

**EXPLANATORY STATEMENT**  
**Select Legislative Instrument 2009 No. 191**

Subject - *Sydney Harbour Federation Trust Act 2001*

*Sydney Harbour Federation Trust Amendment Regulations 2009 (No. 1)*

Section 73 of the *Sydney Harbour Federation Trust Act 2001* (the Act) provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act establishes the Sydney Harbour Federation Trust. The objects of the Trust relevantly include: managing certain land in the Sydney Harbour region to enhance the amenity of that region; protecting, conserving and interpreting the environmental and heritage values of that land; and establishing and maintaining suitable parts of that land as a park on behalf of the Commonwealth.

The Regulations establish an infringement notice scheme under the *Sydney Harbour Federation Trust Regulations 2001* (the Principal Regulations), as an alternative to prosecution, for certain offences under the Principal Regulations. The Regulations are designed to give effect to the objects of the Trust, to improve the effectiveness of the offence provisions contained in the Principal Regulations, and to allow for those offence provisions to be readily enforced.

Details of the Regulations are set out in the Attachment. The Act specifies no conditions that need to be satisfied before the power to make the Regulations was exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations will commence on the 1 August 2009.

The Minute recommended that the Regulations be made in the Form proposed.

Authority: Section 73 of the *Sydney Harbour Federation Trust Act 2001*

## **Attachment**

### **Details of the Sydney Harbour Federation Trust Amendment Regulations 2009 (No. 1)**

Section 73 of the *Sydney Harbour Federation Trust Act 2001* (the Act) provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Regulations amend certain existing offences and create further offences under the *Sydney Harbour Federation Trust Regulations 2001* (the Principal Regulations). The Regulations also establish an infringement notice scheme, as an alternative to prosecution, for offences against the Regulations. The Regulations are designed to give effect to the objects of the Trust, to improve the effectiveness of the offence provisions contained in the Principal Regulations, and to allow for those offence provisions to be readily enforced.

#### **The Regulations impose strict liability in relation to a number of offences**

The Regulations impose strict liability in relation to a number of offences under Division 2.1 of the *Sydney Harbour Federation Trust Regulations 2001*. The effectiveness of each of the relevant offence provisions are enhanced by the imposition of strict liability, and, as a result, each provision is more effective as a deterrent and as a protection for important public interests. The need to establish the required mental state for the purposes of a prosecution for these offences, as they presently operate, limits their effectiveness: the relatively low penalties and potentially high volumes of offences make prosecution a relatively inefficient and ineffective method of enforcing these provisions. The imposition of strict liability, combined with the infringement notice scheme, increases the effectiveness of the offence provisions, and the efficiency with which they may be enforced, without compromising the interests of persons who are alleged to have breached the provisions. In particular, imposing strict liability does not compromise the ability of innocent people to defend themselves against a prosecution under the Principal Regulations.

#### **The amending regulations created an infringement notice scheme**

The Regulations also provide for an infringement notice scheme for offences against Divisions 2.1 and 3.2 of the Principal Regulations. This scheme is designed to give practical effect to the offence provisions in those Divisions. Increasing numbers of people are visiting Trust land, and it is necessary that the Principal Regulations provide for the effective management of these increasing numbers of visitors and their impact on Trust land. The scheme only applies in relation to strict liability offences that attract low penalties, and which have clear cut physical elements. The

scheme, and related provisions, has been designed to be consistent with the requirements of *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*.

Details of the Regulations are as follows.

### ***Regulation 1 Name of Regulations***

This regulation provides that the name of the regulations is the *Sydney Harbour Federation Trust Amendment Regulations 2009 (No. 1)*.

### ***Regulation 2 Commencement***

This regulation provides that the regulations commence on 1 August 2009.

### ***Regulation 3 Amendment of Sydney Harbour Federation Trust Regulations 2001***

This regulation provides that the *Sydney Harbour Federation Trust Regulations 2001* (the Regulations) be amended in the terms set out in Schedule 1 to the Regulations.

## **Schedule 1 Amendments**

### ***Item 1 Regulation 3, after definition of Act***

This item inserts a definition of the term ‘cultural feature’ into regulation 3. The definition covers features on Trust land that have cultural heritage significance, and includes features such as indigenous rock art, indigenous middens, and inscriptions or carvings made by convicts, or military personnel, before the land was transferred to the Trust.

### ***Item 2 Regulation 3, after definition of identity card***

This item inserts a definition of ‘ranger’ into regulation 3. A ‘ranger’ is a person appointed under regulation 27. Rangers have the power to issue infringement notices (see proposed Division 3.4). Where rangers are employees of the Trust, their conduct is subject to the operation of Commonwealth administrative law as officers of a Commonwealth body. In cases where rangers are appointed who are not employees of the Trust, and these people are instructed by the Trust to issue infringement notices, the Trust will endeavour, by contract, to impose conditions on the conduct of these people that, as far as possible, replicate the public accountability requirements imposed on officers employed by the Trust.

### ***Item 3 Subregulation 6(2), except the notes***

This item substitutes a new subregulation (2) to provide that an offence against subregulation (1) is an offence of strict liability.

***Item 4 Subregulation 7(3), except the notes***

This item substitutes a new subregulation (3) to provide that an offence against subregulation (1) is an offence of strict liability.

***Item 5 Subregulation 8(3), except the notes***

This item substitutes a new subregulation (3) to provide that an offence against subregulation (1) is an offence of strict liability.

