

HOUSE OF REPRESENTATIVES  
STANDING COMMITTEE ON TRANSPORT AND REGIONAL  
SERVICES

## **Discussion Paper**

# ***Inquiry into Maritime Salvage in Australian Waters***

The discussion paper has been prepared by the committee secretariat and does not seek to present the views or conclusions of the Committee

## ***Inquiry into Maritime Salvage in Australian Waters***

The House of Representatives Standing Committee on Transport and Regional Services is undertaking a new inquiry into *Maritime Salvage in Australian Waters*.

The Hon John Anderson MP, Minister for Transport and Regional Services referred this inquiry to the committee as a result of the Productivity Commission Report on the Economic Regulation of Harbour Towing and Related Services.

The purpose of the inquiry is to investigate the impact of the report in respect to the nation's ongoing capacity to provide a defined level of salvage capabilities and cover for all Australian waters.

This discussion paper is not a definitive approach to the issues of Maritime Salvage in Australian Waters. It considers only part of the terms of reference for the inquiry by raising issues and questions in relation to Maritime Salvage in Australian Waters.

The discussion paper does not present the views or conclusions of the Committee. The Committee's report will be prepared at the conclusion of the inquiry.

The purpose of the discussion paper is to scope some of the key areas central to the provision of adequate salvage in Australian waters, and to canvas for input from a wide range of local and state governments, researchers, businesses, industry associations and individuals. The aim of this paper is to assist and challenge those who may make a submission or otherwise assist the Committee in the inquiry.

Submissions to the inquiry may respond to the discussion paper or to all or some of the terms of reference. Details of the terms of reference and making a submission to the inquiry are provided overleaf.

## **Terms of Reference**

### ***Inquiry into Maritime Salvage in Australian Waters***

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 towage 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.

Submissions can be e-mailed to [Trs.Reps@aph.gov.au](mailto:Trs.Reps@aph.gov.au)

Or sent to the following address:

Transport and Regional Services Committee  
House of Representatives  
Parliament House  
Canberra ACT 2600

The closing date for submissions is 8 April 2004 although the committee will accept late submissions.

The discussion paper is available at [www.aph.gov.au/house\\_salvage](http://www.aph.gov.au/house_salvage)

# Discussion Paper

## Maritime Salvage in Australian Waters

### SALVAGE

- Salvage is the act of rendering voluntary services to a vessel in danger. The services must be rendered voluntarily and must “not have been rendered pursuant to a contractual or official duty.”<sup>1</sup>
- Salvage may occur in emergency conditions where a ship is in immediate danger at sea, which may include danger to lives or the environment.
- Salvage is paid for by the owners of salvaged vessels under one of a number of widely recognised contracts such as Lloyds Open Form, the Baltic & International Maritime Council (BIMCO) Towhire or BIMCO Towcon, or through the courts under common law.

### AUSTRALIAN CONTEXT

- 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 force of law in Australia.
- Article 16 addresses lives salvage and, thus, is the only salvage expressly provided for in statute.
- The requirements for salvage are unpredictable.
- There are currently no vessels engaged exclusively in salvage services in Australian waters.
- Vessels that do engage in salvage services are usually tugs whose primary purpose is for harbour towage. This is, however, an additional cost to the towage company as the tugs are usually upgraded to be able to perform salvage work.
- Given the unpredictability of salvage work the case could arise where there are no available tugs for a particular salvage job.
- This is already the case in New Zealand. In January 2002 when the *Jody F Millenium* was grounded off New Zealand a tug had to be sent from Melbourne to save the ship.

---

<sup>1</sup> White, M W. *Salvage; Towage; Wreck and Pilotage* in White, M W (Ed) (2000) Australian Maritime Law, Federation Press, p. 241.

## **HARBOUR TOWAGE SERVICE AGREEMENTS**

- It is possible to include clauses guaranteeing salvage capacity in towage agreements. Two issues arise from this:
  1. Users of Harbour Towage subsidise salvage through higher towage costs due to towage firms having tugs with far more capabilities than necessary for towage alone.
  2. Towage operators subsidise salvage through higher costs or missed opportunities when acting as a salvor.
- Salvage capability can be provided, not only by harbour towage services, but also by a range of other vessels, depending on the nature of the salvage task, such as off shore oil supply vessels or fishing boats.

