

**National Interest Analysis [2023] ATNIA 8
with attachments**

Nairobi International Convention on the Removal of Wrecks

(Nairobi, 18 May 2007)

[2023] ATNIF 8

Attachments:

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|-----------------------|------------------------|
| Attachment I | Consultation |
| Attachment II | Impact Analysis |
| Attachment III | Background Information |

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

Nairobi International Convention on the Removal of Wrecks, Nairobi, 18 May 2007

[2023] ATNIA 8

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Nature and timing of proposed treaty action

1. The proposed treaty action is for Australia to accede to the *Nairobi International Convention on the Removal of Wrecks* ('Nairobi Convention').
2. The Nairobi Convention was developed under the auspices of the International Maritime Organization ('IMO') and was adopted by an international conference held in Kenya in 2007. The Nairobi Convention closed for signature on 18 November 2008 and entered into force on 14 April 2015. The Nairobi Convention currently has 65 Contracting States including major maritime and Flag States such as China, France, Germany, India, Panama, Liberia and the Marshall Islands.¹
3. In accordance with Article 18(2), the Nairobi Convention would enter into force for Australia three months after the date of deposit for its instrument of accession.
4. It is proposed that Australia would deposit its instrument of accession as soon as practicable following consideration by the Joint Standing Committee on Treaties ('JSCOT'), authorisation of the Federal Executive Council, the passing of appropriate legislative amendments by Parliament, and the making of any necessary regulations.

Overview and national interest summary

5. At present, when a ship² breaks down, spills its contents overboard, or otherwise becomes a wreck in Australia's exclusive economic zone (EEZ) and territorial sea, the Australian Government uses the *Navigation Act 2012* (Cth) ('*Navigation Act*') and in some circumstances, the *Protection of the Sea (Powers of Intervention) Act 1981* and the *Protection of the Sea (Civil Liability) Act 1981*, to locate, remove, sink or destroy the wrecks, and recover costs from liable parties.
6. The current regulatory framework has significant gaps that impact the Australian Government's ability to recover costs, including where:
 - a) a foreign vessel creates a wreck in Australia's EEZ;
 - b) an object from a foreign or regulated Australian vessel (RAV) is sunken, stranded or adrift at sea from a vessel that is not itself wrecked or in distress, including shipping containers (the most common form of wreck); and

¹ As at 19/7/23.

² Please note that the terms 'ship' and 'vessel' will both be used to reflect the term used in the relevant legislation or the Convention.

- c) a domestic commercial vessel (DCV) or recreational vessel creates a wreck in the EEZ.
7. This is a problem because the majority of wreck incidents affecting Australia involve lost shipping containers from foreign-flagged vessels whilst in the EEZ. Acceding to the Nairobi Convention would provide Australia with a clear legal basis to remove, or have removed, wrecks (including objects lost at sea) in the EEZ that pose a danger or impediment to navigation, or may reasonably be expected to result in major harmful consequences to the marine environment, damage to the coastline, or related interests.
 8. Under the Nairobi Convention, State Parties' registered ship owners are held financially liable for the wrecks they create and are required to have insurance or other financial security to cover the costs of locating, marking and removing any wrecks. By acceding to the Nairobi Convention, the Australian Government would have the ability, in most cases, to recover these costs directly from the registered ship owner's insurer.
 9. The Nairobi Convention includes an optional clause enabling a State Party to extend the application of the Convention to its territorial sea. This option would provide the Australian Government with an even greater financial benefit, due to the high frequency of wreck incidents that occur in the territorial sea. However, it would require complex and lengthy negotiations with state and territory governments which have non-exclusive jurisdiction over the first three nautical miles of the territorial sea (known as coastal waters). States and Territories have varying wreck removal regimes for DCVs and recreational vessels which would require modification to be consistent with the Nairobi Convention if the Australian Government chose to extend its application to the territorial sea. It is proposed that Australia accede to the Convention, which will apply in the EEZ, and consider extending its operation to the territorial sea under the optional clause at a later date.

