



INFORMATION, ANALYSIS
AND ADVICE FOR THE PARLIAMENT

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 95 2002–03

Maritime Legislation Amendment Bill 2002

ISSN 1328-8091

© Copyright Commonwealth of Australia 2003

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of the Parliamentary Library, other than by Senators and Members of the Australian Parliament in the course of their official duties.

This paper has been prepared for general distribution to Senators and Members of the Australian Parliament. While great care is taken to ensure that the paper is accurate and balanced, the paper is written using information publicly available at the time of production. The views expressed are those of the author and should not be attributed to the Information and Research Services (IRS). Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion. Readers are reminded that the paper is not an official parliamentary or Australian government document. IRS staff are available to discuss the paper's contents with Senators and Members and their staff but not with members of the public.

Inquiries

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2646.

Information and Research Services publications are available on the ParlInfo database. On the Internet the Department of the Parliamentary Library can be found at:
<http://www.aph.gov.au/library/>

Published by the Department of the Parliamentary Library, 2003

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 95 2002–03

Maritime Legislation Amendment Bill 2002

Angus Martyn
Law and Bills Digest Group
31 January 2003

Contents

Purpose	1
Background	1
Schedule 1 - Marine pollution	1
Schedule 2 - Stevedoring Corporations and anti-competitive conduct under the Trade Practices Act 1974	3
Schedule 3 - Bass Strait Ferry	4
Main Provisions	4
Schedule 1	4
Schedule 2	5
Schedule 3	5
Endnotes	5

Maritime Legislation Amendment Bill 2002

Date Introduced: 11 December 2002

House: House of Representatives

Portfolio: Transport and Regional Services

Commencement: The amendments increasing compensation limits payable from tanker oil spills commence on 1 November 2003. The remainder of the Bill commences on the day after Royal Assent.

Purpose

To:

- amend various pieces of marine pollution legislation, especially so as to increase the amount of compensation potentially payable from damage caused by tanker oil spills;
- clarify the application of certain anti-competitive conduct provisions in the *Trade Practices Act 1974* to stevedoring companies; and
- repeal redundant legislation relating to a Commonwealth grant to Tasmania for the purchase of the *Spirit of Tasmania* Bass Strait ferry in the 1980s.

Background

Schedule 1 - Marine pollution¹

As a result of the disastrous oil spill resulting from the *Torrey Canyon*² grounding in 1967, members of the International Maritime Organisation (IMO)³ adopted a convention dealing with the civil liability of oil tanker owners for pollution damage caused by oil carried as cargo. The purpose of the 1969 International Convention on Civil Liability for Oil Pollution Damage (the Civil Liability Convention)⁴ was to ensure that compensation is paid to victims and the liability is placed on the shipowner. Compensation is payable only for damage caused in waters out to the outer limits of the 200 nautical mile Exclusive Economic Zone (EEZ) of member States - thus damage to a fishery in international waters is not covered.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

The Civil Liability Convention is based on the principle of strict liability. This means that the tanker owner (or in practice, their insurer) is liable to pay compensation up to liability limits regardless - with a few exceptions⁵ - of whether or not they were at fault for the oil spill in question. The amount of compensation for which the tanker owner is potentially liable increases with the size of the ship.

Even after the adoption of the Civil Liability Convention, there was some concern that the compensation limits were too low. This led to the adoption of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (the Fund Convention) by the IMO in 1971. The Fund established by this Convention is derived from levies from companies or other entities importing more than 150 000 tonnes of crude and/or heavy fuel oil a year. In cases where pollution damage exceeds the compensation limit under the Civil Liability Convention, the Fund 'tops up' the remaining amount up to a certain maximum. The Fund will also pay compensation in situations like if the tanker owner cannot be identified, is uninsured⁶ or insolvent or can otherwise invoke one of the exemptions to liability under the Civil Liability Convention.⁷

The original Civil Liability and Fund Conventions were both replaced with updated versions in 1992, when liability limits in both were increased. Liability limits were increased again by the adoption of amendments in 2000. The second of these two increases is expected to come into effect on 1 November 2003. Australia is a member of both the (1992) Civil Liability and Fund Conventions, hence the need for legislation to reflect the new liability limits. The Government has stated that any possible increases in shipowners insurance premiums resulting from the new limits are 'likely to be insignificant'.⁸

The current and new liability limits are shown in the following table.

