

3. ARTICLES AND PAPERS

OPENING ADDRESS OF THE TENTH ANNUAL GENERAL MEETING AND CONFERENCE OF THE MLAANZ

By THE HON. PETER MORRIS M.P.

As noted elsewhere in this edition of the Journal, the Association was honoured to have its most recent Conference opened by the Minister for Transport. The Minister's address was referred to by many of the subsequent speakers and, indeed, it might be said that it set the theme for much of the rest of the Conference. The address is reproduced below.

This morning I would like to speak to you on the subject of international maritime conventions.

I note that Frank Wiswall will be presenting a paper later on the international regulation of merchant shipping, but while I do not want to pre-empt his comments, I thought I should set out for you the Government's policy on conventions and to explain the status of those of current interest.

Australia's record in becoming a party to international treaties and agreements on shipping matters has not been spectacular.

Our Government, however, has a firm policy commitment to promote the development and application of international transport conventions in order to secure fullest international agreement on safety, environmental protection and other transport matters of concern to Australia.

Of course, there is a valid reason for Australia taking longer to become a party to a convention than a country without our federal system. Obtaining the necessary legislative compliance with the terms of a convention in all jurisdictions can be a time-consuming process. A process which is essential but too often fraught with political difficulties. Notwithstanding this, we intend to give higher priority to the improvement of that process.

The commitment of our Government to reconciliation, consultation and consensus is a real one. It is a deliberate policy directed at all areas of government which have stumbled for too long over problems which stem from narrow concerns and which ignore the broader national interest. It is my hope that, in the future, our relations with the States will be such that the ratification process will be smoother than it has been.

For your interest, I will turn now to specific conventions currently the subject of our attention.

SAFETY OF LIFE AT SEA CONVENTION 1974 ("SOLAS '74")

We acceded to this Convention and its 1978 Protocol last month.

This will come into force for Australia on 18 November 1983, along with fourteen parts of Marine Orders which will implement the detailed provisions of the Convention.

Australia is not quite the last nation to become a party to SOLAS '74. Indeed, there are still thirty-nine countries left to adopt it but the sixty-seven countries which have joined in SOLAS '74 make up about ninety-three per cent of the world's merchant fleet.

The 1981 Amendment to SOLAS '74 will come into force internationally next September and Australia will automatically adopt those. In fact, the Marine Orders being finalised now foreshadow those amendments.

FOUR CONVENTIONS TO BE RATIFIED IN NOVEMBER

It is hoped that instruments of ratification or accession to another four conventions will be deposited at the biennial meeting of the Assembly of the International Maritime Organisation in November, at which Australia will be represented. I say "hope" because there are still some outstanding executive actions required before instruments can be deposited, but I am confident that these will be completed in time.

1. *Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 ("STCW")*

This Convention will come into force internationally on 28 April 1984, so Australia will be one of the original participating nations.

The provisions of the Convention are already being implemented in Australia. Most of the training and certification requirements for officers were introduced on 1 January 1982; the remainder, plus the requirements for training and certification of ratings, were introduced on 1 August 1983.

Those provisions of the STCW Convention which need to be applied to ships under the control of the States and the Northern Territory are being incorporated into State and Territory legislation.

2. *Search and Rescue Convention of 1979 ("SAR")*

At the last count, there were thirteen contracting States and fifteen are needed to bring it into force. Australia will make fourteen, so this Convention, which aims to develop and promote co-ordination of activities regarding safety on and over the sea by establishing an International Maritime Search and Rescue Plan, is very close to coming into force internationally.

3. *Convention on Civil Liability for Oil Pollution Damage 1969 and its Protocol of 1976 ("CLC")*

This Convention came into force internationally in June 1975. It ensures that adequate compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge

of oil from ships. So our becoming a party to this Convention and its Protocol in November will mark the end of a long delay.

4. *International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969 and its Protocol of 1973 Covering Substances Other Than Oil ("INTERVENTION")*

The Convention has also been in force internationally since 1975, although the Protocol only came into force in March this year.

This Convention introduces an important exception to the general rule that ships on the high seas are under the exclusive control of the flag state. It allows a coastal state under a grave and imminent threat of pollution, following a maritime casualty, to take appropriate intervention action on the high seas.

In addition to the acceptance of these four conventions in November, we are moving ahead on a number of others, particularly in the pollution field.

