

**PROTOCOL OF 1997 TO AMEND THE INTERNATIONAL  
CONVENTION FOR THE PREVENTION OF POLLUTION  
FROM SHIPS OF 2 NOVEMBER 1973, AS MODIFIED BY THE  
PROTOCOL OF 17 FEBRUARY 1978  
(LONDON, 26 SEPTEMBER 1997)  
[1997] ATSD 4519**

**Documents tabled on 2 December 2003:**

**National Interest Analysis**

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## NATIONAL INTEREST ANALYSIS: CATEGORY B TREATY

### SUMMARY PAGE

**Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships of 2 November 1973, as Modified by the Protocol of 17 February 1978 (London, 26 September 1997)  
[1997] ATSD 4519**

#### **Date of Tabling of Proposed Treaty Action**

1. 2 December 2003

#### **Nature and Timing of Proposed Treaty Action**

2. The International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) is one of the key international instruments addressing the problem of marine pollution. MARPOL 73/78 contains five technical annexes dealing with oil, bulk noxious liquid substances, harmful substances in packaged forms, sewage, and garbage. Australia ratified MARPOL 73/78, and its two mandatory annexes (Annexes I and II) on 14 October 1987, with entry into force for Australia on 14 January 1988. Australia acceded to Annexes III and V on 10 October 1994 and 14 August 1990 respectively. It is expected that Australia will accede to Annex IV early in 2004.

3. The Protocol of 1997 (the 1997 Protocol) was adopted in September 1997 and adds Annex VI, **Regulations for the Prevention of Air Pollution from Ships**, to MARPOL 73/78. The 1997 Protocol will enter into force 12 months after the date on which not less than 15 States representing at least 50% of the world's merchant shipping tonnage have become Parties to it. As at 31 October 2003, 12 States representing 54.25% of the world's shipping tonnage had become Parties to the 1997 Protocol. The 1997 Protocol will enter into force for Australia on the date that it enters into force generally if the Australian instrument of accession is lodged before that date. Otherwise, the 1997 Protocol will enter into force for Australia three months after lodgement of an instrument of accession. It is expected that the 1997 Protocol will enter into force generally in mid-2004. The date of accession by Australia is dependent on domestic legislation being enacted. The Bill to implement obligations relating to the 1997 Protocol is expected to be introduced into Parliament in 2004.

#### **Overview and National Interest Summary**

4. The need for the 1997 Protocol arose due to recognition by the international shipping and maritime community that, while a great deal has been achieved internationally to reduce atmospheric emissions from land-based sources, there remained considerable scope for reduction of air pollution emissions from seagoing ships. It was also recognised that air pollution from seagoing ships is one of the few areas related to shipping where there are currently no enforceable international standards.

5. Accession by Australia to the 1997 Protocol would provide consistent national standards for commercial vessels trading internationally and implement the full range of enforcement measures available under MARPOL 73/78. For Australia, this will result in streamlined regulatory processes, reduced monitoring and enforcement costs and higher levels of compliance.

## Reasons for Australia to Take the Proposed Treaty Action

6. Australia is a Party to MARPOL 73/78, which is administered by the International Maritime Organization (IMO) and, as at 31 October 2003, was in force for 127 States. Accepting the 1997 Protocol will be in accordance with Australia's general obligations as a Party to the United Nations Convention on the Law of the Sea (UNCLOS) 1982 which provides for nations to adopt generally accepted international rules and standards when implementing laws and regulations to prevent, reduce and control pollution of the marine environment from vessels (Article 211 of UNCLOS). Australia is a long-standing member of IMO, and was an active participant during the IMO deliberations that resulted in the adoption of the 1997 Protocol. Australia fully endorses the internationally-accepted principle that IMO is the body responsible for developing and implementing international rules and standards to protect the marine environment from vessel-sourced pollution.

7. Accession to the 1997 Protocol and its implementation will result in:

- streamlined regulatory processes, as all Australian jurisdictions will apply the same standards, meaning both industry and enforcement agencies will clearly understand the relevant obligations;
- reduced monitoring and enforcement costs, as much of the survey and certification work will be carried out by internationally-recognised Classification Societies based on identical criteria; and
- higher levels of compliance, as international standards will be enforced in most ports on a ship's voyage, rather than just in Australian ports.

8. The regulations, when they come into force, will set limits on sulfur oxides (SO<sub>x</sub>) and nitrogen oxides (NO<sub>x</sub>) emissions from ship exhausts and prohibit deliberate emissions of ozone depleting substances. The 1997 Protocol includes a global cap of 4.5% mass per mass (m/m) on the sulfur content of fuel oil and calls on the IMO to monitor the worldwide average sulfur content of fuel once the Protocol comes into force.

