

### Introduction

Australian shipowners or operators with vessels of more than 1,000 Gross Registered Tons (GRT) should be aware of a new liability regime applying to them as set out in **The International Convention on Civil Liability for Bunker Oil Pollution Damage 2001** [The Convention].

The Convention entered into force in Australia on 16 June 2009 via the **Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008** [The Act].

The Act and the Convention it brings into force, form part of Australia's commitment to the United Nations and its maritime body - The International Maritime Organisation [IMO]. IMO's main task is to develop and maintain a comprehensive regulatory framework for shipping including safety, environmental and legal matters, and maritime security.

[www.imo.org](http://www.imo.org)

### Disclaimer

**This newsletter is for information purposes only and is not legal advice.**

### Why has the Convention been introduced?

The Convention introduces strict liability for loss or damage resulting from the discharge of bunker fuel from ships. Set limits of liability and procedural requirements are established for all qualifying vessels entering Australian ports or offshore facilities.

### To whom/what does the convention apply?

- The Convention only affects defined ships<sup>1</sup> with a gross tonnage greater than 1000 [GRT],
- The ship must carry a relevant certificate when entering or leaving an Australian Port, arriving at or leaving a coastal facility in the coastal sea of Australia or an external territory, or in the waters or the sea within the limits of an Australian State or Territory.
- Ships registered in Australia must also carry the relevant certificate whenever the ship is in operation; however those vessels operating in inland waterways or solely within the limits of a port or harbour are exempt.

### Convention application

The convention applies a strict liability to the shipowner/operator for pollution damage resulting from the escape or discharge of bunker oil (fuel). Strict liability does not apply under certain circumstances:

1. The damage resulted from an act of war (or similar event) or a natural phenomenon of an exceptional, inevitable or irresistible character.
2. The damage is caused wholly by an act or omission done

with the intent to cause damage by a third party.

3. The damage was wholly caused by the negligence or other wrongful act of any Government or authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.
4. The shipowner proves that the pollution damage resulted wholly or partially from an act or omission of the person claiming damage (whether they intended to cause the damage or where negligent).

In addition to strict liability, the convention provides that any claim may be made directly against the insurer.

### Convention enforcement

Application for a Bunkers Certificate can be made to the Australian Maritime Safety Authority (AMSA). Applications require proof of insurance from the ship's Liability Insurer (or other financial security) showing the requisite cover is in force. Vero can assist client shipowners with this process.

Hefty fines and detention penalties may apply where there is non-compliance.

[www.amsa.gov.au](http://www.amsa.gov.au)

<sup>1</sup> The Convention defines "ship" as 'any seagoing vessel and seaborne craft, of any type whatsoever'.

Contact us if you would like additional information.

**The Team at Vero  
Marine and Aviation**