



# Marine Insurance in Australia – Navigating out of the past WICA 2023

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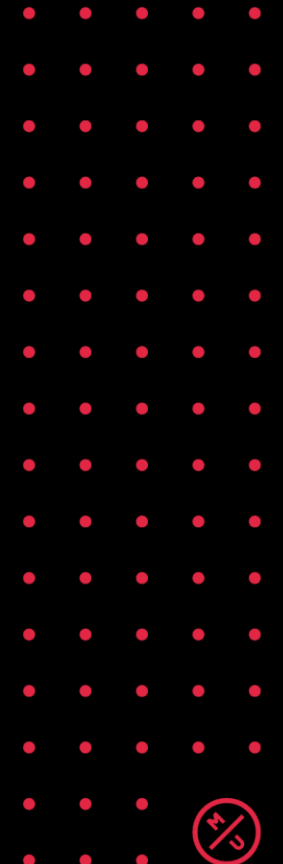
**School of Law and Criminology**

# Acknowledgement of Country



We acknowledge the Whadjuk people of the Noongar nation as the traditional custodians of this country and its waters and that Murdoch University stands on Noongar country.

We pay our respects to Noongar elders past and present, and acknowledge their wisdom and advice in our teaching and cultural knowledge activities.



# Marine insurance in Australia

- Worth about \$0.6 Billion dollars a year (2016)
- Direct employer via insurance agencies, brokers. Also employs surveyors, dispute resolution practitioners/lawyers.
- Local market is worth having and therefore worth protecting.
- Why is the local marine insurance market at risk?

*Marine Insurance Act 1909 (Aust) (MIA)*

# Australia was an early champion of insurance law reform...

- Australia was one of first movers in reforming its laws of general insurance.
- ALRC embarked on 'coherent scrutiny' of the adequacy of general principles and applicable statutes in Australia - very early in the common law world.
- Motivation - to 'strike a fair balance' between the rights and interests of insureds and insurers.
- Resulted in *Insurance Contracts Act 1984 (Cth) (ICA)*. Has been in force for almost 40 years.
- ICA does not apply where MIA applies (except for pleasurecraft).

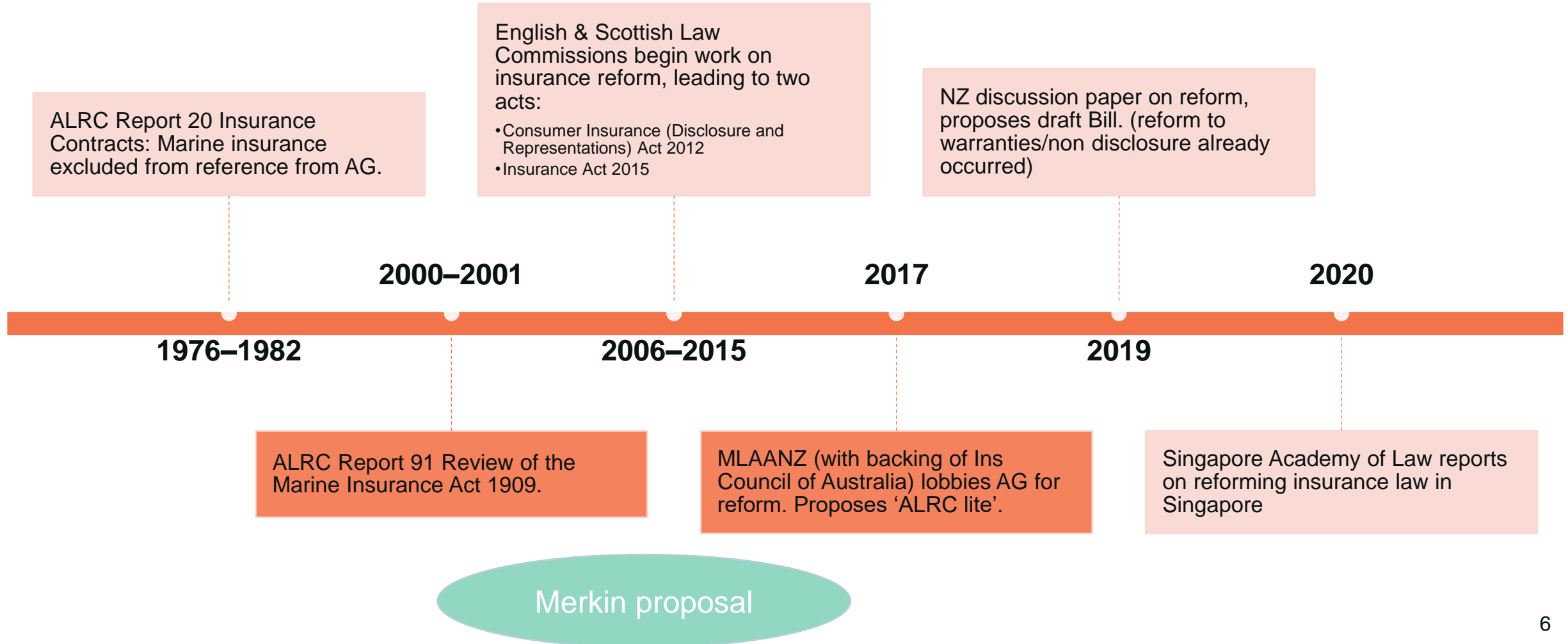
# *Marine Insurance Act 1909 (Aust)*

## **‘draconian’ elements include:**

- Insured has no real remedy for an insurer’s breach of UGF.
- Pre contractual duties:
  - require insured to ‘know’ what a prudent insurer would find material.
  - Remedy for a breach of duty of disclosure is rescission, even if breach is not fraudulent, or the insurer would have still covered the risk but on other terms/higher premium.
- Warranties.
  - Require absolute compliance.
  - Remedy for breach of warranty -automatic termination from time of breach/discharge of insurer. Leaves insured with no policy/cover for a claim, even if breach of warranty did not cause/contribute to the event.
  - Implied statutory warranties.
- MIA a code (of sorts), but parties free to contract out. Some of vagaries of the MIA have been softened by contractual provisions.

***By 2015 the UK had substantially reformed the Marine Insurance Act 1906 (UK).***

# Lost opportunities to reform *Marine Insurance Act 1909 (Aust)*



# The case for reform is now much more compelling...



Australia feared being out of step with the UK, and resisted reform accordingly



Now Australia IS out of step with the UK: to the detriment of our insureds AND insurers.

# When reform comes, what shape will it take?

## “Off the shelf” – keep two acts and amend MIA

- ALRC Report 91 or
- MLAANZ version (‘ALRC lite’)? (namely modify MIA, leave it free standing)

**A bit more work:** More closely align our MIA with either UK version or NZ approach. Consider moving to one Act (as rejected by ALRC)

The market will adjust to whichever path. \*Important thing\* – to agitate for reform.





**Thank you**

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