

Email Cover Sheet

Dear [REDACTED]

Thank you for the opportunity for Maritime Safety Queensland (MSQ), as a branch of the Department of Transport and Main Roads (TMR), to provide comment on the *Discussion paper: Australia's accession to the Nairobi International Convention on the Removal of Wrecks 2007*.

MSQ are in-principle, supportive of work to provide greater powers and certainty for wreck removal within the Exclusive Economic Zone (EEZ), whether this includes accession to the *Nairobi International Convention on the Removal of Wrecks 2007* (the Removal of Wrecks Convention (WRC)), or amending the Commonwealth laws to provide for similar powers for cost recovery to the WRC.

However, MSQ have a number of concerns associated with ratifying the WRC and implementing this within the territorial sea. Queensland's current wreck removal framework contains provisions for actions to intervene and cost recover from all ships operating within Queensland's coastal waters. Additionally, ships over 15m length overall require insurance coverage for both pollution response and salvage of wrecks when operating in Queensland's coastal waters. These provisions apply to all ships (with the exclusion of Australian Defence Force and International government ships on government duty) including recreational vessels, domestic commercial vessels (DCVs) under the *Marine Safety (Domestic Commercial Vessel National Law) Act 2012* (Cth) and foreign-flagged vessels, irrespective of whether they are party States to the WRC.

Significant consultation with both MSQ and the wider Queensland Government would be required prior to any changes, particularly for changes that might affect Queensland's current or future powers, including to take or direct intervention actions, recover costs or prescribe insurance requirements for ships (including those below the WRC mandatory insurance trigger of 300gt). Any decisions which will impact ships within Queensland's coastal waters, particularly for Queensland regulated ships, will also require broader consultation with users and industry.

Further detail and explanation is included in the attached document containing MSQ's responses to the questions posed in the Discussion Paper, along with an overview of key points from Queensland's current framework for wreck removal, cost recovery and insurance (*Transport Operations (Marine Pollution) Act 1995* and *Transport Operations (Marine Safety) Act 1994*).

Thank you again for the opportunity to comment and we look forward to an update on the outcome of your enquiries. Should you have any questions, please do not hesitate to contact [REDACTED].

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Maritime Safety Queensland (MSQ) Comments on the Discussion paper: Australia's accession to the Nairobi International Convention on the Removal of Wrecks 2007 (Wreck Removal Convention – WRC)

Table 1: Queensland's current framework of legislation and measures for wreck removal and insurance within coastal waters:

<p>Legislation</p>	<p>Relevant provisions for wreck removal, insurance and cost recovery Please note, this table provides summary of key sections only and does not include full definitions or provisions of legislation regulating these issues.</p>
<p>Transport Operation (Marine Pollution) Act 1995 (TOMPA) and Transport Operation (Marine Pollution) Regulation 2018 (TOMPR)</p>	<ul style="list-style-type: none"> • Page 4 of the Discussion paper references TOMSA as the relevant legislation for wreck removal and insurance in Queensland, however as outlined below, TOMSA does not have any specific requirements for insurance. TOMPA has inclusions for both wreck removal (including cargo) and insurance requirements, and as such should also be referenced. <p>Insurance:</p> <ul style="list-style-type: none"> • Part 11A of TOMPA and Part 9 of TOMPR provide requirements for insurance. • Under s67A of TOMPA, the owner of a ship more than 15m in length overall must hold an insurance policy that, to the limits applying under a regulation, is sufficient to pay for— <ul style="list-style-type: none"> (a) the clean up costs of the discharge of a pollutant from the ship into coastal waters; and (b) the costs of salvage or removal of the ship from coastal waters if the ship is abandoned or wrecked. (Please note: <i>length overall</i> is as defined in TOMPA, which aligns with <i>length on deck</i> under the National Standard for Commercial Vessels: Part B). • s67A applies to <i>any</i> ship of more than 15m length operating in Queensland's coastal waters, including recreational vessels, Domestic Commercial Vessels (DCVs) and foreign flagged ships. Under TOMPA, ship has the meaning given by MARPOL, and includes an aircraft when it is on the surface of the water. • s62 of TOMPR sets the required limits for insurance policies under s67A of TOMPA based on the type and length overall of ships: <ul style="list-style-type: none"> (a) for an insurance policy for a DCV, or an other Queensland regulated ship that is more than 15m but less than 35m in length overall— <ul style="list-style-type: none"> (i) for costs mentioned in section 67A(2)(a) of the Act—\$500,000; and (ii) for costs mentioned in section 67A(2)(b) of the Act—\$10m; (b) for an insurance policy for a recreational ship that is more than 15m but less than 35m in length overall— <ul style="list-style-type: none"> (i) for costs mentioned in section 67A(2)(a) of the Act—\$250,000; and (ii) for costs mentioned in section 67A(2)(b) of the Act—\$10m; (c) for an insurance policy for a ship that is 35m or more in length overall—for costs mentioned in section 67A(2) of the Act—\$10m. • s63 of TOMPR requires certificates of insurance or other evidence of insurance meeting the provisions above to be kept onboard. • There is provision under s67A of TOMPA for a regulation to be made to provide an exemption for a ship to hold an insurance policy where the Queensland Minister for Transport and Main Roads has considered the risk

