



# SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



## An Update from the Vice-President

The maritime and offshore sectors have witnessed many recent developments both statutory and at common law. The developments have included private commercial dealings, realignment of maritime borders and cyber security and associated risks. Some notable examples are referred to below.

1. Contractual rights following breach came into sharp focus in the landmark decision of the UK Court of Appeal in *Grand China v Spar Shipping*. The Court of Appeal confirmed that in the absence of an express contractual term, a charterer's failure to pay hire under a charter party does not constitute breach of a "condition" and hence does not entitle the shipowner, at law, to end the charter party, withdraw the vessel and claim damages from the charterer for loss of the unexpired term of the charter period. Not even a contractual right to terminate the charter party for non-payment of hire will in itself alter that position. The decision has widespread implications for charterers, owners and financiers alike.
2. Of particular significance to Western Australia was the recent reintroduction into Parliament of *The Petroleum Legislation Amendment Bill*. That Bill has been referred to a Standing Committee. The bill, if passed, will alter the maritime boundaries, allowing for the sharing of petroleum agreements across Commonwealth and State jurisdictions. The Bill was introduced following the Torosa Apportionment Agreement signed in July 2015 by the State Government, the Commonwealth Government and the Woodside Browse Joint Venture. That apportionment agreement is said to have produced a 'windfall' in royalties for the State Government, including increasing the share of the Torosa gas field from 5% to 65%, with the potential to generate some \$1.34 billion dollars in royalties on commencement of production.
3. The heightened crossover between maritime law and technology is seeing the ever increasing risk of cyber security breaches in the maritime sector. It is also evident in the use of bills of lading and electronic release systems. A recent example of this was seen in the decision of *MSC v Glencore International AG*, where the court considered the carrier's obligation to deliver goods on production of an original bill of lading. Part of a consignment was misappropriated at the discharge port (Antwerp) which operated an electronic release system — carriers provided a computer generated electronic number ('electronic pin code') against presentation of bills of lading. This process was used instead delivery orders and release notes. The court at first instance found the carrier liable for breach of bailment and breach of contract for misbelieving of part of the consignment. This decision was upheld on appeal, with the Court of Appeal rejecting the carrier's argument that delivery of the pin code constituted delivery of the goods. The Court of Appeal's decision sounded a warning to carriers who bear the risk of misdelivery, which can occur if electronic pin codes are hacked or misappropriated. The Court found that the carrier actually had to deliver the consignment — delivery of the electronic pin code was no substitute. At best the electronic pin code was a delivery order (of sorts). As such, the carrier was found to have breached the contract and its duty as bailee in delivering the cargo upon presentation of the electronic pin code.

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