

# Ports and Maritime Administration Regulation 2007

[2007-423]



New South Wales

## Status Information

### Currency of version

Repealed version for 6 July 2012 to 31 August 2012 (accessed 19 November 2024 at 17:37)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Does not include amendments by**  
Cll 30 (2) and 36 (4) of this Regulation (not commenced — cll 30 (2) and 34 (4) to commence on the commencement of Sch 15 to the [Parliamentary Electorates and Elections Amendment Act 2006 No 68](#))  
Cl 2 (2) of this Regulation (cll 30 (2) and 36 (4) to be repealed on the day following the day on which those subclauses commence)
- **Repeal**  
The Regulation was repealed by sec 10 (2) of the [Subordinate Legislation Act 1989 No 146](#) with effect from 1.9.2012.

### 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](#).

File last modified 1 September 2012

# Ports and Maritime Administration Regulation 2007



New South Wales

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# Ports and Maritime Administration Regulation 2007



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Ports and Maritime Administration Regulation 2007*.

### 2 Commencement

- (1) This Regulation commences on 1 September 2007, except as provided by subclause (2).
- (2) Clauses 30 (2) and 36 (4) commence on the later of:
  - (a) the day on which Schedule 15 to the *Parliamentary Electorates and Elections Amendment Act 2006* commences, or
  - (b) 1 September 2007,

and are repealed on the day following the day on which those subclauses commence.

#### Note—

This Regulation replaces the *Ports Corporatisation and Waterways Management Regulation 2002* and the *Ports Corporatisation (Staff Director Elections) Regulation 2002* which are repealed on 1 September 2007 under section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definition

In this Regulation:

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

### 4 Notes

Notes included in this Regulation (other than Schedule 2) do not form part of this Regulation.

## Part 2 Port charges

### Division 1 Preliminary

#### 5 Definitions

(1) In this Part:

**charge** means a charge under Part 5 of the Act.

**container** means an article of transport equipment (other than a vessel) that:

- (a) is of a permanent character and accordingly is strong enough to be suitable for repeated use, and
- (b) is specially designed or adapted to facilitate the transport of goods, by one or more modes of transport, without intermediate reloading.

**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 such a delegate, appointed by the Minister or the delegate (as the case requires) as an officer for the purposes of this Part, or
- (b) if the relevant port authority is a Port Corporation—an officer of the Port Corporation appointed by the Port Corporation as an officer for the purposes of this Part.

**owner** has the same meaning as in section 48 of the Act.

**voyage number**, in relation to a vessel, means the number allocated to the vessel in respect of a particular sailing.

**working day**, in relation to a port, means that part of the day (not being a Saturday, Sunday or public holiday) during which work is normally carried on in the port.

(2) Other words and expressions in this Part have the same meanings as they have in Part 5 of the Act.

#### 6 Exemption from navigation service charges for certain vessels

(1) A vessel that:

- (a) leaves the port of Sydney Harbour and, without leaving the territorial sea of Australia or entering another port, enters the port of Botany Bay, or
- (b) leaves the port of Botany Bay and, without leaving the territorial sea of Australia or entering another port, enters the port of Sydney Harbour,

is exempt from Division 2 (Navigation service charges) of Part 5 (Port charges) of the

Act in respect of the second port entered.

(2) In this clause:

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

## **Division 2 General principles for calculation of charges**

### **7 Rates per tonne**

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

- (a) a mass of 1,000 kilograms, or
- (b) a volume of 1 cubic metre or 1 kilolitre.

### **8 Goods in bulk**

If, in the terms by which any charge is fixed, reference is made to goods of any specified description being in bulk, the reference is to be construed (unless provision is made to the contrary) as a reference to goods of that description that have been loaded on to or discharged from a vessel at a designated port by means of a pipeline, conveyor, mechanical shovel or bucket.

### **9 Rounding off**

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

### **10 Gross tonnage**

- (1) For the purposes of calculating any charge, the gross tonnage of a vessel is the gross tonnage of the vessel as stated on the International Tonnage Certificate (1969) for the vessel issued in accordance with the *International Convention on Tonnage Measurement of Ships 1969*.
- (2) If no such certificate has been issued in respect of the vessel, the gross tonnage of the vessel is to be calculated by the relevant port authority in accordance with the formula set out in the document known as MSC Circular 653 (entitled *MSC/Circ. 653*) issued by the International Maritime Organization.

**Note—**

Copies of MSC Circular 653 are available from the Australian Maritime Safety Authority.



## **Division 3 Furnishing of particulars and calculation of charges**

### **11 Navigation service charge—particulars to be furnished**

The owner of a vessel in respect of which a navigation service charge is payable must, at such time as the relevant port authority requires, furnish the relevant port authority with the following particulars:

- (a) the owner's name and address,
- (b) the name, identifying particulars and relevant voyage number of the vessel,
- (c) the gross tonnage of the vessel,
- (d) the port in respect of which the navigation service charge is payable,
- (e) the date on which, the time at which, and the purpose for which, the vessel entered the port,
- (f) such other information with respect to payment of the navigation service charge as the relevant port authority reasonably requests.

Maximum penalty: 20 penalty units.

### **12 Pilotage charge—particulars to be furnished**

The owner of a vessel in respect of which a pilotage charge is payable must, at such time as the relevant port authority requires, furnish the relevant port authority with the following particulars:

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

Maximum penalty: 20 penalty units.

### **13 Port cargo access charge—particulars to be furnished**

A person liable to pay a port cargo access charge must, at such time as the relevant port authority requires, furnish to the relevant port authority the following particulars:

- (a) the name and address of the person making the payment,
- (b) the name of the vessel from or on to which the cargo has been or is to be discharged or loaded, and the site at which the discharge or loading took place or is to take place,
- (c) a description of the cargo,
- (d) the nature and number of the packages, cases or other receptacles in which the cargo is enclosed (whether or not those receptacles are carried in a container), and the identifying marks and numbers of those receptacles as shown on each bill of lading in respect of the cargo,
- (e) if the cargo is carried in a container, the identifying marks and number on the container,
- (f) the mass and volume (expressed in cubic metres or in kilolitres) of the cargo,
- (g) the number of each bill of lading that is to be or has been issued in respect of the cargo,
- (h) such other information with respect to payment of the port cargo access charge as the relevant port authority reasonably requests.

