

# Submission in Response to Discussion paper: Australia's accession to the *Nairobi International Convention on the Removal of Wrecks 2007*

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This submission responds to many, but not all, the question posed in the Discussion paper dated August 2020. Many of the issues responded to in this submission have been covered in detail in Nicholas Gaskell and Craig Forrest, *The Law of Wreck* (Informa Law, Maritime and Transport Law Library, 2019): see e.g. pp 530-534 dealing with “Accession choices for States” (including a checklist for drafting implementing legislation). In a number of our submissions, below, we provide some specific cross references to this book rather than addressing (and repeating) the issues in the depth that we were able to cover there.

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

Ratification and implementation of the Nairobi International Convention on the Removal of Wrecks 2007 (WRC) will provide Australia with the basis for the extension of the various powers to require action, e.g. under Art. 9(4)-(8) from flag states to Australia as the affected coastal state under Art. 9(10). The benefits that flow from this extension include:

- a. The power to require the Master and operator to notify AMSA of most wreck in the EEZ<sup>1</sup> (cf *Navigation Act 2012* s. 232). This will support existing obligations to report maritime casualties in the EEZ, but enable more specific wreck removal information to be provided

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<sup>1</sup> The application of the WRC to wrecks of non-State parties, and the degree to which WRC powers already exist by way of other international Conventions such as the Intervention Convention and the Law of the Sea Convention, is complex, and addressed in detail in Nicholas Gaskell and Craig Forrest, *The Law of Wreck* (Informa Law, Maritime and Transport Law Library, 2019) 377-87.

to AMSA.<sup>2</sup> As was evident in the incidents involving the *YM Efficiency* and, more recently, the *APL England*, early warning is an essential element of wreck removal.

- b. The power to require the registered owner to mark or remove most wreck<sup>3</sup> in the EEZ (*Navigation Act* 2012 s. 229(2)(a) and (b)), or have such a wreck marked, removed, sunk or destroyed, (*Navigation Act* 2012 s. 229(2)(c) and (d)).
- c. The possibility of imposing criminal offences in respect of foreign flagged ships in the EEZ for failure to obey obligations provided for in WRC in Art. 9(2)-(4); e.g. to remove the wreck, provide insurance details, or comply with deadlines or conditions as to the removal of the wreck set down by the Affected State. As such the *Navigation Act* 2012 s.230 may be extended to cover contraventions of s. 229(a) and (b) in the EEZ (*Navigation Act* 2012, s. 229(2)).

These increased regulatory powers in the EEZ are clearly advantageous and exemplified in their utility in cases similar to the *YM Efficiency* that may occur in the future.

The WRC will also provide some additional or improved liability provisions in the EEZ.

- a. The power of AMSA to recover from the legal owner of the wreck any expenses incurred by AMSA in connection with locating, marking, removing, destroying or sinking the wreck provided for in *Navigation Act* 2012 s. 229(1)(d) and (e) can be extended to cover those wrecks of foreign vessels in the EEZ.
- b. In some circumstances (e.g. removal of hazardous cargo) the WRC may provide additional (insured) protection before entry into force of the HNS Convention 2010 in a way that may not have been fully appreciated.
  - i. While the WRC is surprisingly unclear about cargo removal as distinct from hull removal, our opinion is that liability extends not only to the removal of the hull of a ship, but also cargo that has been on the ship and floats clear, but also cargo that remains in a wreck where the latter of itself is not a navigational hazard.<sup>4</sup>
  - ii. The WRC extends to cargo removal even when the hull is not removed, while there may be doubts about how far s. 229 of the *Navigation Act* 2012 (Cth) covers cargo lost overboard where the ship itself is not wrecked, or whether the cost of cargo removal is effectively covered by intervention powers.
  - iii. The ability to recover cargo removal costs (potentially without limit for the registered owner) means that hazardous substances other than oil<sup>5</sup> could be removed under the strict liability and compulsory insurance regime of the WRC even before the HNS Convention comes into force. Most obviously, this could extend to the container cargo of a sunken ship (see e.g. the *Napoli* and the *Rena*).

<sup>2</sup> See further Gaskell and Forrest, n1, 417-21 on existing reporting obligation and the extent to which the WRC will complement these.

