



New South Wales

Ports and Maritime Administration Regulation 2020

under the

Ports and Maritime Administration Act 1995

[*The following enacting formula will be included if the Regulation is made—*]

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Ports and Maritime Administration Act 1995*.

Minister for Transport and Roads

Explanatory note

The object of this Regulation is to repeal and remake, with changes, the provisions of the *Ports and Maritime Administration Regulation 2012* which would otherwise be repealed on 1 September 2021 by section 10(2) of the *Subordinate Legislation Act 1989*.

This Regulation deals with the following matters—

- (a) the calculation and administration of various port charges payable to port authorities for vessels, cargo and passengers,
- (b) the commuter and charter wharves in NSW that require a permit or booking prior to use,
- (c) mooring licences, including applications and fees,
- (d) traffic control at ports and wharves,
- (e) the Port Botany Landside Improvement Strategy, which regulates the provision of rail and truck servicing by stevedores at Port Botany,
- (f) the management of dangerous goods, by repealing and replacing provisions under Part 11 of the *Dangerous Goods (General) Regulation 1999*, as continued in effect by regulations under the *Work Health and Safety Act 2011*,
- (g) the offences under the *Ports and Maritime Administration Act 1995* and this Regulation that may be dealt with by penalty notice and the penalty amounts payable,
- (h) other minor and miscellaneous matters.

This Regulation is made under the *Ports and Maritime Administration Act 1995*, including sections 10B, 27(3)(e) (definition of **authorised person**), 34, 43E, 50(2), 76, 85B, 85G, 100, 105 and 110 (the general regulation-making power) and Schedule 4.

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Ports and Maritime Administration Regulation 2020

under the

Ports and Maritime Administration Act 1995

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Ports and Maritime Administration Regulation 2020*.

2 Commencement

This Regulation commences on [insert date] and is required to be published on the NSW legislation website.

Note. This Regulation repeals and replaces the *Ports and Maritime Administration Regulation 2012*, which would otherwise be repealed on 1 September 2021 by section 10(2) of the *Subordinate Legislation Act 1989*.

3 Definitions

In this Regulation—

approved means approved by TfNSW, except in Part 7.

TfNSW means Transport for NSW.

the Act means the *Ports and Maritime Administration Act 1995*.

Transport Service has the same meaning as in the *Transport Administration Act 1988*.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

4 Port boundaries

For the purposes of section 105 of the Act, the ports specified in Schedule 1 have the boundaries described in that Schedule.

Part 2 Port charges

Division 1 Preliminary

5 Definitions

- (1) In this Part—
- charge** means a charge under Part 5 of the Act.
- container** has the same meaning as in the *International Convention for Safe Containers 1972*, as in force in Australia from time to time.
- voyage number** of a vessel means the number allocated to the vessel for a particular sailing.
- working day**, in relation to a port, means the part of the day, that is not a Saturday, Sunday or public holiday, during which work is normally carried on in the port.
- (2) If there is more than one relevant port authority in relation to charges at a port, a requirement of this Part to provide information or give a manifest to the relevant port authority is a requirement to provide the information or give the manifest to each of the relevant port authorities.

6 General principles for calculation of charges

- (1) This clause specifies the principles that apply to the calculation of a charge.
- (2) 1 tonne is taken to be equivalent to a mass of 1,000 kilograms or a volume of 1 cubic metre or 1 kilolitre.
- (3) If the amount of a charge is to be calculated by reference to goods in bulk, the reference is to be construed, unless otherwise provided, as a reference to goods that have been loaded on to, or discharged from, a hold or tank of a vessel at a designated port by means of a pipeline, conveyor, mechanical shovel or bucket.
- (4) If the amount of a charge is to be calculated by reference to the weight or volume of goods, the weight or volume is to be rounded up to the nearest whole unit of measurement.
- (5) The gross tonnage of a vessel is the gross tonnage of the vessel as specified in the International Tonnage Certificate (1969) for the vessel issued in accordance with the *International Convention on Tonnage Measurement of Ships 1969*.

7 Exemption from navigation service charges

- (1) For the purposes of section 50(2) of the Act, a navigation service charge is—
- (a) not payable for—
- (i) the entry into Botany Bay by a vessel that leaves Sydney Harbour and, without leaving the territorial sea of Australia or entering another port, enters Botany Bay, or
 - (ii) the entry into Sydney Harbour by a vessel that leaves Botany Bay and, without leaving the territorial sea of Australia or entering another port, enters Sydney Harbour, and
- (b) to be reduced by 50% for—
- (i) a subsequent entry into Botany Bay by a vessel that leaves Botany Bay and, without leaving the territorial sea of Australia or entering another port, re-enters Botany Bay, and
 - (ii) a subsequent entry into Sydney Harbour by a vessel that leaves Sydney Harbour and, without leaving the territorial sea of Australia or entering another port, re-enters Sydney Harbour.

(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 Information required for calculation of charges

8 Navigation service charges

An owner of a vessel who is required to pay a navigation service charge for a vessel must, at the time the relevant port authority requires, give the relevant port authority the following information—

- (a) the owner's name and address,
- (b) the vessel's name, identifying particulars and voyage number,
- (c) the gross tonnage of the vessel,
- (d) the port for 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) other information about the payment of the navigation service charge that the relevant port authority reasonably requests.

Maximum penalty—20 penalty units.

9 Pilotage charges

An owner of a vessel who is required to pay a pilotage charge for a vessel must, at the time the relevant port authority requires, give the relevant port authority the following information—

- (a) the owner's name and address,
- (b) the vessel's name, identifying particulars and voyage number,
- (c) the gross tonnage of the vessel,
- (d) the pilotage port for which the pilotage charge is payable,
- (e) the time, date and nature of the pilotage of the vessel for which the pilotage charge is payable,
- (f) other information about the payment of the pilotage charge that the relevant port authority reasonably requests.

Maximum penalty—20 penalty units.

10 Port cargo access charges

A person who is required to pay a port cargo access charge must, at the time the relevant port authority requires, give the relevant port authority the following information—

- (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,
- (c) the site at which the discharge or loading of cargo took place or is to take place,
- (d) a description of the cargo,
- (e) the nature and number of the packages, cases or other receptacles in which the cargo is enclosed, whether or not the receptacles are carried in a container,
- (f) the identifying marks and numbers of the receptacles as shown on each bill of lading for the cargo,

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- (g) if the cargo is carried in a container, the identifying marks and number on the container,
- (h) the mass and volume of the cargo in cubic metres or kilolitres,
- (i) the number of each bill of lading that has been or is to be issued for the cargo,
- (j) other information about the payment of the port cargo access charge that the relevant port authority reasonably requests.

Maximum penalty—20 penalty units.

11 Site occupation charges

- (1) The occupier of a site who is required to pay a site occupation charge must, at the time the relevant port authority requires, give the relevant port authority the following information—
- (a) the type of site sought and the purpose for which it is sought,
 - (b) the name of the vessel,
 - (c) the name and address of the owner of the vessel,
 - (d) the gross tonnage of the vessel,
 - (e) the total number of passengers arriving on the vessel,
 - (f) the date and time the site will be required,
 - (g) the expected duration for which the site will be required,
 - (h) the general nature of the cargo to be transferred,
 - (i) the intended daily hours of work.

Maximum penalty—20 penalty units.

- (2) The occupier of a site who is required to pay a site occupation charge must, within 24 hours after vacating the site, give the relevant port authority the details of when the occupation of the site started and ended.

Maximum penalty—20 penalty units.

- (3) The site occupation charge is to be calculated by reference to whichever of the following methods the relevant port authority considers is appropriate in the circumstances—

- (a) the amount of time for which the site was reserved or occupied,
- (b) the gross tonnage of the vessel,
- (c) the amount of time for which the site was reserved or occupied and the gross tonnage of the vessel,
- (d) the total number of passengers arriving on the vessel,
- (e) the amount of time for which the site was reserved or occupied and the total number of passengers arriving on the vessel.

- (4) For the purposes of this clause—

- (a) occupation of a site starts when the first cargo arrives at the site for loading onto the vessel or when the vessel arrives at the site, whichever first occurs, and
- (b) occupation of a site ends when the last cargo discharged by the vessel is removed from the site or when the vessel leaves the site, whichever last occurs, and
- (c) a reference to the total number of passengers arriving on a vessel is a reference to the total number of passengers as shown in the vessel's inward passenger manifest.

12 Wharfage charges

- (1) A person required to pay a wharfage charge must, at the time the relevant port authority requires, give the relevant port authority the following information—
- (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,
 - (c) the site at which the discharge or loading of cargo took place or is to take place,
 - (d) a description of the cargo,
 - (e) the nature and number of the packages, cases or other receptacles in which the cargo is enclosed, whether or not the receptacles are carried in a container,
 - (f) the identifying marks and numbers of the receptacles as shown on each bill of lading for the cargo,
 - (g) if the cargo is carried in a container, the identifying marks and number on the container,
 - (h) the mass and volume of the cargo in cubic metres or kilolitres,
 - (i) the number of each bill of lading that has been or is to be issued for the cargo,
 - (j) other information about the payment of the wharfage charge that the relevant port authority reasonably requests.

Maximum penalty—20 penalty units.

- (2) An officer of a relevant port authority may require the owner of goods in relation to which a wharfage charge is payable—
- (a) to produce to the officer a document that is relevant to the payment of the wharfage charge, or
 - (b) to make the goods available for inspection by the officer.
- (3) The owner of the goods must comply with a requirement under subclause (2) unless the documents or goods, at the time the officer required the document or goods, were not in the owner's possession or under the owner's control.

Maximum penalty—20 penalty units.

- (4) In subclause (2), ***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 the delegate, appointed by the Minister or the delegate, as the case requires, for the purposes of this clause, or
 - (b) if the relevant port authority is a Port Corporation—an officer of the Port Corporation appointed by the Port Corporation for the purposes of this clause, or
 - (c) if the relevant port authority is the port operator of a private port—an officer, employee or agent of the port operator appointed by the port operator for the purposes of this clause.

13 Manifest for goods discharged from vessel

- (1) The owner of a vessel that discharges goods in a designated port, and in relation to which a wharfage charge or port cargo access charge is payable, must give the relevant port authority a manifest of all the goods to be discharged.

Maximum penalty—20 penalty units.

- (2) The manifest must be given—
- (a) for Sydney Harbour, Botany Bay and Port Kembla ports—by the end of the third working day after the vessel enters the port, and

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- (b) for Newcastle, Yamba and Eden ports—by the end of the first working day after the vessel leaves the port.
- (3) The manifest must include the following information—
 - (a) the vessel's name and voyage number,
 - (b) the berth at which the goods are to be, or were, discharged,
 - (c) the place at which the goods were first loaded for carriage by sea to the designated port,
 - (d) a description of the goods,
 - (e) the nature and number of the packages, cases or other receptacles in which the goods are enclosed, whether or not the receptacles were carried in a container,
 - (f) the identifying marks and numbers of the receptacles as shown on each bill of lading for the goods,
 - (g) the name and address of the consignee of the goods,
 - (h) the number of each bill of lading issued for the goods,
 - (i) the mass and volume of the goods in cubic metres or kilolitres,
 - (j) if the goods were carried in a container, the identifying marks and number of the container,
 - (k) other information about the goods that the relevant port authority reasonably requests.
- (4) If the vessel is a cargo vessel and no 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 by the end of the first working day after the vessel leaves the designated port.
Maximum penalty—20 penalty units.

14 Manifest for goods loaded on vessel

- (1) The owner of a vessel who loads goods in a designated port, and in relation to which a wharfage charge or port cargo access charge is payable, must, in accordance with this clause, give the relevant port authority a manifest of all the goods loaded.
Maximum penalty—20 penalty units.
- (2) The manifest must be given—
 - (a) for Sydney Harbour and Botany Bay ports—by the end of the eighth working day after the vessel leaves the port, and
 - (b) for Newcastle, Port Kembla, Yamba and Eden ports—by the end of the first working day after the vessel leaves the port.
- (3) The manifest must include the following information—
 - (a) the vessel's name and voyage number,
 - (b) the berth at which the goods were loaded,
 - (c) the destinations to which the goods are ultimately to be carried by sea,
 - (d) a description of the goods,
 - (e) the nature and number of the packages, cases or other receptacles in which the goods are enclosed, whether or not the receptacles are carried in a container,
 - (f) the identifying marks and numbers of the receptacles as shown on each bill of lading for the goods,
 - (g) the name and address of the consignor of the goods,

- (h) the number of each bill of lading issued for the goods,
 - (i) the mass and volume of the goods in cubic metres or kilolitres,
 - (j) if the goods are carried in a container, the identifying marks and number of the container,
 - (k) other information about the goods that the relevant port authority reasonably requests.
- (4) If the vessel is a cargo vessel and no goods are loaded in the designated port, the owner of the vessel must ensure that the relevant port authority is given notice by the end of the first working day after the vessel leaves the designated port.
Maximum penalty—20 penalty units.

15 Berthing charges

- (1) An owner of a vessel who is required to pay a berthing charge must, within 24 hours of the charge first becoming payable due to the berthing of the vessel at a wharf, dolphin or buoy, give the relevant port authority the following information—
- (a) the owner's name and address,
 - (b) the name of the vessel,
 - (c) the wharf, dolphin or buoy at which the charge first became payable,
 - (d) the gross tonnage of the vessel,
 - (e) for a fishing vessel—the length of the vessel,
 - (f) for a ferry that is not a vehicular ferry—the number of passengers the ferry is authorised by law to carry,
 - (g) for a ferry is a vehicular ferry—a statement that the ferry is a vehicular ferry,
 - (h) the time and date of the berthing of the vessel at the wharf, dolphin or buoy.
- Maximum penalty—10 penalty units.
- (2) An owner of a vessel who is required to pay a berthing charge must, within 24 hours after the berthing charge ceases to be payable, give the relevant port authority written notice.
Maximum penalty—10 penalty units.

Part 3 Commuter wharf permit scheme

16 Application of Part

- (1) This Part does not apply in relation to a vessel that accesses a commuter wharf in accordance with—
 - (a) the terms of a passenger service contract entered into by TfNSW under the *Passenger Transport Act 2014*, or
 - (b) the terms of a wharf access agreement entered into by TfNSW.
- (2) In this Part—

commuter wharf means a wharf specified in Part 1 of Schedule 2.

permit means a permit to access a commuter wharf issued under clause 18.

17 Application for commuter wharf permit

- (1) A person may apply to TfNSW for a permit to access a commuter wharf.
- (2) An application for a permit must be made in the approved form and manner and be accompanied by—
 - (a) other information or documents required by TfNSW, and
 - (b) the fee for the permit specified in Part 2 of Schedule 2.
- (3) TfNSW may waive a requirement of subclause (2) for an application for a subsequent or additional permit by the same applicant.

