
The Parliament of the Commonwealth of Australia

Ship salvage

Inquiry into Maritime Salvage in Australian Waters

House of Representatives
Standing Committee on Transport and Regional Services

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Foreword

Maritime salvage is an integral part of the safety of Australia's mariners and the maritime transport industry. This report follows *Ship Safe*, and *Ships of Shame* in a series of reports that the committee has carried out with the safety and efficiency of Australia's maritime transport sector in mind.

This report addresses issues relating to maritime salvage touched on by the Productivity Commission's report on the Economic Regulation of Harbour Towing and Related Services. Despite the Productivity Commission's belief that market forces will continue to provide the necessary salvage capability, evidence before the Committee indicated that this may not be the case for much longer. Two salvage capable tugs have already left Australian waters due to economic pressures.

This report focuses on Australia's salvage capability; a capability that Australia must have in order safeguard its national security, economic and environmental wellbeing. The Committee has made recommendations in this report relating to the assessment of strategic placement of salvage tugs, the revenue needed to support salvage capability, maintaining salvage standards, the development of a national salvage plan and the provision of salvage related training.

The men and women who work in this dangerous and difficult industry only get the recognition they deserve on those occasions when a major disaster makes the evening news. Australians need to be more proactive than that.

I would like to take this opportunity to thank all those who made submissions to the Committee and gave their time and hospitality as we went on our diverse inspection tours. The committee would especially like to thank those who participated in the round table.

Due to the fact that the ships coming into Australian waters are in better condition than they have ever been before salvage operations are becoming less frequent. The Committee takes some satisfaction in this outcome given that its 1992 report *Ships of Shame* made many seminal recommendations relating to improving the quality of ships in Australian waters. The committee compliments the former chair of the committee, the Hon Peter Morris, for his continuing involvement in this field.

This report also touched on three issues that the Committee believes need more detailed thought and long term planning. These are security, salvage personnel and places of refuge. The Committee is pleased to see that work is already being focussed on these issues and believes that this report will go a long way in helping to keep Australia's maritime transport industry safe and secure.

Paul Neville MP
Committee Chair



Membership of the Committee

Chair Mr Paul Neville MP

Deputy Chair Mr Steve Gibbons MP

Members Mr Peter Andren MP

Mr Stewart McArthur MP

Mr Barry Haase MP

Mr Frank Mossfield MP

Mrs Sussan Ley MP

Mr Alby Schultz MP

Ms Kirsten Livermore MP (from
20/08/02 to 02/12/02)

Mr Patrick Secker MP

Ms Michelle O'Byrne MP (to
20/08/02 and from 02/12/02)

Committee Secretariat

Secretary Mr Ian Dundas

Inquiry Secretary Mr Tas Luttrell

Research Officer Mr Robert Little

Administrative Officers Mrs Marlene Dundas

Ms Jeannie Brooks



Terms of reference

The committee will inquire into and report on the impact of the Productivity Commission Report on the Economic Regulation of Harbour Towing and Related Services in respect to the nation's ongoing capacity to provide a defined level of salvage capabilities and cover for all Australian Waters.

The report will have regard to:

1. The three tiers of government's responsibility to provide salvage infrastructure;
2. The inclusion of a defined level of salvage capability in harbour towing service agreements;
3. The provision of relief tugs when salvage tugs are engaged in a salvage operation;
4. Minimum standards of salvage tug safety, training and operational capability;
5. The need for public interest obligations to release tugs for marine emergencies.



List of abbreviations

AAPMA	Association of Australian Ports and Marine Authorities
AMG	Australian Maritime Group
AMSA	Australian Maritime Safety Authority
BMA	BHP Billiton Mitsubishi Coal Alliance
DOTARS	Department of Transport and Regional Services
ETV	Emergency Towing Vessel
ISU	International Salvage Union
LOF	Lloyd's Open Form
MARSAR	Maritime Search and Rescue
OPPRC	International Convention on Oil Pollution Preparedness, Response and Co-operation
SCOPIC	Special Compensation Protection and Indemnity
SCOT	Standing Committee on Transport
SOLAS	Convention on Safety of Life at Sea
UNCLOS	United Nations Convention on the Law of the Sea



List of recommendations

Recommendation 120

The Committee recommends that the Australian Maritime Safety Authority, with industry consultation and input, make an assessment of Australian ports to determine the most strategic placements for salvage-capable tugs and their equipment.

Recommendation 228

The Committee recommends that to support the continued provision of salvage capability in designated ports, the additional revenue should be raised by:

- an increase in either light dues or the shipping levy to raise one-third of the estimated revenue required;
- the Australian States and the Northern Territory to provide one-third; and
- the Australian Government to provide the remaining one-third.

Recommendation 329

The Committee recommends that the subsidy for salvage capability be paid to a company which successfully tenders for the towage contract in a designated port, subject to an audit by AMSA to ensure that salvage capability is maintained at a satisfactory standard and the sum involved is an accurate reflection of the costs incurred.

Recommendation 429

The Committee recommends that the tripartite funding arrangement proposed in recommendation 2, be reviewed every three years by the Australian Transport Council's Standing Committee on Transport.

Recommendation 533

The Committee recommends that Articles 9 and 11 of the International Convention on Salvage 1989, be enshrined in Australian law.

Recommendation 637

The committee recommends that AMSA, in consultation with state governments, industry and other interested parties, develop a national plan for emergency response/salvage operations. The plan should have regard to the following needs/issues:

- the ability for a salvor to negotiate with one authorised person/authority so as avoid the necessity of separate negotiations with a number of interest groups in an emergency situation; and
- legislative protection for port authorities and tug operators to allow the release of tugs to carry out emergency response operations.

Recommendation 743

The committee recommends that the Government subsidise the provision of training courses in Australia in subjects related to maritime salvage operations and that greater utilisation should be made of Australia's maritime training and education resources in this area.

Recommendation 847

The Committee recommends that, in determining the site to be used as a place of refuge, the person making the final decision must have an adequate level of maritime experience, understanding of maritime safety issues and appropriate maritime transport ministerial authority.

Introduction

- 1.1 Australia is an island nation with a large coastline. Consequently, it relies on maritime shipping for many of its export and import products. In particular, Australia's resource mining community must rely on safe maritime passage to deliver its goods. A proper level of salvage capability is one of the most important requirements for maritime safety; both the safety of seafarer's lives and the safety of Australia's environmentally important coastline and sea area.

Inquiry background

- 1.2 The inquiry was requested by the Federal Minister for Transport and Regional Services, the Hon John Anderson MP, following a report by the Productivity Commission (*Economic Regulation of Harbour Towing and Related Services*). That report made recommendations that could have a direct effect on the provision of maritime salvage services and salvage coverage in Australia.
- 1.3 The committee takes a keen interest in transport and regional service issues, and it has shaped strategic thinking on a number of aspects of transport.
- 1.4 Some significant works by the committee on surface transport includes inquires into maritime issues that lead to the reports *Ships of Shame* and *Ship Safe*.

Conduct of the inquiry

- 1.5 The inquiry was advertised nationally in January 2004. It received 26 submissions and four exhibits.¹
- 1.6 The submissions, exhibits and verbal evidence provided the Committee with a variety of views and a good source of possible recommendations. The evidence came from industry representatives, legal practitioners, and State and Australian government departments and individuals.
- 1.7 In addition to the evidence before the Committee, it conducted an industry round table in Melbourne and carried out inspections in three major ports.

Structure of the report

- 1.8 Chapter 2 discusses the differences between emergency response and salvage. There is considerable confusion, not least in the industry, over the use of the terms emergency response and salvage. Some evidence to the Committee has suggested that they are separate whilst others have suggested that they are different components of the one service.
- 1.9 Chapter 3 looks at the need for salvage capability in Australia, the areas in which salvage tugs should be located and ways to fund this.
- 1.10 Chapter 4 discusses legislative and jurisdictional issues. It provides background on the international and Australian legislative and jurisdictional environment in which salvage is conducted.
- 1.11 Chapter 5 looks at three issues that have stood out to the Committee as needing careful thought and long term planning. These are:
 - Security
 - Salvage Personnel
 - Places of Refuge

1 Listed in Appendices A and B.

Salvage or Emergency Response?

Introduction

- 2.1 There is considerable confusion, not least in the industry, over the use of the terms emergency response and salvage. Some evidence given to the Committee regarded these as two entirely separate issues, while in other cases they were regarded as a continuum of service that could not easily be split into the two aspects.
- 2.2 Salvage is one service offered under the general heading of emergency response to distressed vessels – that is, emergency response to render assistance to vessels in danger, or potentially in danger. The committee sought to clarify this matter because it found that two different questions were being posed - does Australia need salvage capability, and does it need emergency maritime response capability. Whether we need one response to these questions or two separate approaches depends on whether the two concepts are different or just different views of the one problem.
- 2.3 One of the complicating factors is that danger, as used in this context, includes financial danger, for example the financial loss incurred due to being delayed, late delivery of cargo or failure to deliver cargo.
- 2.4 Another problem is that every emergency situation is different; each one presenting some features that make it unique. This means that in most cases it is impossible to categorically distinguish between emergency response and salvage.

Emergency Response

2.5 The obligation of ships to go to the assistance of vessels in distress is enshrined both in tradition and in international treaties such as the International Convention for the Safety of Life at Sea (SOLAS), 1974. The principle is set out in paragraph 1 of Article 10 of the International Convention on Salvage 1989:

Every master is bound, so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea.¹

2.6 The above article does not have the force of law in Australia, but it shows clearly that internationally, maritime authorities recognise that salvage and emergency response are very closely linked.

2.7 Some industry participants do, however, consider that there is a clear distinction between the two aspects. For example, Mr John McGoogan of Inchcape Shipping Services said :

The foreign shipowner sees clearly a division between each of the items that we are talking about. Salvage is an issue which comes into play when a salvage contract is awarded to a salvor. That supplier can be offshore or onshore. ...Emergency response is very different.²

2.8 Bunbury Port Authority said it considered that it is:

...important to differentiate between salvage capability to protect life, property and the environment, where there is an immediate danger, to where a vessel requires assistance due to loss of motive power, steering malfunction etc. where there is no immediate danger.³

2.9 Other industry participants disagreed. At the roundtable discussions in Melbourne, Mr Bendy of United Salvage (Adsteam) commented:

...We really do see that the emergency response category can take a lot of different aspects. One of them is salvage, one of them might be emergency towing, but it is all part of a continuum and there is really no clear delineation except for an ocean towing exercise ...As I said, we really do not see that there is a clear line of distinction between each one of those and a lot does depend on the

1 International Convention on Salvage, 1989, p.11.

2 Mr John McGoogan, transcript of evidence, Melbourne, 28 April 2004, p. 3.

3 Bunbury Port Authority, submission 1, p.2.

circumstances at the time. Another part of it is also wreck removal, which can be a completely different exercise.

