



ABN 97 054 763 923

# MLAANZnews

November 2009, Issue 50

## President's Message

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Dear fellow members

It is a great honour and a privilege to have been elected President of MLAANZ in Queenstown on 2 September and I look forward to serving the members of the Association in this new role into the future. I would at the outset like to formally thank Frazer Hunt for his outstanding leadership over the past three years. He has positioned the Association financially so that my role will be much easier than it might otherwise have been. I am very pleased that we will continue to have the benefit of his experience and counsel on the Board of Directors for some time yet. I would also like to pay tribute to John Farquharson who resigned from the Board after many years of tremendous service, including as Immediate Past President for the last three years. We welcome to the Board two new members, Pat Saraceni from the WA Branch and Peter Dawson from the NZ Branch. I am sure that both will make an enormous contribution to the Board and I look forward to working them both on a number of initiatives.

The full Board of Directors is:

**President:** Sarah Derrington (Qld)

**Immediate Past President:** Frazer Hunt (NSW)

**Australian Vice-President:** Matthew Harvey (Vic)

**NZ Vice-President:** Paul David (NZ)

**Secretary:** Paul Baxter (Qld)

**Treasurer:** Ian Campbell (ACT)

**Directors:** Pat Saraceni (WA)  
Peter Dawson (NZ)

Members should feel free to contact any person on the Board about any matters relating to the Association or its activities.

The first meeting of the new Board was held on 28 October 2009. The Board considered a number matters, the most significant of which concern engagement with the membership and engagement more broadly, including in particular with relevant Government agencies. So far as the latter is concerned, I had in September written to the Attorney-General's Department and to members of the Senate Standing Committee on Legal & Constitutional Affairs expressing the concerns of MLAANZ in relation to the *Personal Properties Securities Bill 2009*. Unfortunately it does not appear that any significant changes will now be possible given the stage the Bill has reached. Nonetheless, the views of MLAANZ have been noted and responded to at least in part. I have proposed that the Association attempt to establish a regular dialogue with the Commonwealth and New Zealand Governments on matters pertaining to maritime law and the first matter on which we wish to consult will be the Rotterdam Rules.

Prior to any such meeting, the Board has proposed that a seminar series be run on the Rotterdam Rules early in the new year in each of the Branches, following which a survey of the membership will be undertaken to gauge the extent of support for the implementation of the Rotterdam Rules. We hope that members will consider the Rules in detail and provide as much comment as possible on the perceived pros and cons of the new regime.

To assist with better engagement amongst the members, the Board has given in

principle approval for the revamping of the website and this has been made a priority.

The Board also made special note of the excellent job done by Mrs Sarah Masters in her role as Administrator of the Association and thanked her for her on-going efforts.

On 13 October 2009 I had the pleasurable task of representing MLAANZ at the British Maritime Law Association's Annual Dinner in London. The lecture was delivered by Sir Michael Wood QC on "The Legal Aspects of Piracy".

I hope that all Branches have exciting events planned to mark the end of the year and I look forward to a challenging and rewarding year for MLAANZ in 2010.

With my best wishes to you all



### **MLAANZ annual conference**

The annual conference was held in Queenstown from 2-4 September 2009. The conference was a tremendous success thanks to the support of the membership, the New Zealand Branch, the Meetings Managers and the many speakers and sponsors.

The Morella Calder Prize for 2009 was won by Camille Goodman of the University of Wollongong for her excellent paper entitled "The regime for flag State responsibility in international fisheries law – effective fact, creative fiction, or further work required?" Members will be able to read the paper in the upcoming volume of the *Australia & New Zealand Maritime Law Journal*.

Planning for the 2010 to be held in Melbourne in early October is already well underway.

## **The Personal Properties Securities Bill 2009 (PPSB)**

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Following concern expressed by several members about the impact of the PPSB on shipping matters, a small working group was formed to draft a letter to the Commonwealth Attorney-General's Department expressing those concerns. The working group comprised Frazer Hunt, John Levingston, Troy Anderson, Derek Luxford and Sarah Derrington. The letter was sent in September to the Department and to members of the Senate Committee. On 6 October 2009, MLAANZ received a response from the Attorney-General's Department indicating that as a result of recent discussions with MLAANZ, the Department has concluded that there are compelling policy reasons to create a special conflict of law regime for ships engaged in international shipping. An amendment to this effect has been included in the *PPS (Consequential Amendments) Bill 2009*. However, the view was taken that none of MLAANZ's other objections could be sustained given that the Government had taken a policy decision to treat all security interests the same regardless of the nature of the interest, the location of the collateral or the legal personality of the grantor.

Senator Trood (Liberal, Queensland) wrote to the Association on 27 October and has indicated that whilst it is too late to make any further submission to the Senate Standing Committee, he has passed our letter on to the Secretariat of that Committee prior to the vote being taken in the Senate on the Bill.

## Report on the Executive Council and Assembly meetings in Rotterdam: Stuart Hetherington



The CMI held an Executive Council meeting in Rotterdam on 21 September 2009 and its Annual Assembly meeting was held on 23 September 2009, after the signing ceremony that had been organised by UNCITRAL to take place in Rotterdam for the new liability convention, known as the "Rotterdam Rules".

