



Ref: CO/djh/KIC 2012 65

27 November 2012

Committee Secretary  
Joint Standing Committee on Treaties  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600  
AUSTRALIA

Dear Committee Secretary

**Re: Hazardous and Noxious Substances (HNS) Convention**

Thank you for extending the closing date for this submission to Tuesday 27<sup>th</sup> November, and for seeking input from stakeholders in regards to the HNS Convention and its potential impact on Australian businesses.

By way of background the Kwinana Industries Council (KIC) is an incorporated business association with membership drawn from the Kwinana Industrial Area (KIA). The current KIC membership is 11 full members, who include all the major industries found within the KIA, and 26 associate members covering the support and service sectors. KIC members employ approximately 5,000 workers directly and another 26,000 indirectly, and its economic activity contributes \$1.6 bn annually to the State economy. The KIC was established in 1991 with its primary goals being:

- To promote a positive image of Kwinana industries;
- To work towards the long-term viability of Kwinana industry;
- To coordinate a range of intra-industry activities including water quality, air quality, monitoring and emergency management;
- To highlight the contribution Kwinana industry makes to community; and
- To liaise effectively with local communities, Government and Government agencies.

The KIC is well recognised as being almost unique in Australia for what it represents, how it operates and for what it has achieved. It pursues its goals through a range of formal committees set up to provide input on a range of issues of common interest to the KIC member companies. Committee members are delegates with appropriate experience and authority drawn from the member companies. The output from the various committee activities is then used as the basis for communication to the KIC's stakeholders such that Kwinana industry is seen as speaking with one voice.

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KIC is aware the Federal Government is considering adoption of the HNS Convention, and it is understood that the Joint Standing Committee on Treaties will be considering whether or not Australia should become a signatory.

The Regulatory Impact Statement and other documents available from the Department of Infrastructure and Transport (DIT), stated (on p5 -stakeholder attitudes to HNS) that... "no industry stakeholders were opposed to the HNS". In making the following comments opposing the proposal, KIC wishes to specifically rebut that statement within this submission, noting that such a statement at its best it is wrong. It is known that at least one of the major industry stakeholder representative group is strongly opposed to the proposal and is providing a submission to convey their views.

I wish to make it unambiguously clear to the Joint Standing Committee that KIC and its members are opposed to the Australia becoming a signatory to the HNS Convention.

#### Overall Comment

The companies operating within the KIA operate in an internationally competitive environment, where adverse additions to the basic cost structure can place them at a disadvantage to their international competitors.

The HNS fund creates an obligation for shipping quality on our importers which is outside of their control. This obligation revolves around mitigation of risks in an environment outside of Australia's already very high regulatory environment. Whilst it is well recognised operating standards outside of Australia's jurisdiction can be significantly lower, the general thrust of improving HNS sea freight safety is broadly supported. It is the mechanism that is objected to, whereby those least regulated are in essence subsidised by those most regulated. As other less regulated countries are yet to implement and adhere to the higher standards, it is toward these countries that the effort should be directed.

In a fair market environment, it should be those parties that are directly responsible for controlling the risks who should be targeted to contribute to the HNS fund. It is understood that should this be the outcome, the additional costs for the marine insurers and international ship owners will ultimately transfer to the users of the shipping service through their on-charging of higher costs, but this is the marketplace legitimately at work.

The following points set out in more detail the points of objection from the members of the KIC:

- Whilst the National Interest Analysis and Regulation Impact Statement outlines the positive benefits of the HNS Convention, it does not address the cost side of the equation. The indicative cost is vague, uncertain and uncapped. On this basis, there can be no certain quantification of the cost to Australian importers. Uncertainty in this sector is already high, and to add to this uncertainty is not a good outcome for Australian business nor therefore for Australian consumers.

It is unclear upon reading the Convention how the Fund Administrators can be held financially accountable. Transparency is limited and so how might the relatively insignificant Australian importers paying levies to the Fund find the means to actually impact decision making within the Fund administration? Further, the indicative cost of £1,000,000 in annual

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administration costs appear to be most exceptionally high given that the Fund is being 'sold' as something that will be utilised on only rare occasions.