Maximum penalty: 20 penalty units.

**14 Site occupation charges—particulars to be furnished and method of calculation**

- (1) The occupier of the site in respect of which a site occupation charge is payable must, at such time as the relevant port authority requires, furnish to the relevant port authority the following particulars:
  - (a) the type of site sought,
  - (b) the name of the vessel,
  - (c) the name and address of the owner of the vessel,
  - (c1) the gross tonnage of the vessel,
  - (d) the date and time the site will be required,
  - (e) the general nature of any cargo to be transferred,
  - (f) the expected duration for which the site will be required,
  - (g) the intended daily hours of work.

Maximum penalty: 20 penalty units.

- (2) The occupier of the site in respect of which a site occupation charge is payable must,

within 24 hours of vacating the site, furnish to the relevant port authority details of the times when the occupation of the site commenced and finished.

Maximum penalty: 20 penalty units.

- (3) The site occupation charge is to be calculated by whichever of the following methods the relevant port authority considers is appropriate in the circumstances:
- (a) by reference to the amount of time for which the site was reserved or occupied,
  - (b) by reference to the gross tonnage of the vessel,
  - (c) by reference to both the amount of time for which the site was reserved or occupied and the gross tonnage of the vessel.
- (4) For the purposes of subclause (2):
- (a) occupation of a site commences at the time when:
    - (i) the first cargo arrives at the site for loading onto the vessel, or
    - (ii) the vessel arrives at the site,whichever first occurs, and
  - (b) occupation of a site finishes at the time when:
    - (i) the last cargo discharged by the vessel is removed from the site, or
    - (ii) the vessel leaves the site,whichever last occurs.

#### **15 Wharfage charge—particulars to be furnished**

- (1) A person liable to pay a wharfage charge must, at such time as the relevant port authority requires, furnish to the relevant port authority the following particulars:
- (a) the name and address of the person making the payment,
  - (b) the name of the vessel from or on to which the cargo has been or is to be discharged or loaded, and the site at which the discharge or loading took place or is to take place,
  - (c) a description of the cargo,
  - (d) the nature and number of the packages, cases or other receptacles in which the cargo is enclosed (whether or not those receptacles are carried in a container), and the identifying marks and numbers of those receptacles as shown on each bill of lading in respect of the cargo,

- (e) if the cargo is carried in a container, the identifying marks and number on the container,
- (f) the mass and volume (expressed in cubic metres or in kilolitres) of the cargo,
- (g) the number of each bill of lading that is to be or has been issued in respect of the cargo,
- (h) such other information with respect to payment of the wharfage charge as the relevant port authority reasonably requests.

Maximum penalty: 20 penalty units.

- (2) An officer of a relevant port authority may require the owner of any goods in respect of which a wharfage charge is payable:
  - (a) to produce to that officer any document in respect of a matter relevant to the payment of that charge, or
  - (b) to make those goods available for inspection by the officer.
- (3) The owner of any goods who does not comply with any such requirement is guilty of an offence.

Maximum penalty: 20 penalty units.

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

## **16 Manifest for goods discharged from vessel**

- (1) This clause applies to a vessel only if a wharfage charge or port cargo access charge is payable in respect of the vessel.
- (2) If a vessel to which this clause applies is to discharge goods in a designated port, a manifest of all the goods concerned must be given to the relevant port authority within the time specified in subclause (4).
- (3) If a manifest is not given as required by subclause (2), the owner of the vessel is guilty of an offence.

Maximum penalty: 20 penalty units.

- (4) The manifest must be given:
  - (a) for the designated ports of Sydney Harbour and Botany Bay—by the end of the third working day after the vessel enters the port, and
  - (b) for the designated ports of Newcastle, Port Kembla, Yamba and Eden—by the end

of the first working day after the vessel leaves the port.

- (5) The particulars required to be included in the manifest are as follows:
- (a) the name of the vessel, the relevant voyage number and the berth at which the goods are to be, or were, discharged,
  - (b) the place (or places) at which the goods (or respective goods) were first loaded for carriage by sea to the designated port,
  - (c) the description of the goods, the nature and number of the packages, cases or other receptacles in which they were enclosed (whether or not those receptacles were carried in a container), the identifying marks and numbers of those receptacles as shown on each bill of lading in respect of the goods and the name and address of the consignee of the goods,
  - (d) the number of each bill of lading issued in respect of the goods,
  - (e) the mass and volume (expressed in cubic metres or in kilolitres) of the goods,
  - (f) if the goods were carried in a container, the identifying marks and number of the container,
  - (g) such other information with respect to the goods as the relevant port authority reasonably requests.
- (6) If the vessel is a cargo vessel and no such 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 of that fact by the end of the first working day after the vessel leaves the designated port.

Maximum penalty: 20 penalty units.

#### **17 Manifest for goods loaded on vessel**

- (1) This clause applies to a vessel only if a wharfage charge or port cargo access charge is payable in respect of the vessel.
- (2) If a vessel to which this clause applies loads goods in a designated port, a manifest of all the goods so loaded must be given to the relevant port authority within the time specified in subclause (4).
- (3) If a manifest is not given as required by subclause (2), the owner of the vessel is guilty of an offence.

Maximum penalty: 20 penalty units.

