

Protocol on pollution incidents by hazardous and noxious substances

Introduction

- 3.1 The purpose of the *Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances 2000, done at London, 15 March 2000* (the Protocol), is to provide for a global framework for international co-operation and planning in combating major incidents or threats of marine pollution by hazardous and noxious substances other than oil.¹ The Protocol also ensures that Parties have in place measures for dealing with such pollution incidents.
- 3.2 The Protocol is a protocol to, and follows the principles of, the *International Convention on Oil Pollution Preparedness, Response and Co-Operation, 1990* (the OPRC Convention), which entered into force internationally and for Australia on 13 May 1995.² The OPRC Convention provides a framework for assistance and planning for incidents involving oil.³
- 3.3 The Protocol to the OPRC Convention extends the co-operation and planning obligations for oil pollution incidents to pollution incidents involving other hazardous and noxious substances (HNS).

1 National Interest Analysis (NIA), para. 4.

2 NIA, para. 2.

3 NIA, para. 5.

Background

- 3.4 Australia implemented many of the provisions of the OPRC Convention through the National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances.⁴ The National Plan provides a national integrated Government and industry organisational framework enabling effective response to marine pollution incidents.⁵
- 3.5 Mr Paul Nelson from the Australian Maritime Safety Authority (AMSA) advised the Committee that Australia recognised the need for a contingency plan to deal with chemical spills in 1988, but it was not until 'around 1995-96 that we had a proper national chemical spill contingency plan in place'.⁶ The National Marine Chemical Spill Contingency Plan (CHEMPLAN) forms part of the National Plan, originating before and separate from the Protocol.⁷ CHEMPLAN outlines how the combined resources of Governments and industries may be activated to respond to a threat of HNS pollution.⁸ CHEMPLAN also prescribes procedures and provides information required to implement the chemical spill response provisions of the National Plan and State and Territory contingency plans.⁹
- 3.6 AMSA stated in its submission that Australia recently completed a major revision and updating of CHEMPLAN, and that opportunity was taken to ensure it implemented the key obligations of the Protocol.¹⁰ AMSA manages both the National Plan and CHEMPLAN.¹¹

4 NIA, para. 6.

5 Australian Maritime Safety Authority (AMSA), *Australia's National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances Fact Sheet*, p. 1.

6 Mr Paul Nelson, *Transcript of Evidence*, 18 August 2003, p. 23.

7 Mr Paul Nelson, *Transcript of Evidence*, 18 August 2003, p. 23.

8 AMSA, *National Marine Chemical Spill Contingency Plan (CHEMPLAN)*, p. 1.

9 AMSA, *National Marine Chemical Spill Contingency Plan (CHEMPLAN)*, p. 1.

10 AMSA, *Submission 6*, p. 1.

11 For further information on the National Plan and CHEMPLAN see <http://www.amsa.gov.au/me/natplan/natplan1.htm>.

Benefits of the proposed treaty action

- 3.7 The NIA contends that accession to the Protocol would strengthen Australia's existing response arrangements under CHEMPLAN by giving Australia access to international assistance in the event of a major incident once the Protocol enters into force.¹² Mr Nelson explained that:
- This protocol provides important support for our national arrangements and, if you like, turns it into effectively an international contingency plan rather than just a national contingency plan.¹³
- 3.8 The NIA further advises that in acceding to the Protocol Australia would be required to co-operate in the promotion and exchange of research and development programs, provide technical assistance and work towards concluding bilateral and multilateral agreements for preparedness and response to pollution incidents.¹⁴
- 3.9 The Protocol also authorises the International Maritime Organization (IMO) to undertake a range of functions and activities in relation to HNS incidents.¹⁵ Mr Robert Alchin from the Department of Transport and Regional Services identified this as an important reason for Australia to become a Party to the Protocol, because:
- it imposes obligations on the International Maritime Organisation to develop an international approach to chemical spill response. That international approach includes IMO being required to develop international guidelines and provide technical assistance to states.¹⁶
- 3.10 The NIA identifies Australia's accession to the Protocol as important because of a 'reliance on the international maritime industry to underpin our international trade', and that it would enhance the protection of Australia's marine environment from all types of ship sourced pollution.¹⁷

12 NIA, paras 2 and 6.

13 Mr Paul Nelson, *Transcript of Evidence*, 18 August 2003, p. 23.

14 NIA para. 11.

15 NIA, para. 7.

16 Mr Robert Alchin, *Transcript of Evidence*, 18 August 2003, p. 22.

17 NIA, para. 8.

Features of the Protocol

- 3.11 The obligations under the Protocol have ‘generally already been met by existing Australian legislation and policies’.¹⁸
- 3.12 Mr Alchin mentioned three significant obligations that Australia already implements. First, Parties to the Protocol will be required to establish measures for dealing with HNS pollution incidents, either nationally or in co-operation with other countries. As mentioned in paragraph 3.6, CHEMPLAN already meets this obligation. Secondly, under the Protocol, ships are required to carry a shipboard pollution emergency plan to deal with HNS pollution incidents. This obligation is already implemented, as there is a similar obligation in another IMO convention that Australia is a Party to, namely, the *International Convention for the Prevention of Pollution from Ships (MARPOL 73/78)*, which is the main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes.¹⁹ Lastly, seaports and HNS handling facilities are required to have pollution incident emergency plans in place. These obligations are implemented through various Commonwealth, State and local council regulations and vary across jurisdictions.²⁰ Mr Alchin advised the Committee that:

