

Ports and Maritime Administration Regulation 2021

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New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Staged repeal status**

This legislation is currently due to be automatically repealed under the [Subordinate Legislation Act 1989](#) on 1 September 2026

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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Ports and Maritime Administration Regulation 2021



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Ports and Maritime Administration Regulation 2021*.

2 Commencement

This Regulation commences on 1 September 2021 and is required to be published on the NSW legislation website.

Note—

This Regulation replaces the *Ports and Maritime Administration Regulation 2012*, which is repealed on 1 September 2021 by the *Subordinate Legislation Act 1989*, section 10(2).

3 Definitions

The Dictionary defines words used in this Regulation.

Note—

The *Ports and Maritime Administration Act 1995* and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

Part 2 Port charges—the Act, Part 5

Division 1 Preliminary

4 Preliminary

(1) 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.

(2) In this Part—

container has the same meaning as in the *International Convention for Safe*

Containers 1972, as in force in Australia from time to time.

5 General principles for calculation of charges

- (1) This section specifies the principles that apply to the calculation of a charge under the Act, Part 5.
- (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 Tonnage Convention, within the meaning of the [Navigation Act 2012](#) of the Commonwealth.

Division 2 Information required for calculation of charges

6 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 and identifying particulars,
- (c) the number allocated to the vessel for the particular sailing,
- (d) the gross tonnage of the vessel,
- (e) the port for which the navigation service charge is payable,
- (f) the date on which, the time at which and the purpose for which the vessel entered the port,
- (g) other information about the payment of the navigation service charge that the relevant port authority reasonably requests.

Maximum penalty—20 penalty units.

7 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 and identifying particulars,
- (c) the number allocated to the vessel for the particular sailing,
- (d) the gross tonnage of the vessel,
- (e) the pilotage port for which the pilotage charge is payable,
- (f) the time, date and nature of the pilotage of the vessel for which the pilotage charge is payable,
- (g) other information about the payment of the pilotage charge that the relevant port authority reasonably requests.

Maximum penalty—20 penalty units.

8 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,
- (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.

9 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 must be calculated by reference to whichever of the following methods the relevant port authority considers 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 section—

- (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 occurs first, 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 occurs last, 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.

10 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 give 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 subsection (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 this section—

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 section, 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 section, 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 section.

11 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
- (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 name of the vessel,
- (b) the number allocated to the vessel for the particular sailing,
- (c) the berth at which the goods are to be, or were, discharged,
- (d) the place at which the goods were first loaded for carriage by sea to the

designated port,

- (e) a description of the goods,
 - (f) 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,
 - (g) the identifying marks and numbers of the receptacles as shown on each bill of lading for the goods,
 - (h) the name and address of the consignee of the goods,
 - (i) the number of each bill of lading issued for the goods,
 - (j) the mass and volume of the goods in cubic metres or kilolitres,
 - (k) if the goods were carried in a container, the identifying marks and number of the container,
 - (l) 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.

- (5) In this section—

working day for 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.

12 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 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 name of the vessel,
 - (b) the number allocated to the vessel for the particular sailing,
 - (c) the berth at which the goods were loaded,
 - (d) the destinations to which the goods are ultimately to be carried by sea,
 - (e) a description of the goods,
 - (f) 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,
 - (g) the identifying marks and numbers of the receptacles as shown on each bill of lading for the goods,
 - (h) the name and address of the consignor of the goods,
 - (i) the number of each bill of lading issued for the goods,
 - (j) the mass and volume of the goods in cubic metres or kilolitres,
 - (k) if the goods are carried in a container, the identifying marks and number of the container,
 - (l) 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.

- (5) In this section—

working day for 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.

13 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.

Division 3 Exemptions

14 Exemption from navigation service charges—the Act, s 50(2)

- (1) A navigation service charge is not payable for—
 - (a) 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
 - (b) 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.
- (2) A navigation service charge must be reduced by 50% for—
 - (a) 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
 - (b) 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.

- (3) In this section—

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

Part 3 Commuter wharves and charter wharves—the Act, s 85G

Division 1 Commuter wharf permits

15 Preliminary

- (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 Division—

commuter wharf means a wharf specified in Schedule 1, Part 1.

permit means a permit to access a commuter wharf issued under section 17.

16 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 method and be accompanied by—
 - (a) other information or documents required by TfNSW, and
 - (b) the fee for the permit specified in Schedule 2, Part 2.
- (3) TfNSW may waive a requirement of subsection (2) for an application for a subsequent or additional permit by the same applicant.

