



THE UNIVERSITY OF QUEENSLAND
AUSTRALIA

TC Beirne School of Law

Marine & Shipping Law Unit Report 2015-2017

MASLU MEMBERS

Professor Craig Forrest (Director)
Professor Sarah Derrington
Professor Nick Gaskell
Associate Professor Qiao Liu
Dr Vincent Cogliati-Bantz (to 2016)
Adjunct Professor Dr Michael White OAM QC
Adjunct Professor Dr Damien Cremean

MASLU ACADEMIC VISITORS

Alex Herman (July-December 2015)
Nippon Fellow, Seabed Minerals Authority, Cook Islands

Associate Professor Xuyu Hu (August 2016 – September 2017)
Nankai University Law School, China

Wu Ningbo (September to December 2016)
PhD candidate, Fudan Law School, China

Professor Massimiliano Piras (February 2017)
Ordinario di Diritto della navigazione
Università di Cagliari, Italy

Dr David Goodwin (November 2017)
MBA Director, RMIT University, Melbourne

MASLU HDR SCHOLARS

Ashwin Nair, MPhil Candidate

Thesis title: *Maritime liens in 21st century Australia – transferability and conflict*

Yan Xuan, PhD candidate

Thesis title: *China's Maritime Arbitration System's "Selective Adaptation" to International Legal Norms and Practice*

MASLU RESEARCH AND ENGAGEMENT EVENTS

TRANSBOUNDARY MARINE POLLUTION RESPONSE WORKSHOP



The central focus for MASLU in 2015 was the organising and convening of a workshop on Transboundary Maritime Environmental Pollution from 20th-22nd May 2015 on behalf of the Department of Foreign Affairs and Trade (DFAT), and in conjunction with the Australian Maritime Safety Authority (AMSA). The Workshop was held as part of Australia's support for the Expanded ASEAN Maritime Forum (EAMF) Expanded ASEAN Seafarers' Training (EAST). The workshop was co-chaired by Australia (Mr Jamie Storrie, Acting General Manager, Marine Environment, Australian Maritime Safety Authority) and Vietnam (Mr Le Dai Thang, Deputy Director, Bureau of Marine Resources Control and Marine Island Environment Protection, Ministry of Natural Resources and Environment).

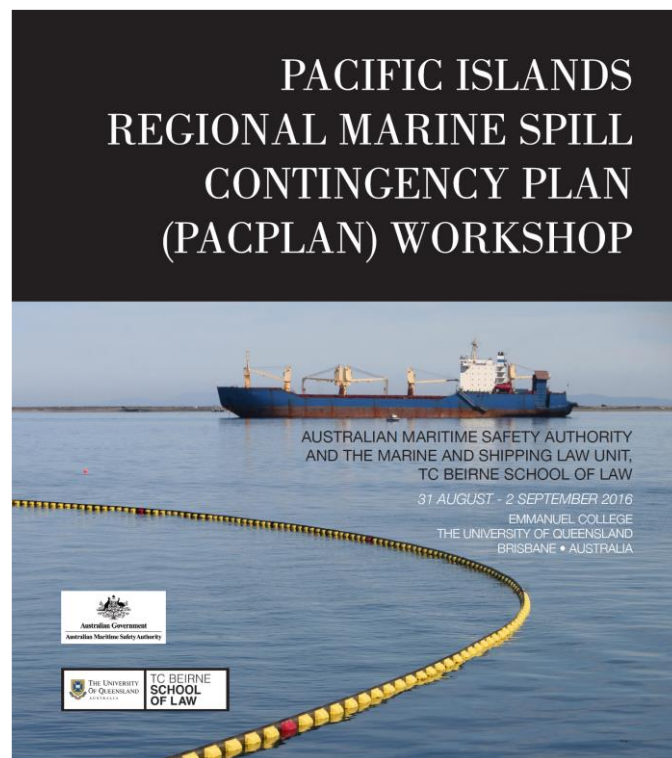
The workshop was designed and delivered by Professor Craig Forrest (MASLU) and Mr Jamie Storrie. It featured a number of keynote speakers, including Ms Colleen O'Hagan, Technical Officer, International Maritime Organisation (IMO); Mr Alex Hunt, Technical Team Manager, International Tanker Owners Pollution Federation (ITOPF) and Mr Said Faisal, Director, ASEAN Coordinating Centre for Humanitarian Assistance on disaster management (AHA Centre). MASLU members Professor Nick Gaskell and Adjunct Professor Michael White QC presented the bulk of the learning material on day 1 of the workshop.

