

INTERVENTION POWERS

SPILLCON 2016 – THE ASIA-PACIFIC OIL SPILL
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The Torrey Canyon disaster 1967

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- The Torrey Canyon oil spill was the world's first major tanker oil spill:
 - 136 million litres of oil was spilled, 190km of English and 80km of French coastline was affected;
 - Urgent measures had to be taken to disperse the oil;
 - Failed attempts were made to bomb the stricken vessel and dissolve the spill using chemicals.



2

Power of Intervention

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- At the time it was widely believed the British Government had acted in breach of international law by intervening against a Liberian flag, US owned, BP chartered tanker outside the three mile limit of the British territorial waters.
- The disaster led to a review of a range of matters associated with wrecked ships:
 - The extent to which a State threatened or affected by a casualty taking place outside its territorial sea can intervene to protect its coastline, its harbours and amenities; and
 - How such measures affect ship owners, salvage companies, insurers, and the ship's flag state.
- The IMO established a Legal Committee to address the legal aspects of preventative action.
- That led to the adoption in 1969 of the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties ("**Intervention Convention**").

3

The Intervention Convention

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- At the same time as adopting the Intervention Convention the International Convention on Civil Liability for Oil Pollution Damage ("**CLC**") was introduced; and
- In 1971 the International Convention on the Establishment of an International Fund for Oil Pollution Damage ("**Fund Convention**") was established.
 - These CLC and Fund conventions deal with liability, and compensation.
 - The **Intervention Convention** addresses the right of a State to intervene in the event a foreign ship poses a **grave and imminent danger** to its coastline.
 - The Intervention Convention did not fully address all wreck removal issues....about which more later!



4

Protection of the Sea (Powers of Intervention) Act 1981

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- The PSPIA implemented the Intervention Convention (and Protocol) in Australia.
- It gives Australia an enhanced power to protect its territory and coastal seas in the event of actual or threatened incidents, providing the Minister with powers of intervention.
- The PSPIA was amended in 2006 to:
 - Clarify the status and scope of the Australian Government's power to intervene in Australia's Exclusive Economic Zone (EEZ);
 - Extend the Act to **all ships** in the Australian coastal sea that present a threat;
 - Clarify the extent and scope of intervention powers;
 - Provide that directions issued by AMSA are to prevail over any other person and where there is a conflict;
 - Revise penalties for non compliance;
 - Provide for responder immunity for decisions made; and
 - Provide compensation for damage and loss and for requisition of property.

5

What powers are given to AMSA under the Act?

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- A core provision of the Act is to confer power on AMSA. It provides:

*"Where the Authority [AMSA] is satisfied that, following upon a maritime casualty on the high seas or acts related to such casualty, there is **grave and imminent danger** to the coastline of Australia...from pollution or threat of pollution of the sea by oil which may reasonably be expected to result in major harmful consequences, that Authority may take such measures, whether on the high seas or elsewhere, as it considers necessary to prevent, mitigate or eliminate the danger".*
- The powers include:
 - the power to move the ship, remove cargo, salvage the ship, sink or destroy the ship or part of the ship, or take control of the ship;
 - Issue directions to the owner or master of the ship or to any salvor in possession of the ship or any other person; and
 - To prevent pollution of the sea by substances other than oil (e.g. noxious substance);
 - There is immunity to the Minister and AMSA as well as any person directed to provide a ship, assets or services.
 - Penalties of up to A\$1.7 million are provided for the failure to comply.
 - The owner is also liable for any costs incurred by AMSA in taking action.

6

How does it work in practice?

- Australia has a National Plan for Maritime Environmental Emergencies.
 - AMSA manages the National Plan.
 - The work with the State/Northern Territory Governments, shipping and related industries to maximise Australia's marine pollution response.
- There is a minimum level of towage capacity around the coast provided by Contractors under the Emergency Towage Vessel Program.
- There is a single decision maker for the management of responses to maritime casualties with power to intervene to prevent, mitigate or eliminate potential or actual instances of marine pollution from ships.
- There is a Maritime Emergency Response Commander (MERCOT) who is responsible for handling emergency intervention for actual or potential pollution. MERCOT is exempt from liability. But the owner remains responsible on the "polluter pays" principal.



7

What about Wrecks?

