



New South Wales

Ports and Maritime Administration Amendment (Port Botany Landside Improvement Strategy) Regulation 2010

under the

Ports and Maritime Administration Act 1995

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

ERIC ROOZENDAAL, MLC
Minister for Ports and Waterways

Explanatory note

The object of this Regulation is to provide for:

- (a) the setting of and compliance with access and performance standards relating to access by road carriers to the Port Botany Container Terminals, the performance of road carriers at those terminals and the performance of stevedores in providing services to road carriers at those terminals, and
- (b) the regulation by the Minister of the charges imposed by stevedores and service providers for or in connection with the operation or provision of facilities or services of the port-related supply chain at Port Botany, including truck servicing and rail servicing charges.

This Regulation is made under the *Ports and Maritime Administration Act 1995*, including section 10B and Schedule 4.

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Clause 1 Ports and Maritime Administration Amendment (Port Botany Landside Improvement Strategy) Regulation 2010

Ports and Maritime Administration Amendment (Port Botany Landside Improvement Strategy) Regulation 2010

under the

Ports and Maritime Administration Act 1995

1 Name of Regulation

This Regulation is the *Ports and Maritime Administration Amendment (Port Botany Landside Improvement Strategy) Regulation 2010*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Ports and Maritime Administration Regulation 2007

[1] Part 2B

Insert after Part 2A:

Part 2B Port Botany Landside Improvement Strategy

Division 1 Preliminary

18E Commencement of provisions

A provision of Divisions 2–4 does not commence until the provision is declared to be operational by the mandatory standards.

18F Interpretation

(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 (not being a penalty for an offence).

industry participant means a carrier or a stevedore.

mandatory standards means standards set by the Minister under this Part.

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 any service that is incidental to that 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.

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

Sydney Ports means Sydney Ports Corporation.

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 any service that is incidental to that loading or unloading.

truck turnaround time means the time within which the truck servicing for which a booking is made must be performed by a stevedore, as provided by the mandatory standards.

- (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.

18G Mandatory standards

The Minister is authorised to set standards (referred to in this Part as ***mandatory standards***) in connection with the provision of truck servicing by stevedores at Port Botany, including (without limitation) standards relating to any of 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) such other matters as may be authorised or required by this Part.

18H Procedure for setting and notifying mandatory standards

- (1) The mandatory standards are set by the Minister by order in writing and may be amended by the Minister by order in writing from time to time.

- (2) The mandatory standards and any amendment of the mandatory standards must be notified as follows:
 - (a) the Minister must cause a copy of the mandatory standards and any amendment of the mandatory standards to be published in the Gazette,
 - (b) the Minister must give each stevedore notice in writing of the mandatory standards and any amendment of the mandatory standards,
 - (c) Sydney Ports must cause a copy of the mandatory standards, any amendment of the mandatory standards and a consolidated version of the mandatory standards (as in force for the time being) to be publicly available on its website.
- (3) The mandatory standards and any amendment of the mandatory standards cannot be expressed to take effect before the date of their publication in the Gazette.

18I Minister's directions

- (1) A direction that the Minister is authorised to give to a person under this Part is to be given in writing in any of the following ways:
 - (a) by delivery to the person,
 - (b) by delivery, or service by post, to an address provided to the Minister for the service of notices on the person.
- (2) Alternatively, in the case of a direction that is of general application to all stevedores or all carriers (or both), the direction may be given by being included in the mandatory standards.

Division 2 Booking and gate procedures**18J Booking systems and procedures**

- (1) The mandatory standards can include provision for or with respect to the systems and procedures that are to 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 any requirements of the mandatory standards as to the systems and procedures that must be used by stevedores and carriers for the making of bookings.
Maximum penalty: 500 penalty units.

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18K Minimum duration of time zones for bookings

- (1) The mandatory standards can include provision for or with respect to 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 any minimum duration for the time zone set by the mandatory standards.
Maximum penalty: 500 penalty units.

18L Minimum number of slots for bookings

- (1) The mandatory standards can include provision for or with respect to 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.

18M Minimum booking period before start of time zone

- (1) The mandatory standards can include provision for or with respect to the minimum time before the commencement of a time zone when slots in the time zone must be made available for booking.
- (2) A stevedore must comply with any requirements of the mandatory standards as to the minimum time before the commencement of a time zone when slots in the time zone must be made available for booking.
Maximum penalty: 50 penalty units.

18N Gate requirements

- (1) The mandatory standards can establish *gate requirements* for truck servicing, being requirements as to:
 - (a) the permissible points of entry to and exit from a terminal for trucks arriving for and leaving after truck servicing at the terminal, and
 - (b) the queuing of trucks for entry to a terminal for truck servicing, and
 - (c) the installation of clocks at points of entry to a terminal.

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- (2) A stevedore must not permit a truck to enter or exit from the stevedore's terminal in contravention of the gate requirements for truck servicing.
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 for truck servicing.
Maximum penalty: 50 penalty units.