The national interest analysis does not include a detailed analysis and listing of all applicable rules and regulations relating to this issue. To do so, we thought, would have been a considerable undertaking, and we did not think it was really necessary. But there is, as indicated in the national interest analysis, a comprehensive—and, some might say, overlapping—array of rules and regulations dealing with this issue in both the specific and more general senses.²¹

- 3.13 The NIA states that the Protocol ‘does not apply to warships, naval auxiliary or other ships used only on government non-commercial service’.²² However, Parties are obliged to ensure that these vessels act consistently with the Protocol, without interfering with the operations or operational capabilities of these vessels.²³

18 Mr Robert Alchin, *Transcript of Evidence*, 18 August 2003, p. 21.

19 Mr Robert Alchin, *Transcript of Evidence*, 18 August 2003, p. 22.

20 Mr Robert Alchin, *Transcript of Evidence*, 18 August 2003, p. 22.

21 Mr Robert Alchin, *Transcript of Evidence*, 18 August 2003, p. 22.

22 NIA, para. 9.

23 NIA, para. 9.

Costs

- 3.14 The NIA states that, as Australia's obligations under the Protocol are currently met by existing legislation and policies, there would be no significant costs associated with Australia's accession to the Protocol.²⁴
- 3.15 However, the Queensland Government disputed the claim that there will be no additional costs associated with Australia's accession to the Protocol, and contends that the implementation of the Protocol:
- will involve additional administrative costs associated with State officers' involvement in the joint planning forum, training costs associated with conducting exercises and costs of the purchase and maintenance of response equipment.²⁵
- 3.16 The Queensland Government argued that the Commonwealth is relying on the National Plan and CHEMPLAN to provide the basis for implementing the Protocol, and that:
- While this intergovernmental agreement sets out roles and responsibilities and respective funding obligations of the Commonwealth and State/Territory in regard to the National Plan, the Protocol is expected to add significant new costs for preparing for noxious and hazardous substances other than oil.²⁶
- 3.17 The Queensland Government suggested that a full cost assessment of the implementation of the Protocol be undertaken by the Commonwealth prior to accession.²⁷
- 3.18 Mr Paul Nelson addressed the Committee's concerns regarding the likely costs associated with the treaty action, advising that the only costs incurred to date have been in the area of training maritime, port and AMSA personnel. He noted that as most HNS companies and handling facilities already have the necessary equipment to handle pollution incidents, there are no significant or additional costs.²⁸
- 3.19 According to the NIA, once the Protocol is in force there would be some minor administrative costs for AMSA, resulting from ships'

24 NIA, para. 20, and Mr Paul Nelson, *Transcript of Evidence*, 18 August 2003, p. 24.

25 Queensland Government, *Submission*, p. 1.

26 Queensland Government, *Submission*, p. 1.

27 Queensland Government, *Submission*, p. 1.

28 Mr Paul Nelson, *Transcript of Evidence*, 18 August 2003, p. 24.

emergency plans requiring examination by marine surveyors when conducting shipboard inspections (under the port State control program) to ensure that the ships carry current plans.²⁹

Levy on commercial ships

3.20 The NIA states that a review of arrangements under CHEMPLAN identified the need for additional resources to be allocated to training in chemical spill response techniques.³⁰ Subsequently:

some additional costs have ... been incurred in this area, and have been met under the National Plan funding arrangements, derived from a levy on commercial ships visiting Australian ports.³¹

3.21 The Government of Western Australia states that when the Protocol is in force, there will be possible cost implications for shipping, seaports and HNS handling facilities, which may require an increase in the levy on commercial ships.³² The WA Government believes that this may create an inadequate situation whereby vessels that are carrying oil as fuel or cargo, and no other HNS, will be required to pay a higher levy. The WA Government suggests that consideration be given to the manner in which the existing levy might be split to accommodate vessels carrying HNS in addition to oil and those vessels only carrying oil.³³

Costs for ship operators

3.22 The NIA states that the cost to ship operators of implementing an on-board emergency plan for HNS pollution incidents is expected to be comparable to the current costs of implementing Oil Pollution Emergency Plans, in the range of US\$3-5,000 per vessel, and around US\$500 every time it is updated.³⁴ However, as previously mentioned, this is already implemented under MARPOL 73/78.