<sup>3</sup> Gaskell and Forrest, n 1, 377-87.

<sup>4</sup> See further Gaskell and Forrest, n1, 37-9, 396, 481-90.

<sup>5</sup> Oil removal costs might be recoverable under the CLC 1992 if “reasonable”. It seems from the *Prestige* litigation that the IOPC Fund 1992 will not necessarily allow for all oil to be removed from a sunken tanker, e.g. if the costs are disproportionate. Although the WRC itself has an express proportionality requirement, it is possibly arguable that such oil remedial costs could be covered under the WRC in so far as it is necessary to remove the hull of the ship containing the oil. There would then be no conflict with the CLC/Fund 1992 under Art. 11 of the WRC.

- iv. Coal will not be covered by the HNS Convention 2010, but it may be arguable that coal spilled onto the Great Barrier Reef involves “major harmful consequences to the marine environment” within the WRC.
- v. The wider definition of “related interest” may allow for greater scope of recovery, e.g. where a cargo (such as coal, or iron ore) may not be hazardous to health, but may have “major harmful consequences for fishing and tourism, or marine living resources” within Art. 1(5)(b) of the WRC.

Closely associated with the extension of AMSA powers in the EEZ are the benefits that flow from the WRC insurance regime. The major benefit which the WRC offers States is its compulsory insurance package which has a number of components.

- a. The WRC will allow AMSA to extend the *Navigation Act 2012* s. 229(1)(e) to recover directly from the insurer of the vessels, as well as from the shipowner, wreck expenses incurred within the EEZ.
- b. AMSA would not have to request and require the shipowner to give security to the satisfaction of AMSA for the removal of a wreck or for marking a wreck (*Navigation Act 2012* s. 229(1)(a) and (b) as WRC insurance (at least for ships of 300 gt and larger) would automatically be in existence for State party ships and other ships visiting Australian ports (and the vast majority of ships trading internationally).
- c. The WRC could not have been agreed without substantial input from the International Group of P & I Clubs. This has two practical implications;
  - (i) If the Clubs are prepared to issue WRC certificates this will be of considerable practical value to States such as Australia. Locating a solvent insurer in a jurisdiction where it can be sued and has assets is a major problem for any maritime claimant (especially where the shipowner is a one ship company whose only asset is a ship which is now worthless). So far as is known, Club certificates under the CLC and Bunker Convention have never been repudiated.<sup>6</sup>
  - (ii) Where the Club is involved from the start it is likely to cooperate with the State, both in terms of practical arrangements (e.g. arranging for contractors) and (possibly) paying directly for expenses. The ability to start an operation quickly has practical, environmental and political advantages.

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

AMSA would need to set up some very clear administrative procedures for satisfying the specific notification requirements in Arts. 5-9, e.g. to flag States and registered owners. These procedures almost certainly already largely exist within AMSA. Similarly, AMSA would also need to create and maintain records to satisfy the WRC’s evidentiary requirements as to whether action taken (or required) by it is both reasonable and proportionate within Art 2. While these two criteria would be express requirements under the WRC (that could be utilised by defendants), it seems unlikely that Australian courts

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<sup>6</sup> For a comprehensive consideration of insurance and wreck generally see Gaskell and Forrest n 1, 173-209, and on the insurance provisions in the WRC see Gaskell and Forrest n 1, 491-514.

would not already imply them. Overall, though, the existing National Plan and MERCOM arrangements provide a good structure to give effect to key operational requirements of the WRC.

In the context of the *YM Efficiency*, the distinct advantages of the application of the WRC in Australia's EEZ clearly offset any regulatory burdens that might arise for AMSA.

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

It is not clear how far existing Australian or international law can apply in the EEZ, at least to foreign flag ships—which are the overwhelming threat.<sup>7</sup> The advantages of the application of the WRC to Australia's EEZ as set out in 1 (above) justify its application over any existing regime.

