Marine insurance warranties under Australian law: Lost at sea?

White Paper – February 2025

25 YEARS IN ASIA PACIFIC

Liberty Specialty Markets

Kennedys

Overview

The *Marine Insurance Act 1909* (Cth) (AMIA) has governed Australia's marine insurance law for over a century. However, as the global maritime industry evolves, there have been repeated calls for reform. The AMIA's framework for promissory warranties (which help protect the risk an insured agrees to accept from alteration during the policy period) is of particular concern. It is no longer aligned with modern insurance practice or with other marine jurisdictions such as the United Kingdom and New Zealand.

A key criticism of the AMIA's warranty regime is the unforgiving remedy that applies for breach of warranty where there is a subsequent claim, even if the breach was not causally relevant. That remedy framework has seen some courts resolve warranty disputes in ways that can be difficult to reconcile with the Act itself and which are productive of uncertainty. Such uncertainty, both legally and commercially, could well hinder Australia's role as a market for placing marine insurance. At the same time, underwriters are understandably losing confidence in the use of warranties for their original purpose.

The time has come to embrace reform – not just for the benefit of policyholders and insurers, but for the future of Australia's maritime industry as a whole. To promote open discussion on this important issue, Liberty Specialty Markets and Kennedys have partnered to co-author this whitepaper providing a comprehensive overview of the role, historic purpose and current issues arising from the framework for promissory warranties established by the ageing AMIA, as well as a review of recent case examples from common law courts.

By contrasting the historic approach to warranty disputes with that of more recent years, the paper suggests that certainty has often been sacrificed in aid of outcomes that are perceived to be more in keeping with prevailing notions of fairness. That uncertainty may result in more palatable outcomes in specific cases but does little to assist insurers or insureds at large.

In addition to offering cautious guidance to those who draft and negotiate warranties under Australia's current legislation, the paper also carefully examines various options for much needed reform. The approaches taken in the United Kingdom and New Zealand are examined, as is the treatment of remedies under Australia's *Insurance Contracts Act 1984* (Cth) (ICA).

Our paper concludes by recommending that there be greater harmony between the AMIA and the ICA. However, certain acts or omissions by an insured can materially alter the risk profile accepted and priced by an insurer, including in circumstances where no claim results. If underwriters are to price risk confidently and sustainably, that issue should be acknowledged in any amendment to the remedy framework.

If you have any questions on the information provided, or would like to arrange a discussion on the issues and opportunities we have raised, please reach out to the authors.

Nathan McLellan

Vice President, First Party Claims - Asia Pacific
Liberty Specialty Markets

t: +61 2 8298 5944
e: Nathan.McLellan@libertyglobalgroup.com

Jonathan Wyatt

Australian Managing Partner
Kennedys

t: +61 8 6147 4372
e: Jonathan.Wyatt@kennedyslaw.com

Introduction

In marine insurance policies, promissory warranties[1] are contractual provisions that assist insurers by:

a) helping to define and control the risk they agreed to accept, including by reference to factual considerations; and

b) seeking to prevent an alteration of that risk by the insured during the policy.

While the core objectives for which marine warranties evolved remain valid, there is uncertainty as to the extent they will be enforced by the Courts under the framework established by Australia's *Marine Insurance Act 1909* (Cth) (**AMIA**)[2]. Such uncertainty, coupled with the fact that the AMIA's treatment of warranties is an outlier compared to:

a) the *Insurance Contracts Act 1984* (Cth) (**AICA**); and

b) the legislative framework in both the United Kingdom (**UK**) and New Zealand (**NZ**),

begs that steps are taken to amend AMIA.

This paper describes the AMIA's warranty provisions after considering the judicial context from which they arose. More recent case law is then examined, revealing a pronounced change that can be somewhat difficult to reconcile with the statute itself. Despite the prevailing uncertainty, general guidance is cautiously offered as regards the drafting of warranties in policies subject to the AMIA.

The need for reform is then explored, including a discussion of the approach taken in each of the UK, NZ and under the AICA. It is suggested that marine insurers are understandably losing confidence in the use of warranties, and neither insurers nor insureds benefit from the status quo.

Relevantly:

a) the AMIA places considerable emphasis on intention, meaning it can be difficult, whatever language might be used, to achieve certainty about whether a particular contractual provision will function as a warranty;

b) there is something of a dichotomy between the requirements of the AMIA and the judicial treatment of warranties, no doubt, at least in part, because the remedies for breach of a marine warranty have, with some justification, been described as "draconian"; and

c) the objectives that warranties evolved to achieve can be met at least as effectively, arguably more equitably and probably, with additional certainty through an alternative legislative framework more in keeping with modern insurance practice.

By way of conclusion, having explored the various reform options, this paper endorses greater alignment between the AMIA and the AICA. However, we do recommend that any revised warranty framework recognise, albeit proportionately, that a breach can fundamentally alter the risk the insurer agreed to accept, even if that breach does not ultimately have any causal relationship with a subsequent claim.

[1] Promissory warranties are to be distinguished from other terms that are also sometimes called "warranties" but which in fact merely limit the insurer's liability. Examples of such terms, which are arguably not warranties at all, include clauses such as "warranted free of particular average" and "warranted free from capture and seizure".

[2] Whilst this paper is confined to the AMIA, many of the observations made would ostensibly apply to Singapore's *Marine Insurance Act* (Cap. 387).

The historical context

Early English law afforded special significance to marine warranties as contractual terms used to define, and protect against the alteration of, the risk accepted by an insurer. *Bond v Nutt*[3], for example, considered a policy issued on 20 August 1776 with a warranty that the "Capel" had sailed from Jamaica for London on or before 1 August 1776. The departure date was related to hurricane risk, and it transpired that due to an embargo, the Capel did not depart until 6 August 1776.

The insurer denied a subsequent claim. Lord Mansfield CJ, who was instrumental in shaping early views on marine warranties, said[4]:

> *The question... admits no latitude, no equity of construction or excuse. Had she or had she not sailed on or before that day? ... No matter what cause prevented her; if... she had not sailed, though she staid behind for the best reasons, the policy was void: the contingency had not happened; and ... there was no contract...*

De Hahn v Hartley[5] concerned a handwritten note in the margin of an insurance policy about the sailing of the "Juno" with a certain number of men due to risks such as piracy. Once again, Lord Mansfield CJ delivered a forceful judgment. After accepting the note was a warranty, His Lordship held:

> *A warranty... is a condition or a contingency, and unless that be performed, there is no contract. It is perfectly immaterial for what purpose a warranty is introduced; but, being inserted, the contract does not exist unless it be literally complied with.*

Ashurst J, also in *De Hahn*, agreed that strict compliance was essential[6]:

> *The very meaning of a warranty is to preclude all questions whether it has been substantially complied with; it must be literally so.*

A century later, *Thomson v Weems*[7] expressed the conception of warranties that ostensibly informed the UK legislation upon which the AMIA was based. Lord Blackburn said:

> *In... Marine insurance... any statement of a fact bearing upon the risk introduced into the written policy is, by whatever words and in whatever place, to be construed as a warranty ... [I]f a promissory warranty is not complied with, the insurer is discharged from liability as from the date of the breach...*

> By reforming the AMIA to incorporate proportionality, align with international best practices, and harmonise with the ICA, Australia can create a fairer, more efficient, and competitive marine insurance market.
>
> **Jonathan Wyatt**
> Kennedys

[3] 1777, 2 Cowp. 601 at [606] – [607].
[4] Such a dualistic approach aligns with Lord Mansfield's clear preference for certainty in commercial affairs. In *Buller v Harrison* (Cowp. 565), his Lordship observed; "*I desire nothing so much as that all questions of mercantile law shall be fully settled and ascertained; and it is of much more consequence that they should be so, than which way the decision is.*"
[5] 1786, 1 T.R. 344 at [345].
[6] Ibid, at [346].
[7] (1884) 9 App Cas 671, citing Lord Blackburn at (at [684]).