The Legal Committee of the International Maritime Organisation has been busy in recent years preparing amendments to the Civil Liability Convention ("CLC") and to the Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 ("the Fund Convention"). It has also been putting together a convention to provide a compensation and liability regime for ships carrying noxious and hazardous substances. Australian delegations have actively participated in sessions of the Legal Committee engaged in this work.

The attention of all member states of the International Maritime Organisation is now being concentrated on an international conference, to be held in London during April and May 1984, at which it is intended that final texts will be agreed. By becoming a party to the Civil Liability Convention before that conference is held, Australia will be able to participate fully in developing amendments to that instrument.

The benefits to be gained by Australia becoming party to the Fund Convention are not so clear and further study is required before our position can be confidently determined.

CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS 1973-1978 ("MARPOL")

This Convention, designed to control operational discharges of pollutants from ships, is to come into force internationally on 2 October 1983. MARPOL is basically environmental in its origins and effects and I believe that it effectively incorporates concern for the marine environment.

Australia has an extensive coastline and spread of territorial waters.

It is fundamentally important that we be able to demonstrate to ourselves and the international community that we take our responsibility for this national and global resource seriously and that we are committed to its protection. It was, therefore, with great personal satisfaction that the first major legislation which I put through the Parliament as Minister for Transport was the legislation to give effect to this important convention.

It is now up to the States to enact complementary legislation to apply MARPOL in their respective jurisdictions. The Standing Committee of Attorneys-General is currently drafting a model Bill which the States can use for this purpose and we are looking forward to Australia being able to ratify the Convention shortly.

Before I say something of the conventions with parentage other than the International Maritime Organisation ("I.M.O."), I should mention two other I.M.O. Conventions that are under consideration.

CONVENTION ON FACILITATION OF INTERNATIONAL MARITIME TRAFFIC 1965 ("FAL")

This Convention aims at simplifying and reducing to a minimum the formalities, documentation and procedures on the arrival, stay and departure of ships. It came into force internationally in 1967 and there is no good reason why Australia could not have become a party to it long ago. Indeed, it came close to doing so in 1975 — during the last Labor Government — but since then progress has languished. I intend to see that we become a party to this Convention early in 1984.

CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS 1976

This Convention is not yet in force internationally — in fact, there are only seven parties out of the twelve required to bring it into force.

There have been extensive discussions between the Commonwealth and the States on whether Australia should move towards the adoption of this Convention. Although it provides for higher liability limits than the 1957 C.M.I. Convention, the opinion at the moment is that no clear case has been made out for adoption. The States are reluctant to accept the limitation for damage to harbour works which is incorporated in the 1976 Convention and there is a reluctance to see a change in onus of proof in limiting liability shifted from the shipowner to the claimant. This does not mean that the 1976 Convention has been rejected — it means that it will be kept under review and re-examined closer to the time of its entry into force internationally.

I have paid particular attention to I.M.O. Conventions this morning for two reasons. The first is that in recent years most of the important maritime conventions have come out of I.M.O. The second is that

I.M.O. has dealt in the main with the hardware of shipping — the ships themselves, their crews and the way they operate. It is in these areas that governments have a vital role to play in administration. But to do this effectively, a government must have the co-operation and involvement of practitioners.

In the realm of ships and crews, we have a well-established machinery for consultation with industry through Maritime Services Advisory Committees. These Committees discuss virtually all matters affecting the regulation of the industry and all significant legislation. On the private law side, consultation may not be so formal but it is nonetheless as important. The views of practitioners are essential if the Government is to represent Australia's interests adequately in international forums.

The thorny question of liability regimes is a case in point. There is considerable division of opinion on the relative merits of the Hamburg and the Hague Rules. Australia's cargo liability laws embody the Hague Rules, which have several commonly recognised deficiencies. They contain many exemptions in favour of the shipowner; they only apply to goods actually on a ship; the monetary limits of liability have not kept pace with inflation; and the monetary limits apply "per package or unit" which has proved very difficult to interpret, particularly in this age of containers. The Visby Amendments adopted in 1968 update the monetary limits of liability and adopt a clearer test of "package or unit". While several countries, including the United Kingdom, have adopted the Visby Amendments, Australia has not.