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

#### *Benefits*

The primary benefit for Australia in applying the WRC to the territorial sea is the resulting ability to bring an action directly against the vessel's insurer.<sup>8</sup> While AMSA may be entitled under the *Navigation Act 2012* s. 229(1)(e) to recover from the shipowner the expenses incurred in removing the wreck in the territorial sea, the practical difficulty arises in respect of a foreign shipowner with no assets in Australia, as was the case of the *MV Tycoon*. The WRC, if extended to the territorial sea, would enable AMSA to bring an action directly against the vessel's insurer.

Moreover, the current requirement in s.229(1)(a)(ii) and (b)(ii) of the *Navigation Act 2012* (Cth) is that the legal owner of a foreign vessel in the territorial sea give security to the satisfaction of AMSA for wreck marking and removal in the territorial sea. The WRC produces a similar security result, but without any need for any special demand - as the insurance certificate provides appropriate security up to the relevant limits. In theory the s.229 provision is without limit, although the *Navigation Act* does not address the practicality of enforcing a demand for high security against the foreign owner of a one ship company whose only asset has sunk.

Article 4(4) of the WRC ensures that AMSA retains many powers in the territorial sea that the WRC limits in the EEZ. These include (as noted in the Discussion paper):

- the need for the Affected State to inform the state of a ship's registry and the registered ship owner that it has determined the wreck to be a hazard;
- the limitation on the extent of an Affected State's intervention if the ship owner removes the wreck.

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<sup>7</sup> Gaskell and Forrest, n 1, 370-91.

<sup>8</sup> The extension of the WRC to the territorial sea is addressed in Gaskell and Forrest, n1, 410-14, 435-6, 531.

Articles 9(7) and (8) are also excluded from their application to territorial waters so that AMSA:<sup>9</sup>

- is not bound by the limitation to remove a wreck only in circumstances where the registered owner does not remove the wreck within the deadline set in accordance with paragraph 6(a), or the registered owner cannot be contacted, and actions AMSA take are not limited by the requirement that such removal be by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.
- is not bound, in circumstances where immediate action is required and the Affected State has informed the State of the ship's registry and the registered owner accordingly, to remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

Article 9(4) of the WRC is one provision that is not expressly excluded by Art. 4(a)(ii) where the WRC is extended to territorial waters. Article 9(4) allows a shipowner to contract with any salvor or other person to remove the wreck, and only allows the State to lay down pre-conditions for such removal "to the extent necessary to ensure that the removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment". However, in its application to the territorial sea, it is amended so that its application to the territorial sea is "subject to the national law of the Affected State". This does not therefore appear to limit AMSA's existing powers in the territorial sea.

### *Disadvantages*

One possible practical disadvantage that might apply if the WRC were extended to territorial waters is that insurers might take a more restrictive approach to cost payments than in cases such as *Rena* and *Costa Concordia*.<sup>10</sup> An insurer may respond to future major incidents by willingly and quickly providing security or funds up to its WRC Art. 12 limit (ie that for the ship calculated under the LLMC 1996). That could leave a State with the decision whether to incur itself any extra wreck raising costs above that limit, and to seek to recover them from the shipowner (which may be insolvent). There is no present indication that International Group P & I Clubs would take such an approach, but it may be more likely from a fixed premium insurer. Overall, the issue involves balancing the bird in the hand against two in the bush.

We also consider that implementing legislation (both for the EEZ and any extension to territorial waters) should ensure (so far as possible) that Australia's enactment of the LLMC 1996 is amended to protect against limitation forum shopping in order to avoid Australia's existing

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<sup>9</sup> These are, however, subject to the requirement of proportionality set out in Art. 2(2) and (3) WRC. See further Gaskell and Forrest, n1, 435-6.

<sup>10</sup> On these cases see Gaskell and Forrest, n1, 19-29.

LLMC provisions opting for unlimited liability of *shipowners* for wreck removal. The problem could occur if shipowners seek to establish limitation funds in LLMC 1996 States that themselves have not opted for such unlimited liability.<sup>11</sup> Australia is entitled under the LLMC to have such unlimited liability and may need to strengthen its LLMC legislation so that there is no obligation to recognise a foreign fund that seeks to defeat that choice.<sup>12</sup>

The extension of the WRC to territorial (and possibly internal) waters may involve coordination with the States (and territories) and consideration of the legal and practical implications of the Offshore Constitutional Settlement. Even if Australia does not immediately take advantage of extending the WRC inwards it would make sense for any legislation to enable that future possibility; ie to allow a staged introduction of the WRC.

