

1990 - No. 358

MARINE PORT CHARGES ACT 1989 - REGULATION
(Marine Port Charges Regulation 1990)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Marine Port Charges Act 1989, has been pleased to make the Regulation set forth hereunder.

BRUCE BAIRD
Minister for Transport.

PART 1 - PRELIMINARY

Citation

1. This Regulation may be cited as the Marine Port Charges Regulation 1990.

Commencement

2. This Regulation commences on 30 June 1990.

Definitions

3. (1) In this Regulation:

"**cargo vessel**" means a vessel constructed or adapted for the carriage of goods by sea;

"charge" means a charge fixed under the Act;

"container" means a receptacle of a permanent character (other than a vessel) used, or designed or adapted for use, as a receptacle for the carriage of goods;

"port" means a port designated by the Minister by Order published in the Gazette as being a port to which the Act applies;

"the Act" means the Marine Port Charges Act 1989.

PART 2 - GENERAL PRINCIPLES FOR CALCULATION OF CHARGES

Rates per tonne

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

- (a) a mass of 1000 kilograms; or
- (b) a volume of 1 cubic metre or of 1 kilolitre.

Goods in bulk

5. If, in the terms by which any charge is fixed, reference is made to goods of any specified description being in bulk, the reference is to be construed as a reference to:

- (a) goods of that description which have been shipped on to or unshipped from a vessel at a port by means of a pipeline, conveyor, mechanical shovel or bucket; or
- (b) goods of that description which have been shipped on to or unshipped from a vessel at a port (otherwise than as referred to in paragraph (a)), but only if those goods are the only goods shipped on to or unshipped from the vessel at that port.

Rounding off

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

PART 3 - WHARF SERVICE CHARGES

Division 1 - Site occupation charges

Particulars of site occupation

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

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

(2) The occupier must also, within 24 hours of vacating the site, furnish to the Board details of the times when the occupation of the site commenced and finished.

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

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

(4) The occupier of a site who is required by this clause to furnish particulars and who does not do so within the time allowed by this clause is guilty of an offence.

Maximum penalty: 20 penalty units.

Division 2 - Wharfage charges

Particulars of vessel and operations

8. (1) A person liable to pay a wharfage charge must, at the time the person makes the payment, furnish to the Board the following particulars:

- (a) the name and address of the person making the payment;
- (b) the name of the vessel from or on to which the cargo has been or is to be unshipped or shipped, and the site at which the unshipment or shipment took place or is to take place;
- (c) a description of the cargo;
- (d) the nature and number of the packages, cases or other receptacles in which the cargo is enclosed (whether or not those receptacles are carried in a container), and the identifying marks and numbers of those receptacles as shown on the bill of lading in respect of the cargo;
- (e) the weight and volume (expressed in cubic metres or in kilolitres) of the cargo or, where the goods concerned are carried in a container by themselves, of the container;
- (f) the number of any bill of lading which is to be or has been issued in respect of the cargo;
- (g) the person's own calculation of the amount of the charge payable.

(2) A person required by this clause to furnish particulars who does not do so when required by this clause is guilty of an offence.

Maximum penalty: 20 penalty units.

Manifest for arriving vessel

9. (1) On any occasion on which a vessel has entered a port, the Board is to be given a manifest of all goods that on the voyage are unloaded from the vessel in that port.

(2) If the vessel is a cargo vessel and no such goods are unloaded, notice must be given to the Board of that fact.

(3) The particulars required to be given by the manifest are as follows:

- (a) the name of the vessel and the berth at which the goods are unshipped;

- (b) the name of the importer of the goods or the agent of the importer;
- (c) the place (or places) at which the goods (or respective goods) were first shipped for carriage by sea to the port;
- (d) the description of the goods, the nature and number of the packages, cases or other receptacles in which they are enclosed (whether or not those receptacles are carried in a container), the identifying marks and numbers of those receptacles as shown on the bill of lading in respect of the goods and the name of the consignee of the goods;
- (e) the weight and volume (expressed in cubic metres or in kilolitres) of the goods;
- (f) if the goods are carried in a container, the identifying marks and number of the container.

(4) If this clause is not complied with by the close of business on the first working day after the vessel leaves the port, the owner of the vessel is guilty of an offence.

Penalty: 20 penalty units.