Participating delegations were from Australia, Cambodia, Indonesia, Japan, Laos, Malaysia, Myanmar, New Zealand, Philippines, Vietnam, Korea and United States. The workshop examined existing international, regional and national mechanisms for co-operation in transboundary marine pollution incident and considered other regimes, mechanisms and good practice that may enhance this existing regime and further cooperation in transboundary marine pollution incidents. A number of pollution incidents were examined and reviewed for lessons learned, beginning with the *Torrey Canyon* spill in 1967 and moving through to more recent spills such as the *Prestige*, *Rena*, *Deepwater Horizon*, *Montara* and spills caused during Typhoon Haiyan.



Workshop delegates, including from third from left: Mr Said Faisal, Director, ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management; Mr Alex Hunt, Technical Team Manager, International Tanker Owners Pollution Federation; Mr Jamie Storrie, Acting General Manager, Marine Environment, Australian Maritime Safety Authority (co-chair); Mr Le Dai Thang, Deputy Director, Bureau of Marine Resources Control and Marine Island Environment Protection, Ministry of Natural Resources and Environment, Vietnam (co-chair); and Ms Colleen O'Hagan, Technical Officer, International Maritime Organisation.

Pacific Islands Regional Marine Spill Contingency Plan Workshop



The Marine and Shipping Law Unit convened and facilitated a workshop on the implementation of the Pacific Islands Regional Marine Spill Contingency Plan (PACPLAN) on behalf of, and in conjunction with, the Australian Maritime Safety Authority (AMSA) on 1 and 2 September 2016.

Marine pollution is widely recognised as one of the four major threats to the world's oceans, and particularly in the Pacific. Spills of oil and other chemicals into the marine environment from ships and other sources, is a significant pollution threat. The Secretariat of the Pacific Regional Environment Programme, in partnership with the International Maritime Organization, has responsibility for implementation of the Pacific Ocean Pollution Prevention Program (PACPOL). A primary mechanism for provision of assistance under PACPOL is the Pacific Islands Regional Marine Spill Contingency Plan (PACPLAN) that provides a mechanism for a number of Pacific Island States to seek assistance on a co-operative basis from Australia in the event of a marine pollution incident. This workshop was designed to engage five of these Pacific Islands States and Australia in a discussion of the implementation of PACPLAN. The results of the workshop will allow the participating States to further consider the participation in, and implementation of, International Maritime Organisation's maritime law conventions that will facilitate the most effective implementation of PACPLAN should a pollution incident occur in the Pacific.

Participants attending the workshop were from Solomon Islands, Vanuatu, Nauru, Tuvalu, Kiribati and Australia as well as from the Secretariat of the Pacific Regional Environment Programme and from the Secretariat of the Pacific Community. The workshop was designed by Professors Craig Forrest (MASLU) and Mr Matt Johnstone and Ms Alice Fenwick (AMSA) and delivered by Professor Nick Gaskell and Adjunct Professor Michael White QC (MASLU), together with speakers from AMSA, SPREP and the participating Pacific Island States.



Pacific Islands Regional Marine Spill Contingency Plan Workshop delegates at Emmanuel College UQ

SEMINARS

On 25 February 2015, MASLU hosted a twilight seminar entitled “*Maritime Powers Act 2013 and Refugees: Where Next?*” The panel of speakers (Adjunct Professor Dr Michael White QC, Professor Nick Gaskell and Associate Professor Peter Billings) considered the implications of the 2015 High Court decision in *CPCF v Minister for Immigration and Border Protection* on international maritime law and national administrative law powers, and its relationship to the Maritime Powers Act 2013, as recently amended.

On 18 August 2016 a joint MASLU, MLAANZ and ILA Seminar entitled “*The South China Sea Decision: A Snapshot of Issues*” hosted by Clayton Utz, at their offices in Brisbane. The panel of speakers (professor Anthony Cassimatis, Adjunct Professor Michael White OAM QC and Professor Nick Gaskell) considered the implications of the arbitral decision handed down by the Permanent Court of Arbitration in the Hague (the PCA) in the matter brought by the Philippines against China.

