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 and waters where I work and live, Meanjin, Brisbane.

With ever-increasing geopolitical flashpoints, tariff wars and sanctions, the shipping world continues to be challenged.

Our thoughts continue to be with seafarers, their families and everyone impacted by the upheavals.

Below is a short snapshot of MLAANZ activities in Australia since the March 2025 report.

MLAANZ Australia vice-president Naraya Lamart

MLAANZ Branches

The Australian MLAANZ Branches are gearing up for another busy year.

The MLAANZ NSW Branch held its mini conference on 19 March in the Federal Court in Sydney. There were a number of excellent presenters, as follows:

- Matthew Harvey KC – Time limitation under the Hague-Visby Rules: A conflict resolved?
- Stuart Hetherington – The Rotterdam Rules Convention: The need for ratification and the Comité Maritime International's work to achieve greater uniformity and thereby logistics chain efficient improvements, greater transparency and safety in relation to carriage of cargo by sea
- Michael Swanson – Abandoning nuclear goods
- Anna Elizabeth and Emma Campbell – Admiralty and maritime jurisdiction and the power to make laws with respect to navigation and shipping: A consideration of ss 76(iii) and 98 of the Constitution

The ever-active MLAANZ Western Australia Branch held a webinar on 7 May titled "Operationalising Autonomous Survey Vessel for the Australian Coastline", which was presented by Charles Collins, chief surveyor of EGS Australia.

The MLAANZ Victoria Branch continues its preparations for this year's annual federal conference to be held in Melbourne from 3-5 September. A call for papers was issued in May – however, if you are particularly interested in presenting, please do get in touch with one of the members of the Organising Committee, listed below:

- Nick Luxton (nick.luxton@vicbar.com.au)
- Matthew Harvey KC (mharvey@vicbar.com.au)
- Melanie Long (melanie.long@holdingredlich.com)
- Lachlan Boughton (lachlan.boughton@cbp.com.au)

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IMLAM

MLAANZ continues to support the IMLAM competition which will be held at the University of Sydney from 6-11 July. MLAANZ will again be sponsoring the Derrington-Lewins Encouragement Prize for the competition and looks forward to seeing the amazing talent from around the world showcasing their hard work, research and depth of legal expertise.

The Organising Committee is looking for any arbitrators who can assist over the course of the competition (even if only for one session). Speaking from my own experience, it is always a pleasure to witness the advocacy and technical skill of the students. If you are able to give some of your time, please register your interest via the form at the link on the University of Sydney Law School's IMLAM webpage.

The CMI, Conventions and Consultation

MLAANZ president Hamish Fletcher, immediate past present Michelle Taylor and International Board Committee member Lachlan Boughton all attended the Comité Maritime International (CMI) conference in Tokyo in May. More details on that in the president's report.

One of the key developments to come out of the CMI conference was the organisation tabled its proposed submissions in response to the the United Nations Commission on International Trade Law (UNCITRAL) "Draft Convention on Negotiable Cargo Documents" (Draft NCD). The purpose of the draft convention is to create a new class of document that acts similarly to an ocean bill of lading (in that it can act as a negotiable document of title) in a multimodal carriage of goods context. The CMI developed submissions expressing its concerns regarding the impact of the Draft NCD on transactions involving maritime cargoes.

The CMI has urged all maritime law associations to support submissions to UNCITRAL by Spain and Switzerland to allow ratifying states to declare that they would not apply the NCD Convention to their maritime transportation laws, including those laws relating to bills of lading. Myself and Michelle will be liaising with the Australian Department of Infrastructure, Transport, Regional Development, Communications and the Arts (Department) in that regard. MLAANZ New Zealand vice-president John Knight will be liaising with the New Zealand Ministry for Foreign Affairs and Trade.

On 30 April I had the privilege of attending the Shipping Consultative Forum as Australian vice-president of MLAANZ to represent our association in that forum.

The updates from various industry members were tempered by comments to the effect that some activities were on hold while the Australian Government was in caretaker mode in the lead up to the recent election. However, the key issues raised included:

- the final report of the Shipping Registration Act and interim report for Phase 1 of the Coastal Trading Act 2012 have been completed. Consultation on Phase 2 of the Coastal Trading Act review is due to commence in the coming months. The Department has asked for any interested parties to contact strategicfleet@infrastructure.gov.au to register interest for consultation
- the Strategic Fleet tender process is ongoing but has been on hold during the caretaker period. We anticipate that there will be further announcements on this in the months to come
- multiple stakeholders referred to decarbonisation efforts across the industry and the updated greenhouse gas emissions mid-term measures following the International Maritime Organisation Marine Environment Protection Committee meeting in April. The Department is working on an impact analysis and assessment of a combined technical (through a global fuel standard) and economic (carbon levy) measure. Some stakeholders, while supportive of the objectives, cautioned against a levy as a blunt instrument and urged consideration of potential incentives to use biofuels as an alternative. The Australian Maritime Safety Authority (AMSA) encouraged all parties to engage in its decarbonisation roundtables (see further below)

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Other key issues discussed included practical and regulatory challenges of alternative fuels, maritime waste recycling in the cruise industry and responses to critical resources shortages across the industry – specifically, the need to upskill workers and a possible funding mechanism for investment in training.

