

**SUPPLEMENTARY SUBMISSION NO. 5.3**  
**TT on 1 November 2012**

**Joint Standing Committee on Treaties**  
**Hearing on the HNS Convention**  
**Canberra 4 February 2013**

**Response by the Department of Infrastructure and Transport to the public submissions made to the committee**

Submissions have been made to the committee by Gas Energy Australia, the Kwinana Industries Council (“Kwinana”) and the Plastics and Chemicals Industries Association of Australia (“PACIA”).

A fourth confidential submission has also been made, which we have not seen. If that submission raises any issues that are substantially different from those in the three public submissions, we would be happy to consider and respond to them.

As the three public submissions cover the same ground, our responses are arranged “thematically” rather than trying to address each point in each submission individually.

The main points raised by the submissions are set out in bold type and are followed by our responses.

**It is inefficient and inequitable for LPG to be grouped into the same HNS category as other products, because LPG has a good safety record.<sup>1</sup>**

The HNS Fund will be divided into four separate accounts: oil account, LPG account, LNG account and general account (which will cover all other types of HNS).<sup>2</sup> Each account will only provide compensation for damage caused by the type of HNS to which the account relates, and will be funded by contributions paid by receivers of that type of HNS.<sup>3</sup> There will be no cross-subsidisation between the accounts.

Hence, if the current safety record of the LPG industry is maintained and no serious maritime LPG incidents occur, receivers of LPG will not have to make any annual contributions to the HNS Fund (other than a very small contribution to cover an appropriate portion of the fund’s administration costs).

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<sup>1</sup> Gas Energy Australia submission paragraph 2(c)(1).

<sup>2</sup> Articles 18 and 19. The oil account covers persistent hydrocarbon mineral oil; the main type of oil in this category is crude oil.

<sup>3</sup> **A note on the use of the word “receiver”:** For the sake of brevity, this document refers to “receivers” contributing to the HNS Fund, without further elaborating on the characteristics of those receivers. Unless the context otherwise requires, “receivers” should be understood to mean *receivers of bulk HNS cargo that has been carried by ship, who received during the previous calendar year more than the following amounts of such cargo: 150,000 tonnes of oil; 20,000 tonnes of LPG; any amount of LNG (LNG has no minimum threshold); or 20,000 tonnes of any other type of bulk HNS.* Only receivers who receive bulk HNS in excess of these thresholds will be required to pay annual contributions to the HNS Fund.

The LPG account will be established when aggregate annual receipts of contributing LPG cargo by receivers across all the parties to the HNS Convention reach 15 million tonnes.<sup>4</sup> The aggregate amount of LPG received annually by receivers in the eight countries that have signed the HNS Convention and Australia is currently just under 10 million tonnes.<sup>5</sup> For the convention to come into force, at least four more countries have to become parties. The 15 million tonne threshold might not be reached by the time the convention comes into force – it will depend on whether the next four signatories are significant LPG importers. If the threshold is not reached when the convention comes into force, we expect that it will be reached soon afterwards when additional countries become parties.

It should be noted that the 15 million tonne threshold for the establishment of the LPG account is designed to protect the interests of LPG receivers. If a separate LPG account were established prior to there being a “critical mass” of contributing LPG (*ie* 15 million tonnes), the occurrence of a serious LPG incident could impose a disproportionately large contribution burden on each LPG receiver.

Until such time as the LPG account is established, LPG will form a sector within the general account of the HNS Fund.<sup>6</sup> While it is sector, its contribution rate will be subject to an adjustment to take account of its claims history, pursuant to Article 17(3) and Annex II.<sup>7</sup>

The establishment thresholds for the LNG account and the oil account are 20 million tonnes and 350 million tonnes, respectively. Until these thresholds are reached, each of these substances will have its own sector in the general account. It is highly likely that these thresholds will be reached by the time the HNS Convention comes into force, as the eight countries that have signed the convention plus Australia import 184.2 million tonnes of LNG and 289.1 million tonnes of crude oil annually.<sup>8</sup>

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<sup>4</sup> Article 19.

<sup>5</sup> The eight signatories are France, Germany, the Netherlands, Denmark, Norway, Greece, Turkey and Canada. Statistics concerning their LPG imports in 2010 are in the International Energy Agency's *Energy Statistics of OECD Countries, 2012 Edition* (individual country data). The tonnages for LPG imports include an unspecified amount of ethane, which is a minor constituent of LPG. Units of volume other than tonnes and/or units of energy in which LPG and LNG statistics are denominated are converted to tonnes using the online Santos conversion calculator.

<sup>6</sup> Article 18.

<sup>7</sup> The effect of Article 17(3) and Annex II is that the contributions payable in respect of the type of HNS covered by each sector of the general account will be adjusted in accordance with the claims/volume ratio of that type of HNS over a rolling ten year period.<sup>7</sup> While this will not have the effect of fully quarantining the sectors from each other, it will mean that the contribution rate for each sector will be influenced by the claims history of the type of HNS covered by that sector.

<sup>8</sup> The statistics for crude oil imports are in the International Energy Agency's *Energy Statistics of OECD Countries, 2012 Edition*, individual country data, and relate to 2010. The statistics for LNG imports are in the International Energy Agency's *Natural Gas Information 2012*, table 7, and relate to 2010. Regarding the oil import statistics, it should be noted that while Norway's imports of crude oil in 2010 were only 1.5 million tonnes, its oil fields in the North Sea produced 91.3 million tonnes of crude oil. A lot of this oil production is transported to Norwegian shore facilities by sea-going shuttle tankers, and would therefore

**The requirement to pay contributions to the HNS Fund will place LPG at a further price disadvantage compared to competing fuels such as natural gas and electricity, which will not be liable to contributions.<sup>9</sup>**

If the competing fuels are not transported by ship then they will not be liable to contributions since they will not be adding to the risk of maritime HNS incidents, which is what the HNS Convention is designed to address.

It is very unlikely that LPG's potential liability to contribute to the HNS Fund will be the deciding factor in the competition between LPG and other energy sources, given that contribution rates will be low for HNS generally, and might actually be zero for LPG if its good safety record is maintained.<sup>10</sup>

**Receivers will be funding most of the compensation for HNS incidents (through contributions to the HNS Fund). This is inequitable, because it is shipowners who primarily determine ship safety.<sup>11</sup>**

In fact, most of the compensation provided under the HNS Convention will be paid by shipowners and their insurers.

Based on past experience, we expect that the vast majority of HNS incidents will be entirely covered by the shipowner's mandatory liability insurance, and even where the damage exceeds the shipowner's insurance cover, it will usually not do so by a large amount.

Statistics compiled by the International Group of P & I Clubs, which provide professional and indemnity insurance to 93% of the world's ocean-going ship tonnage, illustrate this point.<sup>12</sup> Those statistics reveal that during the eight year period spanning 2002 to 2009:

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be liable to contribute to the HNS Fund (except where it is transferred from the shuttle tanker straight onto another tanker for export, in which case it will only be treated as "received" at its final destination: Article 2(10)). In other words, Norway's *receipts* of crude oil within the meaning of the HNS Convention are likely to be significantly higher than its *imports* of crude oil. The difference between its imports and its receipts needs to be added to the 289.1 million tonnes of crude oil cited above.

<sup>9</sup> Gas Energy Australia submission paragraph 2(d)(1).

<sup>10</sup> On the other hand, if LPG were to cause a spate of serious HNS incidents, it is surely reasonable that it should be required to contribute to meeting the cost of those incidents – if it did not have to do so, it would be effectively getting a subsidy from taxpayers, who would be left carrying the bill for those incidents.

<sup>11</sup> Gas Energy Australia submission paragraph 2(c)(3).

<sup>12</sup> The statistics are in a paper prepared by the International Group of P & I Clubs dated 8 March 2010 (IMO document reference LEG/CONF.17/6) which was presented to the diplomatic conference which adopted the 2010 HNS Protocol. The market share figure of 93% for the International Group of P & I Clubs is contained in a media release of the European Commission's Competition Directorate dated 26 August 2010 (EC document reference IP/10/1072).

- There were 192 HNS incidents which were dealt with by the clubs.
- 189 of these incidents would have been fully covered by the shipowner's mandatory liability insurance if the HNS Convention had been in force.
- Only 3 incidents out of the 192 would have required any compensation from the HNS Fund.
- The total compensation bill for the 192 incidents was 182.7 million SDRs.
- 152.8 million SDRs would have been paid by the shipowners' mandatory liability insurance.
- The balance of 29.9 million SDRs (\$44 million) would have had to be paid by the HNS Fund, as top-up compensation in the 3 incidents where the damage exceeded the shipowner's insurance cover.<sup>13</sup>

Thus, as regards the period 2002 to 2009, the *total* compensation that would have been payable for all HNS incidents during that period is apportioned as follows:

shipowner's insurer 80.4% : HNS Fund (*ie* receivers) 19.6%.