- (4) The manifest must be given:

- (a) for the designated ports of Sydney Harbour and Botany Bay—by the end of the eighth working day after the vessel leaves the port, and
  - (b) for the designated ports of Newcastle, Port Kembla, Yamba and Eden—by the end of the first working day after the vessel leaves the port.
- (5) The particulars required to be included in the manifest are as follows:
- (a) the name of the vessel, the relevant voyage number and the berth at which the goods were loaded,
  - (b) the destination (or destinations) to which the goods (or respective goods) are ultimately to be carried by sea,
  - (c) the description of the goods, the nature and number of the packages, cases or other receptacles in which they are enclosed (whether or not those receptacles are carried in a container), the identifying marks and numbers of those receptacles as shown on each bill of lading in respect of the goods and the name and address of the consignor of the goods,
  - (d) the number of each bill of lading issued in respect of the goods,
  - (e) the mass and volume (expressed in cubic metres or in kilolitres) of the goods,
  - (f) if the goods are carried in a container, the identifying marks and number of the container,
  - (g) such other information with respect to the goods as the relevant port authority reasonably requests.
- (6) If the vessel is a cargo vessel and no such goods have been loaded in the designated port, the owner of the vessel must ensure that notice is given to the relevant port authority of that fact by the end of the first working day after the vessel leaves the designated port.

Maximum penalty: 20 penalty units.

#### **18 Berthing charge—particulars to be furnished**

- (1) The owner of a vessel in respect of which berthing charges are payable must, within 24 hours of those charges first becoming payable due to the berthing of the vessel at a wharf, dolphin or buoy, furnish to the relevant port authority in triplicate the following particulars:
- (a) the owner's name and address,
  - (b) the name of the vessel,
  - (c) the wharf, dolphin or buoy at which the charges first became payable,

- (d) the gross tonnage of the vessel,
- (e) in the case of a fishing vessel, the length of the vessel,
- (f) in the case of a ferry, the number of passengers the vessel is authorised by law to carry or, if that ferry is a vehicular ferry, a statement of that fact,
- (g) the time and date of the berthing of the vessel at the wharf, dolphin or buoy.

Maximum penalty: 10 penalty units.

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

Maximum penalty: 10 penalty units.

## **Part 2A Mandatory access standards for Newcastle coal terminals**

### **18A Definitions**

In this Part:

**approved access rules** means access rules approved by the Minister under this Part.

**mandatory access standards** means standards set and notified by the Minister under this Part.

**Newcastle coal terminals** means land-based port facilities at Newcastle operated by Port Waratah Coal Services Limited and known as the Kooragang Coal Terminal and the Carrington Coal Terminal.

**the operator** of the Newcastle coal terminals means Port Waratah Coal Services Limited.

### **18B Minister may set mandatory access standards for Newcastle coal terminals**

- (1) The Minister may set standards in connection with the operation of the Newcastle coal terminals in relation to access to those terminals during the period from 1 January 2009 to the end of 10 January 2010, for the purpose of ensuring equitable access to those terminals during that period for all coal producers who seek it.
- (2) In setting those standards, the Minister is to have regard to the following:
  - (a) past usage of allocated access by applicants for access,
  - (b) the capacity of the terminals,
  - (c) the capacity of the port-related supply chain that connects to the terminals,
  - (d) the number and capacity of vessels available to use the terminals to load coal.

- (3) The Minister must notify the operator in writing of any standard set by the Minister under this clause.

#### **18C Access rules**

- (1) The operator must provide the Minister with proposed rules (**access rules**) that will regulate the allocation of access by the operator to the Newcastle coal terminals, for the purpose of ensuring compliance by the operator with the mandatory access standards.
- (2) The Minister may direct the operator to review proposed access rules having regard to any matters directed by the Minister.
- (3) The Minister may approve proposed access rules either without modification or with such modifications as the Minister considers appropriate for ensuring compliance by the operator with the mandatory access standards.
- (4) The operator must ensure that the approved access rules are complied with by the operator during the period from 1 January 2009 to the end of 10 January 2010.

Maximum penalty: 500 penalty units.

#### **18D Records and information**

- (1) The operator must keep such records and provide such information (including reports) to the Minister in connection with the operation of the approved access rules as the Minister may direct by notice in writing to the operator to facilitate the monitoring of compliance by the operator with the mandatory access standards.

Maximum penalty: 250 penalty units.

- (2) The Minister may publish information provided to the Minister under this clause in such manner as the Minister thinks fit.

### **Part 2B Port Botany Landside Improvement Strategy**

#### **Division 1 Preliminary**

##### **18E Commencement of provisions**

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

##### **18F Interpretation**

- (1) In this Part:

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



carrier.

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

**financial penalty** means a financial penalty imposed by this Part (not being a penalty for an offence).

**industry participant** means a carrier or a stevedore.

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

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

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

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

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

**stevedore** means the operator of stevedoring facilities at Port Botany.

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

**Sydney Ports** means Sydney Ports Corporation.

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

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

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

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

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

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

carrier.

### **18G Mandatory standards**

The Minister is authorised to set standards (referred to in this Part as **mandatory standards**) in connection with the provision of truck servicing by stevedores at Port Botany, including (without limitation) standards relating to any of the following:

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

### **18H Procedure for setting and notifying mandatory standards**

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

### **18I Minister's directions**

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

## **Division 2 Booking and gate procedures**

### **18J Booking systems and procedures**

- (1) The mandatory standards can include provision for or with respect to the systems and procedures that are to be used by stevedores and carriers for or in connection with the making of bookings.
- (2) A stevedore must not accept a booking unless the booking has been made in accordance with any requirements of the mandatory standards as to the systems and procedures that must be used by stevedores and carriers for the making of bookings.

Maximum penalty: 500 penalty units.

### **18K Minimum duration of time zones for bookings**

- (1) The mandatory standards can include provision for or with respect to the minimum duration of time zones.
- (2) A stevedore must not make a booking available for a time zone that has a duration less than any minimum duration for the time zone set by the mandatory standards.

Maximum penalty: 500 penalty units.

### **18L Minimum number of slots for bookings**

- (1) The mandatory standards can include provision for or with respect to the minimum number of slots to be made available by stevedores for bookings within a specified period.
- (2) A stevedore who fails to make the minimum number of slots available for booking as required by the mandatory standards is guilty of an offence on each day that the failure occurs.

