



Sydney Harbour Federation Trust Amendment Act 2021

No. 49, 2021

***An Act to amend the Sydney Harbour Federation
Trust Act 2001, and for related purposes***

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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Sydney Harbour Federation Trust Amendment Act 2021

No. 49, 2021

An Act to amend the *Sydney Harbour Federation Trust Act 2001*, and for related purposes

[Assented to 23 June 2021]

The Parliament of Australia enacts:

1 Short title

This Act is the *Sydney Harbour Federation Trust Amendment Act 2021*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	23 June 2021
2. Schedule 1, Parts 1, 2 and 3	The day after this Act receives the Royal Assent.	24 June 2021
3. Schedule 1, Part 4	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of the <i>Federal Circuit and Family Court of Australia Act 2021</i> .	1 September 2021 (paragraph (b) applies)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Review of the Trust

Sydney Harbour Federation Trust Act 2001

1 Preamble

Omit “as a transitional body”.

2 Preamble

Omit “The Trust will transfer suitable land to New South Wales for inclusion in the national parks and reserves system.”, substitute “The Trust will protect the heritage values of the land.”.

3 Section 3 (definition of *repeal time*)

Repeal the definition.

4 Section 3

Insert:

statement of reasons has the meaning given by section 64B.

5 Section 3 (definition of *suitable person*)

Repeal the definition.

6 Subsection 11(4)

Omit “suitable persons”, substitute “persons who have experience or knowledge in at least one of the fields listed in subsection 12(2)”.

7 Subsections 12(2), (3) and (3A)

Repeal the subsections, substitute:

- (2) A person is not eligible for appointment as a member unless the Minister is satisfied that the person has experience or knowledge in at least one of the following fields:
 - (a) environment and heritage conservation or heritage interpretation;
 - (b) Indigenous culture;

- (c) land planning and management;
 - (d) business, financial, property or asset management;
 - (e) tourism or marketing;
 - (f) military service;
 - (g) law.
- (3) One of the members must be an Aboriginal person, or a Torres Strait Islander, within the meaning of the *Aboriginal and Torres Strait Islander Act 2005* who is eligible for appointment under subsection (2).
- (3A) One of the members must be a person who:
- (a) is eligible for appointment under subsection (2); and
 - (b) in the Minister's opinion, provides a local government perspective and experience.

8 Sections 64 and 64A

Repeal the sections, substitute:

64 Contracts

Minister's written approval

- (1) The Trust must not, except with the Minister's written approval, enter into a contract involving the payment or receipt by the Trust of an amount exceeding \$5,000,000.
- (2) In working out the amount under the contract, assume that any option or right to extend or renew the contract will be exercised and take into account the amount under the contract as so extended or renewed.

Indexation of threshold amount

- (3) The dollar amount specified in subsection (1) is a **threshold amount**.
- (4) On 1 July 2022 and each subsequent 1 July (an **indexation day**), the threshold amount is replaced by an amount worked out using the following formula:

Indexation factor for the indexation day \times Threshold amount immediately before the indexation day

- (5) The **indexation factor** for an indexation day is the number worked out using the following formula:

$$\frac{\text{Index number for the reference quarter}}{\text{Index number for the base quarter}}$$

where:

base quarter means the March quarter ending 1 year before the reference quarter ends.

index number, for a quarter, means the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) published by the Australian Statistician for that quarter.

March quarter means a period of 3 months ending on 31 March.

reference quarter means the March quarter immediately before the indexation day.

- (6) An indexation factor is to be calculated to 3 decimal places (rounding up if the fourth decimal place is 5 or more).
- (7) An indexation factor that is less than 1 is to be increased to 1.
- (8) Amounts worked out under subsection (4) are to be rounded to the nearest whole dollar (rounding 50 cents upwards).
- (9) Calculations under subsection (5):
- (a) are to be made using only the index numbers published in terms of the most recently published index reference period; and
 - (b) are to be made disregarding index numbers that are published in substitution for previously published index numbers (except where the substituted numbers are published to take account of changes in the index reference period).