**Shipowners and their insurers should be required to cover the *entire* cost of HNS incidents.**<sup>14</sup>

The two-tier approach to compensation, which allocates the major part of the cost of providing compensation for HNS incidents to shipowners and their insurers, and the minor part of the cost to receivers, is the result of a compromise that was reached during the negotiation of the 1996 HNS Convention, and is modelled on the similar division of responsibility under the Civil Liability Convention and IOPC Funds Conventions, which have been operating successfully since 1978 and which for that reason are seen as a safe precedent. We understand that the two-tier approach was adopted to address concerns about the possible adverse consequences of placing the whole burden on the shipping industry; these included difficulties expected to be encountered by shipowners in obtaining the high level of liability insurance cover that would have been required (*ie* cover of 250 million SDRs).

Notwithstanding that the two-tier approach was born out of a compromise, it constitutes a fair and economically efficient solution and is consistent with a broader conception of the "polluter pays" principle, because receivers undoubtedly contribute to the risk of HNS incidents by generating demand for HNS; and receivers also have some

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<sup>13</sup> *Information about the currency conversion rates used in this document:*

- Special Drawing Rights ("SDRs") are converted to Australian dollars at the rate of 1 SDR = \$1.472570 (the 15 February 2013 conversion rate on the IMF's website).
- British pounds are converted to Australian dollars at the rate of £1 = \$1.506362 (the 15 February 2013 conversion rate on the XE Currency website).
- Euros are converted into Australian dollars at the rate of €1 = \$1.296605 (the 15 February 2013 conversion rate on the XE Currency website).

<sup>14</sup> Gas Energy Australia submission paragraph 2(c)(5) and (6); Kwinana submission pages 2 and 3.

capacity to mitigate the risk through their commercial relationship with the supplier and/or the shipping service provider.

It is also worth pointing out that if the two-tier approach had not been adopted and the HNS Convention had placed the entire responsibility for providing compensation for HNS incidents on shipowners and their insurers, receivers would not necessarily be better off. This is because the shipowners would seek to pass on their additional insurance costs to their customers – who would be either the receivers themselves, or the suppliers of the HNS, who would in turn seek to pass on the cost to the receivers by increasing their HNS prices.<sup>15</sup>

**The HNS Convention provides no additional incentive for shipowners and their insurers to improve ship safety.<sup>16</sup>**

There is no basis for this assertion.

The HNS Convention will significantly increase shipowners' liability for HNS incidents compared to what it is now, and will require them to maintain liability insurance in respect of their liability. As the table at paragraph 152 of the RIS shows, the limits of liability of shipowners under the HNS Convention will be *three to six times higher* than the limits of liability that currently apply under the LLMC Convention.

By way of example, for a ship of 100,000 gross tonnes, the respective limits of liability are:

- limit of liability under the HNS Convention: 115 million SDRs (\$169.3 million);
- limit of liability under the LLMC Convention: 30.2 million SDRs (\$44.5 million).

For smaller cargo ships, the disparity between the limits of liability under the two conventions is even wider – in the case of a small ship of 10,000 gross tonnes, they are:

- limit of liability under the HNS Convention: 25.3 million SDRs (\$37.3 million);
- limit of liability under the LLMC Convention: 4.2 million SDRs (\$6.2 million).

We do not want to overstate the incentive effects of the higher liability limits under the HNS Convention – ships are already subject to an effective and well-enforced international shipping safety regime, and they already face potential liability for HNS incidents, albeit that liability is much more limited than will be the case under the HNS Convention. Nevertheless, by increasing shipowners' liability for HNS incidents, the HNS Convention can only strengthen the incentives for shipowners to keep improving the safety of their ships.

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<sup>15</sup> PACIA's submission acknowledges that shipowners' insurance costs will be passed through to receivers: at third page, third dot point. However, PACIA erroneously claims that this means HNS receivers will be "hit by a double burden". This claim is refuted at pages 12 and 13 below.

<sup>16</sup> Kwinana submission page 4.

**Since shipowners know that the HNS Fund will pay compensation for HNS incidents up to the maximum amount of 250 million SDRs, they might choose to underinsure, leaving it to the HNS Fund (*ie* receivers) to make up the shortfall.<sup>17</sup>**

Ships will not be able to enter or leave Australia unless they have the liability insurance mandated by the HNS Convention. Specifically:

- All ships visiting Australian ports will be required to produce their insurance certificates to inspectors from the Australian Maritime Safety Authority (“AMSA”) or Customs.
- Ships that do not have an insurance certificate will be detained in port until they obtain one.
- The owner and the master of a ship that enters or leaves an Australian port or facility without having the requisite liability insurance will be guilty of a strict liability offence and will be subject to heavy fines.

**Under the HNS Convention Australian industry will be forced to “subsidise other countries’ lower shipping safety standards”, because Australian receivers’ contributions to the HNS Fund will mostly be used to pay for HNS incidents in foreign countries whose shipping safety standards are much lower than ours.<sup>18</sup>**

The assumption that shipping safety standards vary widely between countries is largely an urban myth.

The world enjoys the benefit of a highly effective and dynamic international shipping safety regime which has been established under the auspices of the International Maritime Organization (“IMO”) and international conventions such as the *International Convention for the Safety of Life at Sea* (“SOLAS”), which dates back to the period following the sinking of the *Titanic*. This safety regime is one of the (relatively few) unqualified success stories of international co-operation. It has resulted in the saving of countless lives of seafarers and ship passengers over the past century.

A web of international conventions, and codes and standards made under those conventions, make provision for all aspects of shipping safety. These are kept under review; dedicated committees of the IMO meet regularly and agree changes which result in continuous raising of the standards. The international community has seen the benefits, and recalcitrant behaviour by individual nation-states seeking short-term advantage, which is characteristic of many other international fora, is largely absent from the proceedings of the IMO.

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<sup>17</sup> Kwinana submission page 4.

<sup>18</sup> Gas Energy Australia submission paragraph 2(c)(4); Kwinana submission page 3; PACIA submission second page.

A number of codes and standards specifically deal with safety in the carriage of hazardous cargoes. The *International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk* and the *International Code for the Construction and Equipment of Ships Carrying Liquefied Chemicals in Bulk* specify requirements relating to the design, construction and equipment of ships carrying these substances. The *International Maritime Solid Bulk Cargoes Code* (a revised version of which was promulgated in 2012) addresses the safe shipment of bulk cargoes. The *International Maritime Dangerous Goods Code* is of particular importance to the carriage of HNS cargoes; it specifies in minute detail rules for the consignment, labelling, packaging or containment, stowage and handling of all HNS cargoes (except bulk HNS cargoes that are loaded or pumped directly into the ship's hold, which are dealt with by the other codes just mentioned).

The human element is also critical to shipping safety. The *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers* ("STCW") sets standards of competence for ships' masters and crews, and also imposes training requirements. Comprehensive amendments enhancing the standards in STCW, known as the Manila amendments, came into force on 1 January 2012. The IMO has also developed the *International Safety Management Code* ("ISM Code"), which has been made mandatory through SOLAS. The ISM Code is designed to improve the safety of international shipping and to reduce pollution from ships by setting standards for the way ships are managed and operated.

Revised guidelines for the implementation of the ISM Code entered into force on 1 July 2010. The guidelines are a significant development, because their objective is to engineer a shift in mindset from "unthinking" compliance with a set of rules to a safety culture where every individual, from the ship's officers and engineers to ordinary sea ratings, takes responsibility for their actions to improve safety and performance.

Of course, to be effective, the safety standards need to be enforced. Member states of the IMO implement a ship inspection program which comprises two streams: flag state control, which requires each state to inspect ships on its own register; and port state control, which requires each state to inspect foreign-registered ships that visit its ports. Detailed guidelines for port state control inspections are laid down in resolutions of the IMO Assembly (the latest being resolution A27/Res 1052 of 11 December 2011). In 2003, the IMO instituted the Voluntary IMO Member State Audit Scheme, under which the IMO provides member states with a comprehensive and objective assessment of how effectively the state is implementing port state control inspections and other IMO standards.

AMSA implements the port state control inspection program in Australia. AMSA uses its “Shipsys” software to assess the standard of ships visiting Australian ports and determine their risk profile. This facilitates targeted inspections. In 2011, AMSA carried out 3002 port state control inspections of foreign ships visiting Australian ports. It found 7,487 deficiencies. 275 ships with serious deficiencies were detained until the deficiencies were rectified; the rest of the deficiencies were dealt with by issuing deficiency notices requiring appropriate remedial action. AMSA also carried out 1,179 follow-up inspections to verify that deficiencies found earlier had been rectified.<sup>19</sup> If a ship is inspected it becomes eligible for another routine inspection after six months. (The six months time limitation does not apply to follow-up inspections, which can be carried out at any time.)

Results of port state control inspections are passed on to the maritime authorities of other states, so that they are aware of a ship’s recent inspection history when carrying out their own inspection. AMSA is a party to two regional co-operation arrangements on port state control: the Asia-Pacific Memorandum of Understanding (“MOU”); and the Indian Ocean MOU. Under these co-operation arrangements, AMSA shares port state control data with the maritime authorities of the other parties to the MOUs and participates in, or leads, policy development to ensure consistent quality in the application of the inspection guidelines.

