

Report on the International Convention for the Control and Management of Ships' Ballast Water and Sediments (London, 13 February 2004)

Introduction

- 8.1 The *International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004* (the Convention) was adopted by the International Maritime Organization (IMO) on 13 February 2004.
- 8.2 Australia signed the Convention, subject to ratification, on 27 May 2005.¹

Background

- 8.3 Ballast water consists of water that is taken on board a ship for the enhancement of the ship's stability at sea. Ballast water may contain sediment if it is taken on whilst the ship is in shallow or turbid water. These sediments and the water can contain a wide range of live marine flora and fauna. These are then transported away from their

¹ National Interest Analysis (NIA), para. 1.

original source and discharged with ballast water into the destination port as the ship is loaded with cargo. The larvae and spores of some marine animals and plants can survive this journey.

- 8.4 Ballast water is now recognised as a major source of spreading exotic marine pests around the world. In response the IMO has developed the *International Convention for the Control and Management of ships' Ballast Water and Sediments*. The development of the Convention fulfills an objective of the 1982 *United Nations Convention on the Law of the Sea* which inter alia called for countries to take all measures to reduce and control the accidental or intentional introduction of marine species into new environments. Similarly the 2002 World Summit on Sustainable Development called for action at all levels to accelerate the development of measures to address the problem of the transport via ballast water of invasive alien marine species.²
- 8.5 Australia is particularly vulnerable as many cargo ships arrive here without cargo and therefore with a large quantity of ballast water. If the organisms survive the transport and discharge process they may become established in the new community and populations may flourish.³
- 8.6 Each year, around 200 million tonnes of ships' ballast water is discharged into Australian ports by 13,000 ship visits from some 600 overseas ports.⁴
- 8.7 There are now estimated to be more than 250 exotic species known to be present in the Australian marine environment. The introduced organisms can affect local marine life in a number of ways, by competing with native species for food or space, preying on native species, crossbreeding with native species or by changing the habitat. Generally if the effects of introduced organisms are sufficiently severe they are referred to as "pests". Approximately one in six introduced marine species become pests.⁵

2 Mr Charles Willcocks, *Transcript of evidence*, 22 June 2007, p. 46.

3 Department of Environment and Water Resources, "The Introduction of Marine Pests to the Australian Environment via Shipping", <www.environment.gov.au/biodiversity/threatened/ktp/pests-via-shipping.html>.

4 NIA, para. 7.

5 Department of Environment and Water Resources, "The Introduction of Marine Pests to the Australian Environment via Shipping", <www.environment.gov.au/biodiversity/threatened/ktp/pests-via-shipping.html>. Marine pests can also be introduced via hull fouling.

- 8.8 It is estimated that between 10 and 40 per cent Australia's fishing industry is potentially vulnerable to marine pest incursion.⁶ The North Pacific Seastar, for example, is a major pest introduced into Australia via ballast water.⁷ According to evidence given to the Committee by the Department of Agriculture, Fisheries and Forestry (DAFF), the North Pacific Sea Star has been linked to a significant impact on the spotted handfish stocks in Tasmanian waters and to a decline in scallops and other fisheries in Port Phillip Bay in Victoria.⁸ Some introduced marine species may pose threats to the Great Barrier Reef.⁹
- 8.9 With expanding international maritime trade, it is considered to be in Australia's interest to implement more uniform and stringent requirements to manage the risk of introducing marine pests into Australian waters. Consequently, as DAFF noted: "Australia was one of the first countries to raise this issue at the international level and has been particularly active in developing this convention over a number of years."¹⁰
- 8.10 In evidence to the Committee, DAFF emphasised the importance of ratification of the Convention for Australia as it provides internationally consistent rules for ballast water management in an expanding trading market:

Initially, management will be by exchange of ballast water. But, under the convention, ships built after 2009 will be required to have treatment systems, significantly reducing the risk of marine pest translocation. Further, any increased shipping costs will be equivalent across countries and will not have an effect on Australia's ability to compete in export markets. In most circumstances, the convention will require that ballast water exchange be undertaken at least 200 nautical miles from the nearest land and in waters at least 200 metres in depth.

