

**House of Representatives Standing Committee
on Transport and Regional Services**

**Inquiry into Maritime
Salvage in Australian Waters**

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Salvage in Australian Waters**

**Response to Discussion Paper
by
The Insurance Council of Australia Ltd**

April 2004

Table of Contents

Introduction and Summary	1
Salvage	1
International Salvage Conventions	2
Practical Aspects of “Salvage Services”	3
Who Engages “Salvage Services”	4
How are Salvors Remunerated for their “Salvage Services”	4
Who Pays for “Salvage Services”	5
“Salvage Services” in an Australian Context	5
Current “Salvage Service” Capability in Australia	6
Enhancing “Salvage Services” in Australia	7

Introduction and Summary

The Insurance Council of Australia (ICA) is the representative body of the general insurance industry in Australia. ICA members account for over 90 per cent of total premium income written by private sector general insurers.

ICA members, both insurance and reinsurance companies, are a significant part of the financial services system. Recently published statistics from the Australian Prudential Regulation Authority (APRA) show that the private sector insurance industry generates direct premium revenue of \$19.8 billion per annum and has assets of \$66.6 billion. The industry employs about 25,000 people.

ICA members issue some 37.8 million insurance policies annually and deal with 3.5 million claims each year.

On matters of marine insurance, ICA is advised by an expert Standing Committee comprising leading specialist marine insurers, representing a wide cross-section of the industry, embracing cargo, hull and liability insurance. ICA is well placed to reflect the views of the marine insurance industry in Australia.

ICA welcomes the initiative of the Minister for Transport and Regional Services in referring this Inquiry to the Committee. ICA supports the Government's recognition of the need to ensure that adequate salvage services are available around Australia's coastline and, particularly in relation to its major trading routes.

In this submission, ICA seeks to define more extensively the nature of salvage services and ultimately how their cost is borne by the community. In this respect, the Submission develops more fully the definition of and background to salvage set out in the Discussion Paper.

Against this background, ICA proposes that the Australian Government actively encourages the private sector towage operators to maintain and enhance the present level of salvage capability available in Australian waters.

Salvage

Depending on its context the term "salvage" relates to services rendered to save property in peril at sea or the reward for such services.

The principles giving rise to the right to salvage have arisen over many years and are based on a combination of sound public policy and commercial interests.

Where salvage services are offered voluntarily, and property in peril at sea saved, then international law provides that the independent third party providing these services is entitled to recover a salvage reward from the owners of the property saved. This is known as 'pure salvage'. A basic principle of 'pure salvage' is 'No cure – No pay'. This means no salvage reward will be paid if the property in peril is not saved, no matter how much effort has been put into the salvage operation or how much expenditure incurred.

'Pure salvage' is seldom seen today. Instead, the assistance of another vessel can be engaged under contract, such as when a tug is hired at a daily rate. This method is distinguished from 'pure salvage' by the term 'services in the nature of salvage'. Owing to the agreed hire rate, 'services in the nature of salvage' are usually more economical.

In practice, the most common form of salvage service is one carried out by a professional salvage company, usually acting under Lloyd's Open Form (LOF)¹. Although LOF is in fact a contract (and pure salvage requires the absence of a contract) the services rendered are treated, in practice, on the same basis as pure salvage with the principle of 'No cure-No pay'² still fundamentally applying. Under LOF the amount of the salvage reward is occasionally agreed in advance but more usually settled after the event or, if not, arbitrated. By contrast, in pure salvage, an Admiralty court determines the reward in the event the parties cannot reach an acceptable out of court settlement.

International Salvage Conventions

The *Salvage Convention 1910*³ requires every master to render assistance to any person in danger of being lost at sea. Such assistance is only required where this does not seriously endanger the safety of the vessel (and persons thereon) able to render assistance. In Australia the *Salvage Convention 1910* is substantively given force of law in terms of the *Navigation Act 1912* (Cth).

The *1989 Salvage Convention*⁴ affirmed the desirability of these uniform international rules noting:

CONSCIOUS of the major contribution which efficient and timely salvage operations can make to the safety of vessels and other property in danger and to the protection of the environment,

CONVINCED of the need to ensure that adequate incentives are available to persons who undertake salvage operations in respect of vessels and other property in danger.

¹ Common and universally regarded salvage agreement devised by Committee of Lloyd's, London, as 'Standard Form of Salvage Agreement'. The current edition is LOF 2000.