The port state control inspection program also enables verification of the performance of ship classification societies and other expert certification bodies (called “recognised organisations”) which have responsibility for officially certifying particular aspects of ship safety. When a ship is detained, AMSA inspectors determine and record whether any of the deficiencies reflect inadequate performance by the relevant recognised organisation. This facilitates accountability of recognised organisations. The IMO’s Sub-Committee on Flag State Implementation has developed a new code for recognised organisations, which will include enhanced standards of accountability. The new code was approved by the IMO’s Marine Environment Protection Committee in October 2012 and is expected to be formally adopted at the next session of that committee in May 2013.

It is important to keep in mind that port state control is an international system, which does not depend on any one country. Deficiencies that are not detected at one port will be picked up when the ship goes to a port in another country and is inspected there. It is simply not feasible for ships to trade internationally for any length of time if they are substandard in terms of complying with the safety requirements.

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<sup>19</sup> AMSA *Port State Control – 2011 Report – Australia*.

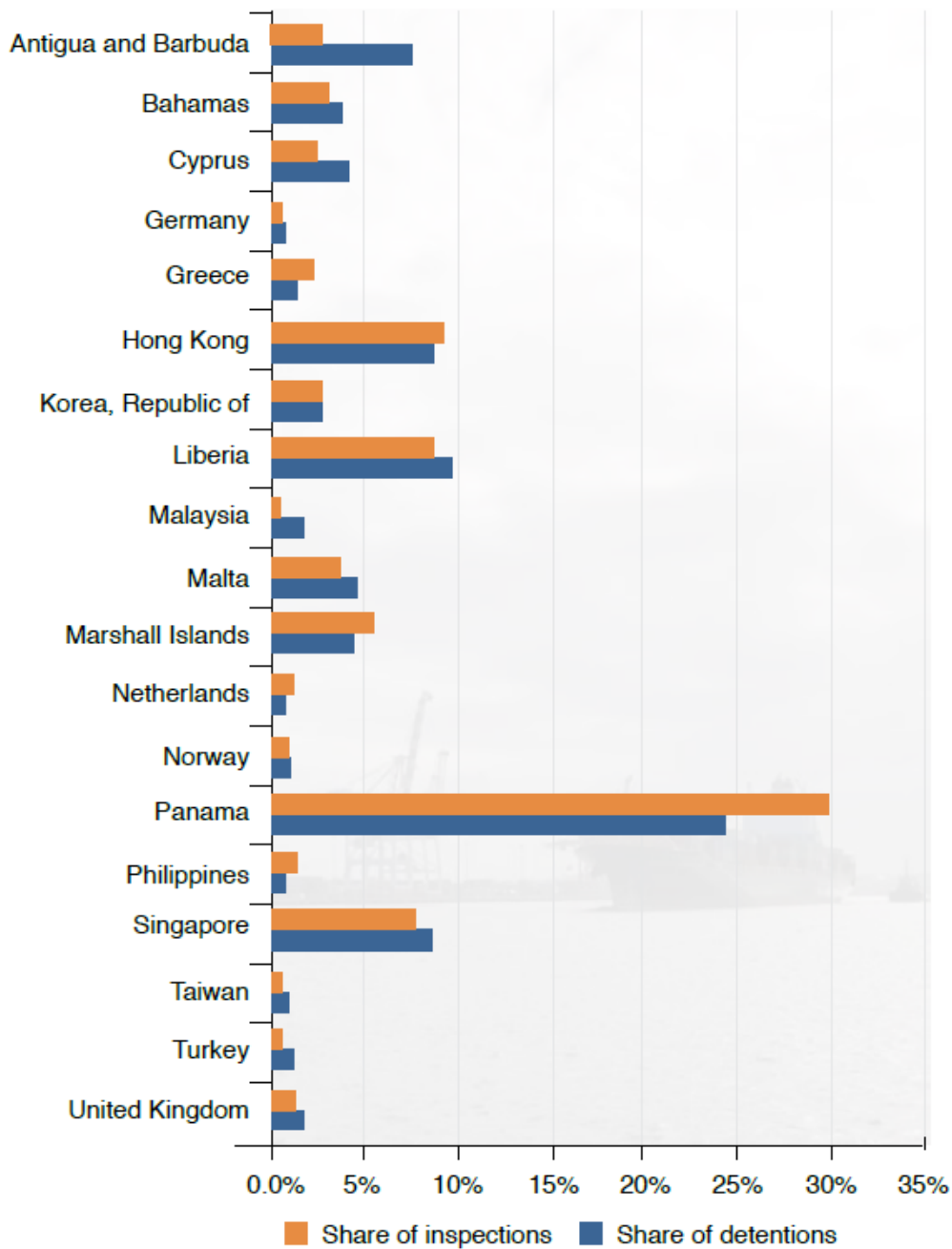


A “reality check” can be run on the foregoing statements, using data in AMSA’s annual port state control reports. The reports rank the safety performance of flag states by setting each flag state’s percentage share of the total number of inspections against its percentage share of the total number of detentions.

(The detention of a ship indicates that it is substandard in terms of safety. If a particular flag state’s ships make up 10% of all the ships inspected but 20% of all the ships detained, it would be an indication that their safety standards are lower than those of the other flag states. On the other hand, if a flag state’s ships make up 10% of all the ships inspected and 10% of all the ships detained, this suggests that the safety standards of its ships are similar to those of all the other flag states, on average.)

Figure 5 in AMSA’s 2011 port state inspection report (at page 20 of the report) tabulates the safety performance of flag states by comparing number of inspections with number of detentions for each flag state:

*Figure 5 – Comparison of proportion of inspections and detentions of totals for flag States with more than 10 inspections and more than 1 detention*



This table shows that Panama, which has the world's largest shipping register, is performing better than average, as are three other major flag states, namely Marshall Islands and Hong Kong. Liberia, which has the world's second-largest shipping register, is performing very close to average. Of the top ten flag states, only Cyprus's performance is significantly below average.

China is the only member of the top ten that is omitted from this table. 60 Chinese ships were inspected in 2011, resulting in one detention. China's share of total inspections

was 2% while its share of total detentions was only 0.36% – which is indicative of above-average safety standards.

The top 25 flag states in the world are as follows:<sup>20</sup>

**FLAG STATE RANKING - SHARE OF WORLD TOTAL DEADWEIGHT TONNAGE**

1. PANAMA - 21.93 %
2. LIBERIA - 11.91 %
3. MARSHALL ISLANDS - 7.08 %
4. HONG KONG (CHINA SAR) - 6.57 %
5. GREECE - 5.12 %
6. BAHAMAS - 4.83 %
7. SINGAPORE - 4.82 %
8. MALTA - 4.39 %
9. CHINA - 3.78 %
10. CYPRUS - 2.32 %
11. JAPAN - 1.59 %
12. KOREA (SOUTH) - 1.44 %
13. ITALY - 1.39 %
14. ISLE OF MAN - 1.39 %
15. NORWAY - 1.29 %
16. GERMANY - 1.26 %
17. UNITED KINGDOM - 1.22 %
18. INDIA - 1.09 %
19. DENMARK - 1.02 %
20. ANTIGUA AND BARBUDA - 1.00 %
21. UNITED STATES - 0.91 %
22. INDONESIA - 0.87 %
23. BERMUDA - 0.78 %
24. MALAYSIA - 0.77 %
25. TURKEY - 0.63 %

Since the flag state of a ship is one of the risk factors taken into account in targeting inspections, the system operates in a “self-correcting” way: if port state control inspections reveal that the ships of a particular flag state are significantly below average

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<sup>20</sup> United Nations Conference on Trade and Development (UNCTAD) *Review of Maritime Transport 2011* Table 2.7.

in meeting the safety standards, they will be more intensely targeted by the inspection regime until they are brought back into line.

*For these reasons, while no system is perfect, the repeated claims in the submissions to the effect that many foreign countries' ships have "significantly lower" safety standards than ours and operate in a "least regulated" environment – and that, as a consequence, Australian contributions to the HNS Fund will predominantly be used to pay for HNS incidents in those countries – are not supported by the facts.*

Finally, the submissions appear to have overlooked the fact that trading ships move around the globe – they do not stay confined in the waters of the country in which they are registered. The point is that *these (allegedly) unsafe ships are heading for Australian waters*, because the vast majority of the ships servicing Australia's trade are foreign-registered ships. So if it were true that they are unsafe and consequently pose increased risks of maritime accidents and pollution disasters, that would provide more reason for Australia to seek cover under the HNS Convention, not less.

**The HNS Convention will create uncertainty for Australian industry, because the contribution rate for the HNS Fund cannot be quantified with any certainty and will vary from year to year.<sup>21</sup>**

Certainty is undeniably important for businesses operating in a competitive environment. However, the HNS Fund essentially provides a form of insurance. The cost of insurance over time is never certain, because the cost depends on the claims that are received, which in turn depend on uncertain natural or human-caused events. When there are destructive bushfires or floods, for instance, insurance premiums rise. But despite the uncertainty about what insurance premiums will be from year to year, most households and businesses still take out insurance.