MASLU Publications

BOOKS

V Cogliati-Bantz, *Means of Transportation and Nationality: Transportation Registered by International Organizations* (Routledge 2015)

D Cremean, *Admiralty Jurisdiction and Practice (Australia, New Zealand, Singapore, Hong Kong and Malaysia)* (4th edn, Federation Press, 2015)

M White *Australian Submarines: A History* (2nd ed, ATOM 2015).

S Derrington and J Turner, *The law and practice of admiralty matters* (2nd ed. Oxford University Press, 2016)

JOURNAL ARTICLES & BOOK CHAPTERS

V Cogliati-Bantz, 'Archipelagic States and the New Law of the Sea' in Lilian del Castill (ed), *Law of the Sea, from Grotius to the International Tribunal for the Law of the Sea. Liber Amicorum Judge Hugo Caminos* (Brill, Leiden 2015) 299- 317

C Forrest, 'South Africa' (2015) *International Maritime and Commercial Law Yearbook* 183-194

N Gaskell, 'Developments in Australian Maritime Law 2013-2014' (2015) 46 (3) *Journal of Maritime Law and Commerce* 311-351

N Gaskell, "Limitation of Liability and Division of Loss in Operation" in S. Gault, General Editor, *Marsden and Gault on Collisions at Sea* (14th ed. 2016, Sweet and Maxwell) 973-1020.

C Forrest, 'South African Maritime Law (2016) *International Maritime and Commercial Law Yearbook* 200-2010

C Forrest, 'State Cooperation in Combating Transboundary Marine Pollution in South East Asia' (2016) 30 *Australian and New Zealand Maritime Law Journal* 78-89

N Gaskell and C Forrest "The Wreck Removal Convention 2007" [2016] *Lloyd's Maritime and Commercial Law Quarterly* 49-117

H Zhong and M White "South China Sea; Its Importance for Shipping, Trade, Energy and Fisheries", (2017) 2 *Asia-Pacific Journal of Ocean Law and Policy* 9-24.

V Cogliati-Bantz 'The South China Sea Arbitration (The Republic of the Philippines v. The People's Republic of China) (2016) 31(4) *The International Journal of Marine and Coastal Law*, 759-774

V Cogliati Bantz, 'Archipelagic States and the new Law of the Sea'. in L. Del Castillo (Ed.) *Law of the Sea, from Grotius to the International Tribunal for the Law of the Sea: Liber Amicorum Judge Hugo Caminos* (Leiden, The Netherlands: Brill, 2015).

V Cogliati-Bantz, 'L'immatriculation des navires par les organisations internationales : une question négligée' (2015) *Annuaire du droit de la mer*, 20, 233-286

N. Gaskell, Review of Kate Lewins, *International Carriage of Passengers by Sea* (2017) *Journal of Business Law*, 261-267.

C Forrest, 'The Law and Practice of Piracy at Sea: European and International Perspectives, Edited by Panos Koutrakos and Achilles Skordas' (2016) 30 *Ocean Yearbook* 594-598

N. Gaskell, Review of Henrik Ringbom (ed), *Jurisdiction over Ships: Post-UNCLOS Developments in the Law of the Sea* (2016) 22 *Journal of International Maritime Law* 151-154.

C Forrest 'South African Maritime Law (2017) *International Maritime and Commercial Law Yearbook* 181-188

CONFERENCE PAPERS & SEMINARS

P Billings, N Gaskell, M White QC, 'Maritime Powers Act and Refugees: Where Next?', Maritime and Shipping Law Unit (MASLU) Twilight Seminar Series, TC Beirne School of Law, UQ (25 February, 2015)

N Gaskell, 'The Electronic Bill of Lading', Sala delle Armi', Faculty of Law, University of Bologna (15 June 2015)

N Gaskell, 'Good Faith in Carriage Contracts - a Comparative Perspective', in the conference on "Rethinking Commercial Law – Recent Developments and Reform Proposals", Institute of Maritime Law, Southampton University, and Norton Rose Fulbright (London 19 June 2015)

C Forrest, 'Indemnities and towage contracts', Global Shipping Forum 2015, Indemnities and Guarantees in Maritime Law, Faculty of Law, National University of Singapore, 7-8 December 2015

N Gaskell, 'Express and implied indemnities in time charterparties', Global Shipping Forum 2015, Indemnities and Guarantees in Maritime Law, Faculty of Law, National University of Singapore, 7-8 December 2015

C Forrest, 'State Cooperation in Combating Transboundary Marine Pollution in South East Asia', Maritime Law in the Asia-Pacific Region, Wellington New Zealand 25 February 2016

N Gaskell, “Overview of Electronic Bill of Lading – Advantages & Challenges”, in Seminar on ‘Electronisation of Transferable Documents or Instruments Used in International Trade’, UN Commission on International Trade Law (UNCITRAL), Attorney-General’s Chambers of Singapore, Association of Banks in Singapore, Singapore 10-11 March 2016.