² The principle of 'No cure – No pay' prevailed until 1980. Commencing with LOF 1980, was an acknowledgement to afford salvors an incentive to expend time and money where there was little prospect of salvaging the vessel or other property but where significant harm to the marine environment exists. Today salvor's remuneration is no longer totally dependent on success in salvaging the ship or some property

³ The *Convention for the Unification of certain Rules of Law relating to Assistance and Salvage at Sea*, done at Brussels on 23 September 1910.

⁴ The International Convention on Salvage, 1989 was drafted by the Comité Maritime International (CMI), agreed at an IMO diplomatic convention in 1989 and entered into force internationally on 14 July 1996. In Australia the passing of the *Transport Legislation Amendment Act 1995* gave effect to the 1989 Salvage Convention which became Sch VIII to the *Navigation Act 1912*.

Practical Aspects of “Salvage Services”

By their nature salvage services are:

- Unpredictable, as to both time and location,
- Infrequent, as to need, and
- Extremely variable, as regards the resources required to respond.

Typical examples of salvage services can range from:

- Towing of an immobilized vessel to a safe port,
- Holding a vessel in place until repairs are carried out,
- Attending a grounded vessel pending possible temporary repairs and/or lightening (through removal of cargo, bunkers, etc) and subsequent re-floating, and
- Attending a vessel following a major peril (such as fire, explosion or collision) and assisting in extinguishing/stabilizing the vessel prior to her towing to a safe port.

The degree of salvage services required in connection with the above can vary considerably. These can range from the provision of a tug, through to operations requiring the provision of several tugs and associated support vessels and salvage equipment.

Australia has been fortunate to date, not to have suffered an environmental maritime disaster similar to those associated with the “Braer”⁵, “Sea Empress”⁶, “Erika”⁷ or “Prestige”⁸. Nonetheless, it has experienced a number of serious maritime incidents including those involving the “Kirki”⁹, “Iron Baron”¹⁰ and “Bunga Teratai Satu”¹¹, all of which had the potential to give rise to catastrophic consequences for the environment.

⁵ M.T. “Braer” loaded with 85,000 tonnes light crude oil grounded 5.1.93 off Shetland Islands. Fortunately the timing, location and weather resulted in rapid dispersion with the effects on the environment less than was first feared.

⁶ M.T. “Sea Empress” loaded with 130,000 tonnes light crude oil grounded 15.2.96 entering Milford Haven, South Wales. Incident occurred in fine weather with a pilot on board with the initial grounding resulting in the loss of 2,500 tonnes of oil. After initial refloating the vessel re-grounded on a number of subsequent occasions giving rise to the further loss of 69,000 tonnes before finally being brought under control. The “Sea Empress” oil spill started as a relatively minor accident and escalated into a major environmental catastrophe.

⁷ M.T. “Erika” loaded with 31,000 tonnes heavy fuel oil sustained structural hull failure off the Bay of Biscay on 12.12.99. The vessel subsequently split in two parts off Brittany resulting in extensive pollution of the adjacent coast.

⁸ M.T. “Prestige” loaded with 77,000 tonnes fuel oil suffered structural hull failure 13.11.02 whilst transiting the Atlantic off the Spanish coast, was denied a Place of Refuge and subsequently sank six days later giving rise to serious, widespread and ongoing pollution.

⁹ M.T. “Kirki” loaded with 82,000 tonnes light crude lost its bow 20.7.91 whilst 55 miles off the WA coast. During the incident some 17,000 tonnes of oil was lost. Serious pollution of the WA coast was avoided due to combination of severe weather conditions and the effects of local currents in dispersing oil lost during the initial stages. Four weeks after the initial casualty some 66,000 tonnes of oil and bunkers transferred at sea with the ‘Kirki’ then towed to Singapore and scrapped.

¹⁰ Bulk carrier “Iron Baron” loaded with 24,000 tonnes manganese ore grounded Hebe Reef, northern Tasmania 10.7.95. Some 300 tonnes of bunker fuel escaped with significant impact on local wildlife. Vessel refloated

The *1989 Salvage Convention* requires any salvor performing salvage services to exercise due care to prevent or minimize ‘damage to the environment’¹², either on account of the vessel in peril, or its cargo. If a salvor is negligent and fails to prevent or minimize damage to the environment he may be penalised in any salvage reward subsequently granted.

The *1989 Salvage Convention* gave further recognition to the importance of preventing damage to the environment through the provision of ‘Special Compensation’¹³ to salvors in those circumstances where no, or insufficient, salvaged values existed to reasonably remunerate the Salvor under Article 13. The ‘Special Compensation’ is intended to encourage a salvor to provide salvage services in what would otherwise be viewed as a financially risky casualty.

