

Ports Corporatisation and Waterways Management Regulation 2002

As at 4 September 2002

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Ports Corporatisation and Arts and Waterways Management Act 1995* .
Minister for Transport

Explanatory note

The object of this Regulation is to remake the *Ports Corporatisation and Waterways Management Regulation 1997* without substantial alteration to the substance of that Regulation but with certain additional material (clause 6). The *Ports Corporatisation and Waterways Management Regulation 1997* will be repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989* . The new Regulation does the following:

- (a) it exempts certain vessels from liability for those charges by exempting them from Division 2 (Navigation service charges) of Part 5 (Port charges) of the *Ports Corporatisation and Waterways Management Act 1995* (clause 6),
- (b) it establishes general principles of a technical nature for the calculation of port charges (such as the method by which the gross tonnage of a vessel is to be ascertained) (clauses 7-10),
- (c) it requires the owner of a vessel or other person liable to pay a port charge to ensure that certain information or documentation is furnished to a relevant port authority in connection with port charges (clauses 11-18),
- (d) it provides a description of the boundaries of certain ports for the purposes of the **marine legislation** as defined in the *Ports Corporatisation and Waterways Management Act 1995* (clause 19 and Schedule 1).

This Regulation also contains provisions of a formal or ancillary nature (clauses 1-5 and 20). This Regulation adopts a publication by reference (see clause 10). This Regulation is made under the *Ports Corporatisation and Waterways Management Act 1995* and, in particular, under sections 76 (which is a regulation-making power relating to port charges) and 110 (the general regulation-making power).

Part 1 - Preliminary

1 Name of Regulation

This Regulation is the *Ports Corporatisation and Waterways Management Regulation 2002* .

2 Commencement

This Regulation commences on 1 September 2002.

Note: This Regulation replaces the *Ports Corporatisation and Waterways Management Regulation 1997* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989* .

3 Definition

In this Regulation:

the Act means the *Ports Corporatisation and Waterways Management Act 1995* .

4 Notes

Notes included in this Regulation do not form part of this Regulation.

Part 2 - Port charges

Division 1 - Preliminary

5 Definitions

(1) In this Part:

charge means a charge under Part 5 of the Act.

container means an article of transport equipment (other than a vessel) that:

- (a) is of a permanent character and accordingly is strong enough to be suitable for repeated use, and
- (b) is specially designed or adapted to facilitate the transport of goods, by one or more modes of transport, without intermediate reloading.

officer of a relevant port authority means:

- (a) if the relevant port authority is the Minister--a delegate of the Minister, or an officer of such a delegate, appointed by the Minister or the delegate (as the case requires) as an officer for the purposes of this Part, or
- (b) if the relevant port authority is a Port Corporation--an officer of the Port Corporation appointed by the Port Corporation as an officer for the purposes of this Part.

owner has the same meaning as in section 48 of the Act.

voyage number , in relation to a vessel, means the number allocated to the vessel in respect of a particular sailing.

working day , in relation to a port, means that part of the day (not being a Saturday, Sunday or public holiday) during which work is normally carried on in the port.

(2) Other words and expressions in this Part have the same meanings as they have in Part 5 of the Act.

6 Exemption from navigation service charges for certain vessels

(1) A vessel that:

- (a) leaves the port of Sydney Harbour and, without leaving the territorial sea of Australia or entering another port, enters the port of Botany Bay, or
- (b) leaves the port of Botany Bay and, without leaving the territorial sea of Australia or entering another port, enters the port of Sydney Harbour,

is exempt from Division 2 (Navigation service charges) of Part 5 (Port charges) of the Act in respect of the second port entered.

(2) In this clause:

territorial sea of Australia means the territorial sea of Australia within the limits referred to in section 4 (1) of the *Coastal Waters (State Powers) Act 1980* of the Commonwealth.

Division 2 - General principles for calculation of charges

7 Rates per tonne

If the amount of any charge is to be calculated at a rate per tonne, that calculation may, at the discretion of the relevant port authority, be made on the basis that 1 tonne is equivalent to:

- (a) a mass of 1,000 kilograms, or
- (b) a volume of 1 cubic metre or 1 kilolitre.

8 Goods in bulk

If, in the terms by which any charge is fixed, reference is made to goods of any specified description being in bulk, the reference is to be construed (unless provision is made to the contrary) as a reference to goods of that description that have been loaded on to or discharged from a vessel at a designated port by means of a pipeline, conveyor, mechanical shovel or bucket.

