

**INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR
BUNKER OIL POLLUTION DAMAGE, 2001**

[2002] ATNIF 25

Documents tabled on 28 March 2006:

National Interest Analysis [2006] ATNIA 9

with attachment on consultation

Text of the proposed treaty action

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NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 [2002] ATNIF 25

Nature and timing of proposed treaty action

1 The proposed treaty action is ratification of the *International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 [2002] ATNIF 25* (the Bunkers Convention) in accordance with Article 12(3) of the Convention. The Bunkers Convention was adopted by the International Maritime Organization (IMO) on 23 March 2001 and signed by Australia, subject to ratification, on 23 September 2002 (Article 12(1)).

2 The treaty action will take place on the date on which Australia ratifies the Bunkers Convention. This will occur once implementing legislation has been passed by both Houses of Parliament. The Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Bill will give effect to Australia's obligations under the Bunkers Convention and is expected to be introduced into Parliament in 2006.

3 The Bunkers Convention is currently not in force generally. It will enter into force one year after 18 States become Parties, including five States each with ships whose combined gross tonnage is not less than one million (Article 14). As at 31 December 2005, nine States are party to it.

Overview and national interest summary

4. The Bunkers Convention establishes a liability and compensation regime for pollution damage¹ caused by spills of bunker oil² from ships in the territory and exclusive economic zone of a State. In accordance with the Bunkers Convention:

- the shipowner³ is strictly liable for pollution damage caused by bunker oil on board or originating from the ship (Article 3);
- the shipowner is able to limit liability under any applicable national or international regime (Article 6);
- the registered owners of ships having a gross tonnage greater than 1,000 are required to maintain insurance to cover their liabilities (Article 7(1)); and
- claims for compensation for pollution damage may be brought directly against the insurer (Article 7(10)).

¹ "Pollution damage" is defined in Article 1(9) to include loss or damage resulting from the escape or discharge of bunker oil from the ship and the costs of preventative measures taken after an incident to prevent or minimise pollution damage.

² "Bunker oil" is defined in Article 1(5) to mean any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil.

³ "Shipowner" is defined in Article 1(3) to mean the owner, including the registered owner, bareboat charterer, manager and operator of the ship.

5. Implementation of the Bunkers Convention in Australia will ensure that compensation for pollution damage is available in case of any spills of bunker oil in Australia in accordance with internationally agreed procedures.

Reasons for Australia to take the proposed treaty action

6. The only existing comprehensive convention covering oil spills applies only to oil spills, including bunker oil spills, from oil tankers. The *International Convention on Civil Liability for Oil Pollution Damage, 1992* (the Civil Liability Convention) provides that owners of oil tankers are strictly liable for oil pollution damage and creates a system of compulsory liability insurance. The Civil Liability Convention is implemented by the *Protection of the Sea (Civil Liability) Act 1981* (Cth) (the Civil Liability Act). If Australia becomes party to the Bunkers Convention, it will provide an example and may encourage others to join. Wide membership of the Convention increases the likelihood that if oil spills occur in Australian waters, there will be a liability and compensation regime in place.

7. Recent international data, supported by experience in Australia, shows that, in the ten year period from 1995/96 to 2004/05, 93 per cent of incidents requiring some type of response action (where the ship type responsible was identified) originated from ships other than oil tankers.

8. The lack of a comprehensive liability and compensation regime makes it more difficult for a State to deal with bunker oil spills from ships that are not oil tankers. Some bulk carriers and container ships carry more oil as bunker oil than smaller coastal tankers carry as cargo. Bunker oils carried by large commercial ships are heavy fuel oils which are highly persistent and viscous. They can potentially travel great distances as a result of wind and the action of currents and cause widespread contamination. Heavy fuel oils are generally not amenable to many of the clean-up techniques used for oils that float. The clean up of heavy fuel oil spills can extend over both large areas and time periods and be extremely costly.

9. Of the 300 oil spill sighting reports received on average each year by the Australian Maritime Safety Authority (AMSA), an average of 37 are serious enough to warrant some type of response activity. All ships involved in past major spills in Australian waters have been insured and all costs of the oil spill response have been reimbursed. However, this has not always been the experience in international incidents. Implementation of the Bunkers Convention will ensure that clean up and response costs are recoverable from the shipowner without difficulty where flag States are Parties to the Convention.

