

As most of you know, from 8th November 2003 we will no longer be trading as a Marine Agency but as Vero National Marine, a division of Vero Insurance Limited.

So it is a fond farewell to NMIA and a warm welcome to Vero National Marine.

The re-branding exercise has afforded us the opportunity to completely re-engineer the look and feel of National Marine and also to reaffirm our strategy going forward. You will see and hear more about this in the ensuing months.

Given the changes we are all experiencing in the current market environment the need for a high level of technical skill, flexibility and innovation becomes all the more important. The implementation of the FSRA (the Act) is certainly proof of this.

FSRA has provided enormous challenges to all Australian general insurers. It has fundamentally changed the way insurers think about the risks they are underwriting and how they distribute products. The reality is we are all still learning about the full impact these changes will have on our operations.

For example, the Act, as far as Marine insurance is concerned, is clear in identifying that insurance policies covering household goods in transit, mobile phones and private pleasure craft are Retail products and therefore subject to the PDS, FSG and SOA regimes.

However, the Act also refers to “moveables” in its definition of a Retail product. So what is a “moveable”? The *Marine Insurance Act* definition is:

“... any moveable tangible property other than the ship, and includes money, valuable securities and other documents.”

Another legal definition is:

“Generally ‘moveable’ refers to personal property (that is property that can be moved) as distinct from real property (that is property which cannot be moved).”

Why the framers of the legislation have not incorporated a specific definition into the Act is beyond us!

In a following article we will give our views of what we believe you need to consider in reviewing this question with your customers.

We will also look at the question of when does a pleasure craft become a pleasure craft for the purposes defined in the Act? A whole subject in its own right!

Then there is the issue of “distribution”. By now you will be aware of what it means for an intermediary to be a ‘licensee’ and/or an ‘authorised representative’ of a licensee.

But have you checked on your client’s status?

For example, consider road carriers or freight forwarders who arrange insurance as part of their services. If they intend to continue this practice from 11 March 2004 they will need to review their procedures and determine their status under the F.S.R.A. and ensure that they conform with all of the applicable provisions. It may be that they need to become an authorised representative or a licensee in their own right.

What is their current intention? It would pay to check. The ASIC web-site (www.asic.gov.au – specifically QFS 125 – “What is our approach to ‘arranging’?”) contains information on this issue. ASIC recommends that each party gets its own professional advice before making decisions about their particular situation.

The *Terrorism Insurance Act* (TIA) is another example of recent legislative changes forcing insurers to rethink their underwriting responsibilities.

A lot of erroneous commentary has gone out in respect to the application of the Act to risks covered under the *Marine Insurance Act* (MIA).

The TIA is quite specific – only goods covered within the meaning of Section 7 of the MIA are exempt. The unhelpful part is that once again the legislators have declined to define the ‘hoary old chestnut’ of when goods are in transit (as distinct to in storage as part of a transit or at the commencement or end of a transit).

There are also two other sections of the MIA that they have chosen not to incorporate – Section 8 which makes provision for “land risks and inland waters risks”, as opposed to sea only risks, and Section 9 which defines a marine adventure.

We believe that by default Sections 7 and 8 can only be read in conjunction with Section 9. This is in line with the rules of statutory interpretation.



There is a reasonable body of law that can provide guidance in this area but they all pinpoint the importance of clearly defining the particular facts of the transit involved – not very helpful in a general sense.

As a rule of thumb, the MIA only applies to contracts of insurance that include cover for ‘mixed’ risks when the subject matter insured is substantially a ‘marine adventure’. Otherwise the contract of insurance is not a contract of marine insurance and would therefore come within the ambit of both the *Insurance Contracts Act* and the TIA.

Marine insurers will potentially be required to charge a terrorism premium for the land based exposures of storage (other than in the ordinary course of transit) and for the liabilities covered by port authorities, ship repairers and marina and terminal operators where terrorism is excluded under the policy terms.

But if you think we are having a hard time spare a thought for those making a living as seafarers. The shipping industry suffered 344 piracy attacks from January through to September this year, up 27% for the same period last year.

The more things change the more they stay the same - Marine insurers have been covering piracy since the days of the Phoenicians.

While NMIA has not been around quite that long we are certainly going to do our best to ensure Vero National Marine continues the proud traditions of its predecessors and builds and delivers even better knowledge-based solutions for our customers.

National Marine