While the contribution rate for the HNS Fund will vary from year to year, the degree of financial uncertainty this will impose on receivers needs to be kept in perspective. An important consideration here is that the absolute size of the contributions will be very low – a few cents per tonne. The position can be summed up by saying that the annual contributions will fluctuate, but they will do so around a very low base.

**Receivers of HNS will be "hit by a double burden", because they will not only have to pay contributions to the HNS Fund but will also have passed on to them the additional insurance costs of shipowners.<sup>22</sup>**

It is true that shipowners will directly or indirectly pass on their costs of meeting the higher liability insurance requirements under the HNS Convention to receivers, through increased freight charges. It is, of course, also true that receivers will have to pay

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<sup>21</sup> Gas Energy Australia submission paragraph 2(d)(3); Kwinana submission page 2; PACIA submission third page.

<sup>22</sup> PACIA submission third page, third dot point.

contributions to the HNS Fund. But it is not true that this will amount to a “double burden” on the receivers. The shipowners’ insurance and the HNS Fund will provide two separate and distinct tiers of cover for HNS incidents. The receivers will not be paying *twice* for the same cover; they will be paying *once* for two separate tiers of cover.<sup>23</sup>

**It is unclear how the administrators of the HNS Fund will be held financially accountable.<sup>24</sup>**

The HNS Fund will be subject to accountability arrangements which are set out in Articles 24 through 34 of the HNS Convention. The following is a summary of those arrangements.

The governing body of the HNS Fund will be the Assembly, which will comprise one representative from each party to the HNS Convention. Each party will have one vote. Decisions of the Assembly will be by majority vote of the representatives present and voting, except certain significant decisions (including the appointment of the Director of the HNS Fund) which will require a two-thirds majority vote. The Assembly will meet at least once every calendar year.

The HNS Fund will be administered by the Secretariat, comprising the Director, who will be appointed by the Assembly, and such staff as are required to administer the HNS Fund, who will be appointed by the Director. The rules relating to the appointment of the staff, and their terms and conditions of employment, will be determined by the Assembly. The Director will be accountable to the Assembly and will be subject to its directions.

The Director’s responsibilities will include ensuring the proper administration of the HNS Fund, preparing financial statements and budget estimates for each calendar year and submitting them to the Assembly, and preparing and publishing an annual report in consultation with the President of the Assembly.

The Assembly will adopt the annual budget prepared by the Director, approve the accounts of the HNS Fund, and appoint external auditors.

All the parties to the HNS Convention will have an interest in keeping a lid on the HNS Fund’s administration costs, in order to limit the contribution burden for receivers in their country. Further, the fact that each party will have one vote in the Assembly, irrespective of the amount of contributions paid by its receivers, should help allay

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<sup>23</sup> The submissions do not call into question the standard business practice of recovering the cost of the inputs to a product or service through the price charged for the product or service; Kwinana’s submission expressly acknowledges the legitimacy of the practice (at page 2, fifth full paragraph).

<sup>24</sup> Kwinana submission, page 2; PACIA submission third page, fourth dot point.

Kwinana's concern that "the relatively insignificant Australian importers paying levies to the Fund" will not be able influence the fund's administration.<sup>25</sup>

**The estimate of £1 million for the HNS Fund's annual administration costs seems to be exceptionally high. No details of those costs have been provided.**<sup>26</sup>

The estimate of £1 million for the HNS Fund's annual administration costs given in paragraph 58 of the RIS was a high-end estimate which assumed that the HNS Fund would *not* share a secretariat with the IOPC Funds. If there is a shared secretariat, the annual administration costs will be much lower, as there will be significant economies of scale and only a limited number of additional staff will be needed.

The country representatives who negotiated the HNS Convention have agreed that the Secretariat of the IOPC Funds should also act as the Secretariat of the HNS Fund, to save costs. This joint secretariat arrangement is expected to be formally endorsed by the Assembly of the HNS Fund at its first meeting. It is envisaged that the Director of the IOPC Funds will be appointed to also act as the Director of the HNS Fund, and that the HNS Fund and IOPC Funds will as far as possible share the same office premises, office administration, electronic systems, and administrative and professional staff. The costs will be apportioned in an appropriate, agreed manner between the two funds.

The Secretariat of the IOPC Funds has provided us with the following updated costs estimate, which assumes that there will be a joint secretariat:<sup>27</sup>

*Establishment costs* (to be covered by the initial contribution provided for in Article 20)

- Initial working capital, including reserves, for the HNS Fund: £1,000,000. This is a one-off expense only. Note also that part of this sum will be maintained as cash funds which will earn interest. The working capital may need to be increased from time to time, depending on the number of incidents to be dealt with.
- Management fees charged by the Secretariat of the IOPC Funds for work relating to the establishment of the HNS Fund: around £30,000 to £70,000.
- Payment for work done by the Secretariat of the IOPC Funds prior to the establishment of the HNS Fund. The Secretariat has already undertaken considerable work in developing the "HNS Finder" application and a number of documents for the HNS Fund. This work has been funded by a loan from the 1992 Fund, currently standing at about £250,000 (which is likely to increase).<sup>28</sup> The HNS Fund will have to repay the loan.

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<sup>25</sup> Kwinana submission page 2.

<sup>26</sup> Kwinana submission pages 2, 3; PACIA submission third page, fourth dot point.

<sup>27</sup> The estimate is contained in an email from Thomas Liebert (IOPC Funds) to Leslie Kelety (Department of Infrastructure and Transport) dated 16 February 2013.

<sup>28</sup> The 1992 Fund is one of the IOPC Funds.

*Annual administration costs (to be covered by annual contributions)*

- In the initial years following the establishment of the HNS Fund, the annual administration costs attributable to the HNS Fund under the joint secretariat cost-sharing arrangements are expected to be very low, until incidents begin to be reported to the HNS Fund, triggering claims for compensation.
- Thereafter, the annual administration costs attributable to the HNS Fund will largely depend on the number and complexity of the claims for compensation that have to be dealt with from year to year. These annual administration costs are expected to range from the mid £10,000s to the low £100,000s.

It needs to be stressed that the foregoing are only broad estimates which are based on the IOPC Funds' thirty-five years of experience and the precedent of setting up the Supplementary Fund in 2003–2005. Actual costs will depend on future circumstances including HNS incidents, as well as on future decisions by the Assembly of the HNS Fund.

The annual administration costs of the HNS Fund will be recovered through the annual contributions that will be payable by receivers. The Assembly will determine how those costs are to be apportioned between the separate accounts of the HNS Fund and the sectors of the general account.<sup>29</sup>

All the parties to the HNS Convention will have an interest in keeping a lid on the HNS Fund's administration costs, in order to limit the amount of contributions that will need to be paid by receivers in their country. Further, the fact that each party will have one vote in the Assembly, irrespective of the amount of contributions paid by its receivers, should help to allay Kwinana's concern that "the relatively insignificant Australian importers paying levies to the Fund" will not be able influence the fund's administration.<sup>30</sup>

What impact will the annual administration costs of the HNS Fund have on the contribution rate? The following calculation provides an illustration. Supposing that:

- the HNS Fund's workload is very heavy and the annual administration costs climb as high as £500,000; and
- aggregate receipts of HNS covered by the general account by receivers in all the parties to the HNS Convention amount to 40 million tonnes (which is the minimum threshold for the coming into force of the convention<sup>31</sup>); and

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<sup>29</sup> Article 17(4). The costs are likely to be apportioned between the accounts and sectors in accordance with a formula that has regard to both the volume of the HNS covered by the account or sector (which is indicative of the reporting and contribution management task) and the number of compensation claims attaching to the account or sector (which is indicative of the claims handling task): email from Thomas Liebert to Leslie Kelety dated 15 February 2013.

<sup>30</sup> Kwinana submission, page 2.

<sup>31</sup> Article 46(1)(b).

- aggregate receipts of oil, LPG and LNG by receivers in all the parties to the convention amount to 350 million tonnes, 15 million tonnes and 20 million tonnes respectively (which are the minimum thresholds for the establishment of the oil, LPG and LNG accounts<sup>32</sup>); and
  - the Assembly decides to recover the annual administration costs from receivers through a uniform contribution rate which applies to all the types of HNS;
- the uniform contribution rate would be \$0.001747 per tonne (*ie* about one-sixth of a cent per tonne).<sup>33</sup>

**The HNS Convention will impose an additional reporting burden on receivers.**<sup>34</sup>

If Australia accedes to the HNS Convention, large-volume receivers of bulk HNS will be required to lodge an annual return with AMSA reporting the amounts of bulk HNS that they received during the previous calendar year.

To complete the annual return, receivers will need to do two things: determine whether any of the substances they received during the previous calendar year are bulk HNS; and, as regards the substances that are bulk HNS, determine the total quantities of those substances that they received during the previous calendar year.