9 Rounding off

For the purpose of calculating a charge that is to be determined by reference to stated units of measurement (whether of weight or volume) of any goods, the measurement of those goods is the lowest whole number of those units that the actual weight or volume of those goods does not exceed.

10 Gross tonnage

(1) For the purposes of calculating any charge, the gross tonnage of a vessel is the gross tonnage of the vessel as stated on the International Tonnage Certificate (1969) for the vessel issued in accordance with the *International Convention on Tonnage Measurement of Ships 1969*.

(2) If no such certificate has been issued in respect of the vessel, the gross tonnage of the vessel is to be calculated by the relevant port authority in accordance with the formula set out in the document known as MSC Circular 653 (entitled *MSC/Circ. 653*) issued by the International Maritime Organization.

Note: Copies of MSC Circular 653 are available from the Australian Maritime Safety Authority.

Division 3 - Furnishing of particulars

11 Navigation service charge--particulars to be furnished

The owner of a vessel in respect of which a navigation service charge is payable must, at the request of the relevant port authority, furnish the relevant port authority with the following particulars:

- (a) the owner's name and address,
- (b) the name, identifying particulars and relevant voyage number of the vessel,
- (c) the gross tonnage of the vessel,
- (d) the port in respect of which the navigation service charge is payable,
- (e) the date on which, the time at which, and the purpose for which, the vessel entered the port,
- (f) such other information with respect to payment of the navigation service charge as the relevant port authority reasonably requests.

Maximum penalty: 20 penalty units.

12 Pilotage charge--particulars to be furnished

The owner of a vessel in respect of which a pilotage charge is payable must, at the request of the relevant port authority, furnish the relevant port authority with the following particulars:

- (a) the owner's name and address,
- (b) the name, identifying particulars and relevant voyage number of the vessel,
- (c) the gross tonnage of the vessel,
- (d) the pilotage port in respect of which the pilotage charge is payable,
- (e) the time, date and nature of the pilotage of the vessel in respect of which the pilotage charge is payable,
- (f) such other information with respect to payment of the pilotage charge as the relevant

port authority reasonably requests.

Maximum penalty: 20 penalty units.

13 Port cargo access charge--particulars of vessel and operations

A person liable to pay a port cargo access charge must, at the time the person makes the payment, furnish to the relevant port authority the following particulars:

- (a) the name and address of the person making the payment,
- (b) the name of the vessel from or on to which the cargo has been or is to be discharged or loaded, and the site at which the discharge or loading took place or is to take place,
- (c) a description of the cargo,
- (d) the nature and number of the packages, cases or other receptacles in which the cargo is enclosed (whether or not those receptacles are carried in a container), and the identifying marks and numbers of those receptacles as shown on each bill of lading in respect of the cargo,
- (e) if the cargo is carried in a container, the identifying marks and number on the container,
- (f) the mass and volume (expressed in cubic metres or in kilolitres) of the cargo,
- (g) the number of each bill of lading that is to be or has been issued in respect of the cargo,
- (h) such other information with respect to payment of the port cargo access charge as the relevant port authority reasonably requests.

Maximum penalty: 20 penalty units.

14 Site occupation--particulars to be furnished

(1) The occupier of the site in respect of which a site occupation charge is payable must, at the time of reservation of the site or at such other time as the relevant port authority may require, furnish to the relevant port authority the following particulars:

- (a) the type of site sought,
- (b) the name of the vessel,
- (c) the name and address of the owner of the vessel,
- (d) the date and time the site will be required,
- (e) the general nature of any cargo to be transferred,
- (f) the expected duration for which the site will be required,
- (g) the intended daily hours of work.

Maximum penalty: 20 penalty units.

(2) The occupier of the site in respect of which a site occupation charge is payable must, within 24 hours of vacating the site, furnish to the relevant port authority details of the times when the occupation of the site commenced and finished.

Maximum penalty: 20 penalty units.

(3) The site occupation charge is to be calculated by reference to the amount of time for which the site was occupied.

(4) For the purposes of subclause (2):

- (a) occupation of a site commences at the time when:
 - (i) the first cargo arrives at the site for loading onto the vessel, or
 - (ii) the vessel arrives at the site,whichever first occurs, and
- (b) occupation of a site finishes at the time when:
 - (i) the last cargo discharged by the vessel is removed from the site, or
 - (ii) the vessel leaves the site,whichever last occurs.

