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THE PARLIAMENT OF THE COMMONWEALTH  
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

LIMITATION OF LIABILITY FOR MARITIME CLAIMS BILL 1989

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister  
for Transport and Communications,  
the Honourable Ralph Willis MP)



## LIMITATION OF LIABILITY FOR MARITIME CLAIMS BILL 1989

### OUTLINE

This Bill will enable Australia to become a party to the Convention on Limitation of Liability for Maritime Claims, 1976 (the 1976 Convention).

The 1976 Convention replaces the International Convention relating to the Limitation of the Liability of the Owners of Sea-going Ships, 1957 (the 1957 Convention), to which Australia is currently a party. The 1957 Convention is implemented by the Navigation Act 1912.

The 1957 Convention sets upper limits for claims arising from a maritime incident in which loss of life, personal injury or property damage occurs. In response to widespread concern that the 1957 Convention limits were too low, a revising Convention with considerably increased limits was adopted in 1976 and came into force internationally in 1986.

The inadequacy of the 1957 Convention is demonstrated by the fact that the total amount of compensation available for all claims involving an incident to a ship of 10,000 gross tonnage would be only about \$3.22m. Under the 1976 Convention, \$6.1m would be available for personal claims, around \$2.7m for property claims and, if applicable, \$39m for passenger claims.

As a trade-off for increased limits, a shipowner's ability to limit liability will be removed only if it is proved that the damage or injury resulted from the shipowner's intended or reckless personal act or omission.

As permitted by the Convention, the Bill provides that claims in respect of harbour works, basins, waterways or aids to navigation have priority over other property claims and claims in respect of salvage or wreck removal are excluded from limitation.

The Bill also contains a savings clause which will permit any valid State or Northern Territory law which applies the Convention's provisions to operate in place of the Commonwealth law. State and the Northern Territory transport Ministers have agreed to accession to the Convention.

### FINANCIAL IMPACT STATEMENT

There will be no significant costs, revenues or savings to the Government arising from the Bill.

NOTES ON CLAUSES

Clause 1 - Short title

1. Provides for the Act to be cited as the Limitation of Liability for Maritime Claims Act 1989.

Clause 2 - Commencement

2. Provides that the Act shall come into operation on a day to be fixed by Proclamation. Clause 2 (2) provides that the Act shall commence within 18 months of Royal Assent. This period is necessary to allow for the denunciation of the 1957 Convention (that Convention provides that denunciation shall take effect twelve months after notice is given), accession to the 1976 Convention and preparation of regulations.

Clause 3 - Interpretation

3. This clause defines the Convention and its provisions for the purposes of the Act and provides for Convention meanings to be retained in the Act. The clause is designed to avoid unnecessary repetition. The text of the Convention itself is in Schedule 1.

Clause 4 - Extension to external Territories

4. Extends the Act to the external Territories of Australia. Current legislation implementing the 1957 Convention contains a similar provision.

Clause 5 - Application

5. A savings clause is provided to permit any valid State or Territory law which may be passed to apply the Convention's provisions to ships coming within the legislative competence of that State or Territory, to the exclusion of Commonwealth law.

Clause 6 - Applied provisions to have force of law

6. This clause gives effect to the provisions of the Convention, other than paragraphs 2 (1) (d) and (e). The effect of the exclusion is that liability cannot be limited in respect of claims arising from salvage and wreck removal. Article 18 permits a Party to exclude the application of these paragraphs.

Clause 7 - Applied provisions not applicable in relation to certain ships

7. This clause ensures that the Act applies to vessels belonging to the defence forces of Australia but not to those of other countries. It is unnecessary to extend the Act to vessels of other countries as action could not be instituted in Australian courts against the owners of such vessels and thus there can be no claim to which limitation of liability could be applied.

Clause 8 - Priority of claims in respect of damage to harbour works etc.

8. Clause 8 provides that claims in respect of damage to harbour works, basins, waterways or aids to navigation shall be given priority over other claims in respect of damage to property. Paragraph 6 (3) of the 1976 Convention permits a State Party to provide for such priority in legislation.

Clause 9 - Applications to the Court under the applied provisions

9. Clauses 9 (1) and (2) confer jurisdiction within the scope of the Convention on State and Territory Supreme Courts. Clauses 9 (3) and (4) have the effect of facilitating transfers of proceedings between Courts. Clause 9 (5) makes it clear that nothing in the Act excludes the operation of section 25 of the Admiralty Act 1988, which provides for the hearing of claims under Liability Conventions by the Federal Court.

Clause 10 - Evidence of certain matters

10. This Clause makes provision for reservations, ratifications, accessions, declarations and denunciations that have occurred in relation to the 1976 Convention to be declared by the Minister in a notice published in the Gazette. Such notice is to be prima facie evidence in any proceedings.

Clause 11 - Regulations etc.

11. Clause 11 provides the power for the making of regulations for carrying out or giving effect to the 1976 Convention. In particular, certain matters left to national law by the Convention will be provided for by regulation, for example the ascertainment of tonnage of a ship which is not able to be measured for tonnage and the conversion into Australian currency of the Special Drawing Right.

12. Clause 11 (2) makes it clear that matters not provided for in regulations may be the subject of rules of Court.

Clause 12 - Amendments of the Admiralty Act 1988

13. Clause 12 provides for the amendment of the Admiralty Act 1988 as set out in Schedule 2. These amendments omit references to the 1957 Convention and substitute references to the 1976 Convention.

Clause 13 - Amendments of the Navigation Act 1912

14. Clause 12 provides for amendment of the Navigation Act 1912 as set out in Schedule 3. These are:

- . repeal of section 59B which prohibits limitation of liability by a shipowner under the 1957 Convention in respect of claims by servants of the shipowner and substitutes a new section providing for similar protection for seamen under the 1976 Convention.
- . omission of those provisions of the Navigation Act which give effect to the 1957 Convention.





