



# 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.

As the global world order is challenged in unprecedented ways, there will continue to be flow-on effects on world trade for the foreseeable future.

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 last report.

### **MLAANZ Branches**

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

The MLAANZ NSW Branch is holding a mini conference on 19 March at the Federal Court of Australia (Queens Square)].

The MLAANZ Victoria Branch is busy preparing for this year's annual federal conference to be held in Melbourne in September 2025. More to come on that in due course.



*MLAANZ Australia vice-president Naraya Lamart*

The Organising Committee for the annual conference consists of:

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

Please contact them if you are interested in presenting a paper at the conference.

### **IMLAM**

MLAANZ continues to support the International Maritime Law Arbitration Moot (IMLAM) competition which will be held at the University of Sydney from 6-11 July 2025. 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***

Michelle Taylor, the immediate past president of MLAANZ, was recently nominated by the president of the Swedish Maritime Law Association to join the Executive Committee of the Comité Maritime International (CMI).

We extend our congratulations to Massimiliano Musi, who was the successful candidate appointed to the Executive Committee. There were six eligible candidates and the following candidates received votes by CMI member associations:

- Massimiliano Musi, Italy – 15 votes
- Jan-Erik Potschke, Germany – five votes
- Michelle Taylor, Australia and New Zealand – four votes
- Gen Goto, Japan – three votes

Although ultimately unsuccessful in being appointed to this contested position, we also extend congratulations to Michelle on being held in such high esteem as to have been nominated.

The independent review of the Shipping Registration Act 1981 being conducted by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts under co-chairs Lynelle Briggs and Emeritus Professor Nicholas Gaskell is anticipated to be delivered in the near future. This review is relevant to the implementation of the Convention on the International Effects of Judicial Sale of Ships (Convention). Once that report has been delivered, MLAANZ will further consider what steps are required to progress the accession to the Convention with the Department.

In December 2024, I had the privilege of attending the Shipping Consultative Forum as Australian vice-president of MLAANZ.

As anticipated, the Maritime Strategic Fleet remains a key topic with themes of interchangeability and interoperability in particular focus. Tenders for vessels to participate in the Strategic Fleet Pilot Program closed on 29 November 2024 and the Government has indicated it will make an announcement as to the successful participants early this year.

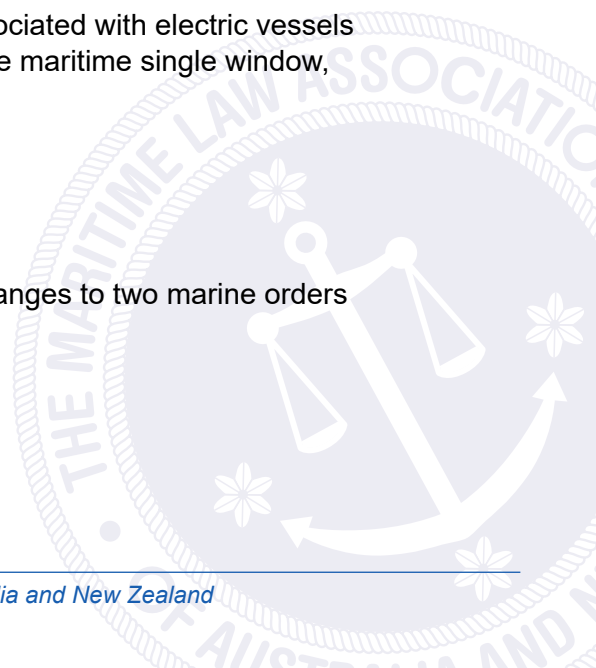
Other key issues discussed included regulatory developments associated with electric vessels (including possible consultation with countries such as Norway), the maritime single window, decarbonisation review targets and alternative fuels.

### ***Some Happenings in Australia***

#### ***AMSA Consultations***

The Australian Maritime Safety Authority (AMSA) has proposed changes to two marine orders as follows:

- Marine Order 16 (Load Lines)
- Marine Order 19 (Tonnage Measurements)



Marine Order 16 (MO16) gives effect to the International Convention on Load Lines (Load Lines Convention). The order regulates, among other things, certification of vessels for compliance with the Load Lines Convention and applies to regulated Australian vessels and foreign vessels.