18 Issue of commuter wharf permit

- (1) TfNSW may determine an application for a permit by issuing a permit for a commercial vessel to the applicant.
- (2) A permit must be in the approved form and specify the name of the permit holder and the permit number.
- (3) A permit remains in force for 6 or 12 months as specified in the permit unless it is sooner suspended or cancelled.
- (4) A permit authorises the permit holder to access a commuter wharf to pick up and drop off passengers on a touch and go basis, where the berthing time does not exceed 5 minutes, unless the permit provides otherwise.
- (5) A permit confers no right of property and is incapable of being transferred, assigned, mortgaged, charged or otherwise encumbered.

19 Refusal to issue commuter wharf permit

- (1) TfNSW may refuse to issue a permit if the applicant gives—
 - (a) false or misleading information, or
 - (b) information that, in TfNSW's opinion, is inadequate to enable the application to be assessed properly.
- (2) If TfNSW refuses to issue a permit, TfNSW is give the applicant written notice of the decision and the reasons for the decision.

20 Commuter wharf permit conditions

- (1) A permit may be issued subject to the conditions specified in the permit.
- (2) A permit holder must comply with the conditions to which the permit is subject.
Maximum penalty—100 penalty units.

21 Variation of commuter wharf permit

- (1) TfNSW may, on application or TfNSW's own initiative, vary a permit by—
 - (a) imposing a new condition, or
 - (b) removing a condition, or
 - (c) varying a condition.
- (2) If TfNSW decides to vary a permit, TfNSW must give the permit holder written notice of the variation.
- (3) A variation takes effect on the date specified in the notice, being a date not earlier than 7 days after the notice is served on the permit holder.

22 Suspension or cancellation of commuter wharf permit

- (1) TfNSW may suspend or cancel a permit on the following grounds—
 - (a) the permit holder gives false or misleading information to TfNSW,
 - (b) the master of a vessel to which a permit applies fails—
 - (i) to give berthing priority to a passenger transport service, or
 - (ii) to vacate a wharf on the approach of a passenger transport service,
 - (c) the permit holder fails to comply with a condition of the permit,
 - (d) the permit holder commits an offence against—
 - (i) a provision of the marine legislation, or
 - (ii) section 52B of the *Crimes Act 1900*, or
 - (iii) a provision of a law of the Commonwealth or another State or Territory that substantially corresponds to a provision of the marine legislation or section 52B of the *Crimes Act 1900*,
 - (e) TfNSW is of the opinion that it is necessary to protect public safety or wharf infrastructure,
 - (f) for a cancellation—the permit holder fails to satisfy the requirements specified by TfNSW under subclause (2)(b) in relation to a suspension.
- (2) Before suspending or cancelling a permit, TfNSW must give the permit holder written notice of the proposed suspension or cancellation that includes—
 - (a) the grounds for the proposed suspension or cancellation, and
 - (b) for a proposed suspension—the duration of the suspension and the requirements that are to be satisfied for the suspension to be lifted.
- (3) Subclause (2) does not apply if the permit holder requests the suspension or cancellation of the permit.
- (4) The suspension or cancellation of a permit takes effect on—
 - (a) the date on which the permit holder is given written notice of the suspension or cancellation, or
 - (b) a later date specified in the notice.
- (5) TfNSW may revoke a suspension or vary the period of a suspension by giving the permit holder further written notice.
- (6) In this clause—

passenger transport service means a passenger transport service conducted according to regular routes and timetables or according to regular routes and at regular intervals.

23 TfNSW to be notified of changes in particulars of commuter wharf permit

A permit holder must give TfNSW written notice of a change in the particulars specified in the permit within 14 days after the change.

Maximum penalty—25 penalty units.

24 Production of commuter wharf permit

- (1) An authorised officer may require a permit holder to produce the permit within 24 hours or a longer period approved by the authorised officer.
- (2) A permit holder must produce a permit in accordance with this clause.
Maximum penalty—100 penalty units.

25 Replacement commuter wharf permit

- (1) TfNSW may issue a replacement permit if satisfied that the permit has been lost, stolen, destroyed or become illegible.
- (2) An application for a replacement permit must be made to TfNSW in the approved form and manner.

Part 4 Mooring licences

Division 1 Mooring licences

26 Application for mooring licence

- (1) A person may apply to TfNSW for a mooring licence.
- (2) An application for a mooring licence must be made in the approved form and manner and be accompanied by the following—
 - (a) proof of the applicant's identity,
 - (b) other documents or information required by TfNSW or the approved form,
 - (c) the application fee and other fees required in connection with the licence specified in Schedule 4.

27 Issue of mooring licence

- (1) TfNSW may determine an application for a mooring licence by issuing a mooring licence to the applicant.
- (2) A mooring licence must be in the approved form and specify the following—
 - (a) the class of licence,
 - (b) the name of the licensee,
 - (c) the location of the mooring,
 - (d) the licence number.
- (3) A mooring licence remains in force—
 - (a) for the period specified in the licence, if any, or
 - (b) until it is suspended or cancelled.
- (4) A mooring licence may be issued in one of the following classes—
 - (a) private mooring licence,
 - (b) commercial mooring licence.
- (5) A private mooring licence may be issued to a natural person only.
- (6) A commercial mooring licence may be issued to a person.
- (7) A private mooring licence authorises the licensee to cause the vessel specified in the licence to occupy a mooring specified in the licence.
- (8) A commercial mooring licence authorises the licensee to cause a specified vessel, or a vessel connected with the licensee's business, to occupy a mooring specified in the licence, if the vessel is an appropriate size for the mooring.
- (9) A mooring licence confers no right of property and is incapable of being transferred, assigned, mortgaged, charged or otherwise encumbered, except as provided by clause 32.

28 Refusal to issue mooring licence

- (1) TfNSW may refuse to issue a mooring licence on the following grounds—
 - (a) the applicant gives false or misleading information,
 - (b) the applicant gives information that, in TfNSW's opinion, is inadequate to enable the application to be assessed properly,
 - (c) the applicant is not, in TfNSW's opinion, a fit and proper person to hold a mooring licence,

- (d) the applicant is issued with a penalty notice in relation to an offence against the marine legislation and the penalty notice is not withdrawn or a court has not dismissed the relevant charges,
 - (e) the applicant is found guilty of an offence against the marine legislation,
 - (f) for an application for a further licence—the applicant has failed to comply with a condition of a current or previous licence,
 - (g) for an application for a further licence—a fee payable in relation to a current or previous licence is overdue by more than 14 days,
 - (h) the vessel to which the licence relates is not in a seaworthy condition or presents a risk to the environment or property,
 - (i) it is, in TfNSW’s opinion, in the public interest,
 - (j) the applicant is not eligible for the licence under this Regulation.
- (2) If TfNSW refuses to issue a mooring licence, TfNSW is to give the applicant written notice of the decision and the reasons for the decision.

29 Mooring licence conditions

- (1) A mooring licence is subject to the following conditions—
- (a) the equipment used to secure a vessel to the mooring must—
 - (i) be suitable to secure the vessel occupying the mooring in the location, and
 - (ii) meet the approved standards,
 - (b) a vessel occupying a mooring must—
 - (i) be registered under the *Marine Safety Act 1998*, or
 - (ii) have a certificate of operation or identification number issued under the National law,
 - (c) the licensee is to ensure that a vessel secured to the mooring is appropriate to the type of mooring.
- (2) A mooring licence is also subject to the additional conditions specified in the licence.
- (3) A licensee must comply with the conditions to which the licence is subject.
Maximum penalty—50 penalty units.

30 Variation of mooring licence

- (1) TfNSW may, on application or TfNSW’s own initiative, vary a mooring licence by—
- (a) imposing a new condition, or
 - (b) removing a condition, or
 - (c) varying a condition.
- (2) If TfNSW decides to vary a mooring licence, TfNSW must give the licensee written notice of the variation.
- (3) A variation takes effect on the date specified in the notice, being a date not earlier than 7 days after the notice is served on the licensee.

31 Suspension or cancellation of mooring licence

- (1) TfNSW may suspend or cancel a mooring licence on the following grounds—
- (a) the licensee gives false or misleading information to TfNSW,
 - (b) the licensee is not, in TfNSW’s opinion, a fit and proper person to hold a mooring licence,

- (c) a fee payable in relation to the licence is overdue by more than 14 days,
 - (d) the licensee fails to comply with a condition of the licence,
 - (e) the licensee commits an offence against—
 - (i) a provision of the marine legislation, or
 - (ii) section 52B of the *Crimes Act 1900*, or
 - (iii) a provision of a law of the Commonwealth or another State or Territory that substantially corresponds to a provision of the marine legislation or section 52B of the *Crimes Act 1900*,
 - (f) the licensee ceases to own the vessel to which the licence relates,
 - (g) the mooring to which the licence relates is unoccupied for more than 28 consecutive days and TfNSW is not notified,
 - (h) the licensee attempts to sell or invites an offer to purchase the licence,
 - (i) the licensee enters into an arrangement for another party to use the mooring to which the licence relates,
 - (j) the licensee attempts to transfer the licence for money or some other benefit,
 - (k) the vessel to which the licence relates is not in a seaworthy condition or presents a risk to the environment or property,
 - (l) it is, in TfNSW's opinion, in the public interest,
 - (m) the licensee fails to comply with a direction of an authorised officer under clause 36,
 - (n) for a cancellation—the licensee fails to satisfy the requirements specified by TfNSW under subclause (2)(b) in relation to a suspension.
- (2) Before suspending or cancelling a mooring licence, TfNSW must give the licensee written notice of the proposed suspension or cancellation that includes—
- (a) the grounds for the proposed suspension or cancellation, and
 - (b) in relation to a suspension—the duration of the proposed suspension and the requirements that are to be satisfied for the suspension to be lifted.
- (3) Subclause (2) does not apply if the licensee requests the suspension or cancellation of the mooring licence.
- (4) The suspension or cancellation of a mooring licence takes effect on—
- (a) the date on which the licensee is given written notice of the suspension or cancellation, or
 - (b) a later date specified in the notice.
- (5) TfNSW may revoke a suspension or vary the period of a suspension by giving the licensee further written notice.

32 Transfer of mooring licence

- (1) A licensee may apply to TfNSW in writing for the transfer of the mooring licence to another person.
- (2) TfNSW may receive an application for a transfer from a person acting on behalf of the licensee if TfNSW considers it appropriate in the circumstances.

Example. A person may apply for a transfer on behalf of a licensee who is incapacitated.
- (3) In determining whether or not a mooring licence is to be transferred, TfNSW may require the licensee and the other person to give information or evidence that TfNSW considers necessary.
- (4) If TfNSW consents to the transfer of a mooring licence to another person—

- (a) the other person is required to pay the fee specified in Schedule 4, and
 - (b) TfNSW may issue a mooring licence to the other person.
- (5) A transferred licence remains in force—
- (a) for the remainder of the period specified in the licence, if any, or
 - (b) until it is suspended or cancelled.

33 TfNSW to be notified of proposed changes in particulars of mooring licence

- (1) A licensee must give TfNSW written notice of a proposed change in the particulars specified in the licence or licence conditions at least 7 days before the proposed change occurs.
Maximum penalty—25 penalty units.
- (2) TfNSW may approve the proposed change of particulars by varying the licence.
- (3) The fee for the approval of a variation of a licence is specified in Schedule 4.

34 TfNSW to be notified of sale or absence of vessel

- (1) A licensee must give TfNSW written notice of the sale of a vessel specified in the licence within 14 days after the sale.
Maximum penalty—25 penalty units.
- (2) A licensee must give TfNSW written notice within 7 days after—
- (a) a vessel specified in the licence vacates the mooring, or
 - (b) becoming aware that a vessel specified in the licence will be absent from the mooring for more than 28 consecutive days.
- Maximum penalty—25 penalty units.

35 Replacement mooring licence

- (1) TfNSW may issue a replacement mooring licence if satisfied that the licence has been lost, stolen, destroyed or become illegible.
- (2) An application for a replacement mooring licence must be made to TfNSW in the approved form and manner and be accompanied by the fee for a replacement mooring licence specified in Schedule 4.

Division 2 Miscellaneous

36 Directions by authorised officers

- (1) An authorised officer may give a direction verbally or in writing to—
- (a) move a mooring to a specified location within a specified time, or
 - (b) remove a vessel from an emergency mooring or courtesy mooring, or
 - (c) require the equipment securing the vessel to the mooring to be modified or replaced.
- (2) A person must comply with a direction given to the person under this clause.
Maximum penalty—50 penalty units.

37 General exemptions

- (1) This Part and section 85B of the Act do not apply to the use of a mooring or commercial or private berth that is authorised by—
- (a) a licence, permit, approval or other authority under another Act, or

- (b) TfNSW, the Port Authority of New South Wales or a direction of the harbour master for the port concerned.

Example. Use of a mooring may be authorised under the *Marine Estate Management Act 2014*.

- (2) The legal personal representative of a deceased licensee is exempt from section 85B of the Act in relation to the use of a mooring in accordance with the deceased licensee's licence, as in force immediately before the death of the licensee, for—
 - (a) if the licence has a specified term—a period of 6 months from the death of the licensee or the remainder of the specified term, whichever is longer, or
 - (b) if the licence has no specified term—a period of 6 months from the death of the licensee.

38 TfNSW may exempt persons and vessels

- (1) TfNSW may exempt the following from a specified provision of this Part or section 85B of the Act—
 - (a) a person or class of person,
 - (b) a vessel or class of vessel.
- (2) An exemption granted by TfNSW is to be made by order in writing served on the person concerned or the owner or master of the vessel concerned.
- (3) An exemption has effect for the period specified in the order.
- (4) An exemption relating to a class of person or class of vessel is to be published in the Gazette.
- (5) TfNSW may grant an exemption subject to conditions.
- (6) A person to whom an exemption is granted, or the owner or master of a vessel in relation to which an exemption is granted, must comply with the conditions to which the exemption is subject.

Maximum penalty—50 penalty units.

Part 5 Traffic control at ports and wharves

39 Definition

In this Part—

relevant land means land under the control or management of, or vested in, TfNSW or the Port Authority of New South Wales that is in the vicinity of a port or wharf.

40 Powers of authorised officers

- (1) The driver of a vehicle on relevant land must give an authorised officer the information about the standing or parking of the vehicle on the land that is required by an authorised officer.
Maximum penalty—5 penalty units.
- (2) An authorised officer may give the following directions to the driver of a vehicle standing or parking on relevant land—
 - (a) to not stand or park the vehicle on the land or a part of the land,
 - (b) to remove the vehicle from the land or a part of the land,
 - (c) to move the vehicle to a particular position,
 - (d) to join a particular line of vehicles on the land,
 - (e) to stand or park the vehicle in a particular location,
 - (f) to not proceed into an area beyond a particular point,
 - (g) to carry out a particular operation involving the vehicle only at a specified time or in a specified manner,
 - (h) another direction relating to the movement, standing, waiting or parking of the vehicle on the land.
- (3) The driver of a vehicle must comply with a direction given to the driver under this clause.
Maximum penalty—5 penalty units.

