

National Interest Analysis [2010] ATNIA 53

with attachment on consultation

**Convention on Limitation of Liability for Maritime Claims, 1976
London, 19 November 1976**

[1991] ATS 12

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

Convention on Limitation of Liability for Maritime Claims, 1976 done at London on 19 November 1976 [1991] ATS 12

Nature and timing of proposed treaty action

1. It is proposed that Australia denounce the *Convention on Limitation of Liability for Maritime Claims, 1976* (the 1976 Convention) by lodgement of an instrument of denunciation with the Secretary-General of the International Maritime Organization in accordance with Article 19 of the 1976 Convention as soon as practicable after the completion of the treaty making process.
2. It is also proposed to lodge reservations to exclude:
 - a) the application of paragraphs 1(d) and (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 [2004] ATS 16 (the 1996 Protocol); and
 - b) 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 (the HNS Convention).

Overview and national interest summary

3. The 1976 Convention was amended by the 1996 Protocol. The 1996 Protocol, which increased liability limits and introduced a revised procedure for amending limits, entered into force generally and for Australia on 13 May 2004. The effect of the 1996 Protocol is that amendments to the 1976 Convention are read together with the original articles.
4. Denunciation of the 1976 Convention will ensure that, in the event of an incident in Australia involving a ship registered in a State which is a Party to the 1976 Convention but not a Party to the 1996 Protocol, the shipowner will not be entitled to claim that the lower liability limits set out in the 1976 Convention apply.
5. The lodging of a reservation excluding the application of paragraphs 1(d) and (e) of Article 2 of the 1976 Convention as amended would ensure the continuation of the existing reservation which was made when Australia lodged its instrument of accession for the 1976 Convention on 20 February 1991. The effect of the reservation is that shipowners are not able to limit their liability for costs relating to shipwrecks or losses for claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship.
6. The HNS Convention will establish a liability and compensation regime to ensure the prompt payment of compensation in case of pollution damage resulting from hazardous and noxious substances. The HNS Convention allows shipowners to limit their liability for HNS incidents. The lodging of a reservation excluding claims for damage within the meaning of the HNS Convention would avoid conflict between the limits set out in the 1996 Protocol and the HNS Convention if and when the HNS Convention enters into force for Australia.

Reasons for Australia to take the proposed treaty action

The 1976 Convention

7. The 1976 Convention establishes uniform rules relating to limitation of liability for maritime claims made against shipowners and salvors. It entered into force for Australia on 1 June 1991 and is implemented by the *Limitation of Liability for Maritime Claims Act 1989*.
8. Under the 1976 Convention, persons entitled to limit liability are:
 - a) shipowners, as defined in paragraph 2 of Article 1 to mean the owner, charterer, manager and operator of a seagoing ship;
 - b) salvors, as defined in paragraph 3 of Article 1 to mean any person rendering services in direct connection with salvage operations; and
 - c) any such person for whose act, neglect or default the shipowner or salvor is responsible (paragraph 4 of Article 1).
9. The 1976 Convention sets out rules governing availability of claims, the exclusion of claims and conduct barring limitation of claims. It also includes formulas for calculating limits of liability and identifies the unit of account on which the calculations are based.
10. Paragraph 1 of Article 18 of the 1976 Convention, as amended by the 1996 Protocol, gives Parties the right to exclude the application of paragraphs 1(d) and (e) of Article 2. In accordance with those two paragraphs, the following claims are subject to limitation of liability:
 - a) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship; and
 - b) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship.

The 1996 Protocol

11. The 1996 Protocol increased liability limits and introduced a simplified procedure for updating limitation amounts.
12. Paragraph 1 of Article 9 of the 1996 Protocol provides that the 1976 Convention and the 1996 Protocol shall, as between the Parties to the 1996 Protocol, be read and interpreted together as one single instrument. One effect of this paragraph is that States which wish to apply the provisions of the 1976 Convention as amended by the 1996 Protocol need to be a Party only to the 1996 Protocol.
13. The 1996 Protocol amended paragraph 1 of Article 18 of the 1976 Convention to provide that States Parties may exclude claims for damage within the meaning of the HNS Convention. Paragraph 6 of Article 1 of the HNS Convention defines damage in the following terms:

Damage means:

- (a) loss of life or personal injury on board or outside the ship carrying the hazardous and noxious substances caused by those substances;
- (b) loss of or damage to property outside the ship carrying the hazardous and noxious substances caused by those substances;
- (c) loss or damage by contamination of the environment caused by the hazardous and noxious substances, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and
- (d) the costs of preventive measures and further loss or damage caused by preventive measures.

14. The HNS Convention has not entered into force generally and Australia is not a Contracting State.

The current situation

15. When Australia acceded to the 1996 Protocol, it did not denounce the 1976 Convention. Australia is therefore currently a Party to both the 1976 Convention and the 1996 Protocol.

16. There is a risk that, if there is an incident in Australian waters involving a ship that is registered in a State which is a Party to the 1976 Convention but not to the 1996 Protocol, then the relations between Australia and the shipowner in determining the shipowner's liability limits may be governed by the unamended 1976 Convention.

17. Denunciation of the 1976 Convention will ensure that the higher liability limits as set out in the 1996 Protocol apply in all cases.

18. Denunciation would occur in accordance with Article 19 of the 1976 Convention which provides that:

- a) the 1976 Convention may be denounced by a State Party at any time after one year from the date on which it entered into force for that Party;
- b) denunciation is effected by the deposit of an instrument of denunciation with the Secretary-General of the International Maritime Organization; and
- c) denunciation takes effect on the first day of the month following the expiration of one year after the date of deposit of the instrument, or after such longer period as may be specified in the instrument.

19. Through the operation of paragraph 4 of Article 12 of the 1996 Protocol, this denunciation would operate in relation to the 1976 Convention only and not to the 1976 Convention as amended by the 1996 Protocol.

Obligations

20. The denunciation of the 1976 Convention will not impose any new obligations on Australia.

Implementation

21. The 1976 Convention and the 1996 Protocol are currently implemented by the *Limitation of Liability for Maritime Claims Act 1989*. The denunciation of the 1976 Convention will not result in the need for any changes to legislation.

Costs

22. The denunciation of the 1976 Convention will not result in any extra costs or savings for the Government, business or individuals.

Regulation Impact Statement

23. The Department of Infrastructure, Transport, Regional Development and Local Government has assessed the denunciation of the 1976 Convention against criteria in *The Best Practice Regulation Handbook*. Denunciation will have no impact on business and individuals or on the economy and a Regulation Impact Statement or Business Cost Calculator report is not required.

Future treaty action

24. There would be no future treaty action arising out of the proposed denunciation of the 1976 Convention.

Withdrawal or denunciation

25. Following the proposed denunciation, the 1976 Convention will not be in force in Australia and its provisions for denunciation will have no effect.

Contact details

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ATTACHMENT ON CONSULTATION

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CONSULTATION

26. No formal consultation was undertaken in relation to the proposed denunciation as denunciation of the 1976 Convention would not have any impact on Government, business or individuals.