The convention includes specific and unique protection measures for the Great Barrier Reef. The outer edge of the

6 Regulation Impact Statement (RIS), p. 7-8.

7 Media Release by the Minister for Agriculture, Fisheries and Forestry, 1 June 2005.

8 Mr Andrew Johnson, *Transcript of Evidence*, 22 June 2007, p. 47.

9 Mr Andrew Johnson, *Transcript of Evidence*, 22 June 2007, p. 48.

10 Mr Charles Willcocks, *Transcript of Evidence*, 22 June 2007, p. 46-47.

Great Barrier Reef is considered to be nearest land for the purposes of the Conventions's operation requirements.

- 8.11 DAFF also highlighted the international significance of Australian ratification in the NIA: "Ratification of the Convention by Australia would be regarded positively by other IMO-member States, and would heighten Australia's reputation as a world leader on environmental issues."¹¹

The purpose of the convention

- 8.12 The Convention is designed to prevent, minimise and ultimately eliminate risks to the marine environment arising from the transfer of harmful aquatic organisms and pathogens via ships' ballast water and sediments.

Obligations

- 8.13 The Convention is divided into general obligations set out in the Articles of the Convention and specific requirements in Regulations contained in the Annex. Some key general obligations include:
- Parties must give effect to the provisions of the Convention and develop ballast water management plans in order to prevent, minimize and ultimately eliminate the transfer of harmful aquatic organisms and pathogens through the control and management of ships' ballast water and sediments (Article 2(1) and (5)). Parties may take more stringent measures in a manner consistent with international law (Article 2(3)). Parties must also ensure that ballast water management practices do not cause greater harm than they prevent to the environment (Article 2(6)).
 - The Convention also requires Parties to
 - ⇒ take effective measures to ensure that ships flying their flag comply with the requirements of the Convention, including the Regulations, and develop national policies, strategies or programmes for ballast water management in their waters (Article 4)

11 NIA, para. 10.

- ⇒ ensure that ports and terminals where cleaning or repair of ballast tanks occurs provide adequate facilities for the reception of ballast water sediments (Article 5)
- ⇒ promote, facilitate and share with other Parties the results of scientific and technical research on ballast water management, and monitor the effects of ballast water management on waters in their jurisdiction (Article 6), and
- ⇒ survey and certify ships flying their flag in accordance with the Regulations (Article 7).
- Parties are required to co-operate to enforce the provisions of the Convention (Article 10). This includes a requirement to prohibit and establish sanctions under domestic law for violations of the Convention, and to take action, or provide relevant information and evidence to other Parties, in relation to alleged violations. A Party's laws must prohibit both violations committed by ships entitled to fly their flag, or operating under their authority, wherever the violation occurs (Article 8(1)), and violations committed within their jurisdiction by any ship covered by the Convention (Article 8(2)).
- The Regulations establish Ballast Water Management and Control Requirements, and Standards for Ballast Water Management that must be met. Subject to entry into force and commencing from a date determined according to the ballast water capacity and date of vessel construction, ships covered by the Convention will be required to discharge ballast water in accordance with the Annex (Regulation A-2). The regulations further require ships to have an approved Ballast Water Management Plan (Regulation B-1) and to maintain a Ballast Water Record Book (Regulation B-2) to record when ballast water is taken on board, circulated or treated, and discharged into the sea. Ships may only conduct ballast water exchange in specified areas (Regulation B-4) and are required to be surveyed (Regulation E-1) and certified (Regulation E-2). Port authorities will be empowered to inspect ships and take samples of ballast water.
- The obligations will apply to all ships entitled to fly the flag of a party to the Convention, as well as to ships not entitled to fly the flag of a Party but which operate under the authority of a Party.
- The obligations do not apply to ships not designed or constructed to carry ballast water, ships with permanent ballast water in sealed

tanks that are not subject to discharge, and any military or other ship used for governmental non-commercial service.

- 8.14 Article 2(e) provides that the Convention will not apply to any warship, naval auxiliary or other ship owned or operated by a State and used only on government non-commercial service. However, each Party shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such ships owned or operated by it, that such ships act in a manner consistent, so far as is reasonable and practicable, with the Convention.¹²

Consultation

- 8.15 The Australian Government has been represented throughout the IMO's development of the Convention and has consulted with relevant groups/bodies including the Australian Shipowners Association, Shipping Australia, the Minerals Council of Australia, the National Bulk Commodities Group and the Association of Australian Ports and Marine Authorities. The NIA indicates that these groups support ratification of the Convention. Consultations were also undertaken with other federal, state and Northern Territory government departments, other IMO Member States and relevant Non-Government Organisations.¹³

