



Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Regulations 2009¹

Select Legislative Instrument 2009 No. 101

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008*.

Dated 4 June 2009

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

ANTHONY ALBANESE
Minister for Infrastructure, Transport, Regional Development
and Local Government

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Regulation 1

Part 1 Preliminary**1 Name of Regulations**

These Regulations are the *Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Regulations 2009*.

2 Commencement

These Regulations commence on the commencement of sections 3 to 30 of the *Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008*.

3 Definitions

In these Regulations:

Act means the *Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008*.

amount payable under the judgment means the amount that an original court has decided is payable in compensation for pollution damage.

compensation for pollution damage means compensation for which provision is made under Article 3 of the Bunker Oil Convention.

Court means a court that is conferred with jurisdiction under regulation 6 for matters arising under Part 3.

judgment means a judgment or order:

- (a) given or made by a court situated in a country to which the Bunker Oil Convention applied at the time the judgment or order was given or made; and
- (b) in proceedings that are, in whole or in part, for compensation for pollution damage.

judgment creditor, in relation to a judgment:

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

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- (b) includes a person in whom the rights under the judgment have become vested by succession, assignment or otherwise.

judgment debtor, in relation to a judgment:

- (a) means the person against whom the judgment was given; and
- (b) includes a person against whom the judgment is enforceable under the laws of the country in which the original court is situated.

original court, in relation to a judgment, means the court by which the judgment was given.

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Part 2 Insurance certificates**4 Application for certificate for ship — prescribed fee**

- (1) For paragraph 18 (3) (b) of the Act, the fees set out in this regulation are prescribed in relation to:
 - (a) an application to issue an insurance certificate for a ship;
and
 - (b) an application to renew an insurance certificate for a ship.
- (2) The fee for the issue of an insurance certificate for a ship is \$70.
- (3) The fee for the renewal of an insurance certificate for a ship is:
 - (a) \$70, if, at the time of the application, the applicant had made a change to any of the following details for the ship since the insurance certificate was last issued or renewed:
 - (i) the insurance provider, or other provider of financial security, for the ship;
 - (ii) the owner of the ship;
 - (iii) the name of the ship;
 - (iv) the country in which the ship is registered; or
 - (b) \$40, if, at the time of the application, paragraph (a) does not apply.

Part 3 Registration and enforcement of judgments

Division 3.1 General

5 General

- (1) For section 27 of the Act, this Part sets out the provisions for and in relation to giving effect to Article 10 of the Bunker Oil Convention.
- (2) In this Part:
registered means registered under this Part.

Division 3.2 Jurisdiction

6 Jurisdiction of Federal Court and State and Territory Supreme Courts

Jurisdiction for matters arising under this Part is conferred on the following courts:

- (a) the Federal Court of Australia;
- (b) the Supreme Court of each State;
- (c) the Supreme Court of the Australian Capital Territory;
- (d) the Supreme Court of the Northern Territory.

Division 3.3 How to apply to register judgment

7 Application to register judgment

- (1) A judgment creditor for a judgment may, in writing, apply to a Court to have the judgment registered in the Court under regulation 9 at any time within 6 years after:
 - (a) the date of the judgment; or

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- (b) if there have been proceedings by way of appeal against the judgment — the date of the last judgment in those proceedings.
- (2) The application may be made for registration of only so much of the judgment that relates to compensation for pollution damage.

8 Application must be supported by affidavit

- (1) An application under regulation 7 must be supported by an affidavit of the judgment creditor for the judgment.
- (2) The following must be attached to the affidavit:
 - (a) a copy of the judgment certified by the original court;
 - (b) if the judgment is not in English — a translation of the judgment into English that is authenticated by an affidavit or certified by a notary public.
- (3) The affidavit must contain the following information:
 - (a) a statement as to whether the amount payable under the judgment of the original court has been satisfied, including:
 - (i) if the amount payable under the judgment has been satisfied in whole — the amount that has been satisfied; or
 - (ii) if the amount payable under the judgment that relates to compensation for pollution damage has been partly satisfied — the amount that has not been satisfied in relation to compensation for pollution damage; or
 - (iii) if the judgment has not been satisfied — the amount payable under the judgment in relation to compensation for pollution damage;
 - (b) a statement as to whether costs (if any) were awarded by the original court and, if so, the amount of costs awarded by the original court, including:
 - (i) if the amount of costs payable under the judgment has been satisfied in whole — the amount of costs that has been satisfied; or