Maximum penalty: 500 penalty units.

### **18M Minimum booking period before start of time zone**

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

Maximum penalty: 50 penalty units.

### **18N Gate requirements**

- (1) The mandatory standards can establish **gate requirements** for truck servicing, being requirements as to:
  - (a) the permissible points of entry to and exit from a terminal for trucks arriving for and leaving after truck servicing at the terminal, and
  - (b) the queuing of trucks for entry to a terminal for truck servicing, and
  - (c) the installation of clocks at points of entry to a terminal.
- (2) A stevedore must not permit a truck to enter or exit from the stevedore's terminal in contravention of the gate requirements for truck servicing.

Maximum penalty: 50 penalty units.

- (3) A carrier must not cause or permit a truck operated by the carrier to enter or exit from a stevedore's terminal in contravention of the gate requirements for truck servicing.

Maximum penalty: 50 penalty units.

## **Division 3 Operational performance of carriers**

### **18O Information to be provided by carriers**

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

### **18P Cancellation of bookings by carriers**

- (1) The mandatory standards can include provision for or with respect to the cancellation of bookings by carriers (including the procedures to be followed for cancelling a

booking and the obligations of stevedores to rebook slots for cancelled bookings).

- (2) A booking cannot be cancelled by a carrier after the start of the time zone for the booking.
- (3) A carrier can cancel a booking at least 24 hours before the commencement of the time zone for the booking without penalty.
- (4) If a carrier cancels a booking less than 24 hours but at least 12 hours before the commencement of the time zone for the booking, a financial penalty of \$50 is payable by the carrier to the stevedore unless:
  - (a) another booking for the slot is made before the beginning of the time zone for the slot, or
  - (b) another booking for the slot is not made before the beginning of the time zone for the slot because of the failure of the stevedore to comply with any provisions of the mandatory standards as to the rebooking of slots for cancelled bookings.
- (5) If a carrier cancels a booking less than 12 hours before the commencement of the time zone for the booking, a financial penalty of \$50 is payable by the carrier to the stevedore (whether or not another booking for the slot is made before the beginning of the time zone for the slot).

**18Q Penalty for truck arriving early or late for booking**

- (1) A carrier who makes a booking for a truck operated by the carrier must ensure that the truck arrives for the booking no earlier than the start of the time zone for the booking and no later than the end of the time zone for the booking.
- (2) A carrier who fails to comply with this clause is liable to pay a financial penalty to the stevedore with whom the booking is made, as follows:
  - (a) the penalty for a truck arriving before the start of the time zone is \$100,
  - (b) the penalty for a truck arriving after the end of the time zone but before the end of the extended arrival period is \$50 if the stevedore permits the truck entry to the stevedore's terminal,
  - (c) the penalty for a truck arriving after the end of the time zone but before the end of the extended arrival period is \$100 if the stevedore denies the truck entry to the stevedore's terminal,
  - (d) the penalty for a truck arriving after the end of the time zone and after the end of the extended arrival period is \$100 (irrespective of whether the stevedore permits or denies the truck entry to the stevedore's terminal).
- (3) The mandatory standards can include provision for or with respect to determining the

time when a truck is considered to have arrived (or failed to arrive) for a booking for the purposes of this clause.

- (4) The **extended arrival period** is the period after the end of a time zone for a booking determined by Sydney Ports from time to time and notified by Sydney Ports on its website.

#### **18R Penalty for non-service caused by fault of carrier or driver**

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

### **Division 4 Operational performance of stevedores**

#### **18S Truck turnaround times**

- (1) The mandatory standards can include provision for or with respect to the time (the **truck turnaround time**) within which the truck servicing for which a booking is made must be performed by a stevedore, including provision specifying the events that are to constitute the commencement and completion of truck servicing for the purposes of the truck turnaround time.
- (2) If the truck servicing for which a booking is made by a carrier is not performed by the stevedore within the truck turnaround time for the booking, a financial penalty is payable by the stevedore to the carrier calculated at the rate of \$25 for every period of 15 minutes by which the truck turnaround time is exceeded.

**18T Failure or refusal to perform truck servicing**

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

- (b) granting exemption from the payment of a financial penalty that would otherwise become payable in connection with the other booking because of the delay, and
- (c) directing changes to the time of commencement of the truck turnaround time for the other booking to allow for the delay.

### **18U Cancellation of bookings**

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

Maximum penalty: 100 penalty units.

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

Maximum penalty: 100 penalty units.

### **18V Cancellation of time zone**

- (1) The mandatory standards can include provision for or with respect to the cancellation of time zones by a stevedore (including restrictions on cancellation and requirements for the giving of notice of cancellation).
- (2) If a stevedore cancels a time zone (whether or not in contravention of the mandatory standards), a carrier who had a booking in the cancelled time zone is not liable to pay



to the stevedore any booking fee in connection with the booking.

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

Maximum penalty: 100 penalty units.

- (7) A stevedore who fails to make an alternate slot available for booking by a carrier as required by subclause (3) (b) is guilty of an offence.

Maximum penalty: 100 penalty units.

## **Division 5 General**

### **18W Regulation of charges**

- (1) The Minister may, by direction in writing to a stevedore or stevedore service provider, regulate the charges that may be imposed by the stevedore or stevedore service provider for or in connection with the operation or provision of facilities or services of the port-related supply chain at Port Botany, including (without limitation):

- (a) by regulating the charges that can be imposed for or in connection with truck servicing, rail servicing or the storage of containers, and
  - (b) by requiring the giving of notice to the Minister of the imposition of a new charge or an increase in the amount of an existing charge, and
  - (c) by requiring a stevedore or stevedore service provider to provide information to the Minister or Sydney Ports about charges imposed or proposed to be imposed or increased by the stevedore or stevedore service provider.
- (2) A stevedore or stevedore service provider is not entitled to impose, collect or recover any charge contrary to a direction under this clause.
- (3) Any charge paid by a person that was not authorised to be imposed on the person (because of a direction under this clause) may be recovered by the person as a debt due from the person to whom it was paid.
- (4) A stevedore or stevedore service provider who imposes a charge in contravention of a direction under this clause is guilty of an offence.