I do not believe you can sit here and say they are separate or they are all combined. You have to look at each separate incident to determine exactly what is involved.⁴

2.10 In the same discussion, Captain Dale Cole added:

...from a professional salvor's point of view I think those professional salvors sitting around this room would not see a difference between emergency response and salvage; they are one and the same thing for me. How you differentiate between an emergency response and a salvage is probably to go down to the contractual arrangements between the contractor and the ship that is in difficulty.⁵

Salvage

2.11 Salvage is the act of rendering services to a vessel in danger. Those services must be rendered voluntarily (that is, the salvor is hoping for a financial return for his services) and must "not have been rendered pursuant to a contractual or official duty."⁶ This means that there must be no pre-existing contractual arrangement between the salvor and the ship-owner.

2.12 The International Convention on Salvage 1989 defines salvage operations as meaning:

...any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever.⁷

2.13 Salvage may occur in emergency conditions where a ship is in immediate danger at sea, which may include danger to lives or the environment.

2.14 Salvage is paid for by the owners of salvaged vessels under one of a number of widely recognised contracts; the most commonly used contract is Lloyd's Open Form (LOF).⁸

4 Mr Paul Bendy, transcript Melbourne, 28 April 2004, pp. 2-3.

5 Captain Dale Cole, transcript 28 April 2004, Melbourne, p.3.

6 White, M W. *Salvage; Towage; Wreck and Pilotage* in White, M W (Ed) (2000) *Australian Maritime Law*, Federation Press, p. 241.

7 International Convention on Salvage, 1989 p.7.

Lloyd's Open Form

- 2.15 Formulated in the 1890s, LOF has become the standard contract worldwide for a salvage agreement. Also known as the Lloyd's Standard Form of Salvage Agreement 'no cure-no pay', it has undergone several revisions since its inception. The basic principle 'no cure-no pay', means that the salvor is entitled to a reward only if the salvage operations are successful.
- 2.16 The much simplified 2-page LOF 2000 is the latest version.⁹ Several features contained in the International Convention on Salvage, London, 1989, have been incorporated into recent versions of LOF. In particular, LOF 2000 has seen the introduction of the optional Special Compensation Protection & Indemnity (P&I) Clause (known as the SCOPIC clause). This was the result of a pact between the International Group of P&I Clubs, the International Salvage Union and the London Property Underwriters, with the knowledge of the International Chamber of Shipping.
- 2.17 SCOPIC puts to rest issues that might otherwise be raised by a shipowner or cargo interest opposing a claim for salvage reward. It represents an agreement that the service is one of salvage and not one of towage. It also conclusively proves the existence of 'danger'. These are two issues that often arise in salvage disputes.
- 2.18 LOF 2000 allows a salvor to terminate operations 'when there is no longer any reasonable prospect of a useful result, leading to a salvage reward.' On the other hand, the shipowner is also under an obligation to 'cooperate fully' with the salvor.
- 2.19 In the case of disputes, LOF directs resolution by way of arbitration, to be conducted in England.
- 2.20 Arbitration is usually heard by a Queen's Counsel experienced in maritime law, with an appeal to a similarly qualified arbitrator. The Lloyd's Procedural Rules (1994) and the Lloyd's Standard Salvage and Arbitration Rules govern the arbitration proceedings.
- 2.21 The SCOPIC clause provides for another forum for special compensation claims, when the value of the property salvaged is insufficient to cover the expenses incurred. Although salvors have a claim, or lien, over property salvaged, they often have a problem enforcing this in practice. Under

8 There are various alternative forms of salvage contract, such as the Japanese Form, Beijing Form, Moscow Form, Turkish Form, the Baltic & International Maritime Council (BIMCO) Towhire or BIMCO Towcon, or through the courts under common law.

9 A copy of this agreement can be found in White, M W. *Salvage; Towage; Wreck and Pilotage* in White, M W (Ed) (2000) *Australian Maritime Law*, Federation Press, Appendix V, p. 243.

Clause 4 of LOF, they can ask for a security to be provided to Lloyd's. The salvor also agrees not to arrest or obtain the property if security is provided. An arbitrator may include in the award, expenses reasonably incurred in obtaining security. Interest is payable as provided for in Clause 11 of LOF.

- 2.22 A salvor cannot force a shipowner to secure claims that would be payable by cargo owners. On the other hand, shipowners are required to use their best endeavours to ensure that cargo owners provide security before releasing the cargo, failing which they will be in breach of contract. This security is normally issued in favour of the Council of Lloyd's or to the salvor, often on the basis of the standardised Lloyds Salvage Guarantees, such as the ISU 1 or ISU 5.¹⁰
- 2.23 An exception to the 'no cure –no pay' principle was introduced in LOF 1980, in an attempt to encourage salvage of vessels that possess the potential to harm the environment. For example, where the vessel is a tanker, wholly or partly laden with oil, and the salvage is not successful, the salvor is awarded reasonable expenses and an increment not exceeding 15% of those expenses. This arrangement creates a safety net against fruitlessly incurred costs.¹¹
- 2.24 Such a claim can only be brought against the tanker owner and then only if the failure of the services has not been caused by the contractor's negligence. This exception is also found in the Salvage Convention 1989, rewarding the salvor for his skill and efforts in preventing or minimising 'damage to the environment,' along with an increment of up to 30%, which may, under special circumstances be increased to 100%.¹² An arbitrator may include in the award expenses reasonably incurred in obtaining security. Interest is payable as provided for in Clause 11 of LOF.

10 International Salvage Union 1 Salvage Guarantee Form and International Salvage Union 5 Salvage Guarantee Form. See http://www.marine-salvage.com/isu_docs.htm. The difference between the two forms is that ISU 5 incorporates a SCOPIC Clause.

11 For more detail on special compensation provisions see White, M W. *Salvage; Towage; Wreck and Pilotage* in White, M W (Ed) (2000) *Australian Maritime Law*, Federation Press, p. 272-274. Also see <<http://www.etshipping.com/march2002/legal.html>>

12 International Convention on Salvage, 1989 Article 14, Clause 2, p.7.

Committee Comments

- 2.25 The Committee noted that the wide variety of circumstances and conditions surrounding cases of distress at sea, make it very difficult to logically separate emergency response and salvage.
- 2.26 In this report, the Committee will treat the two terms as interchangeable. For the purpose of the Committee's inquiry it makes little difference whether a vessel responds as an emergency response or for salvage purposes. The main questions facing the Committee are:
- Does Australia need a continuous salvage capability, including the capacity to respond to emergency situations?
 - If yes:
 - ⇒ Is the present capacity enough?
 - ⇒ Where should salvage-capable tugs be placed?

Salvage Capability

3.1 Currently salvage capability in Australia consists of 15 ocean going salvage capable tugs in Australia all of which are owned by Adsteam's subsidiary United Salvage and are normally engaged in harbour towage duties.¹ There are currently no vessels engaged exclusively in salvage services in Australian waters.²

3.2 The Insurance Council of Australia, in its submission, points out the difference between salvage tugs and tugs designed for use in harbour operations:

Typically, a salvage tug is differentiated from a pure harbour/port tug by virtue of significantly increased displacement and bollard pull, a raised forecastle design, special winches, long range fuel and water tanks and auxiliary power units. These are all intended to improve the tug's sea-keeping ability and suitability to engage in ocean salvage operations. Salvage capable tugs need to be on call 24 × 7 and crewed by trained and experienced personnel under the supervision of suitably skilled and experienced salvage masters.³

3.3 The Australian Shipowners Association gave further details of the different requirements for salvage capable tugs:

Salvage capability requires greater capital investment. Salvage capable vessels have a higher gross tonnage i.e. they are physically larger, than harbour towage vessels. The salvage capability requires larger vessels because:

1 Adsteam Marine Ltd, submission 10, page 4.

2 Insurance Council of Australia, submission 19, p. 6

3 Insurance Council of Australia, submission 19, p.7.

- more, and more extensive, crew accommodation is required (10 on outside salvage work compared to 3 for harbour towage work);
- the vessel is required to possess acceptable sea-keeping characteristics in “outside” (i.e. ocean-going) conditions compared to protected waters in harbours and rivers; and
- the vessel is designed in such a way that the full bollard-pull capability can be utilised in its full range of manoeuvring characteristics compared to the less rigorous circumstances in which harbour tugs operate.

The equipment required to take a large vessel in tow in the open seas could not normally be carried in a harbour tug. The harbour tug’s personnel would not necessarily be trained in open sea towage techniques, nor would the harbour tug provide reasonable accommodation for the crew required: accommodation needs to be more extensive in a tug that may be required to be at sea for days or weeks whilst the vessel to be towed is reached, made fast and towed to the intended destination.⁴

- 3.4 It quickly became clear to the Committee that the usual public perception that salvage operations consist simply of providing a tug to do the job, is quite a simplistic one. Adsteam explained that each tug working on a salvage operation is crewed by a highly skilled team and backed by a complex operation, to ensure that the tug crew has available to it the specialised equipment needed for any particular task:

Emergency response salvage capability is more than just the availability of suitable salvage capable tugs and crews. It includes experienced, trained salvage teams and management, salvage equipment, safety systems, salvors liability insurance coverage, with immediate response capability and the provision of backup tugs, people and equipment.⁵

- 3.5 The Australian Shipowners Association agreed when it said “...salvage capability is made up of experienced, competent, well trained personnel as well as well-found and suitable equipment.”⁶
- 3.6 It is impossible to predict how often salvage capability will be called upon. The need for salvage is inherently unpredictable. In Australia a salvor could go for years without being able to utilise its salvage capability. However, once that capability is needed, the difference between having the required assets available, and the lack of them, can be catastrophic.

