



Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008

No. 76, 2008

**An Act to give effect to the International
Convention on Civil Liability for Bunker Oil
Pollution Damage, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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An Act to give effect to the International Convention on Civil Liability for Bunker Oil Pollution Damage, and for related purposes

[Assented to 12 July 2008]

The Parliament of Australia enacts:

Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008 No. 76, 2008

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Section 1

Part 1—Preliminary

1 Short title

This Act may be cited as the *Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	12 July 2008
2. Sections 3 to 30	<p>The later of:</p> <p>(a) the day on which this Act receives the Royal Assent; and</p> <p>(b) the day on which the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, done at London on 23 March 2001, enters into force for Australia.</p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p> <p>The Minister must announce by notice in the <i>Gazette</i> the day on which the Convention enters into force for Australia.</p>	<p>16 June 2009</p> <p>(see <i>Gazette</i> 2009, No. GN20)</p> <p>(paragraph (b) applies)</p>

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Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Definitions

In this Act:

applied provisions means the provisions of the Bunker Oil Convention mentioned in section 11 as they have the force of law as part of the law of the Commonwealth.

appropriate insurance certificate has the meaning given by section 15.

Australia, when used in a geographical sense, includes the external Territories.

Authority means the Australian Maritime Safety Authority established by the *Australian Maritime Safety Authority Act 1990*.

Bunker Oil Convention means:

- (a) the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, done at London on 23 March 2001; or
- (b) if the Convention has been amended by any amendment that has entered into force for Australia—the Convention as so amended.

Note: In 2008, the text of the Convention was accessible through the Australian Treaties Library on the AustLII Internet site (www.austlii.edu.au).

Civil Liability Convention has the same meaning as in the Bunker Oil Convention.

coastal sea of Australia or an external Territory has the same meaning as in subsection 15B(4) of the *Acts Interpretation Act 1901*.

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domestic voyage ship has the meaning given by subsection 10(3).

enforcement officer means:

- (a) an officer of Customs within the meaning of the *Customs Act 1901*; or
- (b) a surveyor appointed under section 190 of the *Navigation Act 1912*; or
- (c) a person included in a class of persons prescribed by the regulations for the purposes of this paragraph.

exclusive economic zone has the same meaning as in the *Seas and Submerged Lands Act 1973*.

government ship means a ship (including a warship) that is owned or operated by:

- (a) the Commonwealth, a State, a Territory or a foreign country; or
- (b) an authority of the Commonwealth, a State, a Territory or a foreign country.

gross tonnage has the same meaning as in the Bunker Oil Convention.

incident has the same meaning as in the Bunker Oil Convention.

offshore facility has the same meaning as in the Bunker Oil Convention.

person has the same meaning as in the Bunker Oil Convention.

Note: See also sections 28 (partnerships) and 29 (unincorporated associations).

pollution damage has the same meaning as in the Bunker Oil Convention.

preventive measures has the same meaning as in the Bunker Oil Convention.

registered owner has the same meaning as in the Bunker Oil Convention.

Section 4

Secretary-General has the same meaning as in the Bunker Oil Convention.

ship has the same meaning as in the Bunker Oil Convention.

4 Crown to be bound

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

5 Extension to external Territories

This Act extends to every external Territory.

6 Extraterritorial application

Unless the contrary intention appears, this Act extends to acts, omissions, matters and things outside Australia.

Part 2—Liability under Bunker Oil Convention

Division 1—Application of Part

7 Application of Part

Subject to this Division, this Part applies to:

- (a) pollution damage occurring in Australia or the exclusive economic zone of Australia; and
- (b) preventive measures, wherever they are taken, to prevent or minimise pollution damage occurring in Australia or the exclusive economic zone of Australia.

Note: This Part also applies in relation to the coastal sea of Australia and an external Territory: see section 15B of the *Acts Interpretation Act 1901*.

8 Overlap with Civil Liability Convention

This Part does not apply to pollution damage (within the meaning of the Civil Liability Convention), whether or not compensation is payable in respect of the damage under the *Protection of the Sea (Civil Liability) Act 1981*.

9 Government ships

This Part applies in relation to a government ship only if it is being used for commercial purposes.

