



# Protection of the Sea (Supplementary Fund) Regulations 2009<sup>1</sup>

## Select Legislative Instrument 2009 No. 244

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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 (Oil Pollution Compensation Funds) Act 1993*.

Dated 17 September 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**

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**Part 1 Preliminary****1 Name of Regulations**

These Regulations are the *Protection of the Sea (Supplementary Fund) Regulations 2009*.

**2 Commencement**

These Regulations commence on the commencement of Schedule 1 to the *Protection of the Sea Legislation Amendment Act 2008*.

**3 Interpretation**

(1) In these Regulations:

*Act* means the *Protection of the Sea (Oil Pollution Compensation Funds) Act 1993*.

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

***Court*** means a court that is invested or conferred with jurisdiction under regulation 5.

***judgment*** means a judgment or order:

- (a) given or made by a court situated in a country to which the 2003 Protocol applied at the time the judgment or order was given or made; and
- (b) in proceedings that are, in whole or in part, for supplementary compensation for pollution damage.

***judgment creditor***, in relation to a judgment:

- (a) means the person in whose favour a judgment was given; and
- (b) includes a person in whom the rights under a judgment have become vested by succession, assignment or otherwise.

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***judgment debtor***, in relation to a judgment:

- (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.

***supplementary compensation for pollution damage*** means compensation provided by Article 4 of the 2003 Protocol.

- (2) Unless the contrary intention appears, an expression used in these Regulations and in the 2003 Protocol has the same meaning in these Regulations, as they relate to the 2003 Protocol, as in the 2003 Protocol.

*Note* Some terms used in these Regulations are defined in the Act. For example, section 3 of the Act contains definitions of ***the 2003 Protocol*** and ***the Supplementary Fund***.

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## **Part 2 Registration and enforcement of judgments**

### **Division 2.1 Overview of Part**

#### **4 Overview**

For section 46H of the Act, this Part sets out the provisions for, and in relation to, giving effect to Article 8 of the 2003 Protocol.

### **Division 2.2 Jurisdiction and Court fees**

#### **5 Jurisdiction of Federal Court and State and Territory Supreme Courts**

For section 46H 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.

#### **6 Court fees**

For section 46H 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.

### **Division 2.3 How to apply to register judgment**

#### **7 Application to register judgment**

- (1) A judgment creditor for a judgment may apply, in writing, 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 supplementary compensation for pollution damage.

**8 Evidence in support of application to register judgment**

- (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 certified copy of the judgment of the original court; and
  - (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 mentioned in subregulation (1) 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 in relation to supplementary compensation for pollution damage; or
    - (ii) if the amount payable under the judgment has been partly satisfied — the amount that has not been satisfied in relation to supplementary compensation for pollution damage; or
    - (iii) if the judgment has not been satisfied — the amount that has not been satisfied in relation to supplementary compensation for pollution damage;

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- (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 in relation to supplementary compensation for pollution damage; or
  - (ii) if the amount of costs payable under the judgment has been partly satisfied — the amount of costs that has not been satisfied in relation to supplementary compensation for pollution damage; or
  - (iii) if the judgment has not been satisfied — the amount of costs that has not been satisfied in relation to supplementary 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 was given by a court having jurisdiction of the kind mentioned in Article 7 of the 2003 Protocol;
- (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 2003 Protocol 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) a statement 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;
- (i) 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;

**Regulation 9**

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- (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;
  - (k) if the judgment of the original court relates to supplementary compensation for pollution damage and other matters — the provisions of the judgment that relate to supplementary 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 2.4            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 7 of the 2003 Protocol; 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 2003 Protocol 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.

**Regulation 10**

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**10 Judgment in respect of pollution damage and other matters**

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

**11 Amount for which judgment may be registered**

The amount for which a Court may order a judgment to be registered is the total of the following:

- (a) either:
  - (i) the amount payable under the judgment that relates to supplementary compensation for pollution damage; or
  - (ii) if the judgment has been partly satisfied — the unsatisfied amount payable under the judgment that relates to supplementary 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 supplementary 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, the application for registration by the Court, including the cost of obtaining a certified copy of the judgment from the original court.

**12 Amount to be expressed in Australian currency**

- (1) This regulation applies if an amount mentioned in regulation 11 is expressed in the currency of a foreign country.

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- (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
  - (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 order a judgment creditor for a judgment who applies for registration of a judgment to give security for the costs for:

- (a) the application to register the judgment in the Court; and
- (b) any proceedings that may be brought to set aside the registration of the judgment.