Another set of rules on cargo liability was adopted in 1978 — the Hamburg Rules. These essentially shift liability for cargo loss or damage to the carrier, subject to some exceptions and an overall liability limit.

A decision will not be taken on acceptance of the Hamburg Rules until all sections of the industry have been closely consulted. Indications are that shippers, bankers and the Law Council of Australia all support the Hamburg Rules while shipowners and the insurance industry support the Hague-Visby Rules. It would seem logical that, as a predominantly shipper nation, Australia would be better served by the Hamburg Rules as providing a more equitable balance between shipper and carrier liability. However, there have been suggestions that implementation could lead to increased costs for shippers. Additionally, none of the nine countries which have so far accepted the Hamburg Rules are major trading partners of Australia. Those who are, particularly the United Kingdom, favour the Hague-Visby Rules. To complicate the matter further, the Multi-modal Convention adopted under the auspices of UNCTAD is, in effect, an extension of the Hamburg Rules to all modes of transport. So the question is a complex one.

The choice between Hamburg and Hague-Visby cannot be made in isolation and, while the Hamburg Rules appear attractive, we need to take into account the line being pursued by our major trading partners. Consultations with interested parties are continuing. Your own submission was very welcome.

Our Government looks to your Association as a major source of advice on these questions. You have already provided useful assistance towards the establishment of Australia's own Admiralty jurisdiction, through the excellent report produced under your auspices by Mr Justice Zelling. As you probably know, the Australian Law Reform Commission has been charged with the task of reviewing Admiralty jurisdiction using that report as a starting point. I am confident that your Association will make further significant contributions before the task is concluded and that Australia will finally have its own jurisdiction to set alongside its own ship registration system.

Mention of ship registration leads me to the final convention that I want to say something about this morning — that large and controversial United Nations Convention on the Law of the Sea ("UNCLOS").

Along with one hundred and eighteen other countries, Australia signed UNCLOS in Jamaica on 10 December 1982. This, however, is just the beginning. Working out how the laws and practices in Australia must change to reflect UNCLOS is an enormous task.

Ship registration is only one aspect which will need reassessment. Article 94 of UNCLOS 1982 imposes a new obligation on a country to maintain a register of ships containing the names and particulars of ships flying its flag. The only exceptions are those ships which are excluded from generally accepted international regulations on account of their small size. Australian registration legislation currently exempts all government ships, fishing vessels and pleasure craft, as well as small craft under twelve metres in length. Of course, virtually every set of international regulations chooses a different criterion for "small size". Our current thinking is that the twenty-four metres adopted by the Tonnage Measurement Convention would be the most appropriate. This is a matter on which we are consulting with interested parties.

Mr Chairman, I began this morning by congratulating the Association on its tenth birthday. I feel I ought to congratulate you on another milestone in the Association's life — its first Journal, published earlier this year — and to add a footnote to one of the articles published in that first issue.

Morella Calder's article¹ on maritime liens and mortgages raises the problem of whether a mortgagee of a mortgage registered under the Shipping Registration Act 1981 (Cth) could still arrest a vessel, in an action *in rem*, for a breach of the mortgage.

¹ March 1983, Vol. 1 No. 1, p. 12.

The point is well taken. I hope to put to the Government shortly proposals for amendments to the Shipping Registration Act 1981 (Cth) arising from the experiences of the first eighteen months of operations and I expect one of the amendments will put Miss Calder's point beyond doubt.

Mr Chairman, let me conclude by reiterating the Government's firm commitment to bring Australia's maritime law into line with the most up to date and widely accepted international standards. Our Government has in its first six months made considerable headway. I am confident that before our present term of office expires our policy aims will have been substantially achieved. We are directing attention not only to the existing conventions but also to those presently under negotiation.

In this regard, it is essential that we remain in close touch with the international community, particularly through an active participation in the International Maritime Organisation. It is also most important that as part of the process we consult widely with affected parties within Australia both at the negotiation and at the implementation stages of a convention. Your own Association is making a significant contribution in this field and it has delighted me to have had the opportunity to address you.

You have a full agenda of discussions over the next three days, I am delighted to see, with plenty of opportunities for you to get together socially. To your visitors from overseas, may I extend a warm welcome to Australia, and to all participants may I wish you a very successful Conference.

It gives me great pleasure to declare your Tenth Annual Conference open.