- The Act and Intervention Convention do not expressly deal with wrecks in the EEZ or beyond the territorial sea and which pose a navigational hazard.
- In 2007 IMO adopted the draft Nairobi Convention on wreck removal.
 - The Convention permits a State to take measures to remove a wreck that is a hazard to navigation or the marine environment.
 - A hazard includes:
 - a danger to navigation; or
 - a condition that may give rise to harmful consequences to the coastline, ports, fisheries, tourism and offshore and underwater infrastructure.
 - Steps taken must be proportional to the hazard.
 - The Convention Area is the EEZ of the State so excludes territorial waters.
- The Convention has been adopted in part in Australia in the Navigation Act 2012.



8

Navigation Act 2012 – wreck removal

- The Navigation Act gives to AMSA the power to deal with a vessel that has become a wreck if it is:
 - A regulated Australian vessel **wherever located**; or
 - A foreign vessel in Australia's **territorial sea**.

Relationship of maritime features, limits and zones



9

Coastal Waters: State and Territory Jurisdiction

- Coastal Waters:
 - This is the area of water from the outer limits of a State or Territory to a line 3nm seaward of the territorial sea baseline. Jurisdiction over the water and seabed is vested in the adjacent State or Territory.
 - Under the Western Australian Marine Act 1982 where a vessel is abandoned, derelict, stranded, sunk, unfit for sea, wrecked or otherwise a notice may be served on the Owner declaring the vessel to be a navigational hazard or obstruction to other vessels.
 - The vessel can be required to be removed within such period of not less than 7 days after service of the notice.
 - If the vessel is not removed then the costs of removal can be recovered by selling the vessel and/or by action against the Owner.



10

Definitions in the Navigation Act 2012

- The definition of "**vessel**" means any kind of vessel used in navigation by water however propelled or moved and includes: a barge, lighter or other floating craft, an air-cushion vessel or similar craft, used wholly or primarily in navigation by water.
- A vessel is a "**wreck**" if it is wrecked, derelict, stranded, sunk or abandoned or has foundered.
- The definition of "**wreck**" in the Wreck Convention includes: "a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken".



11

Wreck Removal – Intervention by AMSA

- The Navigation Act provides AMSA with power to:
 - order an Owner to remove a wreck or to give security to AMSA for the removal.
 - require the Owner to mark the wreck or to give security to AMSA to do so;
 - mark, remove or destroy or sink a wreck; and
 - recover from the Owner any expenses incurred by AMSA
- The Act is silent as to the time frame for action:
 - The Tycoon foundered on 8 January 2012. AMSA stepped in to manage the wreck on 16 April 2012.
- The wreck removal powers in the Navigation Act do not apply to a foreign vessel in the EEZ.
- Under the LLMC Convention claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded, or abandoned are not subject to limitation of liability in Australian waters*.

* (Australia lodged a reservation at the time of acceptance of the LLMC Convention)



12

The Wreck Convention v the Navigation Act 2012

- The Wreck Convention entered into force in April 2015.
- Australia has not ratified the Convention.
- But – S229 of the Navigation Act deals with wrecks and addresses some of the points in the Convention.
- Some differences include:
 - The Act does not require an Owner to maintain compulsory insurance or other financial security to cover liability under the convention.
 - The Act does not apply to foreign flag ships in the EEZ.
 - The Convention applies to wrecks that pose a "hazard". The Act applies to all wrecks.
 - The Convention requires that the Affected State does not interfere with the rights and interests of other States including the Flag State of the ship, any person or corporate body. The Act is silent on this.
 - The Convention requires the wreck to have arisen as a result of a "maritime casualty". The Act is silent on this.

Some Conclusions

- The Intervention Convention and Power of Intervention under the Act give to AMSA powers to intervene where there is "grave and imminent danger" to the coastline from pollution or threat of pollution.
- The Wreck Convention was intended to be a logical extension of the Intervention Powers and provide rules for the prompt and effective removal of wrecks located outside the territorial seas.
- Australia has not ratified the Convention but chosen to adopt some of the provisions in the Navigation Act 2012.
- There are some differences:
 - The definition of "wreck";
 - The power of wreck removal of foreign flag vessels does not extend to the EEZ;
 - There is no requirement that Owners carry compulsory insurance allowing a direct right of action against insurers; and
 - The timing of any intervention by AMSA is undefined, which could lead to delay and consequential economic losses to port and/or berth operators.

A focus on international commerce

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