



## Oil Pollution Responder Immunity Now Part of Australian Law

Australia is party to and has enacted the *International Convention for the Prevention of Pollution from Ships* ("MARPOL") and the *International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001* ("Bunker Convention"), each of which impose strict liability on the owner of a ship for pollution damage occurring from the discharge of oil carried as cargo or bunkers.

Up until now, persons responding to a casualty, such as salvors, could also be liable for causing or contributing to any (further) discharge of oil - whether to the owners of the ship by way of indemnity for any strict liability imposed by MARPOL or the Bunker Convention or to third parties by way of a civil claim for damages.

By the *Protection of the Sea Legislation Amendment Act 2010* (Cth) ("Act"), which received assent on 9 November 2010, salvors and persons responding to a casualty or oil spill are now granted statutory immunity from civil suit:

*"in relation to anything done, or omitted to be done, reasonably and in good faith ...[by them]... in relation to preventing or minimising pollution damage occurring in Australia..."*

The policy behind the statutory immunity conferred on such "responders" is provided in the second reading speech for the Act as being:

*"... essential that persons or organisations not be deterred from providing assistance following an oil spill because they think they may become liable if their actions inadvertently lead to increased pollution".*

Importantly, the responder immunity from civil suit will not operate where the responder acts unreasonably or in bad faith or with intent to cause damage or recklessly and with the knowledge that damage would probably result.

It is therefore essential that salvors and other responders continue to exercise all reasonable due diligence when conducting response operations. However, response operations can be undertaken in the general knowledge that salvors and other responders are intended to be immune from civil suit in respect of any inadvertent pollution incidents.

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