	<p>of a ship discharging pollutants or being abandoned or wrecked and is reasonably satisfied that for the particular type of ship and insurance policy meeting the requirements of s67A(2) could not reasonably be kept or maintained. Whilst there have been some applications in relation to this provision, to date there has been no reasonable case for a regulation providing exemption to be made).</p> <p>Intervention:</p> <ul style="list-style-type: none"> • TOMPA Part 12 Divisions 6 (response action to discharge and authorised officer's emergency powers) and 7 (Power of Intervention) provides the General Manager and relevant authorised officers significant power to take action to prevent or minimise the impact of a discharge. • Under s97, the definition of maritime casualty is extended to the ship's cargo - <i>maritime casualty</i> means a collision of ships, stranding or other incident of navigation, or other happening on board a ship or external to it resulting in material damage or imminent threat of material damage to a ship or cargo. • s98 provides the power of intervention where the General Manager is satisfied, following a maritime casualty or acts related to a maritime casualty, that there is a potentially serious danger to the Queensland coastline, or to related Queensland interests, from the discharge or threat of discharge of pollutant into coastal waters that may reasonably be expected to result in major harmful consequences. Under this section, the General Manager may take measures considered necessary to prevent, minimise or eliminate the danger, including, for example: <ul style="list-style-type: none"> (a) taking action, whether or not directions have been issued under paragraph (b) in relation to the ship— <ul style="list-style-type: none"> (i) to move the ship or part of the ship to another place; or (ii) to remove cargo from the ship; or (iii) to salvage the ship, part of the ship or any of the ship's cargo; or (iv) to sink or destroy the ship or part of the ship; or (v) to take over control of the ship or part of the ship; and (b) issuing directions of the kind authorised by section 99 to— <ul style="list-style-type: none"> (i) the ship's owner; or (ii) the ship's master; or (iii) any salvor in possession of the ship. • Without limiting other right or power of the State, under s98, the Minister and General Manager must act in accordance with requirements of s100 (below) and have regard to: <ul style="list-style-type: none"> (i) the extent and probability of serious damage if the power is not exercised; and (ii) the likelihood of the exercise of the power being effective; and (iii) the extent of the damage likely to be caused by the exercise of the power. • s99 provides that a direction issued under s98 may require the doing, or prohibit the doing, of anything in relation to the ship including: <ul style="list-style-type: none"> (a) the movement of the ship or part of the ship; and (b) the removal of cargo from the ship; and (c) the taking of salvage measures in relation to the ship, part of the ship or any of the ship's cargo; and (d) the sinking or destruction of the ship or part of the ship; and (e) the sinking, destruction or discharging into the sea of any of the ship's cargo; and (f) the handing over of control of the ship or part of the ship. • s100 provides a number of things to be done before intervention power is exercised, including ensure actions do not involve a threat to human life, to
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	<p>have regards to Australia's obligations under the <i>International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties</i>, contacting AMSA and contacting the ship's. Where the General Manager believes action must be taken urgently, only ensuring the actions do not result in threat to human life is required.</p> <p>Cost recovery of discharge expenses:</p> <ul style="list-style-type: none"> • Part 13 of TOMPA sets requirements and powers in relation to discharge expenses. • Discharge expenses are defined under s111 and include the reasonable costs and expenses incurred by the State or a prescribed entity in undertaking a range of actions, including notably an action taken under Part 12 Division 6 or 7 (as outlined above), as well as investigation of discharges, taking action to prevent or minimise effects of a discharge or likely discharge of pollutant, treating animals and plants impacted by a discharge, and rehabilitating or restoring Queensland's marine and coastal environment. • s112 allows the General Manager to set by gazettal an amount for services of a person or use or provision of ships or equipment for s111. Where the State contracts for services or hire however, the actual cost of such contract or high is to apply. • s113 and s114 include provisions for payments of securities and release of detained ships. • s115 provides for the recovery of discharge expenses, with discharges expenses taken to be a debt payable to the State jointly and severally by the owner and the master of the ship from which the pollutant was discharge or was likely to be discharged. s115 allows parties to apply for review of a decision under s115.
<p>Transport Operation (Marine Safety) Act 1994 (TOMSA)</p>	<ul style="list-style-type: none"> • Subject to prescribed exceptions, TOMSA generally applies to the following ships: (a) all ships connected with Queensland, wherever they may be, including while they are outside Queensland waters; (b) all ships in a pilotage area or port; (c) all ships on Queensland intrastate voyages, including while they are outside Queensland waters; (d) all ships on interstate voyages while they are in Queensland waters; (e) all ships on overseas voyages while they are in Queensland waters (s11). • Essentially, a "ship" is any kind of boat or other vessel used, or intended to be used, in navigation by water or for any other purpose on water. • A ship is "connected with Queensland" if, amongst other things: (a) it is registered under the <i>Shipping Registration Act 1981</i> (Cwlth) with a home port in Queensland; or (b) it is, or is required to be, registered or licensed under this or another Act; or (c) it is owned or chartered by— (i) an individual whose place of residence, or principal place of residence, is in Queensland; or (ii) a person whose place of business, or principal place of business, is in Queensland; or (iii) a person whose principal place of business for managing the ship's operations is in Queensland. • "Queensland waters" means all waters that are— (a) within the limits of the State; or (b) coastal waters of the State. The coastal waters of the State extend 3n miles seaward of the territorial sea baseline. • Section 12 provides that TOMSA does not apply to a ship to the extent that the Commonwealth Navigation Act applies to the ship; however, if the

