the claims arise on the same day;
- how the charge operates where a policy covers both liability and defence costs up to a combined limit; and
- ascertaining the time limit that should apply to a third party's claim against an insurer.[24]

Q34: What are the most significant problems with the operation of section 9 of the LRA that any reform should address?

See response to question 33 above.

Q35: What has been the consequence of the problems with section 9 of the LRA?

The litigation and uncertainty caused by section 9 is costly and disadvantageous to New Zealanders.

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22 https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-498-life-insurance-claims-an-industry-review/

23 See paragraph 116, Issues Paper.

24 See paragraph 118 of the Issues Paper.

Q36: If you agree that there are problems with section 9 of the LRA, what options should be considered to address them?

As recommended by the New Zealand Law Commission in its 1998 report *Some Insurance Law Problems*, section 9 of the LRA should be replaced.[25] Since publication of that report, there has been significant judicial consideration of this provision and international review of similar provisions. Those judgments and overseas reviews should also be considered when amending section 9 of the LRA. Amendments could include a change to replace the statutory charge provisions with provisions giving third parties the right to bring proceedings against the insurer directly.

Failure to notify claims within time limits

Q37: 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?

Section 9 of ILRA relates to time limits and is intended to mitigate the potential unfairness of an insurer denying a claim where the insured has merely failed to comply strictly with the policy's terms, and where that failure has not caused any real prejudice to the insurer.[26] The Law Society acknowledges the difficulties identified in the Issues Paper about the operation of section 9 of ILRA in respect of "claims made" policies, which generally provide cover for third party claims made during the policy term (and thus protect the insurer from exposure to claims years later in respect of events that occurred during the policy term). The application of section 9 of ILRA to "claims made" policies potentially undermines the purpose of such policies.[27]

Q38: What has been the consequence of the problems with section 9 of the ILRA?

See the answer to question 37 above.

Q39: If you agree that there are problems with section 9 of the ILRA, what options should be considered to address them?

The Law Society notes the Law Commission's proposal to amend section 9 of ILRA so that the section does not apply in certain instances involving time limits under "claims made" policies.[28]

Exclusions that have no causal link to loss

Q40: 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?

Yes. As the Issues Paper notes, section 11 has the effect of preventing insurers from excluding coverage in circumstances where there is statistical evidence of greater loss occurring.[29]

Q41: 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?

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25 NZLC R46 http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R46.pdf

26 See paragraphs 121 and 122 of the Issues Paper.

27 See paragraphs 123-126 of the Issues paper.

28 Note 24 above.

29 See paragraphs 128-131.

The Law Society is not aware of other areas where the operation of section 11 is problematic.

Q42: If you agree that there are problems with section 11 of the ILRA, what options should be considered to address them?

The Law Society notes the Law Commission's proposal to remove certain types of exclusions from the operation of section 11 of ILRA, being 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.[30]

Registration of assignments of life insurance policies

Q43: Do you agree that the registration system for assignment of life insurance policies still requires reform?

Yes. As the Issues Paper notes, the physical paper-based registration system has been identified as out of date and largely unused.

Q44: 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?

A notice of assignment of life insurance received by the insurer electronically or in writing should be sufficient to establish the assignee's rights.

Responsibility for intermediaries' actions

Q45: 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.

Yes. Section 10 of ILRA is ambiguous as to the scope of the purpose of the agency and the scope of persons caught as agents. If this section is necessary after reform of the duty of disclosure, it should specify that the agency is only in respect of disclosure of information. As currently drafted, the section could be used to argue that insurers are responsible for financial advice provided by an intermediary. Secondly, insurers pay incentives to a wide range of organisations, some of whom may hold information on the consumer, but play no part in completing the insurance application. It is not appropriate to impute that knowledge to insurers when it is held by parties who play no part in completing the insurance application.

Q46: 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?

Disclosure of agency would assist, but the drafting of the section itself needs to be revisited now that financial advice is regulated by the FAA. Any modification of the agency provisions must be consistent with that Act, or replacement legislation.

Generally we comment that the law of agency is complex. There may be circumstances where an intermediary can act as a dual agent for the consumer and the insurers. Any legislative intervention in the law of agency should be carefully crafted to reflect the practices of insurance business.

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30 Note 24 above.

Q47: If you consider there to be problems, what options should be considered to address them?

If it is necessary to keep section 10 of ILRA, it should be drafted to better reflect commercial practices and be consistent with the financial advice regime.

Insurance intermediaries – deferral of payments / investment of money

Q48: Do you agree that the current position in relation to the deferral of payments of premiums by intermediaries has caused problems?

The Law Society notes that deferral of payments of premiums by, for example, brokers could introduce risks of conflicts of interest and fraud.

Q49: If you agree that there are problems, what options should be considered to address them?

Legislative intervention should not be needed in an area that can be the subject of contractual terms. Alternatively, oversight from an independent regulator could assist.

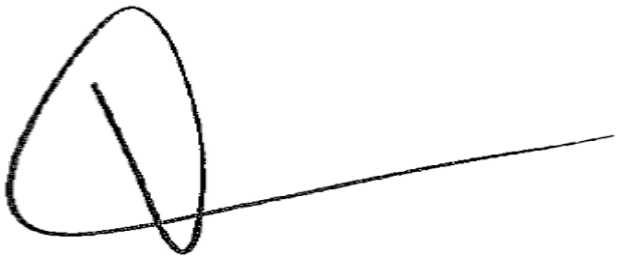
Other miscellaneous questions (Q50-53)

The Law Society has no comment on these questions.

Further information

This submission has been prepared with the assistance of the Law Society's Commercial and Business Law Committee. If you wish to discuss the submission further, please contact the committee's convenor, Rebecca Sellers, via the committee secretary, Jo Holland at jo.holland@lawsociety.org.nz / (04) 463 2967.

Yours faithfully



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