

# **PACIFIC ADVENTURER PRIVATE SECTOR CLAIMS PROCESS**

## **INTRODUCTION**

On 11-13 March 2009 an incident took place involving the vessel *Pacific Adventurer* in which containers were lost overboard and oil was spilled into waters off Cape Moreton, Queensland. On 8 August 2009 the Premier and the Australian Minister for Infrastructure, Transport, Regional Development and Local Government announced a settlement agreement had been reached between the owners of the *Pacific Adventurer* ('Swire'), the State and the Commonwealth in relation to the incident. The terms of that agreement required Swire to make payments totalling AUD\$25 million as follows:

- a limitation fund established according to international law, and
- the balance as a donation to a trust for the benefit of the Queensland marine environment.

The agreement also required that Queensland and Australian Government claims against the limitation fund be deferred in favour of non-government claims.

The Federal Court on 15 September 2009 ordered the constitution of a court-administered limitation fund by a payment into court in the amount of AUD\$16,891,198 plus interest (a total of AUD\$17,526,122.71) by 29 September 2009. On 18 September 2009 advertisements were placed in the press to alert possible claimants to the existence of the fund. Potential claimants have until 23 November 2009 to notify the Federal Court of their claims. On present indications, the limitation fund is more than sufficient to cover all valid non-government claims.

## **PRIVATE SECTOR CLAIMS PROCESS**

This document sets out a process for validating non-government claims arising out of the incident. It is a consent-based, without-prejudice process, to enable valid private sector claims to be identified, substantiated and (where validated) paid out from the limitation fund quickly and economically. Claimants who do not wish to participate in the process are free to pursue their claims through the courts.

Under the process, a claims validation team will collate, examine and make recommendations on each private sector claim. Claimants will have the choice of:

- accepting the claims team's recommendation, with the result that the parties will consent to the court ordering payment of the validated claim at the earliest opportunity, or
- litigating the claim through the courts.

The process is resourced by Swire and the Queensland and Australian Governments.

## **TIMETABLE**

To be considered in this claims validation process, claimants must, by 23 November 2009:

- lodge their claim and supporting documentation in writing with Bayside Shipping Services (BSS), AND
- file a notice of appearance with the Federal Court's Brisbane registry.

Details on how to do both these things are set out below.

If BSS requires further details, these must be provided by 24 December 2009.

The claims validation team will use every endeavour to finalise small claims as soon as possible, and all claims by 30 June 2010.

## **OBJECTIVES**

The objectives of the process are:

- Ensure the earliest possible settlement of valid private sector claims;
- Prioritise claims so that private sector claims are paid in full before public sector claims;
- Prioritise private sector claims so that small claims are finalised quickly and economically.

## **CRITERIA**

A claim will only be recommended for payment if it meets the following criteria:

- The claim is a valid claim at law that arises from the incident (whether as a result of oil contamination or the presence of containers on the seabed).
- The claim is for loss or damage caused, with reasonable proximity, by the incident.
- The claim is 'reasonable'.
- The quantum of the claim can be substantiated by producing appropriate documents or other evidence.
- The claimant has taken reasonable steps to mitigate his or her loss or damage (failing which the claim may be reduced accordingly).

Not every claim or its amount will necessarily be regarded as valid. Not every loss resulting from the incident will be validly claimable.

In making recommendations about whether claims are 'reasonable', the claims validation team will be guided by the International Oil Pollution Compensation Fund 1992's Claims Manual (see References below). (The manual is cited as an internationally accepted standard for assessing claims. To avoid doubt, there are no IOPC funds in relation to this incident because it was not a tanker spill.)

Each claim will have its own particular characteristics, and it will therefore be necessary to consider each claim on the basis of its own merits. These criteria therefore allow the particular circumstances of individual claimants to be taken into account.

## HOW TO SUBMIT A CLAIM

Claimants who have not already done so should submit their claims to the claims validation team through the claims website <http://www.pacificadventurer.com.au/>, operated by Bayside Shipping Services (BSS). BSS are claims adjusters appointed by Swire but with a largely neutral perspective as Swire has little direct interest in the manner in which the fund is distributed.

