



Senator the Hon George Brandis QC
Attorney-General
Parliament House
CANBERRA ACT 2600

12 December 2016

Dear Attorney-General

REVIEW OF THE MARINE INSURANCE ACT 1909

The Insurance Council of Australia¹ (the Insurance Council) is writing to elaborate on matters raised at a meeting earlier this year with Mr Jesse Clarke, a Principal Legal Officer of your Department, regarding the potential impact of the United Kingdom's (UK) *Insurance Act 2015* on Australia's *Marine Insurance Act 1909* (MIA). Given the earlier meeting this year, Mr Clarke has been copied in this letter.

As you may be aware, the UK *Insurance Act 2015*, which came into effect from 12 August 2016, introduced material amendments to the UK's *Marine Insurance Act 1906* (UK MIA), upon which the MIA (and the marine law of many of Australia's trading partners) is based.

The Insurance Council is concerned about the potential consequences of the UK reforms for Australian marine insurance providers. In particular, Australian marine insurers may be materially impacted if Australian marine insurance law is not appropriately aligned with the UK and international practice. As marine insurance is a competitive global market, it is important for Australia that, where possible, marine insurance is taken out in Australia rather than in a competing foreign jurisdiction.

In this respect, we believe that the MIA is in need of reform to ensure that it remains in step with global expectations of marine law; importantly, this would help safeguard the global competitiveness of the Australian marine insurance industry. The Insurance Council therefore proposes that the MIA be reviewed to ensure that it remains fit for purpose. This submission sets out the reasoning underpinning our position.

¹ The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Our members represent more than 90 percent of total premium income written by private sector general insurers. Insurance Council members, both insurers and reinsurers, are a significant part of the financial services system. September 2016 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$44.1 billion per annum and has total assets of \$120.5 billion. The industry employs approximately 60,000 people and on average pays out about \$124.6 million in claims each working day.

Insurance Council members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance).

Australia's Marine Insurance Act 1909

The MIA is almost identical to the UK MIA in substance; it is a codification of marine law that is practised globally. Historically, care has been taken to maintain consistency between Australian law and international practice. For instance, the practices of the Australian marine insurance market have long reflected practices in the UK marine insurance market (the most important marine insurance market globally) and there has generally been consistency in judicial interpretation of the legislation in Australia and the UK. The Australian Law Reform Commission (ALRC), in its final report on its *Review of the Marine Insurance Act 1909*², explored many of these important considerations.

In its report, the ALRC noted that Australia has a close association with marine insurance law and practice in the UK and many other common law jurisdictions, including New Zealand, Canada, Singapore, Malaysia, Hong Kong and India, which have their marine insurance legislation derived from the UK MIA.

The ALRC found that the present codification of marine insurance law and practice is long established and well known, and that this has contributed to a business environment in which the meaning of contracts is well understood and is backed up by comprehensive case law.

The ALRC went further to warn that unilateral changes to Australian marine insurance law may impact adversely on and isolate the Australian market by severing the association between Australian and United Kingdom law and practice, a link shared with marine insurance regimes in other common law systems and also many other countries as well.

As marine law has been long established, it is well understood by industry participants and the legal and judicial profession, both in Australia and in our major overseas trading partners. This has produced consistency and certainty in the global application of marine law.

Impact of the UK Insurance Act 2015

The UK Insurance Act 2015 came into force on 12 August 2016 and represents the most significant reform of UK insurance law since the UK MIA. It makes fundamental amendments to the UK MIA in relation to the areas of utmost good faith, disclosure, remedies for breach of contract and warranties. Notably, the UK MIA now adopts a more pro-insured approach (such as around misrepresentation and non-disclosure); it would seem probable that this will place the Australian marine insurance market at a competitive disadvantage and at real risk of losing business.

The Insurance Council is concerned that the MIA now retains provisions that have been discarded in the UK, and that Australian marine insurance law will become obsolete in respect of the changes to the UK MIA.

Consequently, Australian marine insurance may, over time, become less attractive and the international competitiveness of Australian marine insurers may diminish. In that case, marine insurance contracts for Australian risks would likely to be increasingly issued by Australia's global competitors.

² Australian Law Reform Commission 30 May 2001, *Review of the Marine Insurance Act 1909*, [ALRC Report 91](#).

This would also have a material flow on impact to associated domestic industries, including surveyors and other service providers appointed by insurers, as well as resulting in dispute resolution and litigation being managed in foreign jurisdictions. We consider that the adverse Australian economy-wide implications resulting from this could be substantial.

As an indicator of market size and potential economic impact, the total annual value of gross written marine insurance premium from Insurance Council members is worth in the order AU\$0.6 billion. Given the significance of the Australian marine insurance industry, the Insurance Council submits that it is necessary that Australian marine law maintains the global competitiveness of the domestic industry. Indeed, taking no action would be akin to making unilateral changes to the MIA, which the ALRC had warned against in its review.

The Insurance Council considers that the issues raised in this submission demonstrate the need to review the MIA to ascertain the extent to which its provisions require updating.

Furthermore, we note that many of the issues raised in this submission have also been raised by the Maritime Law Association of Australia and New Zealand (MLAANZ), in its proposed reforms³ to the MIA. The Insurance Council sees merit in the underlying intent of the MLAANZ's proposals, particularly as it also points out the need to review the MIA.

The Insurance Council and its members would appreciate an opportunity to discuss this matter further and will be in touch with your Department to identify a mutually convenient date. In the interim, please contact John Anning, the Insurance Council's General Manager Policy, Regulation Directorate, on tel: (02) 9253 5121 or email: janning@insurancecouncil.com.au if you require further information.

Yours sincerely



Robert Whelan
Executive Director and CEO

cc: Mr Jesse Clarke, Principal Legal Officer, Office of International Law, the Attorney-General's Department

³ Maritime Law Association of Australia and New Zealand: [Proposed reform of the Commonwealth Marine Insurance Act 1909](#).