The HNS Finder, which is accessible on the HNS Convention website ([www.hnsconvention.org](http://www.hnsconvention.org)), has been developed as a tool for identifying whether a given substance comes within the definition of HNS for the purposes of the HNS Convention. The HNS Finder is easy to use. It lists both the official name (called the UN Proper Name) and all known alternative names of each type of HNS; all the names are searchable. It also distinguishes bulk HNS, in respect of which contributions will be payable, from packaged HNS, which will not be liable to contributions.

Using the HNS Finder, a receiver will be able to quickly identify whether a substance that it received is bulk HNS which is liable to contributions. Once it has done this, it will need to ascertain from its business records the amount of that substance that it received during the previous calendar year.

Firms that receive bulk HNS as agent for a principal will have the option to report who the principal is, in which case the contributions will be payable by the principal.<sup>35</sup>

Firms that are part of a corporate group (*ie* holding company and subsidiaries) will have to report the collective receipts of the group.<sup>36</sup>

By any standard, this is a very “minimalist” reporting requirement. Obviously, such reporting is necessary to facilitate the collection of contributions to the HNS Fund.

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<sup>32</sup> Article 19(3).

<sup>33</sup> Calculation: £500,000 ÷ 425 million tonnes = £0.001176 per tonne = \$0.001747 per tonne.

<sup>34</sup> Kwinana submission page 3, fifth dot point; PACIA submission third page, fifth dot point.

<sup>35</sup> Article 1(4)(a).

<sup>36</sup> Article 16(5) and (6).



(Incidentally, receivers in continental European countries and other countries with land borders will face more difficulties with reporting, because the HNS they receive may be transported by land or sea, and at the present time some receivers' record-keeping systems do not identify the mode of transport that has been used. The receivers concerned will need to modify their systems to enable them to meet the reporting requirements under the HNS Convention.<sup>37</sup> Australian receivers will not have this problem, because all the bulk HNS that is imported to this country is transported by ship.)

The reporting requirement will be specified by legislative instrument. Stakeholder consultation will be undertaken when the instrument is being developed, to make both the annual return form and the method of lodgement as user-friendly as possible for industry.

**The reporting burden is made worse by the proposal to set the reporting threshold 10% lower than the contribution threshold. This means that companies that are not liable to pay contributions to the HNS Fund will still be burdened by red tape.<sup>38</sup>**

It is proposed to require persons who receive in a calendar year 18,000 tonnes or more of bulk HNS (other than oil and LNG) to lodge an annual return reporting those receipts – notwithstanding that contributions to the HNS Fund are only payable in respect of annual receipts of 20,000 tonnes or more of bulk HNS.

Many firms' receipts of HNS will fluctuate from year to year – a firm that receives 18,000 tonnes this year may well receive 20,000 tonnes next year. The objective of setting a slightly lower reporting threshold is to enable all potential contributors to the HNS Fund to be “captured” by the reporting system, so as to reduce opportunities for evasion (whether inadvertent or intentional) and ensure the integrity of the system.

The setting of lower reporting thresholds has attracted widespread support among the countries that have been involved in negotiating the HNS Convention; it was endorsed at the HNS workshop which was held at the IMO in November last year. (The workshop, which was attended by representatives from 29 countries, was convened to agree HNS reporting guidelines and discuss ways to facilitate the coming into force of the HNS Convention.)

Some countries' reporting thresholds will be lower than ours: Canada's will be 17,000 tonnes; Denmark's will be 15,000 tonnes.<sup>39</sup>

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<sup>37</sup> This issue was discussed at the HNS workshop.

<sup>38</sup> PACIA submission third page, fifth dot point.

<sup>39</sup> This information was provided in Canada's and Denmark's presentations at the HNS workshop.

The position as regards reporting thresholds for oil and LNG is as follows.

- *LNG*: Since there is no contribution threshold for LNG, the receipt of any amount of bulk LNG will be reportable.
- *Oil*: The contribution threshold for oil is 150,000 tonnes. It has not yet been decided whether to set the reporting threshold for oil 10% lower (at 135,000 tonnes) or to leave it at 150,000 tonnes, on the rationale that the handful of large crude oil importers in Australia are readily identifiable.

**Australian accession to the HNS Convention is unnecessary because “there appears to be little likelihood of an incident in Australian waters.”<sup>40</sup>**

On the contrary: the likelihood of a serious HNS incident occurring in Australian waters is no different than in any other place in the world that is frequented by international shipping. If anything, Australia is even more exposed to the risk of such an incident due to its vast coastline and territorial sea and exclusive economic zone.

In view of the fact that international shipping safety standards are high overall, it is most unlikely that HNS disasters will be a frequent occurrence – which is why there can be a high degree of confidence that the contribution burden on receivers will continue to be relatively light.

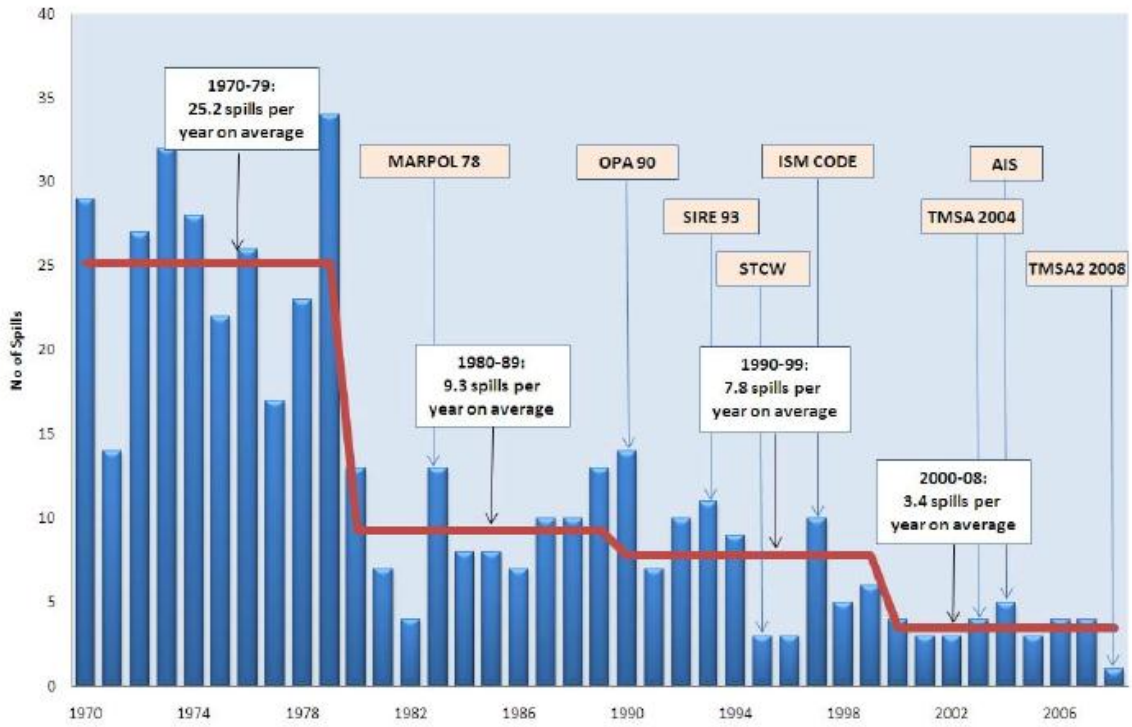
While the world’s shipping fleet has grown, maritime safety has been steadily improving. Technological advances in ship design and the rollout of new electronic identification, navigation and vessel traffic management systems are bringing further improvements.

The following graph illustrates the progress that has taken place in reducing the number of oil tanker spills – thanks to initiatives implemented by oil tanker owners, governments and the IMO relating to ship and navigational safety and oil spill response capability. The result has been a dramatic decline in the average number of oil tanker spills per decade since the 1970s, despite a steady increase in the volume of oil transported by sea:<sup>41</sup>

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<sup>40</sup> Kwinana submission page 3, first dot point; PACIA submission second page.

<sup>41</sup> The graph is from page 3 of a paper by Dr Karen Purnell, Director, International Tanker Owners Pollution Federation *Are HNS Spills More Dangerous than Oil Spills? – A White Paper for the Interspill Conference and the 4th IMO R&D Forum*, May 2009.