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

**a. in the EEZ and territorial sea?**

**b. across the states and Northern Territory?**

- (a) One of the drivers for the adoption of the WRC itself is the need for consistency internationally. Consistency is apparent in the WRC itself and especially in the framework for the liability and insurance provisions. Indeed, Australia's experience with the *YM Efficiency*, where wreck resulted in both the EEZ and territorial sea, evinces the need to deal with the shipowner and the relevant P&I club liability in a single action. The WRC allows for differentiation in the territorial sea (Art 4(4) – see above), and subject to that, envisages a function liability and insurance regime that is consistent across the territorial sea, EEZ and indeed, within the other waters over which State exercise sovereignty (such as internal waters).
- (b) In principle, there are always advantages in having uniformity and consistency of maritime law. The WRC offers a reasonable solution for the states and Northern Territory, but it is a separate matter who administers or applies those provisions. The UK has not made a particularly good job of incorporating the WRC into its national law, but it has recognised that the national coordinator (equivalent to MERCOT) may not always have the experience or interest in dealing with small scale wrecks, eg in estuaries, where there is no real environmental threat.<sup>13</sup> Here a practical administrative division of functions has been made between the national regulator and local administrators (eg the UK's "Trinity House"). It might be possible under the Offshore Constitutional Settlement for a similar Memorandum of Understanding to be reached between AMSA and state/territory authorities for dealing with such smaller wrecks. This might preserve existing arrangements (eg Queensland's "War on Wrecks"), while

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<sup>11</sup> We refer to this as an 'Isle of Man' defence, as occurred in litigation involving the wreck of the *Baltic Ace* in 2012: see further Gaskell and Forrest, n1, 119-124.

<sup>12</sup> See further Gaskell and Forrest, n1, 128-131.

<sup>13</sup> See further Gaskell and Forrest, n1, 556-559.

at the same time preserving state legislation that might cover wreck related issues falling outside of the WRC. One example might be abandoned ships that have not yet suffered a “maritime casualty”:<sup>14</sup> and see response to Q 12, below.

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

To the extent that the WRC will retain these powers, we have no further comment. However, note the observations on abandoned ships, above and see response to Q 12, below).

**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)**

If there are constitutional or administrative difficulties (e.g. caused by the Offshore Constitutional Settlement) then there is no apparent disadvantage in adopting the WRC for the EEZ first. But our concern would be that a staged approach would seem to undermine the efficiency of the WRC and the need for consistency across the maritime zones, given that most wrecks occur in coastal waters. There is a risk that legislative inertia would delay further action indefinitely. The preference would be that implementing legislation should deal with both EEZ and territorial sea, and any staging should be to sort out administrative details.

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

In principle yes, in so far as they are “ships” (ie seagoing vessels) under Art 1(2). Implementing legislation ought to provide a clear definition of what is “seagoing”.<sup>15</sup> The main issue would be the extent to which the insurance market could respond (as to which we cannot comment). Given the problem with abandoned ships (and see response to Q 12, below), there is already an argument for compulsory insurance and direct action in respect of non-seagoing ships..

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

As a matter of consistency it ought to apply in territorial sea and EEZ.

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

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<sup>14</sup> See further Gaskell and Forrest, n1, 559-563.

<sup>15</sup> See further Gaskell and Forrest, n1, 449-450.

As already noted, it is possible (with careful drafting) for national and local legislation to co-exist to some extent, eg in respect of areas that might be outside the WRC (like abandoned ships that have not suffered a casualty—see response to Q 12, below).