41 Parking of vehicles

- (1) A person must not cause a vehicle to stand or be parked on relevant land unless there is—
 - (a) a traffic control device that permits the standing or parking of vehicles, or
 - (b) a sign erected, displayed or marked by order of TfNSW or the Port Authority of New South Wales that permits the standing or parking of vehicles.
Maximum penalty—5 penalty units.
- (2) A person must not cause a vehicle to stand or be parked on relevant land in contravention of a direction appearing on, or represented by, a traffic control device.
Maximum penalty—5 penalty units.
- (3) This clause does not prohibit—
 - (a) the standing of a vehicle while—
 - (i) the vehicle is taking up or setting down goods, or
 - (ii) a person is entering or alighting from the vehicle, or
 - (b) the standing or parking of a vehicle as directed or authorised by an authorised officer.
- (4) In this clause—
traffic control device means a sign, signal, marking or other device that—

- (a) is in the form of, or is in similar form to, a prescribed traffic control device within the meaning of Part 5.3 of the *Road Transport Act 2013*, and
- (b) is erected, displayed or marked on relevant land by order of TfNSW or the Port Authority of New South Wales.

42 False representations

A person must not falsely represent that—

- (a) the person or another person is an authorised officer exercising the powers of an authorised officer under this Regulation, or
- (b) a notice or sign is erected, displayed or marked on relevant land by order of TfNSW or the Port Authority of New South Wales, or
- (c) a direction relating to the standing or parking of a vehicle on relevant land has been given by an authorised officer.

Maximum penalty—2 penalty units.

Part 6 Port Botany Landside Improvement Strategy

Division 1 Preliminary

43 Definitions

(1) In this Part—

booking means an arrangement between a carrier and a stevedore for the stevedore to provide truck servicing at the stevedore's terminal for a truck operated by the carrier.

carrier means a person engaged in a business of transporting shipping containers or cargo to or from Port Botany by truck.

financial penalty means a financial penalty imposed by this Part, other than a penalty for an offence.

industry participant means a carrier or a stevedore.

mandatory standards means the standards set by the Minister under clause 44.

Port Botany means the stevedoring facilities and port facilities located at Port Botany.

rail car means a railway vehicle used to transport a shipping container or cargo to or from Port Botany by rail.

rail servicing means the loading or unloading of shipping containers or cargo onto or from rail cars at a terminal, and includes a service that is incidental to the loading or unloading.

slot means an opportunity for the making of a booking within a time zone.

stevedore means the operator of stevedoring facilities at Port Botany.

stevedore service provider means a person who provides services to a stevedore in connection with a matter for which the mandatory standards make provision.

terminal means the stevedoring facilities operated by a stevedore at Port Botany.

time zone means the period within which a truck is required to arrive at a terminal for the purpose of being provided with truck servicing pursuant to a booking.

truck means a vehicle used to transport a shipping container or cargo to or from Port Botany by road.

truck servicing means the loading or unloading of shipping containers or cargo onto or from trucks at a terminal, and includes a service that is incidental to the loading or unloading.

truck turnaround time—see clause 56.

(2) A truck is **operated** by a carrier if the truck is used for the purposes of the business of the carrier by the carrier or by an employee of or contractor or subcontractor to the carrier.

44 Mandatory standards

(1) The Minister is authorised to set standards (the **mandatory standards**) in connection with the provision of truck servicing by stevedores at Port Botany, including, without limitation, standards relating to the following—

- (a) performance in the provision of truck servicing,
- (b) access to truck servicing and facilities for the provision of truck servicing,
- (c) co-ordination of truck servicing,
- (d) other matters authorised or required by this Part.

(2) The mandatory standards are set by the Minister by order in writing.

- (3) The mandatory standards may, from time to time, be amended by the Minister by order in writing.
- (4) The mandatory standards, and an amendment to the mandatory standards, must be published in the Gazette and cannot take effect before the date of publication.
- (5) The following must be published on a website maintained by TfNSW—
 - (a) the mandatory standards,
 - (b) amendments to the mandatory standards,
 - (c) a consolidated version of the mandatory standards, as in force for the time being,
- (6) The Minister must give each stevedore notice in writing of the mandatory standards, and an amendment to the mandatory standards, as soon as practicable after an order is made.

45 Requirement for industry consultation before setting mandatory standards

- (1) Before setting or amending a mandatory standard, the Minister is to cause the proposed standard or amendment to be the subject of appropriate industry consultation.
- (2) Appropriate industry consultation is consultation that the Minister considers appropriate with representative bodies and organisations of people likely to be affected by the proposed standard or amendment.
- (3) The consultation must provide the bodies and organisations that are consulted with an adequate opportunity to comment on the proposed standard or amendment.

46 Minister's directions

- (1) The Minister is to serve notice of a direction given by the Minister to a person under this Part on the person.
- (2) If the direction applies generally to all stevedores or all carriers, or both, the direction may instead be given by being included in the mandatory standards.

Division 2 Booking and gate procedures

47 Booking systems and procedures

- (1) The mandatory standards may provide for the systems and procedures that must be used by stevedores and carriers for or in connection with the making of bookings.
- (2) A stevedore must not accept a booking unless the booking has been made in accordance with the requirements of the mandatory standards.
Maximum penalty—500 penalty units.

48 Minimum duration of time zones for bookings

- (1) The mandatory standards may provide for the minimum duration of time zones.
- (2) A stevedore must not make a booking available for a time zone that has a duration less than the minimum duration for the time zone set by the mandatory standards.
Maximum penalty—500 penalty units.

49 Minimum number of slots for bookings

- (1) The mandatory standards may provide for the minimum number of slots to be made available by stevedores for bookings within a specified period.

- (2) A stevedore who fails to make the minimum number of slots available for booking as required by the mandatory standards is guilty of an offence on each day that the failure occurs.
Maximum penalty—500 penalty units.

50 Minimum booking period before start of time zone

- (1) The mandatory standards may provide for the minimum time before the start of a time zone when slots in the time zone must be made available for booking.
- (2) A stevedore must comply with the requirements of the mandatory standards.
Maximum penalty—50 penalty units.

51 Gate requirements

- (1) The mandatory standards may establish requirements for truck servicing (*gate requirements*) that relate to the following—
- (a) the permissible points of entry to and exit from a terminal for trucks arriving for and leaving after truck servicing at the terminal,
 - (b) the queuing of trucks for entry to a terminal for truck servicing,
 - (c) the installation of clocks at points of entry to a terminal.
- (2) A stevedore must not permit a truck to enter or exit from the stevedore's terminal in contravention of the gate requirements.
Maximum penalty—50 penalty units.
- (3) A carrier must not cause or permit a truck operated by the carrier to enter or exit from a stevedore's terminal in contravention of the gate requirements.
Maximum penalty—50 penalty units.

Division 3 Operational performance of carriers

52 Information to be provided by carriers

- (1) The Minister may direct a carrier to provide specified information to the Minister or to TfNSW for the purpose of facilitating the monitoring of compliance with the mandatory standards.
- (2) A carrier must comply with a direction within the period specified in or determined in accordance with the direction.
Maximum penalty—50 penalty units.
- (3) A carrier must not in purported compliance with a direction under this clause provide information that the carrier knows is false or misleading in a material particular.
Maximum penalty—100 penalty units.
- (4) The issue of a penalty notice or the taking of proceedings for a failure to comply with a direction under this clause does not prevent—
- (a) the giving of the same direction (a *further direction*) on one or more further occasions, or
 - (b) the issuing of a penalty notice or the taking of proceedings for a failure to comply with a further direction.

53 Cancellation of bookings by carriers

- (1) The mandatory standards may provide for the cancellation of bookings by carriers, including in relation to the following—

- (a) limitations on cancellation,
 - (b) procedures to be followed for a cancellation,
 - (c) the obligations of stevedores to rebook slots for cancelled bookings,
 - (d) the requirements for giving notice of a cancellation.
- (2) A carrier may not cancel a booking after the start of the time zone for the booking.
- (3) A carrier who cancels a booking otherwise than in accordance with the requirements of the mandatory standards referred to in this clause is liable to pay the stevedore—
- (a) a financial penalty of \$50, and
 - (b) a stevedore or booking fee in connection with the cancelled booking.

54 Penalty for truck arriving early or late for booking

- (1) A carrier who makes a booking for a truck operated by the carrier must ensure that the truck arrives for the booking—
- (a) no earlier than the start of the time zone for the booking, and
 - (b) no later than the end of the time zone for the booking.
- (2) A carrier who fails to comply with this clause is liable to pay the stevedore a financial penalty as follows—
- (a) \$100 for a truck arriving before the start of the time zone,
 - (b) \$50 for a truck arriving after the end of the time zone but before the end of the extended arrival period, if the stevedore permits the truck entry to the stevedore's terminal,
 - (c) \$100 for a truck arriving after the end of the time zone but before the end of the extended arrival period, if the stevedore denies the truck entry to the stevedore's terminal,
 - (d) \$100 for a truck arriving after the end of the time zone and after the end of the extended arrival period, whether the stevedore permits or denies the truck entry to the stevedore's terminal.
- (3) The mandatory standards may provide for how to determine when a truck is considered to have arrived, or failed to arrive, for a booking for the purposes of this clause.
- (4) The *extended arrival period* is the period after the end of a time zone for a booking determined by TfNSW from time to time and notified by TfNSW on its website.

55 Penalty for non-service caused by fault of carrier or driver

- (1) A carrier who makes a booking with a stevedore must ensure that—
- (a) a truck operated by the carrier that arrives for the booking is capable of receiving the truck servicing for which the booking is made, and
 - (b) the stevedore is not prevented by an act or omission of the carrier or the driver of the truck from—
 - (i) providing the services for which the booking is made, or
 - (ii) providing the services within the truck turnaround time for the booking.
- (2) A carrier who fails to comply with this clause is liable to pay the stevedore a financial penalty of \$100.
- (3) The mandatory standards may provide for the following for the purposes of this clause—

- (a) determining when a truck is or is not capable of receiving the truck servicing for which the truck is booked,
- (b) specifying the acts or omissions of a carrier or driver of a truck that are regarded as preventing a stevedore from—
 - (i) providing the services for which a truck is booked, or
 - (ii) providing the services within the truck turnaround time for the booking.

Division 4 Operational performance of stevedores

56 Truck turnaround times

- (1) The mandatory standards may provide for the time within which the truck servicing for which a booking is made must be performed by a stevedore (the ***truck turnaround time***), including by specifying the events that constitute the start and end of truck servicing.
- (2) If the truck servicing for which a booking is made by a carrier is not performed by the stevedore within the truck turnaround time for the booking, the stevedore is liable to pay the carrier a financial penalty calculated at the rate of \$25 for every 15 minutes by which the truck turnaround time is exceeded.

57 Failure or refusal to perform truck servicing

- (1) If a stevedore fails or refuses to perform the truck servicing for which a booking (the ***failed booking***) has been made—
 - (a) the stevedore is liable to pay the carrier a financial penalty of \$100, and
 - (b) the stevedore must make another slot available for booking by the carrier in a time zone that is no later than 24 hours after the time zone for the failed booking, and
 - (c) the carrier is not liable to pay the stevedore a booking fee in connection with the failed booking, and
 - (d) the carrier is not liable to pay the stevedore storage charges that would otherwise be payable for storage of cargo in connection with the failed booking during the 24 hours after the time zone for the failed booking.
- (2) A carrier is entitled to the repayment of a fee or charge already paid by the carrier that the carrier is not liable to pay because of this clause.
- (3) A stevedore must not demand or accept payment from a carrier of a fee or charge that the carrier is not liable to pay because of this clause.
Maximum penalty—100 penalty units.
- (4) A stevedore who fails to make another slot available for booking by a carrier as required by subclause (1)(b) is guilty of an offence.
Maximum penalty—100 penalty units.
- (5) This clause does not apply to a failure or refusal to perform truck servicing that results from—
 - (a) the truck not being capable of receiving the services for which the truck is booked, or
 - (b) an act or omission of the carrier or the driver of the truck that prevents the stevedore from—
 - (i) providing the services for which the truck is booked, or
 - (ii) providing the services within the truck turnaround time for the booking.

- (6) The mandatory standards may require allowances and concessions to be made by a stevedore if—
 - (a) there is a failure or refusal of the stevedore to perform truck servicing within the truck turnaround time, and
 - (b) the failure or refusal results in delay for a carrier in connection with another booking.
- (7) The allowances and concessions may include the following—
 - (a) requiring the stevedore to accept a truck for servicing outside the time zone for the other booking,
 - (b) granting an exemption from the payment of a financial penalty that would otherwise become payable in connection with the other booking because of the delay,
 - (c) directing changes to the starting time of the truck turnaround time for the other booking to allow for the delay.

58 Cancellation of bookings

- (1) The mandatory standards may provide for the cancellation of bookings by a stevedore, including—
 - (a) restrictions on cancellation, and
 - (b) requirements for the giving of notice of cancellation.
- (2) If a stevedore cancels a carrier's booking in contravention of the mandatory standards—
 - (a) the stevedore is liable to pay the carrier a financial penalty of \$100, and
 - (b) the stevedore must make another slot available for booking by the carrier in a time zone that is no later than 36 hours after the time zone for the cancelled booking, and
 - (c) the carrier is not liable to pay the stevedore a booking fee in connection with the cancelled booking, and
 - (d) the carrier is not liable to pay the stevedore storage charges that would otherwise be payable for storage of cargo in connection with the cancelled booking during the 36 hours after the time zone for the cancelled booking.
- (3) A carrier is entitled to the repayment of a fee or charge already paid by the carrier that the carrier is not liable to pay because of this clause.
- (4) A stevedore who demands or accepts payment from a carrier of a fee or charge that the carrier is not liable to pay because of this clause is guilty of an offence.
Maximum penalty—100 penalty units.
- (5) A stevedore who fails to make another slot available for booking by a carrier as required by subclause (2)(b) is guilty of an offence.
Maximum penalty—100 penalty units.

59 Cancellation of time zones

- (1) The mandatory standards may provide for the cancellation of time zones by a stevedore, including—
 - (a) restrictions on cancellation, and
 - (b) requirement for the giving of notice of cancellation.

