

Protection of the Sea (Civil Liability) Amendment Regulations 2001 (No. 1) 2001 No. 56

EXPLANATORY STATEMENT

STATUTORY RULES 2001 No. 56

Issued by the Authority of the Minister of Transport and Regional Services.

Protection of the Sea (Civil Liability) Act 1981

Protection of the Sea (Civil Liability) Amendment Regulations 2001 (No. 1)

Section 27 of the *Protection of the Sea (Civil Liability) Act 1981* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 4(1) of the *Acts Interpretation Act 1901* provides that, where an Act confers a power to make regulations, the regulations may be made before the Act comes into operation. Subsection 4(2A) of the *Acts Interpretation Act* provides that regulations made in these circumstances take effect on or from the date specified in the regulations, provided that that date is not earlier than the date on which the Act concerned comes into operation.

The Act was amended by the *Protection of the Sea (Civil Liability) Amendment Act 2000* (the amending Act) which received Royal Assent on 5 October 2000. Amongst other things, the amending Act inserted a new Part IIIA into the Act. The new Part IIIA commences on 6 April 2001.

Currently, oil tankers carrying more than 2,000 ton of oil in bulk as cargo are required to be insured to cover their liabilities for pollution damage in case of an oil spill. Part IIIA extends this requirement to require all ships of 400 gross tons and over that are not covered by the existing requirements to be insured to cover liabilities for pollution damage caused in Australia. It will be an offence for a ship to which Part IIIA applies to enter or leave, or attempt to enter or leave, a port in Australia without carrying on board a "relevant insurance certificate".

In accordance with the definition in section 19A (included in new Part IIIA of the Act), a relevant insurance certificate must contain the "prescribed information" and must indicate that the ship is covered for an amount not less than the "prescribed amount".

The main purpose of the amendments to the Protection of the Sea (Civil Liability) Regulations is to prescribe the necessary information and amount. The necessary information is:

- the name of the ship
- the name of the ship's owner
- the name and business address of the person who is providing insurance or other financial security
- the amount of cover provided under the policy of insurance or financial security
- information showing the period of validity of the relevant insurance certificate.

The prescribed amount in relation to a particular ship is the liability limit that applies to the ship under the two relevant international conventions that are currently in force in Australia.

As well as prescribing the information and amount, the Amendment Regulations also make a number of other minor amendments to update the Regulations and to repeal provisions which are no longer applicable.

A Regulation Impact Statement Was prepared for the relevant amendments to the Act and was included in the Explanatory. Memorandum for the Amending Act which was tabled in the House of Representatives on 28 June 2000 and in the Senate on 31 August 2000. There were further consultations with the Australian Shipping Federation and the Australian Chamber of Shipping during the preparation of the Amendment Regulations. Both organisation support the amendments.

The Amendment Regulations commence on 6 April 2001, the same date as the commencement of new Part IIIA of the Act. Details of the amendments are in the Attachment.

ATTACHMENT

Protection of the Sea (Civil Liability) Amendment Regulations 2001 (No. 1)

Regulation 1 - Name of Regulations

Regulation 1 provides that the name of the Amendment Regulations is the *Protection of the Sea (Civil Liability) Amendment Regulations 2001 (No. 1)*.

Regulation 2 - Commencement

Regulation 2 provides that the Amendment Regulations will commence on 6 April 2001.

Regulation 3 - Amendment of Protection of the Sea (Civil Liability) Regulations

Regulation 3 provides that Schedule 1 of the Amendment Regulations amends the Protection of the Sea (Civil Liability) Regulations.

Schedule 1 - Amendments

Item 1 renames the Protection of the Sea (Civil Liability) Regulations as the *Protection of the Sea (Civil Liability) Regulations 1983* to reflect current drafting practice.

Item 2 omits regulation 3 which provides for the conversion of liability limits into Australian currency. Regulation 3 has not applied since 9 October 1996 which is the date on which Australia became a party to the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969.

Item 3 amends paragraph 4(c) to replace the reference to "the Department" with a reference to "the Authority", that is, the Australian Maritime Safety Authority. Regulation 4 sets out types of guarantees that are acceptable for purposes of paragraph 3 of Article 5 of the International Convention on Civil Liability for Oil Pollution Damage, as amended (the Convention). In brief, the requirement of paragraph 3 of Article 5 is that, if there has been an oil spill from a ship to which the Convention applies, in order to take advantage of the liability limits set out in the Convention, the shipowner must deposit with a Court or other competent Authority a guarantee representing the total of the owner's liability.