	<p>Navigation Act provides that it does not apply to a matter if a State Act deals with the matter and TOMSA makes provision for the matter, TOMSA applies to the ship to the extent of the provision made for the matter.</p> <ul style="list-style-type: none"> • In relation to DCVs, State law applies in so far as it deals with matters relating to environment management, wrecks, salvage and the removal of obstructions (including abandoned, sinking and derelict vessels) from navigable waters (s6(2)(b) of the <i>Marine Safety (Domestic Commercial Vessel) National Law Act 2012</i>). • Under section 91 of TOMSA, a harbour master may direct a person responsible for something (i.e. not necessarily a ship) that is obstructing, or may obstruct, navigation to remove it. In exercising his/her powers, the harbour master must consider it reasonably necessary to give the direction to ensure safety and have regard to the need to ensure the effectiveness and efficiency of the Queensland maritime industry. The harbour master may, to the extent necessary to ensure safety, carry out the direction to remove the property if he/she reasonably believes there is no one to whom a proposed direction can be given and because of the urgent circumstances. • A direction may be given where the obstruction is a ship that is lost, abandoned or stranded. TOMSA defines the term “lost”, in relation to a ship or part of a ship, to include “sunk” and “wrecked”. Under section 87A of TOMSA, the person who was the recorded owner of the ship immediately before the ship was lost, abandoned or stranded is taken to be the owner of the ship and the person to whom the direction may be given, unless the contrary is proved. “Recorded owner” means— (a) for a DCV—the holder of the vessel’s certificate of operation under the national law; or (b) for another ship—the person in whose name the ship is registered under TOMSA or a law of another jurisdiction, whether inside or outside Australia. If the harbour master incurs expense in carrying out the direction (such as where the person has contravened the direction), the State may recover the amount of the expense as a debt by way of court action and the person taken to be the owner is the person who is liable for the amount of the expense that may be recovered. Further, if more than 1 person is taken to be the owner of the ship, on the giving of the direction to any of the owners, all of the owners are jointly and severally liable for the amount of the expense. • Under section 175A of TOMSA, a shipping inspector may, subject to following the prescribed processes, seize and remove an abandoned property. “Abandoned property” is defined to mean a ship, part of a ship, or other property, that is abandoned, lost or stranded in Queensland waters or on land adjacent to Queensland waters. Its application is primarily aimed at abandoned vessels which create a hazard to marine safety and the environment (Explanatory Notes). If no one claims the abandoned property within the prescribed timeframe, the shipping inspector may, having regard to the abandoned property’s value and condition, sell it by public auction or destroy it. If the proceeds of the sale of the abandoned property are insufficient to cover the expenses of the sale and costs of seizing, removing and storing the abandoned property and the seizure notice, the amount by which the proceeds are insufficient is a debt payable to the State by the owner and master of the ship (jointly and severally, if known), the owner of the abandoned property (if known), or any person registered under an Act as its owner at the time of the abandonment, loss or stranding.
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War on Wrecks (Wow) taskforce	<p>Please note, as part of MSQ's War on Wrecks (WoW) taskforce, Queensland's existing legislation is being reviewed to better provide for prevention and removal of derelict vessels, including recreational vessels, DCVs and historical maritime casualties not previously removed. As such, some amendments to TOMPA and TOMSA are expected.</p> <p>A known issue is that most (if not all) insurance policies include requirements for seaworthiness, and as such the current provisions do not adequately provide for derelict or out of survey vessels.</p> <p>As such, consideration and reviews at the National Law level by Department of Infrastructure, Transport, Regional Development and Communications and/or AMSA to provide greater responsibility for management (including removal from waterways and coastal waters) of DCVs which fall out of survey would be supported by MSQ, and opportunity to discuss this further would be greatly appreciated.</p>
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Table 2: MSQ Response to Discussion Paper Questions:

