



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



President's Message

Kia ora

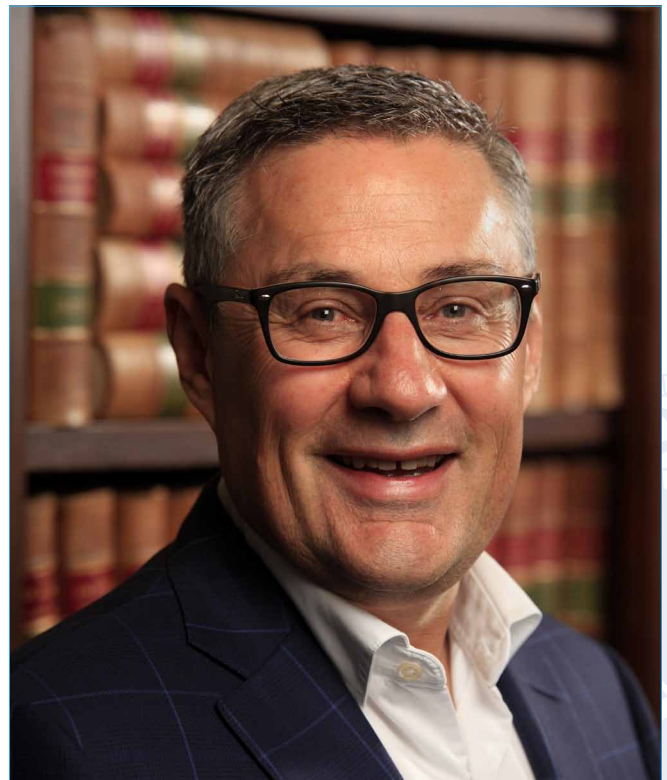
We have recently marked a significant event in maritime law as Comité Maritime International (CMI) held its annual colloquium in Gothenburg (Sweden). MLAANZ immediate past president Michelle Taylor represented MLAANZ. It was a wonderful opportunity for Michelle to build on strategic and personal relationships established during her presidency to enhance our association's reputation in the international maritime law community. We look forward to Michelle's report in the next *Semaphore* and as a teaser I have highlighted in this column the work that goes on at CMI and its conferences.

CMI's Gothenburg focus included exploring 100 years of unifying carriage of goods by sea, both present and future, and the implications of the Red Sea crisis on shipping and global trade. So, it was pleasing to see our association already receiving presentations on the Red Sea crisis at the New Zealand Branch conference two months ago by Chris Griggs and Dr Tracey Epps. I am sure the topic will play a role in our federal Queenstown conference between 2 and 4 October as tensions escalate in the Middle East.

However, much of the work of CMI is undertaken in the two days leading up to the conference proper, with two days of workshops covering:

- polar shipping
- judicial sales
- marine insurance
- implementation and promotion of maritime conventions
- Collision Convention
- piracy, maritime violence and fraudulent activities
- decarbonisation
- automation and AI in shipping
- errors of masters and crew vicarious liability and limitation
- salvage and COLREGs

Of particular interest is the significant contribution our very own Stuart Hetherington plays at CMI and it is a measure of his stature within that organisation that he presented on the Ratification of Rotterdam Rules and the Negotiable Cargo Documents International Working Group at Gothenburg.



MLAANZ president Hamish Fletcher

Next year's CMI colloquium is in Japan and I look forward to representing MLAANZ and building on the significant work undertaken by our past presidents. I encourage as many of our members to attend – you don't have to be on the Federal Board to do so – and as it helps enhance our international reputation, the larger the contingent the better.

Notable Anniversaries

Further on the international front I would like to congratulate the United States of America Maritime Law Association on celebrating its 125th year – a fantastic achievement. CMI president Ann Fenech attended the conference as a special guest. This leads me on to letting you all know that MLAANZ has a 50th Birthday this year by virtue of the Australian Association being formed 50 years ago. So, we will be celebrating this and marking it at our Queenstown federal conference.

Beijing Convention on the Judicial Sale of Ships

At Federal Board level we have urged the Government of Australia to send a delegate to Malta on 19 June 2024 to sign the Beijing Convention on the Judicial Sale of Ships, by writing to the Department of Infrastructure and highlighting that a key objective of MLAANZ, as set out in its constitution, is to promote uniformity in international maritime law (a response has subsequently been received from the Department).

Consistent with this objective, and as a member of CMI, MLAANZ has resolved to promote the ratification of the United Nations Convention on the International Effects of Judicial Sales of Ships, known as the “Beijing Convention on the Judicial Sale of Ships” (Convention) by the Commonwealth Government of Australia. Thanks to Naraya Lamart, our vice-president, and Michelle who took the lead on this and presented the letter to Government.