4 Australian Shipowners Association, submission 7, pp.2-3.

5 Adsteam Marine Ltd, submission 10, p. 4.

6 Australian Shipowners Association, submission 7, p. 3.

- 3.7 Vessels that undertake salvage services are usually tugs that are primarily used for harbour towage but are capable of doing the heavier ocean-going work. Their use in a harbour role is an additional cost to the towage company, as salvage capable tugs are more expensive to buy, operate and to maintain.
- 3.8 Given the unpredictability of salvage work and the economic pressures to cut costs, there is a growing trend for companies to concentrate solely on providing harbour/port towage services. In addition, technological advances in cargo vessels are gradually reducing the number of tugs needed for a particular task.⁷
- 3.9 If current conditions continue, the case could arise where Australia has no salvage capable tugs to deal with an emergency. This is already the case in New Zealand. In January 2002 when the *Jody F Millenium* was aground off Gisborne, New Zealand, a tug had to be sent from Melbourne to save the ship. If Australia faced this situation, it could take two weeks or more for a tug from Singapore or South Africa to get to the scene.
- 3.10 There is evidence that this is beginning to occur. Two United Salvage tugs, *Gurrong* and *Redcliffe*, have already been sent to the United Kingdom as a result of competitive pressure in the towage industry rendering their continued operation in Australia uneconomic.⁸
- 3.11 Another factor is the perceptible improvement in the condition of vessels arriving in Australian ports. The Association of Australian Ports and Marine Authorities (AAPMA) referred to this in its submission, when it noted:

The proactive approach that the Australian Government has taken to port state control for vessels visiting Australian ports has led to a situation where Australia benefits from receiving a higher quality of vessels, in most circumstances, than those received in many other countries. This higher standard of vessels has, inevitably, reduced the likelihood of salvage incidents in Australian waters. However, this higher quality of vessels has, arguably, also led to a cost impost on Australian exporters who have a smaller pool of "Australian suitable" vessels from which to charter their requirements.⁹

7 AAPMA, submission 9, p.4.

8 Adsteam Marine Ltd, exhibit 3, slide 13, Insurance Council of Australia, submission 19, p. 7.

9 AAPMA, submission 9, p.3.

- 3.12 The Committee is pleased to see some positive evidence of the effectiveness of its recommendations in the *Ships of Shame* report.¹⁰
- 3.13 Adsteam considered that one or two tugs placed at the extremities would not be enough and explained its view of the general requirements for salvage in Australia and the type of vessel most suited to the task:
- Any emergency may take the form of salvage, wreck removal or simply rendering assistance to another vessel. The number of these incidents that occur in Australia, fortunately do not warrant specialised and dedicated services for each of these categories of emergencies. Analysis of the salvages will show that geographically close, high-powered, highly manoeuvrable combination salvage tugs are the most effective vessels to assist. Salvage dedicated vessels stationed at the extremities of the nation would not provide the fast and effective response that has been capable of being provided to date.¹¹

Salvage Options for Australia

- 3.14 Most submissions which focussed on the question of whether Australia should have its own salvage capability, strongly supported the idea. There was little evidence disagreeing with this concept.
- 3.15 The Committee was told of four options that could be used to provide salvage capability for Australia. These are:
- an Emergency Towing Vessel system;
 - reliance on nearest overseas dedicated salvage tugs;
 - using alternative types of vessels available in Australia; and
 - the strategic placement of salvage-capable tugs.¹²

Emergency Towing Vessels (ETVs)

- 3.16 The United Kingdom has four ETVs to cover 1,600 kilometres of coastline. These have a value of around £44 million (approximately \$A 120 million), and cost the UK Government approximately \$A 25 million per annum to maintain and operate.¹³

10 *Ships of Shame*, Report from the House of Representatives Standing Committee on Transport, Communications and Infrastructure, AGPS, Canberra, December 1992.

11 Adsteam Marine Ltd, submission 10, p. 5.

12 Adsteam Marine Ltd, exhibit 3, slide 13.

13 Adsteam Marine Ltd, exhibit 3, slide 17.

3.17 Regarding this option, Shipping Australia Ltd gave the following view:

The Discussion paper prepared for this enquiry [poses] the question whether the Government should consider having a publicly provided emergency and salvage system as in the United Kingdom. SAL believes that given the length of Australia's coastline, it is not practical on a national basis to have dedicated vessels on stand-by for what is a relatively rare event. The costs would be prohibitive, the preparedness would diminish without regular experience and the location may not prove to be most efficient in terms of distance from a particular incident.¹⁴

3.18 Bunbury Port Authority considered that: "The UK example is not relevant given the extent of coastline difference between the two countries and the nature of the Government responsibilities."¹⁵

3.19 'K' Salvage agreed with this approach and said:

Because of the lack of shipping in Australia and the vastness of our coastline, such ETVs would not be feasible in Australia.¹⁶

3.20 The Committee also considers that this alternative would be too costly and unsuitable for the Australian environment, especially considering Australia's 17,000 kilometres of coastline.

Reliance on Overseas Tugs

3.21 It has been suggested that one option for Australia is to forego its own salvage capability and place its reliance on overseas tugs. There was no support for this option in the evidence given to the Committee. Most submissions which focussed on the question of whether Australia should have its own salvage capability, strongly supported the idea that such capability should be available.

3.22 Mr Paul Bendy, of United Salvage (Adsteam), in the roundtable discussion with the Committee, commented:

My point was about whether Australia needs a salvage capability, and I most definitely believe it does. I believe it would be political suicide for the politicians of this country to come out and say it does not. Through whatever mechanism – I am not arguing how we maintain a salvage capability – Australia needs a salvage capability.

New Zealand is fortunate in that it is close to Australia. Australia's [next] nearest neighbour is 10 to 15 days away in steaming time.

14 Shipping Australia Ltd, submission 5, p. 4.

15 Bunbury Port Authority, submission 1, p.2.

16 'K' Salvage Co., submission 2, p.3.

Every situation does not allow 15 days to sit there bouncing up and down on the Great Barrier Reef before somebody will come along and assist that vessel and remove that vessel from the dangers and risks it may have got itself into.¹⁷

3.23 Mr Lew Russell CEO of Shipping Australia Ltd added:

I want to go back to that earlier question about whether we support Australia having salvage capability. Shipping Australia does. I think the point is that the owner should have the option of sources of salvage capability in Australia, particularly in the new security environment we are entering.¹⁸

3.24 Captain Jolly of 'K' Salvage Co. commented that "...it is essential to the economic and environmental well being of our Nation, that a high level of salvage expertise and equipment be maintained."¹⁹

3.25 He added that:

...When a marine casualty occurs it is no use waiting for days or even weeks, before experienced men and vital salvage equipment can be mobilised from overseas, we must maintain this capability right here in Australia. The Royal Australian Navy has no salvage capability to handle a major marine casualty, nor have the Water Police or any other Government Agencies.

...Only some commercial operators in Australia maintain limited salvage expertise and equipment. These operators (or others willing to get involved) must be encouraged not only to maintain this capability, but also to invest in new and more suitable equipment for the purpose of marine salvage in the future.

...Australia MUST have a Marine Salvage Capability, both in suitable towing vessels stationed at strategic locations around our coastline and a nucleus of skilled salvage personnel and equipment.²⁰

3.26 Adsteam, in its submission, summed up the difficulty in relying on overseas help in emergency situations:

The first hours after a marine casualty has occurred are critical. Notification to authorities, salvors, emergency response crews and other related parties must be swift. Mobilisation by salvors to the casualty must be measured in hours not days. A proposal to rely on salvage tugs coming from one of our nearest neighbours such

17 Mr Paul Bendy, transcript, Melbourne, 28 April 2004, p. 5.

18 Mr Lew Russell, transcript, Melbourne, 28 April 2004, p. 6.

19 'K' Salvage Co., submission 2, p.1.

20 'K' Salvage Co., submission 2, pp.2 and 4.

as Singapore would significantly reduce the emergency response effectiveness of this country. An example would be the mobilisation and steaming time for a salvage vessel to travel from Asia to a grounded vessel on the Southern end of the Great Barrier Reef. The steaming time is in excess of fourteen days.²¹

- 3.27 The Committee considers that reliance on overseas-based salvage vessels poses obvious problems, because of the long lead times required to get them to the scene of the emergency and also the loss of domestic skills and support services.

Use of Alternative Vessels

- 3.28 Similarly, alternative vessels available on the Australian coastline all have their drawbacks. For example, the most suitable “fill-in” vessels are the off-shore oil supply vessels, which have a capability to handle some salvage tasks. However, as ‘K’ Salvage pointed out in its submission:

...In most cases these types of vessels are fairly bound by their contracts and are not available to attend marine casualties. ...it must be remembered that their primary purpose is related to oil field operations.

...Such vessels are not usually equipped with sufficient towing gear to make an emergency towing connection to a vessel in distress, and few, if any, carry salvage equipment that may be required in such a scenario.²²

- 3.29 Mr Hoskinson of United Salvage (Adsteam), commented that:

...We have used oilfield vessels. We did on the *Jody F Millenium* over in New Zealand. It cost us \$US 46,000 a day to hire one and then they took it away after a week. So it is a limited option. Their priorities are not with salvage; their priority is that very expensive oilwell. That comes first.²³

- 3.30 The Australian Shipowners Association also called attention to the uncertainties about obtaining the release of vessels needed for emergency response/salvage operations:

...But just because a salvage capable tug is present in a port, does not mean it can be easily released to perform salvage work. This requires either back-up equipment to be made available by the existing port provider or cooperation from the port authority to release the tug. The latter point can be problematic as the port

21 Adsteam Marine Ltd, submission 10, p. 6.

22 ‘K’ Salvage Co., submission 2, p.3.

23 Mr Ian Hoskison, transcript 28 April 2004, Melbourne, p.12.

authority would want and need the port to continue to operate, regardless of the emergency for which the salvage-capable tug needs to be withdrawn.²⁴

3.31 Notwithstanding this point of view, the Committee describes in Chapter 4 its methodology for dealing with this situation.

3.32 Mr Bendy of United Salvage (Adsteam) summed up the general feeling at the roundtable discussion, when he said:

...We cannot just walk away from this problem and say, 'It did not work commercially, therefore we must not have needed it.' The fact is that we do need it. We have to try and establish a way where we can maintain that capability. ...²⁵

3.33 Shipping Australia, reporting on research carried out by the Australian Maritime Group on salvage capacity around Australia, noted that the Group's conclusions included the following comments:

Australia is dependent on its local fleet of salvage suitable vessels and there is no international assistance (e.g. Singapore) likely within 10+ days of a casualty occurring.