64A Leases or licences over 25 years

- (1) The Trust must not enter into a lease or licence over Trust land for a period that is longer than 35 years.
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- (2) The Trust must not enter into a lease or licence over Trust land for a period that is longer than 25 years, and not longer than 35 years, unless the requirements in sections 64B, 64C and 64D are met.
- (3) In working out the period of a lease or licence, assume that any option or right to extend or renew the lease or licence will be exercised and take into account the period of the lease or licence as so extended or renewed.

64B Leases and licences over 25 years—statement of reasons

Trust must prepare statement of reasons

- (1) The Trust must prepare a written statement (a ***statement of reasons***) that sets out how a proposed lease or licence over Trust land for a period that is longer than 25 years, and not longer than 35 years, is consistent with:
 - (a) the objects of the Trust set out in section 6; and
 - (b) plans approved under Part 5.

Consultation with community advisory committee

- (2) The Trust must:
 - (a) give a draft statement of reasons to any community advisory committee established under Part 8 whose functions relate to the Trust land that is the subject of the proposed lease or licence; and
 - (b) ensure the draft statement of reasons is accompanied by an outline of the following details:
 - (i) the proposed lessee or licensee, and the land the subject of the proposed lease or licence;
 - (ii) the period of the proposed lease or licence;
 - (iii) the uses of the land permitted by the proposed lease or licence; and
 - (c) invite the committee to provide comments on the draft statement of reasons within a 28-day period.

Public consultation

- (3) The Trust must:
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- (a) make a draft statement of reasons publicly available for a period of at least 28 days; and
 - (b) ensure the draft statement of reasons is accompanied by an outline of the following details:
 - (i) the proposed lessee or licensee, and the land the subject of the proposed lease or licence;
 - (ii) the period of the proposed lease or licence;
 - (iii) the uses of the land permitted by the proposed lease or licence; and
 - (c) invite the public to provide comments on the draft statement of reasons within a 28-day period.
- (4) For the purposes of subsection (3), making a draft statement of reasons publicly available includes publishing it on the Trust's website or the Department's website.

Final statement of reasons

- (5) In finalising the statement of reasons, the Trust must:
- (a) consider any comments provided:
 - (i) by the community advisory committee under subsection (2); or
 - (ii) during public consultation under subsection (3); and
 - (b) include any comments provided by the community advisory committee under subsection (2); and
 - (c) include an outline of:
 - (i) the consultation undertaken; and
 - (ii) any comments provided during public consultation under subsection (3).
- (6) The Trust must give the statement of reasons to the Minister when seeking the Minister's approval under section 64D for the lease or licence to which the statement of reasons relates.

Statement of reasons is not a legislative instrument

- (7) A statement of reasons is not a legislative instrument.

64C Leases and licences over 25 years—proposal

- (1) The Trust must not enter into a lease or licence over Trust land for a period that is longer than 25 years, and not longer than 35 years, unless:
 - (a) a proposal that covers the lease or licence has been made under subsection (2); and
 - (b) the time for each House to disallow the proposal under Part 2 of Chapter 3 of the *Legislation Act 2003* has passed and neither House disallowed the proposal.
- (2) The Trust may, by legislative instrument, make a proposal in relation to a lease or licence.
- (3) For the purposes of paragraph (1)(a), a proposal covers a lease or licence if:
 - (a) the lessee or licensee, and the land the subject of the lease or licence, was specified in the proposal; and
 - (b) the period of the lease or licence does not exceed the maximum period specified in the proposal; and
 - (c) the uses of the land permitted by the lease or licence were specified in the proposal.
- (4) In addition to the requirements under subsection 15J(2) of the *Legislation Act 2003*, the Trust must ensure that the explanatory statement for the proposal includes the statement of reasons prepared under section 64B for the lease or licence covered by the proposal.
- (5) The Trust must, as soon as practicable after the proposal is registered on the Federal Register of Legislation under the *Legislation Act 2003*, publish a notice of this fact on the Trust's website.

