

## NATIONAL INTEREST ANALYSIS

### Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims 1976 (LLMC Protocol)

#### Executive Summary

1. As an island nation dependent on shipping for the majority of its exports and imports New Zealand has a strong interest in the effective regulation of international and domestic shipping in its waters.
2. New Zealand is a signatory to the International Maritime Organization's *Convention on Limitation of Liability for Maritime Claims 1976* (LLMC Convention) which was adopted at Brussels on 19 November 1976 and came into force on 1 December 1986.
3. The LLMC Convention established a uniform regime for the limitation of liability for general maritime claims against shipowners and salvors, such as claims for personal injury, death and property damage. The LLMC Convention introduced a sliding scale for the calculation of a shipowners' limitation based on the tonnage of the ship. Since the LLMC Convention came into force the value of the limitation amount has been eroded by inflation.
4. The *Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims 1976* (LLMC Protocol) substantially raises the liability limit of shipowners and salvors. The LLMC Protocol also introduces the 'tacit acceptance' procedure to speed up the process whereby the International Maritime Organization (IMO) can raise the liability limits in the future.
5. As a signatory to the LLMC Convention, New Zealand has accepted the principle that a shipowner may limit their liability in the event of claims against them for loss of life, injury, and loss or damage to goods. The LLMC Protocol has been in force since May 2004. By not being party to the LLMC Protocol, New Zealand is out of step with the globally accepted higher liability limits in the LLMC Protocol. This puts claimants in the New Zealand jurisdiction at a disadvantage in an action against a shipowner.

#### Nature and timing of proposed treaty action

6. The *Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims 1976* was adopted on 2 May 1996 and came into force internationally on 13 May 2004.
7. It is proposed that New Zealand accedes to the LLMC Protocol by an Instrument of Accession deposited with the IMO following consideration of the Convention and implementing its requirements in domestic law.
8. The government wishes to introduce legislation (through amendments to the Maritime Transport Act 1994) into Parliament in 2009 to permit compliance with the provisions of the LLMC Protocol. If this legislation is passed, New Zealand could complete binding treaty action in 2010. The LLMC Protocol would enter into force in respect of New Zealand ninety days after the deposit of an Instrument of Accession.

## **Reasons for New Zealand to become party to the Protocol**

9. As an island nation dependent on shipping for the majority of its exports and imports, New Zealand has a strong interest in the effective regulation of international and domestic shipping in its waters. New Zealand has demonstrated its commitment to being a good international citizen by becoming party to a number of international maritime conventions and protocols that promote maritime safety and good environmental practice.
10. New Zealand is already a signatory to the *Convention on Limitation of Liability for Maritime Claims 1976* (LLMC Convention) which was adopted at Brussels on 19 November 1976 and came into force on 1 December 1986.
11. The LLMC Convention established a uniform regime for the limitation of liability for general maritime claims against shipowners and salvors such as claims for personal injury, death and property damage. The Convention excludes damage that is covered by other maritime compensation regimes. It is generally considered that the existing limits of liability are too low and, as a result, there is a risk that if the current limits are not up-dated, victims of maritime damage will not be adequately compensated.
12. The LLMC Protocol substantially increases the amount of compensation payable under the Convention and also introduces a 'tacit acceptance' procedure for updating these amounts. The 'tacit acceptance' procedure deems that an amendment to the amounts of limitation shall come into force automatically unless more than one-fourth of the States that are Contracting States make their objection known to the Secretary-General of the IMO.
13. Incorporating the LLMC Protocol into New Zealand law would assist economic development by creating certainty for business across different jurisdictions, reducing barriers to trade and facilitating international commerce. It would also provide claimants with compensation for loss or damage that more accurately reflects the scale of their losses.
14. As a party to the LLMC Convention, not acceding to the LLMC Protocol has the potential to put claimants in the New Zealand jurisdiction at a disadvantage with regards to the amounts of compensation they may be entitled to in a successful action for loss or damage against a shipowner.
15. There are twenty-eight parties to the LLMC Protocol including: Australia, Belgium, Denmark, Finland, France, Germany, the Russian Federation, Spain, Sweden and the United Kingdom.