Who Engages “Salvage Services”

The *1989 Salvage Convention*¹⁴ affirmed that it is the master of the vessel in peril who has the authority to conclude contracts for salvage services on behalf of the owner of the vessel and the owners of property on board the vessel. In practice, it would be a brave master who entered into any salvage contract without sanction from owners, unless in the direst of circumstances.

How are Salvors Remunerated for their “Salvage Services”

The person who renders salvage services (the salvor) becomes entitled to remuneration, termed the salvage reward, and this is claimable from all property saved. This property is broadly confined to the vessel and its associated fixtures and fittings, its cargo and the freight attaching to this cargo. The determined salvage reward is apportioned pro-rata, based on the values salvaged. It is therefore important to precisely identify all salvaged property including its respective owners and salvaged values.

The amount of any salvage reward (outside of that contractually agreed) is determined by reference to a number of criteria including:

- The value of the vessel and other property salvaged,
- The measure of success obtained by the salvor,
- The nature and degree of danger,

16.7.95 with further loss of fuel. Following confirmation of major structural damage arrangements were made to scuttle the vessel.

¹¹ Container ship “Bunga Teratai Satu” transiting the inner route of the Great Barrier Reef en route from Singapore to Sydney grounded Sudbury Reef 2.11.00 at a speed of over 20knots. After two unsuccessful attempts, the vessel was refloated on 14.11.00 without loss of fuel or cargo.

¹² The International Convention on Salvage, 1989 defines “*Damage to the environment*” means 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.

¹³ Article 14

¹⁴ Article 6.2

- The skill and efforts of the salvor in salvaging the vessel and other property,
- The promptness of the services rendered,
- The availability, use and value of the assets employed by the salvor,
- The time used and expenses and losses incurred by the salvor, and
- The skill and efforts of the salvors in preventing or minimising damage to the environment.

In considering the extent of the salvage reward a court or arbitrator is encouraged to be generous and liberal with a view to encouraging salvors and salvage operations.

A salvor has a maritime lien on all salvaged property and can legally restrain owners from claiming or using the property until a salvage reward has been paid. In practice, this maritime lien can be discharged by the provision of financial security so that the property salvaged may be released pending determination of the salvage reward.

Who Pays for “Salvage Services”

The *1989 Salvage Convention* provides that payment of the salvage reward ‘*shall be made by all of the vessel and other property interests in proportion to their respective salvaged values.*’¹⁵ Payment, therefore, falls to those parties who were the owners of the property salvaged.

Given most vessels and cargoes are insured, it is usually the insurers who ultimately become liable for the payment of the salvage reward through the claims submitted by these same vessel and cargo owners. The cost of these claims are factored into the calculation of insurance premiums determined by both hull and cargo underwriters. Given this, it is therefore true to say that it is the wider community of all ship and cargo owners engaged in maritime trade who ultimately share and pay for salvage services.

It follows that without or with diminished salvage services around the Australian coastline ship and cargo owners will, in time, experience an increase in their claim costs and with this a corresponding escalation in their hull and cargo insurance premiums.

“Salvage Services” in an Australian Context

It is widely acknowledged by all levels of government, and by the community at large, that there is a need to ensure there is sufficient salvage capability to provide a prompt and effective response in the event of a maritime casualty impacting the Australian coastline. In the case of the Government this responsibility particularly extends to the protection of life at sea and the marine environment.

¹⁵ Article 13.2

Currently, the Australian Government neither runs nor finances a standing fleet of tugs, or other floating equipment, dedicated to salvage work. To this end the Australian Government, by itself, does not possess any practical capability (such as the ETVs operated in the UK¹⁶ and elsewhere in the EU) with regard to the provision of salvage services.

Similarly, there are currently no private sector vessels that are engaged exclusively in salvage services in Australian waters. Further, and given the infrequent need for such services, it is unlikely that this situation will change in the foreseeable future.

Realistically, neither the Australian Government nor the private sectors are likely to be in a position to provide a dedicated and exclusive salvage response capability and certainly not one that is both substantial and extensive in its coverage. Factors inhibiting this are:

- The vastness of the Australian coastline,
- The geography associated with Australia's major trading routes and ports,
- The relatively low density of ship visits,
- The necessity, in an emergency, for salvage services to be able to respond both swiftly and effectively. An immediate response (within hours) to a vessel in distress is critical and may well avert a serious situation developing into an environmental catastrophe,
- The substantial financial investment required to acquire (and maintain) the necessary tugs and associated salvage plant and equipment including the provision of suitably qualified, trained and experienced salvage teams, and
- The infrequent and variable nature of salvage services.