Division 3 Operational performance of carriers

18O Information to be provided by carriers

- (1) The Minister can direct a carrier to provide specified information to the Minister or to Sydney Ports within a period specified in or determined in accordance with the direction, for the purpose of facilitating the monitoring of compliance with the mandatory standards.
- (2) A carrier who fails to comply with a direction under this clause is guilty of an offence.
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 in respect of a failure to comply with a direction under this clause does not prevent the giving of the same direction (a *further direction*) on one or more further occasions and does not prevent the issuing of a penalty notice or the taking of proceedings in respect of a failure to comply with a further direction.

18P Cancellation of bookings by carriers

- (1) The mandatory standards can include provision for or with respect to the cancellation of bookings by carriers (including the procedures to be followed for cancelling a booking and the obligations of stevedores to rebook slots for cancelled bookings).
- (2) A booking cannot be cancelled by a carrier after the start of the time zone for the booking.
- (3) A carrier can cancel a booking at least 24 hours before the commencement of the time zone for the booking without penalty.

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- (4) If a carrier cancels a booking less than 24 hours but at least 12 hours before the commencement of the time zone for the booking, a financial penalty of \$50 is payable by the carrier to the stevedore unless:
 - (a) another booking for the slot is made before the beginning of the time zone for the slot, or
 - (b) another booking for the slot is not made before the beginning of the time zone for the slot because of the failure of the stevedore to comply with any provisions of the mandatory standards as to the rebooking of slots for cancelled bookings.
- (5) If a carrier cancels a booking less than 12 hours before the commencement of the time zone for the booking, a financial penalty of \$50 is payable by the carrier to the stevedore (whether or not another booking for the slot is made before the beginning of the time zone for the slot).

18Q 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 no earlier than the start of the time zone for the booking and 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 a financial penalty to the stevedore with whom the booking is made, as follows:
 - (a) the penalty for a truck arriving before the start of the time zone is \$100,
 - (b) the penalty for a truck arriving after the end of the time zone but before the end of the extended arrival period is \$50 if the stevedore permits the truck entry to the stevedore's terminal,
 - (c) the penalty for a truck arriving after the end of the time zone but before the end of the extended arrival period is \$100 if the stevedore denies the truck entry to the stevedore's terminal,
 - (d) the penalty for a truck arriving after the end of the time zone and after the end of the extended arrival period is \$100 (irrespective of whether the stevedore permits or denies the truck entry to the stevedore's terminal).
- (3) The mandatory standards can include provision for or with respect to determining the time 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 Sydney Ports from time to time and notified by Sydney Ports on its website.

18R 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 with whom the booking is made is not prevented by any act or omission of the carrier or the driver of the truck from providing the services for which the booking is made or from providing those services within the truck turnaround time for the booking.
- (2) A carrier who fails to comply with this clause is liable to pay a financial penalty of \$100 to the stevedore with whom the booking is made.
- (3) The mandatory standards can include provision for or with respect to:
- (a) determining for the purposes of this clause when a truck is or is not capable of receiving the truck servicing for which the truck is booked, and
 - (b) specifying the acts or omissions of a carrier or driver of a truck that are to be regarded for the purposes of this clause as preventing a stevedore from providing the services for which a truck is booked or preventing a stevedore from providing those services within the truck turnaround time for the booking.

Division 4 Operational performance of stevedores

18S Truck turnaround times

- (1) The mandatory standards can include provision for or with respect to the time (the *truck turnaround time*) within which the truck servicing for which a booking is made must be performed by a stevedore, including provision specifying the events that are to constitute the commencement and completion of truck servicing for the purposes of the truck turnaround time.

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- (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, a financial penalty is payable by the stevedore to the carrier calculated at the rate of \$25 for every period of 15 minutes by which the truck turnaround time is exceeded.

18T 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 a financial penalty of \$100 to the carrier, and
 - (b) the stevedore must make an alternate slot available for booking by the carrier in a time zone that is no later than 24 hours after the time zone of the failed booking, and
 - (c) the carrier is not liable to pay to the stevedore any booking fee in connection with the failed booking, and
 - (d) the carrier is not liable to pay any storage charges to the stevedore that would otherwise be payable for storage of cargo in connection with the failed booking during the 24 hours after the time zone of the failed booking.
- (2) A carrier is entitled to the repayment of any fee or charge already paid by the carrier that the carrier is not liable to pay because of this clause.
- (3) 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.
- (4) A stevedore who fails to make an alternate 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) any act or omission of the carrier or the driver of the truck that prevents the stevedore from providing the services for which the truck is booked or that prevents the stevedore from providing those services within the truck turnaround time for the booking.

