



Sydney Harbour Federation Trust Regulations 2001

Statutory Rules 2001 No. 296 as amended

made under the

Sydney Harbour Federation Trust Act 2001

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Part 1 Preliminary

1 Name of Regulations [see Note 1]

These Regulations are the *Sydney Harbour Federation Trust Regulations 2001*.

2 Commencement

These Regulations commence on 12 October 2001.

3 Definitions

In these Regulations, unless the contrary intention appears:

Act means the *Sydney Harbour Federation Trust Act 2001*.

cultural feature means a feature on Trust land that has cultural heritage significance, and includes features such as:

- (a) indigenous rock art; and
- (b) indigenous middens; and
- (c) inscriptions or carvings made by convicts, or military personnel, before the land was transferred to the Trust.

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

identity card, for a ranger, means an identity card issued to the ranger under regulation 29.

ranger means a person appointed under regulation 27.

vehicle includes the following:

- (a) a motor vehicle;
- (b) a bicycle;
- (c) an animal-drawn vehicle, and an animal that is drawing a vehicle.

vessel includes a charter boat, water taxi or ferry.

Regulation 4

watercraft includes a raft, sailboard, jet ski, parasail, hovercraft or motorised diving aid.

4 Application of the *Criminal Code*

On and after 12 October 2001, Chapter 2 of the *Criminal Code* applies to all offences against these Regulations.

Note Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

5 Application of road transport legislation

For the avoidance of doubt, nothing in these Regulations is intended to prevent or restrict the operation of the road transport legislation (within the meaning of the *Road Transport (General) Act 1999* of New South Wales) in relation to roads and road-related areas.

Part 2 Activities on Trust land

Division 2.1 Prohibited or regulated activities

6 Building activities etc

- (1) A person must not do any of the following on Trust land:
 - (a) erect a permanent or temporary building or other structure;
 - (b) carry out works;
 - (c) carry on an excavation;
 - (d) introduce, disturb or remove minerals, clay, sand, stone or other earth materials;
 - (e) dig up or disturb the surface of any road or other area.

Penalty: 10 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

Note 1 For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2 For general circumstances in which an activity will not constitute an offence, see regulation 23.

7 Commercial activities

- (1) A person must not do any of the following on Trust land:
 - (a) sell or hire, or offer for sale or hire, any goods;
 - (b) use any audio, loudspeaker or broadcasting equipment or camera (whether photographic, cinematic or video), for a commercial purpose;
 - (c) provide, or offer to provide, any services for fee, gain or reward;
 - (d) distribute any advertising matter or display any advertisement (whether on a billboard or otherwise);
 - (e) conduct any wedding;
 - (f) collect or attempt to collect money;
 - (g) busk.

Regulation 8

Penalty: 10 penalty units.

- (2) Paragraph (1) (d) does not apply to an advertisement displayed:
- (a) on clothing worn, or personal items carried, by a person; or
 - (b) on a vehicle driven or parked by a person, not being a vehicle driven or parked wholly or mainly for the purpose of displaying the advertisement.

Note A defendant bears an evidential burden in relation to the matters in subregulation (2) (see subsection 13.3 (3) of the *Criminal Code*).

- (3) An offence against subregulation (1) is an offence of strict liability.

Note 1 For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2 For general circumstances in which an activity will not constitute an offence, see regulation 23.

8 Hazardous activities

- (1) A person must not do any of the following on Trust land:
- (a) light any fire, barbecue or stove;
 - (b) carry or set off any firework;
 - (c) land or launch any hot air balloon;
 - (d) land or take-off any other aircraft.

Penalty: 10 penalty units.

- (2) Paragraph (1) (a) does not apply to a fire, barbecue or stove that is part of cooking facilities provided by the Trust.

Note A defendant bears an evidential burden in relation to the matter in subregulation (2) (see subsection 13.3 (3) of the *Criminal Code*).

- (3) An offence against subregulation (1) is an offence of strict liability.

Note 1 For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2 For general circumstances in which an activity will not constitute an offence, see regulation 23.

Regulation 10

9 Possession of firearms

- (1) A person must not, on Trust land, carry, discharge or be in possession of, a firearm.

Penalty: 10 penalty units.

- (2) Subregulation (1) does not apply to:

- (a) a police officer; or
(b) a person who:
(i) is the holder of a licence under the *Security Industry Act 1997* of New South Wales; and
(ii) is carrying out functions authorised by the licence.

Note A defendant bears an evidential burden in relation to the matter in subregulation (2) (see subsection 13.3 (3) of the *Criminal Code*).

- (3) An offence against subregulation (1) is an offence of strict liability.

Note 1 For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2 For general circumstances in which an activity will not constitute an offence, see regulation 23.

10 Damage to or removal of things from Trust land

- (1) A person commits an offence if:

- (a) the person does an act; and
(b) the act results in the defacement or destruction of, or damage to, or interference with, any building, structure, equipment, notice, sign, barrier, buoy, cultural feature, natural feature, tree, plant or other vegetation on Trust land.

Penalty: 10 penalty units.

- (3) A person must not remove from Trust land any building, structure, equipment, notice, sign, barrier, buoy, cultural feature, natural feature, tree, plant or other vegetation on the land.

Penalty: 10 penalty units.