C Forrest, 'Salvage Contracts & the Nairobi Convention' AMSA's Salvage & Wreck Workshop, National Maritime Museum, Sydney, 15 June 2016

N Gaskell, “The South China Sea Award” in “South China Sea Decision: A Snapshot of Issues”, MASLU, MLAANZ and ILA Seminar, 18 August 2016, Clayton Utz, Brisbane.

N Gaskell, “International Liability and Compensation Conventions”, in PACPLAN 2016 Workshop, AMSA and MASLU, 31 August -1 September 2016, Brisbane.

N Gaskell, “The Athens Convention on the Carriage of Passengers by Sea 2002”, Maritime Law Association of Australia and New Zealand 43rd National Conference on “Resources vs the Reef”, Noosa, 19 September 2016.

C Forrest, ‘The law of Wreck’ Chinese University of Hong Kong Law School Seminar Series, Hong Kong, 21 April 2017

N Gaskell, “Liability and Compensation Regimes: Pollution of the High Seas”, in High Seas Governance: Gaps and Challenges, Centre for International law, National University of Singapore, Singapore, 24 to 25 April 2017.

C Forrest, ‘IMO Shipping Conventions’ in The International Maritime Organisation’s (IMO) Conventions, Maritime and Shipping Branch, Department of Infrastructure and Regional Development, 3-5 May 2017, Canberra.

N Gaskell, ‘International Liability and Compensation Conventions’ in The International Maritime Organisation’s (IMO) Conventions, Maritime and Shipping Branch, Department of Infrastructure and Regional Development, 3-5 May 2017, Canberra.

N Gaskell, “Energy Cargoes: liability and the environment”, in Global Shipping Law Forum 2017, Shipping and Energy: The Role of the Law, Queen Mary University of London, London 12-13 July 2017.

N Gaskell, “Australian maritime law and international perspectives”, Institute of Maritime Law, University of Southampton, 2 August 2017.

C Forrest, ‘The legal content of the 2001 UNESCO Convention’, in ASEAN-UNESCO Conference on the Protection of the Underwater Cultural Heritage, Makassar, Indonesia 19-20 September 2017

N Gaskell, “Limitation of Liability for Maritime Claims (LLMC Convention)”, in AMSA’s 2nd Annual Salvage & Wreck Workshop 2017, Sydney 28-29 November 2017

MEDIA

C Forrest, 'Maritime War Graves of World War I', Evenings with Tim Cox, 612 ABC (18 Mar, 2015); Breakfast with Ian Newton, Radio Adelaide (9 Mar, 2015); Weekend Wake-up Rod Tiley, 6PR (8 Mar, 2015); Drive with Louise Saunders, ABC Local Radio (9 Mar, 2015) and Nights with Walter Williams, 4BC News Talk (5 Mar, 2015)

N Gaskell, 'Pollution fines from Globex's *Regina*' ABC TV interview shown 22 June 2017

C Forrest 'Australia's War Wrecks' Nightlife with Dominic Knight, ABC National 27 December 2017.

SUBMISSIONS

N Gaskell Oral submission with Stuart Hetherington of MLAANZ, at 2016 meetings organised in Canberra with DFID and Treasury about possible accession by Australia to key maritime law conventions, including the Athens Convention 2002 and the Wreck Removal Convention 2007.

N Gaskell, Submission dated 8/12/2016 (6788 words) on “Unfair Contract Terms and the Maritime Provisions in s.28(1)-(2) of the ACL” to Consumer Affairs Australia and New Zealand’s (CAANZ) Australian Consumer Law (ACL) Review, based on the Interim Report of 14 October 2016. Submission consisted of an analysis of potential defects in the ACL relevant to the maritime law exceptions in Part 2-3 of the ACL. The Final Report in March 2017 noted that it would be necessary to examine exemptions generally in future (see Chapter 4).