Warranties under the AMIA

The AMIA, enacted in 1909, has been described as a "carbon copy" of the UK Act that preceded it. Section 39(1) in Division 7 says the Act is concerned with promissory warranties[8], being contractual terms applicable to both the present and the future by which the insured, no doubt in furtherance of an insurer's desire to define and render static the risk it is willing to accept:

a) undertakes that a particular thing shall or shall not be done, or that some conditions shall be fulfilled; or

b) affirms or negatives the existence of a particular state of facts.

Section 39(2) confirms a warranty may be express or implied. Section 39(3), seemingly invoking *Thomson v Weems* and *De Hahn v Hartley*, requires a warranty to be "exactly complied with, whether it be material to the risk or not". Non-compliance discharges the insurer from any liability from the date of the breach, including where there is no connection between the breach and a subsequent loss, but any liability incurred beforehand is undisturbed[9].

If a warranty is breached prior to a loss, section 40(2) says it is no defence that breach was remedied, and the warranty complied with, before the loss and the insurer thus remains discharged of liability. However, in a reasonable departure from the approach in *Bond v Nutt*, non-compliance is excused if changed circumstances render the warranty inapplicable or if compliance would be contrary to any subsequent law.

Express warranties

Section 41(1) makes plain a warranty does not need to be drafted in a certain way or employ a particular form of words. Rather, the intention to warrant is key.

Section 40(2) preserves the historic requirement that a warranty be included in or written upon the policy, albeit a document incorporated by reference will suffice. Section 40(3) confirms that an express warranty only excludes an implied warranty if the former is inconsistent with the latter.

Other sections of the AMIA bear upon the express warranties that may be given in a policy. Section 42 is concerned with warranties as to the neutrality of ships or goods and section 44 deals with what is required when any given subject matter insured is warranted to be "well" or "in good safety" on a particular day.

Implied warranties

The AMIA creates certain implied warranties. It also makes clear that other matters are not in fact implied and would need to be dealt with through express warranties if required.

In brief:

a) Section 43 says there is no implied warranty as to the nationality of a ship, nor that her nationality will not be changed during the risk.

b) In a policy on goods or other movables, section 46(1) provides there is no implied warranty of seaworthiness on the part of those goods or movables, but section 46(2) does imply a warranty that the ship carrying them is itself seaworthy.

c) Section 47 implies a warranty that a relevant marine adventure is lawful and so far as the insured may control such matters, also carried out in a lawful manner.

Importantly, the AMIA tolerates no implied warranties except those it provides for.

---

[8] Promissory warranties are also called "true warranties". Goff LJ, in *Bank of Nova Scotia v Hellenic Mutual War Risks Association (Bermuda) Ltd (The Good Luck)* [1992] 1 AC 233 (at [261 – 262]), helpfully explained:

We have to distinguish between two forms of warranty, viz. those warranties which simply denote the scope of cover (as in the familiar... "warranted free of capture and seizure") and those which are promissory warranties, involving a promise by the assured that the warranty will be fulfilled.

[9] Section 40(3) allows (but by no means compels) an insurer to waive a breach of warranty.

Speaking in the context of the equivalent Singapore legislation (itself also a "carbon copy" of the UK Act), Judith Prakash J observed in *Marina Offshore Pte Ltd v China Insurance Co (Singapore) Pte Ltd and Another*[10] that the only implied promissory warranties were those catered for in the Act and went on to remark:

> *... For the purposes of marine insurance, the court cannot find that an implied warranty is contained in a policy simply because the circumstances might make it important or reasonable that certain conditions be followed to reduce the risk. The normal contractual test relating to the implication of terms does not apply to a marine policy.*

Summary

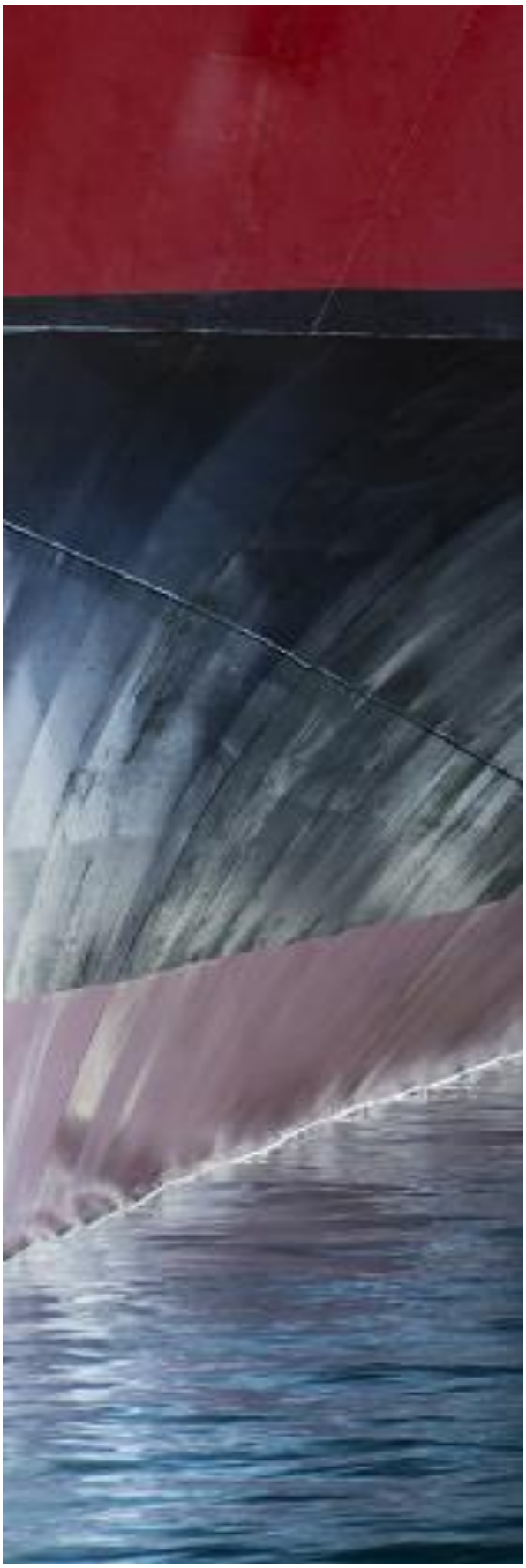
Under the AMIA, a provision incorporated into a marine policy may or may not be a warranty for reasons that turn largely on whether it reveals an intention to warrant. This is the case whatever that provision might be called, however it may be drafted and whatever its subject matter might be. Problematically of course:

a) contracting parties will not always intend the same thing, even where they otherwise agree on the use of particular words; and

b) distilling intent from a written contractual term can itself be an uncertain endeavour.

