

**AMENDMENT, ADOPTED ON 18 OCTOBER 2000, TO THE
LIMITATION AMOUNTS IN THE PROTOCOL OF 1992 TO
AMEND THE INTERNATIONAL CONVENTION ON CIVIL
LIABILITY FOR OIL POLLUTION DAMAGE, 1969**

Documents tabled on 27 August 2002:

- **National Interest Analysis**
- **Text of the proposed treaty action**

Amendment, adopted on 18 October 2000, to the Limitation Amounts in the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. The proposed binding treaty action is the acceptance by Australia of Resolution LEG.1(82) which was adopted in London on 18 October 2000 by the Legal Committee of the International Maritime Organization. Resolution LEG.1(82) will amend the limitation amounts for oil pollution damage set out in Article 6 of the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (1992 Civil Liability Protocol).

Date of proposed binding treaty action

2. There is no requirement for Australia to take further international action to enable the amendments contained in the Resolution to enter into force in Australia.

3. The rules governing the acceptance and entry into force of the amendments contained in Resolution LEG.1(82) are contained in Article 15 of the 1992 Civil Liability Protocol. Article 15(7) provides that amendments will be deemed to be accepted at the end of a period of eighteen months after the date of their notification to States that were Contracting States on the date of adoption of the amendments unless, within that period, not less than one quarter of those States indicate that they do not accept the amendments. As such, the amendments contained in Resolution LEG.1(82) were deemed to be accepted on 1 May 2002 and will enter into force on 1 November 2003.

Date of tabling of the proposed treaty action

4. 27 August 2002.

Summary of the purpose of the proposed treaty action and why it is in the national interest

5. The purpose of Resolution LEG.1(82) is to increase the limitation amounts applying to tanker owners in cases of pollution damage resulting from the escape or discharge of oil from tankers.

6. The increase to the limitation amounts is in the national interest to ensure that they are maintained at a sufficient level so that tanker owners pay a fair share of the compensation costs resulting from oil pollution damage.

Reasons for Australia to take the proposed treaty action

7. Compensation for pollution damage caused by oil spills from oil tankers is governed by an international regime established by two Conventions, the International Convention on Civil Liability for Oil Pollution Damage, 1969 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971. Under this regime, the burden of compensating victims of oil spills is shared between shipowners and cargo owners.

8. The compensation regime was amended in 1992 by two Protocols which amended the above Conventions. The amended Conventions are known respectively as the International Convention on Civil Liability for Oil Pollution Damage, 1992 (the 1992 Civil Liability Convention) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (the 1992 Fund Convention).

9. The 1992 Civil Liability Convention governs the liability of shipowners for oil pollution damage. The Convention lays down the principle of strict liability for shipowners and creates a system of compulsory liability insurance. Shipowners are normally entitled to limit their liability to an amount which is linked to the tonnage of their ships.

10. The 1992 Fund Convention, which is supplementary to the 1992 Civil Liability Convention, establishes a regime for compensating victims when the compensation provided for under the 1992 Civil Liability Convention is inadequate. The 1992 Fund Convention established the International Oil Pollution Compensation Fund 1992 (the IOPC Fund). In accordance with Article 4 of the 1992 Fund Convention, the IOPC Fund pays compensation where full compensation for oil pollution damage is unable to be obtained under the 1992 Civil Liability Convention in the following circumstances:

- (a) the shipowner is exempt from liability under the 1992 Civil Liability Convention because the shipowner can invoke one of the exemptions under that Convention; or
- (b) the shipowner is financially incapable of meeting his or her obligations under the 1992 Civil Liability Convention and the shipowner's insurance is insufficient to satisfy the claims for compensation for pollution damage; or
- (c) the damage exceeds the shipowner's liability under the 1992 Civil Liability Convention.

11. Under Article 10 of the 1992 Fund Convention, the IOPC Fund is financed by contributions levied on any person who has received by sea in a calendar year more than 150,000 tons of "contributing oil" (defined in Article 1 of the 1992 Fund Convention to mean crude oil and fuel oil) in a State Party. Annual contributions are levied by the IOPC Fund to meet the anticipated payments of compensation and administrative expenses during the coming year. Each contributor pays a specified amount per ton of contributing oil received.

12. Article 6(1) of the 1992 Civil Liability Protocol increased the limitation amounts for oil pollution damage under the 1992 Civil Liability Convention. Resolution LEG.1(82) will amend Article 6(1) of the 1992 Civil Liability Protocol to further

increase the limitation amounts to take account of the erosion of the value of the current limits caused by inflation.

13. While it is important to provide limits to liability so that a tanker owner is not exposed to unlimited liability in cases of claims arising from an oil spill, the tanker owner should also be expected to pay a reasonable amount towards the cost of compensation for consequent damages.

14. The limitation amounts set out in the 1992 Civil Liability Convention, in the 1992 Civil Liability Protocol and in Resolution LEG.1(82) are expressed in terms of Units of Account¹. The following table compares the current limitation amounts with the limits proposed by Resolution LEG.1(82).

