

1994—No. 517

MARITIME SERVICES ACT 1935—REGULATION

(Relating to coastal waters)

NEW SOUTH WALES



[Published in Gazette No. 126 of 23 September 1994]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Maritime Services Act 1935, has been pleased to approve the Regulation made by the Maritime Services Board of New South Wales and set forth hereunder.

IAN ARMSTRONG
Minister for Ports.

The Maritime Services Board of New South Wales, in pursuance of the Maritime Services Act 1935, makes the following Regulation:

Commencement

1. This Regulation commences on 1 October 1994.

Amendment of Management of Waters and Waterside Lands Regulations—N.S.W.

2. The Management of Waters and Waterside Lands Regulations—N.S.W. are amended:

(a) by omitting from the definitions of “Channel”, “Dredger”, “Fairway”, “Mooring apparatus”, “Obstruction to navigation”, “Occupation licence” and “Visiting small craft anchorage area” in Regulation 4 (1) the words “enclosed water” wherever occurring and by inserting instead the words “navigable waters”;

(b) by inserting after Regulation 4 (2) the following clause:

(3) A reference in these Regulations to navigable waters is taken to include a reference to any building or other structure erected in or on those waters.

- (c) by omitting from Part 2 the words “enclosed water” wherever occurring (except in Regulations 9, 10 (b), 16 (1), 19 (3), 20 (2), 23 (2) and (3), 24, 28, 44 and 47 (1) (e)) and by inserting instead the words “navigable waters”;
- (d) by omitting Regulation 9 and by inserting instead the following Regulation:

Interference with safety equipment

- 9. A person must not:
 - (a) make improper use of, improperly remove, damage or in any way interfere with; or
 - (b) obstruct the access to, or the use of, any life saving equipment, any fire extinguishing equipment or any fire plug, fire hose or fire hydrant on any managed land or in any navigable waters.
- (e) by omitting from Regulations 21 (5) and 49 (2) the words “that water” wherever occurring and by inserting instead the words “those waters”;
- (f) by omitting clause 44;
- (g) by omitting from Regulation 60 (4) the words “a municipality or shire within the meaning of the Local Government Act 1919, the Board may have regard to a statement of the policy of the municipality or shire, signed by the town or shire clerk” and by inserting instead the words “an area within the meaning of the Local Government Act 1993, the Board may have regard to a statement of the policy of the area, signed by the general manager”;
- (h) by omitting from the heading to the Second Schedule the words “ENCLOSED WATERS” and by inserting instead the words “NAVIGABLE WATERS”.

Amendment of Water Traffic Regulations—N.S.W.

- 3. The Water Traffic Regulations—N.S.W. are amended:
 - (a) by omitting from the Regulations the words “enclosed water” wherever occurring (except in Regulations 8 (1) (b) (ii), (3) (d) and (e) and (5) (a) and 9 (2) (b)) and by inserting instead the words “navigable waters”;
 - (b) by omitting from Regulation 2 (1) the definition of “Enclosed water”;
 - (c) by omitting from Regulations 5A (1), 8 (3) (g) (ii), 9 (1) and 15 (3) (c) the word “enclosed” wherever occurring and by inserting instead the word “navigable”;

- (d) by omitting from Regulation 8 (1) (b) (ii) and (3) (d) and (e) the words “that enclosed water” wherever occurring and by inserting instead the words “those navigable waters”;
- (e) by omitting from Regulation 8 (3) (d) the matter “1919” and by inserting instead the matter “1993”;
- (f) by omitting Regulation 8 (5) (a) (ii) and by inserting instead the following subparagraph:
 - (ii) the navigable waters to which the application relates adjoin any public baths, or adjoin any public reserve (within the meaning of the Local Government Act 1993) and are used for public bathing,
- (g) by omitting from Regulation 8 (5) (a) the words “that enclosed water will not constitute an offence under section 355A of the Local Government Act 1919” and by inserting instead the words “those navigable waters will not constitute an offence under section 633 of the Local Government Act 1993”;
- (h) by omitting from Regulation 9 (2) (b) (i) and (ii) the words “the enclosed water is” wherever occurring and by inserting instead the words “the navigable waters are”.

DATED this 21st day of July 1994.

The COMMON SEAL of the MARITIME SERVICES BOARD OF NEW SOUTH WALES
 was duly affixed in the presence of the Chief
 of the Board:

J.C. HAYES

EXPLANATORY NOTE

At present, most of the provisions of the Management of Waters and Waterside Lands Regulations—N.S.W. concerning the use of vessels and the occupation of waters, and all of the provisions of the Water Traffic Regulations—N.S.W. concerning the handling and registration of vessels, apply only in relation to enclosed waters. That term is defined to mean any port or any inland navigable water in New South Wales.

Part 10 of the Interpretation Act 1987 (Application of State laws to coastal waters) does not operate to apply those Regulations to coastal waters. This is because section 60 (1) of that Act provides (among other things) that Part 10 does not render a provision of the laws of the State applicable in a particular place if the laws concerned “expressly provide that the provision applies only in a specified locality in the State that does not include that place”.

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The object of this Regulation is to extend the application of most of Part 2 of the Management of Waters and Waterside Lands Regulations—N.S.W. (General Management of Waters and Lands) to coastal waters, and to extend the application of all of the Water Traffic Regulations—N.S.W. to vessels in coastal waters. Accordingly, various provisions in those Regulations that formerly applied to enclosed waters only are now expressed to apply to navigable waters. Section 2 (1A) of the Maritime Services Act 1935 provides that a reference to navigable waters includes all waters that are from time to time capable of navigation and are open to or used by the public for navigation, whether on payment of a charge or fee or otherwise.

The Regulation also:

- makes consequential amendments; and
- corrects an incorrectly ranged provision; and
- repeals a spent transitional provision; and
- updates references to other legislation.

The Regulation is made under the Maritime Services Act 1935, in particular section 38.