Regulation 11

- (4) An offence against subregulation (1) or (3) is an offence of strict liability.

Note 1 For **strict liability**, see section 6.1 of the *Criminal Code*.

Note 2 For general circumstances in which an activity will not constitute an offence, see regulation 23.

11 Public assemblies

- (1) A person must not organise or participate in a public assembly on Trust land.

Penalty: 10 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

Note 1 For **strict liability**, see section 6.1 of the *Criminal Code*.

Note 2 For general circumstances in which an activity will not constitute an offence, see regulation 23.

- (3) In subregulation (1):

public assembly means:

- (a) an organised assembly of persons for the purpose of holding a meeting, demonstration, procession or performance; or
- (b) a sporting event.

12 Dumping of waste, littering etc

- (1) A person must not discharge or leave on Trust land:
- (a) any minerals, mineral waste or other solid waste; or
 - (b) any noxious, offensive or polluting substance.

Penalty: 10 penalty units.

- (2) A person must not release liquid or gaseous material on Trust land if the release is likely:

- (a) to pollute the air, soil, water or a watercourse; or
- (b) to be harmful to any plant or animal; or
- (c) be harmful or offensive to another person.

Penalty: 10 penalty units.

Regulation 13

- (3) A person must not leave any litter, dung or other refuse on Trust land.

Penalty: 10 penalty units.

- (4) Subregulations (1) and (2) do not apply to a substance that is a herbicide, pesticide or other poisonous substance.
- (5) Subregulation (3) does not apply to refuse left in an area or receptacle approved or provided for that purpose by the Trust.
- (6) An offence against subregulation (1), (2) or (3) is an offence of strict liability.

Note 1 For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2 A defendant bears an evidential burden in relation to a matter in subregulation (4) or (5) (see subsection 13.3 (3) of the *Criminal Code*).

Note 3 As to the use of herbicides, pesticides or other poisonous substances, see regulation 13.

Note 4 For general circumstances in which an activity will not constitute an offence, see regulation 23.

13 Use of poisonous substances

- (1) A person must not use on Trust land, or bring onto Trust land, a pesticide, herbicide or other poisonous substance.

Penalty: 10 penalty units.

- (2) Subregulation (1) does not apply to a pesticide, herbicide or other poisonous substance brought on to Trust land, or reasonably used on Trust land, for a domestic purpose.

Note A defendant bears an evidential burden in relation to the matter in subregulation (2) (see subsection 13.3 (3) of the *Criminal Code*).

- (3) An offence against subregulation (1) is an offence of strict liability.

Note 1 For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2 For general circumstances in which an activity will not constitute an offence, see regulation 23.

Regulation 14

14 Animals on Trust land

- (1) A person must not cause or allow an animal owned by, or in the charge of, the person, to enter or remain on Trust land.

Penalty: 10 penalty units.

- (2) Subregulation (1) does not apply to the use of a dog or animal that:
- (a) is a guide dog used by a blind person, a hearing dog used by a deaf person or an assistance animal used by a person with a disability; and
 - (b) is at all times restrained on a lead or by other reasonable means.

Note A defendant bears an evidential burden in relation to the matter in subregulation (2) (see subsection 13.3 (3) of the *Criminal Code*).

- (3) A person who, in accordance with a permit or other authority under these Regulations, brings an animal onto Trust land or has charge of an animal on Trust land, must not:
- (a) allow the animal to be at large; or
 - (b) fail to remove the animal from the Trust land:
 - (i) if the person lives on the Trust land — when the person ceases to live there; or
 - (ii) in any other case — when the person leaves the Trust land.

Penalty: 10 penalty units.

- (4) An offence against subregulation (1) or (3) is an offence of strict liability.

Note 1 For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2 For general circumstances in which an activity will not constitute an offence, see regulation 23.

- (5) In this regulation:

assistance animal means an animal trained to help a person to lessen the effects of a disability.

Regulation 15

14A Protection of animals on Trust land

- (1) A person must not do any of the following on Trust land:
- (a) carry or set a trap;
 - (b) deposit any poisonous bait;
 - (c) hunt, interfere with, hurt, or capture an animal on Trust land;
 - (d) have an animal in his or her possession;
 - (e) take or interfere with an animal's nest, egg, habitation or resting place (including beehives);
 - (f) feed an animal.

Penalty: 10 penalty units.

- (2) A person must not drop onto Trust land any poisonous bait from an aircraft.

Penalty: 10 penalty units.

- (3) Paragraph (1) (d) does not apply to a person who has an animal in his or her possession in accordance with a licence or permit issued under regulation 25.

- (4) Paragraph (1) (f) does not apply to a person who feeds an animal in accordance with a licence or permit issued under regulation 25.

- (5) An offence against subregulation (1) or (2) is an offence of strict liability.

Note 1 For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2 For general circumstances in which an activity will not constitute an offence, see regulation 23.

15 Plants on Trust land

- (1) A person must not bring a plant onto, or possess a plant on, Trust land.

Penalty: 10 penalty units.

- (2) Subregulation (1) does not apply to bringing a plant onto Trust land as food.

Regulation 16

Note A defendant bears an evidential burden in relation to the matter in subregulation (2) (see subsection 13.3 (3) of the *Criminal Code*).

- (3) A person must not cultivate or propagate a plant on Trust land.

