

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 206

Issued under the authority of the Minister for Infrastructure, Transport,
Regional Development and Local Government

Protection of the Sea (Civil Liability) Act 1981

Protection of the Sea (Civil Liability) Amendment Regulations 2009 (No. 1)

Section 27 of the *Protection of the Sea (Civil Liability) Act 1981* (the Act) provides that the Governor-General may make regulations prescribing all matters which by the Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act. Section 12 of the Act provides for the making of regulations to give effect to the applied provisions of the International Convention on Civil Liability for Oil Pollution Damage (the Convention).

The amending Regulations amended the *Protection of the Sea (Civil Liability) Regulations 1983* (the Principal Regulations) to increase two application fees payable to the Australian Maritime Safety Authority (AMSA) for the issue of insurance certificates. These fees have remained at their current levels since one fee was introduced in 1983 and the other was introduced in 2004.

The amending Regulations also made a number of minor amendments to update certain references in the Principal Regulations, and clarify transitional arrangements.

Details of the amending Regulations are included in the Attachment.

The amending Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

No formal consultation was undertaken in relation to these amendments as they are of a minor or machinery nature and do not substantially alter existing arrangements.

The amending Regulations commenced on the day after registration with the Federal Register of Legislative Instruments.

**DETAILS OF THE PROTECTION OF THE SEA (CIVIL LIABILITY)
AMENDMENT REGULATIONS 2009 (NO. 1)**

Regulation 1 – Name of Regulations

Regulation 1 is a formal provision specifying the name of the Regulations.

Regulation 2 – Commencement

Regulation 2 provides that the Regulations commence the day after registration on the Federal Register of Legislative Instruments.

Regulation 3 – Amendment of *Protection of the Sea (Civil Liability) Regulations 1983*

Regulation 3 provides that Schedule 1 amends the *Protection of the Sea (Civil Liability) Regulations 1983*.

Regulation 4 – Transitional

The increased fees apply only to applications for insurance certificates received by the Australian Maritime Safety Authority (AMSA) after the commencement of the amending Regulations.

SCHEDULE 1 – AMENDMENTS

Item [1] - Paragraph 3 of Article V of the Convention requires the owner of an oil tanker, from which there has been an oil spill, to produce a bank or other acceptable guarantee to cover the owner's liability to pay compensation for any oil pollution damage. Regulation 4 of the *Protection of the Sea (Civil Liability) Regulations 1983* (the Principal Regulations) prescribes the kinds of guarantees that are acceptable for the purposes of paragraph 3 of Article V of the Convention. The amending Regulations amended paragraph 4(b) to replace the reference to "Maritime Protection and Indemnity Association" with a reference to "Protection and Indemnity Club" to more correctly reflect the collective name of organisations which provide insurance in respect of pollution damage.

Item [2] - Oil tankers carrying more than 2,000 tonnes of oil as cargo are required to carry a certificate on board which provides evidence that the owner is insured to cover the owner's liability in case of pollution damage resulting from a spill of oil from the tanker. Regulation 7 of the Principal Regulations prescribes the person within AMSA with whom applications for insurance certificates must be lodged. The amending Regulations amended paragraph 7(a) to replace the reference to "Manager, Environmental Protection Standards" with a reference to "Manager, Environment Protection", and paragraph 7(b) to replace the reference to "General Manager, Maritime Safety and Environmental Strategy" with a reference to "Deputy Chief Executive Officer, Maritime Standards Division". These changes reflect changes in position titles within AMSA.

Items [3] and [4] - Regulation 9 of the Principal Regulations prescribes the fees to accompany applications for the issue of insurance certificates. The amending Regulations amended regulation 9 to replace the fee of \$50 in subregulation (1) with a fee of \$70, and the fee of \$30 in subregulation (2) with a fee of \$40. The fee of \$70 applies to an application for the initial issue of an insurance certificate or for the renewal of an insurance certificate where there has been a change in material particulars such as the insurance provider, the owner of the tanker, the name of the tanker, or the country in which the tanker is registered. The fee of \$40 applies to an

application for the renewal of an insurance certificate where there has not been a change in material particulars. The fees, which are intended to cover the costs incurred by AMSA in assessing applications for, and issuing insurance certificates, reflect increased operating costs for AMSA since the current \$50 fee was introduced in 1983 and the \$30 fee was introduced in 2004.

Item [5] - In accordance with the requirement in subsection 16(6) of the Act, regulation 10 of the Principal Regulations prescribes the person to whom copies of insurance certificates must be forwarded. The amending Regulations amended regulation 10 to replace the reference to “General Manager, Maritime Safety and Environmental Strategy” with a reference to “Deputy Chief Executive Officer, Maritime Standards Division”.

Items [6] to [8] - Schedule 1 of the Principal Regulations prescribes the application form for a certificate of insurance. The amending Regulations amended the “Address for inquiries” in Schedule 1 by replacing the reference to “Manager, Environment Protection Standards” with a reference to “Manager, Environment Protection”. The amending Regulations amended Note 11 in Schedule 1 to replace the fee of \$50 with a fee of \$70, and the fee of \$30 with a fee of \$40. The changes to the application form reflect changes referred to above.