Manifest for departing vessel

10. (1) On any occasion on which a vessel leaves a port, the Board is to be given a manifest of all goods that on the voyage were loaded on the vessel in that port.

(2) If the vessel is a cargo vessel and no such goods have been loaded, notice must be given to the Board of that fact.

(3) The particulars required to be given by the manifest are as follows:

- (a) the name of the vessel and the berth at which the goods were shipped;
- (b) the name of the exporter of the goods or the agent of the exporter;
- (c) the destination (or destinations) to which the goods (or respective goods) are ultimately to be carried by sea;
- (d) the description of the goods, the nature and number of the packages, cases or other receptacles in which they are enclosed (whether or not those receptacles are, carried in a container), the identifying marks and numbers of those receptacles as

shown on the bill of lading in respect of the goods and the name of the consignor of the goods;

- (e) the weight and volume (expressed in cubic metres or in kilolitres) of the goods; and
- (f) if the goods are carried in a container, the identifying marks and number of the container.

(4) If this clause is not complied with by the close of business on the first working day after the vessel leaves the port, the owner of the vessel is guilty of an offence.

Penalty: 20 penalty units.

Duty to produce documents and make goods available for inspection

11. (1) An officer of the Board may require the owner of any goods in respect of which a wharfage charge is payable:

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

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

Maximum penalty: 20 penalty units.

(3) Subclause (2) does not apply if the documents or goods, at the time their production or availability was required, were not in the owner's possession or under the owner's control.

PART 4 - OTHER CHARGES

Division 1 - Gross tonnage

Meaning of "gross tonnage"

12. For the purposes of any charge in which the expression is used, "gross tonnage" means the measure of the total enclosed internal volume of a vessel, each 2.83 cubic metres of that volume representing one gross ton.

Ascertaining gross tonnage of vessel - general

13. (1) The gross tonnage of a vessel, as defined in clause 12, is to be ascertained in accordance with this clause, except for the purposes mentioned in clause 14.

(2) The gross tonnage of a vessel is to be taken to be the highest gross tonnage stated in the vessel's register or the highest gross tonnage stated in the last publication of Lloyd's Register in respect of that vessel, as the Board may elect, except as otherwise provided by this clause.

(3) If the gross tonnage of a vessel cannot be ascertained in accordance with subclause (2) or if, in the opinion of the Board, the gross tonnage of the vessel as so ascertained is not the gross tonnage of the vessel as defined in clause 12, the Board may estimate the gross tonnage of the vessel.

(4) If the owner of the vessel does not agree with an estimation by the Board of its gross tonnage under subclause (3), the owner may have the gross tonnage of the vessel determined, at the owner's expense, by a Lloyd's surveyor in accordance with the Navigation (Orders) Regulations, Order No. 3 of 1985 published by the Australian Department of Transport as Marine Orders Part 19 Issue 2 (Tonnage Measurement - 1969 Convention).

Gross tonnage of vessels for purposes of navigation service charge or berthing charge

14. (1) For the purposes of any navigation service charge or berthing charge (or of any requirement of the Board to furnish information in connection with such a charge), the gross tonnage of a vessel is to be taken to be:

- (a) the gross tonnage of the vessel as ascertained in accordance with clause 13, unless paragraph (b) or (c) applies; or
- (b) if the Board so directs, the sum of the gross tonnage of the vessel as ascertained in accordance with clause 13 and the measure, calculated in accordance with subclause (2), of any volume (not included in the gross tonnage as so ascertained) which is occupied by goods at the time that the vessel arrives at or leaves any site, as the Board may elect; or
- (c) such gross tonnage as may be agreed on by the owner of the vessel and the Board.

(2) The measure of the volume which is occupied by goods, as referred to in subclause (1) (b), is to be calculated by dividing by 2.83 the sum of the volume (expressed in cubic metres) of each space, bounded by straight lines, which in the opinion of the Board is sufficient to enclose the goods on the site which they occupy.

Measurement and check of gross tonnage of vessels

15. (1) For the purpose of enabling the gross tonnage of a vessel to be ascertained, an officer of the Board may require the owner or master of a vessel to do any one or more of the following:

- (a) to produce to the officer any document or record in the possession or under the control of that owner or master;
- (b) to make the vessel or any cargo on the vessel available for inspection by the officer;
- (c) to delay the departure of the vessel from its site, or to unship any of the cargo on the vessel, in order to enable that officer to inspect the vessel or its cargo.

