



Compensation for oil pollution damage following an oil spill from a ship: Guidance for businesses and individuals suffering property damage or economic loss

Following an oil spill from a ship, businesses or individuals may be eligible for compensation for property damage or economic loss caused by the oil. This Fact Sheet provides summary information to businesses and individuals on eligibility and the claims process to assist in deciding whether to submit a claim, and if so, how to go about it. Note that this Fact Sheet does not deal with costs arising from clean up and preventive measures. Any private company directly involved in clean-up activities should submit a claim directly to the government agency that engaged them.

Property

Compensation may be payable for the reasonable costs of:

- Cleaning, repairing or replacing property contaminated by oil, e.g. hulls of vessels, fishing gear, and aquaculture facilities;
- Cleaning intakes, machinery and equipment of industrial installations that abstract seawater, which have been contaminated by oil, e.g. power stations, fish farms etc.;
- Damage to facilities and infrastructure e.g. roads, jetties and embankments resulting from clean-up operations.

Fisheries sector

Compensation may be payable in the fisheries, aquaculture and fish processing sectors for:

- The loss of earnings by the owners of property contaminated by oil (known as consequential loss) e.g. fishermen or owners of mariculture facilities whose gear/nets have become contaminated may suffer loss for the period when they are prevented from fishing, pending the gear being cleaned or replaced;

- Losses suffered by persons whose property has not been contaminated by oil (known as pure economic loss) but who are unable to work or who have lost revenue because of the oil contamination, e.g. fishermen may decide not to go fishing in order to prevent their gear and catch becoming contaminated resulting in economic loss, or may be unable to work because of a declared fishery closure.

Tourism and related businesses

Compensation may be payable for:

- Loss of profit for businesses in the tourism sector or which derive a large part of their income from tourists in the area affected by an oil spill;

For both industry sectors, compensation may be payable for the costs of reasonable measures, such as targeted marketing campaigns, which are intended to prevent or reduce economic losses by countering the negative effects which can result from a major incident.

Claims

To whom is a claim submitted?

Under international arrangements for maritime oil spill compensation, the shipowner must have a certain level of insurance covering their liability for pollution damage, which will usually be provided by a Protection and Indemnity Association (also known as a P&I Club) (For more details see the AMSA Fact Sheet *Oil Pollution from Ships – Who Pays?*). Claims may be submitted to the shipowner or relevant P&I Club's Australian representative. In some cases where there are a particularly large number of claims, alternative processes may be set up. For example, following a large tanker spill the International Oil Pollution Compensation (IOPC) Funds may establish a local office

to which claims can be submitted directly. Businesses or individuals may contact AMSA at eps@amsa.gov.au for information on the appropriate party to whom to submit a claim. For major incidents, information will be provided through the AMSA web site at www.amsa.gov.au.

The local media may also provide information on who to contact with regard to claims. If you are a member of an association that represents a number of potentially affected individuals (e.g. fishing co-operative), you should contact your association to discuss any arrangements for a group claim.

What information should a claim contain?

Each claim should contain basic information including the name and address of the claimant and of any representative (or agent), the identity of the ship involved in the incident, the date, place and specific details of the incident if known to the claimant, the type of pollution damage or loss sustained, and the amount of compensation claimed.

Claims relating to **property** contaminated by oil should as a minimum include the following items:

- Extent of pollution damage to property and an explanation of when and how the damage occurred
- Description and photographs of items destroyed, damaged or needing cleaning, repair or replacement (for example boats, fishing gear, roads, clothing), including their location
- Original purchase price of damaged equipment with receipt/invoice where possible
- Cost of repair work, cleaning or replacement of items;
- Invoice of costs incurred
- Age of damaged items replaced
- Information on normal repair and maintenance schedules where relevant
- Cost of restoration after clean up, such as repair of roads, jetties and embankments damaged by the clean-up operations, with information on normal repair schedules.

Claims related to economic loss in the **fisheries/aquaculture** sectors should as a minimum include the following items:

- License or permit number(s); or evidence of statutory fishing rights
- Nature of the loss, including evidence that the alleged loss resulted from the contamination

- Monthly breakdown of income for the period of the loss and over the previous three years
- Where possible, monthly breakdown of the quantity (kilograms) of each marine product caught, harvested or processed for the period of the loss and over the previous three years
- Saved overheads or other normal variable expenses
- Method of calculation of loss.

