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Statutory Rules 1994 No. L¹

125/

Protection of the Sea (Oil Pollution Compensation Fund) Regulations

I, THE ADMINISTRATOR of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and under section 4 of the *Acts Interpretation Act 1901*, make the following Regulations under the *Protection of the Sea (Oil Pollution Compensation Fund) Act 1993*.

Dated L 1994.

26 April/

L P. BENNETT/
Administrator

By His Excellency's Command,

L
Minister for Transport

L AURIE BRERETON/

PART 1—PRELIMINARY

Citation

1. These Regulations may be cited as the Protection of the Sea (Oil Pollution Compensation Fund) Regulations.

Commencement

2. These Regulations commence on the day on which Chapters 1, 2 and 4 of the Act commence.

Interpretation

3. (1) In these Regulations, unless the contrary intention appears:

“**Act**” means the *Protection of the Sea (Oil Pollution Compensation Fund) Act 1993*;

“**compensation for pollution damage**” means compensation for which provision is made under Article 4 of the Convention;

“**Convention**” means the 1971 Convention;

“**court**” means a court that may exercise jurisdiction for the purposes of section 13 of the Act;

“**Fund**” means the 1971 Fund;

“**judgment**” means a judgment or order given or made by a court against the Fund for compensation for pollution damage in a foreign country to which the Convention applies;

“**judgment creditor**”:

(a) means the person in whose favour a judgment was given; and

(b) includes a person in whom the rights under a judgment are vested by succession, assignment or otherwise;

“**judgment debtor**”:

(a) means the person against whom a judgment was given; and

(b) includes a person against whom a judgment is enforceable under the law of the country in which the original court is situated;

“**original court**”, in relation to a judgment, means the court by which the judgment is given;

“registered” means registered under Part 2.

(2) Unless the contrary intention appears, an expression used in these Regulations and in the Convention has the same meaning in these Regulations as in the Convention.

PART 2—REGISTRATION OF FOREIGN JUDGMENTS

Jurisdiction of courts

4. For the purposes of section 13 of the Act:
- (a) the Supreme Court of each State is invested with federal jurisdiction; and
 - (b) federal jurisdiction is conferred on the Supreme Court of each internal Territory; and
 - (c) the Federal Court of Australia is invested with jurisdiction.

Court fees

5. For the purposes of section 13 of the Act, the fees to be paid to a Court in respect of a matter under this Part are the fees prescribed in relation to the matter in the Rules of the Court.

Application for registration of foreign judgment

6. (1) A judgment creditor may apply to a court to have the judgment registered in the court.

(2) Subject to these Regulations, on written application, a court must order the judgment to be registered.

- (3) A judgment must not be registered unless it:
- (a) was given by a court having jurisdiction of the kind referred to in Article 7 of the Convention; and
 - (b) was given in respect of an incident that occurred after Australia and the country in which the original court is situated became Contracting States; and
 - (c) is enforceable by execution in the country in which the original court is situated; and

- (d) is no longer subject to ordinary forms of review under the law of the country in which the original court is situated.

Sum for which judgment may be registered

7. The amount for which a judgment may be registered is the total of:

- (a) the whole amount payable under the judgment of the original court, or, if the judgment has been partly satisfied, the balance payable under the judgment at the date of the application for registration, including:
 - (i) any costs awarded to the judgment creditor; and
 - (ii) any interest that, by the law of the country in which the original court is situated, becomes due under the judgment up to the time of registration; and
- (b) the amount of the reasonable costs of, and incidental to, registration, including the costs of obtaining a certified copy of the judgment from the original court.

Judgment sum to be expressed in Australian currency

8. If the sum payable under a judgment is expressed in the currency of a foreign country, the amount for which the judgment may be registered is the amount that the sum payable represents in Australian currency calculated at the official rate of exchange determined by the Reserve Bank of Australia as at the date of the judgment of the original court.

Judgment in respect of pollution damage and other matters

9. If a judgment, for which registration is sought, appears to the court to be in respect of proceedings for compensation for pollution damage and for other matters, the judgment may be registered in respect of provisions contained in it that relate to compensation for pollution damage but not in respect of provisions relating to the other matters.