AMSA is proposing to make changes MO16 to clarify that any Australian vessel that is a regulated Australian vessel and operates as a commercial yacht, will be subject to MO16 and the Load Lines Convention.

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

Consultation closes on 31 March 2025 and the changes will come into effect on 1 July 2025.

Marine Order 19 (MO19) gives effect to the International Convention on Tonnage Measurements of Ships (Tonnage Convention). The order regulates, among other things, certification of vessels as evidence of compliance with the Tonnage Convention and applies to regulated Australian vessels, foreign vessels and other vessels as prescribed.

AMSA is proposing to make changes MO19 to empower AMSA to issue International Tonnage Certificates to Australian recreational vessels that are proceeding on an international voyage.

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

Consultation closes on 31 March 2025 and the changes will come into effect on 1 July 2025.

### ***Recent Federal Court Admiralty Decision: Dan-Bunkering (Singapore) Pte Ltd v The Ship Yangtze Fortune (Priorities) [2024] FCA 1149***

This was one of a number of proceedings involving the Liberian flagged livestock carrier, the Yangtze Fortune.

The vessel was arrested in Portland, Western Australia, in December 2022 and orders for judicial sale were made later that same month. The sale was completed to the second-highest bidder (after the sale to the first failed to complete) and, in March 2023, a notice of application to determine priorities was published. This meant that claimants had until 13 April 2023 to file a claim against the proceeds of the sale.

This proceeding involved two issues, as to:

- (a) whether one of the claimants, the registered owner of the vessel (Soar Harmony Shipping Ltd [SH]), could claim against the fund; and
- (b) the priorities for the *valid* claims and how they were to be distributed.

#### ***The First Issue***

Dan-Bunkering (Singapore) Pte Ltd (DB) was the plaintiff in the original *in rem* proceedings and had obtained a default judgment prior to the vessel sale.

In separate proceedings, Australian Global Exports Pty Ltd (AGE) had commenced *in rem* proceedings against the vessel in November 2022 that were stayed in favour of an arbitration process. AGE obtained an arbitral award and had applied for judgment in terms of the award against the relevant person. That award and judgement formed the basis of the application for AGE's application in these proceedings against the fund.

SH, the registered owner of the vessel, commenced *in rem* proceedings against the vessel on 10 March 2023. SH argued that it had bareboat chartered the vessel to the relevant person, Yangtze Fortune Co Ltd (YF), and YF had failed to pay hire for a number of instalments up the time of the judicial sale amounting to over US\$2 million.

SH brought its claim on the basis that YF was the relevant person for the purposes of s18 of the Admiralty Act 1988 (Cth) notwithstanding that SH was the registered owner and the beneficial owner of the fund created from the proceeds of the sale.

While this note cannot do justice to the arguments raised regarding the status of the legal relationship between the demise charterer, the vessel and the registered owner at various points in time, nor to His Honour's elegant reasoning, Justice Stewart ultimately found that SH's rights *in rem* crystallised when DB issued a writ against the vessel and there was nothing in the language of s18 that prevented an owner from being able to bring a claim against a vessel in the prevailing circumstances.

SH was accordingly granted judgment against the fund.

### *The Second Issue*

DB argued that its claim had priority over SH and AGE's claims. SH sought a rateable "*pari-passu*" contribution proportionate to each party's claim. AGE argued that it (and DB) should be paid out ahead of any payment to SH.

DB and (to a lesser extent) AGE put a number of arguments to His Honour as to why the usual order of priorities should be displaced in favour of a more equitable distribution in circumstances where the owner was claiming against the proceeds of its own property. These included arguments on claims for bunkering being more in the nature of necessities, SH's claim having accrued after the arrest and the claim under the demise charter being in the nature of a penalty.

Justice Stewart examined each argument and held that none of them gave His Honour sufficient reason to depart from the ordinary rule. His Honour found that AGE, DB and SH should "each participate '*pari passu*' in the fund, rateable with reference to the value of their respective claims".

This case is an important decision on the issue of an owner's right to claim against its own vessel and how that claim will be prioritised against other claims.

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