



# SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



## Australian Report

I pay my respects to the Turrbal and Jagera people of the land where I work and live, Meanjin Brisbane.

With ever-increasing geopolitical upheaval and uncertainty, the conflicts in the Middle East, Europe and tensions in the Asia-Pacific region continue to challenge world trade. Our thoughts are, as always, with the seafarers and their families.

Below is a short snapshot of MLAANZ activities in Australia since the last report.

### **MLAANZ Branches**

The Australian MLAANZ Branches have held a number of local events in their respective jurisdictions this quarter, as follows:

- MLAANZ Western Australia – 14 November 2024 virtual seminar hosted by Clifford Chance “Australian Maritime Safety Authority (AMSA) – Legislation, investigation and enforcement of serious offences”, the guest speakers were Chris Guselli (AMSA deputy general counsel) and David Marsh (AMSA enforcement and inspector support manager)
- MLAANZ NSW – 5 December 2024 Christmas drinks
- MLAANZ Queensland – 28 November 2024 Christmas drinks

The big event in this quarter was, of course, the 49th MLAANZ annual national conference held between 2 and 4 October 2024 in beautiful (if a little chilly) Queenstown, New Zealand.



*MLAANZ Australia vice-president Naraya Lamart*

The conference was all it promised to be with an insightful Dethridge Memorial Address by John Gresson, Professor Khylee Quince’s gripping journey through the significance of flags and New Zealand history, a toe-dip into hedging, 100 years of the Hague Visby Rules and many more interesting topics. More about that in the president’s report.

Heartfelt thanks to the Organising Committee consisting of Colin Hunter, Paul David, John Knight and Hamish Fletcher for putting on such a wonderful event.

### ***The CMI, Conventions and Consultation***

As mentioned in the last edition, MLAANZ’s immediate past president, Michelle Taylor, attended the Comité Maritime International (CMI) conference in Gothenburg (Sweden) to represent MLAANZ and participate in the discussions.

MLAANZ continues to correspond with the Australian Government urging it to sign the Beijing Convention on the Judicial Sale of Ships.

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts has welcomed the opportunity to work with MLAANZ to identify the necessary legislative changes that need to be put in place in order to ratify the convention. This includes an opportunity to contribute to the review of the Shipping Registration Act (SRA). The SRA review is currently being jointly undertaken by Emeritus Professor Nicholas Gaskell and Lynelle Briggs (see the previous edition of *Semaphore* for a more comprehensive report on this review).

The legislative changes required by the convention will also need to be considered in the context of the Admiralty Rules. In this regard, the Admiralty Rules Committee is considering necessary changes required by the convention with the support of MLAANZ. We will continue to update on developments.

MLAANZ has been invited to attend the upcoming Shipping Consultative Forum in December 2024. With the retirement of Australian Maritime Safety Authority (AMSA) chief executive Mick Kinley the meeting that was scheduled for September was pushed back. We will accordingly report on the December meeting discussions in the next edition. Given the geopolitical challenges, it seems likely that discussions regarding the Maritime Strategic Fleet will remain high on the agenda.

## ***Some Happenings***

### ***AMSA Consultations***

AMSA has proposed changes to two marine orders as follows:

- Marine Order 28 (Operations Standards and Procedures)
- Exemption 24 – Marine Safety (Emergency service vessels) Exemption 2024

Marine Order 28 gives effect to parts of each of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (STCW Convention), the STCW Code and the International Convention for the Safety of Life at Sea 1974 (SOLAS Convention). The order regulates, among other things, conditions relating to seafarers including watchkeeping standards, minimum hours of rest and alcohol limits.

AMSA is proposing to make changes to the alcohol limits to reflect the 2010 Manila amendments to the STCW Convention and Code and otherwise make drafting amendments to include the wording of the relevant sections of the Code and SOLAS provisions rather than simply making cross references to them.

AMSA's summary document of the changes can be accessed [here](#).

Consultation closes on 2 December 2024 and the changes will come into effect on 1 September 2025.

Exemption 24 applies to volunteer marine rescue organisations, fire service organisations and emergency services organisations. AMSA states that the key amendment proposed is to apply consistent competency requirements for volunteer emergency services providers in circumstances where the current exemption has different crewing arrangements for each volunteer group. The stated benefit for this is that where the same volunteers work across the volunteer groups (which is particularly common in regional areas), they will only need to comply with a single set of requirements.

The amendments to the exemption also clarify which activities can be conducted under the exemption, change the application process for exemptions for certificates of competency, and create flexibility to allow for various state governance arrangements, among other changes.

AMSA's summary document can be accessed [here](#).

Consultation also closes on 2 December 2024 and the changes come into effect on 1 July 2025.

***Recent Federal Court Shipping and Navigation Decision – Nick Scali Ltd v Lion Global Forwarding Pty Ltd & Theo Karabetsos [2024] FAC 1247***

In this case, the applicant applied for the release of approximately 240 containers of Nick Scali furniture over which the freight forwarder, Lion Global Forwarding Pty Ltd (Lion), had purported to exercise a lien.

Nick Scali had ceased paying amounts due to Lion for non-vessel operating common carrier (NVOCC) services for the carriage of the goods because there was an underlying dispute between Lion and a subcontractor, Shenzhen HJT Supply Chain Management Ltd (HJT). The dispute related to the credit terms as between Lion and HJT (to whom Lion had sub-contracted some of its NVOCC services for Nick Scali) in circumstances where Nick Scali had already paid Lion for at least part of the services. This resulted in HJT taking steps to stop delivering Nick Scali's goods and Lion requesting Nick Scali to make a further payment to Lion. Nick Scali expressed concern that the payments it made to Lion may not be paid to HJT and then Nick Scali would be in the position of having to pay twice to receive delivery of its goods.

Lion terminated Nick Scali's account and purported to exercise a contractual lien in accordance with its terms and conditions.

In dismissing the application, His Honour Justice Stewart noted Nick Scali's concerns regarding the possibility of double payment but found that "provides no contractual basis to resist payment, and it does not provide an answer to Lion's assertion of its lien".

The alternative basis of the application for release – that Nick Scali had a damages claim for breach of contract – was also dismissed on the basis there was no serious question to be tried, nor any evidence of possible quantum attributable to the alleged breach.

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