## **GOVERNMENT RESPONSIBILITIES TO PROVIDE SALVAGE INFRASTRUCTURE**

- There is no specific legislation requiring government at any level to provide salvage infrastructure such as tugs.
- Governments at all levels do, however, have responsibilities to protect life and the marine environment.
- Two situations could arise in relation to towage and salvage services:
  1. Due to salvage commitments there are no tugs available to provide towage services. The absence of the tug could limit the ability of the port to undertake its normal trade function of moving ships in and out of port.
    - This would impact negatively on the reliability of towage services and, if frequent enough, could affect Australian trade.
  2. Due to towage commitments there are no tugs available to provide salvage services.
    - This would impact negatively on the international reputation of Australia's (excellent) shipping safety record and could endanger the marine environment.

- The only way government could be sure to fulfil responsibilities with regard to salvage is to finance/run a standing fleet of tugs exclusively for salvage work.
- The United Kingdom has a publicly provided emergency and salvage system.
- It should be noted here that it is not always essential that a salvage tug be in place for salvage operations as soon as the incident occurs. Often all that is required in an incident is for a tug to hold a stricken vessel fast for a period, whilst further investigations are carried out as to the cause, failure or repair possibilities.

### **PRODUCTIVITY COMMISSION REPORT ON THE ECONOMIC REGULATION OF HARBOUR TOWAGE AND RELATED SERVICES**

The Productivity Commission Report on the Economic Regulation of Harbour Towage and Related Services (the Report) made the following observations with regard to 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.

### **Uniform Shipping Laws (USL) Code**

- The Uniform Shipping Laws Code (USL Code) was introduced to primarily cover commercial vessels less than 35 metres in length in Australian waters.

- The Code provides standards for the design, construction and operation of domestic commercial vessels. The Code was first published in 1979 in response to the need for a common national safety standard for commercial vessels.
- Submissions to the Report made note of the problems involved in transferring tug crews interstate due to the differing interpretations and application of the USL Code.
- Some states and territories rely on their own regulations with regard to matters of crew competency adding further difficulties to the transferring of crews interstate.

The report made the following recommendation which, if followed, will have an impact on salvage services:

#### RECOMMENDATION 1

***Subject to maintaining appropriate levels of safety, prescriptive regulations that stipulate tug use and/or tug size or type should be modified to promote provision of required levels of service at minimum cost.***

***Relevant jurisdictions should also promote harmonisation or, where appropriate, introduction of a system of mutual recognition of minimum crew qualifications and standards, to minimise impediments to the movements of crews and tugs across Australian ports in different jurisdictions.***

#### GOVERNMENT RESPONSE TO PRODUCTIVITY COMMISSION RECOMMENDATION 1

The Government's response to the above was that it supported the recommendation and noted that, in relation to tug crew training and qualifications, the Australian Transport Council (ATC) has already initiated work through the National Marine Safety Committee (NMSC) and its National Standard for Commercial Vessels (NSCV).

#### **National Marine Safety Committee (NMSC)**

The National Marine Safety Committee (NMSC) is the Maritime Safety Sub-Committee of the Australian Maritime Group (AMG) and implements the National Marine Safety Strategy. The Strategy aims to achieve national consistency and improved levels of safety for recreational vessels and commercial vessels that do not come under the Commonwealth Navigation Act 1912.

The Australian Maritime Safety Authority (AMSA) is a member of the NMSC and the Department of Transport and Regional Services works with AMSA to develop and advance Commonwealth Government priorities through the Committee.

### **National Standard for Commercial Vessels (NSCV)**

- It is more than 20 years since the USL Code was adopted by the States of Australia and the Northern Territory. Since that time there has been significant technological and operational changes in the marine sector, as well as changes in the way government and society manage risk.
- One of the high priority tasks of the NMSC is to revise and eventually replace the USL Code with the NSCV in accordance with the goals and objectives of the National Marine Safety Strategy.
- The NSCV is being progressively introduced to replace the USL Code.
- Part D of the standard relates to Crew Competencies which should have an impact on the crewing of tugs.

### **ISSUES ARISING**

Whilst the details are not yet known if it is the Government's intention to legislate in relation to the size, type and use of tugs in harbour towage this could have an impact on the provision of salvage services.

1. One argument put forward in relation to the pricing of harbour towage was that this was increased as towage companies used more powerful tugs than needed so as to be able to perform salvage services.
2. If there is a legislative requirement put in place to "stipulate tug use and/or tug size or type" this may mean that in the future there are no tugs powerful enough to provide salvage services.
3. It may, however, also mean a legislative requirement to provide salvage capacity.
4. This may require the Government to have a publicly provided emergency and salvage system as in the United Kingdom.
5. This would be a costly exercise and the decision would have to be made as how to fund such a system.