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- (ii) if the amount of costs payable under the judgment that relates to compensation for pollution damage has been partly satisfied — the amount of costs that has not been satisfied in relation to compensation for pollution damage; or
- (iii) if the judgment has not been satisfied — the amount of costs payable under the judgment in relation to compensation for pollution damage;
- (c) a statement as to whether the judgment of the original court is enforceable by the judgment creditor under the law of the country in which the original court is situated;
- (d) a statement as to whether 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;
- (e) a statement as to whether the judgment of the original court was given by a court having jurisdiction of the kind mentioned in Article 9 of the Bunker Oil Convention;
- (f) a statement as to whether the judgment of the original court was given for an incident that occurred after both Australia and the country in which the original court is situated became countries to which the Bunker Oil Convention applies;
- (g) a statement of the matters relied on by the judgment creditor as evidence of the matters mentioned in paragraphs (d) and (e);
- (h) if the judgment of the original court sets out the amount payable under the judgment in the currency of a foreign country — the equivalent amount to the amount payable under the judgment, calculated in Australian currency;
- (i) if the judgment of the original court sets out costs that are payable to the judgment creditor in the currency of a foreign country — the equivalent amount to the amount of costs, calculated in Australian currency;
- (j) the rate of interest (if any) that is payable under the judgment under the law of the country in which the original court is situated;

Regulation 9

- (k) if the judgment of the original court relates to compensation for pollution damage and other matters — the provisions in the judgment that relate only to compensation for pollution damage.
- (4) If, under this regulation, an amount is to be calculated in Australian currency, the amount must be calculated using the exchange rate determined by the Reserve Bank of Australia for the date on which the judgment of the original court was made.

Division 3.4 Enforcement of judgment

9 Requirement to register judgment

- (1) A Court must make an order to register a judgment if:
 - (a) the judgment was given by a court having jurisdiction of the kind mentioned in Article 9 of the Bunker Oil Convention; and
 - (b) the judgment was given for an incident that occurred after both Australia and the country in which the original court is situated became countries to which the Bunker Oil Convention applies; and
 - (c) the judgment is enforceable under the law of 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; and
 - (e) the application is in accordance with regulations 7 and 8.
- (2) The order must:
 - (a) state the effect of regulation 15; and
 - (b) specify a period within which the judgment debtor for the judgment may make an application under regulation 17 to set aside the order.

10 Judgment must be registered only for matters relating to compensation for pollution damage

A Court may order a judgment to be registered under regulation 9 only in so far as the judgment relates to compensation for pollution damage.

11 Amount for which judgment may be registered

The amount for which a judgment may be registered is the total of the following amounts:

- (a) either:
 - (i) the amount payable under the judgment that relates to compensation for pollution damage; or
 - (ii) if the judgment has been partly satisfied — the unsatisfied amount payable under the judgment that relates to compensation for pollution damage;
- (b) the amount of any costs awarded to the judgment creditor for the judgment by the original court that:
 - (i) has not been satisfied; and
 - (ii) relates to compensation for pollution damage;
- (c) the amount of any interest that is payable to the judgment creditor:
 - (i) under the law of the country in which the original court is situated; and
 - (ii) on the date the judgment is registered by the Court;
- (d) the amount of any reasonable costs of, and incidental to, registration by the Court, including the cost of obtaining a certified copy of the judgment from the original court.

12 Conversion to Australian currency

- (1) This regulation applies if an amount mentioned in regulation 11 is expressed in the currency of a foreign country.
- (2) The amount for which the judgment may be registered must:
 - (a) be an amount that is equivalent to the currency of the foreign country; and
 - (b) be expressed in Australian currency; and

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- (c) use the exchange rate determined by the Reserve Bank of Australia:
 - (i) if the amount is an amount mentioned in paragraph 11 (a) or (b) — on the date of the judgment of the original court; and
 - (ii) if the amount is an amount mentioned in paragraph 11 (c) or (d) — on the date the judgment is registered by the Court.

13 Security for costs

A Court may, in addition to the order under regulation 9, make an order requiring the judgment creditor for a judgment to give security for the costs of:

- (a) the application to have the judgment registered in the Court; and
- (b) any proceedings that may be brought to set aside an order made under regulation 9.

14 Notice of registered judgment

- (1) If a Court makes an order under regulation 9, the Court must give the judgment debtor for the judgment written notice of the order in accordance with the Court's practice and procedure for serving a writ of summons.
- (2) The notice must include the following information:
 - (a) the details of the registered judgment;
 - (b) the details of the order to register the judgment;
 - (c) the name and address for service of:
 - (i) the judgment creditor for the judgment; or
 - (ii) if a solicitor is acting on behalf of the judgment creditor — the solicitor; or
 - (iii) if an agent is acting on behalf of the judgment creditor — the agent;
 - (d) the right of the judgment debtor to apply to set aside the order to register the judgment;
 - (e) the period within which the judgment debtor may apply to the Court;

Regulation 17

- (f) the right of the judgment debtor to apply to the Court for an extension of the period within which the judgment debtor may apply to the Court.

15 When order to register judgment takes effect

An order under regulation 9 to register a judgment takes effect:

- (a) if no application is made to set aside the order:
 - (i) on the day after the end of the period specified by the Court under paragraph 9 (2) (a) in relation to the application; or
 - (ii) if the Court determined under subregulation 17 (4) an extension to the period specified by the Court under paragraph 9 (2) (a) in relation to the application — on the day after the end of the extended period; or
- (b) if an application is made to set aside the order and the application is not successful — immediately after the application has been determined.