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

As stated above, our opinion is that cargo is included within the definition of wreck.<sup>16</sup>

**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?**

The definition of maritime casualty in the WRC is not new and was first drafted as Art II(1) of the Intervention Convention 1969, and then substantially reproduced in Art 221(2) of UNCLOS.<sup>17</sup> The generality of this definition (at least in UNCLOS) allows for a broad interpretation. Whilst a collision or stranding of a ship is relatively clear, an “incident of navigation”, “an occurrence on board a ship” or an occurrence “external to it” cover a range of possible factual circumstances. In this light, a ship becomes a wreck in circumstances that are *ipso facto* a maritime casualty.<sup>18</sup> As such, the only limitation inherent in this qualification to wreck subject to the WRC 2007 regime is that the incident gives rise to “material damage or imminent threat of material damage to a ship or its cargo”. It is thus more concerned with what the consequences of an incident is rather than the cause of the incident. The focus is clearly on the hazard rather than the events which give rise to the hazard.

This definition of maritime casualty does however have some limiting effect. It does not, for example, apply to ships sunk for operational reasons, or dumped.<sup>19</sup> These, however, are covered by existing statutory provision and as such, the definition is not a limiting factor.

It is also not clear at first blush whether it includes ships abandoned by their crews and left floating and adrift. A broad interpretation of “incident of navigation” in the definition of maritime casualty might include the abandonment of its crew with the resulting inability to be navigated, thus posing an imminent threat of material damage. Similarly, the abandonment of the crew could fall within “or other occurrence”. However, this does not cure the requirement that the floating derelict or abandoned ship be about to or may reasonably be expected to sink

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<sup>16</sup> See further Gaskell and Forrest, n1, 37-9, 396, 481-90.

<sup>17</sup> UNCLOS Art. 221(2) uses the term “vessel” rather than “ship” in its definition of “maritime casualty”.

<sup>18</sup> See Richard Shaw, “The Nairobi Wreck Removal Convention” (2007) 13 *Journal of International Maritime Law* 429, 434.

<sup>19</sup> Ships sunk for operational reasons are address in the 1972 Convention for the Prevention of Marine Pollution by Dumping of Wastes and other Matters Art. IV and 1996 Protocol Art. 4: LEG 85/3, 17 August 2002, Annex 2, 3. See Gaskell and Forrest, n1, 394-5, 655-76.



or strand. It might be argued that this unnecessarily narrows the scope of the convention. The threshold was not intended to be used to narrow the definition of wreck in this sense, but rather to act as a threshold when applied in conjunction with the requirement that “effective measures to assist the ship or any property in danger are not already being taken”. It might be assumed that a floating and drifting derelict would at some stage strand or sink, and at all times would be a navigational hazard, and would thus fall within the definition of wreck. This appears to accord with the view of the Legal Committee when dealing with an earlier definition of “casualty” such that floating vessels, and vessels that have capsized but still afloat, would fall within the scope of the Convention. Moreover, the result of an expanded interpretation would align with the inclusion in the definition of wreck of any object, such as cargo, from a ship “adrift at sea”. It would also be consistent with the LLMC 1996, which in Art 2(d) makes claims “in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded *or abandoned*, including anything that is or has been on board such ship”, subject to limitation of liability.<sup>20</sup>

**13. Is the definition of a ‘hazard’ in the WRC too broad?**

No.<sup>21</sup>

**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. Since the determination of a wreck as a hazard is a precondition to giving effect to the WRC (and its insurance and liability regime), such a determination is necessary in order to avoid irrecoverable costs. Since the determination of whether a wreck poses a hazard lies entirely within the power of AMSA (Art.6 WRC), the entire response to any ‘wreck’ event is within AMSA’s control.

**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?**

While the Navigation Act 2012 (e s229(1(a))) may not explicitly apply a proportionate requirement, AMSA would not have *carte blanche* to deal with wrecks, and owners and insurers would have a reasonable expectation that AMSA’s response be proportionate to the threat. Since this would apply to foreign owners and insurers as much as to domestic owner and insurers, the domestic limitations on the acts of State entities would not amount to an encroachment upon Australia’s sovereign rights. this Given the broad scope of the ‘related interests’ (WRC art 1(6)) that will allow AMSA to take action where there is a hazard in

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<sup>20</sup> See in full and further, Gaskell and Forrest, n1, 398-400.

<sup>21</sup> See Gaskell and Forrest, n1, 404-5.

relation to those interests, the degree of proportionality of AMSA's response would not appear to be onerous. As such, since a disproportionate response may lead to a number of difficulties for AMSA, this broad requirement does not, in itself, appear to unduly limit AMSA's response.