Reasons for Australia to take the proposed treaty action

10. In Australia, the majority of wrecks fall within the following three scenarios in which the Australian Government cannot recover costs under Australia's existing regulatory framework:
 - a) a foreign vessel sinks or becomes stranded (that is, creates a wreck) within Australia's EEZ;
 - b) any object from a foreign vessel or a RAV sinks, becomes stranded or is adrift in the EEZ or territorial sea; and
 - c) a DCV or recreational vessel creates a wreck in the EEZ.
11. Since 2018 there have been three major wreck incidents involving international shipping in Australia, all of which have occurred in the EEZ and involved lost containers from foreign vessels. Lost containers and other objects, goods or cargo that have fallen overboard from a ship are covered and defined under the Nairobi Convention, which is not the case currently under the *Navigation Act*. As the risk of wrecks occurring increases, it is important for Australia to have strong wreck-related laws to hold shipping companies responsible if an incident does occur, so that Australia may, in most cases,

recover the costs of locating, marking and removing wrecks. The three recent wreck incidents are outlined below.

- a) On 25 June 2020, while travelling from Fremantle to Adelaide, the Liberian flagged container vessel *Navios Unite* lost three containers during rough seas about 33 kilometres south-west of Cape Leeuwin. The containers immediately sank without discharging their contents or causing wider pollution impacts and there have been no indicative recovery costs to date. This is notwithstanding that the Australian Maritime Safety Authority initially had a plane searching an area about 1600 square kilometres to ascertain the situation.
 - b) On 24 May 2020, while travelling from China to Melbourne, the Singaporean flagged container vessel *APL England* lost 50 containers during heavy seas about 73 kilometres south-east of Sydney. To date, 15 of the 50 containers lost overboard have been recovered. The insurers for the *APL England* have reimbursed \$22 million to the Australian Maritime Safety Authority for the recovery costs.
 - c) On 1 June 2018, while travelling from Taiwan to Port Botany, the Liberian flagged container vessel *YM Efficiency*, lost 81 containers in heavy weather approximately 30 kilometres off the coast southeast of Newcastle. The registered vessel owner had refused to pay for the costs of the wreck and the Australian Government was not able to recover these costs under the *Navigation Act*. The Australian Government sought \$20 million from the owner to cover the salvage operation costs through an action in the Federal Court of Australia, which has now been settled. The Australian Maritime Safety Authority had petitioned the Federal Court previously to arrest the sister vessel of the *YM Efficiency* to recover the debt. Liberia is a State Party to the Nairobi Convention and, if Australia had been a State Party to the Nairobi Convention at the time, the Australian Maritime Safety Authority may have been able to recover the costs directly from the insurer of the *YM Efficiency* and avoided some or all of the litigation that followed.
12. The risk of wreck incidents occurring in Australia is likely to increase with increasing demand for shipping services to facilitate e-commerce. The shipping supply chain is under pressure to respond with bigger container ships, travelling more often at full capacity, and face pressures to load and unload ships as quickly as possible.
 13. The Bureau of Infrastructure, Transport and Regional Economics (BITRE) estimates that by 2029-30 the number of containerised imports arriving in Australia will double while the number of containerised exports will triple. Movements of containers between Australian ports are also estimated to at least double.
 14. These factors, combined with the effects of climate change increasing the severity and variability of weather, are claimed to have contributed to three significant container loss events since November 2020 in the Pacific Ocean – *One Apus* lost 1,800 containers (about 2900 kilometres from Hawaii), *Maersk Essen* lost 750 containers (approximately 800 kilometres off Hawaii), and *Maersk Eindhoven* lost 260 containers (about 80 kilometres off Northern Japan).³

³ Ann Koh, Shipping Containers Fall Overboard at Fastest Rate in Seven Years, Bloomberg, 2021, accessed 8 June 2023.