Notwithstanding this encouraging trend, maritime incidents – including ones with very serious and costly consequences – happen from time to time, whether due to human error or extreme natural events, or a combination of both. Following are brief descriptions of recent incidents which took place in Australian waters:

<i>SHIP</i>	<i>INCIDENT</i>
<i>ID Integrity</i>	On 18 May 2012, the Hong Kong-registered bulk carrier <i>ID Integrity</i> was sailing southwards outside the Great Barrier Reef about 175 nautical miles north-east of Cairns when its engines broke down and it began drifting helplessly towards the Queensland coast. By the time towage vessels arrived, it had narrowly missed Osprey Reef and had drifted right through Shark Reef, which it just managed to clear by jettisoning all of its ballast.
<i>Tycoon</i>	On 8 January 2012, the Panamanian-registered small general cargo ship <i>Tycoon</i> broke its moorings in Flying Fish Cove, Christmas Island, during a storm, foundering and subsequently breaking up against the steep cliff face. Its cargo of oil and phosphate discharged into the cove.
<i>Dumun</i>	On 29 April 2011, the Panamanian-registered bulk carrier <i>Dumun</i> , carrying 50,000 tonnes of coal, ran aground while departing the port of Gladstone. Its cargo was not discharged, but the grounding crushed and destroyed a wide swathe of coral reef in an area of the Great Barrier Reef that is rated as having very high environmental value.
<i>Shen Neng 1</i>	On 3 April 2010, the Chinese-registered bulk carrier <i>Shen Neng 1</i> ran aground on Douglas Shoal, off Rockhampton in the Great Barrier Reef, as it tried to take an unauthorised short-cut through the reef. Its hull was seriously damaged; the engine room was flooded and six water ballast and fuel tanks were breached, resulting in two and a half tonnes of bunker oil being released into the sea.
<i>Pacific Adventurer</i>	On 11 March 2009, the Hong Kong-registered container ship <i>Pacific Adventurer</i> lost 31 containers of ammonium nitrate overboard in gale force winds and large swells off Cape Moreton, Queensland. The containers sank into deep water and were not recovered. Two of the ship's fuel tanks were holed as the containers fell overboard. As a result, about 270 tonnes of bunker oil leaked into the sea, causing oil pollution along 56 kilometres of Queensland coast. The damages bill exceeded \$34 million. (The ship's limit of liability under the LLMC Convention was \$17.5 million.)

<i>Atlantic Blue</i>	On 6 February 2009, the Hong Kong-registered products tanker <i>Atlantic Blue</i> , laden with a cargo of unleaded petrol, encountered strong westerly winds and ran aground at Kirkcaldie Reef in the Torres Strait. The ship's hull was not breached and consequently no pollution resulted.
<i>Pasha Bulker</i>	On 8 June 2007, the Panamanian-registered bulk carrier <i>Pasha Bulker</i> , which was anchored 2.4 nautical miles off Newcastle, dragged its anchor in gale force winds and was driven onto Nobby's Beach.

**While there is a strong case for Australia to be a party to the Civil Liability Convention and IOPC Funds Conventions because oil spills by oil tankers can have devastating consequences, this is largely not so for HNS, which in the majority of cases simply disperses and evaporates.<sup>42</sup>**

There are about 6,500 individual HNS, which pose various kinds of hazards such as explosion, fire, toxicity, corrosion and environmental pollution. Some are more destructive or dangerous than others. Fortunately, most cannot cause widespread environmental pollution, but some can. Moreover, other kinds of damage can also be very costly. For example, liquefied gases like LPG and LNG are a low pollution risk because they evaporate quickly, but they can cause devastating explosions and fires which, if they occur near a built-up area, could be as costly as a major oil pollution incident.<sup>43</sup>

A large spill involving a kind of HNS which floats on the surface of the sea like oil, does not evaporate, and is highly toxic and dangerous to handle can be even more costly to clean up than an equivalent oil spill, because while oil can be scooped up by response teams or volunteers with everyday utensils and minimal protective clothing, the HNS would have to be removed with special equipment by trained responders wearing spacesuits.

The *Ievoli Sun* incident provides an example of another kind of costly response which may be necessitated by some HNS incidents. The Italian-registered chemical tanker *Ievoli Sun* sank in the English Channel in 2000 with 6,000 tonnes of hazardous chemicals, including nearly 4,000 tonnes of styrene, on board. The highly toxic and bio-accumulative characteristics of styrene meant that it could not be left on the sunken tanker, as it would have caused poisoning of aquatic life and entered the human food

<sup>42</sup> Gas Energy Australia submission paragraph 2(b)(2); Kwinana submission page 4, first dot point; PACIA submission second page.

<sup>43</sup> A news report on the Fox News website entitled *AP: LNG Tanker Attack Would Be Devastating*, published on 20 December 2004, commenced with the following opening paragraph: "A terror attack on a tanker delivering liquefied natural gas at a US port could set off a fire so hot it would burn skin and damage buildings nearly a mile away, government scientists say in a report expected to influence where new multibillion-dollar terminals will be built."

chain via fish and crustaceans. As a result, a remotely operated vehicle (“ROV”) had to be deployed to penetrate the ship’s double hull (at a depth of 90 metres) and attach a pipeline leading to the surface, to enable the styrene to be pumped from the ship. This recovery operation cost approximately €12 million (\$15.5 million).

When the Bahamian-registered oil tanker *Prestige* sank off the coast of Spain in 2002, causing environmental damage in excess of €1 billion, a similar method was used to remove the oil that remained in the sunken vessel. In this case the ship lay at a depth of 3.6 kilometres, and the operation cost €100 million (\$130 million).<sup>44</sup>

Presumably, the cost of removing HNS instead of oil from a ship at that depth would have been the same.

**There is no differentiation between the likely risks associated with any given HNS.**<sup>45</sup>

As has been noted, the HNS Convention *does* differentiate between a number of specific types or categories of HNS in this regard, by allocating them to separate accounts and sectors of the HNS Fund which will have different contribution rates.

At a theoretical level, PACIA’s and Kwinana’s submission that there should be finer-grained differentiation between HNS has merit. But the practicality of going very far down this route is doubtful. Many HNS pose multiple hazards, and the degree of hazard may be highly dependent on extraneous circumstances, *eg* the conditions in which the HNS has been stored, proximity to other substances, weather conditions, etc.

Categorising individual HNS or small-groups of HNS on the basis of their hazard profile, and assigning them a contribution rate reflecting their hazard profile, would be difficult, time-consuming, and sometimes controversial even among experts in the relevant field.

Further, separate treatment for contribution purposes would not be feasible except for categories of HNS that are traded in very large volumes, due to the need to enable the prudent spreading of risk. (If a category of HNS that is traded in only modest quantities were “quarantined” in a separate account of the HNS Fund and then caused a serious HNS incident necessitating a large compensation payment from the HNS Fund, receivers of that category of HNS would suddenly be hit with a very high contribution rate per tonne.)

It is possible that at some future time it will be decided that it would be advantageous in terms of enhancing the fairness and economic efficiency of the contribution requirements to establish some additional accounts of the HNS Fund and/or sectors of the general account to cater for particular categories of HNS with “outlier” hazard

<sup>44</sup> Dr Karen Purnell, *Are HNS Spills More Dangerous than Oil Spills? – A White Paper for the Interspill Conference and the 4th IMO R&D Forum*, May 2009, at page 19; Hugh Parker, Technical Team Manager, International Tanker Owners Pollution Federation *The Removal of Oil from Sunken Vessels Including the SOLAR 1 – Some Technical Considerations*, February 2007.

<sup>45</sup> Kwinana submission page 4; PACIA submission second page.

profiles which are traded in large volumes. These issues will be able to be considered by the Assembly of the HNS Fund and by future diplomatic conferences in the light of experience of the operation of the convention.<sup>46</sup>

**It is illogical and pointless to require receivers to contribute to the HNS Fund, because they cannot influence ship safety.<sup>47</sup>**

Receivers can influence the way in which the HNS that they purchase is transported. Sometimes the receiver will arrange the shipping – in that case it will have considerable influence, as it will be contracting directly with the shipping provider. Even in the more common type of situation where the supplier arranges the shipping, the receiver can still exert an influence on the mode of delivery through its contractual relationship with the supplier – for example, by negotiating the inclusion in the sale agreement of terms and conditions relating to the way the HNS is to be shipped, or by exerting commercial pressure on the supplier to take some other kind of action directed at enhancing safety.

The extent of the receiver's influence will depend on the circumstances, in particular on the relative market power of the parties in the supply chain.

By requiring receivers to bear part of the cost of HNS incidents, the HNS Convention will give them an incentive to use whatever influence they have got. (Parties that have the capacity to exert influence but have no incentive to do so usually won't do so.)

Another consideration that should be kept in mind is that it often takes time for financial incentives of this kind to bear fruit. Receivers might not be able to change the standard of shipping immediately, but they might be able to do so in the longer term. For example, creating a stronger demand for safer ships might not do much for the ships that are currently in use, but it could make the *next generation* of ships safer.

Lastly, but most importantly, the reason for requiring receivers to contribute to the cost of providing compensation for damage caused by HNS incidents is not solely an instrumental one directed at making the transport of HNS by ships safer. Another, independent reason is that it is simply fairer to impose the cost of HNS incidents on the parties whose economic activity gives rise to the risk and who profit from that activity (*ie* shipowners and HNS importers), rather than making Australian taxpayers who have nothing to do with that activity bear the cost, which is what happens now.

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<sup>46</sup> Additional accounts or sectors can only be established by amending the HNS Convention. Article 47 provides that amendments can be made by a diplomatic conference, which can be convened at the request of six parties or one-third of the parties (whichever is the higher).

<sup>47</sup> Kwinana submission page 3, fourth dot point, and page 4; PACIA submission second and third pages.

