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Mr Paul Neville
Committee Chair
House of Representatives Standing Committee
on Transport and Regional Services
Parliament House
CANBERRA ACT 2600

Dear Mr Neville

I refer to your letter of 10 February 2004 to the Premier of NSW, the Hon Bob Carr, regarding the House of Representatives Standing Committee Inquiry into Maritime Salvage in Australian waters.

The Ministry of Transport has co-ordinated a response to the Inquiry on behalf of the NSW Transport Portfolio including the NSW Port Corporations and NSW Waterways Authority.

I appreciate the opportunity to make this submission and thank the Committee for its consideration.

Should the Committee have any further inquiries in relation to this submission please contact Mr Jim Glasson, Manager, Freight Logistics and Aviation Policy at the Ministry of Transport on 9268 2258.

Yours sincerely

Peter Scarlett
Acting Director General

NSW MINISTRY OF TRANSPORT

RESPONSE TO THE HOUSE OF REPRESENTATIVES STANDING COMMITTEE INQUIRY INTO MARITIME SALVAGE ON BEHALF OF THE NSW TRANSPORT PORTFOLIO

1. CONTEXT TO NSW SUBMISSION

Introduction

There is clearly a need to maintain a maritime salvage capability in Australia.

Australia is a maritime nation dependent upon ships for its trade. The Bureau of Transport and Regional Economics report that, for the year 2001-2002, ships carried about 99.9% of exports and 99.5% of imports in terms of tonnage. The increasingly positive economic outlook indicates a modest increase in the number of ships trading with Australia and a corresponding increase in the size of these vessels. Super tankers and container ships handling in excess of 8,000 TEU pose a challenge to harbour towage and salvage capability.

The risk associated with collisions and groundings increases with the increase in shipping traffic. The major concern to NSW is a ship being swept ashore or foundering off the coast and creating a major pollution incident, or foundering within port limits. A ship sinking and blocking the shipping channel would have catastrophic economic impact for any port.

In assessing the risk of a shipping accident the increased focus by shipowners on profit at the expense of crew training and ship maintenance needs to be taken into account. The Report by the International Commission on Shipping noted the growing shortage of qualified and competent officers as a consequence of a reduction in shipowner investment in training. It also noted that cut-backs in crew numbers and ship maintenance could have a bearing on a large percentage of shipping collisions, groundings and sinkings.

It is accepted that the waters off the NSW coast are relatively free from underwater dangers such as submerged reefs and most of the offshore islands are steep-to, presenting a somewhat reduced risk to shipping transiting the coast. Nevertheless, the coast is exposed to severe weather patterns which can develop quickly.

NSW has taken a pro-active approach to the identification of "Places of Refuge" that is, safe havens for ships to shelter from bad weather when far away from a port. Debate rages over the best approach to dealing with ships with structural failure and therefore, potential polluters. Some commentators argue such ships are best stabilised within a port environment where emergency response is possible and pollution can be contained. Others believe these ships should be kept at sea.

NSW has taken a proactive approach to the issue of Places of Refuge through the establishment and regular review of guidelines. NSW has also exercised the Guidelines in July 2003. It is considered that salvage capability needs to be considered in conjunction with Places of Refuge.

A strong case can be built to support the need for a salvage capability to cover the NSW coast and adjacent waters.

Definition of Salvage

For the purpose of this inquiry, it is important to define exactly what type of “salvage” operation is being considered by the Standing Committee.

This submission assumes that “salvage” refers to the availability of emergency response on a voluntary basis by suitable vessels where a ship, its crew and /or its cargo is in imminent danger, or “first level salvage support”. It is not referring to the long term operation of retrieving a ship and/or its cargo after the immediate “emergency” situation has passed eg. after a ship has grounded, or “second level salvage support”.

This type of salvage suggest a short term requirement for immediate and urgent assistance, perhaps only until a larger vessel can be deployed to the scene to render long term assistance.

Commonwealth Jurisdiction

With regard to waters under Australian jurisdiction, three maritime Conventions impose quite specific obligations on the Commonwealth 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 Commonwealth 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 off lying island, seawards to a maximum of 200 miles.