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

18U Cancellation of bookings

- (1) The mandatory standards can include provision for or with respect to the cancellation of bookings by a stevedore (including restrictions on cancellation and 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 a financial penalty of \$100 to the carrier, and
 - (b) the stevedore must make an alternate slot available for booking by the carrier in a time zone that is no later than 36 hours after the time zone of the cancelled booking, and
 - (c) the carrier is not liable to pay to the stevedore any booking fee in connection with the cancelled booking, and
 - (d) the carrier is not liable to pay any storage charges to the stevedore that would otherwise be payable for storage of cargo in connection with the cancelled booking during the 36 hours after the time zone of the cancelled booking.
- (3) A carrier is entitled to the repayment of any 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.

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- (5) A stevedore who fails to make an alternate slot available for booking by a carrier as required by subclause (2) (b) is guilty of an offence.

Maximum penalty: 100 penalty units.

18V Cancellation of time zone

- (1) The mandatory standards can include provision for or with respect to the cancellation of time zones by a stevedore (including restrictions on cancellation and requirements 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 to the stevedore any 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 to each carrier who had a booking with the stevedore in the cancelled time zone a financial penalty in the amount set by this clause, and
 - (b) the stevedore must make an alternate slot available for booking by each carrier who had a booking in the cancelled time zone, with the alternate slot to be 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 any storage charges to the stevedore 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 to a carrier who had a booking in a time zone cancelled in contravention of the mandatory standards is:
- (a) if notice of the cancellation was not given to the carrier 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 notice of the cancellation was given to the carrier 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 any 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 an alternate 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 General

18W 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, including (without limitation):
 - (a) by regulating the charges that can be imposed for or in connection with truck servicing, rail servicing or the storage of containers, and
 - (b) by requiring 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) by requiring a stevedore or stevedore service provider to provide information to the Minister or Sydney Ports about charges imposed or proposed to be imposed or increased by the stevedore or stevedore service provider.
- (2) A stevedore or stevedore service provider is not entitled to impose, collect or recover any charge contrary to a direction under this clause.
- (3) Any charge paid by a person that was not authorised to be imposed on the person (because of a direction under this clause) may be recovered by the person as a debt due from the person to whom it was paid.

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- (4) 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.
- (5) 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.
- (6) 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.

18X Invoicing and payment of financial penalties

- (1) The mandatory standards can include provision for or with respect to:
 - (a) the systems and procedures to be implemented for invoicing in connection with financial penalties, and
 - (b) the data and information to be relied on in determining liability for financial penalties, and
 - (c) the procedures for the payment and processing of payment of financial penalties, and
 - (d) the circumstances in which an industry participant is or is not permitted to make any deduction from or set off against a financial penalty payable by the industry participant.
- (2) An industry participant must pay any 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 can 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 any financial penalty fixed by this Part does not include GST and the amount of the penalty payable in any

particular case is to be increased by any applicable GST payable in respect of the payment of the penalty.

- (5) A financial penalty is recoverable as a debt.

18Y Compliance auditing

- (1) Sydney Ports may audit compliance with the mandatory standards and for that purpose may direct a carrier, stevedore or stevedore service provider:
- (a) to provide Sydney Ports with specified information relating to the practices and procedures of the carrier, stevedore or stevedore service provider in connection with any matter for which the mandatory standards make provision, and
 - (b) to produce for inspection by Sydney Ports or an authorised officer of Sydney Ports any specified records (including financial and operational records) relating to any matter for which the mandatory standards make provision.
- (2) Sydney Ports may by its officers or agents enter and inspect any premises or facilities at a stevedore's terminal for the purpose of or in connection with any audit by Sydney Ports of compliance with the mandatory standards.
- (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 in respect of a failure to comply with a direction under this clause does not prevent the giving of the same direction (a **further direction**) on one or more further occasions and does not prevent the issuing of a penalty notice or the taking of proceedings in respect of a failure to comply with a further direction.

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18Z 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 Sydney Ports in connection with the operation or provision of facilities or services of the port-related supply chain at Port Botany, and
 - (b) to keep those records and provide that information in a specified format, and
 - (c) to take specified measures to protect those 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.

18ZA Penalty notice offences

For the purposes of section 100 of the Act:

- (a) an offence under a provision of this Regulation specified in Column 1 of Schedule 3 is a prescribed offence, and
- (b) the amount specified in Column 2 of Schedule 3 in respect of such an offence is the prescribed amount of penalty for the offence.

[2] Schedule 3

Insert after Schedule 2:

Schedule 3 Penalty notices

(Clause 18ZA)

Column 1	Column 2
Provision	Penalty
Clause 18J	\$5000
Clause 18K	\$5000

Column 1	Column 2
Provision	Penalty
Clause 18L	\$5000
Clause 18M	\$500
Clause 18N (2) and (3)	\$500
Clause 18O (2)	\$500
Clause 18U (4) and (5)	\$1000
Clause 18V (6) and (7)	\$1000
Clause 18W (4)	\$5000
Clause 18W (5)	\$1000
Clause 18X	\$1000
Clause 18Y (4)	\$5000
Clause 18Z (2)	\$5000
