



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



President's Message

Welcome to Semaphore from Mianjin (Brisbane). I respectfully acknowledge the traditional custodians of this land, the Turrbal and Jagera/Yuggera peoples, and I pay my respects to all Elders past, present and emerging.

Year 2022 has begun with a great deal of unease – devastating floods, increasing COVID cases and a Russian-Ukrainian conflict that has displaced millions. The Ukrainian Maritime Bar Association (UMBA) has reached out to 37 maritime law associations, including MLAANZ. A copy of the UMBA letter is attached [here](#).

The UMBA letter states that on February 24, 2022 Russia began a full-scale war on Ukraine and it seeks international support in a number of ways. War and the impact of war cannot be ignored. This is an important time for the Board to revisit MLAANZ's role and objects, which are set out in its Constitution. Relevantly, these include:

- to advance reforms in maritime law and facilitate justice in its administration;
- to furnish a forum for the discussion and consideration of problems affecting maritime law and its administration;
- to act with foreign and other associations in efforts to bring about the unification of maritime and commercial law, maritime customs, usages and practices; and
- to bring a greater harmony in shipping laws, regulations and practices of different nations.

In this context, it is necessary to consider how MLAANZ may usefully and appropriately respond to issues that affect maritime law and the administration of justice in both Australia and New Zealand.

The MLAANZ Board can show solidarity with the people of Ukraine within its sphere of influence. We can provide UMBA with a voice in our jurisdictions by sharing the letter with members and forwarding it to Ministers for Transport and Foreign Affairs in Australia and New Zealand. We can support appropriate government action.

MLAANZ does not condone transgressions of humanitarian rights or international law; we do not shy away from difficult problems. However, we do not have a mandate to demand responses to war. Importantly, we can be consulted on relevant issues as they pertain to maritime law, for example the human rights of seafarers.

In times of challenge such as these, it is necessary to continually review what the role of MLAANZ is, and what it should be.

The Board seeks opportunities nationally and internationally to perform its objectives by advancing law reform and engaging in discussions to harmonise the practice of maritime law, including its recent work on the Judicial Sales Draft Convention and the Nairobi Wreck Removal Convention.

Judicial Sales Draft Convention

During October 2021 and January 2022 MLAANZ was consulted by the Office of International Law, Attorney-General's Department, to provide comments in respect of the Judicial Sales Draft Convention



MLAANZ president Michelle Taylor

in its Fifth Revision. Specific comments were given, and in broad terms, MLAANZ supported the position that the intention of the Judicial Sales Draft Convention should be made as plain as possible in the drafting of its articles.

As many maritime practitioners well know, there can be uncertainty and inconsistency in the interpretation of conventions, even where the language is seemingly uncontentious. Therefore, if there is an opportunity to remove ambiguity, then that should be embraced.

It is pleasing to report that the terms of the Judicial Sales Draft Convention were agreed by the delegates at the UNCITRAL meeting in New York in early February 2022. At its simplest, the purpose of the Judicial Sales Draft Convention is to enable a prospective purchaser of a ship

(particularly, if that ship is in a state of financial stress) to complete the sale with confidence that the ship's unencumbered title will be recognised internationally.

Nairobi Wreck Removal Convention

In addition, MLAANZ has contributed to each stage of the consultation process for the Nairobi International Convention on the Removal of Wrecks (WRC) that has been initiated by the Department of Infrastructure, Transport, Regional Development and Communications.

It is understood that the implementation of the WRC would improve the Australian Government's cost-recovery measures following a maritime casualty in respect of the removal of a wreck itself or removing objects that have come from a ship which pose a hazard. The WRC seeks to establish an internationally-consistent regulatory framework for wreck removal that holds shipowners accountable for wrecks (including any object that has been onboard a ship or lost at sea from a ship). A perceived benefit to Australia's accession to the WRC is the ability to recover wreck-related costs directly from an insurer of the shipowner.

MLAANZ continues to support the work of the Department towards the accession and implementation of the WRC in Australia.

Looking Forward

In the history of law reform, it is interesting to reflect that during this month – 100 years ago – Queensland controversially abolished its Legislative Council (Upper House). A few months later, Queensland became the first Australian state to abolish capital punishment. This starkly demonstrates that law reform does not always follow a logical extension of social progress.

The ways in which we respond to injustice in order to effect social reform are critically important. As an organisation, MLAANZ must be cognisant of its Constitution and how it guides the scope of our actions. If you would like to contribute to any of the MLAANZ initiatives, or provide feedback, please get in touch. Through member involvement, the relevance of MLAANZ can be sustained.

This month's issue of *Semaphore* contains articles that are sure to get you through the Easter holiday period, spanning topics such as weather-related risks, electronic charter party signature solutions, decarbonisation, sanctions, cargo theft at congested ports, liability of New Zealand stevedores, liability of ship managers, safety guidance for storage of dangerous goods, as well as Australia's offshore wind sector, air pollution and the recent Australian Transport Safety Bureau consultation process.

On behalf of the MLAANZ Board, we hope to see you at the conference in Brisbane to be held at the University of Queensland, St Lucia campus, from October 12-14, 2022.

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March 2022