17 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.

18 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 must give the applicant written notice of the decision and the reasons for the decision.

19 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.

20 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.

21 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 does not—
 - (i) give berthing priority to a passenger transport service, or
 - (ii) vacate a wharf on the approach of a passenger transport service,
 - (c) the permit holder does not comply with a condition of the permit,

- (d) the permit holder commits an offence against—
 - (i) a provision of the marine legislation, or
 - (ii) the *Crimes Act 1900*, section 52B, 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 to the *Crimes Act 1900*, section 52B,
 - (e) TfNSW considers it necessary to protect public safety or wharf infrastructure,
 - (f) for a cancellation—the permit holder does not satisfy the requirements specified by TfNSW under subsection (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 must be satisfied for the suspension to be lifted.
- (3) Subsection (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 section—
- passenger transport service** means a passenger transport service conducted according to regular routes and timetables or according to regular routes and at regular intervals.

22 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.

23 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 section.

Maximum penalty—100 penalty units.

24 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 method.

Division 2 Charter wharves

25 Charter wharf booking system

- (1) TfNSW must 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 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 must 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) Schedule 3, Part 2 specifies the fees for bookings under the charter wharf booking system.

- (6) This section 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.
- (7) In this section—
- charter wharf** means a wharf specified in Schedule 2, Part 1.

Part 4 Mooring licences—the Act, ss 85B and 85G

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 method 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 3.

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 section 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 not complied 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 seaworthy 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 must 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 must 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 does not comply with a condition of the licence,
 - (e) the licensee commits an offence against—
 - (i) a provision of the marine legislation, or
 - (ii) the *Crimes Act 1900*, section 52B, 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 to the *Crimes Act 1900*, section 52B,
 - (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 seaworthy or presents a risk to the environment or property,
 - (l) it is, in TfNSW's opinion, in the public interest,
 - (m) the licensee does not comply with a direction of an authorised officer under section 36,
 - (n) for a cancellation—the licensee does not satisfy the requirements specified by TfNSW under subsection (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) Subsection (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 make a written application to TfNSW 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 3, 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 3.

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 method and be accompanied by the fee for a replacement mooring licence specified in Schedule 3.

Division 2 Miscellaneous

36 Directions by authorised officers

- (1) An authorised officer may give an oral or written direction 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 under this section.

Maximum penalty—50 penalty units.

37 General exemptions

- (1) This Part and the Act, section 85B 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 the Act, section 85B 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 the Act, section 85B—
 - (a) a person or class of person,
 - (b) a vessel or class of vessel.
- (2) An exemption granted by TfNSW must be made by written order served on the person or the owner or master of the vessel.
- (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 must 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—the Act, s110(1A)

39 Application of Part

This Part applies to land under the control or management of, or vested in, TfNSW or the Port Authority of New South Wales that is near a port or wharf (referred to in this Part as relevant land).

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 way,
 - (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 under this section.

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 section 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 exiting the vehicle, or
- (b) the standing or parking of a vehicle as directed or authorised by an authorised officer.

(4) In this section—

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 the *Road Transport Act 2013*, Part 5.3, 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—the Act, s 10B and Schedule 4

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 Part 6, other than a penalty for an offence.

mandatory standards means the standards set by the Minister under section 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 during which a truck must arrive at a terminal for the purpose of being provided with truck servicing under 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 section 56.

- (2) In this Part, a truck is **operated** by a carrier if the truck is used for the purposes of the business of the carrier by—
- (a) the carrier, or
 - (b) 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 written order.
- (3) The mandatory standards may, from time to time, be amended by the Minister by written order.
- (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 written notice 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 must 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 must give a direction to a person under this Part by serving notice of the direction on the person.
- (2) If a 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 if the booking 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 must make the minimum number of slots available for booking as required by the mandatory standards.

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 section, 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 non-compliance with a direction under this section 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 non-compliance 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 section is liable to pay the stevedore—

- (a) a financial penalty of \$50, and
- (b) a stevedore or booking fee for 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 does not comply with this section 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 the way in which to determine when a truck is considered to have arrived, or failed to arrive, for a booking for the purposes of this section.
- (4) The ***extended arrival period*** is the period after the end of a time zone for a booking as 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 does not comply with this section 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 section—
 - (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 for the failed booking, and
 - (d) the carrier is not liable to pay the stevedore storage charges that would otherwise be payable for the 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 if

the carrier is not liable to pay the fee or charge because of this section.

- (3) A stevedore must not demand or accept payment of a fee or charge from a carrier if the carrier is not liable to pay the fee or charge because of this section.