The second Convention is the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPPRC) 1990, Article 1.1 of which requires the Commonwealth 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). Through Marpol and civil liability this responsibility has been pushed onto the States who already have a significant day to day burden. The above conventions present a case that the Commonwealth’s obligations should extend to the provision of maritime salvage services.

The Convention recognises the ‘polluter pays principle’ as a general principle of international environmental law. The above Conventions present a case that the Commonwealth’s obligations could extend to the provision of maritime salvage services.

The third convention is the International Convention on Salvage 1989. Its preamble notes the increased concern for the protection of the environment and recognises that timely salvage operations can contribute to the safety of vessels, other property and the protection of the environment.

Article 9 of the Convention states:

Nothing in this Convention shall affect the right of any coastal State concerned to take measures in accordance with generally recognised 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 the coastal State to give directions in relation to salvage operations.

'Salvage operation' is defined in the Convention as any act or activity undertaken to assist a vessel or other property in danger in navigable waters or in any other waters whatsoever. When adopting the Convention, the Government noted that it would provide greater incentives for effective and timely salvage operations to assist with the protection of the environment.

These conventions highlight the important role of the Commonwealth in maritime salvage and the protection of the marine environment.

The Australian Maritime Safety Authority (AMSA) is the Commonwealth government agency vested with responsibility for the efficient delivery 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. AMSA is largely self-funded through levies on the commercial shipping industry.

AMSA is responsible for:

- the operation and maintenance of the Federal 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, 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 the Marine Navigation (Regulatory Functions) Levy under the Marine Navigation (Regulatory Functions) Levy Act 1991.
- Administration of the certification of seafarers training,
- Operation of Australia's Rescue Co ordination Centre and co-ordinate search and rescue operations for civilian aircraft and vessels in distress.
- Representation at a national level at international forums for development of maritime standards such as the International Maritime Organisation (IMO).

One of AMSA's primary areas of responsibility is protection of the marine environment through management of the National Plan. 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). 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.

NSW representative on the Australian Maritime Group (AMG) is the NSW Waterways Authority.

The Australian Transport Council (ATC) has recently charged the National Marine Safety Committee (NMSC) of the AMG to develop a strategy for National Salvage Capability. A discussion paper has been prepared by the AMG working group on Salvage Capacity. The paper provides a basis for discussions with relevant stakeholders which are currently being conducted. The Working Group will report back to the next AMG meeting as to the options available for progressing the issue.

The results of the Standing Committee Inquiry will be considered as complementary to the AMG process.

NSW Jurisdiction

The NSW State Government has jurisdiction for waters within 3 miles off the NSW Coast and under the Marine Pollution Act this jurisdiction may extend up to 12 nautical miles.

The NSW Government has 6 commercial ports operated by the Sydney Ports Corporation (Sydney Harbour and Botany Bay), Newcastle Port Corporation (Newcastle), Port Kembla Port Corporation (Port Kembla) and the NSW Waterways Authority (Eden and Yamba).

Through their Port Safety Operating Licenses (PSOL) with the NSW Government, the Port Corporations are vested with responsibility for waters as defined in the *Ports Corporatisation and Waterways Management Regulation 2002* (Appendix 1). Under this regulation NSW ports are not responsible for salvage beyond their port limits.

Tug Capability

For the purpose of this Inquiry, there are essentially three categories of tugs.

Harbour/towage tugs – tugs up to 50 tonne bollard pull whose primary purpose is harbour towage. These tugs are not powered sufficiently, and may not be crewed or equipped, to meet all emergency situations at sea.

Sea/Extended harbour duty tugs – tugs over 50 tonne bollard pull whose primary purpose is harbour towage. However these tugs have sufficient power to respond to ships adrift at sea, relocation of ships and vessels in danger of going aground. These tugs could attend in an emergency situation and wait with a ship to avoid an emergency until a fully equipped salvage tug could attend.

Salvage capable tugs – these tugs are fully equipped, manned and powered to respond to a full marine emergency and long term salvage situation.