15. Australia also has a large number of DCV and recreational vessels. Between 1 July 2018 and 24 March 2021, Maritime Safety Queensland removed a total of 592 wrecks, the vast majority being recreational vessels. Should Australia accede to the Nairobi Convention, both DCV and recreational vessels would be included in a single, uniform set of wreck removal rules for all vessels in the EEZ.
 16. Accession to the Nairobi Convention would increase the circumstances in which the Australian Government could recover wreck-related costs for wrecks occurring in the EEZ. The Nairobi Convention will:
 - a) provide the Australian Government with additional criteria to be taken into account in determining whether a wreck poses a ‘hazard’ and so should be removed, including economic, environmental and health impacts.
 - b) broaden the costs recoverable by the Australian Government for removal to include the costs of any form of prevention, mitigation or elimination of the hazard created by the wreck.
 - c) expand the definition of a ‘wreck’ to include any object that is lost at sea from a ship and that is stranded, sunken, or adrift at sea, thereby including shipping containers.
 - d) make the recovery of wreck-related costs simpler and more time-effective. Owners of RAVs and registered ship owners of State Parties to the Nairobi Convention will be held strictly liable for the costs associated with locating, marking and removing wrecks they create, subject to a number of specific exceptions, making claims more straightforward and easier to resolve.
 - e) require registered vessel owners to hold wreck-related insurance policies for vessels that are 300 gross tonnage (GT) and above, similar to the current financial security requirements under the *Navigation Act*. In most cases, the Australian Government will then be able to bring a claim for costs arising directly against the vessel owner’s insurer in the event of a wreck. This will provide greater opportunities for cost recovery, as there are currently a number of practical difficulties when trying to recover costs from a party with no assets in Australia.
 17. The Nairobi Convention includes an optional clause which enables a State Party to extend the application of the Convention framework to the territorial sea. Extending the operation of the Nairobi Convention to the territorial sea would provide significant financial benefits for the Australian Government due to the high frequency of wreck incidents that occur in the territorial sea. However, this would require extensive negotiations with state and territory governments, which have legislative powers with respect to their coastal waters. By way of comparison, the introduction of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*, Australia’s national DCV safety scheme, required eight Commonwealth, state and territory laws to be harmonised into a single regulatory framework.
 18. Currently, wrecks of foreign vessels in the territorial sea are regulated by the Australian Maritime Safety Authority under the *Navigation Act* and by state and territory legislation
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where the wreck occurs within coastal waters. If a foreign vessel creates a wreck in the part of Australia's territorial sea which is also coastal waters, both Commonwealth and state or territory laws apply and the respective governments work together to determine which regime would give the greatest chance for cost recovery. DCVs and recreational vessels wrecks are regulated by states and territories in coastal waters, and only in some instances, beyond coastal waters.

19. Although there are benefits of extending the Nairobi Convention to the territorial sea by eliminating the inconsistent and complex regulatory regime, Australia's interests are best served by avoiding the significant delay state and territory government negotiations would cause for implementation of the Nairobi Convention if the optional clause were also adopted. To that end, the Australian Government considers Australia should accede to the Nairobi Convention as soon as possible and, subject to proposed legislative changes discussed in paragraph 20 below, Australia does not propose to extend the Nairobi Convention to the territorial sea at this time and should revisit acceding to the optional clause at a later date.
20. While not strictly required to give effect to the Nairobi Convention, it is proposed the *Navigation Act* (Cth) be amended to apply Nairobi Convention requirements to foreign flagged vessels and RAVs in the territorial sea. This will maximise the benefits from the proposed treaty action by ensuring that foreign vessels and RAVs are subject to consistent Commonwealth regulatory requirements throughout their voyage in transiting from Australia's EEZ through the territorial sea to access an Australian port. Wrecks from foreign vessels and RAVs may still be subject to existing state and territory laws where they occur in coastal waters, and Commonwealth, state and territory governments will continue to be able to negotiate to determine which regime should be applied. DCVs and recreational vessel wrecks will continue to be subject to varying state and territory regulations in coastal waters, and largely unregulated beyond coastal waters in the territorial sea.
21. Should Australia accede, most large DCVs and recreational vessels that operate in Australia's EEZ would be covered by the Nairobi Convention. These vessels are generally considered more likely to create a hazardous wreck given their size. DCVs and recreational vessels that travel internationally are likely to already have wreck removal insurance to comply with the Nairobi Convention given the large number of States that are already party to the Nairobi Convention.
22. With 79 per cent of global shipping tonnage flagged to State Parties to the Nairobi Convention, Australia's accession to the Nairobi Convention would result in the adoption of a much more internationally consistent regulatory framework for the removal of wrecks. Accession would contribute to the simplification of the operations for shipping companies. This may in turn boost economic activity by encouraging investment and reducing administrative costs.