Current “Salvage Service” Capability in Australia

The salvage service capability currently available in Australia comes overwhelmingly from its towage operators.

AAPMA, in their submission to the Productivity Commission¹⁷, identified seven major towage operators in Australia. Suffice to say, the location of these towage operators, and their associated tugs, is directly related to Australia's ports and their needs for towage services. This, in turn, is based on the trade/commodity profile of these same ports and the different type and number of ships visits recorded. Of the seven identified Australian towage operators only one,

¹⁶ In his report 'Safer Ships, Cleaner Seas' following the "Braer" casualty in 5.1.93 Lord Donaldson recommended the provision of publicly funded Emergency Towing Vessels (ETVs) with two being introduced. Following the "Sea Empress" casualty, 15.2.96, the number of ETVs was further reviewed and subsequently increased to four at a purported cost of GBP70M –GBP85M over a 10-year period. Maritime and Coastguard Agency, UK
www.mcga.gov.uk

¹⁷ The Association of Australian Ports and Marine Authorities (AAPMA) April 2002 Submission to the Productivity Commission - *Inquiry into Economic Regulation of Harbour Towage and Related Services* Page 5.

Adsteam Marine Limited through its subsidiary United Salvage Pty Ltd, is presently a member of the International Salvage Union (ISU)¹⁸.

For many years United Salvage has provided a dual inner harbour and ocean going emergency tow/salvage capability in conjunction with the fleet of tugs operated by its parent, Adsteam. This salvage service has operated from a network of strategically located ports in Australia (Bowen, Gladstone, Brisbane, Newcastle, Sydney, Westernport, Adelaide, Whyalla and Fremantle), as well as New Zealand (Whangarei) and the South Pacific (Port Moresby and Suva). A number of Adsteam's tugs have had the dual-purpose capability to provide harbour/port towage services as well as, to varying degrees, the capacity to assist in providing salvage services.

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 x 7 and crewed by trained and experienced personnel under the supervision of suitably skilled and experienced salvage masters.

Whilst far from utopia, this historical dual-purpose role has afforded Australia, and its near neighbours, with a highly useful, responsive and economical level of salvage service capability. More especially, this salvage service has been provided and totally funded by the private sector.

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"¹⁹, 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.

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 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. It is understood, that of recent time, two salvage capable tugs have been lost from the Australian coast having been re-positioned by their owners overseas.

Enhancing "Salvage Services" in Australia

Accepting that Australia must have adequate capacity to respond to an emergency situation and that the number of such incidents do not warrant an exclusively dedicated salvage service, going forward, the emphasis must be on encouraging the private sector towage operators to embrace the dual-service approach.

¹⁸ www.marine-salvage.com

¹⁹ International Chamber of Commerce – News Archives 2003. www.iccwbo.org

Whilst Government can legislate as regards the size, type and use of tugs in harbour/port services this, in itself, does not guarantee that the private sector will necessarily respond.

The practical response by which Australia can ensure it maintains (and preferably builds on) its existing level of salvage services is to seek to encourage this capability in conjunction with other related services. In an Australian context, this largely means salvage capability being provided in conjunction with existing towage operators the majority of whom are principally engaged in providing harbour/port assist services. Some salvage capability exists within Australia's offshore energy industry and through their use and deployment of Anchor Handling Tug/Supply vessels.

All harbour/port towage agreements could be mandated and amended to make provision for salvage capability. However, realistically, a more targeted approach is called for. To this end it is felt that Government, in conjunction with the wider maritime industry, should clearly identify those ports and associated trade routes calling for salvage capability and appropriately define the extent and nature of this capability. Those ports subsequently designated as needing salvage capability should then be required to include this additional capability within their towage licenses/agreements.

To place the onus, and more especially the whole additional financial cost, of providing salvage capability, on designated ports (and their associated users) could lead to inequities and potentially disadvantage a designated salvage port over an adjacent non-designated port. Such inequities, if they do exist, are hardly likely to be conducive to the central aim of encouraging the creation and the retention of salvage capability in Australia. To this extent, some form of financial support may be warranted on the part of Government in the 'national interest'.

Although, for reasons commented on earlier, Government is unlikely to wish to run or finance a standing fleet of tugs, this does not preclude it from providing financial incentives to encourage the private sector towage operators to meet the acknowledged need. Such assistance needs to be directly targeted and related to the extent of the salvage capability being provided. This may be best achieved by Government providing a bounty and/or sanctioning higher rates of depreciation on tugs and similar floating plant which meet an agreed criteria for ocean going salvage and which the owners agree and acknowledge will be suitably maintained and crewed to respond in an emergency.