



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



Australia's Potential Accession to the Nairobi International Convention on the Removal of Wrecks 2007 (Wreck Convention)

In August 2020, the Commonwealth Department of Infrastructure, Transport, Regional Development and Communications (Department) released a discussion paper to inform an examination as to whether accession to the Wreck Convention would benefit Australia (Discussion Paper).

The board of MLAANZ endorsed a response to the discussion paper prepared by Michelle Taylor. Non-confidential responses were also submitted to the Department by:

- Professors Nick Gaskell and Craig Forrest, University of Queensland
- International Group of P&I Clubs and International Chamber of Shipping
- Shipping Australia Limited
- Northern Territory Government
- Marine & Safety Tasmania
- Maritime Safety Queensland
- Maritime Industry Australia
- Sydney Coastal Councils

These submissions can be accessed [here](#).

By way of overview, the Wreck Convention was adopted on May 18, 2007 and entered into force on April 14, 2015. There are currently 53 contracting states to the Wreck Convention.

The Wreck Convention creates a legal regime for wreck removal, covering the reporting, locating, marking and removal of a wreck. A wreck potentially includes objects, such as containers, lost overboard from a ship. Wreck removal responsibilities under this regime apply to both the affected state and the shipowner.

The Australian Maritime Safety Authority (AMSA) currently has powers to remove wrecks under the Navigation Act 2012 (Cth). Australia's specific wreck removal laws allow for the removal of wrecks in the territorial sea but limit AMSA's powers to deal with wrecks in the Exclusive Economic Zone (EEZ) to ships that are regulated Australian vessels.

The Wreck Convention regime applies within the EEZ of a state party but a state party can opt to extend its application to wrecks located within the territorial sea.

Pursuant to the Wreck Convention, for an affected state to take removal measures, it must establish the wreck came from a "maritime casualty" and that it poses a "hazard". "Maritime casualty" is broadly defined to include an incident of navigation. "Hazard" is similarly broad, allowing for consideration of a state's "related interests". Where a wreck from a state party ship poses a "hazard", the affected state must ensure all reasonable steps are taken to locate and mark the wreck.

Liability for wreck removal sits with the shipowner. The Wreck Convention requires owners of ships 300GT and above to have insurance to cover wreck removal costs up to the limit of liability prescribed by the Convention on Limitation of Liability for Maritime Claims. The affected state then has the power to bring any claim for costs of wreck removal directly against the shipowner's insurer. The shipowner has defences and exceptions to liability that they can pursue and the insurer can also access these defences and exceptions.

Although the Department's formal consultation process has closed, MLAANZ invites any member who has any comments relevant to Australia's accession to the Wreck Convention to contact either David Goodwin or Michelle Taylor.

December 2020

