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## **POLLUTION FINES IN AUSTRALIA INCREASE**



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 2020, a majority of States (and the Northern Territory) have increased their penalty unit value in accordance with their annual CPI indexation adjustments. The Commonwealth has also completed its three year increase of the applicable penalty unit in accordance with the Consumer Price Index.

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 an oil spill in Commonwealth waters has increased to AUS\$4.44 million for a Master and AUS\$22.2 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.

The risks are not limited to oil or bunker spills. At the time of writing the Master of a container ship that lost a large number of containers overboard off the NSW Coast last week has been charged with the following Commonwealth offences:

- Section 26F of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* – Discharging of garbage into the sea contrary to the Act – Maximum penalty of A\$440,000; and
- Section 141 of the *Navigation Act 2012* – Master did not ensure that the vessel was operated in a manner that did not cause pollution to the marine environment and damage to the marine environment – Maximum penalty of AUS\$1,320,000.

The HWL Ebsworth marine team has a wealth of knowledge in this area having handled some of the largest pollution prosecutions in Australia and is on hand to assist in every State and Territory of Australia.