10 Concurrent State or Territory laws

- (1) This Part does not apply in relation to a domestic voyage ship if a law of a State or a Territory gives effect to Articles 3, 5 and 6, paragraph 10 of Article 7, and Article 8, of the Bunker Oil Convention in relation to the ship.
 - (2) However, subsection (1) does not apply in respect of an incident to which Article 5 of the Bunker Oil Convention applies involving:
 - (a) one or more ships that are domestic voyage ships; and
 - (b) one or more ships that are not domestic voyage ships.
-

Section 10

- (3) A **domestic voyage ship** is a ship that is:
- (a) a trading ship proceeding on a voyage other than an overseas voyage or an inter-State voyage; or
 - (b) an Australian fishing vessel proceeding on a voyage other than an overseas voyage.
- (4) For the purposes of this section, **Australian fishing vessel**, **inter-State voyage** and **trading ship** have the same respective meanings as they have in the *Navigation Act 1912*.
- (5) For the purposes of this section, **overseas voyage** has the same meaning as in the *Navigation Act 1912*. However, if an Australian fishing vessel that is regularly engaged in making voyages from a port or ports in Queensland:
- (a) begins a voyage at a port in Queensland; and
 - (b) ends the voyage at the same port or another port in Queensland;
- that voyage is not taken to be an **overseas voyage** merely because, as an incidental part of its fishing operations on that voyage, the vessel calls at a port or ports in Papua New Guinea.
- (6) For the purposes of this section, a ship is taken to be proceeding on a voyage from the time when it has got under way for the purpose of proceeding on the voyage until the time when it has got under way for the purpose of proceeding on another voyage.

Part 2 Liability under Bunker Oil Convention

Division 2 Liability for pollution damage

Section 11

Division 2—Liability for pollution damage

11 Liability for pollution damage

So far as this Part applies, Articles 3, 5 and 6, paragraph 10 of Article 7, and Article 8, of the Bunker Oil Convention have the force of law as part of the law of the Commonwealth.

Note 1: Those provisions of the Bunker Oil Convention deal with the liability of shipowners for pollution damage and the making of claims against insurers or persons providing financial security for ships.

Note 2: The *Admiralty Act 1988* deals with the conferral of jurisdiction on courts to hear and determine claims under the applied provisions.

Part 3—Insurance certificates relating to liability for pollution damage

Division 1—Introduction

12 Application of Part

- (1) Subject to this section, this Part applies to a ship that has a gross tonnage of more than 1,000.

Overlap with Civil Liability Convention

- (2) This Part does not apply to a ship to which Part III of the *Protection of the Sea (Civil Liability) Act 1981* applies.

Government ships

- (3) This Part applies to a government ship only if it is being used for commercial purposes.

13 Unregistered ships

This Part applies to a ship that is unregistered as if it were registered in the country whose flag the ship is entitled to fly.

14 Concurrent State or Territory laws

This Part is not intended to exclude or limit the concurrent operation of a law of a State or Territory that gives effect to paragraphs 1, 2 and 4 of Article 7 of the Bunker Oil Convention in relation to a domestic voyage ship.

15 Appropriate insurance certificate

For the purposes of this Act, an *appropriate insurance certificate* for a ship is worked out using the following table:

Part 3 Insurance certificates relating to liability for pollution damage

Division 1 Introduction

Section 15

Appropriate insurance certificate	
If the ship ...	the <i>appropriate insurance certificate</i> is ...
1 is registered in Australia and is not a government ship	(a) for a ship other than a domestic voyage ship—a certificate issued under section 18 for the ship; or (b) for a ship that is a domestic voyage ship—a certificate issued under section 18 for the ship or a certificate issued for the ship under a law of a State or Territory that gives effect to paragraphs 1, 2 and 4 of Article 7 of the Bunker Oil Convention in relation to the ship.
2 is registered in a foreign country to which the Bunker Oil Convention applies and is not a government ship	a certificate issued for the ship, for the purposes of Article 7 of the Bunker Oil Convention, by or under the authority of the government of that country.
3 is registered in a foreign country to which the Bunker Oil Convention does not apply and is not a government ship	(a) a certificate issued under section 18 for the ship; or (b) a certificate issued for the ship, for the purposes of Article 7 of the Bunker Oil Convention, by or under the authority of the government of a foreign country to which the Bunker Oil Convention applies.
4 is owned or operated by the Commonwealth or an authority of the Commonwealth	a certificate issued under section 19 for the ship.
5 is owned or operated by a State or Territory or an authority of a State or Territory	(a) a certificate issued under section 19 for the ship; or (b) a certificate issued for the ship under a law of the State or Territory stating that the ship is owned or operated by the State or Territory or the authority of the State or Territory and that the State or Territory will meet any liability for pollution damage up to the limits of liability referred to in paragraph 1 of Article 7 of the Bunker Oil Convention in relation to the ship.

