

Discussion paper: Australia's accession to the Nairobi International Convention on the Removal of the Wrecks 2007

Response from the Northern Territory Government

Questions:

1. What benefits are there to AMSA expanding its powers to remove more wrecks in the EEZ?

- An increase in geographic scope will ensure removal of hazards from EEZ leading to safe navigation and protection of the marine environment.

2. Do the benefits of AMSA's expanded powers offset any burden they may create?

- Yes. The benefit of removal of hazards and cost recovery through owner's insurance offsets additional burden.

3. What particular aspects of the current regime governing wreck removal in the EEZ would you like to keep?

- The aspect of cost recovery under the Commonwealth marine pollution legislations.

4. Should the WRC apply in Australia's territorial sea? Please note any benefits or disadvantages.

No. - The removal of wreck and cost recovery from territorial sea is covered under various Commonwealth and State Acts. The Navigation Act allows full cost recovery from the legal owner of the wreck.

The advantages and disadvantages for applying WRC are as follows:

Advantages -

- Every vessel > 300 GT will carry wreck related insurance
- Cargo or any other item lost from vessel will be covered within the definition of wreck
- Ease of dealing with vessel insurer
- Consistent wreck removal framework

Disadvantage:

- WRC requires wreck removal measures be proportionate to the hazard / 'reasonably necessary' which can lead to possible disputes between parties.
- Under the WRC the liability for wreck removal sits with the owner, with the insurance requirement limited to the liability as set out in the *Convention on Limitation of Liability for Maritime Claims 1976 (LLMC Convention)* – 1.51 million SDR (Special Drawing Rights) + an additional allowance for each tonne over certain limits. This may restrict the total amount Australia can claim for wreck removal and restrict Australia's rights to deal with the wreck in its own way.
- All Australian vessels > 300 GT will have to carry wreck insurance which will be an additional expense for Australian vessel owners

5. What need for consistency do you see regarding the wreck removal frameworks that apply:

- in the EEZ and territorial sea? –

- across the states and Northern Territory? –

- Consistent definition of the Wreck and the cost recovery framework for all vessels in EEZ and territorial sea.
- Consistent States and Northern Territory laws for wreck removal

6. What particular aspects of the current regime governing wreck removal in the territorial sea would you like to keep?

- All of it - NT Marine Safety Act covers the wreck cost recovery in NT waters outside of designated ports and the Ports Management Act covers the port waters.

7. If the WRC framework were to be adopted in the EEZ and the territorial sea, would a staged implementation assist in the transition? (e.g. first in the EEZ then in the territorial sea)

- Yes – Implement first in EEZ

8. Should DCVs and recreational vessels be covered by the WRC provisions? What impact would this inclusion have on your industry/sector?

- Yes
- The vessels will have to bear additional costs of wreck removal insurance

9. If DCVs and recreational vessels are covered by the WRC provisions, should it be for the EEZ, territorial sea, or both?

- EEZ only

10. What benefits do the state and Northern Territory wreck removal provisions offer?

- Northern Territory's legislation has provision for cost recovery for the removal of the wreck from the owner of the vessel

11. What implications are there for you and your organisation if the broader definition of a 'wreck', which includes cargo, is adopted?

- The NT Marine Safety Act already covers cargo in definition of wreck

12. Do you see the need for a 'wreck' under the WRC to follow a 'maritime casualty' event as a limiting factor for industry liability and government intervention?

- No. As most wrecks follow a maritime casualty although the open ended clause of the Navigation Act is preferred.

13. Is the definition of a 'hazard' in the WRC too broad?

- Yes

14. Does the requirement for AMSA to determine whether a wreck poses a hazard before commencing removal impede its ability to respond to wrecks promptly or appropriately?

- No, as AMSA already has similar requirement in the Navigation Act.

15. When do you see the need for wreck removal measures to be proportionate to the hazard acting as a limit on AMSA's response capability?