Penalty: 10 penalty units.

- (4) An offence against subregulation (1) or (3) is an offence of strict liability.

Note 1 For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2 For general circumstances in which an activity will not constitute an offence, see regulation 23.

16 Use of vehicles on Trust land

- (1) A person must not drive, ride, tow or park a vehicle on a part of Trust land that is not a public road.

Penalty: 10 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

Note 1 For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2 For general circumstances in which an activity will not constitute an offence, see regulation 23.

17 Use of vessels etc

- (1) A person must not, in any waters on Trust land:
- (a) use, anchor or moor any vessel or other watercraft; or
 - (b) secure a vessel to a wharf of the Trust.

Penalty: 10 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

Note 1 For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2 For general circumstances in which an activity will not constitute an offence, see regulation 23.

- (3) In subregulation (1):

Regulation 19

wharf of the Trust means a wharf (including a pier, jetty, landing stage or dock) that is:

- (a) vested in or managed by the Trust; and
- (b) within Trust land.

18 Taking marine life

- (1) A person must not, in any waters on Trust land:
 - (a) fish; or
 - (b) take or remove any marine life; or
 - (c) use, or set, any fishing net, fish trap or other equipment for fishing.

Penalty: 10 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

Note 1 For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2 For general circumstances in which an activity will not constitute an offence, see regulation 23.

19 Other activities

- (1) A person must not, on Trust land:
 - (a) conduct, or participate in, any game or other activity; or
 - (b) operate or use any radio, television, record-player, musical instrument or other sound-generating device;in a manner that unduly interferes with the amenity of the land.

Penalty: 5 penalty units.

- (2) A person must not, on Trust land, do any act in a manner that:
 - (a) is disorderly, offensive or indecent; or
 - (b) disturbs or annoys any person engaged in the lawful use of the land.

Penalty: 5 penalty units.

- (3) A person must not do any of the following on Trust land:

Regulation 20

- (a) cause a remotely controlled device to be flown or operated;
- (b) camp or use facilities for sleeping overnight;
- (c) erect any tent or other temporary shelter for accommodation;
- (d) paint, erect or affix any decoration, sign or other equipment;
- (e) climb any tree, sculpture, decoration, flagpole or other fixture;
- (f) ride or use any skate board, roller skates, in-line skates or similar equipment.

Penalty: 5 penalty units.

- (4) A person must not swim in any waters on Trust land.

Penalty: 5 penalty units.

- (4A) A person must not, on Trust land, sell or supply liquor to a person who is under 18 years of age.

Penalty: 10 penalty units.

- (5) An offence against subregulation (1), (2), (3), (4) or (4A) is an offence of strict liability.

Note 1 For **strict liability**, see section 6.1 of the *Criminal Code*.

Note 2 For general circumstances in which an activity will not constitute an offence, see regulation 23.

20 Closure of a place on Trust land

- (1) A person commits an offence if:
- (a) a place on Trust land is closed in accordance with this regulation; and
 - (b) the person enters that place.

Penalty: 5 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

Note 1 For **strict liability**, see section 6.1 of the *Criminal Code*.

Regulation 22

Note 2 For general circumstances in which an activity will not constitute an offence, see regulation 23.

- (3) The Trust may close a place on Trust land for the purposes of this regulation.
- (4) In deciding whether to close a place on Trust land, the Trust must have regard to the objects of the Trust set out in section 6 of the Act.
- (5) A closure must be indicated by signs, notices, barriers or buoys, or by a combination of any of them.

21 Failing to comply with safety directions

- (1) If a ranger believes that the safety of a person on Trust land is, or is likely to be, endangered, the ranger may give to the person or another person directions necessary to ensure the safety of the person.
- (2) A person must not fail to comply with a direction given under subregulation (1) to the person.

Penalty: 5 penalty units.

- (3) Subregulation (2) is an offence of strict liability.

Note 1 For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2 For general circumstances in which an activity will not constitute an offence, see regulation 23.

22 Trust may erect notices

- (1) The Trust may erect a notice, or cause a notice to be erected, at a place on Trust land for the purposes of these Regulations.
- (2) A notice must:
 - (a) be clearly legible; and
 - (b) be placed:
 - (i) where it relates to the whole of an area of Trust land — at each entrance to the area, or in a conspicuous place in or in the vicinity of the area; or

Regulation 22

- (ii) where it relates to part only of an area of Trust land — at each entrance to that part, or in a conspicuous place in or in the vicinity of that part; or
 - (iii) where it relates to a building — at or near the entrance to the building.
- (3) The terms of a notice may relate to any 1 or more of the following:
 - (a) the use of a vehicle, vessel or watercraft in the place;
 - (b) the taking of any animal or thing into the place;
 - (c) the use of any animal or thing in the place;
 - (d) the conduct of any person in the place;
 - (e) entry to, or the use of, the place or any part of the place;
 - (f) the charging of an entry fee for:
 - (i) a particular event on Trust land; or
 - (ii) entry onto Trust land on a particular day;
 - (g) the charging of a fee for parking on Trust land;
 - (h) providing for a part of Trust land to be an alcohol-free zone.
- (4) The terms of a notice may:
 - (a) apply generally or in a way that is limited by reference to specified exceptions or factors; or
 - (b) apply differently according to specified factors of a specified kind; or
 - (c) do any combination of the things mentioned in paragraphs (a) and (b).
- (5) Without limiting subregulations (3) and (4), a notice may specify the days and times during which, and the conditions on which:
 - (a) a wharf of the Trust may be used to secure vessels; or
 - (b) vehicles may be used or parked on an area, or part of an area, of Trust land to which the notice applies; or
 - (c) persons may enter an area, or part of an area, of Trust land, or a building, to which the notice applies.
- (6) A person on Trust land must comply with the terms of a notice.