Maximum penalty: 500 penalty units.

- (5) A stevedore or stevedore service provider who fails to give notice or provide information as required by a direction under this clause is guilty of an offence.

Maximum penalty: 100 penalty units.

- (6) A person must not in purported compliance with a requirement imposed by a direction under this clause provide information that the person knows is false or misleading in a material particular.

Maximum penalty: 100 penalty units.

### **18X Invoicing and payment of financial penalties**

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

- (2) An industry participant must pay any financial penalty payable under this Part by the industry participant to another industry participant:
  - (a) within 14 days after receiving an invoice for the penalty from the other industry participant, and
  - (b) in accordance with any procedures established by the mandatory standards for the payment and processing of payment of financial penalties.

Maximum penalty: 100 penalty units.

- (3) The mandatory standards can provide for the circumstances in which a financial penalty that would otherwise be payable under this Part is not payable or is to be reduced.
- (4) The amount of any financial penalty fixed by this Part does not include GST and the amount of the penalty payable in any particular case is to be increased by any applicable GST payable in respect of the payment of the penalty.
- (5) A financial penalty is recoverable as a debt.

#### **18Y Compliance auditing**

- (1) Sydney Ports may audit compliance with the mandatory standards and for that purpose may direct a carrier, stevedore or stevedore service provider:
  - (a) to provide Sydney Ports with specified information relating to the practices and procedures of the carrier, stevedore or stevedore service provider in connection with any matter for which the mandatory standards make provision, and
  - (b) to produce for inspection by Sydney Ports or an authorised officer of Sydney Ports any specified records (including financial and operational records) relating to any matter for which the mandatory standards make provision.
- (2) Sydney Ports may by its officers or agents enter and inspect any premises or facilities at a stevedore's terminal for the purpose of or in connection with any audit by Sydney Ports of compliance with the mandatory standards.
- (3) A direction under this clause is to be given in writing.
- (4) A carrier, stevedore or stevedore service provider who fails to comply with a direction under this clause is guilty of an offence.

Maximum penalty: 500 penalty units.

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

Maximum penalty: 100 penalty units.

- (6) The issue of a penalty notice or the taking of proceedings in respect of a failure to comply with a direction under this clause does not prevent the giving of the same direction (a **further direction**) on one or more further occasions and does not prevent the issuing of a penalty notice or the taking of proceedings in respect of a failure to comply with a further direction.

### **18Z Keeping of records and provision of information**

- (1) The Minister may, by direction given in writing, require a carrier, stevedore or stevedore service provider:
- (a) to keep specified records and provide specified information to the Minister or Sydney Ports in connection with the operation or provision of facilities or services of the port-related supply chain at Port Botany, and
  - (b) to keep those records and provide that information in a specified format, and
  - (c) to take specified measures to protect those records from loss, damage or destruction.
- (2) A carrier, stevedore or stevedore service provider must comply with a direction given under this clause.

Maximum penalty: 500 penalty units.

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

Maximum penalty: 500 penalty units.

### **18ZA Penalty notice offences**

For the purposes of section 100 of the Act:

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

### **18ZB Law enforcement officers**

For the purposes of section 100 (9) of the Act, authorised officers under the [Marine Safety Act 1998](#) are prescribed as a class of persons who are law enforcement officers in relation to offences specified in Column 1 of Schedule 3.

## Part 3 Port boundaries

### 19 Boundaries of ports

For the purposes of section 105 of the Act, the boundaries of a port named in Schedule 1 are as described in that Schedule beneath the name of the port concerned.

**Note—**

Section 105 of the Act enables the regulations to describe the boundaries of any port or area of water. If the regulations do so, a reference in the marine legislation to that port or area of water is a reference to that port or area of water with boundaries as so described.

## Part 4 Staff director elections

### Division 1 Preliminary

#### 20 Definitions

(1) In this Part:

**Chief Executive Officer** means the Chief Executive Officer of a Port Corporation or a person acting in that capacity.

**close of nominations**, in relation to an election, means the final time and date fixed by the returning officer for the close of nominations in the election.

**close of the ballot**, in relation to an election, means the final time and date fixed by the returning officer for the close of the ballot in the election.

**election** means an election of a person to hold office as a staff director referred to in section 18 of the Act.

**employee** of a Port Corporation has the same meaning as in section 18 (9) of the Act.

**Port Corporation** means Newcastle Port Corporation, Port Kembla Port Corporation or Sydney Ports Corporation.

(2) In this Part, a reference to a Form is a reference to a Form set out in Schedule 2.

### Division 2 Calling of election

#### 21 Notice of election

(1) As soon as practicable after being notified by the Minister that an election is required to be held, the returning officer:

(a) must cause a notice of the election to be published in at least one newspaper circulating generally in New South Wales, and

(b) must notify the Chief Executive Officer in writing that an election is to be held and

of the times and dates for the close of nominations and the close of the ballot, as stated in the notice published under paragraph (a).

- (2) The notice referred to in subclause (1) (a):
  - (a) must state that an election is to be held, and
  - (b) must call for the nomination of candidates, and
  - (c) must fix the times and dates for the close of nominations and the close of the ballot, and
  - (d) must state the places where nominations may be lodged.
- (3) The close of nominations is to be not earlier than 21 days, and not later than 28 days, after the date on which the notice is first published.
- (4) The close of the ballot is to be not earlier than 28 days after the close of nominations.

## **22 Extension of time**

- (1) The returning officer may, by a notice in a form similar to, and published in the same manner as, the notice calling for the nomination of candidates, postpone (for a period not exceeding 14 days) the close of nominations or the close of the ballot.
- (2) The power conferred by this clause on the returning officer may be exercised more than once in respect of an election.