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

None. These seem reasonable in the context of existing reporting obligations by both flag and coastal States provided for in international law (Corfu Channel Case) a number of other IMO Conventions (eg MARPOL and OPRC) and other relevant international agreements.<sup>22</sup>

**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?**

Registration provides a clear starting point for liability and insurance. The definition of registered owner in Art 1(8) is flexible enough to cover the 'actual' (or 'legal') owner in the absence of registration.<sup>23</sup>

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

The WRC is based on the compromise package deal of strict but limited liability of the registered owner with direct action against the compulsory insurer. It is true that the WRC does not have channelling provisions (equivalent to those in the CLC for oil pollution claims) preventing actions against persons *other* than the registered owner. It would seem to be theoretically possible for national legislation to create specific liabilities eg of charterers outside of the WRC. This might enable Australia to 'top up'<sup>24</sup> an insurer's claim fund that might be limited under Art 12. But these liabilities would not be backed by the compulsory insurance/direct action provisions of the WRC and may not be easy to enforce. There is a danger of creating overlapping liabilities that might complicate removal operations and delay claims settlement—as more parties might wish to be involved. The WRC leaves the issue open and it would be possible for enacting legislation merely to preserve existing causes of action (eg negligence) against persons other than shipowners.

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

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<sup>22</sup> On flag State obligations and reporting requirements see Gaskell and Forrest, n1, 417-21, and on the Affected State's obligation 422.

<sup>23</sup> On the liability of the registered owner, see Gaskell and Forrest, n1, 439-40.

<sup>24</sup> See Gaskell and Forrest, n1, 440.

Yes – see for example the *Pacific Adventurer*, *MV Tycoon* and *YM Efficiency* incidents.

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

That is a question for the industry, but our understanding is all ships insured with P&I Clubs would have the cover, but that the extent of the cover would be more restricted with fixed premium insurers (who may often be involved with small vessels, eg fishing boats).

**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?**

We have no comment, as this is an industry question.

**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)?**

That is a question for the industry, but our understanding is that this is not a new burden for internationally trading commercial vessels, and the compulsory insurance provisions of the WRC only apply to ‘seagoing’ ships of 300gt and above. One possible solution would be for Australia to allow for some limit of liability for wreck removal liabilities of craft under 300gt so as to facilitate insurance cover. That would of course pass the risk largely into government.

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

We have no comment, as this is an industry question.

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

We have no comment, as this is an industry question.

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

There are two separate questions: (i) the coverage for direct liability of the insurer; (ii) how far existing and future cover can apply to the unlimited liability of shipowners. (i) is limited by the

WRC itself;<sup>25</sup> (ii) unlimited liability of shipowners already exists under current law and is within normal P&I cover.

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

The time limit is not long and requires relatively prompt action of government, but is not significantly out of line with other conventions.

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

The exceptions created in WRC Art 11 apply only to the extent that the WRC does not apply and that the relevant other convention does apply. Since the basic provisions of the WRC are based on these conventions (strict but limited liability of the registered owner with direct action to the insurer), the liability of the registered owner (and insurer) ought not to be to substantially different (though the limit of liability under the CLC will be determined differently). Moreover, the provisions of WRC Art 10 (defences) are boiler plate provisions found in both the CLC and Bunker Conventions and reflect the agreed international balance between strict but limited liability and the scope of that liability. While this is a limiting factor for the registered shipowner's liability, it is a necessary compromise and trade-off for the advantaged offered by ratification of the WRC.

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

See response to Q 27, above.

**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?**

To the extent that salvage operations are rendered to assist a ship that is about, or may reasonably be expected, to sink or to strand, where those operations are effective measures to assist that ship or any property in danger, the WRC will not apply and AMSA's existing powers will remain unaffected. Further, since AMSA has no existing powers to order shipowners to remove a hazard from a foreign wreck in the EEZ, this limitation of the added WRC powers will not detract from existing powers, though admittedly these powers may not be as broad as AMSA might wish. Nevertheless, that is the compromise reached in the WRC.

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<sup>25</sup> Gaskell and Forrest, n1, 502-514.