The flexibility inherent in the AMIA appropriately recognises the primacy of intention over form or terminology. However, it is a corollary of such flexibility that there will always be uncertainty about whether a term will operate as a warranty no matter how it is drafted.

If a policy does contain a warranty, then contouring to early English decisions, the AMIA requires exact and literal compliance. On a plain reading of the AMIA, an insurer is excused from any liability that arises after a breach, including where there is no causal nexus between breach and loss and even if the breach is remedied prior to the loss.



[10] [2006] SGCA 28 at [25].

The modern context

The modern judicial treatment of warranties differs markedly from that contemplated by Lord Mansfield. Recent decisions from courts in the Commonwealth (meaning they would likely be at least persuasive in Australia) suggest a trend towards moderating much that is enshrined in the AMIA, and there are those who would say such moderation is entirely justifiable. For example:

a) there appears to be a general reluctance to construe policy terms as warranties, including where there are explicit indications of an intent to warrant; and

b) even if a term is found to be a warranty, there is an equally apparent willingness to consider curtailing both the requirements for compliance and the circumstances in which compliance is demanded.

Decisions such as *Amlin Corporate Member Limited and Ors v Oriental Assurance Corporation* help explain the judicial willingness to look "behind" the language of a putative warranty and in some circumstances, to embark upon a constructional exercise that ultimately qualifies the requirements for compliance. Keenly aware of what is at stake in any contest over the interpretation and enforcement of a warranty, Field J observed[11]:

> *The words of the warranty must be given their ordinary and natural meaning unless the background indicates that such meaning was not the intended meaning. It also has to be remembered that a continuing warranty is a draconian term: its breach produces an automatic cancellation of the cover, regardless of whether the loss was causally connected to the breach...*

CASE STUDIES

Kler Knitwear

The Newfoundland Explorer

The Resolute

The Pilbara Pilot

[11] [2013] EWHC 2380 (Comm) at [29].

CASE 1:
Kler Knitwear

Although not a marine insurance decision, *Kler Knitwear Ltd v Lombard General Insurance Co Ltd* [12] is nonetheless illustrative of the concerns that arise in marine cases. The relevant policy incorporated the following:

> ***Sprinkler Installation Warranty***
>
> *It is warranted that within 30 days of renewal 1998 the sprinkler systems... must be inspected by a LPC approved sprinkler engineer...*
>
> ***General condition 2 - Warranties***
>
> *Every warranty to which this Insurance... is... made subject shall... apply and continue to be in force during the whole currency of this Insurance and non-compliance with any such Warranty, whether it increases the risk or not, or whether it be material or not to a claim, shall be a bar to any claim...*

The insureds did not arrange the required inspection until 60 days after renewal. Wholly unrelated to the sprinkler inspection warranty, a storm subsequently damaged the insured premises. The insurer denied the claim for non-compliance with the warranty. Morland J opened the judgment with statements that seemed entirely orthodox[13]:

> *My task is to ascertain the intention of the parties... from the clause in the context of the policy as a whole set against its factual matrix...*
>
> *If, on a proper construction of a clause, the intention of the parties was that the clause should be a warranty, the court must uphold that intention...however harsh... the consequences may be.*
>
> *It is wholly irrelevant to the question of construction that as in this case the insured's loss had no causative link with the breach of obligation... If the clause is a warranty, and the policy spells out that a claim is barred, it matters not that storm damage rather than fire or malfunction of the sprinkler system caused the loss.*
>
> *The fact that the clause is entitled "warranty" and contains the phrase "it is warranted that" are some indication that the parties intended the clause be a warranty in the true sense of the word...*

Despite the foregoing, his Honour arrived at the "clear and unhesitating conclusion" that the relevant term was a suspensory condition rather than a warranty[14]. That conclusion was at least partially informed by the fact Morland J regarded it as "absurd" and of "no rational business sense" to bar the storm damage claim for breach of a sprinkler inspection warranty that was not causally related to, and had in any event been remedied before, the ultimate loss. It is, respectfully, difficult to see how such considerations are relevant given the principles set out immediately above.

[12] [2000] Lloyd's Rep IR 47.
[13] Ibid at [49].
[14] Essentially, a suspensory condition "delimits" or "describes" the risk such that if certain stated circumstances were not met at the time of a loss, the insurer would be regarded as "off risk" but unlike a warranty, cover would be restored if the breach was remedied before loss.

CASE 2:
The Newfoundland Explorer

In *GE Frankona Reinsurance Ltd v CMM Trust No 1400 (The Newfoundland Explorer)*[15] considered the following policy provision:

> *Warranted fully crewed at all times.*

The Newfoundland Explorer was severely damaged by fire when laid up. The loss was caused by an overheating generator and there was no crew on board at the time. The resultant claim was denied for breach of the express warranty. Gross J said (at [16]):

> *As a matter of natural and ordinary language, for the vessel to be "fully crewed at all times" while laid up alongside a berth, there must be at least one crew member on board her 24 hours a day; "at all times" means what it says - the whole time, not some of the time... Here, however, questions of context and practicalities require careful reflection and some qualification.*

Having accepted that "considerations of commercial commonsense" necessarily qualified the literal meaning of "at all times", his Honour considered examples of when that literal meaning might not apply, none of which were factually relevant. Ultimately, Gross J was satisfied that "at all times" permitted some exceptions but on the material before the court, the warranty was applied as drafted, and the denial of the claim was sustained.

The Newfoundland is interesting because even though the policy term was held to be a warranty and applied according to its "natural and ordinary language", the outcome seemingly turned largely on the facts. The court was willing to look beyond the plain meaning of the words used to consider whether it would be reasonable to impose limitations or caveats on that which was warranted, and a different factual matrix may thus have produced a different outcome. Accordingly, it might reasonably be said the requirement for exact and unfailing compliance was thereby diluted notwithstanding the ultimate decision.

[15] [2006] EWCA 429, Gross J

CASE 3:
The Resolute

In contrast to *The Newfoundland Explorer*, and involving a not dissimilar warranty and factual matrix, *Pratt v Aigaion Insurance Co SA (The Resolute)*[16] concerned the following:

> *Warranted Owner and/or Owner's experienced Skipper on board and in charge at all times and one experienced crew member.*

After a day at sea on 10 December 2006, the crew left the Resolute unattended and a fire occurred. The claim was denied for breach of warranty. Sir Anthony Clarke MR said[17]:

> *... the respondent says that the clause means what it says and that it is not liable because... there was "no Owner and/or Owner's experienced skipper on board and in charge at all times". By contrast, the appellant submits... the clause is obviously directed to periods when the vessel was navigating or working and, if applied literally, would lead to absurd results...*
>
> *I entirely accept that the court must not invent a new bargain for the parties... However that may be, the warranty requires that the owner or his skipper be on board and in charge. The natural inference from that is that an experienced skipper was to be on board and that the reason for that is that underwriters wanted protection from risks which a skipper would be needed to guard against. That suggests to me that the primary purpose of the warranty was to protect the vessel against navigational hazards.*

Whether the court in fact invented a new bargain for the parties is, respectfully, debatable. Instead of applying the warranty strictly and in accordance with its plain language, the court read a purpose into the warranty that limited the circumstances in which it would apply. The words "at all times" were found to mean "at all times *whilst the vessel was navigating or working*". Rather than construe the warranty as some other creature of contract to dilute its efficacy, the court instead qualified its application.

