Circular From WOE
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Australia - Increased Fines for Polluters

In 2012 the Club advised Members of changes to legislation in Australia which both increased fines for pollution from ships and allowed for these fines to be imposed on charterers as well as shipowners. The International Group Clubs issued a recommended charterparty indemnity clause - drafted in cooperation with BIMCO - for the allocation of pollution fines and penalties between the parties.

The level of fines was increased in 2013 and the terms of the charterparty clause were also amended - please see Notice to Members No.2 2013/2014.

We are grateful to Austrlian lawyers HWL Ebsworth for advice that the fines have been recently been increased again. They comment as follows:

A new financial year brings with it an increase in the fines for those polluting Australian waters. Ship owners, charterers, masters, operators and their insurers should be aware of potential liabilities for fines in Australia on top of pollution clean up and damage claims.

As at 1 July 2018, a majority of States (and the Northern Territory) have increased their penalty unit value in accordance with their annual indexation adjustments. The Commonwealth has also completed its three year increase of the applicable penalty unit in accordance with the Consumer Price Index.

Click here for a table of the applicable fines across Australia.

The State and Territory legislation and penalties apply to oil spills that are within, or migrate to within, 3 nautical miles of the coast. Beyond 3 nautical miles the Commonwealth legislation will apply.

The discharge of oil in Commonwealth, State or Territory waters is a strict liability offence for Owners and Masters and potentially crew members and those involved in the operation and maintenance of the ship. The Commonwealth legislation expressly includes Charterers in the list of those strictly liable.

These penalty unit increases mean that the maximum fine for a spill in Commonwealth waters has increased to $4.2 million for a Master and $21 million for a corporate Owner or Charterer.

Both AMSA and the relevant State regulators and port authorities continue to police this area strictly. We recommend that our readers take these risks into account when involved in trade to Australia. Should a spill occur owners should take immediate steps to mitigate the physical damage and manage the resulting liabilities and penalties with care.

Members are advised to take note of these increased fines and to ensure that the recommended pollution indemnity clause is included in charterparties. A copy of the clause and explanatory notes can be found here.

Source of Information: West of England P&I Club