



Protection of the Sea (1992 Fund) Regulations 1994

Statutory Rules 1994 No. 126 as amended

made under the

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

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Regulation 1

Part 1 Preliminary**1 Name of Regulations** [see Note 1]

These Regulations are the *Protection of the Sea (1992 Fund) Regulations 1994*.

2 Commencement [see Note 1]

These regulations commence on the day on which Chapters 1, 2 and 4 of the Act commence.

3 Interpretation

- (1) In these regulations, unless the contrary intention appears:

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

compensation for pollution damage means compensation for which provision is made under Article 4 of the 1992 Convention.

Court means a court that is invested or conferred with jurisdiction under regulation 4 for matters arising under Part 2.

judgment means a judgment or order given or made by a court against the Fund for compensation for pollution damage in a foreign country to which the 1992 Convention applies.

judgment creditor:

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

judgment debtor:

- (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.

Regulation 3

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

registered means registered under Part 2.

- (2) Unless the contrary intention appears, an expression used in these regulations and in the 1992 Convention has the same meaning in these regulations, as they relate to the 1992 Convention, as in the 1992 Convention.

Note Words and expressions used in these regulations that are defined in the Act have the same meaning in these regulations as they have in the Act (see *Acts Interpretation Act 1901*, s. 46 (1) (a)). For example, section 3 of the Act contains definitions of *the 1992 Convention* and *the 1992 Fund*.

Regulation 4

Part 2 Registration of foreign judgments**4 Jurisdiction of Courts**

For the purposes of section 34 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.

5 Court fees

For the purposes of section 34 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.

6 Application for registration of foreign judgment

- (1) A judgment creditor may apply to a Court to have the judgment registered in the Court.
- (2) Subject to these regulations, on written application, a Court must order the judgment to be registered.
- (3) A judgment must not be registered unless it:
 - (a) was given by a court having jurisdiction of the kind referred to in Article 7 of the 1992 Convention; and
 - (b) was given in respect of an incident that occurred after Australia and the country in which the original court is situated became countries to which the 1992 Fund applies; and
 - (c) is enforceable by execution in the country in which the original court is situated; and
 - (d) is no longer subject to ordinary forms of review under the law of the country in which the original court is situated.

Regulation 10

7 Sum for which judgment may be registered

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

- (a) the whole amount payable under the judgment of the original court, or, if the judgment has been partly satisfied, the balance payable under the judgment at the date of the application for registration, including:
 - (i) any costs awarded to the judgment creditor; and
 - (ii) any interest 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 amount of the reasonable costs of, and incidental to, registration, including the costs of obtaining a certified copy of the judgment from the original court.

8 Judgment sum to be expressed in Australian currency

If the sum payable under a judgment is expressed in the currency of a foreign country, the amount for which the judgment may be registered is the amount that the sum payable represents in Australian currency calculated at the official rate of exchange determined by the Reserve Bank of Australia as at the date of the judgment of the original court.

9 Judgment in respect of pollution damage and other matters

If a judgment, for which registration is sought, appears to the Court to be in respect of 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 relating to the other matters.

10 Evidence in support of application to register judgment

- (1) An application for registration must have with it an affidavit:
 - (a) to which is attached:

Regulation 10

- (i) a certified copy of the judgment of the original court authenticated by the seal of that court; and
 - (ii) if the judgment is not in English — translation of the judgment into English that is certified by a notary public or authenticated by affidavit; and
 - (b) that states to the best of knowledge of the applicant:
 - (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 for which it remains unsatisfied; and
 - (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; and
 - (iii) that, if the judgment is registered, the registration will not be, or be liable to be, set aside; and
 - (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; and
 - (v) that the judgment was given by a court having jurisdiction of the kind referred to in Article 7 of the 1992 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 countries to which the 1992 Fund applies; and
 - (c) 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.
- (2) The affidavit must set out the matters relied on by the applicant as evidence of the matters referred to in paragraphs (1) (b) (v) and (vi).
- (3) If the sum payable under the judgment of the original court is expressed in currency other than Australian currency, the affidavit must state the amount that that sum represents in Australian currency calculated at the official rate of exchange

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determined by the Reserve Bank of Australia as at the date of that judgment.