Evidence in support of application to register judgment

10. (1) An application for registration must have with it an affidavit:

- (a) to which is attached:
 - (i) a certified copy of the judgment of the original court authenticated by the seal of that court; and
 - (ii) if the judgment is not in English—a translation of the judgment into English that is certified by a notary public or authenticated by affidavit; and
- (b) that states to the best of knowledge of the applicant:
 - (i) that, at the date of the application, the judgment of the original court has not been satisfied, or, if the judgment has been partly satisfied, the sum for which it remains unsatisfied; and
 - (ii) that, at the date of the application, the judgment of the original court is enforceable by the applicant by execution in the country in which the original court is situated; and
 - (iii) that, if the judgment is registered, the registration will not be, or be liable to be, set aside; and
 - (iv) that the judgment of the original court is no longer subject to ordinary forms of review under the law of the country in which the original court is situated; and
 - (v) that the judgment was given by a court having jurisdiction of the kind referred to in Article 7 of the Convention; and
 - (vi) that the judgment was given in respect of an incident that occurred after Australia and the country in which the original court is situated became Contracting States; and
- (c) that specifies the rate at which interest (if any) accrues on the judgment under the law of the country in which the original court is situated.

(2) The affidavit must set out the matters relied on by the applicant as evidence of the matters referred to in paragraphs (1) (b) (v) and (vi).

(3) If the sum payable under the judgment of the original court is expressed in currency other than Australian currency, the

affidavit must state the amount that that sum represents in Australian currency calculated at the official rate of exchange determined by the Reserve Bank of Australia as at the date of that judgment.

(4) If the judgment has been given in respect of proceedings for compensation for pollution damage and of other matters, the affidavit must identify the provisions of the judgment:

- (a) that relate to compensation for pollution damage; and
- (b) for which registration is sought.

Security for costs

11. The court may order a judgment creditor who applies for registration of the judgment to give security for the costs of the application and of any proceedings that may be brought to set aside the registration of the judgment.

Order on application for registration of judgment

12. (1) If an order is made for registration of a judgment the court must fix a period that appears to the court to be appropriate in the circumstances to enable an application to be made to set aside the registration of the judgment.

- (2) The order for registration of a judgment must:
 - (a) specify the period fixed by the court under subregulation (1); and
 - (b) include a statement to the effect that the judgment will not be given effect until the end of the period stated in the order.

(3) At any time until a party can no longer apply to have registration of a judgment set aside, the court may grant an extension of the period during which an application to have the registration set aside may be made.

Notice to judgment debtor of registration of judgment

13. (1) Notice in writing of the registration of a judgment of the original court must be served on the judgment debtor in accordance with the practice and procedure applicable to service of a

writ of summons issued by the court in which the judgment has been registered unless another mode of service is ordered by the court.

(2) A notice of the registration of a judgment referred to in subregulation (1) must:

- (a) specify full particulars of the registered judgment and the order for registration; and
- (b) specify the name and address for service of the judgment creditor or his or her solicitor or agent, as the case may be; and
- (c) include a notice to the judgment debtor that he or she may apply, within the period specified in the order, for registration of the judgment to be set aside in accordance with these Regulations.

Effect of registration of foreign judgment

14. (1) Except to the extent that these Regulations provide for the setting aside of registration, a registered judgment has the same effect as a judgment of the court in which it is registered as if the judgment had been entered in that court on the date of registration.

(2) For the purpose of any proceedings on a registered judgment, interest on the sum for which the judgment is registered accrues from the date of registration of the judgment as if it were a judgment of the court in which it is registered.

Execution not to issue before period allowed to set aside judgment

- 15.** Effect must not be given to a registered judgment until:
- (a) the end of the period fixed by the court for making an application to set aside the judgment; or
 - (b) the end of any further period that is ordered by the Court; or
 - (c) if an application to set aside the judgment is made during the period referred to in paragraph (a) or (b)—after the application has been finally determined.

Procedure to have a registered judgment set aside

16. (1) A person against whom a registered judgment may be enforced may apply to the court in which the judgment was registered to have registration of the judgment set aside.

(2) On an application, the court may set aside registration of a judgment, if:

- (a) the rights under the judgment are not vested in the person by whom the application for registration was made; or
- (b) the person against whom the judgment was registered is not the person subject to the obligations under the judgment; or
- (c) at the date of the application for registration of the judgment, the sum for which the judgment was registered had been paid in whole or in part; or
- (d) the judgment was obtained by fraud; or
- (e) the judgment debtor, being the defendant in the proceedings in the original court, was not given reasonable notice of those proceedings or a fair opportunity to defend the proceedings; or
- (f) before the date of the judgment in the original court, the matter in dispute in the proceedings in that court had been the subject of a judgment of an Australian court exercising jurisdiction in the matter; or
- (g) before the date of the judgment in the original court, the matter in dispute in the proceedings in that court had been the subject of a judgment of a court (except an Australian court) exercising jurisdiction in the matter, being a judgment that:
 - (i) could be registered; and
 - (ii) if it were registered—would not be liable to be set aside; or
- (h) the judgment was registered in contravention of these Regulations.

