



ABN 97 054 763 923

# MLAANZnews

June 2012, Issue 58

## President's Message

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Dear fellow members

I extend a very warm welcome to the Board of MLAANZ to the newly elected New Zealand Branch President. **Mr Neil Beadle** will be well known to many of you given his distinguished career in maritime law. Neil is a partner in the Auckland office of DLA Phillips Fox and I am sure his expertise will enhance the work of Board.

Of course whilst welcoming Neil, we must sadly farewell **Mr Matthew Flynn** from the Board. Matthew has been a tremendous asset to the Board and the Board thanks him for his service and contribution to MLAANZ in his role as New Zealand Vice-President.

I would also like to extend a very warm welcome to our new members, who are listed below. It is encouraging to see a growing interest in our Association and we look forward to meeting the new members and including them in the work and activities of MLAANZ.

Simon Allison (Student: WA)  
Hussain Balouch (Pakistan)  
Rohan Barton (Vic)  
Aurelie Buthod (France)  
Angela Carpenter (Student: UK)  
Glen Cremer (NSW)  
Bronwen Ewens (Vic)  
Sophie Hill (NSW)  
Kingsley Kongnyuh (Argentina)

Dimitrios Kyrkos (Greece)  
Benjamin Olbourne (UK)  
Elizabeth Riekert (Vic)  
Kevin Roche (NSW)  
Olusola Salau (Nigeria)  
Ashunchung Paul Tanyi Ako (Cameroon)  
Jaimie-Lee Tertipis (SA)  
Shaiju Thomas (India)

The first half of 2012 has seen much activity in the development of Australian maritime law. On 24 May, the following **bills were introduced into Parliament** by the Federal Minister for Infrastructure and Transport, The Hon Anthony Albanese MP:

- *Marine Safety (Domestic Commercial Vessel) National Law*
- *Marine Safety (Domestic Commercial Vessel) National Law (Consequential Amendments)*
- *Navigation Act 2012*
- *Navigation (Consequential Amendments) Act 2012*

The text of the Minister's Second Reading Speech is reproduced below. The legislative and regulatory changes brought about by these bills are significant and there will be challenges ahead for both the industry and the legal profession, particularly in the transition phase.

The Admiralty Rules Committee has recently **proposed amendments to the Admiralty Rules 1988**. MLAANZ has been invited to provide any comments by **30 July 2012**. The proposed amendments are attached to this newsletter and any member who wishes to contribute to a submission from MLAANZ is invited to contact Terri Bell of the NSW Branch who will coordinate the submission. ([Terri.Bell@mk.com.au](mailto:Terri.Bell@mk.com.au))

Further, from 16-20 April, the 99<sup>th</sup> session of the IMO's Legal Committee (LEG99) agreed at Australia's instigation to an **increase to the limits of liability** under the Convention for the Limitation of

Liability for Maritime Claims (**LLMC 96**). The Australian proposal was to increase the limitation amounts by the maximum amount permitted under the LLMC, 6% pa compounded annually, since 1996. Australia did not however receive the necessary support from other sponsoring States. LEG99 decided to increase the limits by 52%, which represented the Japanese proposal updated to reflect inflation between 2010 and 2012. The amendments only affect the general limits of liability under Article 6 (there was no consideration of the limits of passenger liability). Several delegations suggested that the debate which had occurred at LEG99 had demonstrated that the principal problems with the 1996 limits were related to bunker oil pollution damage. Consequently, it was suggested that LEG should consider the linkage between the Bunkers Convention and LLMC 96 in the future with a view to creating separate and higher limits for Bunker claims.

Many of these issues are already on the programme for the 2012 Conference in Brisbane later this year, which I hope many of you will be able to attend.

With my best wishes to you all



## **NAVIGATION BILL 2012 SECOND READING SPEECH 24 May 2012**

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This year, the 100<sup>th</sup> year since the sinking of the RMS Titanic, is also the 100<sup>th</sup> anniversary of the *Navigation Act 1912*.