Regulation 23

Penalty: 10 penalty units.

- (7) An offence against subregulation (6) is an offence of strict liability.

Note 1 For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2 For general circumstances in which an activity will not constitute an offence, see regulation 23.

23 Activities that are not offences under this Division

An offence provision in this Division does not apply to an activity that:

- (a) is provided for by, and carried out in accordance with, a plan in effect for the area where the activity is carried out; or
- (b) is provided for by, and carried out in accordance with, a lease granted by the Trust; or
- (c) is authorised by the terms of a notice erected by the Trust under regulation 22; or
- (d) is authorised by a licence or permit in force under regulation 25; or
- (e) is carried out by or on behalf of, or at the request of, the Trust, or by a ranger; or
- (f) is carried out for the construction, repair or maintenance of a public utility or facility and is authorised by the Trust; or
- (g) is carried out by an agency of the Commonwealth, or of New South Wales, and is reasonably necessary for law enforcement; or
- (h) is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or
- (i) occurs because of an accident, other than an accident caused by negligent or reckless behaviour of the person engaging in the activity; or
- (j) is carried out by a person who is complying with a direction given to the person by:
 - (i) a ranger; or
 - (ii) a police officer or an emergency services officer in the performance of his or her duties.

Regulation 24

Note A defendant bears an evidential burden in relation to a matter in this regulation (see subsection 13.3 (3) of the *Criminal Code*).

24 Limit on prosecution

A prosecution must not be brought against a person for an offence mentioned in this Division in respect of an activity that is the subject of an order given under regulation 37.

Division 2.2 Licences and permits

25 Trust may issue licences or permits

- (1) The Trust may grant a licence or permit authorising a person to carry out on Trust land an activity that would, in the absence of a licence or permit, be prohibited under Division 2.1.

Note For limitations relating to the grant of a licence before plans for an area take effect, see section 38B of the Act.

- (2) An application for a licence or permit must:
- (a) be in writing; and
 - (b) if a fee is charged under subregulation 41 (2) in respect of the application, be accompanied by the fee.
- (3) In considering whether to grant a licence or permit, the Trust must have regard to the objects of the Trust set out in section 6 of the Act.
- (4) If a licence or permit is granted, the Trust must issue a licence or permit document to the person to whom it is granted.
- (5) A licence or permit is subject to the conditions (if any) specified in the licence or permit document.
- (6) If the Trust refuses to grant a licence or permit, the Trust must give notice in writing of the refusal to the applicant, giving reasons for the refusal.
- (7) A person may apply to the Administrative Appeals Tribunal for the review of a decision by the Trust:
- (a) to refuse to grant a licence or permit under this Regulation; or

- (b) to grant a licence or permit subject to conditions.

26 Contravention of licence or permit conditions

- (1) A person commits an offence if:
- (a) a licence or permit has been granted to the person under regulation 25; and
 - (b) the licence or permit is subject to a condition to be complied with by the person; and
 - (c) the person engages in conduct; and
 - (d) the person's conduct contravenes the condition.

Penalty: 10 penalty units.

- (2) Strict liability applies to paragraphs (1) (a) and (b).

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

Part 3 Enforcement

Division 3.1 Rangers

27 Appointment of rangers

The Trust may, in writing, appoint as a ranger:

- (a) an employee of the Trust; or
- (b) a person covered by an arrangement made under subsection 48 (3) of the Act; or
- (c) a person covered by an arrangement made under regulation 28; or
- (d) a person who is the holder of a licence under the *Security Industry Act 1997* of New South Wales.

28 Arrangements for performance of the powers etc of rangers

- (1) The Trust may make arrangements with:
 - (a) the Secretary of a Department of the Australian Public Service; or
 - (b) an authority of the Commonwealth;
for the performance or exercise of all or any of the functions or powers of rangers under these Regulations by employees or officers in that Department or authority, as the case may be.
- (2) The Trust may enter into an arrangement with the appropriate Minister of New South Wales for:
 - (a) officers or employees in:
 - (i) the Public Service of that State; or
 - (ii) an authority of that State; or
 - (iii) an affected council; or
 - (b) members of the police force of New South Wales;
to perform or exercise all or any of the functions or powers of rangers under these Regulations.

29 Identity cards

- (1) The Trust must issue to each ranger (except a member of a police force) an identity card.
- (2) The identity card must include:
 - (a) a recent photograph of the face of the person to whom it is issued; and
 - (b) the person's full name; and
 - (c) the year of issue of the card; and
 - (d) a statement that the person has been appointed as a ranger for the purposes of these Regulations.
- (3) If a person ceases to be a ranger, the person must, as soon as is practicable, return his or her identity card to the Trust.
- (4) A person commits an offence if the person:
 - (a) is required to return his or her identity card under subregulation (3); and
 - (b) does not return the identity card.