Ship size	Current liability limits	Limits from November 2003
Up to 5 000 gross tons	A\$7.125 million	A\$14.3 million
5 000-140 000 gross tons	A\$7.125 million plus A\$1000 for each extra ton	\$14.3 million plus A\$1500 for each extra ton
Over 140 000 gross tons	A\$142 million	A\$214 million
Maximum compensation (shipowners share under Civil Liability Convention plus 'top up' from the Fund).	A\$321 million	A\$482 million

Note: Convention liability limits are actually expressed in International Monetary Fund 'special drawing rights (SDRs)'. The Australian dollar figures shown above are

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

approximate only and have been calculated for reader's convenience according the exchange rates on 31 December 2002.

Compensation is available under both the Civil Liability and Fund Conventions for loss of income as a direct consequence of an oil spill. Preventative and clean up costs incurred by governments and other bodies may also be claimed.

There have been relatively few spills from oil tankers in Australian waters. In 1991, the Greek tanker *Kirki* lost its bow off the West Australian coast, resulting in the spill of about 17 000 tonnes of crude oil. Damage to the environment was minimal, and no significant costs were incurred by Government authorities responding to the spill. In 1999, around 300 tonnes of oil was spilled into Sydney Harbour by the Italian tanker *Laura D'Amato* during transference to an oil refinery. The spill was largely contained, but reportedly 'only favourable weather prevented the slick from creating a major catastrophe'.⁹ In both of these cases, some claims were paid out under the shipowners obligations under the Civil Liability Convention.

Worldwide, the most costly oil tanker spills in terms of compensation paid out through the Civil Liability and Fund Conventions mechanisms have been the breaking up of the *Nakhodka* in the Sea of Japan in January 1997 and the *Erika* off the coast of Brittany in December 1999. In the case of the *Erika*, over 6 000 claims for compensation have been made to date for a total of almost A\$350 million. About A\$110 million has been paid out, with assessments of other claims still pending. The total compensation and clean-up cost of the 1989 *Exxon Valdez* disaster in Alaska in 1989 was several billion Australian dollars, but the United States is not a member of either Conventions and thus compensation was not available under those mechanisms. Compensation was however paid out to various parties by Exxon after lengthy litigation in United States courts. The cost of the oil spill from the *Prestige*, which sank off the Spanish coast in November 2002, is still to be estimated.

Schedule 2 - Stevedoring Corporations and anti-competitive conduct under the Trade Practices Act 1974

Sections 45 and 47 of the *Trade Practices Act 1974* (TPA) contain general prohibitions against corporations engaging in certain arrangements or practices that may restrict competition. Part X of the TPA, which deals with international cargo shipping, provides some exemptions from these prohibitions in order to allow shipping companies to collaborate as liner 'conferences' in setting shipping charges. Part X was substantially amended in 2000 by the *Trade Practices Amendment (International Liner Cargo Shipping) Act 2000*.¹⁰ This followed a review of Part X by the Productivity Commission.¹¹ It is worth noting that the Australian Consumer and Competition Commission does not support the exemptions contained in Part X.¹²

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

The 2000 amendments inserted a new section 10.24A into the TPA. This provided that that the prohibitions in section 45 and 47 not apply to the negotiation and carrying out of stevedoring contracts. According to the Explanatory Memorandum to the 2000 Bill,¹³ the insertion of section 10.24A was intended to reflect the fact that stevedoring arrangements were part of the normal terminal-to-terminal services provided by conference lines and the collective negotiation with stevedores by conference lines was established practice in the industry. However, according to the Second Reading Speech to the 2002 Bill,¹⁴

Section 10.24A of part X could possibly be interpreted as allowing stevedoring operators to collude in determining the terms and conditions of a stevedoring contract to be negotiated with a shipping conference. The amendments made by Schedule 2 will explicitly state that the exemptions that apply to liner shipping in relation to negotiating stevedoring contracts under section 10.24A do not apply to stevedoring operators.

In other words, shipping companies may act collectively, but stevedoring corporations may not. Note that currently there are only two major stevedoring corporations in Australia: Patricks and P&O.