- (4) If the judgment has been given in respect of proceedings for compensation for pollution damage and of other matters, the affidavit must identify the provisions of the judgment:
 - (a) that relate to compensation for pollution damage; and
 - (b) for which registration is sought.

11 Security for costs

The Court may order a judgment creditor who applies for registration of the judgment 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.

12 Order on application for registration of judgment

- (1) If an order is made for registration of a judgment the Court must fix a period that appears to the Court to be appropriate 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 must:
 - (a) specify the period fixed by the Court under subregulation (1); and
 - (b) include a statement to the effect that the judgment will not be given effect until the end of the period stated in the order.
- (3) At any time until a party can no longer apply to have registration of a judgment set aside, the Court may grant an extension of the period during which an application to have the registration set aside may be made.

13 Notice to judgment debtor of registration of judgment

- (1) Notice in writing of the registration of a judgment of the original court must 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

Regulation 14

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 subregulation (1) must:
 - (a) specify full particulars of the registered judgment and the order for registration; and
 - (b) specify the name and address for service of the judgment creditor or his or her solicitor or agent, as the case may be; and
 - (c) include a notice to the judgment debtor that he or she may apply, within the period specified in the order, for registration of the judgment to be set aside in accordance with these regulations.

14 Effect of registration of foreign judgment

- (1) Except to the extent that these regulations provide for the setting aside of registration, a registered judgment has the same 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) For the purpose of any proceedings on a registered judgment, interest on the sum 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.

15 Execution not to issue before period allowed to set aside judgment

Effect must not be given to a registered judgment until:

- (a) the end of the period fixed by the Court for making an application to set aside the judgment; or
- (b) the end of any further period that is ordered by the Court; or
- (c) if 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.

Regulation 16

16 Procedure to have a registered judgment set aside

- (1) A person against whom a registered judgment may be enforced may apply to the Court in which the judgment was registered to have registration of the judgment set aside.
- (2) On an application, the Court may set aside registration of a judgment, if:
 - (a) the rights under the judgment are not vested in the person by whom the application for registration was made; or
 - (b) the person against whom the judgment was registered is not the person subject to the obligations under the judgment; or
 - (c) at the date of the application for registration of the judgment, the sum for which the judgment was registered had been paid in whole or in part; or
 - (d) the judgment was obtained by fraud; or
 - (e) 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; or
 - (f) before the date of the judgment in the original court, the matter in dispute in the proceedings in that court had been the subject of a judgment of an Australian court exercising jurisdiction in the matter; or
 - (g) before the date of the judgment in the original court, the matter in dispute in the proceedings in that court had been the subject of a judgment of a court (except an Australian court) exercising jurisdiction in the matter, being a judgment that:
 - (i) could be registered; and
 - (ii) if it were registered — would not be liable to be set aside; or
 - (h) the judgment was registered in contravention of these regulations.

Regulation 17

17 Power of Court to set aside registered judgment

- (1) If, on application to set aside the registration of a judgment, it appears to the Court that registration of the judgment may be set aside only because at the date of application for registration:
 - (a) the judgment was not enforceable in the country in which the original court is situated; or
 - (b) the judgment was subject to an ordinary form of review under the law of the country in which the original court is situated;

the Court 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) If the registration of a judgment is set aside only 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 must, 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) If the registration of a judgment is set aside only because the judgment was registered in respect of proceedings for compensation for pollution damage and for other matters, the Court must, on the application of the judgment creditor, order the judgment to be registered only in respect of the provisions of the judgment that relate to compensation for pollution damage.

18 Further application for registration

The setting aside of the registration of a judgment under these regulations does not prevent a further application to register the judgment being made, unless the Court orders otherwise.

19 Judgment not to be enforceable except by registration

A Court must not hear or determine proceedings, except proceedings by way of registration of a judgment, for the recovery of an amount payable under the judgment.

Regulation 20

20 Issue of certificates of judgments

If a judgment has been entered in an Australian court for a claim for compensation under the applied provisions of the 1992 Convention and the person in whose favour such judgment has been entered wishes to enforce the judgment in a country to which the 1992 Convention applies, the Registrar or chief officer of the court must, on application by that person, issue under the seal of the court:

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

Regulation 21

Part 3 Contributions and late payment penalties**21 Recovery of contributions and late payment penalties**

For section 42 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 1992 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 1992 Fund is located.

