

# The Contracts of Insurance Act 2024 in New Zealand: What will this mean for insurers?

01 May 2025  Joanna Wallens

The [Contracts of Insurance Act 2024](#) will come into force in New Zealand by November 2027, at the latest. It will better align New Zealand insurance law with the United Kingdom and Australia.

Insurance law in New Zealand has developed in a piecemeal way and the Act consolidates and modernises the law.

## 1. Requirement for insurance policies to be written and presented clearly, so that consumers can easily understand them

This important reform requires insurers to write policies in plain language, improving fairness and clarity. The emphasis is on ensuring that consumers understand their rights and responsibilities.

Insurers have new duties to inform policyholders about their disclosure duties and the consequences of breaching them.

Insurers will be required to make key information, including claims acceptance rates, publicly available.

## 2. Distinction between consumer and non-consumer insurance contracts

The Contracts of Insurance Act 2024 introduced a new distinction between consumer and non-consumer insurance contracts.

Consumer insurance contracts means contracts (or proposed contracts) of insurance ordinarily entered into by a policyholder wholly or predominantly for personal, domestic or household purposes. Non-consumer insurance contracts means those entered into by a policyholder that is not a consumer insurance contract.

## 3. Diluted disclosure duties

The existing requirement is that both consumers and non-consumers must, before entering into an insurance contract, disclose all “material information” to the insurer.

The Contracts of Insurance Act 2024 requires non consumers to make a “fair presentation of the risk” to insurers. All information which the policyholder knows or ought to know that could influence a reasonable insurer’s decision to underwrite the risk must be disclosed. A policyholder’s disclosure should provide insurers with sufficient information to put them on notice that they need to make further inquiries.

Consumers must take “reasonable care not to make a misrepresentation” to insurers. This is assessed based on the standard of care that a “reasonable policyholder” would exercise. However, when assessing whether a policyholder has exercised reasonable care, insurers must consider the consumer’s particular circumstances and characteristics. The Contracts of Insurance Act 2024 sets out matters to be taken into account when determining if the consumer has taken reasonable care.

The Contracts of Insurance Act 2024 increases the onus on insurers to ask consumers the right questions, rather than leaving it to consumers to know what to tell their insurer. The existing requirement is that consumers have to disclose any information which might influence a “prudent insurer”. This is poorly understood by consumers and leads to accidental failures to disclose information. The Contracts of Insurance Act 2024 should make it easier for consumers to know what information to provide to their insurer.

## New remedies for non-disclosure

Currently, if the insurer would have underwritten the policy differently, such as charging a higher premium or adding an exclusion, claims can be declined and policies voided from the start. However, an insurer cannot decline a claim because of an exclusion where that exclusion did not cause or contribute to the loss.

Under the Contracts of Insurance Act 2024, insurers will no longer be able to cancel an insurance contract because a consumer failed to disclose information. Insurers have to respond “proportionally”; this means that they might charge a higher premium for the remainder of the policy period to reflect the risk better or reduce the amount paid on a claim. However, the Contracts of Insurance Act 2024 allows “increased risk exclusions”, meaning insurers can exclude coverage in situations where the risk of loss is higher than initially assessed, which:

- define the age, identity, qualifications or experience of a driver, pilot, ship-master or other person in a similar position;
- define the geographical area where the loss must occur; or
- exclude loss where personal vehicles or goods are being used for commercial purposes.

## 4. Intermediaries

Intermediaries have a duty to take reasonable steps to let the insurer know what the customer has told them before the insurer enters into or varies the insurance contract. The Contracts of Insurance Act 2024 gives insurers rights to claim against specified intermediaries for failing to pass on disclosure information.

## 5. Abolition of third-party statutory charges

In December 2013, the New Zealand Supreme Court in *Steigrad* ruled that a statutory charge can “freeze” insurance proceeds to meet insureds’ liability to third parties. This prevented insurers from advancing funds to cover defence costs which would deplete the limit and the amount available to the third party, if successful - especially where the quantum of the third-party claim exceeds the policy limits (*BFSL 2007 Ltd & Ors (in liq) v Steigrad* [2013] NZSC 156).

Insureds with policies which combined defence costs and third-party cover in a single limit were left vulnerable, as sums insured could be subject to a statutory charge, preventing their access to defence costs cover. This caused brokers to recommend ring-fenced defence costs cover, where defence costs cover was separated out - including for insureds who previously relied on global liability programmes placed by their parent organisation. Separate defence costs cover was advised if insureds wanted certainty that they would be able to call on their insurance to pay for defending third-party claims. Separate policies for defence costs or single policies with separate limits for third-party liability and defence costs have been the mainstay in New Zealand for years.

The majority judges in *Steigrad* commented that, *“If it is considered that a different balance should be struck between the rights of third party claimants, the insured and insurers, however, then this is for Parliament.”* The Contracts of Insurance Act is this legislative change. Statutory charges should no longer be able to be placed on sums insured by claimants. Previously, statutory charges could operate to prevent insureds from accessing funds for defence costs.

## 6. Unfair contract terms regime

Insurance-specific exceptions have been removed from the unfair contract terms provision in the Fair Trading Act 1986 (FTA). Clarification has been added as to which insurance terms are part of the “main subject matter” of insurance contracts. The “main subject matter” of insurance contracts remains FTA exceptions, which cannot be declared unfair. These are:

- the event/subject matter/risk insured against;
- life or health insurance premiums;
- the sum insured;
- the claims settlement basis;
- excess and deductible amounts; and

- policy exclusions or limitations.

## 7. Genetic testing

The Contracts of Insurance Act 2024 includes provisions which mean that the use of genetic testing results by insurers can be regulated in the future. In including these provisions, reference was made to international examples of insurers limiting over or increasing premiums due to genetic testing results. In including, the government made reference to safeguarding Kiwis' access to life and health insurance if they have taken a genetic test.

## 8. Claims processing

The Contracts of Insurance Act 2024 requires insurers to process claims within a "reasonable time". This is not a fixed time limit, to allow insurers to take into account the complexity of the claim and the surrounding circumstances, such as whether it is business as usual or there has been a large natural disaster impacting multiple policyholders.

## Conclusion

Browne Jacobson has specialised in drafting insurance policy wordings for over a decade. In conjunction with leading linguists at the University of Nottingham, we developed drafting techniques which have been independently proven to reduce the reading age of policy wordings to increase comprehension.

How clear and specific the questions asked by insurers are is set out in the Contracts of Insurance Act 2024 as a matter to be taken into account in determining whether a consumer has taken reasonable care not to make a misrepresentation. The clarity of question sets will also have increased importance following the Contracts of Insurance Act 2024.

Please contact us if you would like further information on writing insurance policies and associated documents in plain English. We also have a member of the team practising in England who is an enrolled barrister and solicitor of the High Court of New Zealand, with experience working in the New Zealand insurance market.

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