9. The 1997 Protocol contains provisions allowing for special SO<sub>x</sub> Emission Control Areas to be established by the IMO with more stringent control on sulfur emissions. In these areas, the sulfur content of fuel oil used on board ships must not exceed 1.5% m/m. Alternatively, ships must fit an exhaust gas cleaning system or use any other technological method to limit SO<sub>x</sub> emissions. Emissions over open seas are dispersed and the effects are generally moderate. However, on certain busy or confined routes the emissions create environmental problems. These areas presently include the Baltic Sea, North Sea, English Channel, South China Sea and Straits of Malacca.

10. The 1997 Protocol prohibits deliberate emissions of ozone depleting substances, which include halons and chlorofluorocarbons (CFCs). New installations of equipment such as new portable fire extinguishing units, insulation or other material containing ozone depleting substances, are prohibited on all ships. However, new installations containing hydro - chlorofluorocarbons (HCFCs) are permitted until 1 January 2020.

11. The requirements of the 1997 Protocol are in accordance with the *Montreal Protocol on Substances that Deplete the Ozone Layer* (the Montreal Protocol), as amended in London in 1990, to which Australia is a Party. The Montreal Protocol is an international environmental treaty, drawn up under the auspices of the United Nations, under which nations agreed to cut CFC consumption and production in order to protect the ozone layer.

12. The 1997 Protocol sets limits on emissions of NO<sub>x</sub> from diesel engines. A mandatory *Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines* (NO<sub>x</sub> Technical Code), developed by IMO, outlines how this is to be done.

13. The 1997 Protocol also prohibits the incineration on board ship of certain products such as contaminated packaging materials and polychlorinated biphenyls (PCBs).

14. Australia has demonstrated leadership in the protection of the marine environment and the atmosphere as successive governments have recognised the importance of embracing internationally consistent measures. In particular, Australia has met and in some cases exceeded its obligations to control ozone-depleting substances (ODS) under the Montreal Protocol; reducing Australia's consumption of ODS by over 80% since 1989, and destroying over 1000 metric tonnes of the ozone-depleting fire suppressant, halon, widely used on ships. Australia is heavily reliant on international shipping for its international trade with 3,107 international trading ships making 8,779 voyages into Australia in 2001-2002.

15. By becoming a Party to the 1997 Protocol, Australia will be able to enforce the full range of controls on air pollution from foreign vessels in waters over which we exercise jurisdiction and Australian flagged vessels, wherever located, on international voyages. If Australia does not become a Party to the 1997 Protocol, there is a risk that the level of environmental protection in Australia will fall short of internationally adopted standards, and that may encourage more polluting ships to operate in Australian waters as other countries tighten their regulation of emissions.

### **Obligations**

16. The 1997 Protocol sets standards for the emission of SO<sub>x</sub> and NO<sub>x</sub> from diesel engines, the release of volatile organic compounds from cargoes carried in tankers and the use of ozone depleting substances such as CFCs and halons in shipboard systems. It also specifies requirements for type, approval and operation of shipboard incinerators, including prohibiting incineration of certain harmful substances such as oil cargo residues and garbage containing more than traces of heavy metals.

17. Key obligations of the 1997 Protocol include:

- Regular surveys and inspections of ships to verify compliance with the requirements of the 1997 Protocol. For ships of 400 gross tonnage or more, the surveys are specified in the 1997 Protocol; for ships below this size, the survey and inspection regime is left to the flag State to determine (Regulation 4).
- The issue of an International Air Pollution Prevention Certificate, after inspection, to any ship of 400 gross tonnage or more engaged in voyages to ports or offshore terminals under the jurisdiction of other Parties (Regulation 6).
- Marine diesel engines (other than emergency engines) with a power output of more than 130kW installed on ships built on or after 1 January 2000 and existing engines undergoing major conversion (which includes installing new engines in existing ships) must comply with specified emission standards for NO<sub>x</sub> using the test procedure and test methods set out in the NO<sub>x</sub> Technical Code. These NO<sub>x</sub> requirements will apply retrospectively from 1 January 2000 once the Annex enters into force (Regulation 13).

- Fuel oil supplied to ships must have not more than 4.5% sulfur content except that in the case of ships operating in designated sulfur emission control areas a limit of 1.5% is specified (Regulation 14).
- Shipboard incinerators installed on or after 1 January 2000 must meet specified performance standards and must be operated by trained personnel. The incineration of certain substances, such as oil cargo residues and garbage containing more than traces of heavy metals, is prohibited (Regulation 16).
- Fuel oil supplied to ships must meet minimum quality standards and the sulfur content documented by the supplier by means of a bunker delivery note. This document is to be kept on board a ship and retained for three years after delivery of the oil (Regulation 18).

18. Survey and certification of ships will be required under Regulation 5. The Australian Maritime Safety Authority (AMSA) and/or an authorised Classification Society will undertake this role as part of its flag State control function for Australian ships. Ships will be subject to an initial survey before the ship is put into service, when an International Air Pollution Prevention Certificate is issued for the first time and/or during renewal surveys at intervals not exceeding five years. The issue, form, duration and validity of the International Air Pollution Prevention Certificate are outlined in Regulations 6, 7, 8 and 9.