N Gaskell, Submission to UK Department for Transport Consultation on changes to domestic legislation implementing certain international maritime liability conventions (in particular, revision of the LLMC 1996). 27 January 2016.

N Gaskell, Response (22 December 2017) to Department of Infrastructure and Regional Development Consultation document 30 November 2017 “Carriage of Passengers and their Luggage by Sea: the Athens Convention 2002”.

CONSULTANCIES

- | | |
|------|---|
| 2017 | Australian Department of Infrastructure and Regional Development – Workshop on IMO Maritime Conventions (Craig Forrest and Nick Gaskell) |
| 2016 | Australian Maritime Safety Authority (AMSA) – Consultancy/workshop Pacific Pollution Plan (PACPLAN) Implementation (Craig Forrest and Nick Gaskell) |
| 2015 | Department of Foreign Affairs and Trade, Government of Vietnam, Australian Maritime Safety Authority and ASEAN Maritime Forum consultancy/workshop: Co- |

- operation in responding to Trans-boundary Marine Pollution incidents (Craig Forrest, Michael White and Nick Gaskell)
- 2015 Australian Maritime Safety Authority (AMSA) – national interest analysis of IMO Wreck Removal Convention (Nick Gaskell and Craig Forrest)
-

MASLU MARITIME COURSES

Maritime Law Courses

In addition to the research and conference presentations by the members of MASLU, those members also contribute to the teaching of maritime law subjects in the undergraduate and postgraduate degrees in the law School.

2015 courses

Marine Insurance Law (LAWS7951). Professor Rob Merkin

Shipping Law (LAWS7865). The Hon James L B Allsop AO (Chief Justice, Federal Court), Peter McQueen and Drew James

Carriage of Goods by Sea Law (LAWS7876), Professor Nick Gaskell

Maritime Law (LAWS5160). Professors Craig Forrest and Nick Gaskell

2016 courses

Admiralty Jurisdiction and Practice (LAWS7863), Professor Sarah Derrington

Marine Insurance Law (LAWS7951). Professor Rob Merkin

Maritime Law (LAWS7865). The Hon James L B Allsop AO (Chief Justice, Federal Court), Peter McQueen and Drew James

Carriage of Goods by Sea Law (LAWS7876), Professor Nick Gaskell

2017 courses

Maritime Law (LAWS7865). The Hon James L B Allsop AO (Chief Justice, Federal Court), Peter McQueen and Drew James

Carriage of Goods by Sea Law (LAWS7876), Professor Nick Gaskell

Maritime Law (LAWS5160). Professors Sarah Derrington and Nick Gaskell

COMBINING MARITIME LAW PRACTICE AND THEORY

Port of Brisbane Visit

A small group of LLM maritime Law students was able to visit the Port of Brisbane on 23 October 2015, along with Professor Nick Gaskell and Dr Alan Davidson. After a presentation about the port by Tim Cope (Trade Development executive), the party observed operations at the bulk coal terminal, the crude oil wharf, the grain and woodchip facilities and the Patrick Container Terminal. From the Patrick Tower, they were able to view the movement of containers by robot carriers, as explained by Matt Hollamby (Manager - Patrick Terminals Division).



Queensland Recreational boat licence course

In February 2015, Professors Nick Gaskell and Craig Forrest, together with three LLM maritime law students, Rosemary Gibson, Alistair Sullivan and Michael Krakat, completed a Queensland Recreational boat licence offered through Allstate Boat Licencing and Training.

Australian and New Zealand Maritime Law Journal

The *Australian and New Zealand Maritime Law Journal* is published by MASLU under the general editorship of Professor Craig Forrest. The table of contents for the past three years is as follows:

2015 Volume 29(1)

General Editor: Professor Craig Forrest

Student Editor: Mr Samuel Walpole

Frank Dethridge Memorial Address

Limitation of Liability as a Risk Allocation Mechanism in Maritime Law The Honourable Justice Alan MacKenzie 1-7

Australian Coastal Shipping: Navigating Regulatory Reform Jennifer Porter 8-17

Does the Maritime Transport Act 1994 (NZ) Effectively Inhibit Marine Pollution? Luke Knights 18-35

In the Wake of the Montreal Convention: Why Maritime Law Should Abolish Limited Liability for Personal Injury and Death Claims Maxwell Smith 36-52

Trans-Tasman Ship Arrests: A Missed Opportunity Luke Strom 53-69

Casenote: *Svitzer Salvage v Z Energy Limited and Another* [2013] NZHC 2585:

