

# **Protection of the Sea (Oil Pollution Compensation Fund) Regulations 1994 No. 126**

## **EXPLANATORY STATEMENT**

### **STATUTORY RULES 1994 No. 126**

Issued by the authority of the Minister for Transport

Protection of the Sea (Oil Pollution Compensation Fund) Act 1993

Protection of the Sea (Oil Pollution Compensation Fund) Regulations.

The Protection of the Sea (Oil Pollution Compensation Fund) Act 1993 (the Act) received Royal Assent on 15 October 1993. The purpose of the Act is to give effect to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (the 1971 Fund Convention) and its 1976 and 1992 Protocols.

The 1971 Fund Convention establishes the International Oil Pollution Fund (IOPC Fund) for compensating victims of oil pollution damage. The IOPC Fund is created by applying an annual levy on any person who receives, after carriage by ship, more than 150,000 tonnes of "contributing oil" in a calendar year,

Section 47 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or matters necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Protection of the Sea (Oil Pollution Compensation Fund) Regulations will enable Australia to accede to the 1971 Fund Convention.

Part 1 (regulations 1 to 3) of the regulations provide for the citation, commencement and interpretation of the regulations.

Part 2 (regulations 4 to 20) of the regulations provide for the vesting of jurisdiction in relation to claims for compensation or indemnification under the 1971 Fund Convention in the State and internal Territory Supreme Courts and the Federal Court of Australia and the registration by an Australian Court of foreign judgments against the IOPC Fund.

Part 3 (regulations 21 to 24) of the regulations prescribe procedures for the maintenance and retention of records of contributing oil, the provision of details of contributing oil and the payment of contributions to the IOPC Fund.

Details of the Regulations are:

Regulation 1 provides that the regulations may be cited as the Protection of the Sea (Oil Pollution Compensation Fund) Regulations.

Regulation 2 provides that the regulations commence on the day on which Chapters 1, 2 and 4 of the Protection of the Sea (Oil Pollution Compensation Fund) Act 1993 come into force, which is when the 1971 Fund Convention comes into force in Australia.

Regulation 3 defines certain terms used in subsequent regulations.

Regulation 4 provides that the Supreme Court of each State and internal Territory and the Federal Court of Australia are invested with jurisdiction in relation to an action against the IOPC Fund.

Regulation 5 provides that court fees in respect of a matter are to be those prescribed in the rules of that Court.

Regulation 6 specifies the conditions under which a judgment creditor may have a foreign judgment against the IOPC Fund registered by an Australian Court. A foreign judgment may be registered by a competent Australian Court where the judgment is enforceable and no longer subject to the ordinary forms of review under the law of the country where the original court is situated.

Regulation 7 specifies the amount for which a judgment may be registered having regard to any part satisfaction of the claim, costs and any interest due.

Regulation 8 specifies that where the amount in a foreign judgment is expressed in the currency of a foreign country the judgment will be registered by an Australian Court at the equivalent amount internal 2 in Australian currency.

Regulation 9 provides that a foreign judgment that relates to pollution damage and other matters may only be registered in respect of the part of the judgment relating to pollution damage.

Regulation 10 specifies the evidence in support and other particulars required to be submitted to the Court with an application for registration of a foreign judgment.

Regulation 11 provides that the Court may require an applicant to give security for the cost of an application and of any subsequent proceedings to set aside the registration of the judgment.

Regulation 12 provides that a Court that makes an order to register a foreign judgment must fix a reasonable period specified in the order to enable an application to be made to set aside the registration of the judgment.

Regulation 13 provides for a notice of the registration of a foreign judgment to be served on the judgment debtor.

Regulation 14 provides that a registered judgment has the same effect as a judgment of the Court in which it was registered.

Regulation 15 provides that effect must not be given to a registered judgment until the end of the period fixed by the Court under regulation 12 or until after the determination by the Court of any application to set aside registration.

Regulation 16 specifies the procedures for an application to a Court to have the registration of a foreign judgment set aside.

Regulation 17 specifies the powers of the Court to set aside or vary a judgment on receiving an application to set aside a judgment.

Regulation 18 provides that a further application for registration may be made after the setting aside of a judgment unless the Court orders otherwise.

Regulation 19 provides that a foreign judgment is not enforceable except after registration under the provisions of these regulations.

Regulation 20 specifies the conditions under which a copy of a judgment or other related documents will be issued by the Court.

Regulation 21 specifies that subscriptions and late payment penalty payments to the Fund must be paid by a cheque or by electronic transmission in Australian currency or the currency of the place where the Fund is kept (presently London).

Regulation 22 specifies that a person who is required to make payments to the IOPC Fund must maintain and retain relevant records at their principal place of business in Australia for a period of 5 years.

Regulation 23 provides that a person who is required to contribute to the Fund must provide a return of contributing oil received, in the form in the Schedule, to the Australian Maritime Safety Authority (AMSA).

Regulation 24 provides that AMSA may require a person, by notice in writing, to produce a document that is relevant to determining a person's liability to make a contribution to the Fund.

It is an offence to fail to comply with the requirements of regulations 22, 23 and 24.

The form of report required under regulation 23 is specified in the Schedule.