



Oil spills from ships - Who pays?

The costs associated with ship-sourced oil spills in Australian waters are met by those responsible for the oil spill through various domestic and international arrangements. The arrangements differ between oil tankers and non-oil tankers.

Oil tanker spills

The costs of oil spills from tankers are covered by a widely accepted international insurance regime involving two international conventions. These conventions are administered by the International Maritime Organization (IMO), a specialised agency of the United Nations.

The *International Convention on Civil Liability for Oil Pollution Damage 1992* (Civil Liability Convention) is based on the principle of “strict liability”. This means that the owners of a tanker that spills oil are liable regardless of whether or not they were actually at fault, with very few exceptions. As a result, claimants can receive compensation promptly, without the need for lengthy and costly litigation.

The Civil Liability Convention places an obligation on tanker owners to maintain insurance or other financial security to cover pollution damage, and to carry on board each tanker a certificate attesting to the fact that such cover is in force. Most tanker owners arrange this insurance with a Protection and Indemnity Club (P&I Club). The amount of insurance cover required depends on the size of the tanker, up to a maximum of approximately \$A170 million.

The other convention that forms part of this compensation regime is the *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992*, and its 2003 Protocol. These Conventions establish ‘the IOPC Funds’ which may provide additional compensation where the limit of compensation available under the Civil Liability Convention is exceeded or where the tanker owner cannot be identified, is uninsured or insolvent.

Payments of compensation by the IOPC Funds are financed by contributions levied on private companies or other entities that receive by sea an annual quantity of more than 150,000 tonnes of crude and/or heavy fuel oil. Australia’s major oil companies contribute to the scheme. Additional compensation available from the IOPC Funds may be up to \$A1.2 billion.

In summary, the total compensation that may be available under both the Civil Liability Convention and the IOPC Funds is approximately \$A1.4 billion, although this is subject to exchange rate fluctuations.

One of the features of this regime is that compensation is available for economic loss as a direct consequence of an oil spill, for example, for fishing and tourism industries.

Spills from ships other than oil tankers

The *International Convention on Civil Liability for Bunker Oil Pollution Damage 2001* (Bunkers Convention) provides strict liability for fuel oil spills for owners of ships over 1,000 gross tonnage and requires them to carry compulsory insurance to cover any pollution damage following such spills. The Bunkers Convention is modelled on the Civil Liability Convention, described above. The main difference is that the Bunkers Convention requires insurance to be maintained to limits specified in a separate instrument – the *Convention on the Limitation of Liability for Maritime Claims 1976*. The liability limit depends on the size of the vessel. For a ship of 30,000 gross tonnage, the limit of liability would be approximately \$A35 million.

Australia also has in place a domestic requirement for all ships between 400 and 1000 gross tonnage entering or leaving Australian ports to maintain specific insurance to cover the cost of a clean-up resulting from the spillage of bunker fuel (used in ships engines) or other oil.

Protection and Indemnity Insurance

The majority of commercial vessels carry comprehensive general insurance coverage through Protection and Indemnity (P&I) Clubs, which covers the shipowner's liability for pollution damage described above. P&I Clubs are independent, non-profit mutual insurance associations, providing cover for their shipowner and charterer members against third party liabilities relating to the use and operation of ships. P&I Clubs cover a wide range of liabilities including personal injury to crew, passengers and others on board, cargo loss and damage, oil pollution, wreck removal and damage to wharves and jetties.

For an oil spill in Australia, the international P&I Clubs are generally represented by 'correspondents' who represent the Club's commercial and/or legal interests. This means that claimants can deal with a local representative and that the P&I Club can apply local knowledge to the assessment of claims. A small proportion of commercial vessels are covered for third party liabilities by premium-based insurance policies, rather than P&I insurance.

For more information on claim eligibility and processes see the AMSA Fact Sheet *Compensation for oil pollution damage following an oil spill from a ship: Guidance for businesses and individuals suffering property damage or economic loss*.

Spills from unidentified vessels

In virtually all major pollution incidents, the ship that has caused the spill is readily identified and costs are claimed under the insurance arrangements outlined above. However, on occasion significant costs are incurred in cleaning up an oil spill where the source of the spill cannot be identified or, in rare cases, the limit of liability is exceeded.

In such cases, the Commonwealth reimburses the costs incurred by State or Territory agencies in responding to the spill using funds obtained from a levy applied to all ships visiting Australian ports. This levy is part of Australia's National Plan for Maritime Environmental Emergencies (National Plan). See also the AMSA Fact Sheet *National Plan for Maritime Environmental Emergencies*.

For more information see:

International Maritime Organization - www.imo.org

International Oil Pollution Compensation Fund - www.iopcfund.org

Australian Maritime Safety Authority - www.amsa.gov.au