Obligations

23. The Nairobi Convention provides an internationally consistent regulatory framework for Australia to remove, or have removed, wrecks that pose a hazard in the EEZ. The main obligations under the Nairobi Convention are outlined below.

24. Article 1(3) defines ‘maritime casualty’ to mean a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it (e.g. an explosion at a port), resulting in material damage or imminent threat of material damage to a ship or its cargo.
25. Article 1(4) of the Nairobi Convention defines a ‘wreck’ following upon a maritime casualty, to mean a sunken or stranded ship, any part of a sunken or stranded ship (including any object that is or has been on board a ship), or any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea. It also includes any ship that is about, or may reasonably be expected, to sink or become stranded, where effective measures to assist the ship or any property in danger are not already being taken.
26. Under Article 5 of the Nairobi Convention, a State Party must require the master and operator of a ship flying its flag to report when that ship has been involved in a maritime casualty resulting in a wreck to the government authorities with responsibility for that location without delay.
27. Article 7 provides that when the affected State Party becomes aware of a wreck (for instance, because it has been reported to it under Article 5) it must use all practicable means to issue an urgent warning of the nature and location of the wreck to all seafarers and the States concerned.
28. Under Article 9(2), the registered owner of a vessel is required to remove a wreck determined to constitute a ‘hazard’ by the affected State Party.
 - a) Article 1(5) defines ‘hazard’ as any condition or threat that poses a danger or barrier to navigation or may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or ‘related interests’ of one or more States.
 - b) Article 1(6) defines ‘related interests’ as the interests of a coastal State directly affected or threatened by a wreck, such as: maritime coastal, port and estuarine activities (including fisheries activities) constituting an essential means of livelihood of the persons concerned; tourist attractions and other economic interests of the area concerned; the health of the coastal population and the wellbeing of the area concerned (including conservation of marine living resources and of wildlife); and offshore and underwater infrastructure.
29. Under Article 6, if a wreck is reported in an affected State Party’s EEZ, that State should take the following criteria into account to determine if the wreck poses a hazard:
 - a) the type, size and construction of the wreck;
 - b) the depth of the water in the area;
 - c) tidal range and currents in the area;
 - d) if the wreck is located in a particularly sensitive area;
 - e) the proximity of shipping routes or established traffic lanes;
 - f) traffic density and frequency;

- g) type of traffic;
- h) nature and quality of the wreck's cargo, the amount and types of oil (such as bunker oil and lubricating oil) on board the wreck and, in particular, the damage likely to result should the cargo or oil be released into the marine environment;
- i) vulnerability of port facilities;
- j) prevailing meteorological and hydrographical conditions;
- k) submarine topography of the area;
- l) height of the wreck above or below the surface of the water at lowest astronomical tide;
- m) acoustic and magnetic profiles of the wreck;
- n) proximity of offshore installations, pipelines, telecommunications cables and similar structures; and
- o) any other circumstances that might necessitate the removal of the wreck.

30. If an affected State Party determines a wreck constitutes a hazard, that State must:

- a) ensure all reasonable steps are taken to mark the wreck in accordance with international standards and promulgate the marking information, including through appropriate nautical publications, pursuant to Article 8.
- b) immediately inform the registered owner and the ship's flag State of the decision and consult the ship's flag State and any other impacted States on measures to be taken in relation to the wreck, pursuant to Article 9(1).
- c) inform the registered owner in writing of a reasonable deadline by which it must remove the wreck, pursuant to Article 9(6)(a) and (b). The notice must specify that if the wreck is not removed by the deadline it may be removed at the registered owner's expense.
- d) inform the registered owner in writing if the affected State party intends to intervene immediately in circumstances where the hazard is particularly severe, pursuant to Article 9(6)(c).

31. Under Article 9(7) and (8) if immediate action is required to remove the wreck, or if the registered owner does not remove the wreck within the reasonable deadline set by the affected State, or the registered owner is not able to be contacted, the affected State may remove the wreck.

