



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



President's Message

Welcome to the first edition of Semaphore for 2023 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.

MLAANZ 48th Annual Conference in Perth 5-6 October 2023

Recently, I had the pleasure of joining the Western Australia MLAANZ Committee meeting for the planning of this year's Federal Annual Conference to be held in Perth from 5-6 October (registration will be on 4 October). With Pat Saraceni at the helm, the conference programme will have an exceptional line up of speakers from government, industry and the profession, on diverse topics reflective of issues that are most relevant to members. Further details on the conference programme and how to register will be circulated shortly.

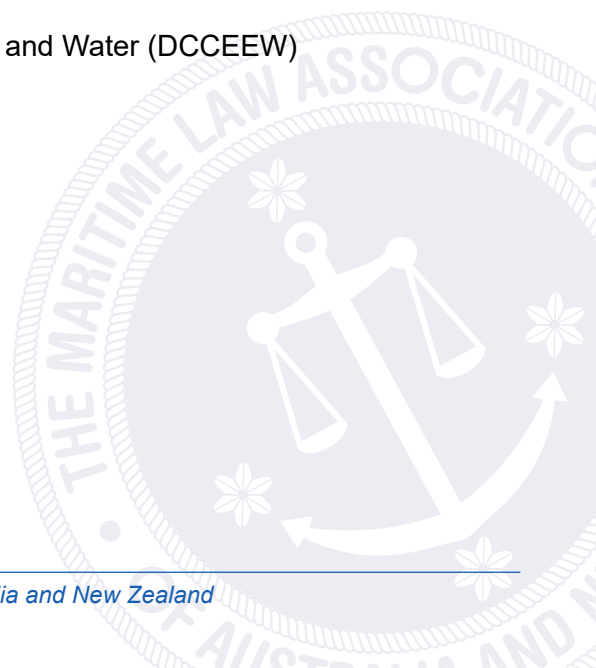
AMSA Shipping Consultative Forum

Earlier this month, I represented MLAANZ at the sixth Australian Maritime Safety Authority (AMSA) Shipping Consultative Forum (SCF). The SCF was established to provide advice on strategic priorities that are likely to challenge AMSA and the maritime industry in the medium to long-term relating to the following themes:

- regulation – keeping pace with technology, social expectation and use of data to inform change
- environment – impacts of a changing climate, reduction in greenhouse gas (GHG) emissions and changing energy sources
- stakeholders – impact of COVID-19 on industry and the long-term recovery
- technology – improved connectivity and information exchange, increased use of automation

The SCF meets bi-annually. In addition to MLAANZ, stakeholder members of the SCF are:

- Department of Infrastructure, Transport, Regional Development, Communication and the Arts (DITRDCA)
- Department of Climate Change, Energy, the Environment and Water (DCCEEW)
- Minerals Council of Australia
- Shipping Australia Ltd
- Maritime Industry Australia Ltd (MIAL)
- Maritime Union Australia
- Royal Australian Navy
- Cruise Lines International Association Australasia
- Ports Australia
- Australian Institute of Marine and Power Engineers
- Australian Shipbuilding & Repair Group



- Australian Marine Conservation Society
- Australian Maritime College
- Tourism and Transport Forum
- Women's International Shipping and Trading Association

At the SCF meeting the stakeholders discussed the key issues facing them, which included:

- decarbonisation and the reduction of GHG emissions from ships through alternative fuels and renewable energy
- the United Nations (UN) High Seas Treaty
- Australia's Strategic Fleet
- the DITRDCA Independent Review of the Marine Safety (Domestic Commercial Vessel) National Law Act 2012 (Cth) (National Law)
- AMSA's Port State Control and National Compliance Plan update
- seafarer certification

Decarbonisation

One of the many challenges facing decarbonisation in the shipping industry is achieving a balance between the availability, production costs and viability of alternative fuels.

MIAL has announced its third Maritime Decarbonisation Summit to be held on 16 May 2023 in Perth. The Summit will provide an overview of energy generation and port infrastructure projects, the growing international collaborations on green corridors, shipping industry strategies, the challenges facing carbon neutrality, and an update on Australian Government considerations of actions to assist maritime decarbonisation.

Presenters will include:

- DITRDCA
- Global Centre for Maritime Decarbonisation
- Global Maritime Forum, Centre for Zero Carbon Shipping
- Commonwealth Scientific and Industrial Research Organisation
- Lloyd's Register
- Pilbara Ports Authority
- Deloitte
- Fortescue Metals, Rio Tinto
- Maersk
- Svitzer
- Vast Solar
- Blue Visby System
- H2Perth

MLAANZ members are invited to attend the Summit.

UN High Seas Treaty

On 4 March 2023 an agreement was reached by delegates of the Intergovernmental Conference on Marine Biodiversity of Areas Beyond National Jurisdiction to endorse a UN High Seas Treaty protecting



biodiversity of the areas beyond national jurisdiction. The Treaty is a response to progressive loss of biodiversity and decline of the ocean's ecosystems caused specifically by climate change. The Treaty builds on the legacy of the UN Convention on the Law of the Sea (UNCLOS) and:

- creates a framework to establish Marine Protected Areas (MPAs) on the high seas
- puts in place a rigorous environmental impact assessment process to achieve nature positive outcomes
- ensures that the interests and contribution of indigenous peoples and local communities are recognised
- puts in place a regime to regulate the use of marine genetic resources

The Minister for Foreign Affairs has announced that Australia's formal adoption of the Treaty text will take place in the coming months.