Penalty: 2 penalty units.

- (5) Strict liability applies to paragraph (4) (a).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

Division 3.2 Powers of rangers

30 Request to state name and address

- (1) A ranger who believes on reasonable grounds that a person on Trust land has committed, or is committing, an offence against these Regulations may request the person to state his or her full name and residential address.
- (2) A person must not fail to comply with a request made to the person under subregulation (1).

Penalty: 5 penalty units.

Regulation 31

- (3) A person must not, in purported compliance with a request made to the person under subregulation (1), give information that the person knows to be false or misleading.

Penalty: 5 penalty units.

- (4) However, a person does not commit an offence under subregulation (2) or (3) unless the ranger, at the time of making the request:
- (a) produced his or her identity card, or identification as a police officer; and
 - (b) warned the person that the failure to comply with the request is an offence.
- (5) An offence against subregulation (2) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

31 Removal of certain persons from Trust land

- (1) A ranger who believes on reasonable grounds that a person on Trust land has committed, or is committing, an offence against these Regulations may request the person to leave the Trust land immediately.

- (2) A person must comply with a request made to the person under subregulation (1).

Penalty: 5 penalty units.

- (3) Despite subregulation (2), a person does not commit an offence under that subregulation unless the ranger, at the time of making the request:
- (a) produced his or her identity card, or identification as a police officer; and
 - (b) warned the person that the failure to comply with the request is an offence.

- (4) An offence against subregulation (2) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

Regulation 33

- (5) A person who fails to comply with a request made to the person may be removed from Trust land by a ranger.
- (6) However, in effecting a person's removal, no more force is to be used than is reasonably necessary.

32 Removal of certain animals from Trust land

A ranger may remove from Trust land any domestic animal that is unattended or at large on the land.

33 Removal of obstructions etc from Trust land

- (1) A ranger may order the removal from Trust land of anything that the ranger believes, on reasonable grounds, is:
 - (a) causing an obstruction to persons, vehicles or vessels on Trust land; or
 - (b) encroaching on Trust land.
- (2) The order may be given to either or both of the following:
 - (a) the person who caused the obstruction or encroachment;
 - (b) a person using the thing causing the obstruction or encroachment.
- (3) A person to whom an order is given in accordance with subregulations (1) and (2) must not fail to comply with the order.

Penalty: 5 penalty units.

- (4) It is a defence to a prosecution for an offence against subregulation (3) if the defendant complies with the direction to the extent to which he or she is capable.

Note A defendant bears an evidential burden in relation to the matter in subregulation (4) (see subsection 13.3 (3) of the *Criminal Code*).

- (5) An offence against subregulation (3) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

Regulation 34

- (6) If a person to whom an order is given in accordance with subregulations (1) and (2) fails to comply with the order, a ranger may remove the obstruction or encroachment.
- (7) The Trust may recover from either of the persons referred to in subregulation (2) the Trust's reasonable costs and expenses incurred in removing an obstruction or encroachment.
- (8) If a ranger removes an obstruction or encroachment, neither the ranger, nor any person who assists him or her to do so, nor the Trust, is liable for any loss of, or damage to, anything causing the obstruction or encroachment that occurs while it is being removed with reasonable care and in accordance with this regulation.
- (9) This regulation does not apply to an obstruction or encroachment if its presence on Trust land is authorised:
 - (a) by the Trust; or
 - (b) by or under the Act or any other law; and its presence has not ceased to be so authorised.

34 Direction to move vehicle

- (1) A ranger who believes, on reasonable grounds, that a vehicle:
 - (a) is being, or has been, used; or
 - (b) is parked;on Trust land in contravention of these Regulations may direct the driver of the vehicle to move the vehicle.
- (2) The driver of a vehicle must comply with a direction given to the driver under subregulation (1).

Penalty: 5 penalty units.
- (3) Despite subregulation (2), a person does not commit an offence under that subregulation unless the ranger, at the time of giving the direction:
 - (a) produced his or her identity card, or identification as a police officer; and
 - (b) warned the person that the failure to comply with the direction is an offence.

Regulation 35

- (4) It is a defence to a prosecution for an offence against subregulation (2) if the defendant complies with the direction to the extent to which he or she is capable.

Note A defendant bears an evidential burden in relation to the matter in subregulation (4) (see subsection 13.3 (3) of the *Criminal Code*).

- (5) An offence against subregulation (2) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (6) In this regulation:

driver includes any adult who appears to be the driver of the vehicle, whether or not he or she is sitting in the driver's seat of the vehicle.

35 Removal of abandoned property

- (1) A ranger (with whatever assistance is reasonably necessary) may remove, to a place on Trust land or reasonably adjacent to Trust land set aside for the purpose, any property that the ranger believes, on reasonable grounds, has been abandoned.
- (2) The ranger must take reasonable steps to identify the owner of the property and inform the owner of the removal.
- (3) If the owner of the property cannot be identified, the steps include publishing, in a newspaper circulating generally in New South Wales, an advertisement that includes:
- (a) a description of the property; and
 - (b) the date when, and location of the Trust land from which, the property was removed.
- (4) The Trust must release the property to its owner on payment to the Trust of the Trust's reasonable costs of the removal and storage of the property.
- (5) An amount payable to the Trust is a debt due to the Trust recoverable in a court of competent jurisdiction.
- (6) The Trust is not required to return the property to a person claiming it unless the person pays the amount due to the Trust under this regulation.