## **Division 3 Nominations**

### **23 Nomination of candidates**

- (1) A nomination of a candidate:
  - (a) must be in Form 1, and
  - (b) must contain a statement, signed by the candidate, consenting to the nomination, and
  - (c) must be lodged with the returning officer before the close of nominations.
- (2) A nomination must contain the full name, residential address and signature of each person by whom the nomination is made.
- (3) The returning officer must reject any nomination received by the returning officer after the close of nominations.

### **24 Withdrawal of nomination**

A candidate who has been nominated in an election may, by notice in writing given to the

returning officer, withdraw the nomination at any time before the close of nominations.

#### **25 Uncontested election**

If, by the close of nominations, 1 person only has been duly nominated as a candidate, that person is elected.

#### **26 Contested election**

If, by the close of nominations, 2 or more persons have been duly nominated as candidates, a ballot is to be held.

#### **27 Candidate information sheet**

- (1) A candidate may, at any time before the close of nominations, submit to the returning officer a statutory declaration in Form 2 containing information intended for inclusion in a candidate information sheet.
- (2) If a ballot is to be held, the returning officer is to draw up a candidate information sheet consisting of the information in the statutory declarations submitted by candidates.
- (3) The returning officer may, in drawing up a candidate information sheet, omit so much of the information contained in a candidate's statutory declaration as the returning officer considers:
  - (a) to be false or misleading, or
  - (b) to be inappropriate for inclusion in the candidate information sheet, or
  - (c) to exceed the maximum amount of information that is suitable for inclusion in the candidate information sheet.

### **Division 4 The ballot**

#### **28 Electoral roll**

- (1) As soon as practicable after it becomes apparent that a ballot must be held for an election, the returning officer must notify the Chief Executive Officer:
  - (a) that a ballot is to be held for the election, and
  - (b) that an electoral roll for the election is required.
- (2) The Chief Executive Officer must provide the returning officer with:
  - (a) a roll containing the full names (consecutively numbered and listed in alphabetical order) and residential addresses of all of the employees of the relevant Port Corporation, and

- (b) an appropriately addressed label, or an appropriately addressed envelope, for each person whose name is included in that roll.
- (3) The electoral roll must be certified by the Chief Executive Officer in accordance with Form 3.
- (4) This clause does not apply to an election to be held as a consequence of an earlier election which has failed if an electoral roll for the earlier election has already been provided to the returning officer.

## **29 Printing of ballot-papers**

- (1) If a ballot is to be held, the returning officer:
  - (a) must determine the order in which the candidates' names are to be listed on the ballot-paper by means of a ballot held in accordance with the procedure prescribed for the purposes of section 82A of the *Parliamentary Electorates and Elections Act 1912*, and
  - (b) must cause sufficient ballot-papers to be printed so that a ballot-paper can be sent to each employee of the relevant Port Corporation, and
  - (c) if a candidate information sheet has been drawn up, must cause sufficient copies of it to be printed so that a copy can be sent to each employee of the relevant Port Corporation.
- (2) The ballot-paper must contain:
  - (a) the names of the candidates, arranged in the order determined in accordance with subclause (1) (a), with a small square opposite each name, and
  - (b) if the returning officer considers that the names of 2 or more candidates are so similar as to cause confusion, such other matter as the returning officer considers will distinguish between the candidates, and
  - (c) such directions as to the manner in which a vote is to be recorded and returned to the returning officer as are required by subclause (3), and
  - (d) such further directions as to the manner in which a vote is to be recorded and returned to the returning officer as the returning officer considers appropriate.
- (3) The directions to voters must include the following:
  - (a) that the voter must record a vote for at least 1 candidate by placing the number "1" in the square opposite the name of the candidate indicating the voter's first preference,
  - (b) that the voter may, but is not required to, vote for additional candidates by placing consecutive numbers (beginning with the number "2") in the squares



opposite the names of the additional candidates, indicating the voter's preferences for them.

### **30 Distribution of ballot-papers**

- (1) The returning officer must, as soon as practicable after the printing of the ballot-papers, send to each employee of the relevant Port Corporation:
  - (a) a ballot-paper that is initialled by the returning officer (or by a person authorised by the returning officer) or that bears a mark prescribed as an official mark for the purposes of section 122A (3) of the *Parliamentary Electorates and Elections Act 1912*, and
  - (b) an unsealed envelope addressed to the returning officer and bearing on the back the words "FULL NAME AND ADDRESS OF VOTER" and "SIGNATURE OF VOTER", together with appropriate spaces for the insertion of a name, address and signature, and
  - (c) if applicable, a candidate information sheet.
- (2) Subclause (1) is amended by omitting "or that bears a mark prescribed as an official mark for the purposes of section 122A (3) of the *Parliamentary Electorates and Elections Act 1912*" and by inserting instead "or that bears a mark authorised by the Electoral Commissioner".

### **31 Duplicate ballot-papers**

- (1) The returning officer may, at any time before the close of the ballot, issue to a voter a duplicate ballot-paper and envelope if the voter satisfies the returning officer by statutory declaration:
  - (a) that the original ballot-paper has been spoilt, lost or destroyed, and
  - (b) that the voter has not already voted in the election to which the ballot-paper relates.
- (2) The returning officer is to maintain a record of all duplicate ballot-papers issued under this clause.

### **32 Recording of vote**

In order to vote at an election, a voter:

- (a) must record a vote on the ballot-paper in accordance with the directions shown on it, and
- (b) must place the completed ballot-paper (folded so that the vote cannot be seen) in the envelope addressed to the returning officer, and

- (c) must seal the envelope, and
- (d) must complete the person's full name and address on, and must sign, the back of the envelope, and
- (e) must return the envelope to the returning officer so as to be received before the close of the ballot.