Current Salvage Capability of Tugs Servicing NSW Ports

Port	Total No of Tugs (1)	Towage/ Harbour Tugs Only (2)	Sea/ extended harbour duty tugs (3)	Salvage Capable Tugs (4)
Sydney Adsteam	4	3	1	0
Botany Bay Adsteam	3	3	1	0
Australian Maritime Services (AMS)	2	2	0	0
Newcastle – Adsteam Marine	6	6	5*	0
Port Kembla – Adsteam Marine	4	1	1	0
Eden - Chartercraft Marine (AdsteamMarine)	2	2	2	0
Yamba – Waterways Authority	1	1	0	0

(1) Total No of Tugs in the Port

(2) Of total tugs, no. of tugs capable of Harbour towage only

(3) Of total tugs, no. capable of extended services such as relocation of ships, attendance of ships adrift, with engine failure at sea or aground.

(4) Of total tugs, no. capable of full salvage service.

* 5 harbour tugs in Newcastle have the capability to effect “sea/extended harbour duty” but are not currently equipped for salvage.

General Observations

- Currently, vessels that engage in salvage services are usually tugs whose primary purpose is harbour towage.
- There is (or will be) an additional cost to towage companies to enhance or upgrade harbour tugs for salvage.
- There will be a need to subsidise salvage availability through higher towage costs if towage companies are required to have tugs with capabilities beyond those required for harbour towage.
- In NSW there is currently no enabling legislation to allow service agreements to be negotiated between port operators and towage companies and therefore the Inquiry should not assume that all towage companies are under a service agreement. Notwithstanding, there has not been an incident in NSW where the absence of such an agreement has inhibited the response to a ship in distress.
- In NSW, deployment time from the major ports of Sydney Harbour, Botany Bay, Newcastle or Port Kembla to the far south coast could be up to 24 hours and 36 hours for the north coast. An incident on the northern NSW coast may be attended more quickly from tugs based in Brisbane.
- a national protocol for the deployment of the most appropriate tug/s from the most appropriate port/s for various sections of the Australian coast, irrespective of State borders seems to be required.

2. REMARKS IN RESPECT OF THE PRODUCTIVITY COMMISSION REPORT ON THE ECONOMIC REGULATION OF HARBOUR TOWAGE AND RELATED SERVICES

Competitive tendering does not necessarily alter market incentives for provision of base salvage capability as ports are not prescribing maximum criteria, nor salvage criteria, in towage provision license specifications. Towage companies (historically) set their vessel specification maxima whereas ports may specify a base minimum capability for their ship handling requisites with tug assistance. Ports do not specify that salvage capable tugs are required to handle vessels within their precincts.

The optimum level of emergency salvage capability is an issue for all industry stakeholders and may only be sustainable in major ports where some redundancy of plant is possible in the event of a salvage mobilisation being required.

3. COMMENTS IN RELATION TO FUNDING

If additional funding is required to provide salvage services or offset increased harbour towage charges there is a strong case for the Commonwealth to meet these costs. The case is supported by the obligations on the Commonwealth by the following:

- 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 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.

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.

Should it be necessary to supplement harbour towage, the most appropriate mechanism for funding the salvage capability would be the Commonwealth's *Protection of the Sea (Shipping Levy) Act 1981* and the *Protection of the Sea (Shipping Levy Collection) Act 1981*.

In introducing the *Protection of the Sea (Shipping Levy) Bill*, the then Commonwealth Minister made two points: "With one national plan and one set of stockpiles, it is logical, as we have agreed with the States, to raise one charge for covering the costs". The second point concerned the 'polluter principle' in respect of which he noted: "There is a widely accepted principle which is pithily expressed in the words: 'The polluter pays'. It is a good principle, but in this case we have extended it a little to make the potential polluter pay". The Shipping Levy Act is a convenient instrument through which to fund maritime salvage capability.

4. COMMENTS ON THE SPECIFIC TERMS OF REFERENCE OF THE INQUIRY INTO MARITIME SALVAGE IN AUSTRALIAN WATERS

1. The three tiers of government's responsibility to provide salvage infrastructure.

Marine salvage is a matter for the Commonwealth and State Governments plus the Northern Territory. Local Government has no role.

In addressing responsibility for salvage it is appropriate to consider the Commonwealth's responsibilities in terms of maritime search and rescue. The International Convention on Maritime Search and Rescue (MARSAR) 1979 imposes responsibilities on the Commonwealth for maritime rescue in a vast area from the mid-Indian Ocean in the west to mid-Pacific Ocean in the east and as far south as Antarctica. That responsibility would imply a corresponding responsibility for maritime salvage in some those waters, even though they are not technically under direct Australian jurisdiction.