15 Wharfage charge--particulars to be furnished

(1) A person liable to pay a wharfage charge must, at the time the person makes the payment, furnish to the relevant port authority the following particulars:

- (a) the name and address of the person making the payment,

- (b) the name of the vessel from or on to which the cargo has been or is to be discharged or loaded, and the site at which the discharge or loading took place or is to take place,
- (c) a description of the cargo,
- (d) the nature and number of the packages, cases or other receptacles in which the cargo is enclosed (whether or not those receptacles are carried in a container), and the identifying marks and numbers of those receptacles as shown on each bill of lading in respect of the cargo,
- (e) if the cargo is carried in a container, the identifying marks and number on the container,
- (f) the mass and volume (expressed in cubic metres or in kilolitres) of the cargo,
- (g) the number of each bill of lading that is to be or has been issued in respect of the cargo,
- (h) such other information with respect to payment of the wharfage charge as the relevant port authority reasonably requests.

Maximum penalty: 20 penalty units.

(2) An officer of a relevant port authority may require the owner of any goods in respect of which a wharfage charge is payable:

- (a) to produce to that officer any document in respect of a matter relevant to the payment of that charge, or
- (b) to make those goods available for inspection by the officer.

(3) The owner of any goods who does not comply with any such requirement is guilty of an offence.

Maximum penalty: 20 penalty units.

(4) Subclause (3) does not apply if the documents or goods, at the time their production or availability was required, were not in the owner's possession or under the owner's control.

16 Manifest for goods discharged from vessel

(1) This clause applies to a vessel only if a wharfage charge or port cargo access charge is payable in respect of the vessel.

(2) If a vessel to which this clause applies is to discharge goods in a designated port, a manifest of all the goods concerned must be given to the relevant port authority within the time specified in subclause (4).

(3) If a manifest is not given as required by subclause (2), both the owner of the vessel and any person who is appointed or authorised to act as an agent of the owner in respect of that vessel in the port concerned is guilty of an offence.

Maximum penalty: 20 penalty units.

(4) The manifest must be given:

- (a) for the designated ports of Sydney Harbour and Botany Bay--by the end of the third working day after the vessel enters the port, and
- (b) for the designated ports of Newcastle, Port Kembla, Yamba and Eden--by the end of the first working day after the vessel leaves the port.

(5) The particulars required to be included in the manifest are as follows:

- (a) the name of the vessel, the relevant voyage number and the berth at which the goods are to be, or were, discharged,
- (b) the place (or places) at which the goods (or respective goods) were first loaded for carriage by sea to the designated port,
- (c) the description of the goods, the nature and number of the packages, cases or other receptacles in which they were enclosed (whether or not those receptacles were carried in a container), the identifying marks and numbers of those receptacles as shown on each bill of lading in respect of the goods and the name and address of the consignee of the goods,

- (d) the number of each bill of lading issued in respect of the goods,
- (e) the mass and volume (expressed in cubic metres or in kilolitres) of the goods,
- (f) if the goods were carried in a container, the identifying marks and number of the container,
- (g) such other information with respect to the goods as the relevant port authority reasonably requests.

(6) If the vessel is a cargo vessel and no such goods are discharged from the vessel in the designated port, the owner of the vessel must ensure that the relevant port authority is given notice of that fact by the end of the first working day after the vessel leaves the designated port.

Maximum penalty: 20 penalty units.

17 Manifest for goods loaded on vessel

(1) This clause applies to a vessel only if a wharfage charge or port cargo access charge is payable in respect of the vessel.

(2) If a vessel to which this clause applies loads goods in a designated port, a manifest of all goods so loaded must be given to the relevant port authority within the time specified in subclause (4).

(3) If a manifest is not given as required by subclause (2), both the owner of the vessel and any person who is appointed or authorised to act as an agent of the owner in respect of that vessel in the port concerned is guilty of an offence.

Maximum penalty: 20 penalty units.

(4) The manifest must be given:

(a) for the designated ports of Sydney Harbour and Botany Bay--by the end of the eighth working day after the vessel leaves the port, and

(b) for the designated ports of Newcastle, Port Kembla, Yamba and Eden--by the end of the first working day after the vessel leaves the port.

(5) The particulars required to be included in the manifest are as follows:

(a) the name of the vessel, the relevant voyage number and the berth at which the goods were loaded,

(b) the destination (or destinations) to which the goods (or respective goods) are ultimately to be carried by sea,

(c) the description of the goods, the nature and number of the packages, cases or other receptacles in which they are enclosed (whether or not those receptacles are carried in a container), the identifying marks and numbers of those receptacles as shown on each bill of lading in respect of the goods and the name and address of the consignor of the goods,

(d) the number of each bill of lading issued in respect of the goods,

(e) the mass and volume (expressed in cubic metres or in kilolitres) of the goods,

(f) if the goods are carried in a container, the identifying marks and number of the container,

(g) such other information with respect to the goods as the relevant port authority reasonably requests.