...It was recognised that the highest traffic areas e.g. Torres Strait, north of Geraldton WA and the Great Barrier Reef, were the leanest in specialist salvage response capability.²⁶

3.34 The Committee believes that it is important that Australia have its own ocean-going salvage capability, so that it may be utilised for emergency response situations. It agrees that maintaining an adequate salvage capability on the Australian coast is essential. The question of funding this capability is a more difficult problem.

3.35 A particular problem here is that the shipping industry is happy to see present arrangements continue:

The record shows that the availability of towage/salvage capability has been sufficient to deal with casualties around the Australian coast and for that reason the members of the Australian Shipowners Association are confident that existing towage/salvage capacity is sufficient.

...it follows that any expansion of emergency towage and salvage capacity would occur for public policy reasons. The industry does not see any operational requirement for such capacity.

24 Australian Shipowners Association, submission 7, p. 4.

25 Mr Paul Bendy, transcript 28 April 2004, Melbourne, p.15.

26 Shipping Australia, submission 5, p.2.

...If additional, salvage-capable capacity is to be provided in minor ports, and if returns on private capital investment cannot be such as to make for viable investment in salvage capable equipment, then the provision of such equipment for public policy reasons should be government funded.²⁷

Strategic Placement of Salvage Ready Tugs

3.36 The Committee notes that all shipowners have the right to enter into commercial salvage agreements with whomever they wish; but to counter emergencies, the first point of response needs to be in a position to stabilise the situation and give the owner/operator the opportunity to consider his options.

3.37 The Great Barrier Marine Park Authority, in its submission to the Committee stated;

The rate of shipping incidents in the Great Barrier Reef Marine Park is high. Since 1985, over six hundred shipping incidents involving minor pollution events have been reported. During that time, there have been 11 collisions and 22 groundings of ships or 1.9 incidents per annum in the inner route.²⁸

3.38 However, in an exhibit given to the Committee by United Salvage (Adsteam) listing salvage operations conducted in Australasian/South Pacific waters, only 74 incidents were listed from April 1998 to April 2004.²⁹

3.39 Ms Susan Blackwell, Executive Officer of the Australian Association of Australian Ports and Marine Authorities Inc (AAPMA) summed up the issues, emphasising that the placement of salvage capable tugs was the most important consideration:

Mr Payne has highlighted a particularly relevant point – that is, the distance that Australia lies from overseas providers of salvage. ...But the *Harmonic Progress* is a very interesting example, because it occurred on the coast of Queensland, which has its own peculiar sensitivities, being of course the Great Barrier Reef. Then, of course, you also have the Ningaloo Reef over in WA and the delicate fishing grounds not only around Tasmania but in a lot of areas around Australia. Those areas might require an instant response. To answer your question: I think it is highly desirable for Australia to have its own salvage and emergency response

27 Australian Shipowners Association, submission 7, p. 6.

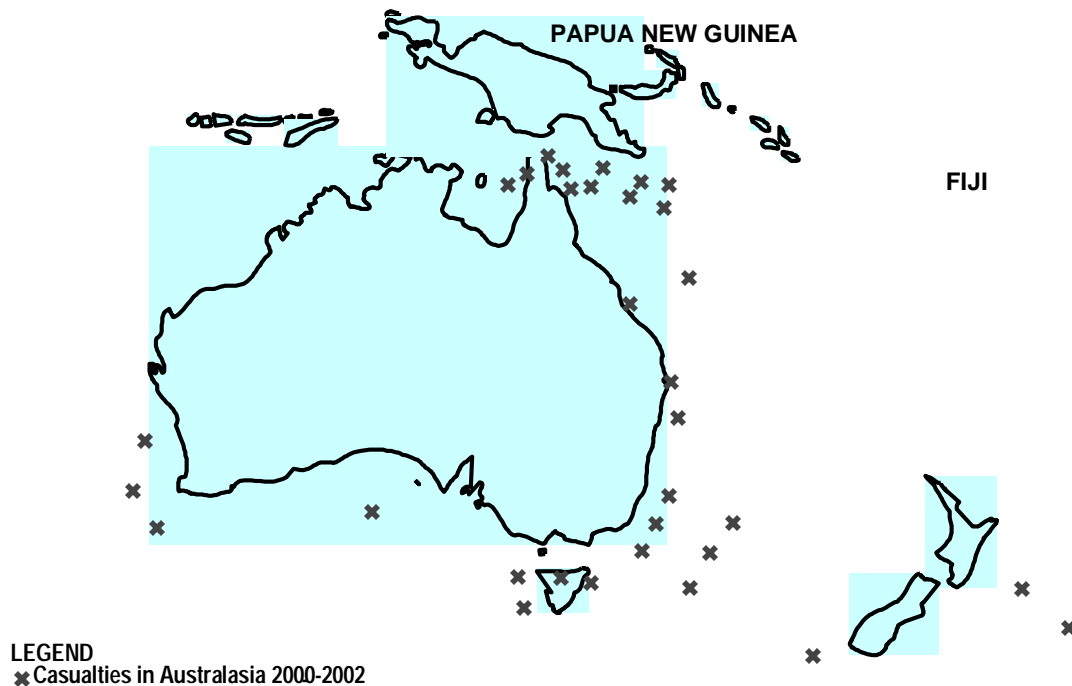
28 Great Barrier Reef Marine Park Authority, submission 11, p. 1.

29 United Salvage (Adsteam), exhibit 4, p.5.

capacity; it is where you place it that I think is the most important thing.³⁰

Where do incidents occur?

Figure 3.1 Maritime Casualties in Australasia 2000 - 2002



Source *Adsteam Marine Ltd, submission no 10, p. 7.*

3.40 Captain Dale Cole has suggested that emergency response/salvage vessels be stationed in eleven strategic ports around Australia to cover Australian waters in the areas indicated:

- Queensland:
 - ⇒ Weipa: the Gulf of Carpentaria, North East Channel, Torres Strait and Australian Waters from Cape York to Cape Flattery;
 - ⇒ Townsville: from Cape Flattery to Mackay;
 - ⇒ Gladstone: from Mackay to Sandy Cape; and
 - ⇒ Brisbane: from Sandy Cape to Point Danger.
- New South Wales:
 - ⇒ Brisbane: from Point Danger to Coffs Harbour; and;
 - ⇒ Port Botany/Port Jackson: from Coffs Harbour to Cape Howe.

30 Ms Susan Blackwell, transcript, Melbourne, 28 April 2004, p. 5.

- Victoria and Tasmania:
 - ⇒ Melbourne: from Cape Howe inclusive of Bass Strait, the waters off Tasmania and west to Portland.
- South Australia:
 - ⇒ Adelaide: Australian Waters from Portland to the projection of the South Australian/Western Australian border south and including the waters of the Spencer Gulf and the Gulf of St. Vincent.
- Western Australia:
 - ⇒ Fremantle: from the South Australian border to Geraldton; and
 - ⇒ Dampier/Port Hedland: from Geraldton to the Western Australian/Northern Territory Border extending into the Timor Sea.
- Northern Territory:
 - ⇒ Darwin: from the Western Australian/Northern Territory Border extending into the Timor Sea and east to Gove.³¹

3.41 The placement of salvage capable tugs in recent years has been as set out in Table 3.1.

Table 1 - Present Placement of Adsteam salvage capable tugs

PORT(S)	TUG(S)
Brisbane	Austral Salvor, Redcliffe*
Gladstone	Tom Tough, Wistari
Bowen	Denison, Gloucester
Sydney	Woonah, Wonga
Melbourne	Gabo, Keera, Gurrong*
Westernport	Cooma, Hastings
Adelaide	Tusker, Tarpan
Whyalla	Taminga
Fremantle	Wambiri
Papua New Guinea, Fiji	Brighton Nelia

* These salvage capable tugs left Australian waters during 2003

Source: Adsteam, exhibit number 3

31 Captain Dale Cole, submission 3, pp. 3-4.

3.42 Shipping Australia suggested that :

...major and strategically located ports should provide for exclusive licences which includes at least one tug having ocean going capability and such licences could also include minimum standards in terms of training, safety and operational capability offshore regarding the use of that tug in specified circumstances.

...These arrangements could be backed by state legislation to enable a central body to require the use of such tugs in specific circumstances and to provide any necessary indemnities for commercial damages that may arise from operational delays.³²

3.43 The Committee notes that the Australian Maritime Group (a subcommittee of the ministerial Standing Committee on Transport) has commissioned a report on Salvage Capacity around Australia. The Terms of Reference are shown at Appendix D. A report is expected towards the end of this year.

3.44 The Committee believes that the need for strategic placement of salvage capable tugs at appropriate ports around Australia is beyond question. It is the Committee's strong view that the recommendations by Captain Cole in his evidence, was compelling as a minimum requirement.

Recommendation 1

3.45 **The Committee recommends that the Australian Maritime Safety Authority, with industry consultation and input, make an assessment of Australian ports to determine the most strategic placements for salvage-capable tugs and their equipment.**

Productivity Commission Report on the Economic Regulation of Harbour Towage and Related Services

3.46 This inquiry is derived from the Productivity Commission's report on the Economic Regulation of Harbour Towage and Related Services (the Productivity Commission Report)³³ and the Committee has carefully examined the Commission's views.

32 Shipping Australia Limited, submission 5, p.2.

33 *Economic Regulation of Harbour Towage and Related Services*, Productivity Commission Report No 24, 20 August 2002.

- 3.47 The Productivity Commission Report made the following observations regarding maritime salvage:
- efficient provision and pricing of harbour towage (whether this is promoted through direct competition, competitive tenders or price regulation) need not affect provision of salvage.
 - competitive tendering (for exclusive or non-exclusive licences) need not alter the market incentives for provision of salvage, provided that ports do not explicitly proscribe salvage by, for example, prescribing maximum tug requirements in the port.
 - if ports were to introduce licences specifying a minimum standard of harbour towage capacity, additional salvage capacity would continue to be provided in individual ports if it were profitable to do so.
 - if the optimal level of emergency salvage capacity (and its location) is not privately profitable (under current or alternative arrangements for towage), then intervention may be warranted.³⁴

- 3.48 Adsteam outlined the difficulties facing private sector operators:

The vastness of the Australian coastline makes it impossible to provide dedicated emergency response capability to cover its entirety. Some 30 years ago, the concept of dual-purpose salvage/port tugs was developed, supported by a core of experienced salvage staff. United Salvage is able to call upon Adsteam tugs in their various port operations around the coast to meet “outside” emergencies. This has proved to be a convenient, fast skilled and economic service by the private sector, with cost borne largely by private sector insurers.

