

## No. 2 2013/2014 - Australian Pollution Law - Oil Pollution Indemnity Clause for Penalties and Fines

March 2013

Translations: Chinese  Vietnamese 

Dear Sirs,

### **Australian Pollution Law – Oil Pollution Indemnity Clause for Penalties and Fines**

In October 2012, an International Group recommended charterparty clause was drafted to address the concerns raised by owners and charterers in respect of the amendments to Australian legislation<sup>1</sup> introducing increased penalties for pollution from ships and damage to the marine environment. Since the recommended clause was circulated to Members, there have been further developments in relation to the Australian legislation and further consideration of the wording of the recommended clause, which has been updated as attached and further explained below:

#### Increase in the Amount of Penalties

On 28 December 2012, a new regulation came into force in Australia escalating the monetary value of financial penalties for Federal offences. The increase in penalty unit valuations is only applicable to offences committed on or after 28 December 2012.

The changes affect fines calculated on penalty units, such as fines imposed under the Protection of the Sea Act 1983, which imposes fines ranging from 500 penalty units to 20,000 penalty units for the offence of discharging oil or oily mixtures into the sea.

Under the previous penalty unit calculation, this resulted in maximum fines of AUD 2.2 million for an individual and AUD 11 million for a corporation. Under the new penalty unit calculation, the applicable maximum fines are now AUD 3.4 million<sup>2</sup> for an individual and AUD 17 million<sup>3</sup> for a corporation.

#### Amendments to the International Group Recommended Clause and Explanatory Notes

- Legal/Defence costs

A new subparagraph (b) iii. has been inserted to address the concerns that prosecution legal costs and/or expenses might be passed onto the defending party. Subparagraph (b) iii. clarifies that the indemnity in the recommended clause extends to the recovery of any reasonable legal costs and/or other expenses incurred by or awarded against either party in respect of any proceedings instituted against them for the imposition of any fine or other penalty, in circumstances set out in subparagraph (b), irrespective of whether any fine or other penalty is actually imposed.

- Indemnity in the event of contributory fault

The proviso to subparagraphs (b) i. and ii. has been amended to specifically address the consequences of liability arising in circumstances where there is contributory fault on the part of the party seeking indemnity. The amendment restricts the amount of the recovery where there is contributory fault, provided this is not prohibited under the law governing the charter party.

The recommended clause and explanatory notes are attached.

This Notice to Members supersedes Notice No. 17 2012/2013 issued in October 2012.

Should Members have any questions they should contact the Managers in the normal way.

All Clubs in the International Group of P&I Clubs have issued similar circulars.

Yours faithfully

For: **West of England Insurance Services (Luxembourg) S.A.**

(As Managers)

**A Paulson**

Director

[1] Australian Navigation Act 1912 and the Protection of the Sea Act 1983

[2] Equivalent to approximately USD 3.5 million, as per the exchange rate on 21st February 2013

[3] Equivalent to approximately USD 17.4 million, as per the exchange rate on 21st February 2013

 Australia Oil Pollution Indemnity Annex & Explanatory Notes