Obligations

10. A shipowner at the time of an incident will be strictly liable for pollution damage caused by any bunker oil on board or originating from the ship (Article 3(1)). The shipowner will not be liable if the damage was caused intentionally by a third party or as a result of war or natural phenomena or by the negligence of government authorities responsible for the maintenance of marine navigational aids. (Article 3(3)).

11. The Bunkers Convention does not apply to pollution as defined in the Civil Liability Convention (Article 4(1)). The effect of this exclusion is that the Bunkers Convention

does not apply to spills of oil, including bunker oil, from oil tankers. It also does not apply to warships, naval auxiliary or other ships owned or operated by the State and in use for Government non-commercial service (Article 4(2)). The State must waive all defences based on sovereignty for ships owned by the State and in use for a commercial purpose (Article 4(4)).

12. Shipowners and insurers are able to limit their liability for pollution damage resulting from bunker oil under any applicable national or international regime (Article 6). In Australia, the *Convention on Limitation of Liability for Maritime Claims, 1976* (LLMC Convention), as amended, will apply. The LLMC Convention is implemented by the *Limitation of Liability for Maritime Claims Act 1989* (Cth). The liability limits set out in the LLMC Convention are as follows:

- one million Special Drawing Rights (SDR)⁴ for a ship with a gross tonnage not exceeding 2,000;
- for a ship with a gross tonnage in excess of 2,000, the following additional amount:
 - for each ton from 2,001 to 30,000 tons, 400 SDR;
 - for each ton from 30,001 to 70,000 tons, 300 SDR; and
 - for each ton in excess of 70,000 tons, 200 SDR.

For example, the maximum liability for a typical ship with gross tonnage of 40,000 is 15,200,000 SDR which is approximately \$30 million.

13. There is a requirement for the registered owners of ships with a gross tonnage in excess of 1,000 to maintain insurance or other financial security to cover liabilities under the applicable national or international regime (Article 7(1)). Once a State Party is satisfied that a ship registered in that State has complied with insurance requirements, the State is required to issue a certificate to the ship attesting that appropriate insurance is in force (Article 7(2)). A State Party may also issue a certificate to any ship registered in a State that is not a Party to the Bunkers Convention.

14. Ships are required to carry the insurance certificate (Article 7(5)), and certificates issued by a State Party shall be accepted by other State Parties (Article 7(9)). The requirement for ships to carry insurance certificates applies to all ships at ports and offshore terminals of States Parties, not just to those ships registered in States that are Parties to the Bunkers Convention (Article 7(12)).

15. Claims for compensation for pollution damage may be brought directly against the insurer or other person providing financial security (Article 7(10)). If there is a bunker oil spill, the requirement for ships to carry insurance certificates will facilitate claims for compensation by making it easier to determine who the insurer is.

16. A State Party must not permit a ship registered in that State and which is required to be insured for purposes of the Bunkers Convention to operate at any time unless an insurance certificate has been issued to the ship (Article 7(11)). A State Party must ensure that all ships, with a gross tonnage over 1,000, do not enter or leave a port in its territory or arrive at or leave an offshore terminal in its territorial sea if the ships are not insured (Article 7(12)). The implementing legislation will make it an offence for a ship to enter or leave a port in Australian territory or arrive at or leave an offshore terminal in Australia's

⁴ The Special Drawing Right (SDR) is a unit of account defined by the International Monetary Fund. The value of the SDR varies from day to day in accordance with changes in currency values. As at 13 March 2006, one SDR was worth approximately \$A1.95.

territorial sea without an insurance certificate on board. There will be a power to detain ships which enter a port or arrive at an offshore terminal without an insurance certificate and such detention may be continued until such ships have a certificate.

17. Each State Party is required to ensure that its courts have jurisdiction to consider actions for compensation under the Bunkers Convention (Article 9) and that it is able to recognise and enforce "relevant judgments"(or "orders for compensation") made by the courts of other States Parties.

Implementation

18. The Bunkers Convention will be implemented by a proposed Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Bill which is expected to be introduced into Parliament in 2006.