Question		MSQ Response/ Comment
Exclusive Economic Zone (EEZ)		
1	What benefits are there to AMSA expanding its powers to remove more wrecks in the EEZ?	<p>With the exception of a significant pollution event occurring within the EEZ and moving into Queensland's coastal waters, Queensland's maritime legislation has no application in the EEZ.</p> <p>In general, with case studies such as the <i>YM Efficiency</i>, there does appear to be substantial benefit to either accession of the WRC or amendment to the Navigation Act to reflect elements of the WRC such as the requirement for insurance and broadening of the definition of wreck.</p>
2	Do the benefits of AMSA's expanded powers offset any burden they may create?	
3	What particular aspects of the current regime governing wreck removal in the EEZ would you like to keep?	
Territorial sea		
4	Should the WRC apply in Australia's territorial sea? Please note any benefits or disadvantages.	<p>MSQ has a number of concerns with regards to ratifying the WRC and implementing this within the territorial sea. Queensland currently has provisions for intervention actions and cost recovery from all ships operating within Queensland's coastal waters, and currently require insurance coverage for both pollution response and salvage of wrecks for all ships over 15m length overall operating in Queensland's coastal waters. These provisions apply to all ships (with the exclusion of Australian Defence Force and International government ships on government duty) including recreational vessels, Domestic Commercial Vessels (DCVs) and foreign-flagged vessels, irrespective of whether they are party States to the WRC.</p> <p>Queensland's coastal waters include many significant and sensitive environments, including the Great Barrier Reef, Torres Strait and state marine parks. Ensuring Queensland is able to respond to incidents of smaller scales which may still significantly impact these and other marine and coastal values. Whilst the Article 10 of the Nairobi Convention still provides for the registered owner of the wreck to be liable for costs for the locating, marking and removing of a wreck (under articles 7, 8 and 9), Queensland's</p>