- (2) If a stevedore cancels a time zone, whether or not in contravention of the mandatory standards, a carrier who had a booking in the cancelled time zone is not liable to pay the stevedore a booking fee in connection with the booking.
- (3) If a stevedore cancels a time zone in contravention of the mandatory standards—
 - (a) the stevedore is liable to pay each carrier who had a booking with the stevedore in the cancelled time zone the financial penalty specified in subclause (4), and
 - (b) the stevedore must make another slot available for booking by each carrier who had a booking in the cancelled time zone, being a slot in a time zone that is no later than 36 hours after the cancelled time zone, and
 - (c) a carrier who had a booking in the cancelled time zone is not liable to pay the stevedore storage charges that would otherwise be payable for storage of cargo in connection with the booking during the 36 hours after the cancelled time zone.
- (4) The financial penalty payable by a stevedore under subclause (3) is—
 - (a) if the carrier was not given notice of the cancellation as required by the mandatory standards at least 2 hours before the start of the time zone—\$100 for each booking that the carrier had in the time zone, and
 - (b) if the carrier was given notice of the cancellation as required by the mandatory standards at least 2 hours before the start of the time zone—\$50 for each booking that the carrier had in the time zone.
- (5) A carrier is entitled to the repayment of a fee or charge already paid by the carrier that the carrier is not liable to pay because of this clause.
- (6) A stevedore who demands or accepts payment from a carrier of a fee or charge that the carrier is not liable to pay because of this clause is guilty of an offence.
Maximum penalty—100 penalty units.
- (7) A stevedore who fails to make another slot available for booking by a carrier as required by subclause (3)(b) is guilty of an offence.
Maximum penalty—100 penalty units.

Division 5 Confidentiality of information

60 Making a claim for confidentiality of information

- (1) A person may, when providing information as required under this Part, claim that the information is confidential if there are sufficient grounds for the claim.
- (2) There are sufficient grounds for a claim that information is confidential only if it appears that disclosure of the information—
 - (a) could adversely affect the competitive position of the person or another person, or
 - (b) would result in the person being in breach of a duty of confidentiality owed to another person.
- (3) A claim that information is confidential must be accompanied by a detailed statement of the reasons for the claim.

61 Disclosure of confidential information

- (1) A relevant authority must take all reasonable steps to prevent the disclosure of confidential information, unless the disclosure is authorised.
- (2) The disclosure of confidential information is authorised if the disclosure is—

- (a) to a person engaged in the administration of the Act for the purposes of the administration of the Act, or
 - (b) made with the consent of—
 - (i) the person who provided the information, and
 - (ii) if the disclosure could adversely affect the competitive position of another person, the other person, or
 - (c) authorised or required under an Act or law, or
 - (d) authorised or required by a court.
- (3) The disclosure of confidential information is also authorised if the Minister is of the opinion that—
- (a) the disclosure is in the public interest, and
 - (b) the public benefit in disclosing the information outweighs the detriment that might be suffered by a person as a result of the disclosure.
- (4) This clause does not prevent the disclosure of confidential information if—
- (a) the relevant authority is of the opinion that there are insufficient grounds for the claim for confidentiality under this Division, and
 - (b) the relevant authority has notified the person who provided the information of the relevant authority's opinion.
- (5) A disclosure of information authorised by this clause does not constitute a breach of a duty of confidentiality by—
- (a) the person making the disclosure, or
 - (b) the person who provided the information.
- (6) In this clause—
- confidential information*** means information that is claimed to be confidential under this Division.
- relevant authority*** means the Minister or TfNSW.

Division 6 General

62 Regulation of charges

- (1) The Minister may, by direction in writing to a stevedore or stevedore service provider, regulate the charges that may be imposed by the stevedore or stevedore service provider for or in connection with the operation or provision of facilities or services of the port-related supply chain at Port Botany.
- (2) Without limiting subclause (1), a direction may—
 - (a) regulate the charges that may be imposed for or in connection with truck servicing, rail servicing or the storage of containers, and
 - (b) require the giving of notice to the Minister of the imposition of a new charge or an increase in the amount of an existing charge, and
 - (c) require a stevedore or stevedore service provider to give the Minister or TfNSW information about charges imposed, or proposed to be imposed or increased, by the stevedore or stevedore service provider.
- (3) A stevedore or stevedore service provider is not entitled to impose, collect or recover a charge in contravention of a direction under this clause.

- (4) A charge paid by a person that was imposed on the person in contravention of a direction under this clause may be recovered by the person as a debt due from the person to whom it was paid.
- (5) A stevedore or stevedore service provider who imposes a charge in contravention of a direction under this clause is guilty of an offence.
Maximum penalty—500 penalty units.
- (6) A stevedore or stevedore service provider who fails to give notice or provide information as required by a direction under this clause is guilty of an offence.
Maximum penalty—100 penalty units.
- (7) A person must not in purported compliance with a requirement imposed by a direction under this clause provide information that the person knows is false or misleading in a material particular.
Maximum penalty—100 penalty units.

63 Invoicing and payment of financial penalties

- (1) The mandatory standards may provide for the following—
 - (a) the systems and procedures to be implemented for invoicing in connection with financial penalties,
 - (b) the data and information to be relied on in determining liability for financial penalties,
 - (c) the procedures for the payment and processing of payment of financial penalties,
 - (d) the circumstances in which an industry participant is or is not permitted to make a deduction from or set off against a financial penalty payable by the industry participant.
- (2) An industry participant must pay a financial penalty payable under this Part by the industry participant to another industry participant—
 - (a) within 14 days after receiving an invoice for the penalty from the other industry participant, and
 - (b) in accordance with any procedures established by the mandatory standards for the payment and processing of payment of financial penalties.Maximum penalty—100 penalty units.
- (3) The mandatory standards may provide for the circumstances in which a financial penalty that would otherwise be payable under this Part is not payable or is to be reduced.
- (4) The amount of a financial penalty specified in this Part does not include GST.
- (5) The amount of a financial penalty payable in a particular case is to be increased by the applicable GST payable for the financial penalty.
- (6) A financial penalty is recoverable as a debt.

64 Compliance auditing

- (1) TfNSW may audit compliance with the mandatory standards and for that purpose may direct a carrier, stevedore or stevedore service provider—
 - (a) to provide TfNSW with specified information relating to the practices and procedures of the carrier, stevedore or stevedore service provider in connection with any matter dealt with in the mandatory standards, and

- (b) to produce for inspection by TfNSW or an authorised officer of TfNSW any specified records, including financial and operational records, relating to any matter dealt with in the mandatory standards.
- (2) TfNSW may, by its officers or agents, enter and inspect premises or facility at a stevedore's terminal for the purpose of or in connection with a compliance audit by TfNSW.
- (3) A direction under this clause is to be given in writing.
- (4) A carrier, stevedore or stevedore service provider who fails to comply with a direction under this clause is guilty of an offence.
Maximum penalty—500 penalty units.
- (5) A person must not in purported compliance with a direction under this clause provide information that the person knows is false or misleading in a material particular.
Maximum penalty—100 penalty units.
- (6) The issue of a penalty notice or the taking of proceedings for a failure to comply with a direction under this clause does not prevent—
 - (a) the giving of the same direction (a *further direction*) on one or more further occasions, or
 - (b) the issuing of a penalty notice or the taking of proceedings for a failure to comply with a further direction.

65 Keeping of records and provision of information

- (1) The Minister may, by direction given in writing, require a carrier, stevedore or stevedore service provider—
 - (a) to keep specified records and provide specified information to the Minister or TfNSW in connection with the operation or provision of facilities or services of the port-related supply chain at Port Botany, and
 - (b) to keep the records and provide the information in a specified format, and
 - (c) to take specified measures to protect the records from loss, damage or destruction.
- (2) A carrier, stevedore or stevedore service provider must comply with a direction given under this clause.
Maximum penalty—500 penalty units.
- (3) A person must not in purported compliance with a direction under this clause provide information that the person knows is false or misleading in a material particular.
Maximum penalty—500 penalty units.

Part 7 Management of dangerous goods

Division 1 Preliminary

66 Application of Part

- (1) This Part applies to the handling of dangerous goods in or on port operational areas only.
- (2) Each of the following is a *port operational area*—
 - (a) the waters of a port, including, in relation to a port specified in Schedule 1, the waters described in Schedule 1 for the port,
 - (b) a ship in a port,
 - (c) a port facility,
 - (d) a storage tank in a port connected to a wharf or other berth of the port,
 - (e) property in a port that is used for the handling of dangerous goods to or from a ship.
- (3) However, a port operational area does not include—
 - (a) a long-term storage area where dangerous goods are usually kept for more than 5 days, or
 - (b) for a port that is a security regulated port within the meaning of the *Maritime Transport and Offshore Facilities Security Act 2003* of the Commonwealth—an area outside of the boundaries of the port shown in a notice published under section 13 of that Act.
- (4) This Part does not apply to the handling of dangerous goods, other than bunkering fuel, that—
 - (a) are required for the navigation, safety or maintenance of a ship, and
 - (b) form part of the equipment or stores of the ship.
- (5) A provision of this Part prevails to the extent of an inconsistency with a provision of a standard or code that is incorporated in, or applied by, this Part.
Note. Also, see the following provisions in relation to the application of this Part—
 - (a) section 5(2) of the *Dangerous Goods (Road and Rail Transport) Act 2008*,
 - (b) clause 52 of the *Explosives Regulation 2013*,
 - (c) clause 530 of the *Work Health and Safety Regulation 2017*.

67 Relationship with Commonwealth law

- (1) This Part does not apply to the carriage of dangerous goods on a relevant foreign vessel or a relevant regulated Australian vessel if, but for this clause, the application of this Part would be inconsistent with the Commonwealth law for the purposes of section 109 of the Commonwealth Constitution.
- (2) In subclause (1), a reference to this Part includes a reference to a particular provision of this Part.
- (3) In this clause—

Commonwealth law means Chapter 3, Part 4 of the *Navigation Act 2012* of the Commonwealth and includes, for the purposes of subclause (1), a regulation, marine order or other subordinate legislation in force under that Part.

relevant foreign vessel means a foreign vessel within the meaning of the *Navigation Act 2012* of the Commonwealth to which the Commonwealth law applies.

relevant regulated Australian vessel means a regulated Australian vessel within the meaning of the *Navigation Act 2012* of the Commonwealth to which the Commonwealth law applies.

68 Definitions

(1) In this Part—

approved means approved from time to time by the relevant authority for the port concerned.

ARPANSA means the Australian Radiation Protection and Nuclear Safety Agency.

AS 3846 means the Australian Standard AS 3846—2005 *The handling and transport of dangerous cargoes in port areas*, as in force from time to time.

berth means a dock, pier, jetty, quay, wharf, marine terminal or similar structure (whether floating or not) at which a ship may tie up, and includes a plant or premises (other than a ship) used for purposes ancillary or incidental to the loading or unloading of cargoes of dangerous goods within a port operational area.

bulk, in relation to dangerous goods, means a cargo of the goods that is intended to be carried, without an intermediate form of containment, in—

- (a) a structural part of a ship, or
- (b) a tank that is permanently fixed in or on a ship.

cargo agent means a person engaged by or on behalf of the owner, charterer or operator of a ship, or by the owner of cargo, to provide shipping services.

Class 5.1 restricted chemical means a form of restricted chemical that is a dangerous good of Class 5.1.

consignee of dangerous goods means a person who is—

- (a) entitled to take delivery of the goods, and
- (b) identified as the consignee of the goods in—
 - (i) a sea-carriage document within the meaning of the *Sea-Carriage Documents Act 1997*), or
 - (ii) the manifest for the seaward transport of the goods.

consignor of dangerous goods means a person who is the shipper of goods and includes a person identified as the consignor of the goods in the Multimodal Dangerous Goods Form, as published by the Australian Maritime Safety Authority from time to time, relating to the transport of the goods.

dangerous goods means the goods listed in the IMDG Code and includes a restricted chemical.

dangerous goods incident—see clause 74.

emergency service means an ambulance, fire, police or other emergency service and includes a emergency service within the Australian Defence Force.

explosives means explosive substances and explosive articles within the meaning of the IMDG Code.

export goods means goods that are, or are to be, delivered to a port facility by road or rail for loading on a ship due to depart from the port.

flammable means capable of being ignited and burning.

flammable liquids has the same meaning as in the IMDG Code.

gas has the same meaning as in the IMDG Code and includes vapour, fumes, mist or smoke.

handle dangerous goods means—

- (a) deliver the goods to, or remove the goods from, a port facility, whether by ship, road or rail, or

- (b) accept or take delivery of the goods at a port facility, or
- (c) load or unload the goods, whether on or from a ship, vehicle or train, or
- (d) move the goods between different port operational areas, or
- (e) store or warehouse the goods at a port facility or on a ship.

hazard means something that may result in—

- (a) death or injury to a person, or
- (b) harm to the environment or property.

hot work means the use of open fires and flames, power tools or hot rivets, grinding, soldering, burning, cutting, welding or other work involving heat or creating sparks.

IMDG Code means the *International Maritime Dangerous Goods Code* issued by the International Maritime Organization, as in force from time to time.

import goods means goods that are, or are to be, delivered to a port facility of a port by a ship for unloading, but does not include trans-shipment goods.

IMSBC Code means the *International Maritime Solid Bulk Cargoes Code* issued by the International Maritime Organization, as in force from time to time.

intermediate bulk container (IBC) has the same meaning as in the IMDG Code.

NEQ means the Net Explosive Quantity, expressed as a mass, of an explosive, exclusive of the non-explosive components.

port entry approval—see clause 76.

port facility means a facility at a port that consists of one or more berths and includes all of the area of the facility within the port boundaries.

port facility operator means a person engaged in the business of providing stevedoring, storage or warehousing services at a port facility, but does not include a person who is employed to provide the services.

port facility time limit for dangerous goods—see clause 101.

port guidelines or directions—see clause 70.

port operational area—see clause 66(2) and (3).

radioactive goods means dangerous goods of Class 7.

relevant authority for a port means—

- (a) if the Port Authority of New South Wales has port safety functions under Part 2, Division 3 of the Act in relation to the port—the Port Authority of New South Wales, or
- (b) TfNSW.

responsible consignor or agent for dangerous goods, or a kind of dangerous goods, means—

- (a) for export goods—the consignor of the goods, or
- (b) for import goods, transit goods or trans-shipment goods—the cargo agent for the goods.

responsible explosives handler—see clause 82.

responsible person for reporting a dangerous goods incident—see clause 74.

restricted chemical means—

- (a) ammonium nitrate, UN 1942, 2067, 2426 or 3375, or
- (b) calcium hypochlorite, UN 1748, 2880, 3485 or 3487.

ship means a seagoing or non-seagoing vessel that is used for the transport of cargoes and includes a vessel used on inland waters.

public consultation draft

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Part 7 Management of dangerous goods

special berth means a berth that has been separated, controlled and specially designated by the relevant authority for a port for the handling of cargoes of particular kinds of dangerous goods.

transit goods means goods that are, or are to be, part of the cargo of a ship that is visiting a port on its way to one or more other destinations for the unloading of the cargo.

trans-shipment goods means goods that—

- (a) are, or are to be, part of the cargo of a ship that is visiting a port, and
- (b) are to be transferred to another ship visiting the port for carriage to one or more other destinations.

wharf means a wharf, dock, jetty, pier, platform, landing stage or other fixed or floating structure or apparatus that is or is intended to be used for securing a ship and that is—

- (a) structurally attached to, or made fast to, the shore of a port or a structure on the shore of a port, or
- (b) used or capable of use in connection with the loading or unloading of passengers or goods on or from a ship from or to the shore of a port without the use of another ship,

and includes a depot, shed, building or structure erected on, forming part of or used in connection with it and the land adjoining or adjacent to and used in connection with it.

work, in relation to a ship, includes the following—

- (a) hot work carried out on the ship,
- (b) work that immobilises the ship,
- (c) freeing gas from the ship's tanks,
- (d) cleaning or painting the ship's hull,
- (e) polishing or cleaning the ship's propeller,
- (f) underwater inspections of the ship,
- (g) running a radar if the ship is a tanker.

