

**AMENDMENT, ADOPTED ON 18 OCTOBER 2000, TO THE  
LIMITS OF COMPENSATION ON THE PROTOCOL OF 1992  
TO AMEND THE INTERNATIONAL CONVENTION ON THE  
ESTABLISHMENT OF AN INTERNATIONAL FUND FOR  
COMPENSATION FOR OIL POLLUTION DAMAGE, 1971**

**Documents tabled on 27 August 2002:**

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

**Amendment, adopted on 18 October 2000, to the Limits of Compensation in the Protocol of 1992 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971**

**NATIONAL INTEREST ANALYSIS**

**Proposed binding treaty action**

1. The proposed binding treaty action is acceptance by Australia of Resolution LEG.2(82) which was adopted in London on 18 October 2000 by the Legal Committee of the International Maritime Organization. Resolution LEG.2(82) will amend the limits of compensation for oil pollution damage set out in Article 6(3) of the Protocol of 1992 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (1992 Fund 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 amendments to limits of compensation contained in Resolution LEG.2(82) are contained in Article 33 of the 1992 Fund Protocol. Article 33(8) 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.2(82) were deemed to be accepted on 1 May 2002 and will enter into force on 1 November 2003.

**Date of tabling of proposed treaty action**

5. 27 August 2002.

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

6. The purpose of Resolution LEG.2(82) is to increase the compensation limits payable from the International Oil Pollution Compensation Fund 1992 (the IOPC Fund) in cases of pollution damage resulting from the escape or discharge of oil from tankers where full compensation is unable to be obtained from the tanker owner.

7. The increase in the limits is in the national interest to ensure that the full costs of compensation are recoverable in the case of a major pollution incident in Australian waters.

## **Reasons for Australia to take the proposed treaty action**

8. 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.

9. 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).

10. 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.

11. 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 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.

12. 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.

13. The aggregate amount payable by the IOPC Fund is governed by Article 6(3) of the 1992 Fund Protocol, which amended Article 4(4) of the 1992 Fund Convention. Resolution LEG.2(82) will amend Article 6(3) of the 1992 Fund Protocol to further increase the limits of compensation.

14. It is important to provide a limit to the amount that the IOPC Fund may be required to pay in the case of a major oil spill so that there can be some estimate of

potential liabilities of the IOPC Fund. However, it is recognised that the limit on liability should be set at a level that is sufficient to cover compensation costs arising from almost all oil pollution incidents involving oil tankers. The amendments to the limits of compensation set out in Resolution LEG.2(82) will increase the existing limits to take account of the erosion of their value by inflation since 1992.

15. It should be noted that there have been only two cases where the 1992 Fund Convention has applied and where the existing limits of compensation have been exceeded. These were the breaking up of the *Nakhodka* in the Sea of Japan on 2 January 1997 and the breaking up of the *Erika* off the coast of Brittany, France on 12 December 1999.

16. The limits of compensation set out in the 1992 Fund Convention, in the 1992 Fund Protocol and in Resolution LEG.2(82) are expressed in terms of Units of Account<sup>1</sup>. In accordance with Resolution LEG.2(82), the maximum amount of compensation to be paid for a single pollution incident will be increased from 135 million units of account (approximately \$A332 million) to 203 million units of account (approximately \$A500 million). However, if three States contributing to the 1992 Fund receive more than 600 million tons of contributing oil per annum, the limit of compensation will be increased from 200 million units of account (approximately \$A492 million) to 300,740,000 units of account (approximately \$A740 million). This latter condition has not been met and so the lower maximum limit of compensation currently applies.

17. It is in Australia's interests that Australia should accept the proposed amendments to the limits of compensation to ensure that adequate compensation is paid in case of any oil pollution incident from a tanker in Australian waters.

18. In accordance with Article 33(9) of the 1992 Fund Protocol, all Contracting States will be bound by the amendments contained in Resolution LEG.2(82) to limits of compensation when they enter into force. In order to avoid the application of the new limits on compensation contained in Resolution LEG.2(82), Australia would have to denounce the 1992 Fund Protocol. Such action would not be in Australia's national interest as it would constitute a partial rejection of an internationally-accepted liability and compensation regime. The result would be that the maximum amount of compensation payable in the case of a major oil pollution incident involving a tanker would be the amount payable under the 1992 Civil Liability Convention.

## **Obligations**

19. The 1992 Fund Convention provides also for the payment of financial contributions to the IOPC Fund in respect of each Contracting Party. The total amount of contributions to be levied is determined by the IOPC Fund Assembly. Under Article 13 of the 1992 Fund Convention, Australia is obliged to require persons who receive more than 150,000 tons of oil by sea in a calendar year to make contributions to the IOPC Fund. This obligation will not be affected by Resolution LEG.2(82).

20. Under Article 7 of the 1992 Fund Convention, Australia is obliged to ensure that its Courts possess jurisdiction to allow them to hear actions against the Fund for compensation for oil pollution damage that has occurred in the territory of a Party to the

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<sup>1</sup> 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.

Convention. Australia is required also to recognise and enforce any judgement given by a Court that has been conferred with jurisdiction in accordance with Article 7 (Article 8). From 1 November 2003, Australia will be required to give effect to these obligations with reference to the new limits of compensation contained in Resolution LEG.2(82).

### **Implementation**

21. Resolution LEG.2(82) will be implemented in Australia by amendments to the *Protection of the Sea (Oil Pollution Compensation Fund) Act 1993* to commence on 1 November 2003.

### **Costs**

22. Acceptance of the amendments proposed by Resolution LEG.2(82) would not impose any additional costs on the Government of Australia. There are no provisions in Resolution LEG.2(82) that would require contributions by the Government to international organisations, nor would any new domestic agency be required as a result of accepting the amendments.

23. The increased limits have the potential to increase the costs of contributions by receivers of contributing oil, but this is unlikely to occur unless there is a very major oil pollution incident where the compensation costs exceed the current limit of 135 million units of account (approximately \$A319 million).

### **Consultation**

24. Letters were written to the Governments of the States and the Northern Territory, the Australian Shipowners Association, Shipping Australia Limited, the Association of Australian Ports and Marine Authorities and to the receivers of contributing oil in Australia seeking their views on whether Australia should accept the revised limits of compensation. All responses received supported the introduction of the revised limits of compensation.

### **Regulation Impact Statement**

25. 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.2(82) does not provide for the conclusion of any future protocols, annexes or other legally binding instruments.

26. Any future amendments to limits of compensation would have to be made in accordance with Article 33 of the 1992 Fund Protocol (which, in accordance with Article 36 *quinquies* of the 1992 Fund Convention, also forms one of the final clauses of the 1992 Fund Convention). In particular, no amendment may be considered less than five years from the entry into force of a previous amendment (Article 33(6)(a)). As such, any future amendment to the limits of compensation may not be considered before 1 November 2008.

27. Furthermore, any increase in limits of compensation:
- (a) may amount to no more than 6 per cent per year calculated on a compound basis from 15 January 1993 (Article 33(6)(b)); and
  - (b) shall be no more than three times the limits set out in Resolution LEG.2(82) (Article 33(6)(c)).

### **Withdrawal or denunciation**

28. Australia would be required to denounce the 1992 Fund Protocol in order to avoid the application of the amended limits of compensation contained in Resolution LEG.2(82). Article 34 of the 1992 Fund Protocol (Article 36 *quinquies* of the 1992 Fund 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.

### **Contact details**

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