We are finding now, however, that the tug customers who use Australian ports and port owners themselves, all of whom are facing competitive pressures for greater reliability and efficiencies, are increasingly uneasy that a port could lose towage capability to attend a vessel in trouble “outside”. These competitive pressures make it unlikely that tug companies will in the future be able to afford to invest in salvage capable tugs and equipment.³⁵

- 3.49 Examining the same topic, the Insurance Council of Australia commented:

There is a growing perception that the current dual-purpose model, as presently provided by the private sector is under threat. Port owners and their customers, in seeking greater efficiencies (and associated cost savings), are increasingly focusing their

34 *Economic Regulation of Harbour Towage and Related Services*, Productivity Commission Report No 24, 20 August 2002, p. 237.

35 Adsteam Marine Ltd, submission 10, pp.12-13.

requirements on securing towage services which meet the ports immediate requirements. Increasingly, insufficient regard is given to encourage the maintenance or enhancement of the salvage capability to intervene and assist in an emergency around the Australian coast. If the providers of harbour towage services are not required to build-in and enhance the salvage capability of the tugs they engage then, with competition, Australia is likely to witness a degradation, rather than a building up, of its present salvage capability.³⁶

3.50 Mr Lachlan Payne, Chief Executive of the Australian Shipowners Association, added:

I think that the evidence suggests that the provision of salvage capability has been adversely affected by what is described as efficient harbour towage pricing mechanisms.³⁷

3.51 The Committee did not accept the Productivity Commission's analysis, as outlined in its observations above, and noted that these were unfortunate comments on a serious matter.

3.52 Despite the Productivity Commission's belief that market forces will continue to provide the necessary salvage capability, the evidence before this Committee indicates that this may not be the case for much longer.³⁸ Adsteam, in its submission, suggested:

The revenues in a salvage business are unpredictable due to the inherent irregular nature of the business. In Australia the frequency of casualties that require salvor assistance is low. . . but there is still a real need to have an effective emergency salvage capability strategically located around the Australian coast. The provision of salvage services by itself in Australian waters is not a profitable business and thus must co-exist with harbour towage to be viable. For this to happen however requires that all towage operators, who wish to operate in strategically located (for salvage) ports, must meet a prescribed level of emergency salvage capability.

36 Insurance Council of Australia, submission 9, p. 7.

37 Mr Lachlan Payne, transcript of evidence, Melbourne, 28 April 2004, p. 42.

38 *Economic Regulation of Harbour Towage and Related Services*, Productivity Commission Report No 24, 20 August 2002, p. 237.

- 3.53 The Committee agrees that the availability of emergency response/salvage capability at key points on the Australian coastline, is a very important issue. It is essential that protection is readily available for some of the very vulnerable coastal areas, such as the Great Barrier Reef, the West Australian coast and the fishing grounds off Tasmania.
- 3.54 The Committee considers that the issue of salvage capability has gained additional importance that touches on Australia's national security (due to recent international events) and its environmental integrity.
- 3.55 Mr Paul Bendy of Adsteam (United Salvage), commented that it is a common misconception that all salvage operations are highly lucrative. He said:
- Everybody keeps saying there are highly lucrative salvage opportunities, but the fact is that only 20 per cent of the jobs being done around Australia in recent years have been done on LOF. And that does not necessarily mean that all those have been highly lucrative. Think of a situation where one company was providing Australia's salvage capacity and there was a year where there were no salvage jobs. That would put enormous strain on that capability's ability to continue. There are certain cash flow implications as a result of that.³⁹
- 3.56 Harbour towage contracts naturally do not take salvage operations into account and a harbour towage contractor is usually not obliged to provide salvage capable tugs. This is obviously a business decision and those towage providers that do have salvage capability have warned the Committee that based on a business case alone, the basis for a company maintaining salvage capability, is steadily weakening. As already mentioned, two salvage capable tugs have recently disappeared from Australian waters because of better economic returns elsewhere.
- 3.57 The Australian Shipowners Association summed up this issue by saying:
- ... But when a towage operator has both harbour service and salvage-capable tugs operating in the one port, that operator maybe (sic) at a disadvantage when it comes to competition. If an alternate operator wanted to compete in that port with only cheaper, harbour-classed tugs, he is advantaged by the lower operating costs of his fleet. While this is fine for the particular port it may not be in the national interest.

39 Mr Paul Bendy, transcript, Melbourne, 28 April 2004, p. 15.

As a result it is not hard to envisage a situation where the operator providing salvage capability, is forced to move towards only operating harbour tugs in order to continue to compete.⁴⁰

3.58 Adsteam acknowledges the influence of competition in keeping towage prices down but highlighted the difficulty caused by splitting an already small level of business:

The threat of competition in a port has the effect of maintaining towage prices at an efficient level in the port. However the actual entry of competition in a port has an immediate effect of reducing the incumbent's market share significantly. This reduction in revenue, accompanied by a need to maintain the fixed assets i.e. tugs and berth infrastructure, and little opportunity to reduce crew costs, results in a significant reduction in profit margin. To compound this issue there is also some degree of price reduction as the competitor will most likely undercut existing pricing regimes in an effort to secure more business. This further reduces the incumbent's revenue that is available to cover overheads.

The result is that overheads such as maintaining an incremental salvage capability in the port as part of the harbour towage fleet can no longer be carried and consideration must be given to reducing costs to enable direct competition on a level playing field. The tendency is for all harbour towage operators to move towards the lowest cost harbour tug, berth infrastructure and crew skill level that will meet the ports specified requirements. This must be done to ensure that profit margins are not reduced to unacceptable levels.

The provision of salvage services by itself in Australian waters is not a profitable business and thus must co-exist with harbour towage to be viable. For this to happen however requires that that all towage operators, who wish to operate in strategically located (for salvage) ports, must meet a prescribed level of emergency salvage capability.

Two other less obvious costs for the salvage operator are the lost opportunity costs that may be incurred from lost towage revenue when a tug is called out on a salvage and the intangible cost of disaffected harbour towage customers under these circumstances.⁴¹

40 Australian Shipowners Association, submission no. 7, p. 4.

41 Adsteam Marine Ltd, submission 10, pp. 8-9.

3.59 Captain Dale Cole has suggested two ways in which this problem might be overcome:

As ship owners and/or ship operators are the main beneficiaries of an emergency response/salvage regime, levying all vessels calling at Australian ports is a practical suggestion. Such a levy could be part of each individual marine safety authority's cost recovery regime or as a separate component of the Commonwealth's Light Dues regime. A tenet implied in this suggestion is that revenue collected would be revenue neutral and the quantum determined by a financial modelling exercise.

Alternatively, each designated maritime safety authority would fund the cost of stationing emergency response/salvage vessels in the port or ports under their jurisdiction on the premise that the community is the major beneficiary in an emergency response/salvage task. The amount of funding would be determined by independent modelling ... The designated maritime safety authority would be compensated for this support by having an agreement with each of the emergency response/salvage providers to recover the cost of this support by sharing the salvage award on a 50:50 basis when the provider successfully secures a salvage contract.⁴²

3.60 As an alternative to increasing Light Dues, salvage capability could be funded through an increase in funds collected under the Shipping Levy Act.⁴³

3.61 Another method by which salvage capability could be funded is by requiring, in certain designated ports, that the harbour towage provider, as part of its contract, include a salvage capability. However, there are problems associated with this approach:

- ports requiring salvage capability would have to charge more for their towage service, which would then be passed on to shippers:
 - ⇒ this could reduce a port's competitiveness; and,
 - ⇒ a national salvage capability would be subsidised by only a few shippers.

3.62 The Fremantle Ports Authority supported this view in informal discussions during the Committee's port inspection.

42 Captain Dale Cole, submission 3, p.4.

43 NSW Ministry for Transport, submission 12, p. 7.

3.63 The Australian Shipowners Association, with regard to this problem, said:

It is important from a user's perspective that the additional costs associated with the purchase of a salvage-capable tug over a standard harbour duties tug, are not subsidised by the port users. These additional costs must be paid for by the salvage and emergency response revenue of the operator's business. This is to ensure competitive port towage tariffs and ensure the viability of that section of the operator's business.⁴⁴

3.64 The Association of Australian Ports and Marine Authorities (AAPMA) pointed to the risk that other ports located near the salvage capable ports could receive a "free ride" in terms of emergency response salvage.⁴⁵

3.65 Shipping Australia holds the view that certain designated ports should have exclusive harbour towage licences that provide for an emergency response capability, including minimum training, safety and operational standards.⁴⁶

3.66 It was suggested that the Australian Government could subsidise salvage capability in ports. If adopted, this suggestion would cost approximately \$6.5 million per annum.⁴⁷

3.67 The NSW Ministry of Transport⁴⁸ argued that the case for Australian Government funding is supported by the obligations placed on the Australian Government under the following conventions:

- the Maritime Search and Rescue Convention which dictates the need for search and rescue within Australia's MARSAR sea area;
- the Oil Pollution Preparedness and Response Convention which requires the adoption of measures to protect the marine environment from actual or threatened pollution;
- the Law of the Sea Convention which grants jurisdiction to protect the marine environment within the Exclusive Economic Zone.⁴⁹

3.68 The NSW Ministry of Transport said that:

...the Commonwealth has accepted its responsibilities for maritime search and rescue over a vast sea area and the provision of maritime salvage capability should be an integral part of this responsibility.⁵⁰

44 Australian Shipowners Association, submission 7, p. 4.

45 AAPMA, submission 9, p. 6.

46 Shipping Australia Ltd, submission 5, p. 2.

47 Adsteam Marine Ltd, submission 10, p. 16.

48 NSW Ministry for Transport, submission 12, p. 7.

49 These obligations are discussed in Chapter 4.

50 NSW Ministry for Transport, submission 12, p. 7.

- The Queensland Government submission also supported this view.⁵¹
- 3.69 The BHP Billiton Mitsubishi Coal Alliance (BMA), in its submission indicated that “...we are also concerned to ensure there is an effective response for emergency salvage in our region...” However, BMA’s priorities were emphasised in its follow-up comments, which said:
- ...in a way that is compatible with the uninterrupted and efficient operation of [Hay Point Coal Terminal]. ...Our tugs, ..., are likely to be called upon to assist in emergencies, ... However, unless we were assured of adequate replacement/remedy, BMA’s operations could be significantly disrupted and our commercial interests affected.⁵²
- 3.70 The South Australian Freight Council went even further. Its submission said that government should not “...directly intervene in these commercial negotiations, but should ensure that a suitable salvage capability remains available to shipping operating in Australian waters.” The Council then went on to say that because of the Commonwealth’s responsibilities outside the three-mile limit and for national security and defence:
- ...the Commonwealth would require access to salvage and emergency salvage capacity. It should not require the private sector to satisfy this ...obligation.
- The Commonwealth should also consider compensating towage service providers, shipping lines and port operators for lost revenue when the usual towage service is unavailable when required to attend to emergency situations, as well as when unavailable for training purposes.⁵³
- 3.71 The Fremantle Ports Authority expressed similar ideas and suggested that:
- ...the additional cost of providing ocean-going emergency towage capability (i.e. the cost over and above that of normal harbour towage provided on a cost effective basis) should be funded as a taxpayer benefit.⁵⁴
- 3.72 The Committee considers that any funding for salvage capability must have two main characteristics.
- fairness in the spread of the cost; and
 - minimal impact on the provision of towage services.