Costs

19. The costs of enforcement for the Australian Government of the Bunkers Convention will be low as established inspection and certification procedures applied pursuant to other IMO environmental conventions, such as the Civil Liability Convention, are already in place. The Australian Customs Service is responsible for verifying that ships are carrying relevant certificates. The existing checks will be extended to cover the insurance certificate. AMSA marine surveyors conduct "port State control" inspections of about 70 per cent of foreign ships visiting Australian ports. These inspections include checking that all required certificates are on board the ship. In both cases, this will be an insignificant addition to the existing checks.

20. The impact on shipowners of adopting the Bunkers Convention will be negligible. Ships entering Australian ports are already required by Part IIIA of the Civil Liability Act to be insured to cover "the liability of the owner for pollution damage caused in Australia". There will be no additional requirements imposed on State or Northern Territory authorities.

Regulation Impact Statement

21. A Regulation Impact Statement is attached.

Future treaty action

22. IMO may convene a conference for the purpose of revising or amending the Convention. Such a conference must be convened if there is a request by at least one-third of the States Parties to the Convention (Article 16).

23. The liability limits for the Bunkers Convention, which are set out in the LLMC Convention, would be increased if there are amendments to the limits in the LLMC Convention. The LLMC Convention has a "tacit acceptance" procedure for updating liability limits. In brief, amendments to the limits previously circulated by IMO and adopted by a meeting of the Legal Committee of IMO will be deemed to be accepted 18 months after being notified to all States Parties, unless one quarter of those States

advise that they do not accept the amendments. The amendments will come into force 18 months after they have been deemed to have been accepted.

24. There are no provisions of the Bunkers Convention dealing with reservations and the only provision dealing with declarations is Article 7(15). A State may, at the time of becoming a Party to the Bunkers Convention, or at any time thereafter, declare that Article 7 (which includes the requirements for compulsory insurance) does not apply to ships operating in its territory, including its territorial sea. As Australia supports compulsory insurance for ships operating in its territory, it is not proposed that Australia make a declaration under Article 7(15). The State must also notify the Secretary-General of IMO if it decides to apply the Bunkers Convention to warships, naval auxiliary or State owned or operated ships used for non-commercial service. (Article 4(3))

25. Any amendments to the Bunkers Convention would be subject to the Australian treaty process including tabling and consideration by the Joint Standing Committee on Treaties.

Withdrawal or denunciation

26. Australia can denounce the Convention at any time after the date on which it comes into force for Australia. Such denunciation would take effect one year after the deposit of the instrument of denunciation, or on a later date, if any, specified in the instrument of denunciation (Article 15). Denunciation for Australia would also be subject to the domestic treaty process.

Contact details

Maritime Safety and Environment Section
Maritime and Land Transport Division
Department of Transport and Regional Services

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[2002] ATNIF 25**

CONSULTATION

The International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 was developed by the Legal Committee of the International Maritime Organization (IMO) from 1995 to 2000. The final text of the Convention was adopted by the International Conference on Liability and Compensation for Bunker Oil Pollution Damage held in London in March 2001. Australia was represented at all meetings of the Legal Committee and the 2001 Conference. Consultation with stakeholders was undertaken at various stages:

- Stage 1 – developing proposals for a new convention and preparing detailed technical briefing for the Australian delegation attending each of the Legal Committee sessions as the text of the Convention was being developed;
- Stage 2 - preparing briefing on the final draft text for the Australian delegation attending the Diplomatic Conference; and
- Stage 3 - after the Convention was adopted, seeking the views of stakeholders on possible Australian adoption.

The following table provides information on these consultations. (Note: This lists only Australian domestic stakeholders, there were also extensive consultations undertaken with other IMO Member States and Non-Government Organisations)

Organisation or Company	Timing	Form	Contributions	Feedback incorporated
Attorney-General's Department (Office of International Law)	Stage 1 – 1996, 1997, 1998, 1999 Stage 2 – 2000, 2001	Written correspondence Written correspondence regarding Diplomatic Conference	Comments on legal principles and draft text Comments on individual provisions	<i>Stage 1</i> - Briefing for Legal Committee sessions, also Australian documents submitted to Legal Committee. <i>Stage 2</i> – Briefing for 2001 IMO Diplomatic Conference
BHP Transport	Stage 1 - 1997	Written correspondence	Technical comments provided	
Maritime Law Association of Australia and New Zealand	Stage 1 - 1996	Presentation to meeting, written correspondence seeking comments on draft text	Technical comments provided	

