

Committee Inquiries Question on Notice

Treaties

Nairobi International Convention on the Removal of Wrecks

IQ24-000012

Division/Agency: DIV - Surface Transport Emissions and Policy

Hansard Reference: Spoken, Page No. 4-5 (25 March 2024)

Topic: Wrecks that drift across maritime borders

Mr Matt Burnell asked:

Mr BURNELL: One of the scenarios that I wouldn't mind a little bit of clarity on is where we have a wreck— this probably is more relevant to containers going over the side in heavy seas—on our EEZ border at the extremity, which—correct me if I'm wrong—is 200 nautical miles from our coastline.

Ms Stagg: That's correct, except for in the north where there isn't 400 nautical miles between us.

Mr BURNELL: In those situations where you do have containers go overboard right on that border, if we were to instigate recovery operations from a government perspective, but the containers end up drifting or the wreck drifts outside of the EEZ, what's our ability to claim back costs incurred for recovery or part recovery of that wreckage?

Ms Stagg: I think there are two instances there. My understanding is it is where the maritime casualty incident occurs. If that occurs in the EEZ, my understanding is that it is within the scope of these arrangements. I will double-check that, and if I've got that wrong we'll come back to you on notice to provide clarification. My understanding is that where the casualty incident is within our EEZ, if those containers were to shift outside but we had already commenced those recovery operations, then our costs would be met. To the north it's a little more complicated because it may be shifting from our EEZ to that of another country. Again, I'd have to clarify whether it's the location in which the wreck commences or whether it's the location in which the wreck stops or finalises its movement. I'll have to take that on notice and come back to you.

Mr BURNELL: Especially on our northern locations, where there may be some discrepancy as to whose jurisdiction it sits in, there may be joint operations so, therefore, they need to jointly recover costs.

Ms Stagg: Certainly, where the wreck is actually on the border it is jointly managed. We negotiate with the other government, and the costs are shared and recovered that way. What I am unsure about, is where it starts on one side of that boundary and where it finishes on the other side of that boundary. Whether it's the jurisdiction in which the casualty event occurred, or the jurisdiction in which the wreck finally comes to a stop. I'll have to clarify that and come back to you on notice.

Mr BURNELL: It depends on the circumstances and the time of locating from the time of the incident. For example, it's not uncommon for containers to go over the side during rough seas and it not to be noticed for a period of 12 hours or longer, if you're in cyclonic conditions. You could be quite some distance from the incident when the first notification

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gets put through to the relevant authority, which I assume in our waters would be AMSA.

Ms Stagg: That's correct.

Mr BURNELL: By the time the contents are located, is it quite possible they could be outside our EEZ, depending on where they are transiting from.

Ms Stagg: Absolutely, that is possible. I'll have to take that on notice and come back to you with some further advice.

Answer:

The drifting of wrecks, such as shipping containers, near the boundary of the area covered by the Nairobi Convention would be a rare occurrence. The Department of Infrastructure, Transport, Regional Development, Communications and the Arts is not aware of such cases globally which have relied on the Convention to date. As a comparatively new convention, there may be legal interpretations of provisions in the Nairobi Convention that are yet to be tested with insurance claims, or in the courts.

Under the *Nairobi International Convention on the Removal of Wrecks* (the Nairobi Convention), "the affected State may take measures... in relation to the removal of a wreck which poses a hazard in the Convention area," or its exclusive economic zone (EEZ). Where a wreck poses a hazard outside Australia's EEZ, Australia would not be able to rely on the Convention to recover the costs of wreck removal.

The Nairobi Convention also allows for co-operation between State parties in the event of a wreck that involves multiple states, for example, where containers go overboard in one state and drift into another. Consistent with the Convention, where a wreck poses a hazard on the boundary of Australia's EEZ with another State, Australia would seek to act collaboratively with the other member state to manage the wreck.

Where a wreck drifts into another State's EEZ, the ability of the member state to recover costs for wreck removal will depend on whether they are a signatory to the Nairobi Convention.

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IQ24-000013

Division/Agency: DIV - Surface Transport Emissions and Policy

Hansard Reference: Spoken, Page No. 5 (25 March 2024)

Topic: Insurance requirements for ship operators

Mr Josh Wilson asked:

CHAIR: Making sure that people have appropriate insurance seems like very good common sense. Prior to us entering into this agreement, did we require operators who owned ships that were bearing containers into Australian ports to have insurance?