For those 100 years the Navigation Act has been Australia's primary legislation regulating ship and seafarer safety, shipboard aspects of protection of the marine environment and protection of the rights and conditions of seafarers.

The original Navigation Bill was in the process of development when the *Titanic* sank on 15 April 1912.

As a result, the draft legislation was amended before it had even commenced to incorporate the safety recommendations that were internationally agreed following the disaster.

This vital piece of legislation has been the key legislative vehicle to give domestic effect to Australia's international port state control responsibilities and a range of international conventions.

But the Act is 100 years old.

On 5 June 2009, I announced that the Gillard Labor Government would rewrite the *Navigation Act 1912*.

After approximately three years of planning, public and whole of Government consultation, extensive drafting, and through the commitment and cooperation demonstrated by all stakeholders, it is with great pride that I introduce the Navigation Bill 2012 to the Australian Parliament.

We are in the middle of a once-in-a-generation resources boom.

Each year almost 4,000 ships transport goods to and from Australia, carrying ninety-nine per cent by volume of Australia's imports and exports.

This constitutes the world's fifth largest shipping task.

The increase in demand for Australia's exports and new resource developments means Australia's sea freight task is expected to double by 2025.

The safety and efficiency of the shipping industry is therefore critical to Australia's economic prosperity, maritime environment and security.

Australia's re-election last year to the Council of the International Maritime Organisation served to reinforce Australia's long standing tradition as an active participant, in a cooperative multilateral approach to the regulation of maritime safety and marine pollution prevention.

This Bill supports that approach.

This Navigation Bill 2012 is a comprehensive rewrite of the *Navigation Act 1912*.

The Bill is written in plain language, reflects contemporary maritime industry practice and provides clarity to domestic and international seafarers, vessel owners and operators on their regulatory responsibilities.

Gone are the archaic and redundant provisions that peppered the *Navigation Act 1912*.

Many of the 1912 Acts original provisions were taken from the British Merchant Shipping Act of 1894 which included laws that had been around since the 18th century.

You will be reassured to know that it is no longer an offence to take a lunatic to sea without telling the master.

Not only is the Navigation Bill clearer and more accessible to the reader it is more flexible allowing the regulatory framework to keep pace with changes in the domestic and global maritime sector today and in the future.

The Bill introduces a civil penalty regime which expands the range of regulatory options available to the regulator for breaches of the legislation.

The Bill also allows for the development of an infringement notice scheme in regulations.

Of primary importance, the Navigation Bill gives effect to our international obligations under various conventions to which Australia is a signatory, covering matters such as the safety of life at sea; training and certification of seafarers; prevention of collisions at sea; watertight integrity and reserve buoyancy of ships; pollution prevention standards for ships; safety of containers; salvage and regulations to determine gross and net tonnage of ships.

The Bill will also ensure Australia's compliance with the International Labour Organization's Maritime Labour Convention – which Australia has ratified and which will soon come into force internationally.

I have previously introduced legislation to establish an Australian International Shipping Register.

The employment provisions contained in the Navigation Bill will be a key part of the legislative framework that protects the rights of seafarers working on those vessels.

The Navigation Bill applies to Australian commercial vessels undertaking overseas voyages and where it is consistent with international law, to all foreign flagged vessels in Australian waters regardless of the voyage.

As such it provides a legislative framework within which the Australian Maritime Safety Authority (AMSA) can exercise its port state control responsibilities.

AMSA has an enviable reputation as the regulatory authority with responsibility for 'big' ships.

The Navigation Bill complements the Marine Safety (Domestic Commercial Vessel) National Law Bill, which I introduced today, that establishes AMSA as Australia's single national maritime regulator.

The Navigation Bill also incorporates the provisions of the *Lighthouses Act 1911*, one of the oldest laws on the Statute book and one that predates even the *Navigation Act 1912*.