Organisation or Company	Timing	Form	Contributions	Feedback incorporated
Middletons, Moore and Bevins (Maritime Law firm, Melbourne)	Stage 1 - 1996	Written correspondence seeking advice re application of LLMC Convention	Technical comments provided	Australian documents submitted to Legal Committee
Australian Chamber of Shipping (now "Shipping Australia")	Stage 1 – 1995, 1999	Written correspondence seeking comments on draft text	Support development of Convention, provided comments on text	
	Stage 2 – 2001	Written correspondence regarding Diplomatic Conference	No comments	
	Stage 3 - 2001	Written correspondence	No objection to Australian adoption	
Mallesons Stephen Jaques (Maritime Law firm, Melbourne)	Stage 1 - 1996	Written correspondence seeking comments on draft text	Support development of Convention, provided comments on text.	
Australian Shipowners Association	Stage 1 – 1995, 1998, 1999	Written correspondence seeking comments on draft text	Support development of Convention, provided comments on text	
	Stage 2 – 2001	Written correspondence regarding Diplomatic Conference	No comments	
	Stage 3 - 2001	Written correspondence	No objection to Australian adoption	

Organisation or Company	Timing	Form	Contributions	Feedback incorporated
Minerals Council of Australia	Stage 1 - 1995	Written correspondence seeking comments on draft text	Support development of Convention, provided comments on text	
Bulk Commodities Group	Stage 1 - 1995	Written correspondence seeking comments on draft text	Support development of Convention, provided comments on text	
Ebsworth and Ebsworth (Maritime Law firm, Sydney)	Stage 1 - 1995	Written correspondence seeking advice re application of LLMC Convention	Technical comments provided	
Association of Australian Ports and Marine Authorities	Stage 1- 1998, 1999 Stage 2 - 2001 Stage 3 - 2001	Written correspondence seeking comments on draft text Written correspondence regarding Diplomatic Conference Written correspondence	Support development of Convention No comment Support Australian adoption	
Howard Smith Towage (United Salvage)	Stage 1 - 1998 State 2 - 2000, 2001	Written correspondence providing information on proposal Written correspondence regarding Diplomatic Conference	No response Support	

Organisation or Company	Timing	Form	Contributions	Feedback incorporated
Bulk Liquid Industry Association	Stage 1 - 1998	Verbal communication	Nil concerns	
Insurance Council of Australia	Stage 1 - 1998	Verbal communication	Nil concerns	
Ausship P&I	Stage 1 - 1998, 1999 Stage 2 - 2001	Verbal communication Written correspondence regarding Diplomatic Conference	Nil concerns No comment	
International Union of Marine Insurance (Australian representative – Michael Hill – Melbourne Solicitor)	Stage 1 - 1998	Verbal communication	Nil concerns	
Environment Australia	Stage 1 - 1998	Written correspondence	Support	Included in “Oceans Policy”
Blake Dawson Waldron (Canberra)	Stage 2 - 2001	Written correspondence regarding Diplomatic Conference	No comment	
Transport Mutual Services	Stage 2 - 2001	Written correspondence regarding Diplomatic Conference	No comment	
Middleton (Maritime Law firm – Melbourne)	Stage 2 - 2001	Written correspondence regarding Diplomatic Conference	No comment	
Commonwealth Ministers	Stage 2 - 2001	Letter to relevant Ministers advising of Diplomatic Conference	N/A	

Organisation or Company	Timing	Form	Contributions	Feedback incorporated
State/NT Transport Ministers	Stage 2 - 2001	Letter to Ministers advising of Diplomatic Conference	N/A	
Australian Maritime Group (Commonwealth/States/NT)	Stage 3 - 2001	Paper seeking support for Australian adoption	Agreed	
Standing Committee on Transport (Commonwealth/States/NT)	Stage 3 - 2001	Paper seeking support for Australian adoption	Agreed	
Australian Transport Council (Commonwealth/States/NT)	Stage 3 - 2001	Paper seeking support for Australian adoption	Agreed	

BACKGROUND INFORMATION: CURRENT STATUS LIST

INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE, 2001

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As at 28 February 2006, the following nine States were Party to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001:

- Cyprus
- Greece
- Jamaica
- Latvia
- Luxembourg
- Samoa
- Slovenia
- Spain
- Tonga