		<p>current insurance requirements provide greater surety for cost recovery for ships under 300gt.</p> <p>Queensland has encountered a number of situations that have provided learnings worthy of sharing, particularly with regards to insurance, including:</p> <ul style="list-style-type: none"> • As with all compliance matters, there will be situations where people deliberately seek to circumvent regulatory requirements. For example, obtaining insurance (and being issued a certificate of insurance), then cancelling within the cooling-off period but fraudulently showing the certificate of insurance. • Issues making a claim against off-shore insurers and jurisdictional issues. • Claims being refused due to reasons around the seaworthiness of the vessel, unsafe or negligent operation. • Situations where ship's do not meet the insurer's criterion for coverage, for example age of ship's master, construction of the vessels, area of operation (noting that TOMPA does have provisions for exemption where risk is considered and suitable evidence is provided that insurance cannot be obtained). <p>While these situations are less likely to be relevant for tankers or similar large vessels, they are applicable for DCVs should the Commonwealth Government be looking to apply the WRC holistically. These matters require further investigation and consideration.</p>
5	<p>What need for consistency do you see regarding the wreck removal frameworks that apply:</p> <ul style="list-style-type: none"> - in the EEZ and territorial sea? - across the states and Northern Territory? 	<p>Whilst it is agreed consistency operating in all Australian waters, (including EEZ, territorial sea, and states and territories) has benefits for both Australian and foreign vessels travelling in the coastal limits and wider territorial sea, for reasons listed in the rest of this response, applying all requirements of the WRC verbatim across the territorial sea (including application in coastal waters) may limit Queensland's (and other states and territories) ability to adequately protect, regulate and manage Queensland coastal waters.</p>
6	<p>What particular aspects of the current regime governing wreck removal in the territorial sea would you like to keep?</p>	<p>As per previous comments, as well as further comments below, MSQ would seek to ensure current and future powers within Queensland coastal waters, including those to take or direct intervening action, recover costs or prescribe insurance requirements for ships of a certain size (currently set at over 15m length overall), including ships under the WRC mandatory insurance trigger of 300gt, are not limited or diminished.</p>
7	<p>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)</p>	<p>As per previous comments, significant consultation and considerations is required should the Commonwealth take steps to apply the WRC to the territorial sea to ensure Queensland's current regulatory measures, particularly for insurance, intervention and cost recovery are not diminished. It is suggested that a staged approach be considered to ensure Australia's ability to take action and cost recover in the EEZ as soon as possible.</p>
Domestic commercial and recreational vessels		
8	<p>Should DCVs and recreational vessels be covered by the WRC provisions? What impact would this inclusion have on your industry/sector?</p>	<p>As per previous comments, Queensland's intervention powers, cost recovery powers and requirements for insurance already apply to both recreational vessels and DCVs.</p> <p>As per previous comments, as well as further comments below, Queensland would seek to ensure current and future powers within Queensland coastal waters, including those to take or direct intervening action, recover costs or prescribe insurance for ships (currently applied to ships over 15m length overall) including those</p>