Maximum penalty—100 penalty units.

- (4) A stevedore must make another slot available for booking by a carrier as required by subsection (1)(b).

Maximum penalty—100 penalty units.

- (5) This section 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 by the stevedore to perform truck servicing within the truck turnaround time, and

(b) the failure or refusal results in a 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 for the cancelled booking, and
 - (d) the carrier is not liable to pay the stevedore storage charges that would otherwise be payable for the 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 section.
- (4) 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 section.

Maximum penalty—100 penalty units.

- (5) A stevedore must make another slot available for booking by a carrier as required by subsection (2)(b).

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) 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 the stevedore a booking fee for the booking.
- (3) If a stevedore cancels a time zone in contravention of the mandatory standards—
- (a) the stevedore is liable to pay the financial penalty specified in subsection (4) to each carrier who had a booking with the stevedore in the cancelled time zone, and

- (b) the stevedore must make another slot available for booking by each of the carriers that is in a time zone no later than 36 hours after the cancelled time zone, and
 - (c) the carrier is not liable to pay the stevedore storage charges that would otherwise be payable for the 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 subsection (3) is—
- (a) 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, and
 - (b) if the carrier was not given the notice at least 2 hours before the start of the time zone—\$100 for each booking that the carrier had in the time zone, and
- (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 section.
- (6) 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 section.
- Maximum penalty—100 penalty units.
- (7) A stevedore must make another slot available for booking by a carrier as required by subsection (3)(b).
- 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 considers—
 - (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 section does not prevent the disclosure of confidential information if—
 - (a) the relevant authority considers 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 section 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 section—

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 written direction 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 subsection (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 section.
- (4) If a person paid a charge that was imposed on the person in contravention of a direction under this section, the charge 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 must not impose a charge in contravention of a direction under this section.

Maximum penalty—500 penalty units.

- (6) A stevedore or stevedore service provider must comply with a direction to give notice or provide information as referred to in subsection (2)(b) or (c).

Maximum penalty—100 penalty units.

- (7) A person must not, in purported compliance with a direction under this section, 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 a carrier or stevedore is or is not permitted to make a deduction from or set off against a financial penalty payable by the carrier or stevedore.
- (2) A carrier or stevedore must pay a financial penalty required to be paid under this Part—
- (a) within 14 days after receiving an invoice for the penalty from the carrier or stevedore to whom the penalty is payable, and
 - (b) in accordance with the 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 must 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.
- (2) For the purpose of an audit, TfNSW may give a written direction to 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 specified records, including financial and operational records, relating to any matter dealt with in the mandatory standards.
- (3) TfNSW may, by its officers or agents, enter and inspect premises or a facility at a stevedore's terminal for the purpose of or in connection with a compliance audit by TfNSW.

- (4) A carrier, stevedore or stevedore service provider must comply with a direction under this section.

Maximum penalty—500 penalty units.

- (5) A person must not, in purported compliance with a direction under this section, 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 non-compliance with a direction under this section 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 non-compliance with a further direction.

65 Keeping of records and provision of information by carriers, stevedores and stevedore service providers

- (1) The Minister may, by written direction, 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 section.

Maximum penalty—500 penalty units.

- (3) A person must not, in purported compliance with a direction under this section, 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—the Act, s 110(2)

Division 1 Preliminary

66 Definitions

(1) In this Part—

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

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.

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 section 74(2).

emergency service means an ambulance, fire, police or other emergency service

and includes an 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 liquid 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.

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.

NEQ means the Net Explosive Quantity of an explosive, expressed as a mass, not including the non-explosive components.

port entry approval—see section 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—see section 101.

port guidelines or directions—see section 70.

port operational area—see section 67(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 for the port under the Act, Part 2, Division 3—the Port Authority of New South Wales, or
- (b) the Minister.

responsible consignor or agent for 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 section 82.

responsible person for reporting a dangerous goods incident—see section 74(3).

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.

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—

- (a) means a wharf, 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—
 - (i) structurally attached to, or made fast to, the shore of a port or structure on the shore of a port, or
 - (ii) is used or capable of use for loading or unloading passengers or goods on or from a ship from or to the shore of a port without the use of another ship, and
- (b) includes a depot, shed, building or structure erected on, forming part of or used in connection with the wharf and the land adjoining or adjacent to and used in connection with the wharf.

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.