[16] [2009] 1 Lloyds Rep 225.
[17] Ibid at [8] and [28] respectively.

CASE 4:
The Pilbara Pilot

Finally, *Allison Pty Ltd t/a Pilbara Marine Port Services v Lumley General Insurance Ltd* [18] involved the loss of the "Pilbara Pilot" during a cyclone. The court's decision is, again respectfully, far from straightforward and this paper will consider aspects of it only.

The relevant policy contained several warranties, including one that dealt with the use of cyclone proof moorings and another requiring the vessel to be operated in accordance with local "statutory authority requirements". One such requirement necessitated that during a cyclone, each vessel was to be secured to a single mooring and that no more than one vessel would be attached to any mooring.

The question of whether the insured had breached the warranty requiring the vessel to be moored on a cyclone proof mooring was a point of contention at trial. The relevant warranty was as follows:

> *Warranties*
>
> ...
>
> *(iii) Vessels are moored on cyclone proof moorings.*

The policy also included a sue and labour clause through the incorporation of the Institute Time Clauses Hulls Port Risks and by reason of section 84 of the AMIA:

> *14. Duty of Assured (Sue and Labour)*
>
> *14.1 In the case of any loss or misfortune it is the duty of the Assured and their servants and agents to take such measures as may be reasonable for the purpose of averting or minimising a loss which would be recoverable under this insurance.*

The insured became concerned about the water clearance at the vessel's ordinary mooring given the imminent cyclone. As there were no other available moorings, the Pilbara Pilot was moved to a deeper position and moored to another vessel, the Pilbara Jarrah, that was itself moored to a cyclone proof mooring, but one only rated for a single vessel. The Pilbara Pilot was lost during the cyclone and the claim denied for reasons that included a breach of the mooring warranty.

At trial, it appears to have been accepted the Pilbara Pilot may have fared better had she remained at her usual mooring. However, the insured contended that it was subject to an overarching duty to protect the vessel from the imminent cyclone by operation of the sue and labour clause and the corresponding obligation in section 84(4) of the MIA.

According to the insured, that duty prevailed such that the decision to move the vessel did not constitute a breach of warranty. The Court noted[19]:

> *... when the "Pilbara Pilot" was tied astern of the "Pilbara Jarrah"... she was not moored at an approved mooring and, that being so, neither was she moored at a cyclone proof mooring. The plaintiff does not dispute this...*

[18] (2006) 14 ANZ Ins Cas 61-708, [2006] WASC 104.
[19] Ibid at [114].

However, it submits that this express warranty does not apply because of the provisions of s 84(4) of the Marine Insurance Act 1909 and cls 14.1 and 14.3 of the Institute Time Clauses Hulls Port Risks. Additionally, or alternatively, the plaintiff submits that, irrespective of s 84(4) and the Institute Time Clauses, the owner and master of a vessel have an acknowledged obligation and right to take steps to protect the safety of a vessel at all times, especially in the face of an imminent peril, and that reasonable precautions taken in good faith in performance of this obligation do not constitute a breach of the warranty.

His Honour commenced with an uncontroversial observation[20]:

> *... a warranty in a policy of marine insurance is a contractual term of unique significance in that any breach of the warranty automatically terminates[21] the contract regardless of materiality and, in this way, the effect of a warranty is even more far reaching than that of a condition in another commercial contract...*

Heenan J then characterised the interaction between the cyclone proof mooring warranty and the sue and labour clause as "the crucial issue in the case"[22] and one that was "by no means of easy resolution", saying[23]:

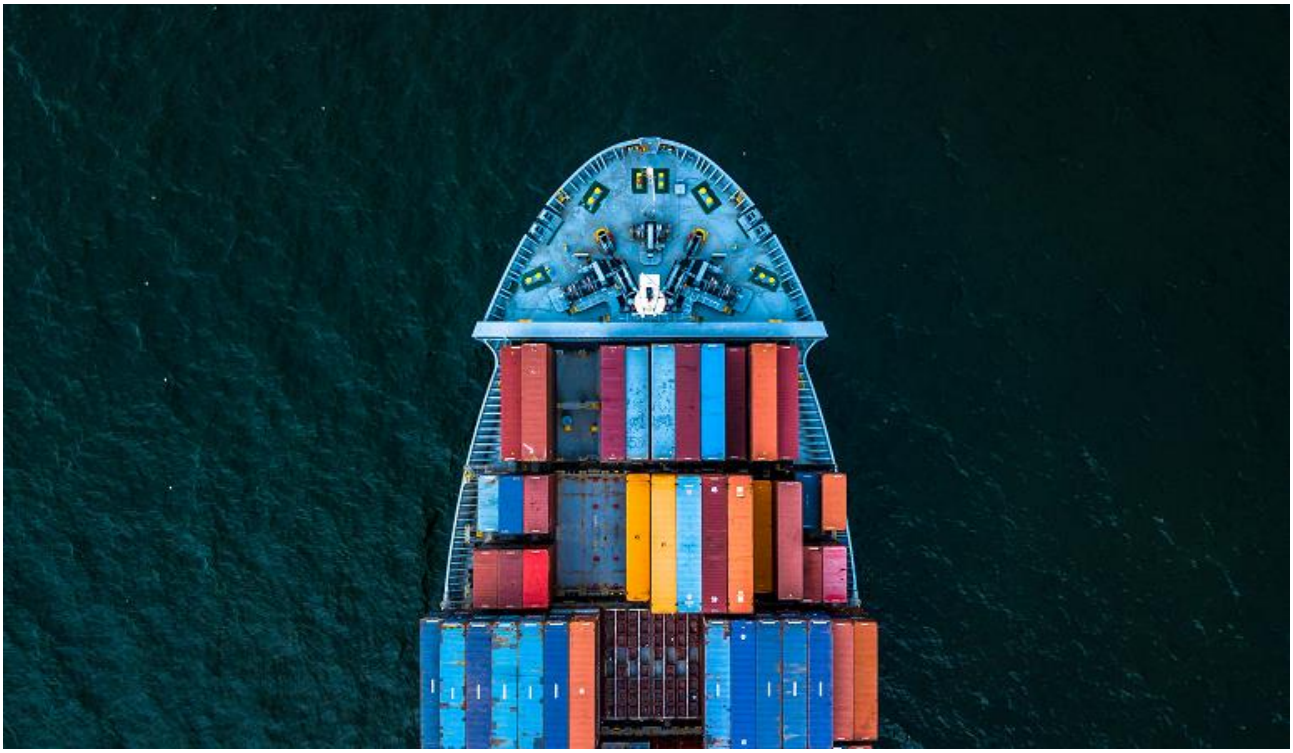
> *The proposition... is that if a vessel, such as the "Pilbara Pilot" is lying at a mooring which, while complying with the warranties and the applicable policy of insurance, is nevertheless exposed to an imminent hazard because of an approaching cyclone, it will be in the interests of both the owner of the vessel and the insurer if, when it is considered reasonably necessary to do so, she is moved to a safer anchorage, even one not complying with the terms of the warranties in the policy, which is likely to preserve the safety of the vessel or to minimise damage from the impending peril. To do otherwise, and insist that the vessel remain at the anchorage which complies with the warranties in the policy, even though that may be the more dangerous course, would mean that an avoidable risk would have to be run simply because of the terms of the policy to the potential detriment both of the insurer and of the owner of the vessel. If this proposition be sound then if the avoiding action reasonably pursued results in damage or loss of the vessel, that should not result in the discharge of the policy or the rejection of the claim so long as the loss or damage was proximately caused by the peril of the seas or by some other insured risk.*

[20] Ibid at [11].
[21] It may be more appropriate to say that a breach discharges the insurer from liability rather than terminates the underlying contract.
[22] At [117].
[23] At [120].