(2) In this Part, a reference to—

- (a) a specified class or division of dangerous goods is a reference to the class or division to which the goods are assigned under the IMDG Code, including assigned as a subsidiary risk, and
- (b) a specified packing group for dangerous goods is a reference to a packing group to which the goods are assigned under the IMDG Code, which indicates the degree of danger and level of containment required for the goods.

(3) The UN numbers used in this Part have the same meaning as in the IMDG Code.

(4) If this Part requires compliance with a specified provision of AS 3846—

- (a) a reference in the provision to a port area is to be read as a reference to a port operational area within the meaning of this Part, and
- (b) a reference in the provision to dangerous goods is to be read as a reference to dangerous goods within the meaning of this Part, and
- (c) a reference in the provision to the port authority or regulatory authority in relation to a port is to be read as a reference to the relevant authority for the port within the meaning of this Part.

69 Exemptions from requirements of Part

- (1) The relevant authority for a port may exempt a person or class of person from a requirement under a provision of this Part that relates to the port operational areas of the port.
- (2) An exemption may be subject to conditions.
- (3) The relevant authority may vary or revoke an exemption
- (4) An exemption, or the variation or revocation of an exemption, must be in writing.
- (5) An application made to a relevant authority for an exemption, or the variation or revocation of an exemption, must—
 - (a) be made in the approved form and manner, and
 - (b) contain the supporting documentation and other information required by the relevant authority.

70 Guidelines and directions for handling of dangerous goods

- (1) The relevant authority for a port may, from time to time, issue written guidelines or directions (the *port guidelines or directions*) for the handling of dangerous goods in or on port operational areas of the port.
- (2) The port guidelines or directions must not be inconsistent with this Part.
- (3) Without limiting subclause (1), port guidelines or directions may make provision for the following—
 - (a) the specification of maximum NEQs for explosives,
 - (b) the specification of minimum separation distances for dangerous goods,
 - (c) the specification of separation requirements for dangerous goods,
 - (d) the specification of time limits for the storage or handling of dangerous goods at port facilities,
 - (e) the prohibition of the handling of specified kinds of dangerous goods,
 - (f) the approved form or manner for applications, approvals or notices under this Part,
 - (g) the supporting documentation and other information required by the relevant authority for the purposes of this Part.
- (4) The power to issue port guidelines or directions includes the power to amend or revoke the port guidelines or directions.
- (5) Port guidelines or directions may incorporate relevant guidelines by reference, wholly or in part and with or without modification.
- (6) In this clause—

relevant guidelines means guidelines, standards, rules, codes, specifications or methods that are—

 - (a) prescribed or published by an authority or body, whether or not a New South Wales authority or body, and
 - (b) in force at a particular time or as in force from time to time.

71 Obligations of owners of ships to their masters

The owner of a ship—

- (a) must not authorise or direct the master of the ship to contravene a provision of this Part that imposes a requirement on the master, and

- (b) must ensure, as far as is reasonably practicable, that the master of the ship does not contravene a provision of this Part that imposes a requirement on the master.

Maximum penalty—300 penalty units for a corporation and 60 penalty units for an individual.

72 Cessation of transitional work health and safety regulations

It is declared that clause 63 of Schedule 18B to the repealed *Work Health and Safety Regulation 2011* ceases to apply in relation to ports on the day on which this Part commences.

Note. Schedule 18B to the repealed *Work Health and Safety Regulation 2011* continues to have effect, despite the repeal of the Regulation. See clause 702A of the *Work Health and Safety Regulation 2017* and section 30 of the *Interpretation Act 1987*.

Division 2 Notice of dangerous goods

73 Advance notice of dangerous goods

- (1) The responsible consignor or agent for dangerous goods that are to be brought into the waters of a port or a port facility must give notice to the relevant authority for the port—
 - (a) for explosives—at least 48 hours before the arrival of the explosives at the port or the port facility, and
 - (b) for other classes of dangerous goods—at least 24 hours before the arrival of the goods at the port or the port facility.
- (2) The notice must—
 - (a) be given in the approved form and manner, and
 - (b) contain the supporting documentation and other information required by the relevant authority.
- (3) If the responsible consignor or agent who has given advance notice under this clause becomes aware of a change in the estimated time of arrival or departure of the ship carrying the dangerous goods, the responsible consignor or agent must—
 - (a) immediately give notice to the relevant authority of the change in the approved form and manner, and
 - (b) where the responsible consignor or agent is a cargo agent—notify all other persons who have dangerous goods booked for loading on, or unloading from, the ship, and
 - (c) take all reasonable steps to ensure that the goods do not exceed the time limits under this Part applicable to the storage of goods on the ship or at a port facility, including, where necessary, by applying for appropriate exemptions from the time limits.

Maximum penalty—50 penalty units for a corporation and 10 penalty units for an individual.

74 Notice of dangerous goods incidents

- (1) The responsible person for reporting a dangerous goods incident must report the incident to the relevant authority for the port concerned as soon as possible after becoming aware of the incident by providing—
 - (a) a report in the approved form and manner, and
 - (b) supporting documentation and other information required by the relevant authority.

Maximum penalty—300 penalty units for a corporation and 60 penalty units for an individual.

- (2) Each of the following is a ***dangerous goods incident***—
 - (a) a package or container in which dangerous goods are stored—
 - (i) is leaking, damaged or emitting a gas on a ship that is scheduled to enter a port or be berthed at a port facility, or
 - (ii) has leaked, been damaged or emitted a gas during the voyage of a ship to the port,
 - (b) a package or container in which dangerous goods are stored is leaking, damaged or emitting a gas before or while the goods are being delivered to a port facility of a port by road or rail,
 - (c) a package or container in which dangerous goods are stored is leaking, damaged or emitting a gas while at a port facility.
- (3) The ***responsible person for reporting a dangerous goods incident*** is—
 - (a) if the dangerous goods are located on a ship when the incident occurs or is discovered—the master of the ship, or
 - (b) if the dangerous goods are not on a ship or at a port facility when the incident occurs or is discovered and the consignee has not taken delivery of them—the responsible consignor or agent for the goods, or
 - (c) if the dangerous goods are being loaded on, or unloaded from, a ship or are being stored at a port facility when the incident occurs or is discovered—the port facility operator handling the goods, or
 - (d) if the consignee of the dangerous goods has taken delivery of the goods when the incident occurs or is discovered—the consignee.

Division 3 Bringing dangerous goods into ports

75 Prohibited dangerous goods

- (1) A person must not—
 - (a) bring prohibited dangerous goods in or on a port operational area, or
 - (b) permit, authorise or arrange for prohibited dangerous goods to be brought in or on a port operational area.

Maximum penalty—300 penalty units for a corporation and 60 penalty units for an individual.

- (2) Dangerous goods are ***prohibited dangerous goods*** for the purposes of this clause if port guidelines or directions for the port concerned prohibit the dangerous goods in or on the port operational area.
- (3) This clause does not apply to the relevant authority for the port.

76 Port entry approvals

- (1) The relevant authority for a port may grant approval (a ***port entry approval***) to the responsible consignor or agent for a cargo of dangerous goods to be brought into the waters of the port or a port facility.
- (2) A port entry approval is subject to the terms and conditions imposed by the relevant authority.
- (3) An application for a port entry approval may be made as part of an advance notice under clause 73 or in another approved form and manner.

- (4) The relevant authority may, by giving written notice to the responsible consignor or agent for the dangerous goods—
 - (a) revoke the port entry approval, or
 - (b) vary the terms and conditions of the port entry approval.

77 Port entry requirements

- (1) The responsible consignor or agent for dangerous goods to be brought into the waters of a port or a port facility must ensure that—
 - (a) a port entry approval has been granted by the relevant authority at least 24 hours before the goods arrive, and
 - (b) the terms and conditions of the approval are complied with in relation to the cargo, and
 - (c) the dangerous goods are identified, marked, labelled and placarded in accordance with the requirements of the IMDG Code for dangerous goods of the class concerned, and
 - (d) in relation to goods to be brought to a port facility—the relevant clearances have been obtained.

Maximum penalty—300 penalty units for a corporation and 60 penalty units for an individual.

- (2) Subclause (1)(c) continues to apply to a container or package that previously contained dangerous goods, other than radioactive goods, unless the steps required under the IMDG Code for dangerous goods of the class concerned have been taken to remove the hazards associated with the goods.

- (3) In this clause—

relevant clearance means a clearance or approval required to enable the goods to be stored, segregated or transported at the facility and includes a clearance or approval from the following—

- (a) the operator of a ship involved in carrying the goods,
- (b) the Commonwealth Department of Home Affairs,
- (c) the Commonwealth Department of Agriculture, Water and Environment,
- (d) the Australian Maritime Safety Authority,
- (e) SafeWork NSW,
- (f) the Environment Protection Authority,
- (g) TfNSW.

78 Master of ship must have port entry approval

The master of a ship carrying a cargo of dangerous goods must not enter the waters of a port otherwise than in accordance with a port entry approval.

Maximum penalty—60 penalty units.

Division 4 Handling dangerous goods generally

79 Separation and segregation requirements

- (1) The separation distances between dangerous goods in or on a port operational area must not be less than—
 - (a) the separation distances specified by the relevant authority for the port concerned for the goods in or on the port operational area, or
 - (b) if separation distances are not specified—

- (i) for explosives—the separation distances specified in Table 4.2 of AS 3846, or
 - (ii) for radioactive goods—the separation distances specified in Table 7.1 of AS 3846, or
 - (iii) for other dangerous goods—the separation distances specified in section 5 of AS 3846 for the goods concerned, if any.
- (2) In calculating the separation distances specified for dangerous goods, the additional requirements for the calculation of separation distances specified in Division 5 are to be taken into account.
- (3) Dangerous goods in or on a port operational area must be segregated in accordance with—
 - (a) the requirements specified by the relevant authority for the port concerned for the goods, or
 - (b) if there are no requirements specified—Table 5.2 of AS 3846 and the requirements of Chapter 7.2 of the IMDG Code.
- (4) The responsible consignor or agent for dangerous goods is guilty of an offence if the separation distances or separation requirements, or both, applicable to the goods under this clause are not complied with.
Maximum penalty—100 penalty units for a corporation and 20 penalty units for an individual.
- (5) The master of a ship that is carrying dangerous goods into a port is guilty of an offence if the separation distances or separation requirements, or both, applicable to the goods under this clause are not complied with while the goods are on board the ship.
Maximum penalty—20 penalty units.
- (6) A port facility operator is guilty of an offence if the separation distances or separation requirements, or both, applicable to the goods under this clause are not complied with while the goods are at the port facility.
Maximum penalty—100 penalty units for a corporation and 20 penalty units for an individual.

80 Remediating dangerous goods incidents

- (1) The responsible person for reporting a dangerous goods incident, other than an incident involving radioactive goods, must, as soon as possible after the incident is discovered, ensure that—
 - (a) a spillage or leak is cleaned up immediately by properly equipped and trained personnel, and
 - (b) appropriate specialist advice to address the incident is obtained.
- (2) The responsible person for reporting a dangerous goods incident involving radioactive goods must ensure that—
 - (a) all steps are taken to avoid contact with, or inhalation of, radioactive substances, and
 - (b) each of the following are immediately notified of the incident—
 - (i) the Environment Protection Authority,
 - (ii) ARPANSA,
 - (iii) the owner of the radioactive goods, and
 - (c) a spillage or leak is cleaned up immediately by properly equipped and trained personnel, and

- (d) persons, other than the properly equipped and trained personnel, are excluded from the site of the spillage or leak until the Environment Protection Authority declares the site to be safe.
- (3) Nothing in this clause limits the duty of the responsible person for reporting a dangerous goods incident to notify the relevant authority for the port concerned of a dangerous goods incident.
Maximum penalty—300 penalty units for a corporation and 60 penalty units for an individual.

81 Work or bunkering on ships carrying dangerous goods

The master of a ship that is carrying dangerous goods—

- (a) must not carry out work or bunkering on the ship while it is in the waters or berthed at a port facility without the prior written approval of the relevant authority for the port, and
- (b) must ensure that the work or bunkering complies with the conditions of the written approval granted by the relevant authority.

Maximum penalty—60 penalty units for an individual.

Division 5 Handling explosives

82 Persons responsible for handling explosives

- (1) The *responsible explosives handler* in relation to explosives, and dangerous goods handled together with explosives, is—
 - (a) while the explosives or goods are being handled in or on a port operational area, but before the consignee takes delivery of them—the responsible consignor or agent, and
 - (b) while the explosives or goods are being handled on the ship—the master of the ship, and
 - (c) while the explosives or goods are being handled by the port facility operator, including following the consignee taking delivery of the explosives—the port facility operator.
- (2) A reference in this Division to the handling of explosives, or dangerous goods that are handled together with explosives, by a responsible explosives handler is a reference to the handling of the explosives or goods in the circumstances specified in subclause (1) for the handler concerned.
- (3) Nothing in this Division limits other requirements imposed on a person by another provision of this Part that relates to the handling of dangerous goods.

83 Maximum NEQs must not be exceeded

- (1) Explosives in or on a port operational area must not exceed—
 - (a) the maximum NEQ specified by the relevant authority for the port concerned for the explosives in or on the port operational area, or
 - (b) if a maximum NEQ is not specified—the applicable maximum NEQ specified by Table 4.2 of AS 3846 for the explosives concerned for the available distance.

Example. If the maximum separation distance available is 10 metres, the maximum NEQ for explosives of Division 1.1 is 25 kilograms.

- (2) If a cargo of emulsion precursors is handled simultaneously with explosives—

- (a) the quantity of the emulsion precursors must be added to the quantity of the explosives in order to calculate the total NEQ, and
 - (b) the relevant separation distances for explosives must be complied with in relation to the emulsion precursors as well as the explosives.
- (3) If a cargo of ammonium nitrate is handled simultaneously with explosives of Division 1.1, 1.5 or 1.6—
 - (a) 50% of the quantity of ammonium nitrate must be added to the quantity of explosives of Division 1.1, 1.5 or 1.6 in order to calculate the total NEQ, and
 - (b) the relevant separation distances for explosives must be complied with in relation to the ammonium nitrate as well as the explosives.
- (4) The following persons are guilty of an offence—
 - (a) a responsible consignor or agent for prohibited cargo,
 - (b) a master of a ship carrying prohibited cargo,
 - (c) a port facility operator who handles prohibited cargo.