### **Implementation**

19. The 1997 Protocol will be implemented by amendments to the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* and the *Navigation Act 1912*. The legislation will apply to all jurisdictions, with suitable roll-back and savings provisions to preserve any existing or future State/Territory legislation.

20. Administration and enforcement of the 1997 Protocol will be by way of established procedures applied to other MARPOL 73/78 regulations, primarily through port State control inspections undertaken by AMSA marine surveyors.

21. AMSA will make appropriate Marine Orders and will also develop Instructions to Surveyors and/or Classification Societies, based on guidelines being developed by IMO.

### **Costs**

22. The 1997 Protocol will have some cost implications for Australian registered vessels operating in waters designated as SO<sub>x</sub> Emission Control areas. The Protocol's requirements may be imposed on vessels of all nationalities by coastal State regulations. As such, the regulations in these areas may be applied regardless of whether or not Australia adopts Annex VI. Fuel oil certified at less than 1.5% m/m sulfur content is expected to cost around 20-30% (approximately A\$57 per tonne) more than regular fuel oil.

23. The 1997 Protocol will have some administrative impact on AMSA and fuel oil suppliers in Australian ports. AMSA will be required to maintain an up-to-date register of fuel oil suppliers in Australian ports (approximately 62 suppliers in 27 ports). Suppliers will be required to provide to the Master, or a ship's officer, a bunker delivery note and sample certified by the supplier that the fuel oil meets the requirements relating to sulfur content and quality. A copy of this delivery note must be retained by fuel oil suppliers for at least three years. These minor administrative requirements are unlikely to be burdensome for any fuel suppliers. As these measures apply to all fuel suppliers, they will not disadvantage small fuel supply firms.

24. Implementation of the 1997 Protocol will not impose any additional costs on the Australian Government, State/Territory Governments or port authorities.

### **Consultation**

25. The main parties affected by the proposed legislation will be the shipping industry. The Australian Shipowners Association and Shipping Australia Limited, which represent respectively Australian and foreign ship operators, support Australian adoption of the 1997 Protocol. The shipping industry has been consulted at all stages in the development of the regulations contained in the 1997 Protocol.

26. States and Territories were consulted through the Australian Transport Council (ATC) which is a ministerial forum of Australian Government, State and Territory Transport Ministers. In November 2002 ATC recommended that the 1997 Protocol be accepted by Australia.

27. Details of consultations are in Annexure 1.

### **Regulation Impact Statement**

28. A Regulation Impact Statement is attached.

### **Future Treaty Action**

29. Article 4 of the 1997 Protocol provides that amendments to any Annexes should be consistent with the provisions of Article 16 of MARPOL 73/78. Amendments shall be circulated to all Parties and the appropriate body, which in this case would be the Marine Environment Protection Committee (MEPC), for a period of six months prior to its consideration. Alternatively, upon the request of a Party, concurred by at least one-third of the Parties, a Conference can be convened to consider an amendment.

30. Amendments must be adopted by a two-thirds majority of the Parties to the Convention present and voting. At the time of adoption, the MEPC can deem amendments to be accepted on the date on which it is accepted by two-thirds of the Parties whose combined merchant fleet constitutes not less than 50% of the world's shipping tonnage. Otherwise, an amendment is deemed to be accepted unless one-third of Parties or Parties whose combined merchant fleet constitutes not less than 50% of the world's shipping tonnage, communicate an objection. The period to lodge an objection must not be less than 10 months. Under these circumstances, a Party can notify the Secretary-General of the IMO that its express approval will be necessary before the amendment enters into force for that Party.

31. An amendment is to enter into force six months after its acceptance for all Parties, through tacit acceptance, unless a Party has made a declaration that its express approval is necessary for the amendment to enter into force for them. Previous practice with MARPOL 73/78 and its Annexes indicates amendments have been relatively common.

32. In relation to Australia, a decision can be made not to accept a particular amendment. If Australia advises that it does not accept a particular amendment, that amendment will not enter into force for Australia unless Australia subsequently advises IMO that it accepts the amendment. Failure to accept a particular amendment would not affect the continued application of Annex VI to Australia.

33. All amendments would be subject to the Australian treaty process.

### **Denunciation**

34. Article 7 of the 1977 Protocol provides that a Party may denounce the 1997 Protocol by written notification to the Secretary-General of the IMO at any time after five years from the date on which it enters into force for that Party. Denunciation takes effect one year after receipt or longer if specified in the notification.

35. Denunciation may occur at any time five years after the 1997 Protocol enters into force for Australia. Denunciation would be subject to the Australian treaty process.

### **Contact details**

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