

Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage

Introduction

- 4.1 The *Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage* (the Protocol) establishes a Supplementary Fund to provide additional compensation to victims of oil spills. At present, compensation is available to victims of oil spills under a two-tier system of compensation. The Protocol would provide an additional third tier of compensation in situations where the maximum amount of compensation available under the previous two tiers proves insufficient.¹

¹ Mr Michael Sutton, *Transcript of Evidence*, Monday 8 May 2006, p. 1; National Interest Analysis (NIA), para. 6.

Background

- 4.2 At present, compensation is available to victims of oil spills first under the *International Convention on Civil Liability for Oil Pollution Damage* (Civil Liability Convention) and second under the *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage* (Fund Convention).
- 4.3 Under the Civil Liability Convention, the tanker owner is strictly liable for damage resulting from a spill of persistent oil. Owners are required to maintain insurance to cover their liability under the Civil Liability Convention if they are carrying more than 2,000 tons of persistent oil.² Owners are able to limit their liability with the liability limit set in proportion to the size of the tanker.
- 4.4 If the compensation limits of the Civil Liability Convention are reached, the Fund Convention provides additional compensation for victims of oil spills.³ Under the Fund Convention, compensation
- ... is financed by levies imposed on persons or entities who receive by sea transport more than 150,000 tonnes of heavy oils in a calendar year. The costs vary from year to year as they are dependent on the number and severity of incidents that occur within states that are party to the fund convention.⁴
- 4.5 The Committee was informed that currently the maximum liability limit or compensation able to be obtained in the first instance is approximately \$175 million. Under the Fund Convention, the maximum compensation obtainable is approximately \$395 million.⁵
- 4.6 The two-tier compensation system proved insufficient to compensate victims of oil spills in three recent high profile instances: the *Nakhodka* off the coast of Japan in 1996, the *Erika* off the coast of France in 1999 and the *Prestige* off the coast of Spain in 2002.⁶

2 NIA, para 5. 'Persistent oil' is defined in the Civil Liability Convention as crude oils, including residual fuel oil, heavy diesel oil and lubricating oil.

3 NIA, para. 6.

4 Mr Michael Sutton, *Transcript of Evidence*, 8 May 2006, p. 2.

5 Mr Michael Sutton, *Transcript of Evidence*, 8 May 2006, p. 2.

6 NIA, para. 7; Mr Michael Sutton, *Transcript of Evidence*, 8 May 2006, p. 2.

The Protocol

- 4.7 The Protocol established a Supplementary Fund which will provide additional compensation for victims of oil spills up to 750 million Special Drawing Rights (SDR), approximately \$1.46 billion, per incident that affects Contracting States.⁷
- 4.8 The Supplementary Fund will be financed through levies on public or private entities in receipt of more than 150,000 tonnes of contributing oil per year in Contracting States.⁸ Thus, the Supplementary Fund is
- ...financed in the same way as the [Fund Convention] is financed – that is, by levies on persons or entities who receive more than 150,000 tonnes of heavy oils in a calendar year – though contributions from member states will be calculated as if they had received a minimum of one million tonnes of heavy oils in a calendar year.⁹
- 4.9 Contracting States are required to communicate to the Supplementary Fund information of any person or public or private entity in that State who is liable to contribute, in addition to the quantity of contributing oil received.¹⁰
- 4.10 In practice, levies for the Supplementary Fund would only be collected after an oil spill occurred and after the first two tiers of compensation are exhausted:
- The fund would work out the number of claimants and the likely amount of payment and a particular amount per tonne of imported oil would be levied against each of the contributors. For a major incident, that could be over three or maybe four years.¹¹
- 4.11 It is likely that contributions to the Supplementary Fund would vary in accordance with the changing levels of imported contributing oil in

7 SDR is a unit of account defined by the International Monetary Fund. The value of the SDR varies from day to day in accordance with changes in currency values. As at 10 May 2006, one SDR was worth approximately A\$1.92; Mr Michael Sutton, *Transcript of Evidence*, 8 May 2006, p. 2.

8 Article 10 of the Protocol; Under Article I of the Fund Convention, 'Contributing oil' means crude oil and heavy fuel.

9 Mr Michael Sutton, *Transcript of Evidence*, 8 May 2006, p. 2.

10 Articles 13 and 20 of the Protocol; NIA, para. 19.

11 Mr John Gillies, *Transcript of Evidence*, 8 May 2006, p. 4.

any given year.¹² For instance, Australian contributions to the Fund Convention have ranged from approximately A\$2.44 million to A\$5.77 million.¹³

- 4.12 Contracting States must receive a minimum of 1 million tonnes of contributing oil.¹⁴ Where a Contracting State does not receive the minimum amount of contributing oil, it can collect the difference from oil importing entities in its State.¹⁵
- 4.13 The Supplementary Fund must be given legal personality by Contracting States under Article 2(2) of the Protocol. Furthermore, Article 7 provides that:
- Australian courts must be given jurisdiction to entertain action against the Supplementary Fund for compensation
 - the Supplementary Fund must be given the right to intervene in proceedings for compensation initiated under the Civil Liability Convention.¹⁶

Costs and consultation

- 4.14 The National Interest Analysis provides that the costs to the Australian Government of entering into the Protocol are negligible, as the costs are borne by oil importing entities.¹⁷

Implementation and entry into force

- 4.15 The Protocol entered into force generally on 3 March 2005.¹⁸
- 4.16 The Australian Maritime Safety Authority in the course of its duties will ensure that relevant Australian companies submit their contributing oil returns to the Supplementary Fund.¹⁹

12 NIA, para. 30.

13 NIA, para. 30.

14 Article 14 of the Protocol; NIA, para. 21.

15 Article 14 of the Protocol; NIA, para. 21.

16 NIA, para. 23.

17 NIA, para. 27.

18 Mr Michael Sutton, *Transcript of Evidence*, 8 May 2006, p. 2.

19 NIA, para. 20

- 4.17 It is expected that legislation will be required to give force to the Protocol. The *Protection of the Sea (International Oil Pollution Compensation Supplementary Fund) Bill* is expected to be introduced into Parliament in late 2006.²⁰

Conclusion and recommendation

- 4.18 The Committee supports the efforts of the international community to ensure adequate compensation is available to victims of oil spills.

Recommendation 3

The Committee supports the *Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, done at London on 16 May 2003*, and recommends that binding treaty action be taken.

20 NIA, para. 24.