64D Leases and licences over 25 years—Minister's approval

- (1) The Trust must not, except with the Minister's written approval, enter into a lease or licence over Trust land for a period that is longer than 25 years, and not longer than 35 years.

- (2) The Minister must not give approval unless the Minister is satisfied that the terms and conditions of the proposed lease or licence are consistent with:
- (a) the objects of the Trust set out in section 6; and
 - (b) plans approved under Part 5; and
 - (c) a proposal that covers the lease or licence under section 64C.
- (3) In considering whether the terms and conditions of the proposed lease or licence are consistent with the matters in paragraphs (2)(a) and (b), the Minister must have regard to the statement of reasons prepared under section 64B for the proposed lease or licence.

9 Part 10

Repeal the Part.

Part 2—Regulations

Sydney Harbour Federation Trust Act 2001

10 After paragraph 73(2)(o)

Insert:

- (oa) imposing liability for offences against the regulations involving vehicles or vessels on the owners of the vehicles or vessels;
- (ob) the evidentiary requirements in relation to prosecutions for offences against the regulations;
- (oc) the provision of documents, by the Trust or another person, to persons alleged to have committed offences against the regulations;
- (od) the recovery, by way of penalty, by the Trust on behalf of the Commonwealth, of reasonable costs incurred by the Trust as a result of a contravention of an order, direction or other requirement;

11 After paragraph 73(2)(r)

Insert:

- (ra) the removal of objects and other matter from, and the moving of objects and other matter on, Trust land by wardens and rangers, including the removal or moving of objects and other matter (including animals) that are the property of other persons;
- (rb) the disposal of objects and other matter removed from, or moved on, Trust land, including the disposal of objects and other matter that are the property of other persons;

Part 3—Compliance and enforcement

Sydney Harbour Federation Trust Act 2001

12 Section 3

Insert:

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

13 After Part 9

Insert:

Part 9A—Compliance and enforcement

65A Simplified outline of Part

This Part deals with the compliance and enforcement powers of the Trust.

The Trust may order a person to cease promoting, conducting or carrying out an activity on Trust land, or to do, or not do, specified things in relation to the activity. If a person fails to comply with an order, the Trust may do anything necessary or convenient to give effect to the order, including any work required by the order.

A person can be given an infringement notice under Part 5 of the Regulatory Powers Act for contravening a strict liability offence provision of this Act or the regulations. A person who is given an infringement notice can choose to pay an amount as an alternative to proceedings being brought against the person for the contravention. If the person does not choose to pay the amount, proceedings can be brought against the person in relation to the contravention.

65B Trust may give orders

- (1) Subject to this section and to section 65C, the Trust may order any person engaged in promoting, conducting or carrying out an activity on Trust land:
 - (a) to cease promoting, conducting or carrying out the activity;
or
 - (b) to do, or not to do, such things, in relation to the activity, as are specified in the order and in a way, if any, specified in the order.
- (2) The Trust may give an order under subsection (1) only if any of the circumstances mentioned in subsection (3) exist.
- (3) For the purposes of subsection (2), the circumstances are that the Trust reasonably believes that the activity:
 - (a) contravenes this Act or the regulations; or
 - (b) contravenes a condition of a licence or permit granted to the person; or
 - (c) constitutes, or is likely to constitute, a public hazard or a threat to public health or safety; or
 - (d) is causing, or is likely to cause, pollution or environmental damage, or further pollution or environmental damage, on Trust land or elsewhere.
- (4) If an order is made under paragraph (1)(a) in respect of an activity, an order may be made under paragraph (1)(b) in respect of the same activity.
- (5) Without limiting paragraph (1)(b), an order may be given under that paragraph to:
 - (a) demolish, repair or remove a structure on Trust land; or
 - (b) collect, remove or dispose of any plant, noxious substance, litter, refuse or waste on Trust land; or
 - (c) repair any environmental damage on Trust land.
- (6) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Trust under this section to give an order.