DCCEEW – Offshore Renewable Energy Infrastructure Area Proposal: Pacific Ocean off Hunter

The DCCEEW gave a presentation on the proposal for the Offshore Renewable Energy Project in the Pacific Ocean off Hunter, NSW, dealing with offshore wind.

The Minister for Climate Change and Energy has proposed an area in Australian Commonwealth waters off the Hunter region for offshore renewable energy projects. Commonwealth waters start three nautical miles from the coastline and extend to the boundary of Australia's exclusive economic zone. Given that the proposed area is located near the Port of Newcastle, managing the proposed area in a way that balances competing interests of the port and other users of the exclusive economic zone will need to be considered.

Offshore wind structures will float, which begs the question: will they be regarded as a ship?

The criteria as to what is to be regarded as a ship has evolved with advancements in technology; notably the current deliberations over maritime autonomous surface ships (MASS). Historically, the test for determining whether a particular object was a ship was navigability, as proposed in *Chandler v Begg* [1898] 1 QB 32. This test has been rejected since the early 20th Century, but it is fair to say that international committees and legislatures have struggled to come up with future-proof definitions for the term "vessel" or "ship". Safe to say that renewable energy projects involving floating offshore wind structures are unlikely to be assisted by the "elephant test" as propounded by Lord Justice Scrutton in *Merchant Marine Insurance Co Ltd v North of England P&I Assn* (1926) 26 Lloyd's Rep 201 where his Lordship said:

"One might possibly take the position of the gentleman who dealt with the elephant by saying he could not define an elephant, but he knew what it was when he saw one, and it may be that that is the foundation of the learned Judge's judgment, that he cannot define 'ship or vessel' but he knows this thing is not a ship or vessel."

The consultation paper on the proposal for the Offshore Renewable Energy Project in the Pacific Ocean off Hunter is open and submissions close on 28 April 2023.

Australia's Strategic Fleet

On 20 October 2022, the Commonwealth Government established a Strategic Fleet Taskforce (Taskforce) to advise Government on the creation of a Maritime Strategic Fleet for the purposes of strengthening Australia's economic sovereignty and supporting improved national security outcomes. The fleet will comprise vessels that are Australian flagged and Australian crewed.

The Taskforce is supported by DITRDCA which provides its secretariat. In late 2022, the Taskforce conducted a formal consultation process with stakeholders to develop high-level strategic objectives for the fleet. The consultation sought industry comment on:

- the composition of a strategic fleet of 12 ships and the mix of ship types and trades where ships designated as strategic fleet ships could operate commercially

- possible ways the strategic fleet could be established and operate (including commercial and contractual arrangements)
- types and levels of government assistance that might be required to incentivise the transition to Australian ships and crewing
- whether, and to what extent the Coastal Trading (Revitalising Australian Shipping) Act 2012 (Cth) or any other legislation might need amending to support or facilitate a strategic fleet and ensure it is an enduring feature of Australia's sea freight transportation system

The report on the outcomes of the consultation process is underway.

DITRDCA Independent Review of the National Law

The DITRDCA Independent Review of the Marine Safety (Domestic Commercial Vessel) National Law Act 2012 (Cth) (National Law) is underway by an expert panel which is meeting with stakeholders nationally. A report is expected at the end of FY 2023.

Comité Maritime International (CMI)

Members are reminded that the next CMI Assembly will be held in Montreal, Canada from 14-16 June 2023. The programme will include sessions on:

- Convention on the International Effects of Judicial Sales of Ships and its Ratification
- climate change – impact on ports and inland waterways
- promoting and enforcing ethics and diversity in the maritime legal community
- Maritime Autonomous Surface Ships (MASS) – the future regulation of unmanned shipping
- mobile offshore renewable units – examining the need for unification of maritime law
- harmonising the application of liability conventions
- CMI Lex Maritima Project
- cyber threat in the maritime sector
- The Collision Convention 1910 – is cmi's oldest convention in need of modernisation?
- The Master – an endangered species? responsibility and liabilities in today's climate
- Young CMI

MLAANZ Sexual Harassment Prevention Policy

The MLAANZ Sexual Harassment Prevention Policy is currently under external review. A further update on the proposed draft and the consultation process is expected to be circulated in the near future.

I take this opportunity to wish everyone a restful and safe Easter break. As always, if members would like to bring any matter to the Board's attention or provide any feedback on the initiatives of MLAANZ, we would welcome your input so please get in touch.

Michelle Taylor
 President
 MLAANZ
 Sparke Helmore Lawyers
 Level 23, 240 Queen Street
 Brisbane, QLD 4000
 p +61 7 3016 5016
michelle.taylor@sparke.com.au

March 2023