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No. 76, 2008

Section 15

Appropriate insurance certificate

If the ship ...	the <i>appropriate insurance certificate</i> is ...
6 is owned or operated by a foreign country or an authority of a foreign country	a certificate issued for the ship by or under the authority of the government of the foreign country stating that: (a) the ship is owned or operated by the foreign country or the authority of the foreign country; and (b) the foreign country will meet any liability for pollution damage up to the limits of liability referred to in paragraph 1 of Article 7 of the Bunker Oil Convention in relation to the ship.

Division 2—Ships must carry insurance certificates

16 Ships must carry insurance certificate when entering or leaving ports in Australia etc.

- (1) A person commits an offence if:
- (a) the person is the registered owner or master of a ship to which this Part applies; and
 - (b) the ship:
 - (i) enters or leaves a port in Australia; or
 - (ii) arrives at or leaves an offshore facility in the coastal sea of Australia or an external Territory or in the waters of the sea within the limits of a State or Territory; and
 - (c) at the time the ship does so, the ship does not have on board an appropriate insurance certificate for the ship that is in force.

Penalty: 500 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) Subsection (1) does not apply if:

- (a) an appropriate insurance certificate for the ship is in force at the time referred to in paragraph (1)(c); and
- (b) the issuer of the certificate has notified the Secretary-General that it maintains records in an electronic form that attest to the existence of the certificate; and
- (c) the records are accessible to all countries to which the Bunker Oil Convention applies.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

- (4) An offence against subsection (1) is an indictable offence.

17 Ships registered in Australia must carry insurance certificate when in operation

- (1) A person commits an offence if:
- (a) the person is the registered owner or master of a ship to which this Part applies; and
 - (b) the ship is registered in Australia; and
 - (c) at the time the ship is in operation, the ship does not have on board an appropriate insurance certificate for the ship that is in force.

Penalty: 500 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) Subsection (1) does not apply if:

- (a) an appropriate insurance certificate for the ship is in force at the time referred to in paragraph (1)(c); and
- (b) the issuer of the certificate has notified the Secretary-General that it maintains records in an electronic form that attest to the existence of the certificate; and
- (c) the records are accessible to all countries to which the Bunker Oil Convention applies.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

- (4) An offence against subsection (1) is an indictable offence.

Division 3—Insurance certificates

Subdivision A—Issue of certificates

18 Issue of certificates for ships other than government ships

Application for certificate

- (1) A person may apply to the Authority for the issue of a certificate for a ship that is registered:
 - (a) in Australia; or
 - (b) in a foreign country that is not a country to which the Bunker Oil Convention applies.

Government ships

- (2) This section does not apply to a government ship.

Note: Section 19 deals with the issue of certificates for certain government ships.

Form of application

- (3) An application must be:
 - (a) in accordance with the form approved under subsection (4); and
 - (b) accompanied by the fee (if any) prescribed by the regulations for the purposes of this paragraph.
- (4) The Authority must, by writing, approve a form for the purposes of paragraph (3)(a).
- (5) A fee must not be such as to amount to taxation.

Decision on application

- (6) If the Authority is satisfied that the registered owner of the ship is maintaining insurance or other financial security for the ship in an amount that will cover the limits of liability referred to in

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paragraph 1 of Article 7 of the Bunker Oil Convention in relation to the ship, it must issue a certificate for the ship.

- (7) If the Authority is not so satisfied, it must refuse to issue a certificate for the ship.

Form of certificate

- (8) A certificate under this section must be in the form approved under subsection (9).
- (9) The Authority must, by writing, approve a form for the purposes of subsection (8). That form must contain the particulars specified in paragraph 2 of Article 7 of the Bunker Oil Convention, but may contain other particulars.

Period certificate in force

- (10) A certificate under this section comes into force on the day specified in the certificate.

Note 1: Paragraph 2 of Article 7 of the Bunker Oil Convention requires the certificate to specify the period of validity of the certificate.

