THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PROTECTION OF THE SEA (SHIPPING LEVY) AMENDMENT BILL 2005

EXPLANATORY MEMORANDUM

(Circulated by Authority of the Minister for Transport and Regional Services, the Honourable Warren Truss MP)
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OUTLINE

The Protection of the Sea (Shipping Levy) Amendment Bill 2005 amends the Protection of the Sea (Shipping Levy) Act 1981 (the Act).

The Act enables the Australian Government to impose a quarterly levy on ships of 24 metres or more in length and having on board a quantity of ten tonnes or more of oil in bulk.

Section 6 of the Act prescribes a maximum rate (the cap) of the levy for any quarter, which is currently set at six cents per ton, where ton is a unit of the net tonnage of the ship.

Schedule 1 of the Bill removes the cap set out in Section 6 of the Act. The purpose is to enable access to levy revenue required to fund a national approach to maritime emergency towage while maintaining the scope for funding of the National Plan to Combat Pollution of the Sea by Oil and other Noxious and Hazardous Substances (the National Plan).

The Protection of the Sea Levy (PSL) administered by Australian Maritime Safety Authority (AMSA), currently funds the operations and management of the National Plan. The current level of National Plan funding is set at 3.3 cents per ton of a ship’s tonnage and pays for the equipment, training and contracted services designed to optimise preparedness for and the response to any ship-sourced oil or chemical pollution incident in Australia.

The remaining 2.7 cents available within the current cap is intended to allow the Government to recover its costs following any oil or chemical spill when such costs can not be fully recovered from the polluter. In light of recent overseas experiences in dealing with major oil spills (for example the Prestige and the Erika) or chemical spills (for example the Ievoli Sun), which have seen very high costs of clean up and response, and in the time before the outstanding international liability Conventions come into effect that will provide much improved compensation cover for incidents in Australia, the 2.7 cents buffer is not likely to be adequate to recover costs that the Government may have to meet should a major incident (especially one involving persistent chemicals) occur.

Australian, State and Northern Territory Government transport ministers on the Australian Transport Council (ATC) in June 2005 agreed in-principle to the introduction of a national approach to maritime emergency towage around the Australian coastline to minimise the risks of ship-sourced marine pollution.

ATC has agreed that funding for the national system, if it proceeds, be on the basis of full cost recovery from the shipping industry via a single national Levy, and the PSL has been identified as the most appropriate vehicle for this purpose.
It is not possible to quantify with any accuracy, in advance of market testing via contestable tendering processes, the costs of the proposed national emergency towage system together with ongoing management costs. It is therefore inappropriate to impose an upper limit on the PSL.

If such a limit were set too low, it would need to be revisited by the Parliament before an adequate programme could be put in place.

Alternatively, if an upper limit is set for the PSL, it would need to be high (an upper-estimate) so as to avoid a situation where AMSA under-recovers and is unable to fulfil all of its functions. However, setting a high limit would raise unnecessary industry concerns about possible future levy changes.

It is therefore proposed that the levy cap be removed so as to provide adequate funding for the two pollution prevention and combat programs.

This approach will also bring the PSL into line with other AMSA levies, which raise funds for ship regulatory and aids to navigation purposes, and which do not have caps.

The actual rate of the PSL will be set by Regulation, which is subject to review and disallowance by Parliament. AMSA follows a policy of consulting regularly and extensively with industry on its levy arrangements. Since AMSA was established, and in particular since 1996, AMSA’s levy impost on industry has consistently trended downwards due to efficiency and management improvements. AMSA has its next formal independent review of its levies scheduled for 2007, consistent with the Commonwealth Guidelines for Cost Recovery by Information and Regulatory Agencies.

Under policies implemented by the Government since the PSL legislation was implemented in the early 1970s, the PSL has been closely targeted for specific ship-sourced pollution prevention and response purposes. Under section 48 of the *Australian Maritime Safety Authority Act 1990*, all revenues raised from the PSL must be appropriated to AMSA. This legislation will ensure that the impost on industry will not be used for other purposes.

The annual reporting requirements of AMSA’s ongoing operations and finances will also be open to public scrutiny through the Commonwealth Parliament and this will act as a further safeguard against any possibility of over recovering through any new PSL rate.

**FINANCIAL IMPACT STATEMENT**

There is no financial impact. The amendment does not alter the current rate of levy, which is set at 3.3 cents per ton.
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NOTES ON CLAUSES

Clause 1: Short title

This clause is a formal provision that provides for the Bill, when enacted, to be cited as the Protection of the Sea (Shipping Levy) Amendment Act 2005.

Clause 2: Commencement

Clause 2 provides for the commencement of the provisions of the Bill.

This clause provides that the Act commences on the day after the proposed Act receives Royal Assent.

Clause 3: Schedule(s)

By virtue of this clause, the provisions of the Act specified in the Schedule are amended or repealed as set out in the Schedule and other items in the Schedule have effect according to their terms.
**Schedule 1- Amendment to the Protection of the Sea (Shipping Levy) Act 1981.**

This Schedule provides for the imposition of a quarterly Protection of the Sea Levy (PSL) on ships visiting Australian ports which are of 24 metres or more in tonnage length and carrying ten tonnes or more oil in bulk on board.

Section 6 of the Act provides that the rate of the PSL applicable at any time is subject to a maximum level which is currently set at six cents per ton, where the word ‘ton’ is one unit of the net tonnage of the ship. This Section also provides that the actual rate of the levy at any period is that rate which is prescribed by, and in accordance with, the regulations for that quarter.

The Act, through Section 9, allows the Governor-General to make any regulation for the purposes of Sections 6. This schedule has a single item.

**Item 1: Section 6**

Item 1 of Schedule 1 replaces the words “being a rate not exceeding 6 cents per ton of the tonnage of a ship” from Section 6 of the Shipping Levy Act with the words “per ton of the tonnage of the ship”.

The effect of this amendment is to remove the legislated provision of an upper limit on the levy, allowing an appropriate rate to be prescribed through the Protection of the Sea (Shipping Levy) Regulations as necessary. This amendment will make the provisions of the Act consistent with other legislation on shipping levies administered by AMSA. While the situation applying to other Government levy legislation is not uniform, there is no cap on a range of other levy legislation including the Fisheries Levy Act 1984, Fishing Levy Act 1991, Stevedoring Industry Levy Act 1997, Foreign Fishing Boats Levy Act 1981, Foreign Fishing Licences Levy Act 1991.

The purpose of the amendment is to enable the Australian Government to have timely access to required levy revenue through an appropriate rate of levy, which can be expeditiously imposed through the regulations, thereby removing the need for any subsequent amendments to the Act if any existing limit is found to be inadequate for the intended purpose. The regulations are themselves subject to Parliamentary scrutiny.