67 Application of Part

- (1) This Part applies to the handling of dangerous goods in or on a port operational area 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 that Act, section 13.
- (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) the *Dangerous Goods (Road and Rail Transport) Act 2008*, section 5(2),
- (b) the *Explosives Regulation 2013*, clause 52,
- (c) the *Work Health and Safety Regulation 2017*, clause 530.

68 Relationship with Commonwealth law

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

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

foreign vessel means a foreign vessel within the meaning of the *Navigation Act 2012* of the Commonwealth.

regulated Australian vessel means a regulated Australian vessel within the meaning of the *Navigation Act 2012* of the Commonwealth.

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 area 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 written.
- (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 method, 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 a port operational area of the port.

- (2) The port guidelines or directions must not be inconsistent with this Part.
- (3) Without limiting subsection (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 method 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,
 - (h) the training required under this Part for—
 - (i) personnel of a port facility operator involved in handling explosives or chemicals, and
 - (ii) ship personnel involved in handling explosives or chemicals.
- (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, by reference wholly or in part and with or without modification, 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 the repealed *Work Health and Safety Regulation 2011*, Schedule 18B, clause 63 ceases to apply in relation to ports on the day on which this Part commences.

Note—

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

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.

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

- (2) The notice must—
 - (a) be given in the approved form and method, 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 section 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 method, 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 as soon as possible after becoming aware of the incident by providing—

- (a) a report in the approved form and method, 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 section if the port guidelines or directions for the port prohibit the dangerous goods in or on the port operational area.
- (3) This section 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 section 73 or in another approved form and method.
- (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 the class of dangerous goods, and
- (d) in relation to goods to be brought to a port facility—the clearances and approvals required to enable the goods to be stored, segregated or transported at the facility have been obtained.

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

- (2) Subsection (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 the class of dangerous goods have been taken to remove the hazards associated with the goods.

- (3) In this section—

hazard means something that may result in—

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

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 responsible consignor or agent for dangerous goods must ensure the separation distances and segregation requirements for the goods are complied with.

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

- (2) The master of a ship that is carrying dangerous goods into a port must ensure the separation distances and segregation requirements for the goods are complied with while the goods are on board the ship.

Maximum penalty—20 penalty units.

- (3) A port facility operator must ensure the separation distances and segregation requirements for the goods are 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.

- (4) In calculating the separation distances, the additional requirements for the calculation of separation distances specified in Division 5 are to be taken into account.

- (5) In this section—

segregation requirements means the following requirements for segregating dangerous goods in or on a port operational area—

- (a) the requirements specified for the goods by the relevant authority for the port,
- (b) if there are no requirements specified—Table 5.2 of AS 3846 and the requirements of Chapter 7.2 of the IMDG Code.

separation distances means the following distances between dangerous goods in or on a port operational area—

- (a) the separation distances specified for the goods by the relevant authority for the port,
- (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, if any.

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.

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

- (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) the Australian Radiation Protection and Nuclear Safety Agency,
 - (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.

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

- (3) Nothing in this section limits the duty of the responsible person for reporting a dangerous goods incident to notify the relevant authority for the port of a dangerous goods incident.

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.

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 subsection (1) for the handler.

(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) A responsible consignor or agent for an explosive in a port operational area must ensure that the maximum NEQ for the explosive is not exceeded at any time while the explosive is in or on a port operational area.

(2) A master of a ship carrying an explosive in a port operational area must ensure that the maximum NEQ for the explosive is not exceeded at any time while the ship is carrying the explosive in port.

(3) A port facility operator must ensure that the maximum NEQ for an explosive is not exceeded while the explosive is being handled at the port facility.

(4) A person is not guilty of an offence against this section 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.

(5) For the purposes of calculating the maximum NEQ, the following applies—

(a) if a cargo of emulsion precursors is handled simultaneously with explosives—

(i) the quantity of the emulsion precursors must be added to the quantity of the explosives to calculate the NEQ, and

(ii) the separation distances for explosives under section 79 must be complied

with in relation to the emulsion precursors as well as the explosives,

- (b) if a cargo of ammonium nitrate is handled simultaneously with explosives of Division 1.1, 1.5 or 1.6—
 - (i) 50% of the quantity of ammonium nitrate must be added to the quantity of explosives of Division 1.1, 1.5 or 1.6 to calculate the NEQ, and
 - (ii) the relevant separation distances for explosives must be complied with in relation to the ammonium nitrate as well as the explosives.