The Interaction between the Law of Salvage, the Law of Contract and the Salvage Convention in Circumstances of Duress Alistair Sullivan 70-74

Fair Work Ombudsman v Pocomwell Ltd [2013] FCA 250; [2013] FCA 1139 R. E. Lindsay 75-82

Book Reviews: *Maritime Law Evolving: Thirty Years at Southampton* Dr Damien J Cremean 83-84

2015 Volume 29(2)

General Editor: Professor Craig Forrest

Student Editor: Mr Samuel Walpole

The Owner's Vulnerability to the Liabilities of the Demise Charterer Angus Stewart SC 85-92

Cruise Ship Operators, Their Passengers, Australian Consumer Law and State Civil Liability Acts - Part 1 Kate Lewins 93-110

Can You Arrest Bunkers in Australia? Quintin Alexander Rares 111-121

Book Review: Australian Maritime Law Yvonne Baatz 122-123

Book Review: The South China Sea Arbitration: A Chinese Perspective Timothy Stephens 124-126

2016 Volume 30(1)

General Editor: Professor Craig Forrest

Guest Editor: Dr Bevan Marten

Student Editors: Mr Zackary George and Miss Erin Gourlay

Frank Dethridge Memorial Address

Charting Our Own Courses: The Australia, New Zealand, and Singapore Journeys in Maritime Law The Honourable Justice Steven Chong 1-11

Cruise Ship Operators, Their Passengers, Australian Consumer Law and Civil Liability Acts - Part Two Kate Lewins 12-27

Reviewing Knock for Knock Indemnities: Risk Allocation in Maritime and Offshore Oil and Gas Contracts Pat Saraceni, Nicholas James Summers 28-43

- Oil and Water - Can the Offshore Minerals Industry and Environmental Protection Ever Mix?* Brendan Patrick Coll Abley 44-63
Conference proceedings
- Maritime Law in the Asia-Pacific Region* Bevan Marten 64-66
- The European Union and International Maritime Law - Lessons for the Asia-Pacific Region?* Henrik Ringbom 67-77
- State Cooperation in Combating Transboundary Marine Pollution in South East Asia* Craig Forrest 78-89
- Shipping and Air Pollution: New Zealand's Failure to Ratify MARPOL Annex VI* Bevan Marten 90-98
- The Tokyo Mou: Its Implications for Taiwan* Chen-Ju Chen 99-106
- Openness and Inclusiveness: Nature of Chinese Maritime Law and Legal Practices* Hong Jun Shan, Yun Liang 107-113
- A Study on the Updating of the Law on Carriage of Goods by Sea in China* James Zhengliang Hu, Siqi Sun 114-124
- Japan's Maritime Law Reform in an International and Regional Context* Souichirou Kozuka 125-133
- Recent Admiralty Decisions in Hong Kong - Are the Courts Ready to Deviate from Their English Predecessors?* Poomintr Sooksripaisarnkit 134-146
- Book Review: Admiralty Jurisdiction Law and Practice Australia, New Zealand, Singapore, Hong Kong and Malaysia* Nigel Meeson 147-148

2016 Volume 30(2)

General Editor: Professor Craig Forrest

Student Editors: Mr Zackary George and Miss Erin Gourlay

Safe Port Promise By Charterers: Rethinking Outstanding Complications Choi Wai Bridget Yim 1-12

Casenotes: back On Course – Excluding the Right to Limit Liability Under The 1976 Convention: Bahamas Oil Refining Company International Ltd v The Owners of the Cape Bari Tankschiffahrts GMBH & Co KG ('The Cape Bari') [2016] UKPC 20 Samuel Walpole, Leo Rees-Murphy 13-20

Book Review: International Carriage of Passengers Michael William White 21-23

2017 Volume 31(1)

General Editor: Professor Craig Forrest

Student Editors: Mr Zackary George and Miss Erin Gourlay

Frank Dethridge Memorial Address

Of reefs and men: When the best laid plans go awry, have we an acceptable way forward? Sarah Catherine Derrington 1-13

The Maritime Labour Convention 2006: The seafarer and the fisher Luci Carey
14-36

*A "sea change" in Queensland's marine safety laws - Recent marine safety
reforms in Queensland* Shane Bosma 37-44

Book review: The International Law of the Sea Patrick H Vrancken 45-56