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Reference: 035-21JM

29 September 2021

Attn. Anastasia Krol
Nairobi Wreck Removal Convention
Department of Infrastructure, Transport, Regional Development and Communications
By Email: wreckconvention@infrastructure.gov.au

Dear Ms Krol,

Regulatory Impact Statement: Australia's accession to the Nairobi International Convention on the Removal of Wrecks 2007

Thank you for the opportunity to comment on the Australian Government's *Regulatory Impact Statement: Australia's accession to the Nairobi International Convention on the Removal of Wrecks 2007* (Nairobi Convention).

The Sydney Coastal Councils Group (SCCG) is a regional organisation of Councils that advances sustainable management of Sydney's urban coastal and estuarine environment. We currently comprise nine member Councils who represent approximately 1.3 million Sydneysiders. Our goals include waterways and foreshores being protected and healthier, and marine biodiversity protected in the bioregion. The SCCG is an effective and efficient conduit for engaging with coastal and estuarine Councils in the Sydney region.

Basis for proposed accession to the Nairobi Convention

The SCCG notes that the Nairobi Convention provides a set of uniform international rules aimed at ensuring the prompt and effective removal of wrecks within a State's Exclusive Economic Zone (EEZ), and potentially its territorial sea.

The Nairobi Convention also makes ship owners financially liable and requires them to take out insurance to cover the costs of wreck removal. It also provides States with a right of direct action against insurers. If Australia were to accede to the Nairobi Convention, the Australian Government would have clear powers allowing it cost recovery in a greater number of incidents.

Previous comments on the Discussion Paper

The SCCG commented on the Discussion paper which explained the basis and developed options for accession to the Nairobi Convention. We noted recent events involving wrecks at sea such as the APL England container loss which occurred on 24 May 2020, when 50 containers fell overboard southeast of Sydney that highlight the importance of effective responses to clean-up operations. This resulted in marine debris being deposited in the surf zone and on beaches and clean-up operations along the NSW coast. The debris creates a physical hazard for water users and marine organisms as well as potential for impacts on water quality.



We noted that our member councils have a duty of care to ensure that beaches and surrounding environments are free of hazardous debris and impacts to public and ecosystem health are appropriately managed. This can mean that Councils may bear the costs of clean-up activities from wrecks and container loss. A recent example is where Malabar Beach was closed for the morning of 27 May 2020, in order to perform a thorough clean-up due to the contents of a shipping container/s washing up all over the beach, presumably associated with the APL England container loss. The costs of the clean-up were unreasonably borne by Randwick Council.

The SCCG supported the option of ratifying the Nairobi Convention and implementing its framework in the territorial sea and the EEZ, as well as being expanded to include Domestic Commercial Vessels and recreational vessels. At that time, we considered these options appeared to be the most comprehensive for types of vessels. However, our views have been reconsidered in the light of the reasoning in the Regulatory Impact Statement (RIS).

Comments on the RIS

The SCCG provides the following comments on the RIS.

Section 2. Introduction

We support the important recognition in the RIS that the major routes used by ships visiting Australia are through an environment that is home to some of the world's most ecologically sensitive sea areas, and groundings by ships or accidents at sea in these areas would put extreme pressures on our marine environment. The marine environment provides essential ecosystem services as well as supporting marine tourism and commercial and recreational fishing.

Section 2.1.2 Containers lost at sea

This section acknowledges the potential severe impacts on the marine environment, contributing to marine litter and the proliferation of microplastics when debris from wrecks breaks up and/or releases contents.

Section 2.2 Case for Government Action

The SCCG supports the Australian Government's general approach that polluters should be held financially responsible when their actions threaten navigational safety, Australia's unique marine environment or maritime industries.

However, there is no mention of the impacts from marine debris from containers washing ashore on beaches, the risk of hazards caused to swimmers, other inshore recreational water users and beachgoers and the onus on local councils to undertake clean-up operations swiftly to remove hazards. In addition to acknowledging the onus on councils, there needs to be mention of whether local councils can recover costs and the process by which councils can recover costs under the Nairobi Convention or otherwise.