(6) In this section—

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

maximum NEQ for an explosive in or on a port operational area means—

- (a) the maximum NEQ specified by the relevant authority for the port, or
- (b) if a maximum NEQ is not specified—the applicable maximum NEQ specified by Table 4.2 of AS 3846 for the explosives 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.

special berth means a berth designated by the relevant authority for the port as a berth at which it is permissible for the maximum NEQ for the explosive to be exceeded.

Maximum penalty (subsections (1)–(3))—300 penalty units for a corporation and 60 penalty units for an individual.

84 Requirements for responsible explosives handlers generally

- (1) A responsible explosives handler must ensure that explosives are handled in a safe, efficient and secure way.
- (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 if there is an emergency, and
- (d) the representative has not been authorised or permitted to act in a command or control position if there is an emergency.

Maximum penalty (subsections (1)-(4))—300 penalty units for a corporation and 60 penalty units for an individual.

85 Requirements for masters of ships—general

- (1) This section 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 for the port operational area as if all the goods belong to the most restrictive class or division.
- (10) Subsections (2)(a), (4) and (8) do not apply to explosives of Division 1.4.

Maximum penalty (subsections (2)-(9))—60 penalty units.

86 Requirements for masters of ships—procedures

- (1) This section 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.

Maximum penalty—60 penalty units.

- (3) The master of the ship must ensure the procedures required under this section are followed when required.

Maximum penalty—60 penalty units.

87 Requirements for port facility operators

- (1) This section 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 section 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 facility 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 (subsections (2)–(8))—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 the Australian Radiation Protection and Nuclear Safety Agency, 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

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 section 73, or
- (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 clearances and approvals required to enable the goods to be stored, segregated or transported at the port facility have been obtained.

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

Division 7 Handling restricted chemicals

90 Quantity limits for restricted chemicals

- (1) A responsible consignor or agent for a restricted chemical must ensure the quantity limit for the chemical is not exceeded at any time while the chemical is in or on a port operational area.

- (2) A master of a ship carrying a restricted chemical must ensure that the quantity limit for the chemical is not exceeded at any time while the ship is carrying the chemical in port.
- (3) A port facility operator must ensure that the quantity limit for a restricted chemical is not exceeded while the restricted chemical is being handled at the port facility.
- (4) A consignee of a restricted chemical must not, in or on a port operational area, take delivery of a chemical that exceeds the quantity limit for the chemical.
- (5) A person is not guilty of an offence against this section 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.

(6) In this section—

quantity limit for a restricted chemical in or on a port operational area means—

- (a) the quantity limit specified by the relevant authority for the port, 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.

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

Maximum penalty (subsections (1)-(4))—300 penalty units for a corporation and 60 penalty units for an individual.

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.

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

individual.

- (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 section applies to a master of a ship that is carrying restricted chemicals that are Class 5.1 dangerous goods.
- (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) If chemicals 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) If chemicals 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 must 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 must 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 (subsections (2)–(10))—60 penalty units.

93 Requirements for masters of ships—fire

- (1) This section applies if there is a fire on a ship involving restricted chemicals that are Class 5.1 dangerous goods.
- (2) The master of the ship 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 section applies to a port facility operator handling restricted chemicals that are Class 5.1 dangerous goods.
- (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 section 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 (subsections (2)–(10))—300 penalty units for a corporation and 60 penalty units for an individual.

95 Requirements for port facility operators—loading and unloading

- (1) This section applies to a port facility operator handling restricted chemicals that are Class 5.1 dangerous goods.
- (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) If chemicals 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) If chemicals 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 (subsections (2)-(4))—300 penalty units for a corporation and 60 penalty units for an individual.

96 Requirements for port facility operators—fire

- (1) This section applies if there is a fire involving restricted chemicals that are Class 5.1 dangerous goods at a port facility.
- (2) 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 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.

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

- (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.

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

- (2) A declaration and plan must—
 - (a) be in the approved form and method, 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 subsection (3), a provision of the IMSBC Code prevails to the extent of an inconsistency with section 9 of AS 3846.

- (5) In this section—

multipurpose carrier has the same meaning as in AS 3846.

Maximum penalty (subsections (1)–(3))—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.

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

- (2) Without limiting subsection (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.

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

- (4) For the purposes of subsection (3), a provision of the IMSBC Code prevails to the extent of an inconsistency with section 9 of AS 3846.

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

Table

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 for the port.
- (6) In this section—

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 or agent 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 (subsections (1)-(4))—

- (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 section—
 - (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 section 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 Port boundaries

For the purposes of the Act, section 105, the ports specified in Schedule 4 have the boundaries described in that Schedule.