Implementation and costs

- 8.16 Under the *Quarantine Act 1908* all ships arriving in Australian ports from overseas are required to comply with mandatory ballast water management arrangements. These arrangements are currently consistent with the Convention but only protect Australia from the introduction of marine pests from ships entering Australian waters. Similar arrangements are required to prevent the spread of marine pests in Australian waters from ships travelling between Australian ports that discharge ballast taken up in Australian waters.¹⁴
- 8.17 The Convention will be implemented through Commonwealth, State and Northern Territory legislation, and jurisdictions are considering

12 *International Convention for the Control and Management of Ships' Ballast Water and Sediments, London, 13 February 2004.*

13 For further details on consultation, see Annex to the NIA.

14 This requirement has been in place since 2001. See NIA, para. 8.

the legislative models that would best give full effect to the Convention within Australia.¹⁵ Although all jurisdictions have expressed support for ratification of the Convention, the Committee noted that New South Wales had, in the context of the Natural Resource Management Ministerial Council, expressed some reservations concerning implementation. DAFF confirmed that the South Wales Government had some concerns about costs: "But New South Wales continued to participate in the development of arrangements, and we are working on finding some alternative cost-sharing arrangements ... so we are very optimistic that all the relevant States and Territories will be on board."¹⁶

- 8.18 DAFF has proposed the establishment of an Australian Ballast Water Management Unit to provide a single point of contact for industry. Located within the Department, the Unit will track and monitor ships around Australia, provide advice to the shipping industry and jurisdictions, and manage the risk profiling, targeting and coordination of the compliance inspections. A phase-in transitional period with voluntary compliance will be introduced prior to mandatory requirements commencing.¹⁷
- 8.19 Following passage of the proposed legislation by the Australian Parliament and by the Parliaments of the States and the Northern Territory, it is proposed that Australia ratify the Convention by depositing an instrument of ratification with the IMO.¹⁸
- 8.20 In the period from 2007 to 2008, the cost of the regulation will be the costs of exchanging high-risk ballast water at sea and these will vary according to the management option implemented. During the transitional period between 2009 and 2016, regulation costs will be a function of the proportion of ships still using the ballast water exchange procedures and the proportion of ships using on-board treatment. From 2016, the cost of regulation will be the cost of implementing permanent on-board ballast treatment facilities on all ships.¹⁹
- 8.21 The costs incurred by government in implementing the ballast water management arrangements arising from the obligations of the
-

15 NIA, para. 20.

16 Mr Andrew Johnson, *Transcript of Evidence*, 22 June 2007, p. 48-49.

17 NIA, para. 21.

18 NIA, para. 22.

19 NIA, para. 23.

Convention will be recovered from the shipping industry via a uniform shipping levy to be applied to all ships on a quarterly basis.²⁰

- 8.22 The provision of services for implementation of the mandatory elements of the Ballast Water Management Arrangements (domestic ballast water inspections and single point of contact for the shipping industry) is expected to cost in the order of \$800,000 per annum (in addition to current costs of international ballast water management arrangements of \$1.5 million per annum). Apart from levy costs, the direct costs to the shipping industry from implementing the requirements are expected to be approximately \$5.3 million per annum.²¹ The benefits of preventing further incursions of marine pests (and the costs of incursions) via ballast water could exceed \$30 million a year.²²

Entry into force and withdrawal

- 8.23 The Convention will enter into force twelve months after the date on which not less than thirty States, the combined merchant fleets of which constitute not less than thirty-five per cent of gross tonnage of the world's merchant fleet have ratified the Convention (Article 18(1)). As at 6 April 2007, eight member countries had ratified the Convention, accounting for just over three per cent of the world's merchant shipping by gross tonnage.²³
- 8.24 Article 20 of the Convention provides that any Party may denounce the Convention by written notification to the IMO at any time after two years from the date on which the Convention enters into force for that Party. Denunciation takes effect one year after receipt or such longer as may be specified in the notification.²⁴

Conclusion and recommendation

- 8.25 The Committee welcomes this development of the Convention as an important response to the risks to the marine environment arising

20 NIA, para. 24.

21 NIA, para. 25.

22 RIS, p. 9.

23 NIA, para. 3.

24 NIA, para. 30.

from the transfer of harmful aquatic organisms and pathogens via ships' ballast water.

Recommendation 8

The Committee supports the *Convention on the International Convention for the Control and Management of Ships' Ballast Water* and recommends that binding treaty action be taken.

Dr Andrew Southcott MP

Committee Chair