One of the significant issues before the Executive Council and the Assembly related to the level of subscriptions being charged by CMI to National Maritime Law Associations. In 2008, and again during the course of last year, the steering committee of the Executive Council (which comprised the Secretary General, Nigel Frawley, the President, Karl Gombri and the writer) made recommendations to the Executive Council which included the abolition of titular membership fees and a significant review of the contributions which NMLAs should make by way of annual subscription.

It was apparent during the course of 2009 that the difficulties which some NMLAs had been experiencing prior to the global financial crisis had been exacerbated during the course of 2009.

Accordingly, in an unprecedented move, the subscriptions which had been agreed by the Assembly in Athens in 2008, for the 2009 calendar year, were further reduced at the Assembly Meeting in Rotterdam and

additional further reductions approved for 2010. The CMI has been able to do this because it has in recent years built up substantial reserves. Another issue for continuing debate within the CMI is the extent to which those reserves should be maintained or reduced.

The Executive Council welcomed to its meeting Jorge Radovich, from the Argentinean MLA, which is organising a colloquium to take place in Buenos Aires in October 2010 (it will be taking place between 24 and 27 October 2010 at the Plaza Marriott Hotel). The topics which are likely to be discussed at the colloquium include the review of the Salvage Convention 1989, Judicial Sale of Ships, Collision, Procedural Rules in Limitation Conventions, the HNS Convention and Harmonisation of Environmental Laws.

I was pleased to be able to report to the Executive Council that a new Maritime Law Association has been formed in Indonesia and we are hopeful that it will join the CMI family in the not too distant future.

I also reported on the International Working Group (IWG) which I am chairing and which is reviewing the Salvage Convention 1989, at the request of the ISU. The ISU has raised a number of concerns in relation to this convention, in addition to the topic of environmental salvage. The International Working Group consists of Diego Chami (Rapporteur), Jorge Radovich, Mans Jacobsson and Chris Davis (the latter two both being members of the Executive Council of the CMI). Questionnaires were sent out to NMLAs and a number of responses had been received prior to a meeting of the International Working Group in London in the week prior to the Rotterdam meetings (including from the MLAANZ). It is proposed to hold an International Subcommittee meeting in about the middle of next year, the details of which will be circulated to NMLAs over the next few weeks.

Henri Li reported on the IWG work on Judicial Sale of Ships. Henri had given a paper in 2008 at the Athens Conference which focussed on international recognition on Judicial Sale of Ships. The IWG consists of Henry (as Chairman); Jonathan Lux (Rapporteur); Andrew Robinson; Benoit Goemans; Frank Smeele; Louis Mbanefo; Aurelio Fernandez. The IWG is preparing a draft Questionnaire to be sent to NMLA's in early 2010.

At the Assembly meeting, I again reported on the work of the International Working Group which is reviewing the Salvage Convention 1989. I also reported on the Steering Committee Report and, in particular, identified the changes to the CMI Constitution which the Assembly was being asked to vote on. Those changes reduced the terms of members of the Executive Council from four years to three years. The Assembly approved that change to the constitution. I also reported on moves which were taking place to upgrade the website. CMI has appointed a consultant to the University of Southampton, Jo Bartlett, to assist us in upgrading the website and making it more informative and user friendly. That work, we are hopeful, will take place over the next few months.

The International Subcommittee on General Average recommended a rate of interest to be applied under Rule XXI of the York Antwerp Rules 2004 of 4% to be applied to expenditure, sacrifices and allowances in the General Average from 1/1/2010 - 31/12/2010.

Georgiou Berlingieri was elected at the Assembly to the Executive Council and I was given a further three year term as Vice President.

I should add (for those who may not have caught up with developments in relation to the Rotterdam Rules) that 16 Nations signed the Convention in Rotterdam on 23 September 2009, including the United

States. It is to be hoped that they will soon move to formal ratification. The Rules do not come into force until one year after the Convention has been ratified by 20 States.

*Stuart Hetherington*  
*October 2009*

## **"The Centenary of the Marine Insurance Act 1909 (Cth)"**

The NSW Branch is hosting a special lecture to mark the centenary of the enactment of the Marine Insurance Act. The lecture will be delivered by **The Honourable Justice Ailsop**, President of the NSW Court of Appeal.

Date: Wednesday 11 November 2009

Time: 1300 – 1400hrs

Locations: Sydney - Federal Court of Australia, Law Courts Building, Queen's Square, Video Court Level 20 Newcastle, Melbourne - Via video link

Invitation attached.

## **Arbitration**

As you are aware, the MLAANZ Arbitration Rules were updated in 2007 with the intention of creating a framework for the speedy and cost-efficient resolution of disputes by arbitrators familiar with shipping and maritime trade. The Rules and the MLAANZ panel of arbitrators can be found on the website under the menu "MLAANZ Arbitration".

Please promote the use of the MLAANZ Rules and Australian & New Zealand Arbitration generally whenever possible.