Note 2: Sections 22 and 23 deal with certificates ceasing to be in force.

Certificate not a legislative instrument

- (11) A certificate issued under this section is not a legislative instrument.

19 Issue of certificates for government ships

Commonwealth ships

- (1) The Authority may issue a certificate, for a ship owned or operated by the Commonwealth or an authority of the Commonwealth, certifying that:
- (a) the ship is owned or operated by the Commonwealth or the authority of the Commonwealth; and
 - (b) if the ship is owned or operated by the Commonwealth and the Minister is satisfied that the Commonwealth will meet any liability for pollution damage up to the limits of liability

Section 19

referred to in paragraph 1 of Article 7 of the Bunker Oil Convention in relation to the ship—any such liability will be met by the Commonwealth; and

- (c) if the ship is owned or operated by an authority of the Commonwealth and the Minister is satisfied that the Commonwealth or the authority will meet any liability for pollution damage up to the limits of liability referred to in paragraph 1 of Article 7 of the Bunker Oil Convention in relation to the ship—any such liability will be met by the Commonwealth or the authority.

State or Territory ships

- (2) The Authority may issue a certificate, for a ship owned or operated by a State or a Territory or an authority of a State or Territory, certifying that:
 - (a) the ship is owned or operated by the State or Territory or the authority of the State or Territory; and
 - (b) if the ship is owned or operated by a State or Territory and the Minister is satisfied that the State or Territory will meet any liability for pollution damage up to the limits of liability referred to in paragraph 1 of Article 7 of the Bunker Oil Convention in relation to the ship—any such liability will be met by the State or Territory; and
 - (c) if the ship is owned or operated by an authority of a State or Territory and the Minister is satisfied that the State or Territory or the authority will meet any liability for pollution damage up to the limits of liability referred to in paragraph 1 of Article 7 of the Bunker Oil Convention in relation to the ship—any such liability will be met by the State or Territory or the authority.

Form of certificate

- (3) A certificate under this section must be in the form approved under subsection (4).
- (4) The Authority must, by writing, approve a form for the purposes of subsection (3).

Section 20*Period certificate in force*

- (5) A certificate under this section:
 - (a) comes into force on the day specified in the certificate; and
 - (b) remains in force for the period specified in the certificate.
- (6) However, if the Commonwealth, the State or the Territory or the authority of the Commonwealth, the State or the Territory ceases to own or operate the ship covered by a certificate under this section, the certificate immediately ceases to be in force.

Certificate not a legislative instrument

- (7) A certificate issued under this section is not a legislative instrument.

Subdivision B—Production of certificates**20 Enforcement officer may require insurance certificate to be produced**

- (1) An enforcement officer may require the master or other person in charge of a ship to which this Part applies to produce to the officer an appropriate insurance certificate for the ship that is in force if:
 - (a) for a ship that is registered in Australia—the ship is in Australia; or
 - (b) for any other ship—the ship is at a port in Australia or at an offshore facility in the coastal sea of Australia or an external Territory or in the waters of the sea within the limits of a State or Territory.

Offence

- (2) A person commits an offence if:
 - (a) the person is subject to a requirement under subsection (1); and
 - (b) the person fails to comply with the requirement.

Penalty: 20 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
-

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Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) Subsection (2) does not apply if:
- (a) an appropriate insurance certificate for the ship is in force at the time the requirement under subsection (1) is made; and
 - (b) the issuer of the certificate has notified the Secretary-General that it maintains records in an electronic form that attest to the existence of the certificate; and
 - (c) the records are accessible to all countries to which the Bunker Oil Convention applies.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

Subdivision C—Detention of ships

21 Enforcement officer may detain ships

- (1) An enforcement officer may detain a ship to which this Part applies in a port in Australia if the officer has reasonable grounds to believe that, at the time the ship attempts to leave the port, there is not an appropriate insurance certificate for the ship that is in force.
- (2) The officer may detain the ship until the certificate is produced to the officer or the officer is satisfied that the certificate has been obtained.
- (3) A person commits an offence if:
 - (a) the person is the registered owner or master of a ship to which this Part applies; and
 - (b) an enforcement officer has detained the ship under subsection (1) in a port in Australia; and
 - (c) the ship leaves the port while it is under detention.

Penalty: 2,000 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (5) An offence against subsection (3) is an indictable offence.