(6) If the vessel is a cargo vessel and no such goods have been loaded in the designated port, the owner of the vessel must ensure that notice is given to the relevant port authority of that fact by the end of the first working day after the vessel leaves the designated port.

Maximum penalty: 20 penalty units.

18 Berthing charge--particulars to be furnished

(1) The owner of a vessel in respect of which berthing charges are payable must, within 24 hours of those charges first becoming payable due to the berthing of the vessel at a wharf, dolphin or buoy, furnish to the relevant port authority in triplicate the following particulars:

(a) the owner's name and address,

- (b) the name of the vessel,
 - (c) the wharf, dolphin or buoy at which the charges first became payable,
 - (d) the gross tonnage of the vessel,
 - (e) in the case of a fishing vessel, the length of the vessel,
 - (f) in the case of a ferry, the number of passengers the vessel is authorised by law to carry or, if that ferry is a vehicular ferry, a statement of that fact,
 - (g) the time and date of the berthing of the vessel at the wharf, dolphin or buoy.
- Maximum penalty: 10 penalty units.

(2) The owner of such a vessel must, within 24 hours after berthing charges have ceased to be payable in respect of that vessel, inform the relevant port authority in writing of that fact.

Maximum penalty: 10 penalty units.

Part 3 - Port boundaries

19 Boundaries of ports

For the purposes of section 105 of the Act, the boundaries of a port named in Schedule 1 are as described in that Schedule beneath the name of the port concerned.

Note: Section 105 of the Act enables the regulations to describe the boundaries of any port or area of water. If the regulations do so, a reference in the marine legislation to that port or area of water is a reference to that port or area of water with boundaries as so described.

Part 4 - General

20 Saving

Any act, matter or thing that, immediately before the repeal of the *Ports Corporatisation and Waterways Management Regulation 1997*, had effect under that Regulation is taken to have effect under this Regulation.

Schedule 1 Description of port boundaries

(Clause 19)

1 Botany Bay

The waters of Botany Bay and of all bays, rivers and their tributaries connected or leading to Botany Bay bounded by mean high water mark and by, as upstream boundaries, the eastern side of the Endeavour Bridge in Cooks River and the eastern side of the Captain Cook Bridge in Georges River together with that part of the South Pacific Ocean below mean high water mark enclosed by the arc of a circle of radius 4 sea miles having as its centre the navigation light at Henry Head.

2 Clarence River (Yamba)

The waters of the main channel of the Clarence River, Iluka Bay and Yamba Channel bounded by mean high water mark and by, as upstream boundaries, the eastern side of Harwood Bridge in the main channel and, in Yamba Channel, a line drawn from the southernmost point of Freeburn Island to the easternmost point of Rabbit Island and from there produced south-westerly to the opposite shore and by, as seaward boundary, a line drawn between the eastern extremity of the northern breakwater at the entrance to the Clarence River and the eastern extremity of the southern breakwater at that entrance.

3 Eden

The waters of Twofold Bay bounded by mean high water mark (but excluding all rivers and their tributaries connected or leading to Twofold Bay) and by, as seaward boundary, a line drawn

between the southernmost point of Worang Head and the northernmost point of Red Point.

4 Newcastle Harbour

The waters of Newcastle Harbour and of all bays, rivers and their tributaries connected or leading to Newcastle Harbour (but excluding Fullerton Cove) bounded by mean high water mark and by, as upstream boundary, the eastern side of the Hexham Bridge together with that part of the South Pacific Ocean below mean high water mark enclosed by the arc of a circle of radius 3 sea miles having as its centre the navigation light at Nobbys Head.

5 Port Kembla

The waters of Port Kembla Inner and Outer Harbours bounded by mean high water mark together with that part of the South Pacific Ocean below mean high water mark enclosed by the arc of a circle of radius 2.5 sea miles having as its centre the navigation light on the outer extremity of the eastern breakwater at the entrance to the Outer Harbour.

6 Sydney Harbour

The waters of Sydney Harbour and of all tidal bays, rivers and their tributaries connected or leading to Sydney Harbour bounded by mean high water mark together with that part of the South Pacific Ocean below mean high water mark enclosed by the arc of a circle of radius 4 sea miles having as its centre the navigation light at Hornby Lighthouse.

Historical notes

Table of amending instruments *Ports Corporatisation and Waterways Management Regulation 2002* published in Gazette No 135 of 30.8.2002, p 7472.