



Protection of the Sea (Shipping Levy) Amendment Bill 2005

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Protection of the Sea (Shipping Levy) Amendment Bill 2005

Date Introduced: 18 August 2005

House: House of Representatives

Portfolio: Transport and Regional Services

Commencement: The Bill commences the day immediately following royal assent.

Purpose

To remove the current cap on the rate of levy imposed on certain shipping under the *Protection of the Sea (Shipping Levy) Act 1981*. The levy funds pollution prevention, response and mitigation measures.

Background

Under the *Protection of the Sea (Shipping Levy) Act 1981* (the Levy Act), ships of 24 metres or more *and* which are carrying a minimum of 10 tonnes of oil that visit Australian ports are liable for the levy. The *maximum* payable under existing section 6 of the Levy Act is 6c per ton.¹ However, the *actual* rate is set out in the Protection of the Sea (Shipping Levy) Regulations, and currently is 3.3c per ton. The actual rate has varied over the years from less than 1c per ton in the early 1980s to 4c per ton in 1994. The current rate has applied from 1995.

The levy is used to fund the National Plan to Combat Pollution of the Sea by Oil and other Noxious and Hazardous Substances (the [National Plan](#)). Funds are used to buy and maintain oil spill response equipment, provide training in oil spill response and meet clean-up costs which cannot be attributed to a known polluter. In 2003–04, about \$4.3 million was raised from the levy, which represented over 90% of the total revenue of the National Plan. The National Plan 2003–04 [annual report](#) noted:

The operating surplus of \$484,627 for the 2003-2004 financial year was in line with the 'break even over time' policy set by government....Total income received during the 2003-2004 financial year increased by \$468,094 compared with the previous financial year. Levy revenue increased during the reporting period due to an unforeseen rise in shipping activity.

According to the Minister for Transport and Regional Services, the rationale for removing the 6c a ton cap under the Levy Act is essentially twofold. The first regards funding a potential future pollution spillage:²

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Incidents overseas have shown the severe impacts of a major pollution incident and that, while international compensation regimes are generally highly effective, on occasions the cost of responding to an incident can exceed the liability and compensation limits that are available. In those cases, governments and affected citizens have had to bear the surplus costs, which may be many hundreds of millions of dollars.

The remaining 2.7c available within the current cap on the protection of the sea levy (PSL) is intended to permit the recovery of costs to government of any oil or chemical spill which would be irrecoverable from the polluter. In light of recent overseas experiences in dealing with major oil spills, it is likely that this buffer now could be inadequate to recover costs that the government may have to meet in the event of a major incident.

The ‘international compensation regimes’ referred above include the [International Pollution Compensation Fund](#) (IOPC). Under this, up to around \$400 million can be claimed,³ including any part paid by the shipowner. This will increase to around \$1.5 billion, should Australia become a member of a new supplementary fund. It is understood that Australia is the process of preparing for ratification of the supplementary fund.

More information on ship-source pollution incidents recorded by the Australian Maritime Safety Authority (AMSA) can be found in the National Plan 2003-04 [annual report](#). Most of these did not require any response under the National Plan. Historic information on [major oil spills](#) in Australia is also kept by AMSA.

The second rationale for the removal of the cap is to assist in the funding of a proposed emergency towage capability. The June 2005 [communiqué](#) of the Australian Transport Council stated:

Ministers agreed in-principle to the introduction of a national approach to maritime emergency towage around the Australian coastline. The national approach, to involve an integrated package of measures to ensure a minimum level of emergency towage coverage in strategic regions around the Australian coastline and to provide an appropriate regulatory framework, will be finalised later in 2005 following completion of a regulatory impact statement. The approach will include a vessel for the northern section of the Great Barrier Reef and the Torres Strait, which currently has no port-based emergency towage services.

The Bill’s second reading speech outlined the proposal⁴ in more detail:

A key element of the proposed national approach to emergency towage is the provisioning of a dedicated emergency towage service in the northern section of the Great Barrier Reef and the Torres Strait region. The service will be provided by an AMSA-contracted vessel that will combine its emergency towage role with the provision of navigation aid maintenance services in the region. The combined role will minimise the costs of the new arrangements and, as the current navigation aids

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contract expires in June 2006, this will necessitate the new tender proceeding in the fourth quarter of 2005.

Owing to the likely cost of the vessel resulting from the tender, and the associated PSL revenue required, this will necessitate removal of the current legislative cap on the levy in time for the tendering arrangements to proceed. Removal of the cap will enable adequate funding to be made available through subsequent amendments in the relevant regulations. Removal of the cap is required by end October 2005 in order to meet contracting/tendering time lines associated with the new emergency towage arrangements.

Main Provisions

Item 1 of Schedule 1 amends section 6 of the Levy Act to delete the current cap on the levy of 6c per ton.

Concluding Comments

The Government has not provided any details about what the future rate of the levy might be once the current cap is removed. However, the Minister noted that:⁵

There is sufficient safeguard in the system to ensure that this amendment effecting the removal of the cap will not enable unjustifiable levy rates to be set. The levy rate for any quarter will be prescribed by the regulations and, as these are a disallowable instrument, any amendments will be subject to the usual parliamentary and regulatory scrutinies to justify the proposed rate of levy at any time.

Endnotes

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- 1 The levy is payable quarterly, provided that the relevant ship visits a port at least once in the relevant quarter. Thus a 1000 tonne ship carrying the requisite amount of oil would be subject to statutory maximum possible levy of \$60 a quarter, irrespective if it made one or ten visits port visits that quarter.
 - 2 The Hon. Warren Truss MP, 'Second reading speech: Protection of the Sea (Shipping Levy) Amendment Bill 2005', House of Representatives, *Debates*, 18 August 2005, p. 1.
 - 3 Compensation could only be claimed if the perpetrator of the spill was known.
 - 4 op. cit., p. 1.
 - 5 *ibid.*, p. 2.

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