## The Australia & New Zealand Maritime Law Journal

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The next issue of the Australia & New Zealand Maritime Law Journal is about to be published. Submissions for its next edition, due in April/May 2010 are warmly welcomed.

The Editorial Board invites articles on any topic relevant to maritime areas of law & practice, such as shipping, law of the sea, offshore energy and other related fields. (Articles need not be limited to Australian and New Zealand law.) Notes on new developments, short comments, book reviews and case notes are also welcomed.

Submissions for publication can be made at the website:

<https://maritimejournal.murdoch.edu.au/index.php/maritimejournal>

Information about the journal's policies can also be found at the website.

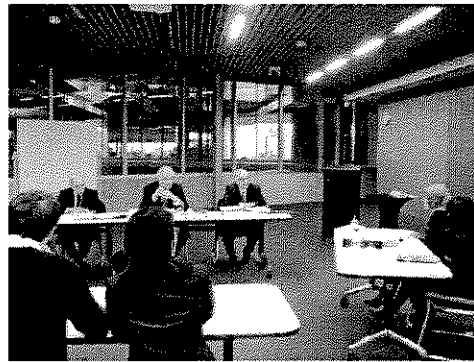
Any other enquiries should be directed to the Editor, Dr. Kate Lewins  
[k.lewins@murdoch.edu.au](mailto:k.lewins@murdoch.edu.au)

## International Maritime Law Arbitration Moot – Sydney, 2 – 6 July 2010

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The 2010 International Maritime Law Arbitration Moot is being held in Sydney from 2 - 6 July 2010. Dr Kate Lewins is requesting members' support of this competition as arbitrators. This year, the Competition is being organised by Murdoch University and hosted by University of Technology, Sydney.

Many of the members of the legal and maritime profession have given their time, sponsorship and enthusiastic support to the moot in previous years. The organisers expect to have at least 16 teams from Australia and Asia.



The 2009 Grand Final Panel: David Martin-Clarke,  
Allsop P, Ron Salter

The popularity of the competition means that there will be about 8 moots happening each morning and afternoon, and therefore they will need at least 12 arbitrators for every session. Ideally they would like to have a mix of arbitrators, lawyers and industry personnel making up a panel of three for each hearing. Past arbitrators have commented that they find the moots most enjoyable and intellectually stimulating and they are struck by the high quality of mooting on display. Of course, it is also an opportunity for firms to do some talent scouting for future graduate employees.

Further details can be found at:

[http://www.law.murdoch.edu.au/maritimemoot/registration\\_arbitrator.html](http://www.law.murdoch.edu.au/maritimemoot/registration_arbitrator.html)

## The Seventh International Conference on Maritime Law

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The Seventh International Conference on Maritime Law will be hosted by the China Maritime Law Association in Shanghai from 13 – 15 November 2009.

Further details: [oldog\\_li@hotmail.com](mailto:oldog_li@hotmail.com)

## **Keep Alive, Go Thrive: Maritime 2010**

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MLAANZ is pleased to endorse this conference on the future face of safety & security in ports, maritime & supply chains to be held in Melbourne from 22-23 March 2010.

MLAANZ members are entitled to a 10% discount on registration: contact Esther Wong.

Further details:

<http://www.marcusevans.com/html/eventdetail.asp?eventID=16063&SectorID=7&divisionID>

## **Branch websites**

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All Branch Committees are requested to update their Committee & Event details as a matter of priority.

## **How do we contact you?**

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Please keep your membership information current! Go to the website and update your contact details. Remember to include your e-mail address and help us save on costs.

If you need any assistance, please contact the Administrator, Mrs Sarah Masters, at

[sarahmasters@qldbar.asn.au](mailto:sarahmasters@qldbar.asn.au)

UNIVERSITY OF CANBERRA



Joint monthly lunch time lecture series - 2009

Lecture No 9

Topic: The Centenary of the Marine Insurance Act (Cth) 1909  
Speaker: The Honourable Justice James Allsop, President of the NSW Court of Appeal

Date: Wednesday 11/11/09

Locations: **Sydney:** Federal Court of Australia, Law Courts Building,  
(Live\*) Queen's Square, Video Court Level 20  
**Newcastle:** University of Newcastle, Board Room UNH 3.09, University House,  
cnr Auckland & King Street  
**Melbourne:** Federal Court of Australia, Owen Dixon Commonwealth Law Courts Building,  
305 William Street, Court 8E

Time: 1300 – 1400hrs  
Cost: No charge  
RSVP: Newcastle - [Stuart.Gray@harriswheeler.com.au](mailto:Stuart.Gray@harriswheeler.com.au)  
Melbourne - [Jenny.Bazakas@hfw.com](mailto:Jenny.Bazakas@hfw.com)  
Sydney - [jl@admiralty.net.au](mailto:jl@admiralty.net.au)

Webcast: <http://tandberg-cs.newcastle.edu.au/tcs/#page:conferenceList&status:live>

**Continuing Legal Education**

NSW Bar Association: Approved for CPD one point per hour of attendance. NSW Law Society: If this particular educational activity is relevant to your immediate or long term needs in relation to your professional development and practice of the law, then you should claim one "unit" for each hour of attendance, refreshment breaks not included.