Regulation 36

- (7) If a ranger removes property under this regulation, neither the ranger, nor any person who assists him or her to do so, nor the Trust, is liable for any loss of, or damage to, the property that occurs while it is being moved with reasonable care, and stored, in accordance with this regulation.
- (8) In this regulation:
property includes any vehicle, vessel, watercraft, structure or materials.

36 Disposal of abandoned property

- (1) The Trust may dispose of property removed under regulation 35 after the expiry of the claim period for the property if, within that period, the costs of removal and storage of the property have not been paid.
- (2) In subregulation (1):
claim period, for property removed under regulation 35, means 1 month from:
- (a) the day on which the owner is informed of the removal of the property; or
 - (b) the later of:
 - (i) if the owner cannot be contacted — the day on which the property was removed; or
 - (ii) if the owner cannot be identified — the day on which an advertisement mentioned in subregulation 35 (3) was published.
- (3) The Trust must, as soon as practicable after the end of the financial year in which the Trust sells property under this regulation, give to the Commonwealth the proceeds of the sale, less the reasonable cost of moving, storing and disposing of the property.

Division 3.3 Orders

37 Trust may give orders

- (1) Subject to this regulation and to regulation 38, the Trust may order any person engaged in promoting, conducting or carrying out an activity on Trust land:
 - (a) not to promote, conduct or carry out the activity; or
 - (b) to cease promoting, conducting or carrying out the activity; or
 - (c) 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 subregulation (1) only if any of the circumstances mentioned in subregulation (3) exist.
- (3) For subregulation (2), the circumstances are that there are reasonable grounds for believing that the activity:
 - (a) contravenes these 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) or (b) in respect of an activity, an order may be made under paragraph (1) (c) in respect of the same activity.
- (5) Without limiting paragraph (1) (c), 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.

Regulation 38

- (6) A person may apply to the Administrative Appeals Tribunal for the review of a decision by the Trust to give an order under this regulation.

38 Form etc of order

- (1) An order given under regulation 37 must be in writing.
- (2) Subject to subregulation (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 health or safety; or
 - (b) a serious risk of pollution or environmental damage; or
 - (c) an emergency.

39 Contravention of order

- (1) A person commits an offence if:
- (a) the person is subject to an order given under regulation 37; and
 - (b) the person engages in conduct; and
 - (c) the person's conduct contravenes the terms of the order.

Penalty: 10 penalty units.

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

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

40 Trust may carry out work if order is contravened

- (1) If a person fails to comply with the terms of an order given under regulation 37, the Trust may do anything that is necessary or convenient to give effect to the terms of the order, including any work required by the order.
- (2) Any expenses incurred by the Trust under subregulation (1) (less the proceeds of any sale under this regulation) together

Regulation 40A

with the costs of recovery, may be recovered by the Trust in a court of competent jurisdiction as a debt due to the Trust.

- (3) If the Trust gives effect to an order by:
 - (a) removing a structure; or
 - (b) removing any materials or other thing from Trust land;
the Trust may sell any part of the structure, or the materials or other thing, unless the expenses of the Trust in relation to the removal and sale are paid to the Trust within 14 days after the removal.
- (4) If the proceeds of sale exceed the expenses of the Trust in relation to the removal and sale, the Trust:
 - (a) may deduct from the proceeds an amount equal to those expenses; and
 - (b) must pay the surplus to the owner on demand.
- (5) If the proceeds of sale do not exceed those expenses, the Trust may:
 - (a) retain the proceeds; and
 - (b) recover the deficiency (if any), together with its costs of recovery, in a court of competent jurisdiction as a debt due to the Trust.
- (6) Any structure, materials or other thing removed under this regulation that cannot be sold may be destroyed or otherwise disposed of.
- (7) The Trust may exercise its functions under this regulation whether or not the person concerned has been prosecuted for an offence under regulation 39.

Division 3.4 Infringement notices

40A Purpose and effect of Division

- (1) The purpose of this Division is to establish an infringement notice scheme, as an alternative to prosecution, for infringement notice offences.

Regulation 40B

- (2) This Division does not:
- (a) require an infringement notice to be issued to a person for an offence; or
 - (b) affect the liability of a person to be prosecuted for an offence if an infringement notice is not issued to the person for the offence; or
 - (c) prevent the issue of 2 or more infringement notices to a person for an offence; or
 - (d) affect the liability of a person to be prosecuted for an offence if the person does not comply with an infringement notice for the offence; or
 - (e) limit or otherwise affect the penalty that may be imposed by a court on a person convicted of an offence.

40B Definitions

In this Division:

infringement notice means an infringement notice served under subregulation 40G (1).

infringement notice offence has the meaning given by regulation 40C.

infringement penalty has the meaning given by regulation 40D.

Trust officer means an employee of the Sydney Harbour Federation Trust who:

- (a) is employed at Trust classification level 6 or higher; and
- (b) is not a ranger.