51 Queensland Government, submission 22, p. 3.

52 BHP Billiton Mitsubishi Coal Alliance, submission 20, pp 1-2.

53 South Australian Freight Council, submission 23, p.2.

54 Fremantle Ports Authority, submission 24, p.1.

- 3.73 The requirement for salvage capacity in a specified port should be made known to the industry well in advance of the tendering process for a new harbour towage contract. Each interested company could then decide whether it wished to take on the contract under the specified conditions. The tender document should require the tenderer to separately identify the costs of providing the salvage/emergency response service.
- 3.74 Given the above assessment and requirements, the Committee suggests that the best way to raise the additional revenue, for the provision of emergency response/salvage capability, would be by sharing the funding equally between the users, the States and the Commonwealth.
- 3.75 The Committee considers that this is a tripartite responsibility between the shipowners, using Australian and state waters, the States, who have responsibility within the three mile limit, and the Australian government, for its international obligations and security responsibilities.

Recommendation 2

- 3.76 **The Committee recommends that to support the continued provision of salvage capability in designated ports, the additional revenue should be raised by:**
- **an increase in either light dues or the shipping levy to raise one-third of the estimated revenue required;**
 - **the Australian States and the Northern Territory to provide one-third; and**
 - **the Australian Government to provide the remaining one-third.**
- 3.77 The subsidy should be paid to a contracted company, subject to the following conditions:
- the company would be audited to ensure that:
 - ⇒ the subsidy paid is an accurate reflection of the additional costs incurred in providing salvage capability; and,
 - ⇒ salvage capability, such as equipment and trained staff, is kept up to the required standard.
- 3.78 The Committee wishes to be satisfied that the spirit of this proposal is complied with. It considers that the recommended tripartite funding arrangement should be reviewed every three years to ensure that the funds are being used appropriately.

Recommendation 3

- 3.79 **The Committee recommends that the subsidy for salvage capability be paid to a company which successfully tenders for the towage contract in a designated port, subject to an audit by AMSA to ensure that salvage capability is maintained at a satisfactory standard and the sum involved is an accurate reflection of the costs incurred.**

Recommendation 4

- 3.80 **The Committee recommends that the tripartite funding arrangement proposed in recommendation 2, be reviewed every three years by the Australian Transport Council's Standing Committee on Transport.**

Legislation and Jurisdiction

- 4.1 Under the *Navigation Act 1912*, Articles 6 to 8, 12 to 19, 21 to 22, 26 and 30 of the 1989 Salvage Convention are given the force of law in Australia.

International Convention on Salvage, 1989

- 4.2 The International Convention on Salvage, 1989 replaced a convention on the law of salvage adopted in Brussels in 1910. The 'no cure, no pay' principle under which a salvor is only rewarded for services if the operation is successful, derives from the earlier convention.
- 4.3 Although 'no cure no pay' worked well in most cases, it did not take pollution into account. If a salvor prevented a major pollution incident (for example, by towing a damaged tanker away from an environmentally sensitive area) but did not manage to save the ship or the cargo, the company got nothing. There was, therefore, little incentive to a salvor to undertake an operation which had only a slim chance of success.
- 4.4 The 1989 Convention sought to remedy this deficiency by making provision for an enhanced salvage award, taking into account the skill and efforts of the salvors in preventing or minimising damage to the environment.

Special compensation

- 4.5 The 1989 Convention introduced a "special compensation" to be paid to salvors who have failed to earn a reward in the normal way (i.e. by salvaging the ship and cargo).

- 4.6 Damage to the environment is defined as "substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents."¹
- 4.7 The compensation consists of the salvor's expenses, plus up to 30% of these expenses if, thanks to the efforts of the salvor, environmental damage has been minimised or prevented. The salvor's expenses are defined as "out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used".²
- 4.8 The tribunal or arbitrator assessing the reward may increase the amount of compensation to a maximum of 100% of the salvor's expenses, "if it deems it fair and just to do so".³
- 4.9 If the salvor is negligent and has consequently failed to prevent or minimise environmental damage, special compensation may be denied or reduced. Payment of the reward is to be made by the vessel and other property interests, in proportion to their respective salvaged values.
- 4.10 Articles 9 and 11 of the International Convention on Salvage 1989, have not been adopted into Australian law.

9. Nothing in this Convention shall affect the right of the coastal state concerned to take measures in accordance with generally recognized principles of international law to protect its coastline or related interests from pollution or the threat of pollution following upon a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful consequences, including the right of a coastal State to give directions in relation to salvage operations.⁴

11. A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provision of facilities to salvors, take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general.⁵

1 International Convention on Salvage, 1989 p. 8.

2 International Convention on Salvage, 1989 p. 13, Article 14, Clause 3.

3 International Convention on Salvage, 1989 p. 13, Article 14, Clause 3.

4 International Convention on Salvage, 1989 p. 11.

5 International Convention on Salvage, 1989 p. 11.

4.11 With regard to Article 11, Mr Ian Hoskison, Salvage Manager for United Salvage commented:

It is where the state is obligated to assist the salvor in protecting property and minimising the environmental issues, and with access to ports. That very important article is not in Australian law, and that is a great shame.⁶

Recommendation 5

4.12 **The Committee recommends that Articles 9 and 11 of the International Convention on Salvage 1989, be enshrined in Australian law.**

Australian Legislation

4.13 Salvage, as a commercial enterprise, is not something that any level of Government has any direct responsibility over. Emergency response, with particular reference to environmental protection is, however, the responsibility of both State and Australian governments.

4.14 With regard to waters under Australian government jurisdiction, three maritime Conventions impose quite specific obligations on the Government in relation to the protection of the marine environment:

- Article 56 (1) of the United Nations Convention on the Law of the Sea (UNCLOS), gives the Australian government jurisdiction to protect and preserve the marine environment in Australia's Exclusive Economic Zone which extends, generally, from the low water mark of the coast or coastal island, seawards to a maximum of 200 miles.⁷
- Article 1.1 of the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPPRC) 1990, requires the Australian government to take all appropriate measures to prepare for, and respond to, an oil pollution incident. (An 'oil pollution incident' includes an occurrence which results, or *may* result, in a discharge of oil or which poses, or *may* pose, a threat to the marine environment).⁸

6 Ian Hoskison, transcript of evidence, Melbourne, 28 April 2004, p. 22.

7 United Nations Convention on the Law of the Sea, Article 56.

8 International Convention on Oil Pollution Preparedness, Response and Co-operation, Article 1, Clause 1 and Article 2, Clause 2.

- the International Convention on Salvage 1989 (discussed above and in Chapter 2).
- 4.15 The Committee notes that an appropriate salvage capability is essential to allow the Australian government to comply with these international obligations. It is for this reason, consistent with recommendation 2, that the Committee believes that the Australian government has a financial responsibility for the provision of salvage capability in Australian waters.
- 4.16 Beyond the three mile limit “...there is almost exclusive Commonwealth jurisdiction to control marine matters, subject to the limits placed by international law and the ‘nexus’ between the State and the activity offshore.”⁹
- 4.17 The Centre for Maritime Law points out that State governments have concurrent jurisdiction with the Australian government out to the three mile limit (and in particular cases further) as a result of the “Offshore Constitutional Settlement 1979”:
- The Commonwealth and the States and the NT agreed in 1979, in the “Offshore Constitutional Settlement”, that the States and the NT should have jurisdiction out to the three mile limit, but the Commonwealth also has jurisdiction. As a result much of the Commonwealth maritime legislation has a “roll back” provision, under which the Commonwealth power rolls back if the State or the NT passes identical legislation that applies in that area.
- The States and the NT also have some jurisdiction beyond the three mile limit where it is shown sufficient connection (nexus) with the State and NT requirement to legislate for the “peace good order and government” of that State.¹⁰
- 4.18 There is no direct part for local government to play in emergency response.¹¹ However, the Committee notes that co-operation between host local authorities and port authorities, is an important dimension in port security. It is suggested that onerous and obstructive by-laws and impositions affecting marine salvage operations as described in paragraph 4.22, should be removed.

9 Centre for Maritime Law, submission no 15, pp. 10.

10 Centre for Maritime Law, submission no 15, pp. 9-10.

11 NSW Ministry of Transport, submission no 12, p. 7.

Australian Maritime Safety Authority (AMSA)

- 4.19 AMSA is the Australian government agency that has responsibility for the supervision of safety and other services to the Australian maritime industry. AMSA also has statutory authority for marine pollution matters within the jurisdiction of the Commonwealth of Australia.¹²
- 4.20 AMSA is largely self-funded, through levies on the commercial shipping industry. It is responsible for:
- the operation and maintenance of the Australian Government's coastal marine aids to navigation network, serviced via the Marine Navigation Levy under the Marine Navigation Levy Act 1989;
 - the protection of the marine environment through the management of the National Plan to Combat Pollution of the Sea by Oil and other Noxious and Hazardous Substances (the National Plan), funded by the Protection of the Sea Levy under the Protection of the Sea (Shipping Levy) Act 1981;
 - the safety and seaworthiness of Australian vessels through periodic assessment and survey;
 - the safety and seaworthiness of foreign vessels calling at Australian ports by random inspection to ensure compliance with international regulation or "Port State Control", funded by the Marine Navigation (Regulatory Functions) Levy under the Marine Navigation (Regulatory Functions) Levy Act 1991;
 - administration of the certification of seafarers training,
 - the operation of Australia's Rescue Co-ordination Centre and co-ordination of search and rescue operations for civilian aircraft and vessels in distress; and
 - representation of Australian interests at international forums for the development of maritime standards such as the International Maritime Organisation (IMO).¹³
- 4.21 The National Plan Management Committee is responsible for strategic management of the National Plan and reports to the Australian Transport Council through the Australian Maritime Group (AMG) and the Standing Committee on Transport (SCOT).¹⁴ The "potential polluter pays principle" is reflected in the funding arrangements for the National Plan via the Commonwealth's Protection of the Sea (Shipping Levy) Act.