For reasons that have, again respectfully, been described as "opaque", the court held that there had been no breach of warranty. Heenan J observed[24]:

> *...the decision to move the vessel should... be regarded as resulting from the peril of the sea then actually impending and it was that same peril which accomplished the loss of the vessel at its new position astern of the "Pilbara Jarrah"... in those circumstances, I consider that both the movement of the vessel and its subsequent loss were caused by this peril of the sea and that it is not to the point that, at the new temporary position of the "Pilbara Pilot" astern of the "Pilbara Jarrah" she was not moored at a cyclone proof mooring ... It is not possible, in my view, to regard the move of the vessel from its original mooring as in any way interrupting or avoiding the causative effect of the cyclone which was then developing and which later overwhelmed the vessel.*

It is admittedly difficult to reconcile the statutory requirement to strictly comply with an explicit warranty with a recognised duty to take action in an attempt to preserve insured property and comply with other provisions of the policy. It is equally difficult to distil any principles for resolving such tension from the court's reasoning.



[24] At [132].

Lost at sea?

Under the AMIA, as we have seen, there is no form of words and no subject matter capable of indicating with certainty whether a policy provision will be construed as a warranty. Intention is paramount. However, reasonable minds often differ on the intention evident in a particular contractual provision and the modern judicial treatment of warranties means there is equally no certainty about whether:

a) something explicitly expressed as a warranty will be construed as one; or

b) a warranty will be applied according to the natural and ordinary meaning of its words, or that the statutory demand for strict compliance will not otherwise be diluted.

As a result:

a) insurers cannot have confidence in the effective operation of a warranty, even one drafted in the clearest possible terms;

b) brokers and insureds will face difficulty in knowing when literal compliance with a given clause is required, and the consequences that may arise otherwise; and

c) the rights and obligations of both insurer and insured will, in the event of a dispute, be difficult to navigate confidently. If the parties turn to the courts, the outcome of any contest will be uncertain at best.

Writing in 1979, in the context of Singapore law, Tan Lee Meng[25] described a state of affairs that modern observers in Australia might easily recognise:

> *An insurance warranty… must be exactly and literally complied with, failing which the insurer may repudiate the entire contract. That a breach is immaterial, is unconnected with the loss or has been remedied before loss is irrelevant… It is inevitable, then, that some judges would over-strain canons of construction, to the chagrin of insurers, to achieve just results… This, of course, has led to confusion.*

Similarly, in 2014, the UK Law Commission noted[26]:

> *For many years, the courts have attempted to moderate the harshness of the law with creative reasoning. This approach has allowed the courts to do justice in some individual cases and it discourages insurers from taking purely technical points. While this has its advantages, it also introduces complexity and uncertainty into the law.*

The prevailing confusion about whether a policy term will be construed as a warranty, and even if it is, about how it will be applied, provides no benefit to insurers or insureds. Further, the remedies for a breach of warranty (especially where there is no causal connection between breach and loss or where the breach is remedied before loss) do not comfortably align with modern insurance practice in many jurisdictions and as such, perhaps "incentivise" the judiciary to "over-strain the canons of construction" from time to time. As the certainty warranties evolved to create has all but dissipated, one must wonder whether, as provided for in the AIMA at least, marine warranties are now "lost at sea"?

[25] Meng, Tan Lee (1979) *Insurance Warranties: Some criticisms and proposals for reform.* 21 Malaysian Law Review 259.
[26] Report of the Law Commission; "Insurance Contract Law: Business Disclosure; Warranties; Insurers' Remedies for Fraudulent Claims; and Late Payment" (hereafter **UK Law Commission Report**), July 2014, para. 12.5.

Practical guidance

Whilst insureds (and those who advise them) may frequently resist the inclusion of warranties, there will be times when insurers insist on their use. The challenge for insurers is to ensure that the subject matter and expression of warranties maximises the potential they will operate in line with underwriting intent and in the manner contemplated by the AMIA.

Problematically, as we have seen:

a) if a term is found to be susceptible to competing constructions, it is hard to predict when it will be a warranty rather than, for example, a suspensory condition; and

b) there is no certainty about how a warranty will operate in a particular factual setting, especially as the natural and ordinary meaning of the words used may not always be determinative of its practical application.

Whilst no definitive guidance is possible, below are several considerations underwriters may wish to consider when drafting policy warranties.

Materiality to risk

The AMIA is clear that warranties do not need to be about matters material to the risk insured. However, borrowing from *Thomson v Weems*, "any statement of a fact bearing upon the risk introduced into the written policy is… to be construed as a warranty". Other cases have reinforced this proposition. Therefore, whilst not strictly necessary for the purposes of the AMIA, a term appears to have more prospect of being applied as a warranty if it deals with a matter material to the insured risk.

Language

Although the AMIA does not require the use of "warrant" or "warranty", language can provide a textual indication of intent. In *The Good Luck*[27], the court considered the phrase "[a]s a condition precedent to the liability of Underwriters" to be consistent with an intention to warrant. Similarly, although again not determinative, the use of the word "warranty" was considered by Burton J in *Sugar Hut Group Ltd and Ors v Great Lakes Reinsurance (UK) Plc and Ors*[28] to be a "good starting point" in favour of construing a provision to be a promissory ("true") warranty. Similar observations were made by Morland J in *Kler Knitwear*.

Emphasising that there is considerable uncertainty about how any clause purporting to be a warranty may be construed or applied no matter how it is drafted, insurers may wish to:

a) adopt language that expressly identifies the term as a warranty, potentially citing section 39 of the AMIA;

b) commence with the words "it is warranted that…";

c) avoid language like "at all times" unless that is precisely what is intended;

d) use plain language that allows ready application in all relevant foreseeable circumstances;

e) define terms that may be susceptible to more than one meaning, or that have meaning informed by local practice; and

f) include language by which the insured acknowledges that the clause is intended to apply as a promissory warranty under the AMIA and confirming that even non-causal breach will bar any subsequent claim.

It follows that insureds would be well served resisting as many of the foregoing as possible if they wish to limit the prospect of a term being construed and applied as a warranty.

[27] [1992] 1 AC 233 at [262 – 263]).
[28] [2011] Lloyds' Law Rep IR 198 at [41].