32. Under Article 9(9), a State Party must take appropriate measures under their national law to ensure that their registered owners are complying with their obligations under Article 9(2) and (3). Should Australia accede to the Nairobi Convention, it would be required to have domestic laws requiring Australian RAVs to comply with directions to remove a

wreck determined to constitute a hazard, and to provide an affected State with evidence of insurance where required by the Nairobi Convention.

33. Under Article 12(1), the registered owner of a ship that is 300 GT and over and flying the flag of a State Party is required to maintain insurance or other financial security to cover liability up to the limits set under the *1976 Convention on Limitation of Liability for Maritime Claims* (the LLMC Convention) (as amended by the 1996 Protocol), which are calculated based on the size of the vessel. Currently in Australia, Part IIIA of the *Protection of the Sea (Civil Liability) Act 1981* requires ships entering or leaving Australian ports to be insured up to the limits set under the LLMC Convention as amended, to cover the liability of the shipowner for pollution damage.
34. Although Australia is a party to the LLMC Convention as amended, Australia has made a reservation excluding the application of Article 2, paragraphs 1(d) and (e) to claims for wreck removal. The effect of this reservation is that in Australia, a ship owner will still be held liable for wreck related costs that exceed their insurance coverage.
35. Under Article 12(2), if a ship owner has obtained this insurance, the flag State would need to issue a certificate of compliance in the form of the model set out in the Annex to the Nairobi Convention. This certificate must be in English and contain the:
 - a) name of the ship, distinctive number or letters of port of registry;
 - b) gross tonnage of the ship;
 - c) name and principal place of business of the registered owner;
 - d) IMO ship identification number;
 - e) type and duration of security;
 - f) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
 - g) period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other security.
36. Australia would be responsible for determining the conditions of issue and the validity of the certificate, pursuant to Article 12(3).
37. Australia would be required to not allow any Australian ship of 300 GT and above to operate unless it has been issued a certificate, pursuant to Article 12(11).
38. Australia would be required to ensure under its domestic law that any ship of 300 GT and above, regardless of the flag State, has a certificate if it is:
 - a) entering or leaving a port in its territory; or
 - b) arriving at or leaving from an offshore facility in its Territorial Sea, pursuant to Article 12(12).

39. Australia would be required to accept the certificates issued by other State Parties, pursuant to Article 12(9).
40. As outlined in Article 2, in circumstances where Australia is required to remove a wreck, the measures undertaken by the relevant authorities would be limited to those reasonably necessary to remove the wreck and must cease as soon as the wreck has been removed. The measures would not be able to interfere with the rights of other States and could not be used to claim or extend sovereignty.

Implementation

41. Chapter 7 of the *Navigation Act* contains the current Commonwealth wreck removal provisions.
42. Following consideration by the Joint Standing Committee on Treaties (JSCOT) and prior to treaty action being taken, Australia would need to pass new stand-alone legislation or introduce amendments to the *Navigation Act* in order to implement the obligations in the Nairobi Convention.
43. There would be no impact on state and territory legislation.

Costs

44. Accession to the Nairobi Convention was found to be broadly economically beneficial for the Australian Government as it would avoid disputes over responsibility and lower legal and financial security-related costs (see **Attachment II**).
45. New regulations typically incur costs to both the Australian Government and industry. However, additional costs to the Australian Government following accession to the Nairobi Convention would be negligible due to the reallocation of resources within the Australian Maritime Safety Authority.
46. Most Australian ship owners would incur some ongoing compliance costs, including:
 - a) additional administrative costs (for example, showing and keeping various records)
 - b) costs for obtaining a proof of insurance certificate from a State Party
 - c) premiums for the compulsory wreck-related insurance.
47. It is estimated the compliance costs that would be incurred by the shipping industry (including foreign vessels, RAVs, DCVs and recreational vessels) as a result of acceding to the Nairobi Convention would amount to approximately \$1 million per year. This figure reflects that most foreign flagged vessels already incur the costs of complying with the Nairobi Convention and only a small number of Australian vessels are over 300GT.
48. After accession, in the event of a wreck, in most cases:
 - a) registered vessel owners will bear wreck-removal related costs, instead of the Australian Government (the Australian Government has typically paid for

wreck-related costs through consolidated revenue or from the Protection of the Sea Levy if the incident created marine pollution). The quantum of these costs would depend on the type of vessel and cargo involved – with larger vessels and more complex cargo costing more to remove.