- The WRC requires wreck removal measures to be proportionate to the hazard, thereby restricting measures to not exceed what is considered 'reasonably necessary' for the removal of wreck. The determination of what constitutes 'reasonably necessary' has the potential to lead to disputes between affected parties and limiting AMSA's response capability.
- The terms of the WRC can also potentially encroach on Australia's sovereign rights to independently decide wreck removal measures in territorial waters.
- The Navigation Act has no such express requirement of removal measures to be proportional to the hazard.

16. Are there any concerns about the WRC reporting requirements for both the Affected Ship and the Affected State?

- No

17. Are there any negative commercial implications related to holding the registered owner of the ship liable, as opposed to the legal owner of a wreck?

- No
- The Navigation Act states wreck removal is directed towards 'the legal owner' of the wreck, which can be problematic when there could be more than one owner, for instance when cargo constitutes the wreck. This can make cost recovery for AMSA difficult or impracticable.
- As the WRC establishes strict liability for the 'registered owner' of the ship, holding them liable for wreck removal costs, regardless of fault or circumstance, it creates a clearly traceable path to the responsible entity, making claims straight forward that can be resolved quickly. Settling claims through vessel insurers (P&I clubs) is relatively easier.

18. Should persons other than the ship owner (e.g. charterers) be held liable for wrecks that occur in relation to that ship?

- Yes. They have interest in the vessel and the cargo

19. Would a requirement to hold wreck-related insurance help the government recover costs incurred during wreck removal?

- Yes.
- The WRC offers the advantage of mandating wreck-related insurance which empowers the affected state to directly engage with the vessel insurers up to the limits of the LLMC Conversion liability requirements.

20. Do ship owners or operators currently hold wreck-related insurance?

- Question for the ship owners
- The Nav. Act places no requirement for ships to have insurance for removing wrecks in Australia, and even if they did AMSAs powers do not extend to foreign vessels in Australia's EEZ anyway.

21. Would the requirement to hold wreck related insurance create a barrier to entry for newcomers to the shipping sector, particularly for DCV and recreational vessel owners?

- It may due to the additional costs imposed on small operators for wreck related insurance

22. How much of a financial burden would maintaining wreck-related insurance be for ship owners? Is this burden the same for all ship owners (e.g. DCV and recreational vessel owners)?

- Question for the Insurance Industry and ship owners

23. Where does the insurance industry sit in the wreck removal process? Does this change given the scale of the wreck?

- Question for the Insurance Industry

24. Will the insurance industry be able to provide wreck-related insurance to all ships, including DCVs and recreational vessels?

- Question for the Insurance Industry

25. Will the insurance industry be able to provide coverage for costs beyond the LLMC limit?

- Question for the Insurance Industry

26. Is the WRC time limit for commencing cost recovery actions too restrictive? If so, why?

- The WRC limits the affected States actions for cost recovery rights to three years, and a maximum of six years from the date of a maritime casualty, which presents a limiting factor for AMSA cost-recovery measures. The Navigation Act has no such limiting time factors for cost recovery. The WRC time limit can be too restrictive in some cases.

27. In what other circumstances should a ship owner not be liable for the costs associated with a wreck removal?

- The owner of the vessel should be liable for wreck removal related costs in all circumstances.

28. Are the defences available in Article 10 so broad as to obstruct or prevent AMSA's cost recovery actions?

- Yes.
- The Navigation Act used by AMSA for cost recovery does not allow for the legal owner to present defences

29. Is it important for AMSA to have the authority to select a salvor and set conditions for salvage operations in both the EEZ and the territorial sea?

- Yes. AMSA's authority to select a salvor and set conditions influences the success of salvage and therefore important.

Australia should adopt the Nairobi Convention (WRC), and implement its framework in the EEZ taking advantage of compulsory insurance and the increased reach to cover international vessels, but keep the Navigation Act/States & Territory Act framework for our territorial seas.

Australia can possibly enact amendments to make wreck related insurance compulsory for all vessels > 300 GT in the territorial sea and change definition of wreck to make it more inclusive to include equipment/items lost by vessel.