Powers of court to set aside registration on application

17. (1) If, on application to set aside the registration of a judgment, it appears to the court that registration of the judgment

may be set aside only because at the date of application for registration:

- (a) the judgment was not enforceable in the country in which the original court is situated; or
- (b) the judgment was subject to an ordinary form of review under the law of the country in which the original court is situated;

the Court may, instead of setting aside the registration of the judgment, order a stay of execution on the judgment on such terms as it thinks just.

(2) If the registration of a judgment is set aside only because part of the sum in respect of which the judgment was registered had, at the date of the application for registration of the judgment, been paid, the Court must, on the application of the judgment creditor, order the judgment to be registered for the balance remaining payable at the date of the last-mentioned application.

(3) If the registration of a judgment is set aside only because the judgment was registered in respect of proceedings for compensation for pollution damage and for other matters, the Court must, on the application of the judgment creditor, order the judgment to be registered only in respect of the provisions of the judgment that relate to compensation for pollution damage.

Further application for registration

18. The setting aside of the registration of a judgment under these Regulations does not prevent a further application to register the judgment being made, unless the court orders otherwise.

Judgment not to be enforceable except by registration

19. A court must not hear or determine proceedings, except proceedings by way of registration of a judgment, for the recovery of an amount payable under the judgment.

Issue of certificates of judgments obtained under the Act in a State or Territory

20. If a judgment has been entered in a court for a claim for compensation under the applied provisions of the Convention and the person in whose favour such judgment has been entered wishes to enforce the judgment in a country to which the Convention applies, the Registrar or chief officer of the court must, on application by that person, issue under the seal of the court:

- (a) a certified copy of the judgment in the proceedings; or
- (b) a certified copy of any document filed with the court in the proceedings; or
- (c) a certificate giving details of:
 - (i) any order made by the court in the proceedings; or
 - (ii) any act or thing done in the proceedings that is recorded in a document forming part of the record kept by the court.

PART 3—MISCELLANEOUS

Method of paying subscriptions and late payments

21. For the purposes of section 21 of the Act, contribution, or late payment penalty, must be paid:

- (a) by a cheque for the amount of the contribution or late payment penalty that is drawn in:
 - (i) Australian currency; or
 - (ii) the currency of the place where the Fund is kept; or
- (b) by electronic transmission of the amount of the contribution or late payment penalty in:
 - (i) Australian currency; or
 - (ii) the currency of the place where the Fund is kept.

Records to be kept

22. (1) A person to whom Article 10 of the Convention applies must keep records for each calendar year:

- (a) of the matters; and

(b) in a manner;
that will enable the person to make a return under regulation 23.

(2) A person who is required to keep records must retain the records at the principal place of business of the person in Australia for 5 years after the year to which the records relate.

Penalty: 10 penalty units.

Copies of records to be given to Authority

23. (1) On or before 1 March in a year, a person to whom regulation 22 applies must give to the Authority a return that relates to the preceding calendar year, in accordance with the form in the Schedule.

- (2) A return must:
 - (a) be signed by the person who makes the return; and
 - (b) specify the date on which the return was completed by that person; and
 - (c) show the name, and any telex or fax number, of the person.
- (3) The person must:
 - (a) make a statutory declaration that the information in the return is complete and correct to the best of the knowledge of the person; and
 - (b) include the statutory declaration with the return.

Penalty: 10 penalty units.

Documents may be required to be given to Authority

24. (1) The Authority may require, by notice in writing, a person to:

- (a) produce a document to the Authority; or
- (b) make a copy of a document and give the copy to the Authority;

if the document is relevant to ascertaining the liability of a person to make a contribution to the Fund.

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(2) A person must comply with a requirement made in accordance with subregulation (1).

Penalty: 10 penalty units.

SCHEDULE

Subregulation 23 (1)

CONTRIBUTING OIL RECEIVED IN (*INSERT YEAR OF RECEIPT*)

for the purposes Article 15.1 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage

CONTRACTING STATE
PERSON RECEIVING
CONTRIBUTING OIL

ASSOCIATED PERSONS

Is the reporting person an
“associated person” within the
meaning of Article 10?