107 Information from Australian Maritime Safety Authority

(1) Transport for NSW may collect and use information about commercial vessels from the Australian Maritime Safety Authority for the purpose of exercising the functions of Transport for NSW under the Act.

(2) In this section—

information about commercial vessels means information disclosed to Transport for NSW by the Australian Maritime Safety Authority under the [Australian Maritime Safety Authority Act 1990](#) of the Commonwealth, section 11 and may include personal information within the meaning of the [Privacy and Personal Information Protection Act 1998](#).

108 Keeping of records and provision of information by empty container storage facility operators—the Act, s 10B and Sch 4, clause 1

(1) The Minister may, by written direction, require an operator of an empty storage container facility—

- (a) to keep specified records and provide specified information to the Minister or TfNSW in connection with the operation of the empty container storage facility, 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) An operator of an empty container storage facility must comply with a direction given under this section.

Maximum penalty—500 penalty units.

(3) A person must not, in purported compliance with a direction under this section, provide information that the person knows is false or misleading in a material particular.

Maximum penalty—500 penalty units.

(4) In this section—

empty container storage facility means a supply chain facility used for the storage

and handling of empty cargo containers.

109 Maritime Advisory Council—the Act, s 34

- (1) The Minister must 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**)—
 - (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 must have regard to the 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 subsection (1) or (4) is entitled to be paid travelling and subsistence allowances as determined by the Minister from time to time.

110 Disturbance of bed of port—the Act, s 43E

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 4 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.

111 Delegation of Minister’s functions

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

112 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.

113 Savings

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.

Schedule 1 Commuter wharves

Part 3, Division 1

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	Pymont Bay
Rose Bay (Lyne Park)	Rydalmere	Sydney Olympic Park (Homebush Bay)
Taronga Zoo	Watsons Bay (Military Rd)	Woolwich (Valentia St)

Part 2 Fees

Item	Matter for which fee is payable	Amount
1	6-month permit to access commuter wharf—	
	(a) unlimited use for 0–50 passengers	\$179
	(b) unlimited use for more than 50 passengers	\$23,867
2	12-month permit to access commuter wharf—	
	(a) unlimited use for 0–50 passengers	\$358
	(b) unlimited use for more than 50 passengers	\$47,734
	(c) up to 10 berthings for 0–80 passengers	\$131
	(d) up to 10 berthings for 81–150 passengers	\$262
	(e) up to 10 berthings for more than 150 passengers	\$393

Schedule 2 Charter wharves

Part 3, Division 2

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

Item	Matter for which fee is payable	Amount
1	Ad hoc booking for charter wharf—	
	(a) vessel capacity of 0–80 passengers	\$18.90
	(b) vessel capacity of 81–150 passengers	\$37.60
	(c) vessel capacity of more than 150 passengers	\$56.50
2	Regular bulk booking for charter wharf—	
	(a) vessel capacity of 0–80 passengers	\$13.20
	(b) vessel capacity of 81–150 passengers	\$26.30
	(c) vessel capacity of more than 150 passengers	\$39.40

Schedule 3 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.

Item	Matter for which fee is payable	Amount
1	Application for mooring licence for commercial mooring—	
	(a) vessel length of less than 5m—	
	(i) in Sydney Harbour or Pittwater	\$348
	(ii) in all other waters	\$234
	(b) vessel length of 5m or more—	
	(i) in Sydney Harbour or Pittwater	\$579
	(ii) in all other waters	\$462
2	Application for mooring licence for private mooring—	
	(a) vessel length of less than 7m—	
	(i) in Sydney Harbour (Eastern)	\$592
	(ii) in Sydney Harbour (Western) or Pittwater	\$380
	(iii) in all other waters	\$254
	(b) vessel length of 7m or more and less than 11m—	
	(i) in Sydney Harbour (Eastern)	\$592 plus \$199 for each metre, or part metre, over 7m
	(ii) in Sydney Harbour (Western) or Pittwater	\$380 plus \$130 for each metre, or part metre, over 7m
	(iii) in all other waters	\$254 plus \$55 for each metre, or part metre, over 7m
	(c) vessel length of 11m or more—	
	(i) in Sydney Harbour (Eastern)	\$1,388 plus \$394 for each metre, or part metre, over 11m

	(ii) in Sydney Harbour (Western) or Pittwater	\$900 plus \$254 for each metre, or part metre, over 11m
	(iii) in all other waters	\$474 plus \$101 for each metre, or part metre, over 11m
3	Inspection of mooring or vessel by TfNSW in business hours	\$145
4	Inspection of mooring or vessel by TfNSW outside business hours	\$145 per hour
5	Changes in particulars of mooring licence	\$145
6	Transfer of mooring licence	\$145
7	Replacement mooring licence	\$27

Schedule 4 Port boundaries

section 106

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, 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, 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 5 Members and procedure of Maritime Advisory Council

section 109

1 Definitions

In this Schedule—

appointed member means a person who is appointed by the Minister as a member of the Council under this Regulation, section 109(1) or (4).