Claimants should also file a 'notice of appearance' in the Brisbane registry of the Federal Court in accordance with the court's directions by 23 November 2009. A notice of appearance form for self-represented claimants is available at <http://www.pacificadventurer.com.au/>. The notice of appearance can be lodged electronically with the Federal Court via [http://www.fedcourt.gov.au/fff/fff\\_filingielectronic.html](http://www.fedcourt.gov.au/fff/fff_filingielectronic.html) or by facsimile on (07) 3248-1240. Additional information in relation to the filing of documents can be accessed using the Court's website at [http://www.fedcourt.gov.au/fff/fff\\_filing.html](http://www.fedcourt.gov.au/fff/fff_filing.html). For further assistance with the Court's lodgement process, please contact the Queensland District Registry on (07) 3248-1100 or [qldreg@fedcourt.gov.au](mailto:qldreg@fedcourt.gov.au).

Claims should be made in writing (including electronic mail) through the claims website <http://www.pacificadventurer.com.au/>. Claims forms to assist claimants in the presentation of claims are available at <http://www.iopcfund.org/>.

A claim should be presented clearly and with sufficient information and supporting documentation to enable the basis of the claim and the amount of the damage to be assessed.

Each item of a claim must be substantiated by an invoice or other relevant supporting documentation, such as work sheets, explanatory notes, accounts and photographs.

It is the responsibility of claimants to submit sufficient evidence to support their claims. It is important that the documentation is complete and accurate.

If the documentation in support of a claim is likely to be considerable, claimants should contact Bayside Shipping Services as soon as possible to discuss claim presentation.

## WHAT INFORMATION SHOULD A CLAIM CONTAIN?

Each claim should contain the following basic information:

- The name and address of the claimant and of any representative.
- The type of pollution or other damage sustained.
- The amount of compensation claimed.
- The fact that the claim relates to the Pacific Adventurer oil spill off Moreton Island on 11-13 March 2009.

**Additional information may be required for specific types of claim. See section 3 of the International Oil Pollution Compensation Fund's Claims Manual (December 2008 edition).**

## **Claims assistance**

Bayside Shipping Services (BSS) will liaise with claimants and assemble claims. BSS will require assistance from claimants in providing any further information that may be necessary.

Given that BSS will provide assistance to claimants in preparing their claim, any costs incurred by claimants will be borne by the claimants themselves.

The Queensland Government will assist claimants where reasonably required, such as the provision of fisheries statistics and records.

## **Claims validation**

Once claimants and BSS have collated claims, they will be considered by the claims validation team.

The claims validation team will make recommendations as to whether the claim ought to be paid and the quantum of the claim that has been validated.

### **The claims validation team**

The claims validation team consists of:

- A representative of Bayside Shipping Services (paid for by Swire, but not representing Swire interests)
- A representative of Maritime Safety Queensland
- An independent person experienced in IOPC assessments appointed by the Australian Maritime Safety Authority, and
- A representative of Crown Law, Queensland Government.

## **PRESENTATION TO COURT**

Once recommendations have been made on each claim, the claims validation team will propose a settlement to the claimant. If the claimant is agreeable, a settlement agreement between the claimant, the Queensland Government (as the party with the largest claim against the limitation fund) and Swire (as the party that constituted the limitation fund) will be signed, subject to court approval.

Once settlement agreements have been signed (and it is reasonably clear that the total of all private sector claims will not exceed the limitation fund), the Queensland Government will apply to the Federal Court (perhaps in stages) for approval to pay claims out of the limitation fund.

If the claimant disputes the claims validation team's recommendation and the matter cannot be satisfactorily negotiated, then the matter can be litigated in the usual way.

## **COSTS**

1. You are entitled to seek your own legal advice about your claim entitlements and the amount of your claim. If your claim is resolved by agreement with the Queensland Government and Swire, a reasonable amount of up to \$1000 will be paid on a without-prejudice basis by Swire (not from the limitation fund) to you in reimbursement of your legal costs.
2. If you do not resolve your claim by agreement with the claims validation team then you may pursue your claim through legal action. In that case the question of legal costs will be dealt with by the court at the conclusion of the action.

## **REFERENCES**

As mentioned above, the claims validation team will be guided in making its recommendations by the International Oil Pollution Fund 1992 (IOPC Fund) guidelines. Relevant references are at: <http://www.iopcfund.org/>.

### **IOPC Fund *Claims Manual* (December 2008 edition)**

- A practical guide to presenting claims against the IOPC Funds. The Manual briefly describes the Funds' history and legal background, what types of claims are considered admissible and how to present a claim:  
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