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- In Australia, companies importing hazardous and dangerous goods must comply with strict (and probably up there with world's best practice) safety standards when accessing ports. Given this fact, there appears to be little likelihood of an incident in Australian waters. Industry is already paying to achieve these high standards, and the Convention will in essence mean that Australian importers will pay twice, and in doing so subsidise those countries that are willing to accept import safety at lower standards. Where then, is the benefit to Australian importers?
- The Manufacturing industry is operating in a difficult economic business environment within Australia and is being negatively impacted by many existing, as well as new, cost pressures. In Australia we have a high cost manufacturing environment. There is the carbon tax, the mining tax, high wages, volatile and at this time low commodity prices, a stubbornly high Australian dollar, utility cost increases far in advance of inflation and increasing regulatory costs and pressures. Clearly, the burden of the additional costs associated with contributions to the HNS compensation fund will place further cost pressure on the Australian manufacturing industry.

The proposed direct cost to the Australian manufacturing industry of the HNS Convention represents a nationally imposed mechanism that adds yet another compulsory burden to an industry that is already experiencing immense pressure. How much additional cost pressure these industries can bear remains to be seen, but the cost to the nation of going too far with production cost increases will ultimately see operational closures as the business' move offshore into less regulated and lower cost countries.

- The HNS Convention will disadvantage existing business models over others. Given the competitive nature of the international business marketplace, importers of HNS products will become less competitive within the markets they operate.
- The HNS Convention places liability with the importers. The importers cannot influence the quality of construction of tankers, nor the relative lower regulatory environments that exist in many other countries, nor the quality of the management of the shipping vessels etc. It is the ship owners and insurers that influence many of these factors. On this basis it is they who should be responsible for the risks.
- The HNS Convention will be yet another reporting obligation for industries. Most of this information about import data should be available from other sources, but because there will be a financial dimension through contribution to the HNS Administration (ie fees), there will need to be detailed processes in place to enable accurate reporting which may also require yet another audited report. All of this for supposedly rare events. This equates to the even further addition of 'red tape' adding to the cost of doing business in Australia.
- The risks associated with the safe passage of hazardous cargoes shipping resides with the ship owner. They and their insurers are liable for the safe passage to the point of delivery, from when the importers assume liability. Given the logic of this position, it is illogical to assign partial liability to the importer for damage

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that has already been done, when the importer has no influence upon the mitigation of risk whilst the cargo is at sea

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How then does the Convention place pressure on the ship owners to improve their operations? It actually has the potential to do the opposite. The HNS Convention provides no additional incentive for the international ship owners and marine insurers to look at ways to improve and proactively reduce or prevent the occurrence of potential events, which would otherwise be more effective. The bottom line is that the HNS Convention discourages improvements in shipping safety because it shifts part of the burden of liability to parties (importers) who have no prospect of influencing shipping safety. Poor quality shippers get financial assistance with incident clean-ups, which is a disincentive to operate properly in the first place.

- The description of a HNS good is too non-specific. There appears to be no link to the physical characteristics of the HNS cargo. An incident involving a liquefied gas will see the product evaporate rapidly leaving little if any residue, whereas a crude oil incident can create significant environmental damage. There does not seem to be a recognised robust structured method used within the HNS classification to a degree that adequately assesses the physical spillage characteristics of the goods.
- My reading of the HNS Convention indicates that the Fund pays compensation to a maximum amount (\$250m) to the ship owner when the claims exceed the shipowner's liability for the costs associated with an incident, and when the ship owner or insurer can't meet the full cost of the incident. This in effect reduces the maximum level of insurance a ship owner needs to have coverage for. If the ship owner knows the Fund will pay the balance up to its maximum level for an incident, then the ship owner may choose to underinsure, leaving the balance of the liability to the Fund (read the manufacturing importers of signatory countries like Australia). The cost gets passed on to the receiver of the goods.

It is hoped that upon reviewing these comments, the Joint Standing Committee chooses to decline to recommend Australia become a signatory to the HNS Convention.

Yours sincerely

**CHRIS OUGHTON**  
Director

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