Approaches to reform

The various criticisms levelled against warranties broadly fall into two categories – the difficulty in confidently identifying those policy provisions that will operate as warranties, and the draconian nature of the remedies for breach. As we have seen, the latter issue influences the former. The AMIA's warranty framework is undoubtedly in need of reform, including to recognise the need for proportionality in the remedies that flow from beach. However, ideally at least, there is a balance to be struck because:

a) it is not unreasonable for insurers to define the risk they are willing to accept and protect it from undue alteration by the insured during the currency of a policy; and

b) a risk can be altered from that which was accepted without necessarily causing or contributing to an actual loss.

Below, consideration is given to how the UK, NZ and Australia's Insurance Contracts Act have attempted to deal with some or all the issues that arise.

The UK's *Insurance Act 2015* (UKIA)

The UKIA amendments to the *Marine Insurance Act 1906* are relevantly encompassed by two key provisions in Part 3 that operate concurrently:

a) Section 10 permits any breach of a warranty (whether express or implied) to be remedied where such is possible and no longer allows an insurer to be discharged from all liability in the event of breach.

   Importantly however, and subject to certain provisos, section 10 provides for the warranty to function as a suspensory condition (such that cover is effectively "put on hold") until the breach is remedied.

   Interestingly, sections 10(5) and 10(6) say that the breach of a warranty imposing certain obligations that are temporally bound is taken to be remedied if:

   - the risk to which the warranty relates later becomes "essentially the same as that originally contemplated by the parties"; or
   - otherwise, the insured ceases to be in breach.

   This approach accepts that in some instances, the passage of time from when a warranty was required to be complied with, or other developments, are such that the breach of warranty has no material effect on the risk insured and seems to recognise that whilst it is important to allow insurers to define risk through the use of warranties, the mere fact that a warranty is breached will not always (or at least, indefinitely) change the nature and parameters of that risk.

b) Section 11 concerns policy terms (including warranties) that require compliance to reduce the probability of loss of a particular kind. It prevents an insurer from denying or limiting liability due to breach where the insured can show that the breach did not increase the risk of the loss that actually occurred, in the circumstances in which it occurred. There seems to be an "echo" of sections 10(5) and 10(6) here.

   Importantly:

   - there is a carve out in section 11 for policy terms that define "the risk as a whole"; and
   - by not confining itself to breaches of warranties, the drafting of section 11 makes it is unnecessary for a court to determine whether a breached term is in fact a warranty.

The concept of a term that defines "the risk as a whole" was explained by the UK Law Commission in their 2014 Report.

They relevantly said that what has become section 11 was not intended to apply where:

> *...a clause goes to the entirety of the nature of the risk (such as a requirement that a ship remains in class, or that a vehicle is not used commercially)*[29].

Whilst the examples used by the Law Commission are reasonably straightforward, there are other scenarios in which there could be lively debate about whether a term "defines the risk as a whole". For example, is a contract term requiring that a vessel not enter a known war zone something that defines the risk as a whole?

In determining whether a breach of a term increased the risk of a loss in the circumstances in which it occurred, the Law Commission indicated that a direct causal link between breach and loss is not required. They said that section 11:

> *... does not introduce a causal element about whether compliance would have prevented the loss, or whether the breach caused or contributed to it. It is simply whether compliance might usually be thought to reduce the chances of the particular type of loss being suffered*[30].

The Law Commission went on to give two examples[31]:

> *... a breach of a warranty to install a burglar alarm would suspend liability for loss caused by an intruder but not for flood loss. Similarly, a failure to employ a night watchman would suspend the insurer's liability for losses at night but not for losses during the day.*

The Law Commission also explained why a causation test was rejected:[32]

> *...a causation test would not be appropriate for all warranties, since some may be relevant to the loss without having a causal connection with it. For example, a past claim does not cause (or even contribute to) a future claim, but it may be highly relevant to the insurer's assessment of the likelihood of future claims. Similarly, the fact that an employee has past criminal convictions does not "cause" future misdemeanours, but it is a highly relevant consideration.*

There is, as yet, little case law concerning the application of section 10 and 11 of the UKIA. However, in *Mok Petro Energy FZC v Argo (No. 604) Limited*[33], Dias J considered the application of section 11 in the context of alleged breach of warranty in a marine cargo policy. Whilst the case did not turn on the application of section 11, it rewards consideration.

Mok Petro arranged a shipment of gasoline from Oman under an all-risks cargo policy. The gasoline was found to be contaminated with water upon arrival in Yemen. The policy contained the following:

> *Express Warranties: ...*
>
> *Quantitative/Qualitative survey carried out by internationally recognised marine surveyor at loading port/discharge port at owners' cost, including inspection/certification of the cleanliness of the vessel tanks at load port and the shore tanks at discharge port and the connecting pipelines between the vessel and the shore tanks at both load and discharge port.*
>
> *Failure to comply with a warranty will, in normal circumstances, void this insurance policy.*

[29] UK Law Commission Report para. A.83.
[30] UK Law Commission Report, paragraph 18.16.
[31] UK Law Commission Report, paragraph 15.9.
[32] UK Law Commission Report, paragraph 14.24.
[33] [2024] EWHC 1935.

The court found against Mok Petro on various bases that did not require consideration of the warranty.

However, because the parties had made submissions on both sections 10 and 11, the court made several *obiter* observations largely directed to section 11, noting that section 10 added nothing to the various arguments.

Mok Petro was able to establish that the connecting pipelines between the shore and the vessel were inspected and it was merely that no certification was issued afterwards. Mok Petro then argued that for the purposes of section 11, it was only the failure to observe the certification requirement that mattered and as that failure did not increase the risk of the loss occurring, the reinsurers (against whom the claim proceeded directly) could not rely on the breach of warranty to exclude or limit their liability.

Dias J said[34]:

> *the Defendants... argued that a failure to carry out a proper inspection could have affected the risk of water contamination... [the] riposte was that the breach in this case related only to the lack of certification. However, it seems to me that ... section 11 is directed at the effect of compliance with the entire term and not with the consequences of the specific breach...*
>
> *There was no serious dispute that compliance with the warranty as a whole was capable of minimising the risk of water contamination from either the shorelines or the Vessel's tanks and that therefore non-compliance could have increased the risk of the loss which actually occurred. It follows that the Defendants' breach of warranty defence is not precluded by s 11... therefore, had I held the [plaintiff] succeeded in principle... the claim would nonetheless have failed on grounds of breach of warranty.*

Whilst *obiter*, such comments suggest that the requirement for strict compliance with a warranty remains and that when examining the breach of any provision (including a warranty) introduced to reduce the probability of loss, consideration should be given to the term as a whole in favour of parsing out its constituent parts in order to examine the extent to which, if at all, each such part contributed to a loss.

It also appears, given Dias J's view that the warranty needed to be considered and applied as an entire term, that section 10 if applicable may have achieved a similar outcome by suspending cover unless and until the insured's breach was remedied.

[34] Ibid at [174 – 175].

New Zealand's *Insurance Law Reform Act 1977* (NZILRA)

Whilst various provisions of the NZILRA are relevant to warranties, this paper will consider section 11 specifically. Section 11 applies if a policy incorporates any provision (including a warranty):

a) that excludes or limits the liability of an insurer if certain events happen, or certain circumstances exist; and

b) a court or arbitrator determines that the insurer introduced the provision because such events or circumstances were considered likely to increase the risk of loss occurring.

