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Bulletin 903 - 07/13 - Providing securities under S.27 of the updated Protection of the Sea Act - Australia

Australian policy makers have a very low (zero) tolerance for pollution of the sea. This is reflected in the Commonwealth's Protection of the Sea (Prevention of Pollution from Ships) Act 1983 ("the Act") which (at Sections 9 and 10) sets out strict liability offences for oil and oily water pollution attracting maximum fines of AUD\$3.4 million for individuals and AUD\$17 million for corporations.

Section 27A of the Act also gives the Australian Maritime Safety Authority (AMSA) the power to detain a foreign ship if there are "clear grounds for believing that a pollution breach has occurred". AMSA have powers to investigate further under Section 27 and the right to demand security before releasing the vessel.

AMSA have recently demanded security in the sum of AUS\$20.4 million for what may be a relatively minor alleged breach. AMSA has indicated that they must demand security in the maximum amount of all penalties that could be payable (i.e. AUS\$17 million for the Owner plus AUS\$3.4 million for the Master). This suggests that AMSA believe that they do not have discretion to request a lower amount of security for minor offences. This has far reaching ramifications for Owners and their Insurers.

It is noteworthy that while all of Owners, Master and Charterer are strictly liable for a pollution offence under sections 9 and 10 of the Act, Section 27A of the Act does not give AMSA the power to demand security for the potential fines of a Charterer. Due to this anomaly AMSA are restricted to AUS\$20.4 million rather than AUS\$37.4 million!

Until such time as the legislation is amended or there has been a successful judicial review of the demand for security under Section 27A(4)(b) of the Protection of the Sea (Prevention of Pollution from Ships) Act 1983, the risk of very high security demands by AMSA remains.

Owners and operators should bear this in mind when preparing their vessels for Australian waters.

Source of information:

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