Limitation of Liability for Marine Claims Bill 1989

Date Introduced: 12 April 1989
House: House of Representatives
Presented by: Hon. Ralph Willis, M.P., Minister for Transport and Communications

Digest of Bill

Purpose
To replace the current 1952 Convention regarding the limitation of claims in respect of property and personal loss in sea going ships with a 1976 Convention.

Background
The amount of damages that may be claimed as a result of property or personal loss in sea going ships has been restricted by various conventions for many years. The area is currently governed by an International Convention signed in Brussels in 1952, which replaced rules initiated in 1924. A new Convention was signed by a number of countries in 1976 and entered into force, for the countries that had adopted it, in 1986. For Australian courts to be bound by the new Convention, it is necessary that it be incorporated in Australian law. This Bill aims to achieve that result.

While the limitation of liability is based on an international convention, there is no need for the Commonwealth to rely on the external affairs power to give the Convention the force of law in Australia. Sub – section 51(i) of the Constitution gives the Commonwealth power in respect of trade and commerce with other countries and amongst the States, while section 98 provides that the power to make laws for trade and commerce extends to navigation and shipping. As there is no suggestion that this Bill will affect intra-State trade, it falls clearly within these powers.

A number of arguments have been raised both for and against the limitation of damages, particularly for loss of life. The main argument in favour of limitation is the potential economic effect of a single accident if there were no limit. A single accident involving a number of deaths in a jurisdiction which gives high damages awards could bankrupt even a large shipping firm, and if
insurance was available the additional costs would have an impact on charges. An argument against limitation is that it removes an incentive for shipowners to avoid risks. This was less important under the 1952 Convention as the limit did not apply where the owner was at fault. Under the 1976 Convention, the limit will apply unless the loss results from the owners intended or reckless actions. This higher standard should reduce the number of cases in which the limit does not apply. The explanatory memorandum states that this is a trade off for the increased limits.

The unit of currency used in both the 1952 and 1976 Conventions is the special drawing right defined by the International Monetary Fund (IMF). An idea of the value of each unit can be gained from the second reading speech, where an example used is a limit of 333 000 units, or about $520 000. From this it can be calculated that each unit has a value of approximately $1.55.

**Main Provisions**

Clause 6 will give effect to the Convention on Limitation of Liability for Marine Claims, 1976, which is contained in Schedule 1 of the Bill. The Convention will not apply to ships of the armed forces of a foreign power (clause 7).

Claims in respect of damage to harbour works, basins, waterways or navigational aids will have priority over other property claims (clause 8).

The main provisions of the Convention are:

Article 1 which will allow shipowners to limit their liability. Shipowner is given a wide definition and includes charterers, managers and operators of sea going ships.

Claims in respect of personal injury or death, property damage, delay, breach of contract, or the removal of a wreck or cargo will be covered by the Convention (Article 2). However, claims in respect of salvage, oil pollution or nuclear damage will not be covered (Article 3).

A person will not be able to take advantage of the limit if the loss results from an act or omission committed with the intent to cause the loss or if the person acted recklessly and with knowledge that the loss would probably result (Article 4).

Chapter II of the Convention deals with the limits of liability. Article 6 sets the general limits which are based on the weight of the ship. There are two categories, claims for personal injury or death and property claims, with higher amounts available for the former category. If the amount available under the personal loss category is not sufficient to cover all such claims, the outstanding personal claims are to be included in the property damage category.
Article 7 will impose a limit on the amount payable for claims from passengers for personal injury or death. For each incident the maximum liability will be 46 666 units of account per authorised passenger to a maximum liability of 25 million units of account. The unit of account, as noted above, will be the special drawing right defined by the IMF (Article 8).

Chapter III of the Convention provides for the establishment of Limitation Funds. Where there are claims that are subject to limitation, the liable person may establish a fund consisting of the amounts described in Articles 6 and 7. The fund is to be distributed proportionally amongst those who have established a claim against the fund. Claims against other assets of the liable person will be barred.

The application of the Convention is dealt with in Chapter IV. Parties to the Convention will be able to introduce a separate limitation regime for ships that are intended for inland waterways or are less than 300 tons, and also for cases which do not involve nationals from a State which is a party to the Convention. The Convention is not to apply to platforms designed for exploration or exploitation, or to air cushioned vehicles (Article 15).

After a year of the Convention entering into force in a State, that State may renounce the Convention by depositing an instrument to that effect. The renunciation will have effect a year after the lodging of the instrument (Article 19).

Schedule 3 will repeal the current provisions in the Navigation Act 1912 which deal with the limitation of liability.

For further information, if required, contact the Economics and Commerce Group.

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Bills Digest Service
Legislative Research Service

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

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