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Statutory Rules 1983 No. 1

221/

Protection of the Sea (Civil Liability) (Registration of Foreign Judgments) Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and in pursuance of section 4 of the *Acts Interpretation Act 1901*, hereby make the following Regulations under the *Protection of the Sea (Civil Liability) Act 1981*.

Dated 7 October 1983.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

(Sgd) Peter Morris

Minister of State for Transport

Citation

1. These Regulations may be cited as the Protection of the Sea (Civil Liability) (Registration of Foreign Judgments) Regulations.

Interpretation

2. (1) In these Regulations, unless the contrary intention appears—
“compensation for pollution damage” means compensation in respect of incidents—

- (a) that have caused pollution damage; or
- (b) in relation to which preventive measures have been taken to prevent or minimize pollution damage;

“judgment” means a judgment or order given or made by a court in proceedings for compensation for pollution damage being a court situated in a country to which the Civil Liability Convention applies;

“judgment creditor” means, in relation to a judgment, the person in whose favour the judgment was given and includes a person in whom the rights under the judgment have become vested by succession, assignment or otherwise;

“judgment debtor” means, in relation to a judgment, the person against whom the judgment was given and includes a person against whom the judgment is enforceable under the law of the country in which the original court is situated;

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

“registration” means registration under these Regulations;

“the Act” means the *Protection of the Sea (Civil Liability) Act 1981*.

(2) Except in so far as the contrary intention appears, an expression that is used in these Regulations and in the Convention (whether or not a particular meaning is assigned to it by the Convention) has, in these Regulations, the same meaning as in the Convention.

Jurisdiction of courts

3. The Supreme Courts of the States are invested with federal jurisdiction, and jurisdiction, to the extent that the Constitution permits, is conferred on the Supreme Courts of the Territories with respect to matters arising under these Regulations.

Application for registration of foreign judgment

4. (1) A judgment creditor under a judgment may apply to a Supreme Court of a State or Territory to have the judgment registered in that Court.

(2) Subject to these Regulations, a Supreme Court of a State or Territory shall, on an application under this regulation, order the judgment to be registered.

(3) A judgment shall not be registered unless—

- (a) the judgment was given by a court having jurisdiction of the kind referred to in Article IX of the Convention;
- (b) 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;
- (c) the judgment is enforceable by execution in the country in which the original court is situated; and
- (d) the judgment 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

5. The sum in respect of which a judgment may be registered under these Regulations is the aggregate of—

- (a) the whole sum payable under the judgment of the original court, or, if the judgment has been partly satisfied, the balance remaining payable under the judgment at the date of the application for registration, including—
 - (i) the costs (if any) awarded to the judgment creditor; and

- (ii) interest (if any) 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 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

6. Where the sum payable under a judgment is expressed in a currency other than Australian currency, the judgment shall be registered for the amount that that sum represents in Australian currency calculated at the official rate of exchange determined by the Reserve Bank of Australia at the date of the judgment of the original court.

Judgment in respect of pollution damage and other matters

7. Where, on an application for the registration of a judgment, it appears to the Court that the proceedings in respect of which the judgment was given were 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 contained in it that relate to other matters.

Evidence in support of application to register judgment

8. (1) An application for registration shall be supported by an affidavit—
- (a) having annexed to it a certified copy of the judgment of the original court authenticated by the seal of that court and, if the judgment is not in the English language, a translation of the judgment certified by a notary public or authenticated by affidavit;
 - (b) stating to the best of the information and belief of the deponent—
 - (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 in respect of which it remains unsatisfied;
 - (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;
 - (iii) that, if the judgment were registered, the registration would not be, or be liable to be, set aside;
 - (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;
 - (v) that the judgment was given by a court having jurisdiction of the kind referred to in Article IX 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) specifying 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 shall set out the matters relied on by the deponent as evidence of the matters referred to in paragraphs (1) (b) (v) and (vi).

(3) Where the sum payable under the judgment of the original court is expressed in currency other than Australian currency, the affidavit shall state the amount that that sum represents in Australian currency calculated at the official rate of exchange determined by the Reserve Bank of Australia at the date of the judgment of the original court.