## **Advantages and disadvantages to New Zealand of the Protocol entering into force and not entering into force for New Zealand**

### *Advantages of treaty action*

16. The LLMC Protocol ensures that successful claimants for loss or damage against a shipowner or salvor obtain a higher level of compensation than under the LLMC Convention. The calculation of a shipowner or salvor's liability is based on the tonnage of the ship. The larger the ship the higher the liability. The higher liability levels will help to restore compensation amounts whose value had been eroded by inflation.
17. As an island nation dependent on shipping for the majority of its exports and imports, New Zealand has a strong interest in the effective regulation of international and domestic shipping in its waters. The country is presently demonstrating this commitment as an elected member of the IMO Council. As a member of the IMO Council, acceding to the

LLMC Protocol presents an opportunity to demonstrate leadership to other IMO member states at little cost to the government, New Zealand businesses or taxpayers. Any delay in acceding or a failure to do so would put New Zealand out of step with many other likeminded states. It may also appear to be inconsistent with the country's leadership position in the international maritime community.

18. New Zealand is a trading nation that imports and exports large quantities of goods by sea. New Zealand obtains economic benefits from the universal rule of law established by international maritime conventions and protocols. These international rules promote commerce and trade by standardising regulations and requirements of ships in most ports they visit.

*Disadvantages of treaty action*

19. Raising the liability limits of shipowners has no apparent disadvantages to New Zealand. The LLMC Protocol involves little cost to the government or affected parties. The LLMC Protocol, like the LLMC Convention, will only impact on litigants in a very narrow scope of maritime claims and on Protection and Indemnity clubs (P&I) that provide insurance cover to shipowners and salvors.

*Disadvantages of not taking treaty action*

20. New Zealand is a member of the Council of the IMO and as such needs to demonstrate leadership if it is to play a meaningful role in influencing other states to become party to this and other conventions. New Zealand's influence in ensuring IMO member states become party to international maritime conventions will be reduced if it is seen not to be taking treaty action itself.
21. The LLMC Protocol amends a convention which New Zealand has already ratified. The LLMC Protocol imposes no onerous obligations on the government or affected parties.

**Legal obligations that would be imposed on New Zealand by the treaty action**

22. Accession to the LLMC Protocol would require New Zealand to impose the higher liability limits as prescribed in Articles 3 and 4 below.

**LLMC Protocol Article 3: Liability limits**

	<b>Article 3 claims for loss of life or personal injury</b>	<b>In respect of any other claims</b>
For a ship with a tonnage not exceeding 2,000 tons	2 million Units of Account <sup>1</sup>	1 million Units of Account
For each ton from 2,001 to 30,000 tons	Additional 800 Units of Account;	Additional 400 Units of Account
For each ton from 30,001 to 70,000 tons	Additional 600 Units of Account	Additional 300 Units of Account
For each ton in excess of 70,000 tons	Additional 400 Units of Account	Additional 200 Units of Account

23. Article 4 claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship determine that the limit of liability of the shipowner shall be:

---

<sup>1</sup> The unit of account used is the Special Drawing Right (SDR) 1 SDR equates to approximately NZ\$ 2.09 as at April 2008.

- an amount of 175,000 Units of Account multiplied by the number of passengers that the ship is authorised to carry.
24. This means that a New Zealand court hearing a claim involving the limitation of liability of a shipowner or salvor would be bound to apply the provisions of the LLMC Protocol.
  25. New Zealand would be bound to accept amendments to the LLMC Protocol under the 'tacit acceptance' procedure. This procedure brings amendments to the limits of liability into force automatically unless more than one-fourth of the States that are Contracting States make their objection known to the Secretary General of the IMO.

#### *Reservations*

26. Article 7 of the LLMC Protocol allows any State at the time of signature ratification acceptance, approval or accession to reserve the right to exclude the application of the Protocol to:
  - claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;
  - claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;
  - claims for damage within the meaning of the *International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996* or of any amendment or protocol to the convention.
27. New Zealand is not planning to make a reservation.
28. There is no dispute resolution mechanism in the LLMC Protocol or the LLMC Convention which it amends.

#### **Measures which the Government could or should adopt to implement the treaty action**

29. There are no operational or administrative requirements to implement the treaty action. The only measure required is legislative amendment.
30. The obligations in the LLMC Protocol that require legislative implementation are the new liability limits that are set out in Articles 3 and 4 of the LLMC Protocol. These new limits will be put in place through amendments to the current limits which are contained in Part VII of the Maritime Transport Act 1994. These amendments will be contained in a Maritime Transport Amendment Bill, which is priority 5 in the 2008 Legislation Programme.
31. There will be suitable publicity when the obligations of the LLMC Protocol come into force through the Maritime Transport Amendment Bill. No additional notification process is required.
32. The only impact on existing regulation that this proposal makes is the replacement of the current liability limits with the new limits set under the Protocol.
33. No enforcement mechanisms are necessary to ensure the implementation of the LLMC Protocol as the new liability limits will simply apply from the date of enactment and will only be used when a successful compensation claim is made.