**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;

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- (d) the rights of the judgment debtor for the judgment to apply to set aside the order to register the judgment;
- (e) the period within which the judgment debtor may apply to the Court;
- (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) (b) in relation to the application; or
  - (ii) if the Court determined under subregulation 17 (5) an extension of the period specified by the Court under paragraph 9 (2) (b) 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 2.5      How to set aside registered judgment**

### **17      Application for order to set aside registered judgment**

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

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- (d) the order relates to supplementary 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
  - (g) before the date of the judgment in 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 2.6      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
  - (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) an order made under regulation 9 was set aside by a Court under regulation 18; 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 supplementary compensation for pollution damage and other matters**

- (1) This regulation applies if:
  - (a) an order made under regulation 9 was set aside by a Court under regulation 18; and

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- (b) the only reason the order was set aside by the Court is because the order relates to supplementary 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 supplementary compensation for pollution damage.

**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 of the Protocol; 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 2003 Protocol 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.

## **Part 3**

# **Contributions and late payment penalties**

### **24 Recovery of contributions and late payment penalties**

For section 46Q of the Act, a 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 2003 Fund is located; 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 2003 Fund is located.

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**Part 4 Record keeping and returns****25 Records to be kept**

- (1) A person to whom Article 10 of the 2003 Protocol applies must keep records for each calendar year of the matters that will enable the person to make a return under regulation 26.

Penalty: 10 penalty units.

- (2) A person who is required to keep records under subregulation (1) 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.

**26 Copies of records to be given to Authority**

- (1) On or before 1 April in a year, a person to whom Article 10 of the 2003 Protocol applies must give to the Authority a return that relates to the preceding calendar year, in accordance with the form in the Schedule.

Penalty: 10 penalty units.

- (2) The 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 telephone number, fax number, or email address, of the person.
- (3) For subregulation (1), strict liability applies to:
- (a) whether the person is a person to whom Article 10 of the 2003 Protocol applies; and
  - (b) whether the form of the return is in accordance with the requirements of the form in the Schedule.

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**27 Authority may require documents**

- (1) If a document is relevant to ascertaining the liability of a person to make a contribution to the 2003 Fund, the Authority may, by notice in writing, require the person:
  - (a) to produce the document to the Authority; or
  - (b) to make a copy of the document and give the copy to the Authority.
- (2) A person must comply with a notice issued by the Authority under subregulation (1) within 30 days of receiving the notice.

Penalty: 10 penalty units.
- (3) An offence against subregulation (2) is an offence of strict liability.

## Schedule 1 Return Form

(subregulation 26 (1))

### REPORT TO THE IOPC FUNDS ON RECEIPTS OF CONTRIBUTING OIL

STATE in which oil was received						
YEAR in which oil was received						
FUND to which report is being made ie to the 1992 Fund only, to the Supplementary Fund only or to both Funds	1992 Fund only		Supp. Fund only		Both Funds	

<b>COMPANY OR ENTITY RECEIVING CONTRIBUTING OIL</b>		
Please give details exactly as you would like them to appear on invoices		
<b>COMPANY OR ENTITY</b>		
<b>FOR THE ATTENTION OF</b>		
<b>ADDRESS</b>		
<b>CONTACT PERSON</b> in case of queries	Name	
	Job title	
	Telephone no.	
	Fax no.	
	Email address	
<b>ASSOCIATED COMPANIES OR ENTITIES</b> which may also have received contributing oil		

<b>RECEIPTS OF CONTRIBUTING OIL</b> ie crude oil and heavy fuel oil		
		<b>QUANTITY</b> in metric tonnes, rounded to the nearest tonne
<b>A. Received directly after carriage by sea</b>		
<b>Imported from other States</b>		
<b>After coastal movement within the same State</b>		
<b>B. Received by other modes of transport eg by pipeline, after carriage by sea</b>		
<b>From a Non-Member State</b>		
<b>State from which received</b>	<b>Mode of transport</b>	
<b>TOTAL QUANTITY OF CONTRIBUTING OIL RECEIVED</b>		

<b>SIGNATURES</b>			
<b>OFFICER OF COMPANY OR ENTITY</b>		<b>GOVERNMENT OFFICIAL</b>	
Signed		Signed	
Date		Date	
Name		Name	
Job title		Job title	
		Body	

<b>FUND USE ONLY</b>	File:	Associated to:	92 Fund	SF	Entered	Checked	<b>FUND USE ONLY</b>
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**Note**

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