65C Form etc. of order

- (1) An order given under section 65B must be in writing.
- (2) Subject to subsection (3), the order must specify a reasonable period within which the terms of the order are to be complied with.
- (3) An order may require immediate compliance in circumstances where there is:
 - (a) a serious risk to public health or safety; or
 - (b) a serious risk of pollution or environmental damage; or
 - (c) an emergency.
- (4) An order given under section 65B is not a legislative instrument.

65D Contravention of order

- (1) A person commits an offence if:
 - (a) the person is subject to an order given under section 65B; and
 - (b) the person does an act or omits to perform an act; and
 - (c) the person's act or omission contravenes the terms of the order.

Penalty: 10 penalty units.

- (2) Strict liability applies to paragraph (1)(a).

65E Trust may carry out work if order is contravened

- (1) If:
 - (a) a person is given an order under section 65B; and
 - (b) the person fails to comply with the order;the Trust may do anything necessary or convenient to give effect to the order, including any work required by the order.
- (2) If the Trust incurs costs because of anything done under subsection (1), the person is liable to pay to the Trust, on behalf of the Commonwealth, an amount equal to so much of those costs as are reasonable.
- (3) An amount under subsection (2) may be recovered by the Trust as a debt due to the Trust, on behalf of the Commonwealth, in:

- (a) the Federal Court of Australia; or
 - (b) the Federal Circuit Court of Australia; or
 - (c) a court of a State or Territory that has jurisdiction in relation to the matter.
- (4) The Trust may destroy or otherwise dispose of any structure, materials or other thing removed under this section.
- (5) The Trust may exercise its functions or powers under this section whether or not the person referred to in subsection (1) has been prosecuted for an offence under section 65D.

65F Infringement notices

Provisions subject to an infringement notice

- (1) A strict liability offence against this Act or the regulations is subject to an infringement notice under Part 5 of the Regulatory Powers Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

Infringement officer

- (2) For the purposes of Part 5 of the Regulatory Powers Act, a ranger (within the meaning of the regulations) is an infringement officer in relation to the provisions mentioned in subsection (1).

Relevant chief executive

- (3) For the purposes of Part 5 of the Regulatory Powers Act, the Executive Director is the relevant chief executive in relation to the provisions mentioned in subsection (1).
- (4) The relevant chief executive may, in writing, delegate the powers and functions mentioned in subsection (5) to a Trust officer (within the meaning of the regulations).
- (5) The powers and functions that may be delegated are the powers and functions of the relevant chief executive under the following provisions of the Regulatory Powers Act:
- (a) section 105 (extension of time to pay amount);
 - (b) section 106 (withdrawal of an infringement notice).

- (6) A person exercising powers or performing functions under a delegation under subsection (4) must comply with any directions of the relevant chief executive.

Matters to be included in infringement notices

- (7) Paragraph 104(1)(c) of the Regulatory Powers Act does not apply in relation to an infringement notice for an alleged contravention of a provision mentioned in subsection (1) involving a vehicle or a vessel (within the meaning of the regulations) if the notice is served in accordance with paragraph 65G(1)(b) of this Act.
- (8) Paragraph 104(1)(d) of the Regulatory Powers Act does not apply in relation to an infringement notice for an alleged contravention of a provision mentioned in subsection (1) to the extent that paragraph requires the infringement notice to state the name and contact details of the person who gave the notice.
- (9) In addition to the matters included in subsection 104(1) of the Regulatory Powers Act, an infringement notice given in relation to an alleged contravention of a provision mentioned in subsection (1) must also include the following:
- (a) the ranger identification number (within the meaning of the regulations) of the infringement officer who issued the notice;
 - (b) the contact details of the relevant chief executive;
 - (c) if a vehicle or a vessel (within the meaning of the regulations) was involved in the alleged contravention—the registration number of the vehicle or vessel;
 - (d) any other information that the relevant chief executive considers necessary.