		<p>under the WRC mandatory insurance trigger of 300gt) are not limited or diminished. MSQ is currently reviewing policies and laws with regards to the Queensland Government's War on Wrecks program. The proposed application of the WRC to DCVs and Queensland regulated ships would need consider any outcomes of this program of work.</p> <p>In addition, the impost of any increased insurance liability coverage for ships over 300gt, will require further consultation with Queensland's boating community, especially for Queensland regulated ships.</p>
9	If DCVs and recreational vessels are covered by the WRC provisions, should it be for the EEZ, territorial sea, or both?	As per previous comments.
10	What benefits do the state and Northern Territory wreck removal provisions offer?	As highlighted above, Queensland's existing framework already provides significant powers and benefits for intervention and cost recovery. Any application of the WRC to territorial waters would require significant consultation to ensure this doesn't limit and diminish Queensland's current and future powers and regulation of these matters.
Changes to the Framework		
Definition of 'Wreck'		
11	What implications are there for you and your organisation if the broader definition of a 'wreck', which includes cargo, is adopted?	<p>TOMSA does not use 'wreck' as a defined term nor limits application to a ship (as opposed to 'cargo' or a thing onboard the ship) for the purpose of the provisions concerning an obstruction to navigation and abandoned property. A 'maritime casualty' event is also not a prerequisite for the exercise of the relevant power. However, TOMSA must be applied in a way that meets its overall objective in achieving an appropriate balance between marine safety and the effectiveness and efficiency of the Queensland maritime industry.</p> <p>Whilst TOMPA does not define a wreck, definitions of maritime casualty and intervention actions already extend to cargo lost from a ship.</p> <p>As such MSQ is supportive of the broadening of this definition under the National Law.</p>
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?	Further consideration and formal legal advice would be required in the event the WRC is to be applied to Queensland's coastal waters, to ensure this requirement does not impact Queensland's current ability to cost recover under TOMPA.
Identification of a hazard		
13	Is the definition of a 'hazard' in the WRC too broad?	<p>The suggested considerations for determination of a hazard under Article 6 of the WRC would be expected to be similar to considerations already made by MSQ for determining a hazard under both TOMPA and TOMSA.</p> <p>As the term 'should' rather than 'must' has been used, it would tend to suggest that a reasonable approach to determining hazard based on the situation is acceptable.</p>
14	Does the requirement for AMSA to determine whether a wreck poses a hazard before commencing removal	TOMPA – s98(5) requires the Minister and General Manager to have regard to the extent and probability of serious damage with intervention, the likelihood of intervention being effective and the extent of damage likely to be caused by the intervention. s100 of

	impede its ability to respond to wrecks promptly or appropriately?	TOMPA provides considerations that must be made prior to enacting intervention powers, however there are exclusions for situations where urgent action is required.
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?	<p>TOMSA - A harbour master may give a direction in relation to an obstruction only if the harbour master reasonably considers it necessary to give the direction to ensure safety; and in giving the direction, the harbour master must have regard to the need to ensure the effectiveness and efficiency of the Queensland maritime industry. Safety considerations and the need to have regard to the effectiveness and efficiency of the Queensland maritime industry share some similarities to WRC's requirement to identify a "hazard" before removal can be carried out.</p> <p>Further, if the harbour master is required to carry out the direction, the direction may only be carried out to the extent necessary to ensure safety, which may be considered as a form of proportionality measure. This limitation is dealt with to some extent by the capacity of a Shipping Inspector to sell or dispose of abandoned property.</p> <p>Any changes which would limit Queensland's ability to promptly respond to such events would again require significant consultation with MSQ and the whole of Queensland Government.</p>
Wreck reporting requirements		
16	Are there any concerns about the WRC reporting requirements for both the Affected Ship and the Affected State?	<p>It would be anticipated that for foreign ships, AMSA would undertake any required notifications to the ship's flag State and any other requirements under the WRC.</p> <p>Both TOMPA and TOMSA already include reporting requirements for ships, with arrangements in place between MSQ and AMSA for escalation of such reports where required.</p> <p>s67 of TOMPA provides a duty to report certain incidents, including actual or probable discharge of pollutants.</p> <p>Under 125 of TOMSA, if a marine incident causing or involving the loss or presumed loss or abandonment of a Queensland regulated ship happens, the owner of the ship must report the marine incident to a shipping inspector at the earliest opportunity, but within 48 hours after the owner becomes aware of the incident, unless the owner has a reasonable excuse for non-compliance. Where a Queensland regulated ship is involved in another type of marine incident or a Queensland regulated ship's master has reason to believe that the ship has been involved in another type of marine incident, the master of the ship must report the marine incident to a shipping inspector within 48 hours after the incident happens, unless the master has a reasonable excuse for non-compliance.</p> <p>MSQ publishes Notices to Mariners online to alert mariners of matters of interest including marine incidents and obstructions to navigation.</p>
Liability for wreck removal		
Persons liable		
17	Are there any negative commercial implications related to holding the registered owner of the ship	Under s115 of TOMPA, discharge expenses are taken to be a debt payable by both the owner and the master of a ship from which a pollutant was discharged or likely to be discharged.