**By requiring Australian receivers to pay contributions to the HNS Fund, the HNS Convention will undermine the international competitiveness of Australian industry – particularly the chemical industry.<sup>48</sup>**

Understandably, this is a key concern articulated by the submissions. A number of relevant facts and policy considerations need to be taken into consideration in evaluating this concern.

- ***The contribution burden on receivers will be very modest – so much so that it is unlikely to undermine the competitiveness of Australian industry.***

We have estimated what the contribution rate might be in four different scenarios.

### ***Scenario 1***

Assumptions:

- Aggregate annual receipts of contributing HNS by receivers in all the parties to the HNS Convention total 425 million tonnes (comprising the minimum threshold amounts of each relevant type or category of HNS, namely: 350 million tonnes of oil; 15 million tonnes of LPG; 20 million tonnes of LNG; and 40 million tonnes of HNS covered by the general account).
- The annual amount of compensation payable by the HNS Fund is the same as the average for the eight year period from 2002 to 2009 (see page 4 above), namely \$5.5 million.<sup>49</sup>
- The contribution rate is the same for all the types of HNS.

In this scenario, the contribution rate for all the kinds of HNS is \$0.012941 per tonne (*ie* just under 1.3 cents per tonne).

### ***Scenario 2***

Assumptions:

- Aggregate annual receipts of contributing HNS are the same as in scenario 1.
- The annual amount of compensation payable by the HNS Fund is the same as in scenario 1.
- No contributions are payable in respect of receipts of LPG and LNG.
- The contribution rate for oil is half the contribution rate for HNS covered by the general account.

In this scenario, the contribution rate for HNS covered by the general account is \$0.025581 per tonne (*ie* just over 2.5 cents per tonne).

The contribution rate for oil is half that amount, and the contribution rates for LPG and LNG are zero.

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<sup>48</sup> Kwinana submission page 3; PACIA submission second and third pages.

<sup>49</sup> The total amount of compensation that would have been payable by the HNS Fund during the eight year period was \$44 million. One eighth of that is \$5.5 million.



### **Scenario 3**

Assumptions:

- Aggregate annual receipts of contributing HNS are the same as in scenario 1.
- The annual amount of compensation payable by the HNS Fund quadruples to \$22 million.
- No contributions are payable in respect of receipts of LPG and LNG.
- The contribution rate for oil is half the contribution rate for HNS covered by the general account.

In this scenario, the contribution rate for HNS covered by the general account is \$0.102326 per tonne (ie just over 10 cents per tonne).

The contribution rate for oil is half that amount, and the contribution rates for LPG and LNG are zero.

### **Scenario 4**

Assumptions:

- Aggregate annual receipts of contributing HNS increase as follows (because more countries become parties to the HNS Convention):  
*Oil* increases from 350 million tonnes to 450 million tonnes;  
*LPG* and *LNG* remain at 15 million tonnes and 20 million tonnes, respectively;  
*HNS covered by the general account* increases from 40 million tonnes to 80 million tonnes.
- The annual amount of compensation payable by the HNS Fund stays quadrupled, at \$22 million.
- No contributions are payable in respect of receipts of LPG and LNG.
- The contribution rate for oil is half the contribution rate for HNS covered by the general account.

In this scenario, the contribution rate for HNS covered by the general account is \$0.072131 per tonne (ie just over 7 cents per tonne).

The contribution rate for oil is half that amount, and the contribution rates for LPG and LNG are zero.

#### *Concluding comment on the four scenarios*

It should be kept in mind that since the factors responsible for determining the contribution rates will vary year by year, so will the contribution rates. (Those factors are the aggregate receipts of contributing HNS, the amount of compensation payable by the HNS Fund, and the types of HNS causing the serious HNS incidents that the HNS Fund has to pay for.) One of these scenarios (or something like it) might apply one year, another of these scenarios might apply the next year, and so on.

- ***The European and Canadian chemical industries do not seem to be worried.***

Mr Lennart Heip from Dow Benelux gave a presentation at the HNS workshop on behalf of the European Chemical Industry Council (“CEFIC”). During questions-and-answers following his presentation, he was asked whether he thought that the HNS Convention would have an adverse effect on the international competitiveness of the European chemical industry. He replied: “No”, explaining that the contribution rate would be low, that he expected that most European countries as well as many other countries would become parties, and that the chemical industry understood the need for the HNS Convention and would co-operate with governments in implementing it. He also said that it is the desire of the European chemical industry that as many countries as possible become parties to the convention, for two reasons: to promote a level international competitive playing field; and to push down the contribution rate even further.

Mr Francois Marier from Transport Canada, who chaired the HNS workshop, gave a presentation on behalf of Canada, in which he made the following points concerning Canadian stakeholder views:

- Canadian industry had supported ratification of the 1996 HNS Convention, and that support has continued for the 2010 HNS Protocol (*ie* the current HNS Convention).
- Industry sees the HNS Convention as a positive development, as it spreads the risk of HNS incidents in a way that reflects the global nature of the HNS trade, shares liability between shipowners and cargo owners, and demonstrates leadership by government and industry in addressing a critical gap in community and environmental protection.
- The chemical industry believes that the HNS Convention lines up with the global chemical industry’s “Responsible Care Global Charter”, which has been developed and promoted by the International Council of Chemical Associations. The charter commits the chemical industry globally to a set of guiding principles designed to drive continuous improvement in its performance in the areas of environmental protection, health and safety, and to achieving these objectives “by meeting and going beyond legislative and regulatory compliance, and adopting cooperative and voluntary initiatives with government and other stakeholders.”<sup>50</sup> The charter promotes sustainable development initiatives, continuous improvement and reporting, product stewardship by the chemical industry and the extension of responsible care along the industry’s supply chain, active support for national and global responsible care governance processes, and deeper stakeholder engagement. The Canadian chemical industry initiated the development of the charter in 1985

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<sup>50</sup> International Council of Chemical Associations *Responsible Care Global Charter*, launched at the International Conference on Chemicals Management in Dubai on 6 December 2006. The conference was an initiative which emerged from the 2005 UN World Summit, which followed up on the outcomes of the Millennium Summit. (The quoted words are in the *Introduction* of the charter.)

and has adopted it. PACIA has also promoted adoption of the charter by its members.<sup>51</sup>

- ***The Civil Liability Convention and IOPC Funds Conventions demonstrate the benefits***

The HNS Convention is modelled on the Civil Liability Convention and IOPC Funds Conventions, which provide compensation for pollution damage caused by oil spills from oil tankers. The IOPC Funds are funded by annual contributions by firms that receive more than 150,000 tonnes of crude oil and other persistent oil annually. This regime has worked efficiently, providing compensation for 143 oil pollution incidents since it was established in 1978, and is supported by the oil industry. Eight Australian oil refiners and major oil importers contribute to the IOPC Funds.

The annual contribution rate applying to receipts of 150,000 tonnes or more of contributing oil in the last reported contribution period (calendar year 2009) was £0.04 per tonne. This paid for top-up compensation by the IOPC Funds of up to 750 million SDRs (over \$1.1 billion) per incident. As Mr Paul Nelson told the committee at the hearing on 4 February, this is relatively cheap insurance.

- ***More countries are likely to become parties to the HNS Convention after it comes into force, further levelling the competitive playing field.***

This is what happened with the Civil Liability Convention and IOPC Funds Conventions. When the original IOPC Fund Convention, the 1971 Fund Convention, came into force in 1978, there were only 15 parties to that convention. Today, 109 countries are parties to the 1992 Fund Convention, which is the successor to the 1971 Fund Convention. Basically, all the maritime nations of the world are now parties except the United States, which has its own liability and compensation regime.<sup>52</sup>

Once the HNS Convention comes into force, the parties to the convention will be under an obligation to require *all* ships entering their ports – even ships of countries that are not parties to the convention – to have liability insurance in respect of HNS incidents up to the level stipulated in the convention. This will provide an incentive for countries to become a party, since their ships will not be able to avoid the cost of obtaining the higher level of liability insurance cover even if they stay out of the convention. Countries will also be more confident about becoming a party once there

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<sup>51</sup> Details are on PACIA's *Responsible Care* webpage at <http://www.pacia.org.au/programs/responsiblecare>.

<sup>52</sup> The 1971 Fund Convention was negotiated subsequently to the Civil Liability Convention by a smaller group of countries that were concerned – rightly, as events turned out – that mandatory liability insurance for shipowners under the Civil Liability Convention would not be sufficient to cover the cost of really serious oil spills. It is easy to imagine many governments' initial reluctance to sign up to the 1971 Fund Convention, fearing the political ramifications of higher fuel prices and loss of competitiveness by their economy. Once that convention came into operation, such fears were laid to rest.

is a “critical mass” of contributors to the HNS Fund. Thirdly, more countries are likely to join when the benefits of doing so become apparent – *eg* after they see the HNS Fund in operation and making compensation payments, or after they suffer a serious HNS incident themselves.