29 NIA, para. 21.

30 NIA, para. 20.

31 NIA, para. 20.

32 Government of Western Australia, *Submission*, p. 1.

33 Government of Western Australia, *Submission*, p. 1.

34 NIA, para. 22 and Mr Paul Nelson, *Transcript of Evidence*, 18 August 2003, p. 24.

- 3.23 The Committee noted that, when operating within the framework for reimbursing costs of providing assistance to a pollution incident, consideration will be given to the needs of developing countries.³⁵

Insurance

- 3.24 The Committee noted that under the Annex to the Protocol reasonable financial obligations could be placed on Australia in the case of a pollution incident. Recognising that the financing of costs of managing a HNS pollution incident plays a large part in the process, the Committee was interested in the extent to which ships are insured against such pollution incidents and whether the level of insurance is effective.
- 3.25 In addressing the Committee's concerns, Mr Paul Nelson noted that in 1996, the IMO adopted the *International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea* (HNS Convention) which provides for compensation with a liability regime for incidents involving HNS.³⁶ This Convention, however, is not yet in force internationally as only three Parties out of the required 12 (four of which with no less than 2 million units of gross tonnage) are party to it.³⁷ Mr Nelson advised that until the HNS Convention comes into force Australia relies on a ship's insurance to cover pollution incidents.
- 3.26 Mr Nelson informed the Committee that around April 2001, a requirement for all ships visiting Australian ports to prove that they had protection and indemnity insurance was established.³⁸ He explained that this insurance covers a sizeable amount for the damage ships might cause, whether it is oil pollution, chemical pollution or any other sort of impact they might have.³⁹ Mr Nelson noted that before arrival in an Australian port, ships are required to report to the Customs Service 'on all sorts of issues' and, according to Mr Nelson, one question they are asked is, 'Do you have insurance coverage?'.⁴⁰

35 NIA, para. 23 and Annex to the Protocol.

36 See the International Maritime Organization website at: www.imo.org./home.asp

37 International Maritime Organization, *Summary Status of Conventions as at 30 June 2003*, http://www.imo.org/Conventions/mainframe.asp?topic_id=247

38 Mr Paul Nelson, *Transcript of Evidence*, 18 August 2003, p. 24.

39 Mr Paul Nelson, *Transcript of Evidence*, 18 August 2003, pp. 24-5.

40 Mr Paul Nelson, *Transcript of Evidence*, 18 August 2003, p. 25.

Entry into force

- 3.27 The Protocol will enter into force 12 months after the date on which a minimum of 15 States have either signed or have deposited instruments of ratification, acceptance, approval or accession. Mr Alchin informed the Committee that as of 18 August 2003, six countries were party to the Protocol, (namely Ecuador, Greece, Malta, Netherlands, Sweden and Uruguay), and that the process is:
- proceeding at a satisfactory rate in terms of other IMO conventions which have already entered into force. The wheels tend to move reasonably slowly, but we are satisfied with the progress.⁴¹
- 3.28 The Committee expressed concern that since the inception of the Protocol in 2000 only six out of the required 15 countries had become party to it. Mr Alchin advised the Committee that:
- If we have a look at the history of entering into force of treaties negotiated by the International Maritime Organization we see that they do tend to take some time for member states to put in legislation and pass through the necessary processes.⁴²
- 3.29 The Committee was further concerned about how this would affect Australia. Mr Alchin explained that it primarily impacts on Australia:
- by being able to ensure that we have this international cooperation once the convention enters into force. By Australia becoming a party, we are assisting towards its entering into force. Hopefully we might hasten it along.⁴³
- 3.30 The NIA indicates that recent high profile pollution incidents in European waters have resulted in increased activity globally towards the adoption of the Protocol, and it is expected that the Protocol will enter into force in 2005.⁴⁴ According to Mr Nelson, all member states of the European Union (EU) support the Protocol, and if they came in, 'with the South American and other countries, that would certainly bring it into force.'⁴⁵

41 Mr Robert Alchin, *Transcript of Evidence*, 18 August 2003, p. 22.

42 Mr Robert Alchin, *Transcript of Evidence*, 18 August 2003, p. 22.

43 Mr Robert Alchin, *Transcript of Evidence*, 18 August 2003, p. 23.

44 NIA, para. 3.

45 Mr Paul Nelson, *Transcript of Evidence*, 18 August 2003, p. 23.

3.31 Mr Nelson identified the European countries and Japan as very large chemical importers and exporters.⁴⁶ He noted that Japan is a party to the OPRC Convention, however, it had not indicated that it would not sign the Protocol.⁴⁷

3.32 The Committee was also interested in the intentions of other nations in the region to sign the Protocol. Mr Nelson advised:

New Zealand is a party to the original convention. I am sure that they will sign this—although I do not have any specific information—because they do have a very similar chemical spill response arrangement to us. I think Australia and New Zealand would probably be the two in our region that would sign soon ... I do not have any information about who else might sign in our region.⁴⁸

Conclusion and recommendation

3.33 The Committee believes that this Protocol would strengthen Australia's existing response arrangements to a HNS pollution incident. In particular, it would benefit CHEMPLAN by giving Australia access to international assistance in the event of a major incident once the Protocol enters into force.

Recommendation 2

The Committee supports the *Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances 2000* and recommends that binding treaty action be taken.

46 Paul Nelson, *Transcript of Evidence*, 18 August 2003, p. 26.

47 Paul Nelson, *Transcript of Evidence*, 18 August 2003, p. 26.

48 Paul Nelson, *Transcript of Evidence*, 18 August 2003, p. 26.