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

member means a 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 written instrument addressed to the Minister, or
- (d) is removed from office by the Minister under this section, or
- (e) is absent from 2 meetings of the Council in a 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 a 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 must 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 section, or
- (b) resigns the office by written instrument 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) This section applies if—

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a Council meeting, 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.
- (2) A 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 Council meeting.
- (3) It is sufficient disclosure of the nature of the interest relating to a specified company, body or person that arises after the date of the disclosure if the member has disclosed that the member—
 - (a) is a member, or is in the employment, of the company or other body, or
 - (b) is a partner, or is in the employment, of the person, or
 - (c) has some other interest relating to the company, body or person.
- (4) Particulars of a disclosure made under this section must be recorded by the Council and the information must be available for inspection by a person on payment of the fee determined by the Council.
- (5) After a member has disclosed the nature of an interest in a matter, the member must not, unless the Minister or the Council otherwise determines—
 - (a) be present during a deliberation of the Council in relation to the matter, or
 - (b) take part in a decision of the Council in relation to the matter.
- (6) For the purposes of the making of a determination by the Council under subsection (5), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not—
 - (a) be present during a deliberation of the Council for the purpose of making the determination, or
 - (b) take part in the making by the Council of the determination.
- (7) A contravention of this section does not invalidate a decision of the Council.
- (8) This section 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.

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 determined by the Council.

9 Quorum

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

10 Presiding member

- (1) The chairperson must preside at a Council meeting.
- (2) In the absence of the chairperson, the deputy chairperson must preside at a Council meeting.
- (3) In the absence of both the chairperson and the deputy chairperson, a person nominated by the Minister must preside at a Council meeting.
- (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 Council meeting 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 its business—
 - (a) by the circulation of papers, by email or other electronic means, among all the members of the Council for the time being, or
 - (b) at a meeting at which all or some members participate by telephone or other electronic means, but only if a member who speaks on a matter at the meeting can be heard by the other members.
- (2) If the Council transacts its business by the circulation of papers under subsection (1)(a), a written resolution approved in writing by a majority of the members is taken to be a decision of the Council made at a Council meeting.
- (3) For the purposes of a meeting held under subsection (1)(b) or the approval of a resolution under subsection (2), each member has the same voting rights as at an ordinary Council meeting.
- (4) A resolution approved under subsection (2) must be recorded in the minutes of the Council meeting.

Schedule 6 Penalty notice offences

1 Application of Schedule

- (1) For the purposes of the Act, section 100—
 - (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 the Act, section 100(6), 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	\$500
Section 85A(1)	\$5,000	\$5,000
Section 85B	\$500	\$500
Section 85C(1) and (2)	\$5,000	\$5,000
Section 85D(5)	\$5,000	\$5,000
Section 85E(2)	\$500	\$500
Section 105A(2) and (9)	\$5,000	\$5,000
Section 105C(3) and (4)	\$5,000	\$5,000
Offences under this Regulation		
Section 19(2)	\$500	\$500
Section 22	\$100	\$100
Section 23(2)	\$500	\$500
Section 29(3)	\$500	\$500
Section 33(1)	\$100	\$100
Section 34(1) and (2)	\$100	\$100
Section 36(2)—for contravention of a written direction	\$500	\$500
Section 38(6)	\$500	\$500
Section 40(1) and (3)—for contravention of a written direction	\$100	—