## **Division 5 The scrutiny**

### **33 Receipt of ballot-papers**

- (1) The returning officer must reject (without opening it) any envelope purporting to contain a ballot-paper if the envelope is not received before the close of the ballot or is received unsealed.
- (2) The returning officer must examine the name on the back of each remaining envelope and:
  - (a) must accept the ballot-paper in the envelope, if satisfied that a person of that name is an employee of the relevant Port Corporation, or
  - (b) must reject the ballot-paper in the envelope, if not so satisfied or if a name, address or signature does not appear on the back of the envelope.
- (3) The returning officer may reject a ballot-paper without opening the envelope if, after making such inquiries as the returning officer thinks fit:
  - (a) the returning officer is unable to identify the signature on the back of the envelope, or
  - (b) it appears to the returning officer that the signature on the back of the envelope is not the signature of the person whose name and address appear on the back of the envelope.

### **34 Ascertaining result of ballot**

The result of a ballot is to be ascertained by the returning officer as soon as practicable after the close of the ballot.

### **35 Scrutineers**

- (1) Each candidate is entitled to appoint a scrutineer to represent the candidate at all stages of the scrutiny.
- (2) A candidate who appoints a scrutineer must cause written notice of the appointment to be given to the returning officer.

### 36 Scrutiny of votes

- (1) The scrutiny of votes is to be conducted as follows:
  - (a) the returning officer is to produce, unopened, the envelopes containing the ballot-papers accepted for scrutiny,
  - (b) the returning officer is then to open each such envelope, extract the ballot-paper and (without unfolding it) place it in a locked ballot-box,
  - (c) when the ballot-papers from all such envelopes have been placed in the ballot-box, the returning officer is then to unlock the ballot-box and remove the ballot-papers,
  - (d) the returning officer is then to examine each ballot-paper and reject those that are informal,
  - (e) the returning officer is then to proceed to count the votes and ascertain the result of the election.
- (2) At the scrutiny of votes, a ballot-paper must be rejected as informal:
  - (a) if it is neither initialled by the returning officer (or a person authorised by the returning officer) nor bears a mark prescribed as an official mark for the purposes of section 122A (3) of the *Parliamentary Electorates and Elections Act 1912*, or
  - (b) if it has on it any mark or writing which the returning officer considers could enable any person to identify the voter who completed it, or
  - (c) if it has not been completed in accordance with the directions shown on it.
- (3) However, a ballot-paper is not to be rejected as informal:
  - (a) merely because of any mark or writing on it which is not authorised or required by this Part (unless it is a mark or writing referred to in subclause (2) (b)) if the returning officer considers that the voter's intention is clearly indicated on the ballot-paper, or
  - (b) if the voter has recorded a vote by placing in a square the number "1":
    - (i) merely because the same preference (other than a first preference) has been recorded on the ballot-paper for more than one candidate, or
    - (ii) merely because there is a break in the order of preferences recorded on the ballot-paper, or
  - (c) merely because the voter has recorded a vote by placing a cross or a tick in a square and not placing any mark or writing in any other square, but the ballot-paper is to be treated as if the cross or tick were the number "1".

- (4) Subclause (2) (a) is amended by omitting “nor bears a mark prescribed as an official mark for the purposes of section 122A (3) of the *Parliamentary Electorates and Elections Act 1912*” and by inserting instead “nor bears a mark authorised by the Electoral Commissioner”.

### **37 Counting the votes**

- (1) The method of counting the votes is to be as set out in Part 2 of the Seventh Schedule to the *Constitution Act 1902*.
- (2) For the purpose of applying the provisions of that Part to the election, a reference in those provisions to the returning officer is taken to be a reference to the returning officer under this Part.

### **38 Notification of result of election**

As soon as practicable after the votes have been counted, the returning officer:

- (a) must notify the Minister in writing of the name of the candidate elected, and
- (b) must cause notice of the election of the candidate to be published in the Gazette.

## **Division 6 Miscellaneous**

### **39 Returning officer’s decision final**

If the returning officer is by this Part permitted or required to make a decision on any matter relating to the taking of a ballot, the decision of the returning officer on that matter is final.

### **40 Death of candidate**

If a candidate dies after the close of nominations and before the close of the ballot:

- (a) the returning officer is to cause notice of the death to be published in the Gazette, and
- (b) all proceedings taken after the Minister notified the returning officer that the election was required to be held are of no effect and those proceedings must again be taken.

### **41 Offences relating to voting**

A person must not:

- (a) vote, or attempt to vote, more than once in an election, or
- (b) vote, or attempt to vote, in an election in which the person is not entitled to vote.

Maximum penalty: 10 penalty units.

### **41A** (Renumbered as clause 18ZB)

## **Part 4A Maritime Advisory Council**

### **41B Membership of Maritime Advisory Council**

- (1) The Maritime Advisory Council established under section 34 of the Act is to be composed of up to 9 members, appointed by the Minister, each of whom has expertise in one or more of the following areas:
  - (a) the recreational boating sector,
  - (b) the commercial vessel sector,
  - (c) the maritime property sector.
- (2) The Minister is also to appoint as a member of the Maritime Advisory Council either:
  - (a) the Director-General of the Department of Transport, or
  - (b) a person employed in the Transport Service, who is nominated by the Director-General.
- (3) The Minister may select and appoint additional persons with specialist expertise as members of the Maritime Advisory Council from time to time and for such periods as the Minister decides.
- (4) A person is not eligible for appointment to the Maritime Advisory Council if the person is a lobbyist of government officials, of persons employed in the Transport Service or of persons engaged under contract to provide services to or on behalf of Transport for NSW.
- (5) In this clause, **lobbyist** and **government official** have the same meaning as in the [Lobbying of Government Officials Act 2011](#).

### **41C Expressions of interest in becoming a member**

- (1) The Minister may invite expressions of interest in being a member of the Maritime Advisory Council:
  - (a) by publishing an advertisement in a newspaper circulating throughout the State, or
  - (b) by any other method that the Minister considers appropriate.
- (2) The Minister is to have regard to those expressions of interest when making decisions about the appointment of members to the Maritime Advisory Council.