Review of s.11 of Australian COGSA

We have also supported the Australian Maritime and Transport Arbitration Commission (AMTAC) in a joint letter to Shipping Australia on the Review of Section 11 of Carriage of Goods by Sea Act (Cth) 1991 (Australian COGSA). The Federal Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) Review addressed three Concerns that were raised in relation to the current terms and operation of s.11 of Australian COGSA, namely:

1. a lack of clarity and certainty relating to the types of documents to which s.11 applies (Concern 1);
2. the level of protection afforded by s.11 to inter-State cargo interests being less than the protection afforded to Australian importers and exporters (Concern 2); and
3. the possibility of an arbitration clause being rendered valid by s.11(3) where the seat of the arbitration it provides for is located in a different jurisdiction or place to the venue in Australia where the arbitration is to take place (Concern 3).

The joint letter sets out the joint recommendation of AMTAC and MLAANZ:

It is the submission of each of our respective organisations that it is in the Australian national interest for these three Concerns to be addressed by amending s.11 of Australian COGSA in order to provide those Australian entities involved in inter-State and international shipping, with greater certainty and clarity in the application of the provisions of that section to their contracts of carriage of goods by sea. This is especially where the policy considerations that underlie s.11 and its application are significant and longstanding, and where, in our opinion, those policy considerations should be clearly and uniformly applied across all those interested and participating in the carriage of goods by sea both inter-State and internationally.

The three Concerns that have been raised by the Department and its Review are relevant to both carrier and cargo interests operating in Australia. This is especially given that they impact directly on the potential resolution by Australian seated arbitrations of claims arising out of the carriage of goods by sea not only into and out of Australia, but also inter-State and around Australia.

“Concern 1: Definition of a “Sea-Carriage Document” for the Purposes of s.11

The text of Australian COGSA does not contain any definition of the phrase “sea-carriage document” as it is used in s.11 of COGSA.

Solution

Amend s.4 of Australian COGSA so as to define “sea-carriage document” either:

- (a) by using the definition found in the State based Sea-Carriage Documents Act 1997, namely as “a bill of lading, sea waybill or ship’s delivery order”; or
- (b) by repeating or referring to the definition of that phrase in Article 1(1)(g) of the amended Hague Rules in Schedule 1A of Australian COGSA.

Concern 2: Application of s.11 to Inter-State Carriage of Goods by Sea

Section 11(2) of Australian COGSA strikes down foreign arbitration and exclusive jurisdiction clauses in sea carriage documents for the carriage of goods by sea into and out of Australia. But that sub-section does NOT apply to contracts for the carriage of goods by sea inter-State, nor strike down foreign arbitration and exclusive jurisdiction clauses in such contracts. Failing to provide those involved in the inter-State carriage of goods by sea with the same protections that s.11 gives Australian importers and exporters (in particular as to where disputes concerning such carriage are to be resolved), is damaging to the interests of the former.

Solution

Amend s.11 to ensure equal treatment of both international and inter-State carriage of goods by sea, by extending to contracts for inter-State carriage of goods by sea the same protection against foreign arbitration and exclusive jurisdiction clauses that is currently available under s.11(2) to contracts for the carriage of goods by sea into and out of Australia.

Concern 3: Seat of Arbitration

Section 11(3) of Australian COGSA provides an exception to the prohibition otherwise found in s.11(2) for arbitration clauses where the actual physical hearing of the arbitration provided for by that clause is to be held in Australia. This is irrespective of the seat of that arbitration. Further, the exception available under s.11(3) would also not apply to an arbitration clause providing for an Australian seated arbitration, if the hearing is to take place elsewhere.

Solution

Amend s.11(3) to stipulate that the seat and the venue of the arbitration proceeding must be in Australia, in order for s.11(3) to apply to an arbitration clause and for that clause to not be made ineffective pursuant to s.11(2) of Australian COGSA. “

Thanks to Greg Nell KC, a MLANZ member and AMTAC chair, who took the lead on this.

Click this [link](#) to view the letter.

MLAANZ Survey

MLAANZ recently sent out a questionnaire (for which a reminder will be issued soon) which I encourage you to complete so we can identify what we do well, where we can improve and what should we stop doing. We want to ensure we are relevant to what you, as our members, want from MLAANZ.

As editor-in-chief of *Semaphore* along with editor Iain MacIntyre, we want to use the publication not only for academic orientated papers and maritime news and events but as an opportunity to showcase our “people” As a Māori proverb aptly describes – He tangata, he tangata, he tangata – what is the most important thing in the world? It is people, it is people, it is people. The plan is to provide interesting interview-style articles about not only our senior, experienced members but also use the opportunity to introduce new members, young and old. So, I hope you enjoy our first interviewee in this regard, Ian Maitland, and learn not only about his outstanding career but also more about the person that makes up who Ian Maitland is.

Change of Helm at NZ Branch

Finally, I would like to congratulate and welcome John Knight as the new New Zealand Branch president/chair. This brings to an end my dual role as MLAANZ president and NZ Branch president/chair. I look forward to being able to solely focus on the Federal Board presidency knowing in John, the New Zealand Branch has an excellent leader. John will be supported by a new secretary in Colin Hunter and new treasurer in Theo Ewart. The New Zealand Branch has been busy in the past month in its preparations for the federal conference in Queenstown.

Nga Mihi
Hamish Fletcher
President, MLAANZ
p +64 3 548 4136, m +64 27 220 5122
hamish@oceanlaw.co.nz

June 2024