Maximum penalty—300 penalty units for a corporation and 60 penalty units for an individual.
- (5) However, a person is not guilty of an offence if the person establishes that—
 - (a) the responsible consignor or agent for the explosives or the port facility operator obtained the permission of the relevant authority to use a special berth, and
 - (b) the quantity of explosives involved did not exceed the amount that the relevant authority permitted at the special berth, and
 - (c) the explosives were loaded on to, or unloaded from, a ship that was berthed at the special berth.
- (6) In this clause—

emulsion precursor means an emulsion, suspension or gel of ammonium nitrate, UN 3375, comprised of more than 45% nitrate.

prohibited cargo means a cargo of explosives that exceeds the maximum NEQ applicable to cargoes of explosives in the port operational area.

special berth means a berth designated by the relevant authority as a special berth at which it is permissible for the maximum NEQ applicable to cargoes of explosives in the port operational area to be exceeded.

84 Requirements for responsible explosives handlers generally

- (1) A responsible explosives handler must ensure that explosives are handled in a safe, efficient and secure manner.
- (2) A responsible explosives handler must not handle dangerous goods that are explosives unless the dangerous goods have been classified in accordance with the IMDG Code.
- (3) A responsible explosives handler of explosives of Division 1.5 must ensure that the explosives are managed in the same way as explosives of Division 1.1.
- (4) A responsible explosives handler of a consignment that consists of explosives, other than explosives of Division 1.4, with a total NEQ of more than 100 kilograms must not handle the explosives unless—
 - (a) the responsible consignor or agent has a representative who—
 - (i) can be contacted immediately by telephone, and

- (ii) is available for the whole time the explosives are in or on a port operational area, and
- (b) the availability of the representative has been verified by the responsible explosives handler before the explosives are delivered to the port facility, and
- (c) the representative has been provided with the means to obtain immediate access to specialist advice in the case of an emergency, and
- (d) the representative has not been authorised or permitted to act in a command or control position in the case of an emergency.

Maximum penalty—300 penalty units for a corporation and 60 penalty units for an individual.

85 Requirements for masters of ships—general

- (1) This clause applies to a master of a ship that has explosives on board.
- (2) The master of the ship must prevent—
 - (a) hot work, or work that results in the ship being immobilised, from being carried out on the ship, and
 - (b) bunkering of the ship while the explosives are being loaded or unloaded from the ship.
- (3) The master of the ship must ensure—
 - (a) the ship’s engines and ancillary equipment are ready for sea at all times, and
 - (b) the handling of the explosives is suspended during an electrical storm.
- (4) The master of the ship must sail the ship from the port as soon as practicable after the completion of loading of the explosives.
- (5) The master of the ship must unload the explosives from the ship as soon as practicable after the ship is berthed.
- (6) While explosives are being loaded or unloaded from the ship, the master of the ship must, in conjunction with the port facility operator, exclude all personnel not essential to the loading or unloading of the explosives from—
 - (a) the area of the berth where they are being handled, and
 - (b) a space of at least 15 metres beyond the immediate handling area.
- (7) While explosives are being handled, the master of the ship must—
 - (a) prohibit ignition sources in or near handling areas, and
 - (b) prohibit smoking on the ship and berth, except in safe areas, and
 - (c) ensure that notices are displayed on the ship and berth with the words “DANGER—NO SMOKING—NO NAKED LIGHTS”.
- (8) The master of the ship must—
 - (a) make appropriate fire fighting facilities and water immediately available on the ship,
 - (b) ensure fire hoses on board are primed and laid out ready for immediate use.
- (9) If more than one class or division of explosives is on board the ship, the master of the ship must apply the limit on quantities for dangerous goods applicable for the port operational area concerned as if all the goods belong to the most restrictive class or division.
- (10) Subclause (2)(a), (4) and (8) do not apply to explosives of Division 1.4.
Maximum penalty—60 penalty units for an individual.

86 Requirements for masters of ships—procedures

- (1) This clause applies to a master of a ship that has explosives on board.
- (2) The master of the ship must ensure there are procedures in place that ensure the following—
 - (a) explosives are handled without delay or interruption, other than during an electrical storm,
 - (b) ship personnel involved in handling explosives receive training about correct handling methods, potential dangers and emergency procedures for explosives before handling explosives,
 - (c) spaces within the ship into which the goods are to be loaded are clean and safe,
 - (d) only packages that are in good condition are received on board the ship,
 - (e) the relevant authority is notified if containers or packages for explosives are damaged while being handled,
 - (f) damaged containers or packages are set aside for examination and repair or safe disposal,
 - (g) if there is a dangerous goods incident on the ship—
 - (i) the relevant authority is notified immediately, and
 - (ii) the spillage or leak is contained and secured, and
 - (iii) appropriate specialist advice to address the incident is obtained.
- (3) The master of the ship must ensure the procedures required under this clause are followed when required.
Maximum penalty—60 penalty units.

87 Requirements for port facility operators

- (1) This clause applies to a port facility operator accepting or unloading explosives at a port facility.
- (2) A port facility operator must not accept or unload explosives at a port facility unless the responsible consignor or agent for the explosives has given notice of the arrival of the explosives as required under clause 73.
- (3) A port facility must not unload explosives at a port facility unless—
 - (a) the transportation to remove the explosives from the port facility is available and ready to receive the explosives for loading, and
 - (b) if the explosives are of Division 1.1, 1.2, 1.3, 1.4, 1.5 or 1.6—they can be removed from the port facility after being unloaded within the port authority time limit for the goods.
- (4) A port facility operator must not accept explosives at a port facility while the ship intended to receive the explosives is immobilised.
- (5) A port facility operator must unload explosives of Division 1.1, 1.2, 1.3, 1.5 or 1.6 as soon as practicable after the explosives arrive at the port facility.
- (6) A port facility operator must ensure that the personnel of the port facility operator involved in handling explosives have received training about the correct handling methods, potential dangers and emergency procedures for explosives before handling the explosives.
- (7) A port facility operator must ensure that lift trucks being used to handle explosives, other than explosives of Division 1.4, are attended at all times.

- (8) While explosives are being loaded or unloaded from a ship, a port facility operator must, in conjunction with the master of the ship, exclude all personnel not essential to the loading or unloading of the explosives from—
- (a) the area of the berth where they are being handled, and
 - (b) a space of at least 15 metres beyond the immediate handling area.
- Maximum penalty—300 penalty units for a corporation and 60 penalty units for an individual.

Division 6 Handling radioactive goods

88 Requirements for responsible consignors or agents

A responsible consignor or agent for radioactive goods that are export goods must ensure that packages or containers that contain the goods are not brought on or into a port operational area unless the packages or containers comply with—

- (a) the requirements of the IMDG Code, and
- (b) the *Code of Practice for the Safe Transport of Radioactive Material*, issued by ARPANSA as in force from time to time.

Maximum penalty—300 penalty units for a corporation and 60 penalty units for an individual.

89 Requirements for port facility operators

- (1) A port facility operator must not—
- (a) accept or unload radioactive goods at or from a port facility unless the responsible consignor or agent for the goods has given notice of the arrival of the goods as required under clause 73,
 - (b) accept radioactive goods at or from a port facility while the ship intended to receive the goods is immobilised, or
 - (c) unload radioactive goods unless the relevant clearances have been obtained.
- Maximum penalty—300 penalty units for a corporation and 60 penalty units for an individual.

- (2) In this clause—
- relevant clearance** means a clearance or approval required to enable the goods to be stored, segregated or transported at the port facility and includes a clearance or approval from the following—
- (a) the operator of a ship involved in carrying the goods,
 - (b) the Commonwealth Department of Home Affairs,
 - (c) the Commonwealth Department of Agriculture, Water and Environment,
 - (d) the Australian Maritime Safety Authority,
 - (e) ARPANSA,
 - (f) SafeWork NSW,
 - (g) the Environment Protection Authority,
 - (h) TfNSW.

Division 7 Handling restricted chemicals

90 Quantity limits for restricted chemicals

- (1) The **quantity limit** for a restricted chemical in or on a port operational area is—

- (a) the quantity limit specified by the relevant authority for the port concerned for the chemical in or on the port operational area, or
 - (b) if a quantity limit is not specified—
 - (i) 400 tonnes for a chemical in a freight container or 150 tonnes for a chemical in another package (including a loose IBC), and
 - (ii) an additional 1,000 tonnes for a chemical that remains on board a ship for the entire time that it is in port.
- (2) The following persons are guilty of an offence—
- (a) a responsible consignor or agent for a restricted chemical that exceeds the quantity limit for the chemical at any time while the chemical is in or on a port operational area,
 - (b) a master of a ship carrying a restricted chemical that exceeds the quantity limit for the chemical at any time while the chemical is located on the ship in port,
 - (c) a port facility operator handling a restricted chemical that exceeds the quantity limit for the chemical at any time while the chemical is located at the port facility,
 - (d) a consignee of a restricted chemical that exceeds the quantity limit for the chemical at any time after the consignee takes delivery of the chemical in or on a port operational area.

Maximum penalty—300 penalty units for a corporation and 60 penalty units for an individual.

- (3) However, a person is not guilty of an offence if the person establishes that—
- (a) the responsible consignor or agent for the restricted chemical or the port facility operator obtained the permission of the relevant authority to use a special berth, and
 - (b) the quantity of restricted chemical involved did not exceed the amount that the relevant authority permitted at the special berth, and
 - (c) the restricted chemical was loaded on to, or unloaded from, a ship that was berthed at the special berth.

- (4) In this clause—

special berth means a berth designated by the relevant authority as a special berth at which it is permissible for the quantity limit for the restricted chemical to be exceeded.

91 Requirements for responsible consignors or agents

- (1) The responsible consignor or agent for restricted chemicals that are export goods or trans-shipment goods must ensure that the chemicals are packaged in accordance with the requirements of the IMDG Code.
- (2) The responsible consignor or agent for ammonium nitrate in bulk that are export goods or trans-shipment goods must ensure that—
 - (a) the written permission of the relevant authority for a port has been obtained for the ammonium nitrate before it is delivered to, or unloaded at, a port facility, and
 - (b) the ammonium nitrate is handled in accordance with the requirements of the IMSBC Code.

Maximum penalty—300 penalty units for a corporation and 60 penalty units for an individual.

92 Requirements for masters of ships—general

- (1) This clause applies to a master of a ship that is carrying Class 5.1 restricted chemicals.
- (2) The master of a ship must prevent hot work from being carried out on the ship while the chemicals are being handled.
- (3) The master of the ship must ensure that the ship personnel involved in handling the chemicals have received training about the correct handling methods, potential dangers and emergency procedures before handling the chemicals.
- (4) The master of the ship must ensure that—
 - (a) as far as practicable, the chemicals are packed, stowed, segregated and handled in accordance with the IMDG Code, and
 - (b) chemicals on the ship are kept dry at all times.
- (5) While the chemicals are being handled, the master of the ship must—
 - (a) prohibit smoking on the ship and berth, except in safe areas, and
 - (b) ensure that notices are displayed on the ship and berth with the words “DANGER—NO SMOKING—NO NAKED LIGHTS”.
- (6) For chemicals that have been carried into port by the ship, the master of the ship must ensure that the chemicals are unloaded from the ship as soon as practicable after the ship has berthed.
- (7) For chemicals that are loaded on to the ship, the master of the ship must, as soon as practicable after the chemicals are loaded, ensure that—
 - (a) the loading is completed, and
 - (b) the ship is put out to sea.
- (8) If the chemicals are spilt from damaged or leaking packaging on board the ship, the master of the ship must ensure that—
 - (a) the chemicals are cleaned up immediately, and
 - (b) the chemicals and packaging are placed into a clean, dry plastic container and removed to a safe place for disposal, and
 - (c) ammonium nitrate and calcium hypochlorite are cleaned up, and removed for disposal, separately.
- (9) While a cargo space containing the chemicals is open or the chemicals are being handled, the master of the ship must ensure that no other cargo that is incompatible with the chemicals is handled on the ship.
- (10) The master of the ship must ensure that the following requirements are complied with before the commencement and during the handling of the chemicals at the port facility at which the ship is berthed—
 - (a) the ship’s engines are to be kept ready at all times to enable the ship to leave the berth at short notice,
 - (b) the ship is to be berthed in a direction that will allow the quickest departure from the berth unless the relevant authority directs otherwise,
 - (c) bunkering is not to take place unless permitted by the relevant authority,
 - (d) the chemicals are to be separated from incompatible cargoes, combustible cargoes or other dangerous cargoes by a distance of at least 12 metres unless the other cargoes are in freight containers,
 - (e) electrical cables, including lighting cables, and non-essential electrical equipment is to be protected and kept well clear of the chemicals,

- (f) appropriate fire fighting facilities and water are to be made immediately available on the ship, with fire hoses on board being primed and laid out ready for immediate use.

Maximum penalty—60 penalty units.

93 Requirements for masters of ships—fire

- (1) This clause applies to a master of a ship that is carrying Class 5.1 restricted chemicals.
- (2) In the event of a fire involving Class 5.1 restricted chemicals, the master of a ship that is carrying the Class 5.1 restricted chemicals must ensure that the following procedures are followed on board the ship, subject to directions from an emergency service—
 - (a) all persons on board should be evacuated from the ship if the fire is a large uncontrollable fire,
 - (b) persons on board should be instructed to avoid breathing fumes from the fire,
 - (c) the appropriate emergency service for the port should be contacted as soon as possible and advised of the fire,
 - (d) plenty of water should be used to fight the fire, but only if it is safe to do so,
 - (e) dry chemicals and fire extinguishers should not be used to fight the fire,
 - (f) the hatches of the ship should not be battened down during the fire,
 - (g) steam should not be used to fight the fire.

Maximum penalty—60 penalty units.

94 Requirements for port facility operators—general

- (1) This clause applies to a port facility operator handling Class 5.1 restricted chemicals.
- (2) The port facility operator must not accept or unload restricted chemicals at a port facility unless the responsible consignor or agent for the chemicals has given notice of the arrival of the chemicals as required under clause 73.
- (3) The port facility operator must ensure that the chemicals are separated, segregated and handled in accordance with the IMDG Code.
- (4) The port facility operator must ensure that the personnel of the port facility operator involved in handling the chemicals have received training about the correct handling methods, potential dangers and emergency procedures for the chemicals before handling the chemicals.
- (5) The port facility operator must ensure that the chemicals are not handled unless—
 - (a) the relevant authority has given written permission for the chemicals to be handled, and
 - (b) the port facility operator has provided written notice to the relevant authority of the name of the person responsible for handling the chemicals.
- (6) While the chemicals are being handled, the port facility operator must—
 - (a) prohibit smoking at the port facility, except in safe areas, and
 - (b) ensure that notices are displayed on the ship and berth with the words “DANGER—NO SMOKING—NO NAKED LIGHTS”.
- (7) While the chemicals are being handled, the port facility operator must ensure that no other cargo that is incompatible with the chemicals is handled.
- (8) The port facility operator must ensure that the chemicals are kept dry at all times while at the port facility.