40C Infringement notice offences

- (1) Subject to subregulation (2), an offence under Division 2.1 or Division 3.2 is an *infringement notice offence*.
- (2) An offence against subregulation 29 (4) is not an infringement notice offence.

Note Subregulation 29 (4) relates to the return of a ranger's identity card.

40D Infringement penalty

The *infringement penalty* that is payable under an infringement notice is 20% of the maximum amount of the fine that a court could impose for the offence.

40E When infringement notices can be issued

If a ranger has reasonable grounds to believe that a person has committed an infringement notice offence, the ranger may, within 12 months of the alleged commission of the offence, issue the person with an infringement notice for the offence.

40F Contents of infringement notice

- (1) An infringement notice must:
 - (a) be identified by a unique number; and
 - (b) state that the notice is issued under these Regulations on behalf of the Trust; and
 - (c) state the name of the ranger who issued the notice; and
 - (d) be signed by the ranger who issued the notice; and
 - (e) unless the notice is served in accordance paragraph 40G (3) (b) — state the name and address of the person to whom it is issued; and
 - (f) set out brief details of the offence the person is alleged to have committed, including:
 - (i) the provision of these Regulations that was allegedly contravened; and
 - (ii) the maximum penalty that may be imposed by a court for the offence; and
 - (iii) the time (if known) and the day on which the offence was allegedly committed; and
 - (iv) the place on Trust land where the offence was allegedly committed; and
 - (g) if a vehicle or vessel was involved in the alleged offence — state its registration number; and
 - (h) state the amount of the infringement penalty that is payable under the notice; and

Regulation 40G

- (i) state how and where the infringement penalty can be paid, including, if the penalty can be paid by posting the payment, the place to which it should be posted; and
 - (j) state that if the person pays the infringement penalty in time:
 - (i) any liability of the person for the offence is discharged; and
 - (ii) a prosecution of the offence may not be brought against the person; and
 - (iii) the person is not regarded as having admitted guilt or liability for the offence; and
 - (iv) the person is not regarded as having been convicted of the offence; and
 - (k) state that the person may apply to a Trust officer for an extension of time in which to pay the penalty; and
 - (l) set out how the notice is withdrawn; and
 - (m) state that if the notice is withdrawn:
 - (i) any amount of penalty paid under the notice must be refunded to the person; and
 - (ii) the person may be prosecuted in a court for the offence; and
 - (n) state that the person may apply in writing to a Trust officer requesting the withdrawal of the notice.
- (2) An infringement notice may contain any other information that the Trust considers necessary.

40G Method of serving infringement notices

- (1) An infringement notice must be served on the person to whom it is issued.
- (2) An infringement notice may be served on an individual:
 - (a) personally or by post; or
 - (b) by leaving the notice:
 - (i) at the last-known place of residence or business of the person; and
 - (ii) with a person, apparently over the age of 16 years, who appears to live or work at the place.

Regulation 40I

- (3) An infringement notice may be served on a corporation:
 - (a) by leaving it at, or by sending it by post to, the address of the head office, a registered office or a principal office, of the corporation; or
 - (b) by giving it, at an office mentioned in paragraph (a), to someone who is, or who the person serving the notice reasonably believes is, an officer or employee of the corporation.
- (4) For an offence involving a motor vehicle or a vessel, 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.

40H Time for payment of infringement notice penalty

The penalty specified in an infringement notice must be paid:

- (a) within 28 days after the day on which the notice is served on the person to whom it is issued; or
- (b) if the person applies for an extension of time in which to pay the penalty and that application is granted — within the extension period allowed; or
- (c) if the person applies for an extension of time in which to pay the penalty and the application is refused — within 7 days after the notice of the refusal is served on the person; or
- (d) if the person applies for the notice to be withdrawn and the application is refused — within 28 days after the notice of the refusal is served on the person.

40I Extension of time to pay penalty

- (1) A person served with an infringement notice may apply, in writing, to a Trust officer for an extension of time of up to 28 days in which to pay the penalty specified in the notice.

Regulation 40J

- (2) If the application is made after the end of the 28-day period specified in the notice for payment of the penalty, the application must include a statement explaining why the person could not deal with the notice within that period.
- (3) Within 14 days after receiving the application, the Trust officer must:
 - (a) grant or refuse an extension of time to pay the penalty; and
 - (b) notify the person in writing of the decision, and, if the decision is a refusal, the reasons for it.
- (4) Notice of the decision may be served on the person in any way in which the infringement notice could have been served on the person.

40J Withdrawal of infringement notice

- (1) Before the end of 28 days after receiving an infringement notice, a person may apply, in writing, to a Trust officer for the infringement notice to be withdrawn.
- (2) Within 14 days after receiving the application, the Trust officer must:
 - (a) withdraw, or refuse to withdraw, the notice; and
 - (b) notify the person in writing of the decision, and, if the decision is a refusal, the reasons for the decision.
- (3) Before withdrawing, or refusing to withdraw, a notice, the Trust officer must consider:
 - (a) whether the person has been convicted previously of an offence against these Regulations; and
 - (b) the circumstances of the offence stated in the notice; and
 - (c) whether the person has previously paid a penalty under an infringement notice issued to the person for an offence of the same type as the offence mentioned in the notice; and
 - (d) any other relevant matter.
- (4) A Trust officer may also withdraw an infringement notice without an application having been made if he or she believes it is appropriate to do so in all the circumstances of the particular case.

