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Convention on Limitation of Liability for Maritime Claims

Introduction

10.1 The Australian Government proposes to denounce the *Convention on Limitation of Liability for Maritime Claims, 1976* (1976 Convention) and lodge two reservations with the Secretary-General of the International Maritime Organization.[1]

10.2 The first reservation excludes application of paragraphs 1(d) and 1(e) of Article 2 of the 1976 Convention as amended by the *Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims of 19 November 1976* (1996 Protocol). The effect of this reservation is that shipowners cannot limit their liability for costs relating to shipwrecks or losses for claims relating to removing, destroying or rending harmless the cargo of a ship.[2]

10.3 The second reservation excludes claims for damage within the meaning of the *International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 as amended by the 2010 Protocol* (HNS Convention).[3] This reservation is

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1 *National Interest Analysis* (NIA) [2010] ATNIA 53, Convention on Limitation of Liability for Maritime Claims, 1976, London, 19 November 1976 [1991] ATS 12, paras 1 and 2.

2 NIA, para. 5.

3 The Committee was advised that Australia is not party to the HNS Convention although consultation has commenced with a view to treaty ratification (Ms Poh Aye Tan, Department of Infrastructure and Transport, *Transcript of Evidence,* 22 November 2010, p. 6). Neither the HNS Convention nor the 2010 HNS Protocol has yet entered into force (Department of Infrastructure and Transport, *Submission 3,* p. 1).

intended to avoid any conflict between the liability limits in the 1996 Protocol and the HNS Convention.[4]

10.4 As Australia did not denounce the 1976 Convention when acceding to the 1996 Protocol, it remains a party to both.

1976 Convention and 1996 Protocol

10.5 The 1976 Convention limits the amount of compensation that must be paid by a shipowner in the event of a successful claim against it for loss of life, personal injury or damage to property where the death, loss or damage arose in connection with the operation of the ship.[5]

10.6 In Australia, the Convention applies to almost all claims relating to compensation for incidents involving ships, with the following exceptions:

- damage resulting from an oil spill from an oil tanker (as this is the subject of a separate convention);
- salvage claims;
- claims against the owner of a nuclear ship for nuclear damage; and
- workers compensation claims.[6]

10.7 Australia has also made a reservation excluding application of the 1976 Convention to the removal of wrecks.[7]

10.8 In 1996, the International Maritime Organization adopted the 1996 Protocol, which increased shipowners' liability limits.[8]

10.9 The 1996 Protocol provides that the Convention and Protocol 'shall, as between the parties to the 1996 protocol, be read and interpreted together as one single instrument'. The effect of this provision is that a state need

4 NIA, para. 6.

5 Ms Tan, Department of Infrastructure and Transport, *Transcript of Evidence,* 22 November 2010, p. 4.

6 Ms Tan, Department of Infrastructure and Transport, *Transcript of Evidence,* 22 November 2010, p. 4.

7 Ms Tan, Department of Infrastructure and Transport, *Transcript of Evidence,* 22 November 2010, p. 4.

8 Ms Tan, Department of Infrastructure and Transport, *Transcript of Evidence,* 22 November 2010, p. 4.

only be party to the 1996 Protocol to apply the provisions of the 1976 Convention.[9]

Reasons to take treaty action

10.10 The Committee was informed that if the 1976 Convention is denounced, it will be clear to a ship entering Australian waters that the 1996 Protocol applies.[10]

10.11 Should Australia continue to be a party to the 1976 Convention and an incident occurs involving a ship registered in a country that is party to the 1976 Convention but not the 1996 Protocol, it is possible that the liability limits in the Convention rather than the higher limits in the Protocol would apply. This could then result in a significantly reduced amount of compensation being available.[11]

10.12 The Committee notes that in the last approximately 30 years there have been only two incidents that have reached the limit of liability—the *Iron Baron* in Tasmania in 1995 and the *Pacific Adventurer* in Queensland in 2009.[12] Most compensation claims are well beneath the limit of liability.[13]

Implementation

10.13 The *Limitation of Liability for Maritime Claims Act 1989* currently implements both the 1976 Convention and 1996 Protocol. Legislative amendments are not required if the 1976 Convention is denounced.[14]

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9 Ms Tan, Department of Infrastructure and Transport, *Transcript of Evidence,* 22 November 2010, p. 5.

10 Ms Tan, Department of Infrastructure and Transport, *Transcript of Evidence,* 22 November 2010, p. 6.

11 Ms Tan, Department of Infrastructure and Transport, *Transcript of Evidence,* 22 November 2010, p. 5.

12 Mr Paul Nelson, Australian Maritime Safety Authority, *Transcript of Evidence,* 22 November 2010, p. 5.

13 Mr Nelson, Australian Maritime Safety Authority, *Transcript of Evidence,* 22 November 2010, p. 5.

14 NIA, para. 21.

Conclusion

10.14 The Committee notes that denunciation of the 1976 Convention will provide greater clarity in respect of liability limits for compensation claims arising from incidents involving ships. The Committee therefore supports binding treaty action being taken.

Recommendation 12

The Committee supports denunciation of the *Convention on Limitation of Liability for Maritime Claims, 1976* and recommends that binding treaty action be taken.