



**Submission on  
Discussion Paper  
“Review of the Guidelines on Insurance  
and the Human Rights Act 1993”**

**Submission to  
Human Rights Commission  
11 December 2006  
by Institute of Financial Advisers**

## **Advocacy**

The Institute is available to participate in any further discussion forums on this topic.

## **Contact Person**

Our contact person for this submission is:

David Hutton  
Chief Executive Officer  
Institute of Financial Advisers  
PO Box 5513  
Wellington

Phone (04) 499 8062  
Fax (04) 499 8064  
Mobile (0274) 462 656  
Email [david@ifa.org.nz](mailto:david@ifa.org.nz)  
Website [www.ifa.org.nz](http://www.ifa.org.nz)

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**Integrity**  
**Objectivity**  
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**The Professional Body for Needs-Based Financial Advisers**

## 1. Institute Background

The Institute of Financial Advisers is the professional body for over 1,400 members, representing needs-based financial advisers in New Zealand. All these members are personal members, not corporate members.

Our members provide advice to their clients in the areas of insurance, investments, financial planning, and financial services generally. Their professional practices reflect the broad spectrum of New Zealand businesses – they operate as local SME's, are part of large regional or national dealer groups, are associated with strong financial organisations, services companies in banking, funds management, or insurance, work in employee benefits organisations, or sometimes practice as lawyers, accountants and other professional advisers.

The Institute reinforces compliance with codes of ethics and practice standards, runs Dispute Resolution and Disciplinary Committees that are independently chaired, offers education pathways that can lead to tertiary qualifications and the attainment of internationally recognised adviser marks, maintains and ensures compliance with a continuing professional development programme, and provides networking, education, development, and business practice forums at a national and regional level for members. It represents its members with Government, government agencies, and other stakeholders.

The Institute has a College of Insurance Advisers whose members are specialists in insurance advice. This submission has drawn upon the knowledge and experience of our members. Some of our members specialise in providing advice relating to people either seeking insurance cover or disputing claims in situations covered by the discussion paper. One such member has advised his intention to provide a detailed submission, drawing upon his experience.

The Institute's members provide advice to consumers and our submission reflects our concern for all consumers of insurance.

## 2. Overall View

As is acknowledged in the discussion paper, it is important to understand how insurance works. Insurance is a pooling of risk with costs averaged over the pool of insured people. Any law or regulations that require insurers to include a disproportionate number of people with higher risk in the pool of insured people at the same premium rates means that the average cost to all those paying premiums needs to rise. Effectively, requiring those more likely to make claims to be part of a "pool" is a form of socialisation of costs.

In considering the discussion paper, we are very mindful of the need to balance the rights of ordinary consumers against minority categories. As a broad principle, we consider that the cost of support for high risk categories may be more appropriately met through taxpayer-funded social welfare rather than increasing the average cost of insurance to all consumers or jeopardising the financial viability of insurers.

We fail to see why a relatively small number of insured people (who have been proactive in taking steps to invest in their own risk management) should be required to subsidise the insurance costs of those in high risk categories.

The logic for this general view is that raising the cost of insurance will discourage consumers from taking out insurance policies that provide important risk management for families. For example with higher premiums, fewer families may be able to afford life insurance cover leading to an increase in the families with financial problems where one of the parents dies unexpectedly. There is a general view from our members that under-insurance is an important issue in New Zealand and that having a higher level of insurance would improve the overall level of financial security.

On the other hand, the Institute supports measures to reduce unfair discrimination in insurance and moves to ensure that statistical data is used as the basis for realistic assessment of risk and insurance premiums. We do not support measures that would restrict the ability of insurers to obtain data necessary to make judgments on insurance cover or premiums.

### 3. Specific Comments

The discussion paper asks 13 questions and then summarises these with a request for comment on five aspects. We have comments on some aspects and have tended to group responses rather than deal with the specific questions.

#### ***Should outdated language be replaced with more appropriate terminology?***

Yes.

#### ***General issues concerning medical information***

The discussion paper raises several questions relating to the quality of the data available to insurance underwriters and the ability of underwriters to access data that is relevant to individual cases. At present, guidelines used by underwriters are typically heavily influenced by material provided by reinsurers. There is scope for improving the quality of the statistical data available for underwriting to more realistically reflect the risks of medical conditions under modern treatment practice.

Achieving this would require extensive and detailed research and cooperation amongst insurers and with the medical profession. The approach adopted in Australia relating to mental health (noted on page 11 of the discussion document) with a cooperative venture between the Australian Investment and Financial Services Association and Mental Health Stakeholders seems a sound way to tackle the issue. We draw your attention to the fact that there is an updated Memorandum of Understanding between these two groups, dated June 2006.

We suggest that the practice of “deferring” decisions or offering very high premiums for cover are responses to uncertainty and the lack of data to support a more reasoned approach.

The Institute’s view is that insurance decisions need to be soundly based on fact but that to improve the current situation, there is a need to improve the quality of research and data available to assist underwriting and claims decisions. We suggest that the Australian approach to mental health and insurance could be usefully adapted to form a coalition of the insurance industry and the medical profession, supported by the Human Rights Commission and with government funding for research, could lead to better data and guidelines for underwriting and claims for the whole disability area.

***Do you think that health insurance offered as part of an employment package should be available to everyone regardless of their age?***

The Institute agrees that all employees should be eligible for health insurance when this is part of a work-based group scheme, provided that the premium rates are able to be varied to relate to risk. Data on the cost of providing health insurance clearly supports variable premiums for different age groups, though we understand that in many cases a rate has not been determined for those over 65. A requirement to charge a flat rate for all employees would discourage employers from providing health insurance if they had an older work force or encourage age discrimination in employment.

The Institute is keen to see a much more active Group Insurance market so employers are able to provide access to more competitive life, disability and health insurance products to their employees. We see KiwiSaver and other workplace savings and insurance initiatives supporting this.

***Genetic information***

We suggest that caution needs to be exercised when considering any form of restriction on the use of scientific information. The logic for this is that scientific knowledge is developing at a rapid rate and insurance decisions need to be able to use new knowledge. The alternative is to impose arbitrary restrictions based upon belief rather than fact.

The historical research into the link between smoking and cancer, which led to significant changes in insurance practices is analogous.

***Reinsurance***

The Institute considers that reinsurers' policies have an important impact on the issues discussed. A significant issue is that a reinsurer may set strict terms for reinsurance and decline to pay the insurer, even if the insurer is required to meet the claim. We suggest the solution may be to require the reinsurer to adhere to the Human Rights Act guidelines.

## **4. Conclusion**

Insurance has a very important role in risk management for society, especially in providing financial protection for families. The Institute's view is that insurance needs to remain based on facts and statistics so that premiums are kept at realistic levels to encourage financial risk protection for the benefit of society. We consider there is a need to take steps to ensure that there is not unfair discrimination, but do not favour socialisation of risk through requiring insurers to take on higher risk without being able to charge appropriate premiums. The provision of a safety net for those with disability who are unable to obtain insurance cover should be a responsibility of government rather than individual insurers.