### **41D Chairperson and Deputy Chairperson of Maritime Advisory Council**

- (1) The Minister is to appoint a Chairperson and Deputy Chairperson of the Maritime Advisory Council from among the membership of the Council.

- (2) The person appointed as Chairperson must not be a member of the Government Service or an employee of any public authority.
- (3) The Chairperson or Deputy Chairperson vacates office as Chairperson or Deputy Chairperson if he or she:
  - (a) is removed from that office by the Minister under this clause, or
  - (b) resigns that office by instrument in writing addressed to the Minister, or
  - (c) ceases to be a member of the Maritime Advisory Council.
- (4) The Minister may at any time remove the Chairperson or Deputy Chairperson from office as Chairperson or Deputy Chairperson.

#### **41E No remuneration**

- (1) A member of the Maritime Advisory Council is not entitled to be paid remuneration in relation to that membership.
- (2) However, a member appointed by the Minister under clause 41B (1) or (3) is entitled to be paid such travelling and subsistence allowances as the Minister may from time to time determine in respect of the member.

#### **41F Provisions relating to membership and procedure**

Schedule 4 makes provision for the membership and procedure of the Maritime Advisory Council.

### **Part 5 General**

#### **42 Definition of “marine legislation”**

The following Acts are prescribed for the purposes of the definition of **marine legislation** in section 3 (1) of the Act:

- (a) *Commercial Vessels Act 1979*,
- (b) *Marine Pilotage Licensing Act 1971*,
- (c) *Maritime Services Act 1935*,
- (d) *Navigation Act 1901*.

#### **43 Saving**

Any act, matter or thing that, immediately before the repeal of the *Ports Corporatisation and Waterways Management Regulation 2002* or the *Ports Corporatisation (Staff Director Elections) Regulation 2002*, had effect under that Regulation is taken to have effect under this Regulation.

## **Schedule 1 Description of port boundaries**

(Clause 19)

### **1 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 South Pacific Ocean 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.

### **2 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.

### **3 Eden**

The waters of Twofold Bay bounded by mean high water mark (but excluding all rivers and their tributaries connected or leading to Twofold Bay) and by, as seaward boundary, a line drawn between the southernmost point of Worang Head and the northernmost point of Red Point.

### **4 Newcastle Harbour**

The waters of Newcastle Harbour and of all bays, rivers and their tributaries connected or leading to Newcastle Harbour (but excluding Fullerton Cove) bounded by mean high water mark and by, as upstream boundary, the eastern side of the Hexham Bridge together with that part of the South Pacific Ocean 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.

### **5 Port Kembla**

The waters of Port Kembla Inner and Outer Harbours bounded by the mean high water mark together with that part of the South Pacific Ocean 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.

## 6 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 South Pacific Ocean below mean high water mark enclosed by the arc of a circle of radius 4 nautical miles having as its centre the navigation light at Hornby Lighthouse.

## Schedule 2 Forms

(Clause 20 (2))

### Form 1 Nomination of candidate

*(Ports and Maritime Administration Act 1995)*

We nominate  
*[full name of nominee]*  
of  
*[postal address of nominee]*  
as a candidate for the following election  
*[specify the election to which the nomination relates]*

We declare that we are each employees of the relevant Port Corporation.

Name in full	Address	Signature
.....		
.....		
.....		
.....		

#### Consent to nomination

I,  
*[full name of nominee]*  
consent to being a candidate for the election to which this nomination relates.  
*[Signature]*  
Date:

### Form 2 Candidate information sheet

*(Ports and Maritime Administration Act 1995)*

I,  
*[full name of candidate]*  
of  
*[address of candidate]*  
do solemnly declare that:  
My date of birth is:  
I hold the following qualifications *[academic/trade/professional]*:  
I am a member of the following organisations:  
I am employed by:  
I hold the following offices (other than employment):  
*[See note]*





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

## Schedule 4 Membership and procedure of Maritime Advisory Council

(Clause 41F)

### Part 1 General

#### 1 Definitions

In this Schedule:

**appointed member** means a person who is appointed by the Minister as a member of the Council under clause 41B (1) or (3).

**Chairperson** means the Chairperson of the Council.

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

**Deputy Chairperson** means the Deputy Chairperson of the Council.

**member** means any member of the Council.

### Part 2 Members

#### 2 Terms of office of members

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

#### 3 Part-time appointments

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

#### 4 Vacancy in office of member

- (1) The office of an appointed member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or
  - (e) is absent from any 2 meetings of the Council in any 12-month period of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her 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 of government officials, of persons employed in the Transport Service or of persons engaged under contract to provide services to or on behalf of Transport for NSW.
- (4) In this clause, **lobbyist** and **government official** have the same meaning as in the [Lobbying of Government Officials Act 2011](#).

#### 5 Filling of vacancy in office of appointed member

If the office of any 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 Disclosure of pecuniary interests

- (1) If:
  - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Council, and

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

(2) A disclosure by a member at a meeting of the Council that the member:

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the Council in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Council.

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Council otherwise determines:

(a) be present during any deliberation of the Council with respect to the matter, or

(b) take part in any decision of the Council with respect to the matter.

(5) For the purposes of the making of a determination by the Council under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

(a) be present during any deliberation of the Council for the purpose of making the determination, or

(b) take part in the making by the Council of the determination.

(6) A contravention of this clause does not invalidate any decision of the Council.

(7) This clause applies to a member of a committee of the Council and the committee in the same way as it applies to a member of the Council and the Council.

## **Part 3 Procedure**

### **7 General procedure**

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

## **8 Quorum**

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

## **9 Presiding member**

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

## **10 Voting**

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

## **11 Transaction of business outside meetings or by telephone**

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

## **12 First meeting**

The Minister may call the first meeting of the Council in such manner as the Minister thinks fit.