(2) The owner or master of a vessel who does not comply with any such requirement is guilty of an offence.

Maximum penalty: 20 penalty units.

Division 2 - Navigation service charge

Navigation service charge - particulars to be furnished

16. (1) The owner of a vessel in respect of which a navigation service charge is payable must, at the request of the Board, furnish the Board with the following particulars:

- (a) the owner's name and address;
- (b) the name and identifying particulars of the vessel;
- (c) the gross tonnage of the vessel;
- (d) the port in respect of which the navigation service charge is payable;
- (e) the time, date and nature of the navigation of the vessel in respect of which the navigation service charge is payable;
- (f) the owner's own calculation of the amount of the rate so payable.

(2) If this clause is not complied with, the owner of the vessel is guilty of an offence.

Maximum penalty: 20 penalty units.

Division 3 - Berthing charges

Particulars of berthing

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

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

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

(3) The owner of a vessel who is required by this clause to furnish particulars to the Board and who does not do so within the time allowed by this clause is guilty of an offence.

Maximum penalty: 10 penalty units.

Division 4 - Other charges

Services for which the Board may charge

18. For the purposes of section 10 (d) of the Act, the following services provided by the Board are prescribed services:

- (a) crane hire;
- (b) conveyer hire;
- (c) wharf cleaning;
- (d) amenity cleaning;

- (e) oil inspection;
- (f) inspection of dangerous goods;
- (g) hire of plant;
- (h) ship's utility service for provision of power, water and telephone services to vessels.

PART 5 - GENERAL

Interest on charges

19. For the purposes of section 19 (4) of the Act, the prescribed rate of interest is a rate calculated at 5% per annum above the interest rate which in the ordinary course of business would be charged by the Commonwealth Bank for the relevant period on unsecured overdrafts of more than \$100,000.

Officers of the Board

20. (1) The Board may in writing appoint any person employed by the Board to be an officer of the Board for the purposes of this Regulation.

(2) Every such officer is to be issued by the Board with a badge or other evidence of the officer's appointment under this clause and must, when exercising any power conferred by this Regulation on an officer of the Board, comply with any person's request (being a request that is reasonable in the circumstances) to produce the evidence of his or her appointment.

Transitional provisions

21. (1) Vessels in credit for harbour and light rates under the Port Rates Act 1975 and which enter a port after 29 June 1990 are to be refunded the funds standing to their credit as at 12 midnight on 29 June 1990.

(2) Vessels in credit for any such harbour and light rates which do not enter a port before their period of credit expires are not to receive any refund.

(3) Vessels in a port at 12 midnight on 29 June 1990 must pay harbour and tonnage rates under the Port Rates Act 1975 until the vessel leaves the port but are not required to pay any charges under the Act until the vessel next enters a port.

NOTE

TABLE OF PROVISIONS

PART 1 - PRELIMINARY

1. Citation
2. Commencement
3. Definitions

PART 2 - GENERAL PRINCIPLES FOR CALCULATION OF CHARGES

4. Rates per tonne
5. Goods in bulk
6. Rounding off

PART 3 - WHARF SERVICE CHARGES

Division 1 - Site occupation charges

7. Particulars of site occupation

Division 2 - Wharfage charges

8. Particulars of vessel and operations
9. Manifest for arriving vessel
10. Manifest for departing vessel
11. Duty to produce documents and make goods available for inspection

PART 4 - OTHER CHARGES

Division 1 - Gross tonnage

12. Meaning of "gross tonnage"
13. Ascertaining gross tonnage of vessel - general
14. Gross tonnage of vessels for purposes of navigation service charge or berthing charge
15. Measurement and check of gross tonnage of vessels

Division 2 - Navigation service charge

16. Navigation service charge - particulars to be furnished

Division 3 - Berthing charges

17. Particulars of berthing

Division 4 - Other charges

18. Services for which the Board may charge

PART 5 - GENERAL,

19. Interest on charges
20. Officers of the Board
21. Transitional provisions

EXPLANATORY NOTE

The object of this Regulation is to make provision for the calculation of charges under the Marine Port Charges Act 1989 and for the operation (including the transitional operation) and enforcement of that Act generally.