	liable, as opposed to the legal owner of a wreck?	The definition of both owner and master are as per TOMSA.
18	Should persons other than the ship owner (e.g. charterers) be held liable for wrecks that occur in relation to that ship?	<p>Under section 87A of TOMSA, the person who was the recorded owner of the ship immediately before the ship was lost, abandoned or stranded is taken to be the owner of the ship and the person to whom a direction may be given, unless the contrary is proved. "Recorded owner" means— (a) for a DCV—the holder of the ship's certificate of operation under the national law; or (b) for another ship—the person in whose name the ship is registered under TOMSA or a law of another jurisdiction, whether inside or outside Australia.</p> <p>s7 defines master as being the person having command or charge of the ship (but excludes a pilot having the conduct of a ship but not belonging to the ship).</p>
Compulsory insurance		
19	Would a requirement to hold wreck-related insurance help the government recover costs incurred during wreck removal?	<p>As previously mentioned, it is an existing requirement in Queensland for owners of ships over 15m length overall to hold such insurance. With the maximum limits applying to all ships 35m or more in length overall. The maximum limits for both pollution response and salvage set by TOMPR are \$10M each.</p> <p>It is recognised that this limit may not allow for full cost recovery, particularly for larger ships.</p> <p>A 300gt ship, depending on its design and purpose, would be expected to be closer to 40m length, and range beyond that into large bulk carriers, cruise liners etc.</p> <p>The liability limits for insurance for 300gt or more under the WRC would be anticipated to be significantly more than the limit set by TOMPR for salvage of \$10M. As such, increasing liability limits for ships of 300gt, without limiting Queensland's current ability to require insurance of ships (currently applied to those greater than 15m length overall), would likely provide greater cost recovery ability for maritime casualties at this scale.</p>
20	Do ship owners or operators currently hold wreck-related insurance?	Queensland currently requires owners of ships of more than 15m length overall operating in coastal waters to hold an insurance policy covering both pollution response and salvage of wrecked or abandoned ships. No approvals of exemptions have been granted by regulation, and as such it is generally accepted that insurance companies are able to provide such policies.
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?	<p>As per previous comment, these ships are already required to hold insurance in Queensland coastal waters.</p> <p>However, it would be anticipated that the limits required for ships of 300gt or more under the RWC would be significantly more than the limit set by TOMPR for salvage of \$10M.</p> <p>As such, significant consultation with insurance companies and owners of recreational ships and DCVs of 300gt or more, would be required.</p>
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)?	<p>It would be anticipated that the limits required for ships of 300gt or more under the RWC would be significantly more than the limit set by TOMPR for salvage of \$10M.</p> <p>As such, significant consultation with insurance companies and owners of recreational ships and DCVs, in particular those of 300gt or more, would be required.</p>