Section 3 Options

The range of options explored, from the do-nothing case to the recommended option and the key advantages/disadvantages concluded in the RIS are:

- amendments to the *Navigation Act 2012* (Navigation Act) that are consistent with the Nairobi Convention but without accession; disadvantage that the Navigation Act only applies to foreign vessels when located in Australia's territorial sea and the definition of a 'wreck' under the Navigation Act excludes goods or cargo fallen overboard.
- Accession to the Nairobi Convention -
 - applying it in the EEZ; disadvantage as above regarding justification for including the territorial sea.
 - applying it in the EEZ and territorial sea, replacing the current legislative framework; advantage of consistent application of the Nairobi Convention



between the EEZ and the territorial sea as well as boosted environmental protection of the greater number of environmentally sensitive areas which are found in the territorial sea.

- Accession to the Nairobi Convention and applying it to Domestic Commercial Vessels (DCVs); disadvantage that due to the 300T threshold, it would only apply to a relatively very small number of DCVs.

Recreation vessels have not been included as part of the accession to the Nairobi Convention, for the following reasons:

- Very few recreational vessels are over 300T and are not required to hold insurance.
- Lack of sophistication of recreational vessel owners to manage a salvage operation.
- State and territory wreck removal legislation covers removal of recreational vessel wrecks as a result of abandonment by owners for financial reasons which is a common scenario.

Section 5.4 Environmental and social impacts

Wrecks can cause massive environmental damages by contaminating water with polluting substances and physical waste impacting marine environments. Wrecks may also impact communities by closing beaches, creating unpleasant sights and smells, and impact recreational and commercial fishing. These costs and avoided benefits are difficult to quantify and they depend on the number and severity of factors. AMSA is the Australian Government agency responsible for minimising any such marine costs and this responsibility will not change as a result of accession to the Nairobi Convention.

Environmental and social impacts are assumed to be the same between all Options involving change and so have not been quantified in this study.

Section 6 Recommended option

The recommended option is Option 3B – Australia acceding to the Nairobi Convention and applying it in the EEZ and the territorial sea in order to create a clear and consistent regulatory framework for Regulated Australian vessels and foreign vessels flagged to Member States.

SCCG conclusion on preferred Option

The SCCG concurs with the finding from the analysis of options that Option 3B of Australia acceding to the Nairobi Convention and applying it in the EEZ and the territorial sea is the best option. This option enhances and simplifies the ability for the Australian Government to recover wreck-related costs, while ensuring we adopt international best practice and have flexibility to apply to the framework to emerging industries.

The SCCG supports the recommended option for the following key reasons:

- Transfer of wreck-related costs from the Australian Government to ship owners
- Adoption of a widely accepted and internationally consistent standard which a large majority of ship owners already comply with
- Enhanced ability of the Australian Government to remove wrecks and to determine a wreck has created a hazard with economic, environmental or health impacts
- Enhanced ability of the Australian Government to recover costs, especially costs relating to an object overboard in both the territorial sea and EEZ.

Regarding DCVs and recreational vessels, the SCCG initially supported their inclusion in the accession to the Nairobi Convention in its consideration of the Discussion Paper. However, the consideration in the RIS to not include these vessels appears well reasoned, as noted above and is subsequently supported.



Sutherland Shire
COUNCIL



INNER WEST COUNCIL



WAVERLEY
COUNCIL



Bayside Council

northern
beaches
council



WILLOUGHBY
CITY COUNCIL
City of Diversity



Randwick City Council
a sense of community



Further considerations in the RIS

The SCCG has raised concerns over the onus on local councils for clean-up of beaches following incidents of wreck debris washing up on beaches, as per our comments on the Discussion Paper. The impacts of wrecks on communities by closing beaches is acknowledged in the RIS and it reasonably assumes that the environmental and social impacts would be the same between all options involving change so have not been quantified.

However, the RIS should include details of how the impacts on local councils are currently managed and a discussion on how local councils would be impacted by the accession to the Nairobi Convention. This should especially cover the issues of clean-up assistance and cost recovery for local councils when they must act promptly in fulfilling their duty of care to keep beaches and foreshores safe and healthy for their communities.

I look forward to the release of the final RIS and to hearing further progress of implementing Australia's accession to the Nairobi Convention.

If you have any queries, please contact me on M.0407 733 075 or by email at executiveofficer@sydneycoastalcouncils.com.au

Yours sincerely,



Sarah Joyce
Executive Officer



Sutherland Shire
COUNCIL

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