Subdivision D—Certificates ceasing to be in force**22 Authority may cancel certificate**

- (1) The Authority may cancel a certificate issued under section 18 for a ship if it is satisfied that the registered owner of the ship is no longer maintaining insurance or other financial security for the ship in an amount that will cover the limits of liability referred to in paragraph 1 of Article 7 of the Bunker Oil Convention in relation to the ship.
- (2) The Authority must give notice of the cancellation to:
 - (a) the registered owner of the ship; and
 - (b) the master (if any) of the ship; and
 - (c) if, when the certificate was issued, the ship was registered in a foreign country that was not a country to which the Bunker Oil Convention applied—the foreign country.
- (3) The cancellation takes effect on the day specified in the notice of cancellation.

23 When certificate automatically ceases to be in force*Ship registered in Australia*

- (1) A certificate issued under section 18 for a ship immediately ceases to be in force if:
 - (a) when the certificate was issued, the ship was registered in Australia; and
 - (b) the ship ceases to be registered in Australia.

Ship registered in foreign country that is not a Convention country

- (2) A certificate issued under section 18 for a ship immediately ceases to be in force if:
 - (a) when the certificate was issued, the ship was registered in a foreign country that was not a country to which the Bunker Oil Convention applied; and
 - (b) the ship ceases to be registered in that country or that country becomes a country to which that Convention applies.

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Subdivision E—Review of decisions

24 Review of decisions

Applications may be made to the Administrative Appeals Tribunal for review of the following decisions of the Authority:

- (a) a decision under subsection 18(7) to refuse to issue a certificate;
- (b) a decision under subsection 22(1) to cancel a certificate.

Part 4—Other matters

25 No time limit for prosecution

A prosecution for an offence against this Act may be brought at any time.

26 Submission to jurisdiction

- (1) In any proceedings brought in a court in Australia to enforce a claim in respect of a liability incurred under the applied provisions, each foreign country to which the Bunker Oil Convention applies is taken to:
 - (a) have submitted to the jurisdiction of that court; and
 - (b) have waived any defence based on its status as a sovereign country.
- (2) Nothing in this section permits the levy of execution against the property of such a country.

27 Regulations to give effect to Article 10 of the Bunker Oil Convention

- (1) The regulations may make provision for and in relation to giving effect to Article 10 of the Bunker Oil Convention.

Conferral of jurisdiction

- (2) Regulations made for the purposes of this section may confer jurisdiction on the Federal Court of Australia with respect to matters arising under regulations made for the purposes of this section.
- (3) Regulations made for the purposes of this section may confer jurisdiction on the Supreme Courts of the States and Territories with respect to matters arising under regulations made for the purposes of this section.

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- (4) Any jurisdiction conferred on the Supreme Courts of the Territories is conferred to the extent that the Constitution permits.
- (5) This section does not limit the power of a judge or judges of a court to make rules of court with respect to a matter that is not provided for in regulations made for the purposes of this section.

Fees

- (6) Regulations made for the purposes of this section may make provision for and in relation to fees payable in respect of matters arising under regulations made for the purposes of this section.
- (7) A fee must not be such as to amount to taxation.

Interpretation

- (8) Subsections (2), (3) and (6) do not limit subsection (1).

28 Treatment of partnerships

- (1) This Act applies to a partnership as if it were a person, but with the changes set out in this section.
- (2) An obligation that would otherwise be imposed on the partnership by this Act is imposed on each partner instead, but may be discharged by any of the partners.
- (3) An offence against this Act that would otherwise be committed by the partnership is taken to have been committed by each partner who knows or ought reasonably to know that the partnership is the registered owner of the ship concerned.
- (4) For the purposes of this Act, a change in the composition of a partnership does not affect the continuity of the partnership.

29 Treatment of unincorporated associations

- (1) This Act applies to an unincorporated association as if it were a person, but with the changes set out in this section.

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- (2) An obligation that would otherwise be imposed on the association by this Act is imposed on each member of the association's committee of management instead, but may be discharged by any of the members.
- (3) An offence against this Act that would otherwise be committed by the association is taken to have been committed by each member of the association's committee of management who knows or ought reasonably to know that the association is the registered owner of the ship concerned.

30 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*[Minister's second reading speech made in—
House of Representatives on 20 March 2008
Senate on 16 June 2008]*

(60/08)

Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008 No. 76, 2008

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