(4) Where a judgment has been given in respect of proceedings for compensation for pollution damage and in respect of other matters, the affidavit shall identify the provisions of the judgment that relate to compensation for pollution damage, being the provisions in respect of which registration is sought.

Security for costs

9. The Court may, in respect of an application for registration of a judgment, order the judgment creditor 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

10. (1) Where an order is made for registration of a judgment the Court shall fix such period as appears to the Court to be reasonable 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—

(a) shall specify the period fixed by the Court under sub-regulation (1); and

(b) shall contain a statement that execution on the judgment will not issue until the expiration of the period stated in the order.

(3) The Court may, on an application made at any time while it remains competent for a party to apply to have registration of a judgment set aside, 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

11. (1) Notice in writing of the registration of a judgment of the original court shall 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 sub-regulation (1)—
- (a) shall specify full particulars of the registered judgment and the order for registration;
 - (b) shall specify the name and address for service of the judgment creditor, his solicitor or agent as the case may be; and
 - (c) shall contain a notice to the judgment debtor that he may apply, within the period specified in the order for registration, to have registration of the judgment set aside in accordance with these Regulations.

Effect of registration of foreign judgment

12. (1) Except to the extent that these Regulations provide for the setting aside of registration, a registered judgment shall be of the same force and effect as a judgment of the Court in which it is registered as if it 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 shall accrue from the date of registration of the judgment in the same manner as a judgment of the Court in which it is registered.

Execution not to issue before period allowed to set aside judgment

13. Execution shall not issue on a registered judgment until—
- (a) the expiration of the period fixed by the Court for making an application to set aside the judgment;
 - (b) the expiration of such further period as may be ordered by the Court; or
 - (c) where 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

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

(2) The Court may, on an application under this regulation, set aside registration of a judgment where—

- (a) the rights under the judgment are not vested in the person by whom the application for registration was made;
- (b) the person against whom the judgment was registered is not the person subject to the obligations under the judgment;
- (c) the sum in respect of which the judgment was registered, had, at the date of the application for registration of the judgment, been paid in whole or in part;

- (d) a fund of the kind referred to in paragraph 3 of Article V of the Convention has been constituted in respect of the liability of the judgment debtor and that fund is actually available in respect of the claim by the judgment creditor who has access to the court administering the fund;
- (e) the judgment was obtained by fraud;
- (f) 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;
- (g) the matter in dispute in the proceedings in the original court had, before the date of the judgment in that court, been the subject of a judgment of an Australian court having jurisdiction in the matter;
- (h) the matter in dispute in the proceedings in the original court had, before the date of the judgment in that court, been the subject of a judgment of a court, other than an Australian court, having jurisdiction in the matter, being a judgment that is capable of registration under these Regulations and, if registered, would not be liable to be set aside; or
- (j) the judgment was registered in contravention of these Regulations.

Powers of Court on application to set aside registration

15. (1) If, on an application to set aside the registration of a judgment, it appears to the Court that registration of the judgment may be set aside solely on the ground that at the date of the application for registration—

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

the Court, if it thinks fit, 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) Where the registration of a judgment is set aside solely 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 shall, 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) Where the registration of a judgment is set aside solely on the ground that the judgment was registered in respect of proceedings solely for compensation for pollution damage and for other matters, the Court shall, on the application of the judgment creditor, order the judgment to be registered only in respect of the provisions contained in it that relate to compensation for pollution damage.

Further application for registration

16. The setting aside of the registration of a judgment under these Regulations does not prejudice a further application to register the judgment unless the Court orders otherwise.

Judgment not to be enforceable except by registration

17. No proceedings for the recovery of a sum payable under a judgment, other than proceedings by way of registration of the judgment, shall be entertained by a court having jurisdiction in a State or Territory.

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

18. Where a judgment has been entered in a Court referred to in section 9 of the Act in respect of a claim for compensation under the applied provisions of the Convention and the person in whose favour such judgment has been entered desires to enforce the judgment in a country to which the Civil Liability Convention applies, the Registrar or chief officer of the Court shall, on application by that person, issue under the seal of the Court—

- (a) a certified copy of the judgment in the proceedings;
- (b) a certified copy of any document filed with the Court in the proceedings; or
- (c) a certificate giving particulars 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.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 1 1983.

14 October |