



Ship Type: All Trade Area: Australia

Bulletin 275 - 12/02 - Increased Pollution Fines - Australia

We have been advised that the New South Wales State Government have confirmed the following changes to the Marine Pollution Act. These will come into affect immediately.

- 1 Maximum fines for oil pollution have increased to AUS\$500,000/US\$250,000 for individuals and AUS\$10/US\$5 million for corporations.
- 2 Crewmembers, now liable as multiple parties, may be prosecuted for the same incident. Previously liability for pollution was upon the owners of the vessel and master.
- 3 Damage arising as a result of a failure to maintain the ship or its equipment, damage as a result of wear and tear, or defects that develop during the normal operation of a ship or its equipment are now excluded from defences.
- 4 All vessels are required to have adequate insurance to cover oil spills. If evidence of insurance is not provided on demand e.g. P&I Club Certificate of Entry, the master and owner of the ship are automatically guilty of an offence and may be fined up to AUS\$55,000/US\$27,500 for the master and AUS\$110,000/US\$55,000 for the owner.
- 5 Previously the ship's agent was usually requested to give an undertaking to accept service of proceedings on behalf of the master and owners. In line with the widening of the scope of the Act, the undertaking is not needed and proceedings may now be served directly upon a vessel's agent for prosecutions against a vessel, the master and her crew.
- 6 The Act allows fines to be paid directly to the prosecuting Port Corporations. This may potentially result in a conflict of interest with the amount of the spill; however, the amount of the spill is often in contention at trial. Therefore evidence of the extent of the spill ought to be obtained as soon as possible after an incident.
- 7 With strict criminal liability now being imposed upon all owners, master, officers and crew of vessels calling at ports in New South Wales, vigilance is paramount.

Multiple prosecutions are possible leading not only to multiple fines, but also to overall fines at very high level's. Security amounts to avoid detention of vessels could be expected to rise in line with increase in fines. Investigating and prosecuting authorities have extensive powers in relation to more potential defendants.

The Government has introduced the doctrine of public trust of the environment (as per the US), and therefore, if environmental damage is caused, high-end fines will be sought by the prosecuting Port Corporations and imposed by the Courts.

All Members are advised that prompt and co-ordinated action is needed as soon as possible following an oil spill, therefore relevant emergency oil spill procedures should be made.

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