- (9) If the chemicals are spilt from damaged or leaking packaging at the port facility, the port facility operator must ensure that—
 - (a) the chemicals are cleaned up immediately, and
 - (b) the chemicals and packaging are placed into a clean, dry plastic container and removed to a safe place for disposal, and
 - (c) ammonium nitrate and calcium hypochlorite are cleaned up, and removed for disposal, separately.
- (10) A port operator facility must ensure that lift trucks used in handling the chemicals are—
 - (a) powered by battery, liquid petroleum gas or diesel fuel, and
 - (b) fitted with spark arresters where appropriate, and
 - (c) inspected before use to ensure that they are free from leaks, and
 - (d) attended at all times while in a cargo compartment or storage area.Maximum penalty—300 penalty units for a corporation and 60 penalty units for an individual.

95 Requirements for port facility operators—loading and unloading

- (1) This clause applies to a port facility operator handling Class 5.1 restricted chemicals.
- (2) A port operator facility must ensure that the following requirements are complied with at the berth at which the chemicals are to be loaded or unloaded from a ship—
 - (a) appropriate fire fighting facilities and water are made immediately available at the berth, with fire hoses being primed and laid out ready for immediate use,
 - (b) the berth is thoroughly cleaned to ensure that it is free of substances that may contaminate the chemicals, oils and combustible dust or debris,
 - (c) oils, combustible cargoes or other dangerous cargoes are excluded from the area in which the chemicals are to be handled,
 - (d) if the chemicals being handled are in loose bulk—the quantity of chemicals handled must not exceed a quantity that can be removed within 1 hour with the available transport,
 - (e) traffic movement is controlled in the area in which the chemicals are being handled,
 - (f) only packages and containers that are in good order and condition are received in the area in which the chemicals are being handled,
 - (g) following the removal of the chemicals from the berth, the berth is cleaned to ensure that it is free of residue of the chemicals.
- (3) For chemicals that have been carried into port by a ship, the port facility operator must ensure that the chemicals are unloaded from the ship as soon as practicable after the ship has berthed.
- (4) For chemicals that are loaded on to a ship, the port facility operator must ensure that the ship departs as soon as practicable after the chemicals are loaded.
Maximum penalty—300 penalty units for a corporation and 60 penalty units for an individual.

96 Requirements for port facility operators—fire

In the event of a fire involving Class 5.1 restricted chemicals, the port facility operator must ensure that the following procedures are followed at the port facility, subject to directions from an emergency service—

- (a) all persons at the port facility should be evacuated from the port facility if the fire is a large uncontrollable fire,
- (b) persons at the port facility should be instructed to avoid breathing fumes from the fire,
- (c) the appropriate emergency service for the port should be contacted as soon as possible and advised of the fire,
- (d) plenty of water should be used to fight the fire, but only if it is safe to do so,
- (e) dry chemicals and fire extinguishers should not be used to fight the fire,
- (f) if the fire is on a ship—the hatches of the ship should not be battened down during the fire,
- (g) steam should not be used to fight the fire.

Maximum penalty—300 penalty units for a corporation and 60 penalty units for an individual.

97 Requirements for port facility operators—ammonium nitrate fertiliser

- (1) Without limiting other requirements for a port facility operator under this Division, a port facility operator handling ammonium nitrate fertiliser in bulk must ensure that the fertiliser is not be loaded directly into the cargo spaces of a ship unless—
 - (a) the permission of the relevant authority has first been obtained, and
 - (b) the requirements of this Part and the IMSBC Code, including in relation to testing, have been complied with.
- (2) The port facility operator handling ammonium nitrate fertiliser in bulk must provide the relevant authority with test certificates that—
 - (a) are issued by the manufacturer of the fertiliser, and
 - (b) state that the tests required by the IMSBC Code have been undertaken.

Maximum penalty—300 penalty units for a corporation and 60 penalty units for an individual.

Division 8 Handling bulk dangerous goods

98 Requirements for responsible consignors or agents

- (1) The responsible consignor or agent for bulk dangerous goods to be carried by a ship must, at least 24 hours before the ship's latest estimated time of arrival in the port, provide the relevant authority for the port in which the ship is to be berthed with—
 - (a) a bulk dangerous goods declaration, and
 - (b) a vessel stowage plan.
- (2) A declaration and plan must—
 - (a) be in the approved form and manner, and
 - (b) contain the supporting documentation and other information required by the relevant authority.

Maximum penalty—100 penalty units for a corporation and 20 penalty units for an individual.

99 Requirements for masters of ships

- (1) The master of a ship carrying a cargo of bulk liquid dangerous goods must ensure that the cargo is handled by the ship's crew while it is on the ship in accordance with the requirements of section 8 of AS 3846 about the handling of that kind of cargo on a ship.

- (2) The master of a multipurpose carrier carrying bulk dangerous goods must ensure that the requirements of Appendix P of AS 3846 and IMDG Code about the handling of that kind of cargo on a ship are complied with.
- (3) The master of a ship carrying a cargo of bulk solid dangerous goods must ensure that the cargo is handled by the ship's crew while it is on the ship in accordance with the requirements of section 9 of AS 3846 and the IMSBC Code about the handling of that kind of cargo on a ship.
- (4) For the purposes of subclause (3), a provision of the IMSBC Code prevails to the extent of an inconsistency with section 9 of AS 3846.
- (5) In this clause—
multipurpose carrier has the same meaning as in AS 3846.
Maximum penalty—20 penalty units.

100 Requirements for port facility operators

- (1) A port facility operator handling a cargo of bulk liquid dangerous goods must ensure that the cargo is handled in accordance with the requirements of section 8 of the AS 3846 about the handling of that kind of cargo at a port facility.
- (2) Without limiting subclause (1), a port facility operator handling flammable bulk liquid dangerous goods must comply with—
 - (a) the requirements imposed by the relevant authority for the port for the handling of the goods, or
 - (b) if no requirements are imposed—
 - (i) the requirements of Appendix G of AS 3846 that relate to the handling of the goods, and
 - (ii) for flammable liquids—the requirements of section 10.5 of AS 3846 that relate to fire fighting resources.
- (3) A port facility operator handling a cargo of bulk solid dangerous goods must ensure that the cargo is handled in accordance with—
 - (a) the requirements of section 9 of AS 3846, and
 - (b) the requirements of the IMSBC Code that relate to the handling of bulk solid dangerous goods at a port facility.
- (4) For the purposes of subclause (3), a provision of the IMSBC Code prevails to the extent of an inconsistency with section 9 of AS 3846.
Maximum penalty—100 penalty units for a corporation and 20 penalty units for an individual.

Division 9 Miscellaneous

101 Port facility time limits

- (1) The *port facility time limit* for the handling of a dangerous good at a port facility is the time limit specified in this clause.
- (2) A port facility time limit of 2 hours applies for—
 - (a) explosives of Division 1.1, 1.2, 1.3, 1.5 or 1.6, and
 - (b) radioactive goods, other than low specific activity material.
- (3) A port facility time limit of 12 hours applies for—
 - (a) containers packed with more than 500 kilograms of dangerous goods of a class, and packing group, if any, specified in the Table to this subclause, and

- (b) explosives of Division 1.4, and
- (c) low specific activity material, and
- (d) restricted chemicals.

Table Port facility time limits

Class	Packing group	Description
2.1		Flammable gases, excluding UN 1950 and UN 2037
2.3		Toxic gases
3	PG I	Flammable liquids
4.1	PG I	Flammable solids and desensitised explosives
4.2	PG I	Substances liable to spontaneous combustion
4.3	PG I	Substances, which in contact with water, emit flammable gases
5.1	PG I	Oxidising substances
6.1	PG I	Toxic substances
8	PG I	Corrosive substances

- (4) There is no port facility time limit for containers under fumigation that do not contain other dangerous goods.
- (5) The port facility time limit for other kinds of dangerous goods is—
 - (a) 120 hours, or
 - (b) the lesser or greater period specified in port guidelines or directions issued by the relevant authority for the port concerned.
- (6) In this clause—
low specific activity material has the same meaning as in the IMDG Code.

102 Obligations for port facility time limits

- (1) A responsible consignor or agent for dangerous goods that are export goods must ensure that the goods are not delivered to a port facility for loading on to a ship if the goods will remain at the port facility for a period that exceeds the port facility time limit for the goods.
- (2) A responsible consignor for dangerous goods that are trans-shipment goods that have been unloaded at a port facility must ensure that the goods are loaded on to the ship that will carry the goods out of the port within the port facility time limit for the goods.
- (3) A port facility operator must ensure that dangerous goods that are brought to the port facility, or unloaded at the port facility, are removed from the port facility within the port facility time limit for the goods.
- (4) The responsible consignor or agent for import goods and the consignee of import goods that have been unloaded at a port facility must ensure that the goods are removed from the port facility within the port facility time limit for the goods.
Maximum penalty—
 - (a) if the port facility time limit is exceeded by less than 48 hours—50 penalty units for a corporation and 10 penalty units for an individual, or

- (b) if the port facility time limit is exceeded by 48 hours or more, but less than 96 hours—100 penalty units for a corporation and 20 penalty units for an individual, or
- (c) if the port facility time limit is exceeded by 96 hours or more—300 penalty units for a corporation and 60 penalty units for an individual.

103 Notice to remove dangerous goods from port facility

- (1) The relevant authority for a port may, by written notice given to a responsible person, require the person to remove specified dangerous goods from a port facility by the time and date specified in the notice.
- (2) A notice may be given only if the relevant authority considers—
 - (a) a provision of this Part has been contravened in relation to the dangerous goods, or
 - (b) the continued presence of the dangerous goods at the port facility poses a danger to the safe operation of the port facility.
- (3) Each of the following is a *responsible person* for the purposes of this clause—
 - (a) a responsible consignor or agent for the dangerous goods,
 - (b) a port facility operator who is providing stevedoring, storage or warehousing services for the dangerous goods,
 - (c) a consignee of the dangerous goods.
- (4) A responsible person who is given a notice under this clause must ensure that the dangerous goods to which the notice relates are removed from the port facility by the time and date specified in the notice.
Maximum penalty—300 penalty units for a corporation and 60 penalty units for an individual.

104 False or misleading information

A person must not, in relation to information required under this Part to be provided or displayed, provide or display the information knowing it to be false or misleading in a material particular.
Maximum penalty—300 penalty units for a corporation and 60 penalty units for an individual.

105 Defence for consignors of dangerous goods

It is a defence to the prosecution of an offence against this Part that is alleged to have been committed by the consignor of dangerous goods if the defendant proves that the defendant was named or identified as the consignor without the defendant's consent.

Part 8 Miscellaneous

106 Charter wharf booking system

- (1) TfNSW is to maintain a charter wharf booking system to enable the scheduling of access to charter wharves by commercial vessels.
- (2) TfNSW may impose conditions on the use of the system and may provide for the operation and use of the system including, but not limited to, the following matters—
 - (a) administration,
 - (b) fees and payments,
 - (c) changes to and cancellations of bookings,
 - (d) discounts for certain bookings or classes of bookings.
- (3) TfNSW is to ensure the charter wharf booking system gives priority access—
 - (a) to a passenger transport services conducted according to regular routes and timetables or according to regular routes and at regular intervals, and
 - (b) to parties to wharf access agreements entered into by TfNSW in relation to access to charter wharves, and
 - (c) for wharf maintenance requirements.
- (4) TfNSW may impose conditions on the use of a charter wharf by a person who has a booking.
- (5) Part 1 of Schedule 3 specifies the charter wharves to which this clause applies.
- (6) Part 2 of Schedule 3 specifies the fees for bookings under the charter wharf booking system.
- (7) This clause does not apply in relation to a vessel that accesses a charter wharf in accordance with—
 - (a) the terms of a passenger service contract entered into by TfNSW under the *Passenger Transport Act 2014*, or
 - (b) the terms of a wharf access agreement entered into by TfNSW.

107 Maritime Advisory Council

- (1) The Minister is to appoint up to 9 persons who have expertise in one or more of the following areas as members of the Maritime Advisory Council (the **Council**) established under section 34 of the Act—
 - (a) the recreational boating sector,
 - (b) the commercial vessel sector,
 - (c) the maritime property sector.
- (2) Schedule 5 makes provision for the members and procedure of the Council.
- (3) The Minister may also appoint as a member of the Council either—
 - (a) the Secretary of the Department of Transport, or
 - (b) a person employed in the Transport Service who is nominated by the Secretary.
- (4) The Minister may, from time to time, appoint additional persons with specialist expertise as members of the Council for a period determined by the Minister.
- (5) A person is not eligible to be appointed as a member of the Council if the person is a lobbyist, within the meaning of the *Lobbying of Government Officials Act 2011*.

- (6) The Minister may invite expressions of interest in being a member of the Council by publishing a notice in a way that the Minister is satisfied is likely to bring the notice to the attention of members of the public generally.
- (7) The Minister is to have regard to these expressions of interest when making decisions about the appointment of members to the Council.
- (8) A member of the Council is not entitled to be paid remuneration in relation to the membership.
- (9) However, a member appointed by the Minister under subclause (1) or (4) is entitled to be paid travelling and subsistence allowances as determined by the Minister from time to time.

108 Disturbance of bed of port

A person must not use drags, grapplings or other apparatus for lifting an object or material from the bed, or otherwise disturb the bed, of a port specified in Schedule 1 except—

- (a) with the written permission of the relevant harbour master, and
- (b) in accordance with the conditions of the permission.

Maximum penalty—50 penalty units.

109 Delegation of certain functions of Minister

For the purposes of section 27(3)(e) of the Act, a person employed in the Transport Service is prescribed as an *authorised person*.

110 Service of documents

A notice or other document required to be served on a person under this Regulation may be served by—

- (a) delivering the document to the person personally, or
- (b) sending it by post to an address specified by the person for the service of documents of that kind, or
- (c) sending by email to an email address specified by the person for the service of documents of that kind.

111 Repeal and savings

- (1) The *Ports and Maritime Administration Regulation 2012* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Ports and Maritime Administration Regulation 2012*, had effect under that Regulation continues to have effect under this Regulation.