The amendment to paragraph 4(c) provides that a guarantee given by a guarantor approved by an authorised officer of the Authority (rather than by an authorised officer of the Department) is an acceptable type of guarantee.

Item 4 changes the heading to regulation 5 which relates to relevant insurance certificates for purposes of paragraph 15(7)(c) of the Act. The purpose of this amendment is to distinguish regulation 5 from new regulations 11 and 12 which relate to relevant insurance certificates for purposes of section 19A of the Act.

Item 5 replaces regulation 7 to provide that persons who are the holders of specified positions in the Authority, rather than in the Department, are prescribed persons for the purposes of subsection 16(2) of the Act. That subsection provides that a person may apply to a prescribed person for the issue of an insurance certificate in respect of a ship to which Part III of the Act applies.

Item 6 replaces existing regulations 10, 11 and 12 and adds new regulations 10, 11, 12 and 13.

The effect of replacing regulation 10 is to provide that a person who is performing the duties of a specified position in the Authority, rather than in the Department, is a prescribed person for the purposes of subsection 16(6) of the Act. That subsection provides that insurance certificates issued in respect of Australian ships to which Part III of the Act applies must be forwarded to a prescribed person.

The existing regulations 11 and 12 were made redundant by amendments made to section 20 of the Act by the amending Act.

New regulation 11 prescribes the following information that must be included in a relevant insurance certificate:

- the name of the ship
- the name of the ship's owner
- the name and business address of the person who is providing insurance or other financial security
- the amount of cover provided under the policy of insurance or financial security
- information showing the period of validity of the relevant insurance certificate.

The information showing the period of validity depends on whether or not the relevant insurance certificate is a Certificate of Entry issued by a Protection and Indemnity Club (P&I Club). P&I Clubs are specialist marine insurers. A Certificate of Entry is the equivalent of an insurance policy. Cover with a P&I Club is provided on an annual basis, renewable on 20 February of each year.

If the relevant insurance certificate is a Certificate of Entry issued by a P&I Club, it must indicate that the insurance or financial security commences not earlier than the previous 20 February except, for the period of one month including and after the 20 February for the current year, the Certificate of Entry must indicate that the insurance or financial security commences not earlier than the 20 February of the previous year. The reason for the exception is that there will usually be some delay between the issue of a new Certificate of Entry and the Certificate being able to be taken on board a ship.

If the relevant insurance certificate is not a Certificate of Entry, it must indicate that the period of validity of the insurance or financial security includes the day on which the ship enters or leaves, or attempts to enter or leave, a port in Australia.

New regulation 12 prescribes the prescribed amount for the purposes of the definition of relevant insurance certificate. This is the minimum amount in respect of which a ship must be insured to cover liabilities in the case of an oil spill. The amounts prescribed are the liability limits that apply to ships under the two relevant international conventions that are currently in force in Australia.

New regulation 13 provides that, if a ship has not had its tonnage determined under the International Convention on Tonnage Measurement of Ships, 1969, then, for purposes of paragraph 19(1)(b) of the Act, its tonnage shall be taken to be at least 400 tons if the ship has an overall length of at least 33 metres; otherwise it will be taken to have a gross tonnage of less than 400 tons. Regulation 13 has been included because new Part IIIA of the Act applies only to ships which have a gross tonnage of 400 or more. Many ships, particularly small ships, do not have their tonnage determined.

Item 7 changes "1969" in a Note at the end of Schedule 1 to "1992". Schedule 1 prescribes the form to be used to apply for an insurance certificate in respect of a ship to which Part III of the Act applies. This amendment takes account of a change in the citation of the Convention which is referred to in the Note.

Item 8 changes the wording in Schedule 2 to reflect changes in the Convention. Schedule 2 prescribes the form of the insurance certificate to be issued in respect of a ship to which Part III of the Act applies. The effect of both the omitted words and the new words is to indicate that there is in effect a policy of insurance or other financial security satisfying the requirements of the Convention.