Section 11 prevents an insurer from relying on any such provision if the insured can show, on the balance of probabilities, that a loss was not caused or contributed to by the happening of the relevant events or the existence of the relevant circumstances. The purpose of section 11 was described by the New Zealand Law Commission[35] as being to prevent insurers from using exclusions where the circumstances, and thus the increased risk, existed but did not contribute to the loss for which indemnity is sought.

One on view, the purpose of section 11 might seem reasonable. On another, the risk that the insurer agreed to accept has nonetheless altered by reason of the event happening or circumstance existing, even if that event or circumstance does not ultimately contribute to claim. The Law Commission has since recognised this issue[36]:

> *The underwriter's art is (theoretically at least) that of determining whether to accept a risk and on what terms, having regard to the likelihood of the loss occurring. The problem with s 11 as it has been interpreted is that it takes no account of the extent to which an exclusion may be framed with that statistical likelihood in mind.*

The Law Commission has recommended that Parliament modify section 11 so that it not apply to any provision an insurer can show was introduced to limit or exclude liability by reference to statistical or actuarial data establishing an increased probability of loss occurring. The Law Commission's position appears to have influenced the *Contracts of Insurance Bill* currently before New Zealand's parliament. Under that Bill:

a) A new section 75 entitled "Increased risk exclusions" is proposed. Sub-sections (1) and (2) of the proposed section 75 largely restate the matters dealt with in the current section 11 by providing that a policyholder is not bound by any provision intended to limit the liability of an insurer on the happening of certain events or in certain circumstances if, in the view of a court or arbitrator, the insurer included that provision because it determined such events or circumstances were likely to increase the risk of loss occurring. However, the exception's application would be curtailed and not apply to provisions that deal with:

   - the age, identity or qualifications of a driver, pilot, or master or crew member of a ship;
   - the geographical area in which a loss must, or must not, occur; or
   - loss occurring on a vehicle, aircraft, or ship.

b) A new section will preclude an insurer from relying on the implied warranty as to the seaworthiness of a vessel that currently appears in section 40 of the *Marine Insurance Act 1908* (NZ) if the insured can prove that the matters for which it seeks indemnity were not caused or contributed to by the breach of warranty.

c) Another new section will be introduced preventing any representation made by an insured from being converted into a warranty by any contractual means whatsoever.

[35] New Zealand Law Commission, Report 46, "Some Insurance Problems", May 1998, paragraph 42.
[36] Ibid, paragraph 43.

Australia's *Insurance Contracts Act 1984* (AICA)

If a policy to which the Act applies contains a provision that allows an insurer to limit or exclude its liability for a claim because of an act (which includes an omission), whether by the insured or some other person, that occurs after a policy has been entered into, section 54 of the AICA will apply.

The Explanatory Memorandum to the Bill that introduced section 54 referred to the various types of policy terms, including "continuing" and "promissory" warranties, that insurers used to protect themselves against an increase in risk during the period of cover and ensure that their interests were protected when a loss occurred, saying[37]:

> *... [t]he existing law is unsatisfactory in that the parties' rights are determined by the form in which the contract is drafted rather than by reference to the harm caused... [and] whether or not the insurer suffered any prejudice as a result of the insured's breach...*

Sections 54(1) and 54(2) say, respectively:

a) where an act or omission after the commencement of the policy has neither caused nor contributed to a loss that is the subject of a claim, the insurer:

- cannot refuse the claim solely by reason of the act; but
- may reduce its liability to the extent of any prejudice resulting from the act; and

b) subject to the balance of the section, where an act could reasonably be regarded as being capable of (as distinct from actually) causing or contributing to a loss, the insurer may refuse to pay the claim.

Section 54(2) seemingly goes some way towards acknowledging that a variation in risk profile can be consequential even if it does not actually sound in loss.

However, sections 54(3) and 54(4) qualify section 54(2) and "wind back" that apparent acknowledgment. Those sections provide, respectively, that even where an act could reasonably be regarded as being capable of causing or contributing to the loss:

a) the insurer may not refuse the claim if the insured can prove that the act did not actually cause any part of the loss that gave rise to the claim; and

b) if the insured can prove some part of the loss that gave rise to the claim was not caused by the act, the insurer cannot refuse to pay so much of the claim as relates to that part of the loss by reason only of the act.

In an oft-cited passage from *Maxwell v Highway Hauliers* (2014)[38], the High Court observed that the specific objects of section 54 as explained by the Australian Law Reform Commission:

> *... included striking a fair balance between the interests of an insurer and an insured with respect to a contractual term designed to protect the insurer from an increase in risk during the period of insurance cover... no difference was to be drawn between a term framed: as an obligation of the insured... as a continuing warranty of the insured... as a temporal exclusion from cover... or as a limitation on the defined risk...*

Importantly, section 54 does not apply to any policy provision that is "fixed from commencement" and as such, remains unaffected by any subsequent act. Again, this was confirmed in *Maxwell*.

The requirement in section 54 of the AICA for the insurer to demonstrate prejudice is one that requires brief comment. Justice McDougall, writing extra-judicially in a paper delivered to the 2014 Australian Insurance Law Association AGM , made the following observations:

[37] Insurance Contracts Bill 1984, Explanatory Memorandum at paragraph 82.
[38] *Maxwell v Highway Hauliers* [2014] HCA 33 at [19].

> *... it is well established that in determining the 'prejudice' caused to the insurer, the court must have regard to the actual insurer, rather than some hypothetical insurer in the same or similar circumstances... the court must compare the position the actual insurer would have been in but for the act or omission of the insured, to the position that the insurer is in fact in as a result of the act or omission...*
>
> *Therefore, in order to determine the prejudice caused, the court must consider the counterfactual situation, asking what the insurer is most likely to have done, had the act or omission not occurred...*
>
> *As a general proposition... the amount for prejudice caused, when applying section 54(1), was similar to the amount allowed for compensatory damages...*
>
> *If an insurer is to reduce its liability, it must do more than point to possible alternatives. It must demonstrate, on the balance of probabilities, what it would actually have done if the act or omission had not occurred, and from that, what prejudice it has actually suffered...*
>
> *The practical difficulties associated with proving prejudice will continue to arise, and will continue to cause problems for courts. Parties to insurance disputes of this nature should be conscious to attempt to provide the best, if possible extrinsic and contemporaneous, evidence of what they would have done in different circumstances...*

The approach taken by section 54 was considered by New Zealand's Law Reform Commission[39]. In deciding not to adopt a similar approach, they observed:

> *...there are a number of reasons why s 54 should not be adopted in New Zealand:*
>
> *i. The basic entitlement of parties to an insurance or any other contract is to determine their bargain for themselves. While we believe that it is appropriate for the legislature to interfere with contractual freedom if it corrects specific perceived injustices... in our view this does not justify so sweeping and unfocussed a provision as s 54...*
>
> *ii. The application of the notion of proportionality... can only be a matter of guesswork. In New Zealand Insurance Co Ltd v Harris equipment insured only in respect of non-commercial use was vandalised while being used on a job outside that category. In this case it can be argued on the one hand that, but for the non-private use, the equipment would not have been where it was and the loss would not have occurred; on the other hand, as the Court of Appeal held, it can be argued that the commercial use was not causative. In such circumstances it seems impossible to calculate an apportionment in any intellectually justifiable manner.*

Comment

Whilst each wrestles with a common mischief, it is hard to distil too much commonality in the approaches taken by the UKIA, the NZILRA or the AICA.