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Ports and Maritime Administration Regulation 2020 [NSW]
Schedule 1 Port boundaries

Schedule 1 Port boundaries

clause 4

Port	Boundaries
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 Tasman Sea below mean high water mark enclosed by the arc of a circle of radius 4 nautical miles having as its centre the navigation light at Henry Head.
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.
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.
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 Tasman Sea below mean high water mark enclosed by the arc of a circle of radius 3 nautical miles having as its centre the navigation light at Nobbys Head.
Port Kembla	The waters of Port Kembla Inner and Outer Harbours bounded by the mean high water mark together with that part of the Tasman Sea below mean high water mark enclosed by the arc of a circle of radius 2.5 nautical miles having as its centre the navigation light on the northern extremity of the eastern breakwater at the entrance to the Outer Harbour.
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 Tasman Sea below mean high water mark enclosed by the arc of a circle of radius 4 nautical miles having as its centre the navigation light at Hornby Lighthouse.

Schedule 2 Commuter wharves

Part 3

Part 1 Commuter wharves

Abbotsford (Great North Rd)	Aquarium (Darling Harbour)	Balmain (Thames St)
Balmain East (Darling St)	Balmain West (Elliot St)	Barangaroo
Bayview Park (Concord)	Birchgrove (Louisa Rd)	Birkenhead (Henley Marine Dr)
Cabarita Point	Chiswick (Bortfield Dr)	Cremorne Point (Milson Rd)
Darling Point (McKell Park)	Double Bay (Bay St)	Drummoyne (Wolseley St)
Greenwich (Bay St)	Greenwich Point (Mitchell St)	Hunters Hill (Alexandra St)
Huntleys Point	Kirribilli (Beulah St)	Kirribilli (Holbrook Ave)
Kirribilli (Jeffrey St)	Kissing Point (Kissing Pt Park)	Kurraba Point (Kurraba Rd)
Longueville (Stuart St)	McMahons Point (Henry Lawson Ave)	Meadowbank
Milsons Point (Luna Park)	Mosman Bay (Avenue Rd)	Mosman South (Musgrave St)
Neutral Bay (Hayes St)	North Sydney (High St)	Northwood
Old Cremorne (Green St)	Parramatta	Pyrmont Bay
Rose Bay (Lyne Park)	Rydalmere	Sydney Olympic Park (Homebush Bay)
Taronga Zoo	Watsons Bay (Military Rd)	Woolwich (Valentia St)

Part 2 Fees

Matter for which fee is payable	Amount
6-month permit to access commuter wharf—	
(a) unlimited use for 0-50 passengers	\$161
(b) unlimited use for more than 50 passengers	\$21,528
12-month permit to access commuter wharf—	
(a) unlimited use for 0-50 passengers	\$323
(b) unlimited use for more than 50 passengers	\$43,055
(c) up to 10 berthings for 0-80 passengers	\$118
(d) up to 10 berthings for 81-150 passengers	\$236
(e) up to 10 berthings for more than 150 passengers	\$355

Schedule 3 Charter wharves

clause 106

Part 1 Charter wharves

Aquarium Wharf	Campbells Cove
Casino	Commissioners Steps
Eastern Pontoon	Eastern Pontoon North
Eastern Pontoon South	Harbourmasters Steps
Ives Steps	King St Wharves 6–9
Manly Wharf 3	Man-O-War East
Man-O-War North	Pier 26 Wharf 3
Pymont Bay	Towns Place East
Towns Place West	Walsh Bay, Wharf 2 Pontoon

Part 2 Fees

Matter for which fee is payable	Amount
Ad-hoc booking for charter wharf—	
(a) vessel capacity of 0-80 passengers	\$17
(b) vessel capacity of 81-150 passengers	\$33.90
(c) vessel capacity of more than 150 passengers	\$51
Regular bulk booking for charter wharf—	
(a) vessel capacity of 0-80 passengers	\$11.90
(b) vessel capacity of 81-150 passengers	\$23.70
(c) vessel capacity of more than 150 passengers	\$35.60

Schedule 4 Mooring licence fees

Part 4

In this Schedule—

Pittwater means the body of water lying south of a line commencing at the northernmost point of Barrenjoey Head and running west to a point on the eastern shore of the Lambert Peninsula in the vicinity of West Head, including the waters of all tidal bays, rivers and their tributaries connected or leading to that body of water bounded by mean high water mark.

Sydney Harbour means the waters of Sydney Harbour, including the waters of all tidal bays, rivers and their tributaries connected or leading to the Harbour bounded by mean high water mark and lying to the west of a line commencing at the southernmost point of North Head and running to the northernmost point of South Head.

Sydney Harbour (Eastern) means all those parts of Sydney, North and Middle Harbours bounded by a line commencing at the southernmost point of North Head, then south to the northernmost point of South Head, then generally southerly by mean high water mark to, and then along in a northerly direction the line of the face of the eastern side of the Sydney Harbour Bridge, to the mean high water mark at Kirribilli, then generally easterly and northerly, by mean high water mark, to and then along in a northerly direction the line of the eastern face of the Spit Bridge to the mean high water mark at Seaforth, then by mean high water mark, generally easterly, to the point of commencement.

Sydney Harbour (Western) means—

- (a) all those parts of Middle Harbour below mean high water mark that lie upstream of the line of the face of the eastern side of the Spit Bridge, and
- (b) all those parts of Sydney Harbour that lie below mean high water mark, together with the Parramatta, Lane Cove and Duck Rivers and all of the tidal rivers, creeks, bays and tributaries of those rivers that lie upstream of the line of the eastern face of the Sydney Harbour Bridge.

Matter for which fee is payable	Amount
Application for mooring licence for commercial mooring—	
(a) vessel length under 5 m—	
(i) in Sydney Harbour or Pittwater	\$314
(ii) in all other waters	\$211
(b) vessel length 5 m or more—	
(i) in Sydney Harbour or Pittwater	\$522
(ii) in all other waters	\$417
Application for mooring licence for private mooring—	
(a) vessel length under 7 m—	
(i) in Sydney Harbour (Eastern)	\$534
(ii) in Sydney Harbour (Western) or Pittwater	\$342
(iii) in all other waters	\$229
(b) vessel length 7 m to <11 m—	
(i) in Sydney Harbour (Eastern)	\$534 plus \$179 for each metre (or part metre) over 7 m
(ii) in Sydney Harbour (Western or Pittwater)	\$342 plus \$117 for each metre (or part metre) over 7 m

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Ports and Maritime Administration Regulation 2020 [NSW]
Schedule 4 Mooring licence fees

Matter for which fee is payable	Amount
(iii) in all other waters	\$229 plus \$50 for each metre (or part metre) over 7 m
(c) vessel length 11 m or more—	
(i) in Sydney Harbour (Eastern)	\$1,250 plus \$356 for each metre (or part metre) over 11 m
(ii) in Sydney Harbour (Western or Pittwater)	\$810 plus \$229 for each metre (or part metre) over 11 m
(iii) in all other waters	\$429 plus \$91 for each metre (or part metre) over 11 m
Inspection of mooring or vessel by TfNSW in business hours	\$130
Inspection of mooring or vessel by TfNSW outside business hours—per hour	\$130
Variation of particulars of mooring licence (for example, change of vessel or location of mooring) including any inspection by TfNSW	\$130
Transfer of mooring licence	\$130
Replacement mooring licence	\$25

Schedule 5 Members and procedure of Maritime Advisory Council

clause 107

1 Definitions

In this Schedule—

appointed member means a person who is appointed by the Minister as a member of the Council under clause 107(1) or (3) of this Regulation.

Council means the Maritime Advisory Council established under section 34 of the Act.

member means any member of the Council.

2 Terms of office of members

Subject to this Schedule, an appointed member holds office for the period, not exceeding 3 years, specified in the member's instrument of appointment, but is eligible for re-appointment, if otherwise qualified.

3 Part-time appointments

An appointed member holds office on a part-time basis.

4 Vacancy in office of member

- (1) The office of an appointed member becomes vacant if the member—
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this clause, or
 - (e) is absent from any 2 meetings of the Council in any 12-month period of which reasonable notice has been given to the member, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from the meetings, or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for their benefit, or
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove an appointed member from office at any time.
- (3) The Minister must remove an appointed member from office if the member becomes a lobbyist, within the meaning of the *Lobbying of Government Officials Act 2011*.

5 Filling of vacancy in office of appointed member

If the office of an appointed member becomes vacant, a person is, subject to this Regulation, to be appointed to fill the vacancy for the remainder of the appointed member's term.

6 Chairperson and deputy chairperson of Council

- (1) The Minister is to appoint a chairperson and deputy chairperson of the Council from the members of the Council.
- (2) The person appointed as chairperson must not be a member of the Public Service or an employee of a public authority.
- (3) The chairperson or deputy chairperson vacates office as chairperson or deputy chairperson if the person—
 - (a) is removed from office by the Minister under this clause, or
 - (b) resigns office by instrument in writing addressed to the Minister, or
 - (c) ceases to be a member of the Council.
- (4) The Minister may at any time remove the chairperson or deputy chairperson from office as chairperson or deputy chairperson.

7 Disclosure of pecuniary interests

- (1) If—
 - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Council, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.
- (2) A disclosure by a member at a meeting of the Council that the member—
 - (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of a disclosure made under this clause must be recorded by the Council and the information must be available for inspection by any person on payment of the fee determined by the Council.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Council otherwise determines—
 - (a) be present during any deliberation of the Council in relation to the matter, or
 - (b) take part in any decision of the Council in relation to the matter.
- (5) For the purposes of the making of a determination by the Council under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not—
 - (a) be present during any deliberation of the Council for the purpose of making the determination, or
 - (b) take part in the making by the Council of the determination.
- (6) A contravention of this clause does not invalidate a decision of the Council.
- (7) This clause applies to a member of a committee of the Council and the committee in the same way as it applies to a member of the Council and the Council.

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Ports and Maritime Administration Regulation 2020 [NSW]
Schedule 5 Members and procedure of Maritime Advisory Council

8 General procedure

The procedure for the calling of meetings of the Council and for the conduct of business at the meetings is, subject to this Schedule, to be as determined by the Council.

9 Quorum

The quorum for a meeting of the Council is a majority of its members for the time being.

10 Presiding member

- (1) The chairperson is to preside at a meeting of the Council.
- (2) In the absence of the chairperson, the deputy chairperson is to preside at a meeting of the Council.
- (3) In the absence of both the chairperson and the deputy chairperson, a person nominated by the Minister is to preside at a meeting of the Council.
- (4) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

11 Voting

A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

12 Transaction of business outside meetings or by telephone

- (1) The Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Council for the time being.
- (2) A resolution in writing approved in writing by a majority of the members is taken to be a decision of the Council.
- (3) The Council may, if it thinks fit, transact any of its business at a meeting at which some or all members participate by telephone or other electronic means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (4) The chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Council for the purposes of an approval of a resolution under subclause (1) or a meeting held in accordance with subclause (3).
- (5) A resolution approved under subclause (1) is to be recorded in the minutes of the meetings of the Council.
- (6) Papers may be circulated among the members for the purposes of subclause (1) by electronic means.

Schedule 6 Penalty notice offences

1 Application of Schedule

- (1) For the purposes of section 100 of the Act—
- (a) each offence created by a provision specified in this Schedule is an offence for which a penalty notice may be issued, and
 - (b) the amount payable for the penalty notice is the amount specified opposite the provision.
- (2) If the provision is qualified by words that restrict its operation to limited kinds of offences or to offences committed in limited circumstances, the penalty notice may be issued only for—
- (a) that limited kind of offence, or
 - (b) an offence committed in those limited circumstances.
- (3) For the purposes of section 100(6) of the Act, an authorised officer under the *Marine Safety Act 1998* is prescribed as a law enforcement officer for each offence specified in this Schedule.

Column 1	Column 2	Column 3
Provision	Penalty for individual	Penalty for corporation
Offences under the Act		
Section 43G(1)	\$500	
Section 85A(1)	\$5,000	
Section 85B	\$500	
Section 85C(1) and (2)	\$5,000	
Section 85D(5)	\$5,000	
Section 85E(2)	\$500	
Section 105A(2) and (9)	\$5,000	
Section 105C(3) and (4)	\$5,000	
Offences under this Regulation		
Clause 20(2)	\$500	
Clause 23	\$100	
Clause 24(2)	\$500	
Clause 29(3)	\$500	
Clause 33(1)	\$100	
Clause 34(1) and (2)	\$100	
Clause 36(2)—other than for a contravention of a verbal direction	\$500	
Clause 38(6)	\$500	
Clause 40(1) and (3)—other than for a contravention of a verbal direction	\$100	

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Schedule 6 Penalty notice offences

Column 1	Column 2	Column 3
Provision	Penalty for individual	Penalty for corporation
Clause 41(1) and (2)	\$150	
Clause 47(2)	\$5,000	
Clause 48(2)	\$5,000	
Clause 49(2)	\$5,000	
Clause 50(2)	\$500	
Clause 51(2) and (3)	\$500	
Clause 52(2)	\$500	
Clause 57(4)	\$1,000	
Clause 58(4) and (5)	\$1,000	
Clause 59(6) and (7)	\$1,000	
Clause 62(4)	\$5,000	
Clause 62(5)	\$1,000	
Clause 63(2)	\$1,000	
Clause 64(4)	\$5,000	
Clause 65(2)	\$5,000	
Clause 71	\$1,500	\$7,500
Clause 73	\$250	\$1,250
Clause 74(1)	\$1,500	\$7,500
Clause 75(1)	\$1,500	\$7,500
Clause 77(1)	\$1,500	\$7,500
Clause 78	\$1,500	
Clause 79(4) and (6)	\$500	\$2,500
Clause 79(5)	\$1,500	
Clause 80	\$1,500	\$7,500
Clause 81	\$1,500	
Clause 83(4)	\$1,500	\$7,500
Clause 84	\$1,500	\$7,500
Clause 85	\$1,500	
Clause 86	\$1,500	
Clause 87	\$1,500	\$7,500
Clause 88	\$1,500	\$7,500
Clause 89(1)	\$1,500	\$7,500
Clause 90(2)	\$1,500	\$7,500
Clause 91	\$1,500	\$7,500
Clause 92	\$1,500	

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Ports and Maritime Administration Regulation 2020 [NSW]
Schedule 6 Penalty notice offences

Column 1	Column 2	Column 3
Provision	Penalty for individual	Penalty for corporation
Clause 93	\$1,500	
Clause 94	\$1,500	\$7,500
Clause 95	\$1,500	\$7,500
Clause 96	\$1,500	\$7,500
Clause 97	\$1,500	\$7,500
Clause 98	\$500	\$2,500
Clause 99	\$500	
Clause 100	\$500	\$2,500
Clause 102—		
(a) if the port facility time limit is exceeded by less than 48 hours	\$250	\$1,250
(b) if the port facility time limit is exceeded by 48 hours or more, but less than 96 hours	\$500	\$2,500
(c) if the port facility time limit is exceeded by 96 hours or more	\$1,500	\$7,500
Clause 103(4)	\$1,500	\$7,500