Liability limitation		
23	Where does the insurance industry sit in the wreck removal process? Does this change given the scale of the wreck?	<p>Consultation with the insurance industry should be undertaken to provide a response to this question. As previously highlighted Queensland currently requires owners of ships (currently those more than 15m length overall) operating in coastal waters to hold an insurance policy with coverage for both pollution response and salvage of wrecked or abandoned ships. No approvals of exemptions have been granted by regulation, and as such it is generally accepted that insurance companies are able to provide such policies.</p> <p>From MSQ's experience, insurer's Product Disclosure Statements (PDSs) generally include provisions for salvage, however the limits are often set at the value of the ship which may be lower than the \$10M required by TOMPA. Additionally, PDSs may not cover pollution response. In these cases, certificates have been sighted which provide special provisions to increase salvage limits and provide pollution cover to meet the requirements of TOMPA when operating in Queensland's coastal waters.</p> <p>However, as noted above, it would be anticipated that the limits required for ships of 300gt or more under the RWC would be significantly more than the limit set by TOMPR for salvage of \$10M.</p> <p>Significant consultation with the insurance industry and insurers and owners of Queensland regulated ships and DCVs, particularly those of 300gt or more, would be required.</p>
24	Will the insurance industry be able to provide wreck-related insurance to all ships, including DCVs and recreational vessels?	
25	Will the insurance industry be able to provide coverage for costs beyond the LLMC limit?	
Time limit for cost recovery		
26	Is the WRC time limit for commencing cost recovery actions too restrictive? If so, why?	<p>TOMSA and TOMPA do not have set time limits for cost recovery actions taken, however an action in personam to recover a sum recoverable by virtue of an enactment is generally required to be brought within 6 years from the date on which the cause of action arose (<i>Limitation of Actions Act 1974 (Qld)</i>).</p> <p>As the WRC time limits are shorter than this (generally 3 years from the date to a maximum of six years), this would limit Queensland's current ability to cost recover and as such the application to the territorial sea would require significant consultation with the Queensland Government.</p>
Defences and exceptions		
27	In what other circumstances should a ship owner not be liable for the costs associated with a wreck removal?	<p>A ship under the control of the Australian Defence Force or a warship, naval auxiliary or other ship owned and operated by a foreign country and used, for the time being, only on government, non-commercial service of the country as exempt from the application of TOMPA. No other circumstances removing the owner and master for liability of costs associated with discharge expenses are provided, however under s116, an external review of decisions under s115 to recover discharge expenses can be applied for and reviewed at the Queensland Civil and Administrative Tribunal.</p> <p>Under s91 of TOMSA, a person must comply with a direction, unless the person has a reasonable excuse for not complying with it. What constitutes a reasonable excuse will depend on the circumstances of the case. Liability for any expense incurred by the harbour master will follow accordingly.</p>
28	Are the defences available in Article 10 so broad as to obstruct or prevent AMSA's cost recovery actions?	The TOMPA cost recovery provisions are on a 'polluter (or likely polluter) pays', and no defence is provided for this. As previously stated, both the owner and master of the ship are deemed liable for costs to the State. s116 does provide an option for an application for cost recovery decisions to be reviewed by the

		<p>QCAT, but again there is no legislated defence to liability under TOMPA.</p> <p>As such the breadth of provisions of Article 10 would very likely limit Queensland's ability to recover costs, in particular, the inclusion of inclusion of 'natural phenomenon of an exceptional, inevitable and irresistible character', likely to capture tropical cyclones, ex-tropical cyclones and other severe storms.</p>
Salvage		
<p>29</p>	<p>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?</p>	<p>Under s91 of TOMSA, the harbour master's direction may specify how, when and to where the obstruction must be moved. A person must comply with the direction unless the person has a reasonable excuse for not complying with it.</p> <p>Likewise, under s98 of TOMPA, power exists for the State either taking action or directing action to be taken, which would allow appropriate salvors or specialists to be used if required.</p> <p>Any changes which might limit this power in Queensland's coastal waters would require further consultation.</p> <p>Outside of Queensland's coastal waters, for instance within sensitive areas including the Great Barrier Reef and Torres Strait Islands, having some form of approval or pre-approval of a salvor to ensure appropriate operation of salvage operations to not cause further damage or hazard would be important.</p>