- b) both the Australian Government and vessel owners would benefit from avoided legal costs due to the introduction of strict liability.
- c) the shipping industry would also benefit from the requirement to provide financial security, which would avoid vessels needing to be held as security.

49. Accession is considered to carry a significant financial benefit for the Australian Government due to avoidance of disputes relating to liability. The total financial benefits for the Australian Government of accession to the Nairobi Convention over a ten-year period (relative to the status quo) are outlined below.

Bulk carriers	Chemical tankers	Container carriers	General cargo ships	LNG tankers	LPG tankers	Livestock carriers	Tankers	Vehicle carriers
<i>\$m</i>	<i>\$m</i>	<i>\$m</i>	<i>\$m</i>	<i>\$m</i>	<i>\$m</i>	<i>\$m</i>	<i>\$m</i>	<i>\$m</i>
Total net benefits								
33.4	2.8	4.6	4.6	13.6	1.0	4.6	6.4	4.6
Total costs								
2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6
Total benefits								
36.0	5.4	7.2	7.2	16.2	3.6	7.2	9.0	7.2

- 50. With regard to DCVs and recreational vessels, there is no information regarding the extent of legal disputes relating to wreck related costs or the potential cost reduction with adoption of the Nairobi Convention. It is assumed that the benefits of reducing litigation and disputes over wreck removal would have a similar positive impact to that of RAVs and foreign vessels.
- 51. Further information on the costs and benefits is contained in the Impact Analysis, attached to this National Interest Analysis (**Attachment II**).
- 52. Accession to the Nairobi Convention is not expected to disrupt maritime trade or act as a barrier to new entrants because Australia would be adopting a widely accepted international standard, which many vessel owners already comply with. It is estimated 89.9 per cent of vessels visiting Australia are flagged to a State Party to the Nairobi Convention and so are familiar with the framework and already hold the necessary insurance.

Future treaty action

- 53. Under Article 14, if at least one-third of the State Parties make a request, a conference will be held by the IMO to revise or amend the Nairobi Convention. Amendments then

enter into force via ‘tacit acceptance’ – that is, at a time specified by the relevant IMO committee unless before that time objections to the amendment are received from a specified number of parties.

54. Any future amendment to the Nairobi Convention would constitute a treaty action and would be subject to Australia’s domestic treaty making requirements.
55. If Australia decides at a later date that it would like to extend the scope of the application of the Nairobi Convention to the territorial sea under the optional clause, it can do so by notifying the Secretary-General of the IMO. This would be subject to Australia’s domestic treaty-making requirements, including tabling and consideration by the Joint Standing Committee on Treaties (JSCOT).

Denunciation

56. In accordance with Article 19, any State Party may denounce the Nairobi Convention by written notification to the Secretary-General of the IMO after the expiry of one year following the date it comes into force for that State Party.
57. The denunciation takes effect one year, or such longer period as may be specified in the instrument of denunciation, after its receipt by the Secretary-General.
58. Any denunciation by Australia would constitute a treaty action and would be subject to Australia’s domestic treaty making requirements.

Contact details

Maritime Emissions and Environment
Surface Transport Emissions and Policy
Department of Infrastructure, Transport, Regional Development,
Communications and the Arts.