Section 41(1) and (2)	\$150	\$150
Section 47(2)	\$5,000	\$5,000
Section 48(2)	\$5,000	\$5,000
Section 49(2)	\$5,000	\$5,000
Section 50(2)	\$500	\$500
Section 51(2) and (3)	\$500	\$500
Section 52(2)	\$500	\$500
Section 57(3) and (4)	\$1,000	\$1,000
Section 58(4) and (5)	\$1,000	\$1,000
Section 59(6) and (7)	\$1,000	\$1,000
Section 62(5)	\$5,000	\$5,000
Section 62(6)	\$1,000	\$1,000
Section 63(2)	\$1,000	\$1,000
Section 64(4)	\$5,000	\$5,000
Section 65(2)	\$5,000	\$5,000
Section 71	\$1,500	\$7,500
Section 73(1) and (3)	\$250	\$1,250
Section 74(1)	\$1,500	\$7,500
Section 75(1)	\$1,500	\$7,500
Section 77(1)	\$1,500	\$7,500
Section 78	\$1,500	—
Section 79(1) and (3)	\$500	\$2,500
Section 79(2)	\$1,500	—
Section 80(1) and (2)	\$1,500	\$7,500
Section 81	\$1,500	—
Section 83(1)-(3)	\$1,500	\$7,500
Section 84(1)-(4)	\$1,500	\$7,500
Section 85(2)-(9)	\$1,500	—
Section 86(2) and (3)	\$1,500	—
Section 87(2)-(8)	\$1,500	\$7,500
Section 88	\$1,500	\$7,500

Section 89	\$1,500	\$7,500
Section 90(1)–(4)	\$1,500	\$7,500
Section 91(1) and (2)	\$1,500	\$7,500
Section 92(2)–(10)	\$1,500	—
Section 93(2)	\$1,500	—
Section 94(2)–(10)	\$1,500	\$7,500
Section 95(2)–(4)	\$1,500	\$7,500
Section 96(2)	\$1,500	\$7,500
Section 97(1) and (2)	\$1,500	\$7,500
Section 98(1) and (2)	\$500	\$2,500
Section 99(1)–(3)	\$500	—
Section 100(1) and (3)	\$500	\$2,500
Section 102(1)–(4)—		
(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
Section 103(4)	\$1,500	\$7,500
Section 108(2)	\$5,000	\$5,000

Dictionary

section 3

approved means—

- (a) for Part 7—see section 66, or
- (b) otherwise—approved by TfNSW.

AS 3846, for Part 7—see section 66.

berth, for Part 7—see section 66.

booking, for Part 6—see section 43.

bulk dangerous goods, for Part 7—see section 66.

cargo agent, for Part 7—see section 66.

carrier, for Part 6—see section 43.

commuter wharf, for Part 3, Division 1—see section 15.

container, for Part 2—see section 4.

consignee of dangerous goods, for Part 7—see section 66.

consignor of dangerous goods, for Part 7—see section 66.

dangerous goods, for Part 7—see section 66.

dangerous goods incident, for Part 7—see section 66.

emergency service, for Part 7—see section 66.

explosives, for Part 7—see section 66.

export goods, for Part 7—see section 66.

financial penalty, for Part 6—see section 43.

flammable, for Part 7—see section 66.

flammable liquid, for Part 7—see section 66.

gas, for Part 7—see section 66.

handle dangerous goods, for Part 7—see section 66.

hot work, for Part 7—see section 66.

IMDG Code, for Part 7—see section 66.

import goods, for Part 7—see section 66.

IMSBC Code, for Part 7—see section 66.

mandatory standards, for Part 6—see section 43.

NEQ, for Part 7—see section 66.

operated, in relation to a truck, for Part 6—see section 43.

permit, for Part 3, Division 1—see section 15.

Port Botany, for Part 6—see section 43.

port entry approval, for Part 7—see section 66.

port facility, for Part 7—see section 66.

port facility operator, for Part 7—see section 66.

port facility time limit for dangerous goods, for Part 7—see section 66.

port guidelines or directions, for Part 7—see section 66.

port operational area, for Part 7—see section 66.

radioactive goods, for Part 7—see section 66.

rail car, for Part 6—see section 43.

rail servicing, for Part 6—see section 43.

relevant authority for a port, for Part 7—see section 66.

relevant land, for Part 5—see section 39.

responsible consignor or agent for dangerous goods, for Part 7—see section 66.

responsible explosives handler, for Part 7—see section 66.

responsible person for reporting a dangerous goods incident, for Part 7—see section 66.

restricted chemical, for Part 7—see section 66.

ship, for Part 7—see section 66.

slot, for Part 6—see section 43.

stevedore, for Part 6—see section 43.

stevedore service provider, for Part 6—see section 43.

terminal, for Part 6—see section 43.

the Act means the [Ports and Maritime Administration Act 1995](#).

time zone, for Part 6—see section 43.

transit goods, for Part 7—see section 66.

trans-shipment goods, for Part 7—see section 66.

truck, for Part 6—see section 43.

truck servicing, for Part 6—see section 43.

truck turnaround time, for Part 6—see section 43.

wharf, for Part 7—see section 66.

work, for Part 7—see section 66.