Schedule 3 - Bass Strait Ferry

Under the *Bass Strait Sea Passenger Service Agreement Act 1984*, the Commonwealth provided financial assistance to Tasmania, mainly for the purchase of the *Spirit of Tasmania* ferry.¹⁵ The Act no longer has any function and so is being repealed.

Main Provisions

Schedule 1

Items 1-3 collectively amend the *Protection of the Sea (Civil Liability) Act 1981* to incorporate the new liability limits outlined in the background of this Digest into the Act. An example of the practical effect of this will be that oil tankers will be required to increase their insurance cover to the extent they are ships covered by the Act. The Act also provides that compensation claims can be made against shipowners or their insurers according to the provisions of the Civil Liability Convention. The amendments will increase the maximum amount of these claims.

Items 4-6 collectively amend the *Protection of the Sea (Oil Pollution Compensation Fund) Act 1993* to incorporate the new liability limits outlined in the background of this Digest into the Act. The Act provides that compensation claims can be made against the Fund according to the provisions of the Fund Convention. The amendments will increase the maximum amount of these claims.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Items 7-9 amend the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*. This Act implements Australia's obligations under the main international convention on ship-sourced pollution, MARPOL 73/78. Notably, **item 7** will tighten the prohibition against the disposal of the plastics at sea by banning disposal of incinerator ashes from plastic products where they 'may contain toxic or heavy metal residues'.

Schedule 2

Item 1 inserts a **new subsection 10.24 (3A)** into Part X of the *Trade Practices Act 1974*. The amendment explicitly states that the Part X exemptions from anti-competition arrangements and practices do not apply 'to any dealings between stevedoring operators'.

Schedule 3

Item 1 repeals the *Bass Strait Sea Passenger Service Agreement Act 1984*.

Items 2-28 convert penalties in the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* from monetary amounts to penalty units. This conversion leaves the value of the penalties unchanged.

Endnotes

- 1 Much of the background material for schedule 1 is an edited form of information contained on websites of either to IMO or the International Oil Pollution Compensation Fund.
- 2 The oil tanker *Torrey Canyon* ran aground while entering the English Channel. The ships tanks ruptured, spilling her entire cargo of 120,000 tons of crude oil into the sea. This resulted in the biggest oil pollution incident ever recorded up to that time.
- 3 The IMO, established under the auspices of the United Nations, is the organisation responsible for developing international standards for shipping safety, navigation and maritime pollution issues. It has almost universal membership, with 162 States being members. Australian joined in 1952.
- 4 The Convention was updated in 1992 and is generally known as the International Convention on Civil Liability for Oil Pollution Damage, 1992.
- 5 Amongst other things, the tanker owner is not liable under the Civil Liability Convention for pollution damage caused by: acts of war or hostilities, third party acts or omissions intended to cause damage, a 'natural phenomenon of an exceptional, inevitable and irresistible character', negligence on the part of government or other authorities responsible for navigation aids.
- 6 The Civil Liability Convention requires tanker owners to take out insurance or have some other form of financial security specifically to cover liability for pollution damage.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

- 7 As is the case for the Civil Liability Convention, the Fund only provides compensation or damage caused in waters out to the outer limits of the EEZ.
- 8 The Hon Mr Wilson Tuckey, *House of Representatives Debates*, 11 December 2002, p 10084.
- 9 'Harbour oil spill costs culprit \$5.5 million', *Sydney Morning Herald*, 17 March 2000.
- 10 According to the [Bills Digest](#) for the Act, the main purposes of the 2000 amendments were to 'extend to Australian importers a similar level of protection to that enjoyed by Australian exporters in negotiating with liner conferences...and increase the power of the Minister to deal with concerns about activities of shipping conferences which may substantially lessen competition'.
- 11 *International Liner Cargo Shipping: A Review of Part X of the Trade Practices Act 1974, Inquiry Report*, 15 September 1999.
- 12 'The Commission's attitude towards Part X is well known. The Commission does not consider that the arrangements permitted under Part X are appropriate for the liner shipping industry or indeed other sectors of the economy.' Excerpt from speech by Alan Fels to Australian Shipping Pty Ltd, 22 July 2002.
- 13 Explanatory Memorandum, p 25.
- 14 The Hon Mr Wilson Tuckey, *House of Representatives Debates*, 11 December 2002, p 10084.
- 15 According to the Agreement contained the Act, the Commonwealth provided a grant of \$26 million.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.