



# SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



## Marine Insurance Law Reform for New Zealand?

In May 2018 New Zealand's Ministry of Business Innovation and Employment (MBIE) released an issues paper on insurance law reform. This will start the ball rolling on a wide ranging, and long overdue, set of insurance law reforms – but what will be the impact on the marine sector?

The project's remit extends to rules around pre-contractual disclosure, remedies, unfair contract terms and aspects of industry regulation. The Marine Insurance Act 1908 (child of Chalmers' 1906 effort and cousin to Australia's 1909 version) is included in the list of legislation under consideration. But will there be any real appetite for change on the marine side?

New Zealanders will approach this reform process with a sense of *deja vu*. We have been here before, in 1998 (Law Commission report), 2004 (the Law Commission again), 2006 (Ministry of Economic Development report) and 2008 (Minister of Commerce cabinet paper). But none of these past attempts considered change in the marine context. And none of them led to any reforms in any case.

It is unlikely that anyone from outside MBIE will suggest a complete revision so that marine insurance falls within a single insurance contract statute, having been folded into the non-marine provisions. Nonetheless, those interested in marine insurance cannot expect the 1908 Act to emerge entirely untouched.

For example, the question of whether consumer insurance in the marine context remains solely a "marine" issue or is brought into a set of consumer provisions. This is an issue Australia moved on back in 1998, removing pleasure craft from the 1909 Act's scope to give consumers the protections of the Insurance Contracts Act 1984. The Australian Law Commission's 2001 report on the Marine Insurance Act 1909 further recommended the removal of non-commercial cargoes.

A more significant issue will be the extent to which New Zealand decides to align its commercial insurance law with either Australia or the United Kingdom. In particular, the changes to the United Kingdom's marine insurance legislation following the Insurance Act 2015. This Act changed the manner in which pre-contractual disclosure was dealt with, creating a duty of "fair presentation of the risk" that was extended to marine insurance. Will New Zealand decide that there is value in copying the United Kingdom's approach to maintain consistency with the jurisdiction from which insurance law has traditionally been sourced? Or will the neighbours' invitation prove more attractive given our close business links?

Finally, will anyone be keen to recommend that, 110 years later, New Zealand should add the utmost good faith provision that its legislation strangely never included? We would never get "*uberrimae fidei*" through the Parliamentary Counsel's office, but it could be a pleasant reminder that whatever these reforms bring, no one is looking for a complete break with the past.

The MBIE consultation process is set to last well into 2019, so a final legislative decision is some way off. But given the word "marine" appears in just six of 143 paragraphs in the discussion document,

those MLAANZ members with a strong attachment to this area had best speak up loudly if they want to see any changes.

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