12 http://www.amsa.gov.au/About_AMSA/Service_charter.asp

13 http://www.amsa.gov.au/About_AMSA/Organisational_structure/

14 http://www.amsa.gov.au/About_AMSA/Organisational_structure/

4.22 The Committee has received anecdotal evidence that at times there are difficulties for salvors in getting the necessary permission from local authorities, to carry out salvage operations. A particular case described to the Committee, was one where the salvors had to approach environmental and Aboriginal groups before being allowed to commence salvage. Its team members were also required to do building site safety training as the vessel to be salvaged was considered to be a “building site” by the local council.

4.23 The Centre for Maritime Law, in its submission to the Committee points to the lack of clarity in legislation for the maritime industry:

Due to the low priority of the marine transport segment, there is continuing lack of clarity for industry in legislation. Industry is frequently confronted with the complex task of deciphering the intertwined federal and state marine jurisdiction and legislation.¹⁵

4.24 The Committee has been made aware of the fact that a port authority which is requested to release a tug for an emergency response operation, may be placed in an awkward position which may leave it facing legal difficulties if it agrees. The issue was nicely encapsulated by Mr Ian Hoskison when he remarked during a roundtable discussion:

My point is complementary to that because, under port requirements, the port is required to run the port. It is not required to do anything else. So it is very difficult for a port manager to release a tug for something outside the port if it will delay vessels, because he and the port could be open to legal action by so doing. So they have to have some outside impetus to take that burden off their shoulders. If there is legislation under which some outside body can say to the port, ‘We require you to do it,’ there would be no problem, and if there were delays of a minor nature nobody would take too much notice of them.

It is a real problem that we have, particularly in Gladstone, where there are two salvage capable tugs that we can never use apart from in-port jobs. There is the case of the *Stolt Otome*, a gas carrier that was adrift in the Capricorn Channel, and we could not get a tug released from Gladstone. We had to send out the *Nelia* from Mackay in very bad weather, at the limit of its capability, and it had a heck of a job. We should not have to do that.¹⁶

15 Centre for Maritime Law, submission no 15, p. 11.

16 Mr Ian Hoskison, transcript of evidence, Melbourne, 28 April 2004, p. 22.

4.25 In the Committee's view two issues clearly need to be addressed. If Australia's salvage capabilities are to operate effectively, arrangements are needed to enable:

- a salvor to speak to one authorised person to obtain permission to carry out necessary salvage operations; and,
- the introduction of arrangements enabling a port authority to release tugs for emergency response, without fear of legal action.

Similar protection would also be needed for the tug operators, to protect them from legal repercussions if the tug's absence caused delays in the port.

4.26 The Committee recognises that some salvage aspects are covered by the National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances, but industry representatives indicated that there is also a need for a national plan for salvage capability:

As far as legislation related to salvage capability is concerned, my belief is that we need national plan for salvage capability, as I said before.¹⁷

Recommendation 6

4.27 **The committee recommends that AMSA, in consultation with state governments, industry and other interested parties, develop a national plan for emergency response/salvage operations. The plan should have regard to the following needs/issues:**

- **the ability for a salvor to negotiate with one authorised person/authority so as avoid the necessity of separate negotiations with a number of interest groups in an emergency situation; and**
- **legislative protection for port authorities and tug operators to allow the release of tugs to carry out emergency response operations.**

17 Mr Paul Bendy, transcript of evidence, Melbourne, 28 April 2004, p. 21.

Other Issues: Security, Salvage Personnel and Places of Refuge

- 5.1 These three issues, although not directly within the terms of reference, stood out to the Committee as areas that will need some careful thought and long term planning.

Security

- 5.2 The Committee has been made aware of an increasing concern about security issues within the maritime industry. The Insurance Council of Australia commented that:

Outside of the need to respond to marine casualties, when these occur around the Australian coast, there is also the need for Australia's increased preparedness to respond in the event of a terrorist attack. This may well involve Australia's maritime trade, as evidenced in the attack on the "Limburg", off Aden, in October 2002 and the heightened security now being implemented at Australian ports and required of those vessels calling at these same ports.¹

- 5.3 Mr Paul Bendy from United Salvage (Adsteam) explained to the Committee some ways in which a salvage tug could be involved in port security:

There are a lot of areas of prevention and preparedness. As an example, a role that tugs could play is in escort. That may not stop the terrorists' attack on a vessel. I am not a terrorism expert, but

1 Insurance Council of Australia, submission no 19, p. 7.

terrorists typically hit and go. They do not hang around to see if there is a second, third or fourth opportunity to hit again. You could have a situation where a ship is hit in an important area-an entrance to a harbour or something like that - and the tugs could at least move the ship to a safer area before it sinks in a vulnerable position or whatever.²

5.4 Concerns were also raised by Mr Paul Bundy of Australian Maritime Services as to the current focus of security. It seems, he considered, to concentrate on shore side security, with little attention paid to waterborne access to shipping. This could create the conditions necessary for a terrorist to attack a ship from the sea using small boats loaded with explosives, as with the *USS Cole* or the *Limberg*.³

5.5 Mr Bendy of United Salvage (Adsteam) commented:

I see security as two main issues: prevention and then response. The response aspect of it is very easy to align to salvage and emergency response and all the capability that you might have in that area. That is one part of it, and typically that part of it could be a very short time. But the prevention side of it, in other words getting prepared to try and minimise a potential threat, is probably far more important. ...there is a lot Australia could be doing on that side of it in its preparedness for any threat, be it from terrorism or anything else. ...both aspects need to be looked at, and I believe we could be doing a lot more in that regard.⁴

5.6 Mr McGoogan of Inchcape Shipping, pointed out that an incident such as a ship blocking a narrow channel could occur at any time:

...That can occur by way of an errant navigation, by way of machinery damage or by way of a terrorist bomb. It is therefore a question of having the resources to react to that. The salvage issue would immediately come into play. The port authority would be involved in the removal of the wreck, so all of the mechanisms that we currently have in place would, in turn, come into play.

2 Mr Paul Bendy, transcript, Melbourne, 28 April 2004, p. 38.

3 Mr Paul Bundy, transcript, Melbourne, 28 April 2004, p. 38.

4 Mr Paul Bendy, transcript, Melbourne, 28 April 2004, p. 29.

5.7 Responding to a question from the Committee on the current state of port security, Mr Bendy said: “As far as harbour towage is concerned and related salvage, there are now security plans.”⁵ Mr Birchmore of Mermaid Marine, added:

Under the current security legislation –the ISPS Code⁶ – the towage provider, launch provider and pilotage provider are all industry participants and are therefore required to put in a security plan. The shipping agent is in fact an industry participant but he is not required to put in a plan.⁷

5.8 The Committee considers that this is an extremely important issue. It is likely that security matters will constitute an increasing part of the responsibilities of shipowners, port authorities, crews and other maritime sectors in the future. The Committee is pleased to see the attention being given to maritime security issues through the following forums:

- Dr Peter Shergold’s Maritime Security Review.
- security requirements related to the Maritime Transport Security Legislation.

Salvage Personnel

5.9 From the evidence it received and discussions with industry participants, the Committee formed two main impressions regarding the personnel required to crew salvage tugs and support services:

- that salvage requires experienced and professional personnel with abilities that cannot be taught quickly but must be backed by experience, and;
- that the number/availability of personnel with the required training and experience is shrinking. The Committee believes that this will become a major issue in the future if remedial action is delayed.

5 Mr Paul Bendy, transcript, Melbourne, 28 April 2004, p. 29.

6 The International Ship and Port Facility Security Code, adopted by a Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974, convened in London from 9 to 13 December 2002.

7 Mr Alan Birchmore, transcript, Melbourne, 28 April 2004, p. 30.

5.10 Captain Dale Cole in describing the significance of this problem said:

If it is not addressed maritime safety authorities will be facing a potential situation where, in ten (10) years time, all maritime emergency and/or salvage response expertise will reside overseas.⁸

5.11 During the roundtable discussion Captain Cole expanded on this comment:

...there is no question that we – and Adsteam are no different – have a shortage of trained salvage emergency response personnel. It is a huge problem. ...What we are seeing in Australia now is really a lack of skilled people to do this work, and that lack is being supplemented by the capacity of an emergency response provider to contract in the skills.⁹

5.12 The issue is not confined to salvage. Other sectors of the maritime industry also acknowledge a growing problem of a lack of trained personnel and declining incentives to go to sea. Mr Lachlan Payne of the Australian Shipowners Association said:

The towage and salvage industries in Australia are not the only sectors that are suffering from maritime skill shortages. There is a whole range of other maritime related activities that are suffering the same dilemma.

The shipping industry ... is taking steps with the federal government at the moment to try to ...substantially increase the potential for recruitment and training of young Australian men and women for careers in the Australian shipping industry...¹⁰

5.13 The Committee noted that good educational and training resources are available at the Maritime College in Launceston and at several TAFEs around Australia and that Australia is recognised as having some of the best marine training facilities in the world. Better use should be made of available resources, with a view to enhancing that capacity and providing career opportunities for young Australian mariners.