65G Infringement notices—serving notices for contraventions involving vehicles or vessels

- (1) For an alleged contravention of a provision mentioned in subsection 65F(1) involving a vehicle or a vessel (within the meaning of the regulations), an infringement notice may be served:
- (a) personally on a person who appears to be in charge of the vehicle or vessel; or

- (b) by securely placing the notice on the vehicle or vessel in a conspicuous place; or
 - (c) by posting it to the address of the person who is registered as the owner or operator of the vehicle or vessel; or
 - (d) if a statutory declaration has been given to a Trust officer under the regulations naming a person as being in charge of the vehicle or vessel at the time of the alleged contravention—personally on that person, or by posting it to the address of the person given in the statutory declaration.
- (2) A person commits an offence of strict liability if:
- (a) an infringement notice is placed on a vehicle or vessel under paragraph (1)(b); and
 - (b) the person removes, defaces or interferes with the infringement notice; and
 - (c) the person is not:
 - (i) in charge of the vehicle or vessel; or
 - (ii) registered as the owner or operator of the vehicle or vessel; or
 - (iii) authorised to do so by the person in charge of the vehicle or vessel; or
 - (iv) authorised to do so by the person registered as the owner or operator of the vehicle or vessel.

Penalty: 2 penalty units.

65H Infringement notices—evidentiary certificates

- (1) The Executive Director may sign a certificate that states any of the following in relation to an infringement notice served on a person:
- (a) that the amount payable under the infringement notice was not paid by the person within the time specified in the notice;
 - (b) that the Executive Director granted, or refused to grant, an extension of time to the person to pay the amount payable under the infringement notice;
 - (c) that the amount payable under the infringement notice was not paid by the person within the period specified in the extension;

- (d) that the infringement notice was withdrawn under section 106 of the Regulatory Powers Act on a day specified in the certificate.
- (2) At a hearing of a prosecution for an offence mentioned in an infringement notice, a certificate signed by the Executive Director in accordance with subsection (1) is prima facie evidence of the matters stated in the certificate.
- (3) A certificate must not be admitted in evidence at a hearing of a prosecution for an offence mentioned in an infringement notice unless:
- (a) the person charged with the offence; or
 - (b) a barrister or solicitor who has appeared for the person in relation to the hearing;
- has, at least 14 days before the certificate is sought to be so admitted, been given a copy of the certificate together with notice of the intention to produce the certificate as evidence in the hearing.
- (4) A certificate that purports to be signed by the Executive Director is taken to have been signed by the Executive Director unless the contrary is proved.

14 Application of amendments

Definitions

- (1) For the purposes of this item:
- Principal Act** means the *Sydney Harbour Federation Trust Act 2001*.
- Regulations** means the *Sydney Harbour Federation Trust Regulations 2001*.

Orders given by the Trust

- (2) To avoid doubt, the Trust must not, after the commencement of this item, give an order under regulation 37 of the Regulations in relation to a matter covered by section 65B of the Principal Act (as inserted by this Part).
- (3) A reference in regulation 24 of the Regulations, as in force after the commencement of this item, to regulation 37 of the Regulations is taken

to include a reference to section 65B of the Principal Act (as inserted by this Part).

Infringement notices

- (4) Sections 65F, 65G and 65H of the Principal Act, as inserted by this Part, apply in relation to an alleged contravention of a provision mentioned in subsection 65F(1) of the Principal Act that occurs:
- (a) after the commencement of this item; or
 - (b) before that commencement, if an infringement notice has not been given under Division 3.4 of the Regulations in relation to the alleged contravention.
- (5) Division 3.4 of the Regulations, as in force immediately before the commencement of this item, continues to apply in relation to an infringement notice given under that Division before the commencement of this item.

Part 4—Contingent amendments

Sydney Harbour Federation Trust Act 2001

15 Paragraph 65E(3)(b)

Repeal the paragraph, substitute:

- (b) the Federal Circuit and Family Court of Australia (Division 2); or

*[Minister's second reading speech made in—
House of Representatives on 18 March 2021
Senate on 15 June 2021]*

(30/21)