16 Effect of order to register judgment

- (1) An order to register a judgment has 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) Interest on the amount 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.

Division 3.5 How to set aside registered judgment

17 Application for order to set aside registered judgment

- (1) The judgment debtor for a registered judgment may, in writing, apply to a Court to set aside an order made under regulation 9.

Regulation 18

- (2) Subject to subregulation (4), the application must be made before the end of the period specified in the order.
- (3) Before the end of the period specified in the order, the judgment debtor may, in writing, apply to a Court for an extension of the period.
- (4) If the Court grants the extension, an application under subregulation (1) must be made before the end of the extended period.
- (5) If an application is made under this regulation, the Court must determine the application.

18 Order on application to set aside registered judgment

- (1) The Court may set aside an order made under regulation 9 if:
 - (a) the rights under the judgment are not vested in the person who made the application for registration; or
 - (b) the person against whom the judgment was ordered to be registered is not the person subject to the obligations under the judgment; or
 - (c) at the date of the application to have the judgment registered in the Court:
 - (i) the amount for which the judgment was registered had been paid in whole or in part; or
 - (ii) the judgment was not enforceable under the law of the country in which the original court is situated; or
 - (iii) the judgment was subject to an ordinary form of review under the law of the country in which the original court is situated; or
 - (d) the order relates to compensation for pollution damage and other matters; or
 - (e) the judgment was obtained by fraud; or
 - (f) the judgment debtor for the judgment was not given reasonable notice of the proceedings or a fair opportunity to defend the proceedings in the original court; or

Regulation 20

- (g) before the date of the judgment of the original court, the matter in dispute in the proceedings in the original court was the subject of a judgment of an Australian court exercising jurisdiction in the matter; or
 - (h) the judgment was not registered in accordance with these Regulations.
- (2) The Court may also set aside an order made under regulation 9 if:
- (a) before the date of the judgment of the original court, the matter in dispute in the proceedings in the original court was the subject of a judgment of another court; and
 - (b) the other court was not an Australian court.

19 Stay of execution of order for registered judgment

- (1) This regulation applies if:
- (a) a Court under regulation 18 is dealing with an application to set aside an order made under regulation 9; and
 - (b) the Court finds that the only reason the order may be set aside is because at the date of the application to register the judgment, the judgment was:
 - (i) not enforceable under the law of the country in which the original court is situated; or
 - (ii) subject to an ordinary form of review under the law of the country in which the original court is situated.
- (2) The Court may, instead of setting aside the order, order a stay of execution in relation to the registration of the judgment on such terms as it thinks just.

Division 3.6 Other applications to the Court

20 Further applications to register judgment

- (1) This regulation applies if:
- (a) a judgment creditor for a judgment has made an application to register a judgment under regulation 7; and

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- (b) either:
 - (i) the application was not granted by a Court under regulation 9; or
 - (ii) an order made under regulation 9 was set aside by a Court under regulation 18.
- (2) The judgment creditor may make a further application to register the judgment under regulation 7 unless the Court has ordered otherwise.

21 Circumstance in which judgment amount has been paid in part

- (1) This regulation applies if:
 - (a) a Court has set aside an order made under regulation 9; and
 - (b) the only reason the order was set aside is because part of the total amount payable in relation to the judgment had been paid.
- (2) The Court must, on further application by the judgment creditor for the judgment to register the judgment, make an order registering the judgment for the balance remaining payable up to the date of further application.

22 Circumstance in which order relates to compensation for pollution damage and other matters

- (1) This regulation applies if:
 - (a) a Court has set aside an order made under regulation 9; and
 - (b) the only reason the order was set aside by the Court is because the order relates to compensation for pollution damage and other matters.
- (2) The Court must, on further application by the judgment creditor for the judgment to register the judgment, make an order registering the judgment for the provisions of the judgment that relate to compensation for pollution damage.

Regulation 23

23 Issue of court documents

- (1) This regulation applies if:
 - (a) a judgment has been entered in an Australian court for a claim for compensation under the applied provisions; and
 - (b) a person, in whose favour such judgment has been entered, decides to enforce the judgment in a country, other than Australia, in which the Bunker Oil Convention applies; and
 - (c) the person has applied to the court for the issue of any of the following court documents:
 - (i) a certified copy of the judgment;
 - (ii) a certified copy of any document filed with the court in the proceedings;
 - (iii) a certificate giving details of an order made by the court in the proceedings;
 - (iv) a certificate giving details of an act or thing done in the proceedings that is recorded in a document forming part of the record kept by the court.
- (2) The Registrar, or other proper officer, of the court must, on application by the person, issue the person with the court document that the person has applied for under paragraph (1) (c).
- (3) The person must pay the court fee for the issue of a court document mentioned in paragraph (1) (c) if:
 - (a) the person has applied to the court for the issue of the court document; and
 - (b) the court charges a fee for the issue of the court document.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.