Ms Stagg: I would have to check for you, because the barrier at the moment is that we can't go directly to an insurer to seek the cost. I would have to check for you if there is a requirement for them to have insurance to come into our waters or have other forms of financial security, and I will take that on notice for you. The key thing here is, even where they have insurance, we cannot go to the insurer to get those costs directly. They can do that voluntarily, as was the case with the Singaporean vessel where their insurer reimbursed Australia, but in the case of the YM Efficiency they disputed that there was a wreck, and these rules would've clarified that. It would have also enabled us to go directly to their insurer, rather than going through the courts as we had to do in that case.

CHAIR: Going through the courts or going to their operator? Normally in Australia, if two people had a car bingle and they're both insured, it's nevertheless the case that you have to deal with the person with whom you've had the accident. You don't necessarily get to go straight to the insurer

Ms Stagg: This will allow us to deal directly with an insurer.

CHAIR: That's an improvement, but it may well have been—you would like to think that we would have already set as a condition of entry to Australian ports that vessels have appropriate insurance.

Ms Stagg: That's my understanding. I just want to confirm with colleagues that I've got that completely correct.

Answer:

Under the *Protection of the Sea (Civil Liability) Act 1981* and the *Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008*, vessels that come into Australian ports are required to hold insurance to cover liabilities for environmental incidents such as oil spills. However, vessels entering Australian ports are not currently required to hold specific wreck-related insurance as required under the *Nairobi International Convention on the Removal of Wrecks* (the Nairobi Convention).

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Around 90 per cent of all vessels entering Australian ports are flagged in countries that are a State Party to the Nairobi Convention and are already required to meet its insurance obligations. Accession to the Nairobi Convention would enable Australia to take advantage of this high conformity among these vessels.

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IQ24-000014

Division/Agency: DIV - Surface Transport Emissions and Policy

Hansard Reference: Spoken, Page No. 6 (25 March 2024)

Topic: Interaction with NOPSEMA

Mr Matt Burnell asked:

Mr BURNELL: One last question. The interaction between the proposed convention and the offshore gas and oil industry, how will it interact with NOPSEMA with things like FPSO's that decouple from the offtake, or exploration drill rigs for example, that might be on a DP3 setting and then weather starts— is there provision for coverage there? Is that a smooth transition?

Ms Stagg: That would be the intention. We still need to work through the legislative amendments that implement this. We are yet to do that work with the Office of Parliamentary Counsel, including whether there's any necessary consequential amendments and the like. Essentially at the point at which an offshore floating platform becomes a vessel again, then yes, these provisions would apply.

Mr BURNELL: Okay. How much work would be required to ensure that there's compliance there, time frame wise?

Ms Stagg: I'll have to take that on notice.

Answer:

The *Nairobi International Convention on the Removal of Wrecks* (the Nairobi Convention) includes a broad definition of 'ship', but expressly excludes vessels 'on location engaged in the exploration, exploitation or production of seabed mineral resources', for example, a Floating Production Storage and Offload/Offtake (FPSO) vessel connected to the seabed.

This is consistent with current domestic legislative arrangements, where an FPSO ceases to be a 'facility' and becomes a 'vessel' when it disconnects from the seabed. At this point, the requirements of the *Navigation Act 2012* would apply. In practice, this means an FPSO needs to be prepared to meet Navigation Act requirements in advance of disconnecting.

The Australian Government has brought forward legislative amendments to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act) and the Navigation Act to improve the disapplication arrangements and allow relevant aspects of the Navigation Act to apply to OPGGS Act facilities. These disapplication arrangements will be considered in the development of legislation to give effect to the Nairobi Convention. The timing of these new disapplication arrangements is dependent on the passage of the OPGGS Act amendments.

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Similar to when an FPSO disconnects from the seabed and becomes a 'vessel' under the *Navigation Act 2012*, comparable arrangements would need to apply to wreck-related insurance requirements for FPSOs on disconnection outside territorial waters under the Nairobi Convention. In developing the legislation to give effect to the Nairobi Convention, consideration will be given to the interactions of the Convention with the new disapplication arrangements.