With regard to waters under Australian jurisdiction, two maritime Conventions impose quite specific obligations on the Commonwealth. 1) Article 56 (1) of the UN Nations Convention on the Law of the Sea (UNCLOS) and 2) The

International Convention on Oil Pollution Preparedness, Response and Co-Operation (OPPRC) 1990) impose quite specific obligations on the Commonwealth which have already been discussed.

Ships generally enter the State's jurisdiction (coastal waters) only to enter or exit a port. Consequently, it is reasonable to assume that a ship requiring salvage would first be in Commonwealth waters before entering State waters and possibly foundering. Ports are not responsible for salvage beyond the port limits and States should not have a responsibility beyond State waters. Primary responsibility for salvage therefore appears to rest with the Commonwealth.

If, however, State Government intervention becomes necessary, responsibilities may be addressed by way of agreed Port of Refuge protocols, Memorandums of Understanding with industry participants or Powers of Intervention privilege as and when required.

2. The inclusion of a defined level of salvage capability in harbour towage service agreements.

Government's responsibilities to protect life and the marine environment should only be enacted by way of powers of intervention when all industry risk management and response initiatives in the course of commercial and business/operations have failed.

The introduction of legislation that stipulates tug use and/or size and type in any port in order to provide enhanced salvage capability is likely to raise the barrier to new entrants and therefore lessen competition.

The defined level of salvage capability needs to be determined by a risk-based approach. Included in the risk would be elements such as the density of shipping, hazards to navigation, paucity of position-fixing aids, submerged rocks and reefs, uncertainty of weather and prevalence of fog. The environmental sensitivity of a navigable area of water would also need to be considered for example. The Great Barrier Reef, with its world heritage status, may dictate a greater need for salvage capability than other coastlines.

It would be useful to note Recommendation 28 to the report into a Review of Ship Safety and Pollution Prevention Measures in the Great Barrier Reef 2002. The Recommendation was that the Australian Maritime Safety Authority, the Great Barrier Reef Marine Park Authority and Queensland Transport reassess emergency measures in the Great Barrier Reef and Torres Strait, including the assessment of necessary salvage capacity and its operational location.

One option is dedicated salvage-capable tugs located around Australia. This is the UK model which had its genesis in the 1994 Report of Lord Donaldson's Inquiry into the Prevention of Pollution from Merchant Shipping – Safer Ships, Cleaner Seas. The Inquiry was established as a consequence of the grounding and subsequent break-up of the *MV Braer* on rocks around the Shetland Islands on 5 May 1993. The tug contract is expensive – £86M for 8 years (with an option for two years). The frequency and scale of maritime accidents around the Australian coast would not appear to justify such expense.

A variation would be the location of a tug in an area/s which, following a risk assessment, demonstrated a heightened need. The world heritage status of the Great Barrier Reef, the level of traffic which passes through it and the ongoing risk of a major oil spill, support the possible location of a salvage-capable tug in that area. A benefit associated with such a tug is that it could augment the current services of port-based tugs that are called upon to provide first level salvage support outside the reef area.

Salvage services for the remaining areas of the coast of Australia should most probably be provided by harbour tugs for the first level of support – i.e. to take the damaged vessel under control and hold it clear of danger. This support might need to be supplemented by specialist tugs that may require to be brought to Australia from overseas (eg. Singapore) and may take several days to arrive on scene.

In considering the more specific issue of NSW requirements for salvage there is a need to consider the whole of the State's coastline. Tugs based in the four major ports of Sydney Harbour, Botany Bay, Newcastle and Port Kembla could go to the assistance of a ship in distress, provided the ship was located within a reasonable distance from a commercial port. However, a disabled ship adrift off the northern or southern extremities of the State, or subject to bad weather, could drift ashore before a tug could reach it.

In respect of salvage provision beyond the scope of harbour towage services many harbour towage vessels are suitable to stabilise a potential salvage situation until a larger vessel arrives. The level of towage currently available at the major NSW ports should be sufficient to provide a first level of response in most circumstances with an acceptable level of risk. Harbour tugs, however, are restricted in the level of salvage they can provide.