Some Happenings in Australia

AMSA Consultations

Decarbonisation Roundtables

AMSA is holding its second roundtable on decarbonisation on 26 June, with this session's focus on "alternative fuels and emerging technology". A further session will be scheduled in November.

Stakeholders involved in the maritime industry can register their interest to participate in the roundtable discussion by contacting AMSA on Environment.Standards@amsa.gov.au.

Marine Orders

The consultation periods for AMSA's proposed amendments to Marine Order 16 (which gives effect to the International Convention on Load Lines (Load Lines Convention) and Marine Order 19 (which gives effect to the International Convention on Tonnage Measurements of Ships (Tonnage Convention) have now closed.

The amendments to those orders will come into force on 1 July. A summary of the amendments and further commentary is set out in the previous edition.

Recent Federal Court Admiralty Decision

Mitsui O.S.K. Lines Ltd v The Ship: Yangze 22 *[2025] FCA 563*

In this matter, the Owners of the defendant ship, Yangze 22 (Vessel), applied for her release from arrest pursuant to Rule 52 of the Admiralty Rules 1988 (Cth) (Admiralty Rules) on the basis that sufficient and reasonable security had been granted to the plaintiffs for their claim.

The claim itself arose out of a collision between the Vessel and another ship, the Vega Dream, in December 2024 in the Beicao Fairway outside of the Port of Shanghai.

In this case Her Honour Justice Sarah Derrington very helpfully set out the key principles relating to security for vessels under arrest. They are as follows (at [5]):

1. It is the usual practice of Admiralty Courts that an arrested ship will only be released on the provision of sufficient security to cover the plaintiff's reasonably arguable best case plus interest and costs, assessed on a standard basis: The "*Moschanthy*" [1971] 1 Lloyd's Rep 37 at 44; *Freshpac Machinery Pty Limited v Ship "Joanna Bonita"* (1994) 125 ALR 683 at 686-687.
2. Admiralty Courts are often satisfied that it is appropriate to accept letters of undertaking or other security from protection and indemnity (P&I) clubs, as well as from insurance companies, even where such clubs or companies are foreigners in the jurisdiction: *Navios International Inc v The Ship Huang Shan Hai* [2011] FCA 895; 194 FCR 468 at [32].
3. An order to release a vessel without security being given against the wishes of a claimant who has properly exercised the right to arrest is a drastic order that should only be made in a clear case: The *"Myrto"* [1977] 2 Lloyd's Rep 243; The *"APJ Shalin"* [1991] 2 Lloyd's Rep 62 at 67.

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4. Nevertheless, the power to insist that a ship remain under arrest unless security of a certain amount is given must not be exercised oppressively: The *"Polo II"* [1977] 2 Lloyd's Rep 115 at 119; The *"Gulf Venture"* [1984] 2 Lloyd's Rep 445 at 449; *Owners of the Ship "Carina" v Owners or Demise Charterers of The Ship "MSC Samia"* (1997) 148 ALR 623 (*The Carina*) at 628.
5. If the parties are unable to agree on the sufficiency of the security offered, the Court cannot impose an agreement upon them: The *"Alletta"* [1974] 1 Lloyd's Rep 40 at 50; *The Carina* at 630.
6. There is nothing objectionable in a ship, through its P&I club, proffering a conditional security where there is a challenge to jurisdiction: *Tisand Pty Ltd v MV Cape Moreton* [2004] FCA 752 at [18]-[19].

The central issue for the Court in this case was whether certain conditions in the letter of undertaking (LOU) offered by the P&I Club (Skuld) rendered it inadequate security for the claim.

Under the terms of the LOU the original wording had the effect that the LOU would expire immediately upon the shipowners establishing a limitation fund in any jurisdiction. The plaintiffs sought to amend that clause so that the LOU would only expire if limitation fund were constituted in Australia.

Shipowners contended that their refusal of these amendments was justified because the value of the LOU would simply be reduced in Australia if a limitation fund was established elsewhere.

Her Honour disagreed on the basis that the wording provided the LOU would "expire" and the plaintiffs would be left with nothing if the condition – ie, the constitution of a limitation fund were met.

It follows that Her Honour found that the LOU proffered was not sufficient security and the application for release from arrest was dismissed.

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