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Attention:

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By email to: wreckconvention@infrastructure.gov.au

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

Shipping Australia Limited (SAL) is a peak shipowner association with 29 member lines and shipping agents and with 44 corporate associate members. Services provided by members may include carriage of goods and commodities to or from Australia, port and terminal operations, pilotage, insurance, and legal advice. Our member ocean shipping lines are involved with over 80 per cent of Australia's international liner container and car trade as well as over 70 per cent of our break bulk and bulk trade. Our member ship agents are responsible for arranging logistics for visiting ships. We estimate that, as of 2018, our members employed over 3,000 Australians. For further details, please visit www.shippingaustralia.com.au.

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

Shipping Australia is pleased to see that Australia is considering accession to the Nairobi International Convention on the Removal of Wrecks 2007 (Hereafter, "Nairobi Convention"). There is an important principle that limitation of liability is provided to shipowners and operators in return for acceptance of strict liability with a limited number of defences.

Accordingly, Shipping Australia considers that accession in full to the Convention, without reservation or amendment, is the appropriate method of accession. Specifically, any insurance related provisions should be in accordance with the Convention on the Limits of Liability for Maritime Claims (hereafter "LLMC").

However, Australia has reserved its position under the LLMC and imposes unlimited liability on shipowners for all costs associated with the removal of wrecks.

Unlimited liability is both incompatible with the economic operation of international shipping and it is inconsistent with the Nairobi Convention. This unlimited liability reservation must be removed upon accession to the Nairobi Convention.

As a general statement, all matters and issues raised in the discussion paper should be resolved in a manner that is consistent with the Nairobi Convention.

Our responses to specific questions in the discussion paper may be found on the following pages.

Shipping Australia's responses to specific questions in the discussion paper

We have provided responses (below) to a selection of questions in the discussion paper. We have adopted the same numbering scheme as that found in the discussion paper.

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

Generally, in any area of human activity that spans multiple jurisdictions, it is considered desirable to have uniform law in that activity to promote certainty. In turn certainty is generally thought to help stakeholders plan their activities and, in business-related fields, certainty may encourage investment, encourage new services, and generally promote economic activity. Certainty is also thought to reduce costs which, again, generally promotes economic activity.

In areas of law relating to ocean-shipping, uniformity of law is particularly important because ships operate in multiple jurisdictions and so shipping – and therefore world trade – would be next to impossible if every jurisdiction had different rules. Certainty in shipping law will also help increase safety of navigation, boost environmental protection and harmonise liability and compensation regimes.

Shipping Australia also understands that many wrecks around the world happen in a territorial sea. To apply the Nairobi Convention to the Australian territorial sea would be optimal in achieving maximum levels of uniformity and certainty. Excluding the Nairobi Convention from the Australian territorial sea would, it appears, effectively render the Nairobi Convention inapplicable to potential wrecks anywhere in Australia.

Accordingly, Shipping Australia believes that the Nairobi Convention should apply in the Australian territorial sea.

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).

Both should be adopted simultaneously.

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

Domestic commercial and recreational vessels of all kinds should be governed under a separate framework different to that which governs international shipping. To avoid doubt, DCVs or recreational vessels should have an appropriate level of insurance with a reputable provider and should not be subsidised by international shipping.

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?

Yes, as this is consistent with the Nairobi Convention.

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

Australian law should adopt the definition of hazard as written in Article 5 of the Nairobi Convention.

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

No, accession should be consistent with the definition of "Registered Owner" as defined in the Wreck Convention.

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

SAL understands that Protection & Indemnity (P&I) insurance may well already cover wreck-related liability insurance (depending upon the exact cover taken out). See the International Group website at <https://www.igpandi.org/about>.

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

SAL understands that P&I insurance may well already cover wreck-related liability insurance (depending upon the exact cover taken out).

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?

SAL understands that Protection & Indemnity (P&I) insurance may well already cover wreck-related liability insurance (depending upon the exact cover taken out) for international commercial cargo-carrying vessels. SAL is of the view that the international sector should not subsidise the domestic commercial and recreational sectors.

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)?

SAL understands that Protection & Indemnity (P&I) insurance may well already cover wreck-related liability insurance (depending upon the exact cover taken out) for international commercial cargo-carrying vessels. SAL is of the view that the international sector should not subsidise the domestic commercial and recreational sectors.

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

All international commercial cargo-carrying vessels over 300 gross tons should already maintain P&I insurance that covers wreck-related liabilities under Article 12 of the WRC. To avoid doubt, DCVs or recreational vessels should have an appropriate level of insurance with a reputable provider and should not be subsidised by international shipping.

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

Australian law should adopt time limits consistent with the Nairobi Convention.

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

Australian law ought to adopt strict liability consistent with the Nairobi Convention. Australian law ought to adopt limits on liability consistent with the Nairobi Convention and LLMC. It is recommended that the current reservations in respect of unlimited liability are removed.

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?

Australian law should adopt salvage oversight consistent with the Nairobi Convention.

Authorised by:

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