## **Economic, social, cultural and environmental costs and effects of the treaty action**

### *Environmental, social and cultural effects*

34. No discernable economic, social or cultural costs or effects are expected as a result of acceding to the Protocol.

### *Economic effects*

35. The LLMC Protocol is not expected to have any impact on the economy as it imposes no financial burdens on the government or any of the affected parties. A shipowner or salvor involved in a claim involving the higher amounts of liability, as prescribed in the LLMC Protocol, would be covered for these amounts by their P&I club. The amount of liability as prescribed in the LLMC Protocol is unlikely to exceed the coverage already provided to a shipowner or salvor by their P&I club.
36. The LLMC Protocol will have a minimal effect on the shipping industry. Successful claimants against those entitled to limit their liability will be awarded compensation at the higher levels specified in the LLMC Protocol.

## **The costs to New Zealand of compliance with the Treaty**

37. The LLMC Protocol would not impose any additional costs on the government. There are no provisions in the LLMC Protocol that would require contributions to international organisations, nor would any new domestic agency be required as a result of acceding to the Protocol.
38. There are not likely to be any additional costs imposed on shipowners or those entitled to limit their liability. Liability insurance is provided by P&I clubs to which shipowners already contribute. The increased limit of liability in the LLMC Protocol is unlikely to exceed the coverage already provided by the P&I clubs.
39. There are unlikely to be any financial risks to becoming party to the LLMC Protocol. There are no compliance or administration costs associated with accession to the LLMC Protocol.

## **Consultation with the community and parties interested in the treaty action**

### *Sector stakeholders*

40. Consultation with stakeholders was in the form of a discussion document *Four International Maritime Environmental Conventions/Protocols* released in November 2007. Hard copies of the discussion document were sent to interested parties, an electronic copy is available on the Ministry of Transport's website. All of the submissions received on the LLMC Protocol supported New Zealand becoming party to it.

### *Government departments*

41. The following Government agencies were consulted: the Ministry for the Environment, the Ministry of Economic Development, the Ministry of Fisheries, the Ministry of Agriculture and Forestry, Treasury, New Zealand Customs Service, the Ministry of Civil Defence and Emergency Management, the Department of Internal Affairs, the Ministry of Justice, the New Zealand Defence Force, the Ministry of Defence, the Department of Conservation, the Department of Labour, the Ministry of Foreign Affairs and Trade, Te Puni Kōkiri, the Environmental Risk Management Agency, Maritime New Zealand, and the New Zealand Fire Service. The Department of Prime Minister and Cabinet was informed.

### *Identify Maori concerns*

42. No Maori concerns have been identified concerning the Protocol.

### **Subsequent protocols and/or amendments to the treaty and their likely effects**

43. The IMO may convene a conference for revising or amending the LLMC Protocol at the request of not less than one-third of the Contracting Parties.
44. Article 8 of the LLMC Protocol sets out the process for amending the amounts of liability. At the request of at least one-half of the State Parties to the LLMC Protocol a proposal to amend the limits shall be circulated to all members of the IMO and all Contracting States. Amendments are adopted by agreement of a two-thirds majority of the Contracting States to the Convention.
45. The 'tacit acceptance' procedure deems that an amendment to the LLMC Protocol shall come into force automatically unless more than one-fourth of the States that are Contracting States make their objection known to the Secretary General of the IMO (Article 8.7). Such amendments may only be made after five years have passed since any previous amendment. Amendments may not increase the level of liability by more than six percent per year on a compound basis (Article 8.6).
46. Substantive amendments beyond setting the levels of liability would be subject to the usual domestic approval process and made on a case-by-case basis.
47. The only likely amendment to the LLMC Protocol in the future would be an increase in the level of liability. No other amendments to the LLMC Protocol are anticipated.

### **Withdrawal or denunciation provision in the treaty**

48. Article 19 of the Convention provides that the Convention may be denounced by a Party to the Convention at any time after one year from the date on which the Convention entered into force for that Party. Denunciation would be effective on the first day of the month following the expiration of one year after the date of deposit of the instrument of denunciation, or on such later date, if any, as is specified in the instrument.
49. Any decision to withdraw from the Protocol would be made on a case-by-case basis and subject to the usual domestic approval processes.

### **Adequacy Statement**

50. The Ministry of Transport confirms this National Interest Analysis is adequate and that the principles of the Code of Good Regulatory Practice and the regulatory impact analysis requirements have been met.