YES/NO

If yes, name parent company of group

--

FULL POSTAL
ADDRESS

--

Contributing oil ¹ (crude oil and fuel oil) received ^{2,6} directly after carriage by sea	Quantity ⁹ (tonnes)	
Received from other States ⁵		
Received otherwise ⁶		
	SUBTOTAL	

SCHEDULE—continued

Contributing oil ¹ received ⁵⁻⁸ from a non-Contracting State ⁸ by modes of transport other than carriage by sea		
State(s) from which received	Mode of transport	Quantity ⁹ (tonnes)
SUBTOTAL		
TOTAL QUANTITY OF CONTRIBUTING OIL RECEIVED		

For completion by competent officer of company or other body receiving the oil	For completion by certifying AMSA officer
Name	
Signature	
Title	
Telex/Telefax	
Date	

FOR	Entered	Associated to CTR/	
IOPC FUND			
USE ONLY	Checked	Parent of CTR?	File : CTR/

[NOTE: Each of the following directions applies to a matter in the form in which the direction number appears.]

Directions for completing Returns

A return must be completed in accordance with the following directions:

1. The following list gives examples of contributing and non-contributing oils and is not intended to be exhaustive:

SCHEDULE—continued

Contributing Oil	Non-Contributing Oil
<i>Crude Oils</i>	<i>Crude Oils</i>
All naturally occurring crude oils	Natural gas liquids
Topped crudes	Condensate
Spiked crudes	Casinghead naphtha
Reconstituted crudes	Natural gasoline
<i>Finished Products</i>	<i>Finished Products</i>
N°4 fuel (ASTM)	LNG and LPG
Navy Special fuel	Motor gasoline (petrol, essence)
Light fuel oil	White spirit
N°5 fuel (ASTM) - light	Kerosene
Medium fuel oil	- Aviation kerosene
N°5 fuel (ASTM) - heavy	- Jet 1 A
Bunker C fuel oil	- N°1 fuel (ASTM)
Heavy fuel oil	Gas oil
Marine fuel oil	Heating oil
N°6 fuel oil (ASTM)	N°2 fuel (ASTM)
Blended fuel oils by viscosity or sulphur content	Marine diesel
	Lubricating oil
<i>Intermediate or Process Stocks</i>	<i>Intermediate or Process Stocks</i>
Fuel oil blend stocks	Straight run naphthas
	Light cracked naphtha
	Heavy cracked naphtha
	Platformate
	Reformate
	Steam-cracked naphtha
	Polymers
	Isomers
	Alkylates
	Catalytic cycle oil
	Reformer feed
	Steam cracker feed
	Gas oil blend stocks
	Catalytic cracker feedstock

SCHEDULE—continued

Contributing Oil

Non-Contributing Oil

Visbreaker feedstock
Aromatic tar

2. Discharge into a floating tank within the territorial waters of a Contracting State (including its ports) constitutes a receipt of oil, irrespective of whether or not the tank is connected with on-shore installations by pipeline. A ship is taken to be a floating tank only if it is of the kind known as a “dead ship”, that is, it is not ready to sail.

3. Movement within the same port area is not taken to be carriage by sea.

4. Ship-to-ship transfer is not taken to be receipt unless oil, after having been transferred within a port area from a sea-going vessel to another sea-going vessel:

- (a) is carried by the other vessel to an on-shore installation situated on the territory of a Contracting State, in which case receipt in that installation is taken to be receipt of oil carried by sea; or
- (b) passes through a storage tank before being loaded to the other vessel, in which case it is taken to be oil received at that tank in the Contracting State in the territory of which the tank is situated.

SCHEDULE—continued

5. Imports of oil must be entered under “Received from other States” and receipts of oil from other sources must be entered under “Received otherwise”.

6. “Received otherwise” includes movements from terminals at sea, from floated storage, from off-shore oil fields by vessel or after coastal movement of the oil within the same Contracting State.

7. “Contracting State” means a State for which the Convention is in force. When completing the report, States for which the Convention enters into force after 31 March of the year when the report is submitted are taken to be non-Contracting States.

8. The report should specify the non-Contracting State from which contributing oil was received and the mode of transport by which received. Only such oil that has at some time been carried by sea should be reported.

9. Quantities of contributing oil must be given in tonnes rounded off to the nearest tonne.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on

L 1994.

3 May/