	Current limitation amounts		Proposed limitation amounts	
	Units of Account	\$A ²	Units of Account	\$A ²
For a ship up to 5,000 tons	3,000,000	7,384,000	4,510,000	11,100,000
For each additional ton	420	1,033	631	1,553
Maximum limitation amount	59,700,000	146,900,000	89,770,000	221,000,000

15. This will mean that the limitation amount applying, for example, to a 26,000 ton tanker will increase from approximately \$A29 million to approximately \$A44 million.

16. It is in Australia's interests that Australia should accept the proposed amendments to the limitation amounts to ensure that adequate compensation is payable in case of any oil pollution incident resulting from the escape or discharge of oil from a tanker in Australian waters.

17. In accordance with Article 15(9) of the 1992 Civil Liability Protocol, all Contracting States will be bound by the amendments contained in Resolution LEG.1(82) when it enters into force. In order to avoid the application of the new limitation amounts contained in Resolution LEG.1(82), Australia would have to denounce the 1992 Civil Liability Protocol. Such denunciation would not be in Australia's interests as it would constitute a rejection of an internationally-accepted liability and compensation regime for oil spills from tankers.

Obligations

18. Under Article IX of the 1992 Civil Liability Convention, Australia is obliged to ensure that its Courts possess jurisdiction to allow them to hear actions for compensation for oil pollution damage that has occurred in the territory of a Party to the Convention. Australia is also required to recognise and enforce any judgement given by a Court that has been conferred with jurisdiction in accordance with Article IX

¹ One Unit of Account is the same as a Special Drawing Right (SDR) as defined by the International Monetary Fund. The value of the SDR varies from day to day in accordance with changes in currency values. On 24 July 2002, one SDR was worth \$A2.46136

² These values are rounded for convenience.

(Article X). From 1 November 2003, Australia will be required to give effect to these obligations with reference to the new limitation amounts contained in Resolution LEG.1(82).

Implementation

19. Resolution LEG.1(82) will be implemented in Australia by amendments to the *Protection of the Sea (Civil Liability) Act 1981* to commence on 1 November 2003.

Costs

20. Acceptance of the amendments proposed by Resolution LEG.1(82) would not impose any additional costs on the Government of Australia. There are no provisions in Resolution LEG.1(82) that would require contributions to international organisations, nor would any new domestic agency be required as a result of accepting the amendments.

21. The increased limitation amounts have the potential to increase the costs of insurance for owners. Advice was sought from the International Group of P&I Associations (whose members provide cover for over 90% of world ocean-going shipping tonnage) on the potential effect of the increased limitation amounts. The response from the Secretary of the International Group was as follows:

"The short answer to your question is that the introduction of the new CLC and Fund limits will not automatically increase P&I costs - generally P&I premium is fixed in relation to the cost of historical claims. Therefore if the effect of an increase in CLC limits in a particular trade leads to an increase in claims in that trade then, over time there may be an increase in premium but this would not be visible at the outset."

22. While there may be a small increase in insurance costs for owners, the amount of any increase cannot be quantified.

Consultation

23. Letters were written to the Governments of the States and the Northern Territory, the Australian Shipowners Association, Shipping Australia Limited and the Association of Australian Ports and Marine Authorities seeking their views on whether or not Australia should accept the revised limitation amounts. All responses received supported the introduction of the revised amounts.

Regulation Impact Statement

24. The Office of Regulation Review, Productivity Commission, has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action: amendments, protocols, annexes or other legally binding instruments

25. Resolution LEG.1(82) does not provide for the conclusion of any future protocols, annexes or other legally binding instruments.

26. Any future amendments to limitation amounts would have to be considered in accordance with Article 15 of the 1992 Civil Liability Protocol (which, in accordance with Article XII *ter* of the 1992 Civil Liability Convention, also forms one of the final clauses of the 1992 Civil Liability Convention). In particular, no amendment may be considered less than five years from the entry into force of a previous amendment (Article 15(6)(a)). As such, any future amendment to the limitation amounts may not be considered before 1 November 2008.

27. Furthermore, any increase in limitation amounts:

- (a) may amount to no more than 6 per cent per year calculated on a compound basis from 15 January 1993 (Article 15(6)(b)); and
- (b) shall be no more than three times the limits set out in Resolution LEG.1(82) (Article 15(6)(c)).

Withdrawal or denunciation

28. Australia would be required to denounce the 1992 Civil Liability Protocol in order to avoid the application of the amended limitation amounts contained in Resolution LEG.1(82). Article 16 of the 1992 Civil Liability Protocol (Article XII *ter* of the 1992 Civil Liability Convention) provides that it may be denounced by any Contracting State at any time after the date on which it comes into force for that State. Such denunciation would take effect one year after the deposit of the instrument of denunciation, or on a later date, if any, specified in the instrument. Denunciation of the 1992 Civil Liability Convention would be deemed to automatically constitute a denunciation of the 1992 Fund Protocol (Article 34(4) of the 1992 Fund Protocol).

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