Claims relating to economic loss in the tourism sector should as a minimum include the following items:

- Nature of the loss, including evidence that the alleged loss resulted from the contamination
- Monthly breakdown of income for the period of the loss and for the same period for the previous three years
- Where possible, monthly breakdown of the number of units sold for the period of the loss and for the previous three years (for hotels the number of rooms let, for campsites the number of sites let, for self-catering accommodation the number of weeks let, for restaurants the number of meals sold and for tourist attractions the number of visitors/tickets sold; for other businesses such as shops and bars, only a breakdown of income is required)
- Tax return for the year in which the incident occurred, if available, and for the previous three years
- Details of changes in capacity of the business (for example the number of rooms in a hotel) and changes in opening hours or prices charged in the year in which the loss occurred and during the previous three years
- Saved overheads or other normal variable expenses
- Method of calculation of loss.

It is most important to show that a loss has a close link to contamination due to the oil from the ship and is not due to some other cause. It is also important that businesses and individuals attempt as far as possible to minimise their losses, for example, by operating in another area unaffected by the oil. Provided that acceptable records are kept of such actions, compensation can be sought for the difference between the earnings normally expected and what is actually earned during this period.

Any loss or damage must actually have been incurred. Compensation is not available for anticipated future losses – you cannot claim for future loss of income or for cancelled bookings in advance.

Further information

In all oil spills, but particularly in the case of a tanker spill where the IOPC Funds may make compensation payments, the IOPC Funds publications on claims are useful references for preparing a claim. For both tanker and non-tanker spills, P&I Clubs will generally use similar criteria to assess claims. The relevant documents are:

- *Claims Manual*, which provides a practical guide to presenting claims
- *Guidelines for presenting claims in the fisheries, mariculture and fish processing sector*
- *Guidelines for presenting claims in the tourism sector* and
- An *Example Claim Form* provided for reference purposes.

All documents are available at no cost from www.iopcfunds.org/publications.

Additional information may be found in Technical Information Paper 15: *Preparation and submission of claims from oil pollution*, published by the International Tanker Owners Pollution Federation (ITOPF). This document can be located on the ITOPF web site, www.itopf.org, and following the link to the Technical Information Papers.

In the event of a major incident, it is likely that an incident-specific form will be made available to claimants.

It is recognised that in some sectors, for example small-scale subsistence fisheries and relatively new businesses that have not established a long-term record of income, formal documentation may not be available or may be difficult to obtain. There are ways of assessing claims where formal documentation is not available – this should be discussed with the insurer.

Note that insurance fraud is a serious offence in Australia where the penalties can be imprisonment for up to 10 years or a substantial fine or both. For larger and/or complex claims potential claimants may wish to consider obtaining advice in preparing and submitting claims. This may also minimise delay in the assessment of claims by ensuring all claimable items are supported by appropriate documentation before being submitted.

It should be noted that reasonable costs of work carried out by advisers in preparing a claim may be reimbursed as part of the claim. What is 'reasonable' will depend on the need for the claimant to use an adviser, the usefulness and quality of the work carried out by the adviser, the time reasonably needed and the normal rate for work of that kind.

Timeframes for claims

A claim should be submitted as soon as possible after the property damage or economic loss has occurred. This will minimise delay should the insurer's experts need to inspect any damaged property, to clarify details or seek additional information from you relating to your claim.

It is recognised that some losses may not be fully realised for some time after the oil spill, and formal claims may take some time to prepare. In these cases claimants should contact the relevant shipowner, P&I Club or the IOPC Funds to inform them of the intention to present a claim at a later stage. Another option may be to submit a claim, advise of the uncertain situation and modify the claim after the facts become fully available. If you will be claiming for loss of income over a long period (e.g. during a lengthy fishery closure) you do not have to wait until the time period ends before making a claim. You may submit claims at intervals (e.g. monthly) and each claim could be assessed and paid for each period.

It is important to note that, under the international oil pollution compensation arrangements, claimants lose their right to compensation three years from the date when the damage happened (usually the date of the incident). If your claim is not settled within this period, it will become time-barred (i.e. it will no longer be valid) unless you have taken legal action to protect the claim.

What happens next?

In most cases your claim will be reviewed by experts with legal and/or accounting experience engaged by the shipowner's insurer. These experts (who may also visit you) will report their findings to the shipowner's insurer who will then make a decision on your claim. You will then be informed of the assessed amount. If you agree to this amount, the insurer may ask you to sign a Receipt and Release form prior to paying the compensation.

The time it takes to assess claims can vary considerably. It will depend in part on whether you have provided sufficient details to help assess your claim, how complex your claim is and on the number of other claims submitted.

Further information and assistance

This fact sheet provides summary information only. In the event of an oil spill incident, potential claimants should seek further information through local media, the relevant P&I Club, the IOPC Funds, industry associations and government authorities. Potential claimants may wish to seek independent legal and/or claims preparation advice. AMSA can provide more detail on the international oil pollution compensation regime – contact eps@amsa.gov.au.