- ***If a country decides not to become a party to the HNS Convention and it suffers a serious HNS incident, someone in that country’s economy will have to bear the cost. There will be a cost for that country’s economy, which will have an impact on the international competitiveness of that economy.***

Foreign countries cannot escape the cost of a serious HNS incident that occurs in their territory any more than Australia can. The HNS Convention offers countries the opportunity to participate in an international arrangement that spreads the risk of HNS incidents in accordance with the principles of insurance and ensures that adequate compensation is provided for damage resulting from HNS incidents on an economical basis.

**Some of the costs of making contributions to the HNS Fund will be passed on to consumers.<sup>53</sup>**

It is to be expected that businesses will seek to pass on to their customers their costs of supplying their products and services – that is the only economically sustainable way to produce things in a market economy.

As a matter of principle, it is both equitable and economically efficient to pass on the cost of compensation for damage caused by HNS incidents to the consumers of HNS-based products, who benefit from using those products and drive the demand for the HNS that is used to make those products. Including the cost of the “negative externalities” associated with the supply of a product in its price provides appropriate price signals which encourage more optimal resource allocation.

The impact of the contribution requirement on the retail prices of goods and services is likely to be very small. As indicated above, the contribution rate payable on receipts of bulk HNS will be in the range of a few cents per tonne. Moreover, the contribution rate is likely to trend downward over time as more countries become parties to the HNS Convention and the volume of contributing cargo increases, and as shipping safety continues to improve.

The retail price of a product is made up of the cost of all the inputs (raw materials, manufactured components, labour, energy, transport, business overheads, etc) and a profit mark-up. Many consumer products only embody a very small amount of HNS – or, to put this another way, a tonne of HNS will often go into making many individual articles. The impact of contributions on the retail price may be minuscule. In the case

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<sup>53</sup> Gas Energy Australia submission paragraph 2(d)(2).

of many, if not most, consumer products that contain HNS or that are made using HNS, it is likely to be measured in tenths or hundredths of a cent.

**Senator Fawcett asked: “Do you have any analysis on the volume of HNS that is exported [from] Australia versus that which is imported? I am just trying to understand the scale of the impact on Australian commerce.”<sup>54</sup>**

Our response to this question is in three parts, as follows.

***i. What is the volume of Australia’s HNS imports and exports?***

We do not know how much HNS within the meaning of the HNS Convention is imported to and exported from Australia because statistics on HNS imports and exports are currently not collected by any Australian Department or agency. Paragraph 170 of the RIS provides a fuller explanation of the problem.

We are only able to provide statistics on imports and exports for the major HNS commodities that are treated separately under the HNS Convention, namely oil, LPG and LNG. The relevant statistics are:

- *Crude oil*  
Imports 21.7 million tonnes      Exports 14.4 million tonnes.
- *LPG*  
Imports 0.8 million tonnes      Exports 1.5 million tonnes.<sup>55</sup>
- *LNG*  
Imports 4.1 million tonnes      Exports 17.5 million tonnes.<sup>56</sup>

Other kinds of HNS would mostly come under the broad description of “chemicals” (which would include both HNS and non-HNS chemicals). We have been unable to find any useful statistics on the volume of chemical imports and exports.

Other countries intending to become parties to the HNS Convention have the same problem that we do in ascertaining the volume of their HNS imports. (The critical statistics for the HNS Convention are those relating to imports, not exports, since it is imports that will be liable to contributions.) This was confirmed yet again at the HNS workshop last November. Canada’s representative gave a presentation which contained Transport Canada’s (rough) estimates of annual HNS imports to Canada (excluding oil, LPG and LNG): approximately 4.5 million tonnes of HNS, and approximately 3.4 million tonnes of “maybe HNS”, to which there needs to be added some dangerous goods and some “non-toxic persistent floaters”.

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<sup>54</sup> At page 22 of the proof transcript.

<sup>55</sup> The statistics for imports and exports of crude oil and LPG relate to 2009-2010 and are from the Australian Bureau of Agricultural and Resource Economics and Sciences’ *Australian Energy Statistics – Energy Update 2011*, Tables M and N.

<sup>56</sup> The statistics for imports and exports of LNG relate to 2010 and are from the International Energy Agency’s *Natural Gas Information 2012*, country information for Australia, tables 6 and 7.

As Canada's economy and manufacturing industry are bigger than Australia's, it seems reasonable to assume that Australia's HNS imports are less than those of Canada.

Netherlands' presentation gave an estimate of 14 to 15 million tonnes of HNS (excluding oil, LPG and LNG) received at Rotterdam port each year – which is more than a third of the total 40 million tonnes of receipts by parties to the HNS Convention that are needed to trigger the coming into force of the HNS Convention.<sup>57</sup>

At a special consultative meeting on implementation issues held in Rotterdam in June 2011, Norway and Belgium provided estimates of their annual imports of HNS (including LPG and LNG, but excluding oil) of around 7 to 8 million tonnes for Norway, and over 5 million tonnes for Belgium.

**ii. *What are the implications for Australia's chemical industry if Australia is a net importer of chemicals?***

Australia's balance of trade in chemicals, measured by monetary value rather than volume, is as follows:

- *Chemicals and Related Products:*

Imports \$16.851 billion      Exports \$8.425 billion<sup>58</sup>

These figures do not reveal whether the volume-based balance of trade in chemicals runs in the same direction as the value-based balance of trade. (If Australia's chemical exports are, on average, heavier but less valuable per unit of weight than its chemical imports, the volume-based balance of trade may run in the opposite direction.)<sup>59</sup>

Supposing that Australia is a net importer of chemicals *in terms of volume*, and that a significant proportion of its chemical imports are bulk HNS, what would the implications be for the international competitiveness of Australia's chemical industry if Australia became a party to the HNS Convention?

At first glance, the fact that Australia is a net importer of chemicals in terms of volume might suggest that Australia's chemical industry will suffer a relative disadvantage under the HNS Convention and that other countries that are net exporters of chemicals will somehow profit at our expense. However, we do not think such a conclusion would be justified.

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<sup>57</sup> This estimate has been confirmed in an email from Jan de Boer (Netherlands Ministry of Infrastructure and Environment) to Leslie Kelety (Department of Infrastructure and Transport) dated 11 February 2013.

<sup>58</sup> From the Australian Bureau of Statistics' data sheet *5368.0 - International Trade in Goods and Services, Australia, December 2012*, tables 12a and 13a. Note that this category includes medicinal and pharmaceutical products.

<sup>59</sup> We use the term "volume" in the broad sense that encompasses weight.

The HNS Convention will impose a small contribution burden on parties' imports of HNS. The critical consideration for any industry is the amount of contributions it will be required to pay to the HNS Fund, which depends on the amount of HNS it imports, not on the amount it exports.

At the risk of over-simplification, suppose that the chemical industries of country A and country B import the same amount of HNS, in respect of which they each contribute \$1 million to the HNS Fund. Suppose further that each industry produces the same amount of products with the HNS, and that the industry in country A exports most of those products, while the industry in country B sells most of those products domestically. The net financial impact on each industry should be much the same: each is burdened by contributions of \$1 million, which has the same impact on the prices of their respective products. The only difference might be that the industry in country A, which exports most of its products, might face a competitive disadvantage in the international market if its products have to compete against products from countries whose chemical industry does not have to pay contributions to the HNS Fund.<sup>60</sup> However, if the contribution rate is very low – which is the case with the HNS Convention – then the competitive disadvantage to the industry in country A should be commensurately small.

Insofar as Australia is a net importer of chemicals in terms of volume, it broadly corresponds to country B in this example.

Tracing the economic impact on a dynamic and diverse industry sector like the Australian chemical industry that is operating in a globalised milieu of a small volume-based impost like the contribution requirement under the HNS Convention would be a very complex and uncertain exercise even for expert economic modellers. The purpose of the foregoing brief analysis is simply to draw attention to the fact that it is not obvious that Australian accession to the HNS Convention would uniquely disadvantage Australia's chemical industry if that industry happens to be a net importer of chemicals in terms of volume.

***iii. What is Australia's proportionate contribution to the HNS Fund likely to be?***

In view of the relative size of Australia's economy and manufacturing sector compared to some of the other countries that have signed the HNS Convention, Australia's contributions to the HNS Fund are likely to constitute a small fraction of the total contributions. As indicated at page 30 above, the HNS received annually at Rotterdam port alone may make up one-third of the 40 million tonne threshold for the coming into force of the HNS Convention.

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<sup>60</sup> In conditions of free trade, the industry in country B may face similar competition *in its domestic market* from products from countries whose chemical industry does not have to pay contributions to the HNS Fund.

The IOPC Funds provide a point of comparison: Australia's share of total contributions to the 1992 Fund is currently 2.06%; its share of total contributions to the Supplementary Fund is 2.93%.<sup>61</sup> While Australia's share of total contributions to the HNS Fund might be slightly higher than these figures in the initial years, the experience with the IOPC Funds gives an indication of what its relative contribution might be in the longer term.

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<sup>61</sup> International Oil Pollution Compensation Funds *Annual Report 2011*, at pages 18 and 19.