

International Convention on Civil Liability for Bunker Oil Pollution Damage

Introduction

- 5.1 The *International Convention on Civil Liability for Bunker Oil Pollution Damage* (the Bunkers Convention) establishes a liability and compensation regime for pollution damage caused by spills of bunker oil.¹ Bunker oil means any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of a ship.²

Background

- 5.2 The Bunkers Convention is different from the *Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage* (discussed in Chapter 4 of this Report) as that Protocol applies only to spills from oil tankers. At

1 National Interest Analysis (NIA), para. 4. '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 Article 1(5) of the Bunkers Convention

present, there is no international agreement relating to spills from ships that are not oil tankers.³

- 5.3 Representatives from the Department of Transport and Regional Services informed the Committee of the difference between the two agreements:

The Supplementary Fund Protocol ... and the two existing conventions, the 1992 civil liability convention and the 1992 fund convention, relate to spills from oil tankers. The bunkers convention relates to oil spilled from ships that carry oil as a means of propulsion not as a cargo. So the bunkers convention is quite different in scope to this one.⁴

The Bunkers Convention

- 5.4 At present in Australia, liability for pollution damage caused by a bunker oil spill is based on the fault of the shipowner:

If the shipowner is not at fault, the shipowner is not obliged to pay any compensation. If the shipowner is found to be at fault, the shipowner's liability is limited by an existing convention: the Convention on Limitation of Liability for Maritime Claims. As an example, the liability limit of, say, a typical ship with a gross tonnage of 40,000 gross tons is roughly 15 million SDRs, which is roughly \$A30 million.⁵

- 5.5 Under the Bunkers Convention, the shipowner is strictly liable for pollution damage caused by bunker oil on board or originating from the ship.⁶ This includes liability for economic loss, as often the victims of a spill are the fishing and tourism industries.⁷

3 NIA, para. 8.

4 Mr Michael Sutton, *Transcript of Evidence*, 8 May 2006, p. 3.

5 Mr Robert Alchin, *Transcript of Evidence*, 8 May 2006, p. 5. The *Convention on Limitation of Liability for Maritime Claims* is implemented in Australia by the *Limitation of Liability for Maritime Claims Act 1989* (Cth). 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 10 May 2006, one SDR was worth approximately A\$1.92.

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

7 Mr Robert Alchin, *Transcript of Evidence*, 8 May 2006, p. 6.

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- 5.6 Shipowners of ships having a gross tonnage greater than 1,000 are required to maintain insurance to cover their liabilities.⁸ In addition, ships are required to carry insurance certificates, issued by a State Party attesting that the appropriate insurance is in force.⁹ A State Party may also issue a certificate to any ship registered in a State that is not a Party to the Bunkers Convention.¹⁰ A State Party must not allow a ship, with a gross tonnage over 1,000, to operate in its territory if it does not have insurance.¹¹
- 5.7 In Australia, 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 territorial sea without an insurance certificate on board.
- 5.8 Shipowners are able to limit their liability.¹² In Australia, the *Convention on Limitation of Liability for Maritime Claims, 1976*, as implemented by the *Limitation of Liability for Maritime Claims Act 1989* (Cth), sets out the liability limits:¹³
- One million Special Drawing Rights (SDR) 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:
 - ⇒ 400 SDR for each tonne from 2,001 to 30,000 tonnes
 - ⇒ 300 SDR for each tonne from 30,001 to 70,000 tonnes
 - ⇒ 200 SDR for each tonne in excess of 70,000 tonnes.
- 5.9 States Parties to the Bunkers Convention must ensure that courts in their jurisdictions are able to consider actions for compensation under the Bunkers Convention and that they are able to recognise and enforce judgements made by courts of other States Parties under the Bunkers Convention.¹⁴
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8 Article 7(1).

9 Article 7.

10 NIA, para. 13.

11 NIA, para. 16; Article 7(12).

12 Article 6.

13 NIA, para. 12.

14 Article 9; NIA, para. 17.

Regulation Impact Statement

- 5.10 A Regulation Impact Statement (RIS) was prepared for the Bunkers Convention. It notes that the only compensation regime for oil spills is the *International Convention on Civil Liability for Oil Pollution Damage* (the Civil Liability Convention) which only applies to oil spills from oil tankers.
- 5.11 At present, Part IIIA of the *Protection of the Sea (Civil Liability) Act 1981* (Cth) (the Civil Liability Act) requires ships with a gross tonnage of 400 or more entering Australian ports to be insured to cover the liability of the owner for pollution damage caused in Australia.
- 5.12 The RIS recommends developing legislation to enable Australia to ratify the Bunkers Convention while maintaining the current legislation relating to ships with a gross tonnage of 400 or more, with an amendment to ensure there is no duplication of requirements. This option would maintain the existing requirements for proof of insurance as well as keep Australia in step with the requirements of international law.¹⁵

Costs and consultation

- 5.13 There will be minor costs associated with ensuring compliance with the Bunkers Convention, in particular, Australian Customs Service will be responsible for verifying that ships are carrying the relevant certificates. However, similar inspection and certification procedures are already in place so the existing checks will be extended to cover the insurance certificate.¹⁶ Furthermore, ships entering Australian ports are already required by the Civil Liability Act to be insured to cover pollution damage.¹⁷
- 5.14 Consultation was undertaken with stakeholders in three stages: first, during the development of proposals for a new convention and the preparation of technical briefs for the Australian delegation attending the Legal Committee sessions where the text of the Convention was being drafted; second, during the preparation of the brief on the final text for the Australian delegation attending the Diplomatic

15 Regulation Impact Statement (RIS), paras 3.3 and 4.13.

16 NIA, para. 19.

17 NIA, para. 19.

Conference; and third, after the Bunkers Convention was adopted, when determining whether Australia should adopt the Bunkers Convention.¹⁸

- 5.15 Key groups within the shipping industry, including the Australian Shipowners Association, Shipping Australia Limited (which represents overseas shipowners operating in Australia) and the Association of Australian Ports and Marine Authorities all support adoption of the Bunkers Convention.¹⁹

Implementation

- 5.16 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 2006.²⁰

Conclusion and recommendation

- 5.17 The Committee supports the establishment of a liability and compensation regime for oil pollution damage caused by oil spills other than from oil tankers.

Recommendation 4

The Committee supports the *International Convention on Civil Liability for Bunker Oil Pollution Damage* and recommends that binding treaty action be taken.

18 NIA, 'Consultation'. More detailed information on consultation is provided in this section of the NIA.

19 RIS, para. 5.1.

20 NIA, para. 18.