40K Notice of withdrawal of infringement notices

- (1) Notice of the withdrawal of an infringement notice may be served on a person in any way in which the infringement notice could have been served on the person.
- (2) A notice withdrawing an infringement notice served on a person for an offence:
 - (a) must include the following information:
 - (i) the name and address of the person;
 - (ii) the number of the infringement notice;
 - (iii) the date of issue of the infringement notice; and
 - (b) must state that the notice is withdrawn; and
 - (c) if it is proposed that a prosecution be brought against the person for the offence — must state that the person may be prosecuted in a court for the offence.

40L Refund of infringement notice penalty

If an infringement notice is withdrawn after the penalty specified in it has been paid, the Trust must refund the amount of the penalty to the person who paid it.

40M Effect of payment of infringement penalty

If a person served with an infringement notice pays the penalty specified in the notice within the period specified in the notice (or such further period of time allowed under regulation 40I):

- (a) any liability of the person for the offence is discharged; and
- (b) a prosecution of the offence may not be brought against the person for the offence; and
- (c) the person is not regarded as having admitted guilt or liability for the offence; and
- (d) the person is not regarded as having been convicted of the offence.

Regulation 40N

40N Payment of infringement notice penalty — cheques

If a person pays an infringement penalty by cheque, payment is not taken to have been made until the cheque has been honoured on presentation.

40O Evidentiary certificates

- (1) A Trust officer may sign a certificate that states any of the following in relation to an infringement notice served on a person:
 - (a) that the infringement penalty specified in the infringement notice was not paid by the person within the time specified in the notice;
 - (b) that the Trust officer granted, or refused to grant, an extension of time to the person to pay the infringement penalty;
 - (c) that the infringement penalty was not paid by the person within the period specified in the extension;
 - (d) that the infringement notice was withdrawn under regulation 40J 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 a Trust officer in accordance with subregulation (1) is evidence of the matters specified in the certificate.
- (3) A certificate that purports to be signed by a Trust officer is taken to have been signed by the Trust officer unless the contrary is proved.

Part 4 Miscellaneous

41 Fees

- (1) The Trust may charge a reasonable fee in respect of a service or facility provided by the Trust on, or in connection with, Trust land.
- (2) The Trust may charge a fee in respect of an application for a licence, permit or other authority under these Regulations.
- (3) A fee charged under subregulation (2) must not exceed the reasonable administrative costs of processing the application.
- (4) In addition to any fee charged under subregulation (2), the Trust may charge a reasonable fee in respect of the carrying out on Trust land of any activity authorised by a licence or permit granted by the Trust.
- (5) The amount of any fee may be recovered by the Trust as a debt due to the Trust in a court of competent jurisdiction.

42 Delegation

- (1) The Trust may, by writing, delegate to:
 - (a) the Executive Director; or
 - (b) an SES employee of the Department; or
 - (c) a person employed under section 48 of the Act;all or any of the functions and powers conferred on the Trust by these Regulations.
- (2) The Executive Director must report to the Trust at least once every 6 months on the exercise of functions and powers delegated under subregulation (1).

Table of Instruments

Notes to the *Sydney Harbour Federation Trust Regulations 2001*

Note 1

The *Sydney Harbour Federation Trust Regulations 2001* (in force under the *Sydney Harbour Federation Trust Act 2001*) as shown in this compilation comprise Statutory Rules 2001 No. 296 amended as indicated in the Tables below.

Table of Instruments

Year and number	Date of notification in <i>Gazette</i> or FRLI registration	Date of commencement	Application, saving or transitional provisions
2001 No. 296	9 Oct 2001	12 Oct 2002	
2002 No. 312	19 Dec 2002	19 Dec 2002	—
2009 No. 191	31 July 2009 (see F2009L02985)	1 Aug 2009	—

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
R. 3	am. 2002 No. 312; 2009 No. 191
Part 2	
Division 2.1	
R. 6	am. 2009 No. 191
R. 7	am. 2009 No. 191
R. 8	am. 2009 No. 191
R. 9	am. 2009 No. 191
R. 10	am. 2009 No. 191
R. 11	am. 2009 No. 191
R. 12	am. 2009 No. 191
R. 14	am. 2009 No. 191
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R. 15	am. 2009 No. 191
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R. 19	am. 2009 No. 191
R. 20	am. 2009 No. 191
R. 21	am. 2002 No. 312
R. 22	am. 2009 No. 191
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Part 3	
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Heading to Div. 3.1	rs. 2002 No. 312
Heading to r. 27	rs. 2002 No. 312
R. 27	am. 2002 No. 312
Heading to r. 28	rs. 2002 No. 312
R. 28	am. 2002 No. 312
R. 29	am. 2002 No. 312; 2009 No. 191
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R. 30	am. 2002 No. 312
R. 31	am. 2002 No. 312; 2009 No. 191
R. 32	am. 2002 No. 312
R. 33	am. 2002 No. 312

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

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R. 34	am. 2002 No. 312; 2009 No. 191
R. 35	am. 2002 No. 312
Division 3.4	
Division 3.4	ad. 2009 No. 191
R. 40A.....	ad. 2009 No. 191
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R. 40 N.....	ad. 2009 No. 191
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