8 Captain Dale Cole, submission 3, p.5.

9 Captain Dale Cole, transcript, Melbourne, 28 April 2004, p. 19 .

10 Mr Lachlan Payne, transcript, Melbourne, 28 April 2004, p. 11.

Recommendation 7

- 5.14 **The committee recommends that the Government subsidise the provision of training courses in Australia in subjects related to maritime salvage operations and that greater utilisation should be made of Australia's maritime training and education resources in this area.**

Places of Refuge

- 5.15 One issue of concern to the Committee is the difficulty sometimes encountered in quickly finding appropriate places of refuge for ships in distress.
- 5.16 The Department of Transport and Regional Services (DOTARS) has defined a place of refuge as:
- ...a location where a ship in need of assistance is able to find a favourable environment, enabling it to take action to stabilise its condition, protect human life and reduce the hazards to navigation and to the environment.¹¹
- 5.17 DOTARS also explained decisions on granting access to a place of refuge came from one of two sources:
- In Australia requests for a place of refuge may be granted by the responsible State/Northern Territory agency for a place within a port, internal waters or within the three nautical mile limit of coastal waters, or by AMSA within other waters from the three nautical mile limit to the limit of the Exclusive Economic Zone.¹²
- 5.18 In general these questions are handled cooperatively but if there is disagreement, the Protection of the Sea (Powers of Intervention) Act, 1981, gives AMSA the power to override a port authority or a State/Northern Territory government.¹³
- 5.19 As mentioned in Chapter 4 (paragraph 10) Articles 9 and 11 of the International Salvage Convention 1989 (covering pollution and vessels in distress) do not have the force of law in Australia. Instead Australia has introduced the National Maritime Place of Refuge Risk Assessment

11 DOTARS, submission 26, p. 6.

12 DOTARS, submission 26, p. 6.

13 DOTARS, submission 26, p. 6.

Guidelines (the Guidelines). The Guidelines were endorsed by the Australian Transport Council in May 2003.¹⁴

- 5.20 The purpose of the Guidelines is to assist Australian maritime administrations, ship Masters and the maritime industry in identifying:
- places of refuge, in circumstances where an emergency cannot be dealt with at sea; and,
 - the appropriate procedures to access a place of refuge.¹⁵

- 5.21 DOTARS, in its submission explained that:

The Guidelines provide a process for identifying a suitable place of refuge at the time of a casualty, taking into account specific circumstances and prevailing conditions at the time of each case, rather than attempting to pre-determine locations that may be suitable.¹⁶

- 5.22 Two particular issues have been raised with the Committee in regard to places of refuge. These are:
- achieving the proper balance between environmental concerns and the danger to the lives of seafarers; and,
 - local political issues surrounding places of refuge.

Danger to the Environment / Danger to Life

- 5.23 The Committee noted that where sensitive environmental issues are involved, emotions often run high. Sensationalist news media coverage simply serves to exacerbate this. At times it seems that environmental issues overshadow, in the public eye, the danger to human lives. The imperative of this problem was demonstrated by the incident of the *Prestige* off the Spanish coast.

- 5.24 In some cases arguments that erupt over environmental concerns can actually increase environmental danger, because they cause delays in response. As the Committee heard:

Places of refuge focus primarily on the environmental impact. If, as in your example, the environmental problem has been put to one side and there is no danger of a spill it is possible that a port would take the vessel. However, the environmental impacts do have to be measured very carefully, and the spectre of politics is raised.

14 DOTARS, submission 26, p. 6.

15 National Maritime Place of Refuge Risk Assessment Guidelines 1.1.1 and 1.1.2.

16 DOTARS, submission 26, p. 6.

When the *Eurydice* was foundering off Sydney a couple of weeks ago, the loudest shouting and comments were from the minister for environment, who was not coming from a maritime background. ...He was concentrating on the environmental spill, which is fine because that is his area of responsibility. But it really gets very murky. Every incident that you look at around the world is a mess.¹⁷

- 5.25 Placing the issue starkly in context, Mr Paul Bendy of United Salvage (Adsteam) stated:

I would like to go on record, in case it was not caught before that I firmly believe – and this is often overlooked and hardly ever taken into consideration – that the saving of lives is far more important than the environment and it will be and should be every single time. But that is often overlooked. You will hear that a ship is sinking off the South African coast and reports of oiled birdlife and things like that, which are very distressing and very important, but there will not be a mention of the 30 seafarers that went to the bottom with the ship.¹⁸

- 5.26 The Committee is pleased to note that the Guidelines in use in Australia keep these issues in their proper perspective. The guidelines are “intended to assist both maritime safety for commercial trading ships and to protect the environment.”¹⁹ The Committee emphasises that the protection of human life must always be the paramount concern in these emergencies.

- 5.27 Mr Hoskison of United Salvage (Adsteam) addressed the question of who should make the final decision about admitting the vessel to a place of refuge:

There are two issues regarding ports of refuge. One is the physical condition of the ship and getting a balanced view of the risks that are involved in taking a vessel in. I believe that balanced view should be in the hands of AMSA and the state maritime authorities, not in the hands of ministers of the environment, who are going to take the absolutist view of it. The second issue is: what is the appropriate amount of security which is going to be asked by the port authority to take that vessel in?²⁰

17 Ms Susan Blackwell, transcript, Melbourne, 28 April 2004, p. 24.

18 Mr Paul Bendy, transcript of evidence, Melbourne, 28 April 2004, p. 26.

19 National Maritime Place of Refuge Risk Assessment Guidelines, 1.1.2.

20 Mr Ian Hoskison, transcript, Melbourne, 28 April 2004, p. 24.

5.28 Mr Lachlan Payne of the Australian Shipowners Association added:

...if a ship is required to proceed to a place that increases the hazard to which it is exposed, there is a very valid and essential point that has not been raised but that should be raised. It is that the danger to which the crew is exposed could be exacerbated enormously by a decision to require the ship to proceed into a more hazardous situation than the one it is in already. I think the security and safety of the seafarers involved should be high on the list of priorities.²¹

5.29 Captain Cole highlighted the difficulties often faced in these situations when local political issues come into play:

...I have a couple of points to make about this. A, we have to identify ports of refuge in Australia; and B, we have to get somebody senior enough in the political arena to sway all the politicians to keep politics out of this while we stabilise a very unstable situation.

While people want to score political points, this will never work. If we go back to the *Iron Baron*, which you are familiar with, when we proposed to take it north, we could not get a port of refuge, because we wanted to do certain repairs and the only port in Australia that would do it for us was Brisbane. It was Brisbane only because they had a person in charge of what was known as Queensland Transport who had the power and the prestige to accept it and make that decision.²²

5.30 Mr McGoogan of Inchcape Shipping said:

...I think the difficulty is – and the point was made by United Salvage – that the decision makers are very important. ...It certainly should not be in the hands of anybody except skilled maritime people so that they can clearly take a view as to environmental issues, the safety issues of the ship and the safety of persons on board.

To this, Mr Hoskinson added the comment: “And the most appropriate place to go under the circumstances.”²³

21 Mr Lachlan Payne, transcript, Melbourne, 28 April 2004, p. 24.

22 Captain Dale Cole, transcript, Melbourne, 28 April 2004, p. 25.

23 Mr John McGoogan and Mr Ian Hoskinson, transcript, Melbourne, 28 April 2004, p. 25.

Recommendation 8

- 5.31 **The Committee recommends that, in determining the site to be used as a place of refuge, the person making the final decision must have an adequate level of maritime experience, understanding of maritime safety issues and appropriate maritime transport ministerial authority.**

Paul Neville
Committee Chair
2 June 2004



Appendix A – List of submissions

Number	Organisation
10	Adsteam Marine Limited
25	Adsteam Marine Limited [supplementary submission]
9	Association of Australian Ports and Marine Authorities
7	Australian Shipowners Association
20	BHP Billiton Mitsubishi Coal Alliance
8	BIMCO, Marine Department
1	Bunbury Port Authority
15	Centre for Maritime Law
3	Cole, Mr Dale
26	Department of Transport and Regional Services
24	Fremantle Ports
11	Great Barrier Reef Marine Park Authority
19	Insurance Council of Australia
17	International Maritime Bureau
14	International Salvage Union

2	Jolly, Captain Dick
18	Mermaid Marine Australia Limited
6	NAVPAQ Pty Ltd
13	Norfolk Island Government
12	NSW Ministry for Transport
22	Queensland Government
4	Sea Freight Council of Western Australia
5	Shipping Australia Limited
23	South Australian Freight Council
16	South Australian Government
21	Wijsmuller-Perdana Salvage Pte Ltd



Appendix B – List of Exhibits

- 1 Diagrams of Dampier Supply Base and the barge 'Mermaid Builder' presented by Mermaid Marine Australia Limited in Dampier on 19 April 2004.
2. Papers by Adsteam Marine Limited presented in Fremantle on 20 April 2004:
 - Tug 'Wambiri'
 - Towage Proposal to Fremantle Port Authority
 - Summary of Offshore Work Performed
- 3 Papers presented by Adsteam in Melbourne on 28 April 2004.
 - Powerpoint presentation 'Protecting the Australian Coastline'
- 4 Papers presented by Adsteam in Melbourne on 28 April 2004.
 - Statistics on 'Salvage Operations conducted by United Salvage in Australasian/South pacific waters – Jan. 1998 to date'.



Appendix C – Round Table Participants

Wednesday, 28 April 2004 - Melbourne

Adsteam Marine Limited

Mr Paul Bendi, Chief Executive

Association of Australian Ports and Marine Authorities (AAPMA)

Ms Susan Blackwell, Executive Officer

Australian Maritime Services

Mr Paul Bundy, General Manager

Australian Shipowners Association (ASA)

Ms Teresa Hatch, Operations Manager, Ship Safety

Dale Cole & Associates Pty Ltd

Captain Dale Cole, Managing Director

Inchcape Shipping Services Pty Ltd

Mr John McGoogan, Area General Manager Australasia

Mermaid Marine Australia Limited

Mr Allan Birchmore, Chairman

Shipping Australia Ltd

Mr Michael Phillips, Managing Director

Mr Llew Russell, Chief Executive Officer

United Salvage Pty Ltd

Mr Paul Bendy, General Manager, Oceans & Terminals

Mr Ian Hoskison, Salvage Manager



Appendix D – Terms of Reference for the Australian Maritime Group working group on salvage capacity

1. The objective of the Working Group is to:
 - review the Stage 1 report;
 - investigate the legal, administrative, commercial, legislative, financial and practical issues involved;
 - develop an approach for going forward; and
 - report back to AMG.

2. In conducting its work the Working Group will be guided by the overall objective of protecting the Australian marine environment through **prevention** by determining the capacity required to provide an emergency towage capability around the Australian coast

Report

3. The key output of the Working Group will be a report to AMG for consideration with a view to raising the issue to the Standing Committee of Transport and the Australian Transport Council.

Consultation

4. The Working Group will consult with relevant bodies external to AMG in the development of the Report, in particular the Australian Association of Port and Marine Authorities, the Australian Shipowners Association, Shipping Australia, key Port Authorities and the major towage providers.

Meetings

5. Meetings will be arranged by the Convenor as frequently as Members agree is necessary.

Administration

6. The Australian Maritime Safety Authority will supply the secretariat.
7. Telephone conference meetings will be the preferred meeting option.
8. Meeting attendance costs will be borne by attendees.