Like the Navigation Act the Lighthouse Act has struggled to keep pace with changes to maritime industry practice and rapid technological change.

The recast provisions relating to aids to navigation have been modernised and are now sufficiently flexible to encompass a world where satellites and global positioning systems operate in company with traditional beacons and lights.

It is appropriate that the provisions of the Lighthouse Act are incorporated in the Navigation Bill as it will ensure that aids to navigation, which are so essential to safe navigation, are an integral element of Australia's primary maritime safety legislation.

The *Lighthouse Act 1911* will be repealed once the Navigation Bill is enacted.

As the Transport Minister I have had the privilege to undertake the most comprehensive reform of the maritime sector in Australia's history.

This Bill, the shipping reform Bills and the National Maritime Regulator Bill position Australia to make the most of its future as a shipping nation while ensuring that safety of vessels and those who sail upon them as well as the protection of our treasured marine environment is paramount.

I commend this Bill to the House.

## NAVIGATION (CONSEQUENTIAL AMENDMENTS) BILL 2012 SECOND READING SPEECH 24 May 2012

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I introduce to the House, the Navigation (Consequential Amendments) Bill 2012.

This Consequential Amendments Bill contains a number of amendments to existing Acts that are required to ensure the existing regulatory framework interacts properly.

The Bill makes those consequential changes to 29 other pieces of legislation and forms a part of the most comprehensive maritime reform in Australia's history.

This number gives an idea of the complexity of the task that has been undertaken in the past three years.

I commend this Bill to the House.

### CMI

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The CMI Conference will be held in Beijing from 14-19 October 2012, followed by a seminar in Shanghai. Program and Registration details are available at <http://www.cmi2012beijing.org>

The Chairman of the IWG on **Salvage**, Stuart Hetherington, has indicated that a further Position Paper has been received from the International Chamber of Shipping which has been placed on the CMI website.

Members who are interested in contributing to MLAANZ's position in relation to **amendments to the Salvage Convention** or a **new instrument on the Judicial Sale of Foreign Ships** should contact Greg Nell SC ([gnell@sevenwentworth.com.au](mailto:gnell@sevenwentworth.com.au)) who is chairing the MLAANZ sub-committees on these topics.



## MLAANZ Annual Conference 2012

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Save the date: **13-14 September 2012**

Stamford Plaza Hotel & Customs House -  
Brisbane



This year's Conference will be opened in the Federal Court of Australia, Brisbane, by the **Hon Justice John Dowsett AM**, followed by the **Annual Richard Cooper Memorial Lecture** to be delivered by **Mr David Taylor** of the IUA, UK at **5.30 pm** on **Wednesday 12 September**.

Confirmed speakers for this year's conference include:

- Mr Ron Salter
- Mr Simon Meyjes
- Mr Jonathan Spencer (New York)
- Cpt Peter Listrup
- Mr Kah Wah Leong (Singapore)

### Upcoming Maritime Events

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**International Maritime Law Arbitration Moot Competition 2012** (sponsored by MLAANZ Qld)

6-10 July 2012: hosted by the Queensland University of Technology Brisbane

<http://www.law.murdoch.edu.au/maritimemoot/index.html>

**Natship 2012**

6-8 August 2012 – Park Hyatt Melbourne  
<http://www.amsa.gov.au/natship12/program.asp>

**7<sup>th</sup> Annual LNG World**

3-5 September 2012 – Hilton Hotel  
Brisbane  
<http://www.lngworld-lse.com/rollover.asp?eventID=19069>

**WISTA Conference 2012**

3-5 October 2012 Paris  
<http://wista.net/index.php?id=1400>

**How do we contact you?**

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Please keep your membership information current! Go to the website and update your contact details. Remember to include your e-mail address and help us save on costs.

If you need any assistance, please contact the Administrator, Ms Annie Chahwan at [mlaanz@vicbar.com.au](mailto:mlaanz@vicbar.com.au)