Part 4 Record keeping and returns

22 Records to be kept

- (1) A person to whom Article 10 of the 1992 Convention applies must keep records for each calendar year of the matters that will enable the person to make a return under regulation 23.

Penalty: 10 penalty units.

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

23 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 1992 Convention 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 1992 Convention applies, and
 - (b) whether the form of the return is in accordance with the requirements of the form in the Schedule.

Regulation 24

24 Authority may require documents

- (1) If a document is relevant to ascertaining the liability of a person to make a contribution to the 1992 Fund, the Authority may, by notice in writing, require the person:
 - (a) to produce a document to the Authority; or
 - (b) to make a copy of a 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 Return Form

(subregulation 23 (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	

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

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

SIGNATURES			
OFFICER OF COMPANY OR ENTITY		GOVERNMENT OFFICIAL	
Signed Date Name Job title		Signed Date Name Job title	
		Body	

FUND USE ONLY	File:	Associated to:	92 Fund	SF	Entered	Checked	FUND USE ONLY
	CTR/						

Table of Instruments**Notes to the *Protection of the Sea (1992 Fund) Regulations 1994*****Note 1**

The *Protection of the Sea (1992 Fund) Regulations 1994* (in force under the *Protection of the Sea (Oil Pollution Compensation Funds) Act 1993*) as shown in this compilation comprise Statutory Rules 1994 No. 126 amended as indicated in the Tables below.

Table of Instruments

Year and Number	Date of notification in Gazette or FRLI registration	Date of commencement	Application, saving or transitional provisions
1994 No. 126	3 May 1994	3 May 1994 (see <i>Gazette</i> 1994, No. S462)	
1996 No. 221	9 Oct 1996	9 Oct 1996	—
1998 No. 87	15 May 1998	15 May 1998	—
2001 No. 351 (a)	21 Dec 2001	21 Dec 2001	—
2006 No. 231	25 Aug 2006 (see F2006L02825)	26 Aug 2006	—
2009 No. 243	21 Sept 2009 (see F2009L03536)	13 Oct 2009 (see r. 2 and F2009L03731)	—

(a) Statutory Rules 2001 No. 351 was made under the *Navigation Act 1912*, the *Protection of the Sea (Oil Pollution Compensation Fund) Act 1993*, the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* and the *Shipping Registration Act 1981*.

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
R. 1	rs. 2001 No. 351; 2009 No. 243
R. 3	am. 1996 No. 221; 1998 No. 87; 2009 No. 243
Note to r. 3 (2).....	am. 1998 No. 87
Part 2	
Heading to r. 4	rs. 2009 No. 243
R. 4	am. 1996 No. 221; 1998 No. 87
R. 5	am. 1996 No. 221; 1998 No. 87
R. 6	am. 1996 No. 221; 1998 No. 87; 2009 No. 243
R. 9	am. 2009 No. 243
R. 10	am. 1996 No. 221; 1998 No. 87; 2009 No. 243
R. 11	am. 2009 No. 243
R. 12	am. 2009 No. 243
R. 13	am. 2009 No. 243
R. 14	am. 2009 No. 243
R. 15	am. 2009 No. 243
R. 16	am. 2009 No. 243
Heading to r. 17	rs. 2009 No. 243
R. 17	am. 2009 No. 243
R. 18	am. 2009 No. 243
R. 19	am. 2009 No. 243
Heading to r. 20	am. 1998 No. 87
R. 20	am. 1996 No. 221; 1998 No. 87; 2009 No. 243
Part 3	
Heading to Part 3.....	rs. 2009 No. 243
Heading to r. 21	rs. 2009 No. 243
R. 21	am. 1996 No. 221; 1998 No. 87; 2009 No. 243
Part 4	
Heading to Part 4.....	ad. 2009 No. 243
R. 22	am. 1996 No. 221; 1998 No. 87; 2009 No. 243
R. 23	am. 2001 No. 351; 2006 No. 231; 2009 No. 243
Heading to r. 24	am. 1998 No. 87
R. 24	am. 1996 No. 221; 1998 No. 87; 2001 No. 351; 2009 No. 243
Note to r. 24	rep. 2009 No. 243

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected

How affected

Schedule

Schedule.....	am. 1996 No. 221; 1998 No. 87 rs. 2006 No. 231
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