



# SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



## Australian Report

I first pay my respects to the Turrbal and Jagera people of the land where I work and live, Meanjin Brisbane.

As always, the first half of the year has simply flown by and the winter woollies have now been deployed (albeit less in Queensland than elsewhere in Australia).

There is still much upheaval in the maritime (and broader) world with ongoing incidents in the Red Sea attributed to the escalating conflict in the Middle East, the prolonged war in Ukraine and geopolitical manoeuvring in the Asia-Pacific (APAC) region. Our thoughts are with the seafarers who keep world trade turning, at great risk to their own lives and their families' livelihoods.

Below is a snapshot of the work MLAANZ is focusing on in Australia.

### **MLAANZ Branches**

The Australian MLAANZ Branches have held a number of local events in their respective jurisdictions this quarter, as follows:

- MLAANZ Western Australia – 8 April virtual seminar hosted by Clifford Chance: “Dangers of transporting lithium batteries by sea” with speaker Stephen McMeeking (Australian Maritime Safety Authority ship inspections and registration manager)
- MLAANZ New South Wales – 15 May Branch seminar at the Federal Court in Sydney with presentations by Dr Robin Bowley “Potential legal issues that could result from the Red Sea Crisis” and Michael Tatham on “Risks of caveats against release of a vessel *Delta Corp Ship Management DMCCO v The Ship ‘Caledonian Sky’* [2023] FCA 1058”
- MLAANZ Queensland – 9 May evening with the Queensland Bar seminar and networking event hosted by Hemmants List and chaired by Kelly McIntyre showcasing Queensland barristers, with enjoyed presentations from Alexander McKinnon, William Isdale and Samuel Walpole



MLAANZ Australia vice-president  
Naraya Lamart

### **The CMI, Conventions and Consultation**

MLAANZ's immediate past resident Michelle Taylor attended the Comité Maritime International (CMI) conference in Gothenburg (Sweden) to represent MLAANZ and participate in the discussions. Please see the [president's report](#) for more detail on this and look out for Michelle's report in the next edition of *Semaphore*.

MLAANZ has also presented a letter to the Australian Government urging it to sign the Beijing Convention on the Judicial Sale of Ships. More detail on this in the [president's report](#).

MLAANZ has been invited to attend the upcoming Shipping Consultative Forum in September 2024 and we will report on those discussions in the next edition. Given the geopolitical challenges, it seems likely that discussions regarding The Maritime Strategic Fleet will remain high on the agenda.

## ***Other Happenings***

### ***s11 COGSA Reforms***

MLAANZ has signed a joint letter with the Australian Maritime and Transport Arbitration Commission (AMTAC) on proposed reforms to s11 of the Carriage of Goods by Sea Act 1991 (Cth). A link to the letter and details of the proposed reforms are set out in the [president's report](#).

### ***Marine Order 11 Consultations***

The Australian Maritime Safety Authority (AMSA) has opened consultations on Marine Order 11.

The proposed changes to Marine Order 11, which applies to Australian-regulated vessels and foreign vessels, set out requirements for living and working conditions onboard vessels including health, conditions of employment, food and social security protections.

The changes extend to, among other things, adequacy of insurance coverage to compensate seafarers for losses incurred during the recruitment process and ensuring sufficient financial security for the repatriation of seafarers.

A summary of the key proposed changes can be accessed [here](#).

The consultation period closes 28 July.

### ***Recent Federal Court Admiralty Decision***

#### ***Burrows v The Ship "Merlion" [2024] FCA 220***

In this interesting case, Her Honour Justice Derrington made orders dealing with a range of interlocutory issues, including challenges to jurisdiction, summary dismissal applications and even an application directed at the Federal Court Admiralty Marshall for a declaration to provide possession of the vessel under arrest to the plaintiff.

The plaintiff had handed over possession of the Merlion to a ship builder as part of a transaction to build a new vessel. The ship builder subsequently went into voluntary administration and the Merlion was "transferred" to a third party by the sole director of the ship builder in lieu of payment of outstanding debts due to the third party. The third party is the first defendant in the proceedings who had not insignificant dealings with, and knowledge of the operations of, the ship builder.

Justice Derrington considered the jurisdictional challenges in the context of each cause of action pleaded. These were largely dismissed with the exception of a challenge to a misleading and deceptive conduct pleading under the Australian Consumer Law (ACL). In essence, Justice Derrington held that the ACL claim arose out of the dealings for the contract for the new vessel and was accordingly not a proprietary maritime claim relating to the possession or ownership of the Merlion.

Besides being factually interesting, the case otherwise offers helpful guidance on the threshold regarding reasonable prospects of success for summary dismissal applications. Her Honour's clear reasoning regarding the claims that were not dismissed (including a finding that there were at least reasonable prospects of establishing liability against the first defendant for a claim in conversion/*detinue*) would also have given the first defendant pause before defending any subsequent trial.

In *(No 2)* [2024] FCA 429, the plaintiff brought a claim for summary judgment and seeking declaratory relief in circumstances where the first defendant indicated he had no intention of participating in the proceedings. On 26 April 2024, Justice Derrington ordered the first defendant file a defence by 3 May 2024 or the declaration sought by the plaintiff to have the Merlion restored to him be granted.

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June 2024