The table below outlines a series of necessarily general observations that omit some nuance.

[39] Report 46, paragraph [46].

Impacted terms	• Section 54 of the AICA applies to any term, regardless of its character or scope, that seeks to limit or excuse the liability of the insurer because of an act or omission of the insured or third party. • Under the UKIA, section 10 only applies to warranties. Section 11 applies to any term, including a warranty, that seeks to limit the liability of the insurer providing the term does not seek to define the risk as whole. • The NZILRA's section 11 applies to any term, including a warranty, that an insurer introduced to limit or reduce its liability on the basis that certain events or circumstances were considered likely to increase the risk of loss.
Temporal considerations	• The AICA's section 54 only applies to acts (or omissions) happening after the policy has been entered into. It does not deal with any policy provision "fixed from commencement". • Neither sections 10 and 11 of the UKIA, nor section 11 of the NZILRA, differentiate between acts before or after the policy has been concluded.
Causal considerations	• Section 54 of the AICA, section 11 of the NZILRA and section 11 of the UKIA are cast such that causation and contribution, whether to an actual loss or to the probability of loss, are integral to determining whether an insurer will enjoy any remedy at all. • Section 10 of the UKIA applies irrespective of whether breach is causative of, or contributes to, a loss for which a claim is made.
Burden of proof	• Section 54(1) of the AICA maintains a *prima facie* obligation on the part of an insurer to pay a claim subject to being able to demonstrate prejudice flowing from the act or omission that constitutes the breach. Sections 54(3) and 54(4) require the insured to prove that no part of a breach in fact caused or contributed to a loss for which a claim is made. • Under section 11 of the UKIA and section 11 of the NZILRA, it is for the insured to show that a relevant breach did not cause or contribute to a loss, or to the risk of loss (as applicable) for which indemnity is sought. • Section 10 of the UKIA does not require the imposition of any burden of proof.
Remedies available	• Under the AICA: a) Section 54(1) allows for a reduction in the insurer's liability if, and to the extent, the insurer can demonstrate actual prejudice because of a breach. b) Section 54(2) (as qualified by sections 54(3) and (4)) allows an insurer to avoid a claim if it can be shown that the act or omission could have contributed to a loss, unless the insured shows that: i. no part of the loss was caused by the act or omission, in which case the insurer may not refuse the claim; or ii. the act or omission only caused some part of the loss, in which case the insurer may only refuse to pay so much of the claim as relates to that part. • Neither the AICA nor the NZILRA contain any provisions that suspend the operation of a policy if there is a breach of a term. Section 10 of the UKIA does, however, allow warranties to operate as suspensory conditions where a breach is capable of remedy. • The NZILRA and the UKIA each prevent an insurer from relying on the breach of a policy term, including a warranty, if the insured can show that the breach did not cause or contribute to the loss for which a claim is made, or to the risk of loss that in fact occurred (as applicable). If the insured is unable to disprove causation or contribution, the insurer appears entitled to limit or exclude its liability (albeit this is limited to section 11 in the UK context).

Charting a new course

As this paper has shown, the AMIA's treatment of warranties needs reform. In summary:

a) The task of identifying a warranty is coloured by the need to ascertain intent, and even express language signifying such intent will not guarantee a term cast as a warranty will be construed as one.

b) Even where a term is found to be a warranty, it will remain susceptible to interpretation that make its precise requirements almost impossible to know in advance.

c) Where a breach of warranty is established, there are those who would, not unreasonably, suggest that the remedies for breach are unduly harsh, especially if there is no meaningful relationship of cause or contribution between breach and a loss for which indemnity is sought. That said, at least warranties as presently framed are conceptually capable of giving recognition to the legitimate desire of insurers to define, and preserve, risk for the purposes of a policy.

This paper acknowledges that each of the reform options canvassed above present both advantages and disadvantages. However, and to reiterate, there is no longer a compelling reason for Australian law to sustain different regimes for policies of marine insurance and policies general insurance. Also noting that:

a) the practical application of the UKIA awaits substantive judicial guidance;

b) amendments to the NZILRA are presently contemplated; and

c) section 54 of the AICA is familiar to insurers and insureds in Australia, and has been the subject of much judicial deliberation, there is at least a reasoned argument that the AMIA's warranty framework should be aligned with section 54 of the AICA.

Perhaps the only caveat is that the AICA does not readily recognise the materiality of a change in risk profile even in the absence of any causal or contributory nexus with a subsequent loss. The example referred to earlier of a ship venturing into a war zone in contravention of a warranty would surely change the risk that the insurer bargained for even if it is not causative of a loss that occurs later in the policy. Section 54(2) deals with this concern but is arguably diluted by sections 54(3) and 54(4).

It may be prudent, as part of any overarching program of reform, to consider amending both the AICA and the AIMA (much like the new section 75 contemplated by the *Contracts of Insurance Bill* currently before New Zealand's parliament) to permit a limited statutory recognition of certain risk factors that, if the relevant events or circumstances came to pass, would allow an insurer to limit its liability even where such events or circumstances did not substantially cause or contribute to a subsequent loss.

> Liberty has been involved in significant losses where compliance with marine warranty provisions has been a key issue. We have seen first-hand the shortcomings that flow from Australia's outdated legislative framework. By comprehensively analysing the need for reform, and by making specific recommendations, we hope to support more certainty for everyone involved in marine insurance and help preserve Australia as an attractive jurisdiction in which to transact and insure marine business.
>
> **Nathan McLellan**
> Liberty Specialty Markets

About us

Liberty Specialty Markets

From cargo to hull, from liability to builders' risk, today's marine risks are complex and challenging. Fortunately, Liberty's Asia Pacific Marine team has the skills and experience to confidently assess our client's needs and collaboratively deliver effective insurance solutions. Our underwriters are adept at covering both hard-to-place risks and standard exposures, our risk engineers are highly regarded across the region for their technical excellence and our claims team balances deep technical knowledge with commercial pragmatism.

While Liberty forged our reputation in Australia on big and complex risks, today we partner with business and government organisations of all shapes and sizes. We focus on being a long-term partner, not just an insurance supplier, with our team of underwriters, risk engineers and claims professionals getting to know clients and understanding how to support their business needs. Whatever their size, our clients have the security of knowing that, as a mutual, we're committed to their shared success and offer stability and peace of mind, even during turbulent times.

Kennedys

Kennedys' Asia Pacific marine team has experience across a broad range of marine insurance matters including collision and allisions, charterparty obligations, shipbuilding disputes, personal injury at sea, defence of third party claims, marine cargo and policy coverage advice. We are adept at resolving disputes both informally, as well through litigation, arbitration and mediation. We can also draw on our global marine experts and capability on cross-border and international matters and issues.

Kennedys is a global insurance and litigation firm with more than 2,900 staff across 45 offices in the Asia Pacific, UK, EMEA and the Americas. Kennedys in Australia has specialised in insurance law since 2006. We have 22 partners and 80+ lawyers with offices in Sydney, Melbourne, Perth and Brisbane. We occupy a unique position in the legal services market in Australia – we are a local, specialised insurance law practice with leaders who also understand the London market.