**ATTACHMENT I
ON CONSULTATION**

*Nairobi International Convention on the Removal of Wrecks
(Nairobi, 18 May 2007)*

[2023] ATNIA 8

[2023] ATNIF 8

CONSULTATION

59. The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) has undertaken thorough public consultation in regards to Australia's possible accession to the *Nairobi International Convention on the Removal of Wrecks* (Nairobi Convention) to ensure consideration was given to the likely impacts of any potential regulatory change for each practical and viable policy alternative.
60. Consultation commenced with the public release of a discussion paper in August 2020 to inform the options to be considered in any Impact Analysis (IA). The paper was publicised on the Department's website and sent directly to a wide range of stakeholders, including key industry bodies, state and territory governments, legal professionals and academics. Submissions received were generally supportive of accession to the Nairobi Convention, with broad approval for its application in the EEZ and the Territorial Sea.
61. The discussion paper proposed including Domestic Commercial Vessels (DCVs) within the Australian Government's wreck removal framework, which are currently regulated by the states and territories. State and territory government submissions requested further information and consultation before they could provide an in-depth response to this proposal. Several government submissions were firm in their belief their current legislation was acceptable and amendments driven by accession to the Nairobi Convention would not be necessary. As a result, the IA specified the proposed mechanism to include DCVs in a Commonwealth system – an amendment to the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*.
62. Key industry and state government stakeholders were consulted on the cost benefit analysis included in the IA to understand and adequately reflect the costs for industry of acceding to the Nairobi Convention.
63. The Department then distributed the draft IA for comment in September 2021 to the same stakeholders to ensure any concerns, costs, benefits and data were accurately represented and to test the arguments for the preferred option (3B – Accession to the Nairobi Convention and application in the EEZ and Territorial Sea).
64. The responses were generally in agreement with acceding to the Nairobi Convention, with continuing general support for its application in the EEZ and the territorial sea. Stakeholders did raise concerns over the interoperability of the Nairobi Convention with existing wreck removal frameworks governed by the state and territories and the Great Barrier Reef Marine Park Authority. The Department believes the Nairobi Convention can operate in tandem with these frameworks in a similar way to the current Commonwealth wreck removal framework.

65. Stakeholders also raised concerns with regard to how insurance companies could manage their risks given the limitations on liability defences. The Department recognised these issues but felt accession to the Nairobi Convention remained the best option. The Department will continue to consult with stakeholders when it enters the implementation phase to determine if these issues can be further mitigated
66. In exploring these issues, the Department undertook additional research and determined it was necessary to amend the options in the IA to ensure the Nairobi Convention applied to all vessels within the geographic area. The biggest change was that the inclusion of DCVs and recreational vessels in the Nairobi Convention framework could no longer be considered separately, but rather was required as part of each accession option. This changed the preferred option to 3 – Accession to the Nairobi Convention, applying it to all vessels in the EEZ.
67. In March 2022, the Department sent the amended draft IA to the same cohort of stakeholders that received the draft IA. While stakeholders were somewhat disappointed the IA recommends the Nairobi Convention not apply in the territorial sea, it was understood the implementation issues would unnecessarily delay the accession process. Stakeholders did continue to support accession to the Nairobi Convention in this form.

Stakeholders consulted

68. State and territory governments were consulted through the Maritime Agencies Forum and the National Plan Strategic Coordination Committee on the issue of Australia’s accession to the Nairobi Convention.
69. State and territory stakeholders were also informed of the progress through the Commonwealth-State-Territory Standing Committee on Treaties.
70. Industry stakeholders, including industry peak bodies, legal professionals and academics, were consulted through direct engagement.
71. The industry stakeholders included the following organisations:

Australian Aluminium Council	Bulk Liquids Industry Association	Freight and Trade Alliance and Australian Peak Shippers Association
Australian Cruise Association	Cement Industry Federation	
Australian Industry Group	CocksMacnish	International Chamber of Shipping
Australian Institute of Petroleum Ltd	Colin Biggers & Paisley	Insurance Council of Australia
Australian Local Government Association	Container Transport Alliance Australia	International Group of P&I Clubs
Australian Mines & Metals Association	Cruise Lines International Association	Maritime Industry Australia Ltd
Australian Peak Shippers Association Inc	Customs Brokers and Forwarders Council of Australia	Maritime Law Association of Australia and New Zealand
	Deakin University	Meat and Livestock Australia

Melbourne Maritime Heritage
Network

Minerals Council of Australia

National Farmers Federation

RMIT

Shipping Australia Limited

South Australian Freight Council

Superyachts Australia

Sydney Coastal Councils Group

Tasmanian Logistics Committee

Tourism and Transport Forum

University of Queensland