Generally a harbour tug would be unable to pull a vessel off the shore once it has grounded but if it can get a line to a disabled vessel one or more harbour tugs should be able to hold a vessel clear of danger. Clearly a vessel on fire or abandoned, presents a more complicated scenario that may be beyond the capabilities of a harbour tug.

There are, however, some areas of the NSW coast where salvage services might be unable to reach a stricken vessel before it was forced aground. To eliminate this risk would be prohibitively expensive and require an Emergency Towing Vessel (ETV) to be stationed on the far north and far south coasts.

The risk can be further mitigated by using other vessels that might be in the area. Vessels that service the oil platforms in Bass Strait and often call to Eden for bunkering have towing capability. Deployment time to the south coast could be up to 24 hours and 36 hours for the north coast. An incident on the northern NSW coast may be attended more quickly from harbour tugs based in Brisbane. Royal Australian Navy ships have a towing capability and have in the past performed salvage operations off the NSW coast.

In terms of the substitutability possible between salvage capable tugs and harbour tugs, not only do salvage capable tugs have higher capital/operating costs but their design does not necessarily facilitate (and may detract from) the degree of dynamic positioning capability required for best practice harbour towing efficiencies. Tugs simultaneously capable of salvage work, in addition to core functions, do not necessarily provide minimum required service levels or pure harbour towage at minimum cost.

Furthermore, it should also be noted that salvage capability is generated by hardware and human resources beyond those of the tugs in isolation. Such resources include stockpiles of equipment – stored both on tugs and variously located around the continent as well as personnel whose expertise and experience may be drawn upon.

Any funding of salvage related initiatives should simultaneously address shore based salvage equipment and resources which, unlike tugs, are in non-revenue earning mode in between salvage deployments.

3. The provision of relief tugs when salvage tugs are engaged in a salvage operation.

This is an issue for the State's Port Corporations and the commercial towage capacity arrangements that they have in place with towage operators.

Most ports have some spare capability that can be used without disruption to the port's commercial operations for a short time. The towage market, however, is becoming very competitive and this latent capability is being threatened.

In NSW, the four major ports (Sydney Harbour, Botany Bay, Newcastle and Port Kembla) are geographically quite close and provide a very concentrated level of harbour towage. Through sharing arrangements it should be possible to service the NSW coast with a first level of salvage capability.

What seems to be required is a national protocol, developed using a risk based approach, for deployment of the most appropriate tug/s from the most appropriate port/s for various sections of the Australian coasts, irrespective of State borders.

4. Minimum standards of salvage tug safety, training and operational capability.

There is little doubt that a more prudent interface between State's applications of the USL code to their requisite regulatory requirements will facilitate lateral employee mobility when transferring tug crews interstate.

The harmonisation of standards across Australia's jurisdictions is being pursued by the National Marine Safety Committee (NMSC), the maritime safety sub-committee of the Australian Maritime Group (AMG).

5. The need for public interest obligations to release tugs for marine emergencies.

The question is whether public interest will compel tugs being made available for “first level” salvage operations. This has not been a problem in the past and the port authorities have a good record of making tugs available to provide salvage assistance. Tug operators have shown a willingness to provide the first level assistance but would be reluctant to commit a tug to a long tow to take a disabled ship to Singapore or some other East Asian repair yard.

The down side of enforcing this requirement is that it would introduce a commercial cost as operators could be compelled to take some action that was not in their commercial interest. This could lead to increased towage charges and reduced competitiveness of a port.

Noting the number of tugs available in the Port Kembla, Sydney, Botany and Newcastle areas, there does not currently appear to be a need for any more than a public interest obligation in NSW.

CONCLUDING OBSERVATIONS

As a maritime nation dependent on shipping for its trade and economic wellbeing, Australia needs a maritime salvage capability. The Commonwealth has a clear responsibility to ensure this service is available.

In NSW the level of capability to meet the need for “first level” of salvage support can currently be provided from harbour towage services.

The Great Barrier Reef might present a special case that dictates the need for a dedicated salvage tug.

A national protocol for the deployment of the most appropriate tug/s from the most appropriate port/s for various sections of the Australian coast, irrespective of State borders seems to be required.