***Item 6 Subregulation 9(3), except the notes***

This item substitutes a new subregulation (3) to provide that an offence against subregulation (1) is an offence of strict liability.

***Item 7 Paragraph 10(1)(b)***

This item inserts the word ‘cultural feature,’ after the word ‘buoy,’ in order to make it an offence to do an act which defaces or destroys, or cause damage or interference with ‘cultural features’ on Trust land.

***Item 8 Subregulation 10(2)***

This item omits subregulation 10(2), which currently provides that strict liability applies to the physical element of an offence against subregulation 10(1) that is constituted by the circumstance that the relevant conduct occurred on Trust land. Subregulation 10(2) has been omitted because subregulation 10(4) makes an offence against subregulation 10(1) into an offence to which strict liability applies generally.

***Item 9 Subregulation 10(3)***

This item inserts the word ‘cultural feature’, after the word ‘buoy,’ in order to make it an offence to remove a ‘cultural feature’ from Trust land.

***Item 10 Subregulation 10(4)***

This item substitutes a new subregulation (4) to provide that an offence against subregulation (1) is an offence of strict liability.

***Item 11 Subregulation 11(2), except the notes***

This item substitutes a new subregulation (2) to provide that an offence against subregulation (1) is an offence of strict liability.

***Item 12 Subregulation 12(6)***

This item omits ‘(1) or (2)’ and inserts ‘(1), (2) or (3)’ so that subregulation (3) is also an offence of strict liability.

***Item 13 Subregulation 12(7)***

This item omits subregulation 12(7), which provided that strict liability applies to the physical element of an offence against subregulation 12(3) that is constituted by the circumstance that the relevant conduct occurred on Trust land. Subregulation 12(7) was omitted because subregulation 12(6) makes an offence against subregulation 12(3) into an offence to which strict liability applies generally.

***Item 14 Subregulation 14(4), except the notes***

This item substitutes a new subregulation (4) to provide that an offence against subregulation (1) is an offence of strict liability.

***Item 15 After regulation 14***

This item inserts new regulation 14A. The purpose of regulation 14A is to provide clear and comprehensive protection for animals on Trust land. Regulation 14A imposes strict liability which, combined with the proposed infringement notice scheme, is designed to provide an efficient and effective sanction for breach of the regulation, so that the regulation operates effectively to protect animals and has a clear deterrent effect.

Subregulation (1) prohibits a person from undertaking the following activities on Trust land:

- a) carrying or setting a trap;
- b) depositing any poisonous bait;
- c) hunting, interfering with, hurting, or capturing an animal on Trust land;
- d) having an animal in his or her possession;
- e) taking or interfering with an animal's nest, egg, habitation or resting place (including beehives);
- f) feeding an animal.

A penalty of 10 penalty units applies.

Subregulation (2) prohibits a person from dropping onto Trust land poisonous bait from an aircraft. A penalty of 10 penalty units applies.

Subregulation (3) provides that 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.

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

Subregulation (5) provides that an offence against subregulation (1) or (2) is an offence of strict liability.

Note 1 refers to the section 6.1 of the *Criminal Code* which deals with strict liability offences.

Note 2 refers the reader to regulation 23 which describes the general circumstances when an activity will not constitute an offence.

***Item 16 Subregulation 15(4), except the notes***

This item substitutes a new subregulation (4) to provide that an offence against subregulation (1) is an offence of strict liability.

***Item 17 Subregulation 16(2), except the notes***

This item substitutes a new subregulation (2) to provide that an offence against subregulation (1) is an offence of strict liability.

***Item 18 Subregulation 17(2), except the notes***

This item substitutes a new subregulation (2) to provide that an offence against subregulation (1) is an offence of strict liability.

***Item 19 Subregulation 18(2), except the notes***

This item substitutes a new subregulation (2) to provide that an offence against subregulation (1) is an offence of strict liability.

***Item 20 Subregulations 19(1) and (2)***

This item omits the phrase ‘a reasonable person would believe’ from subregulations (1) and (2) so that acts described in regulation 19(1) and (2) are no longer judged by that standard. As strict liability is applied to offences against these provisions, the standard for judging conduct under these provisions is no longer to be judged by reference to what ‘a reasonable person would believe.’ This is consistent with *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*.

***Item 21 After subregulation 19(4)***

This item inserts a new provision into the regulations making it an offence for a person to sell or supply liquor to a person who is under 18 years of age on Trust land. The offence is punishable by 10 penalty units.

***Item 22 Subregulation 19(5)***

This provision omits the phrase ‘(1) and (2)’ from regulation 19 and inserts ‘(1), (2), (3), (4) or (4A)’ in its place. The purpose of this amendment is to make an offence against subregulations (1), (2), (3), (4) or (4A) an offence of strict liability.

***Item 23 Subregulation 19(6), except the notes***

This provision omits subregulation 19(6) for the purpose of making the offence in regulation 19 offences of strict liability.

***Item 24 Subregulation 20(2), except the notes***

This item substitutes subregulation 20(2) to make an offence against subregulation (1) an offence of strict liability.

***Item 25 Paragraph 22(3)(e)***

This item makes a grammatical change to allow new paragraphs 22(3)(f), (g) and (h) to be inserted by item 26.

***Item 26 After paragraph 22(3)(e)***

This item inserts new paragraphs (f), (g) and (h) to enable the Trust to erect notices dealing with:

- the charging of an entry fee for;
  - a particular event on Trust land; or
  - entry onto Trust land on a particular day;
- the charging of a fee for parking on Trust land;
- providing for a part of Trust land to be an alcohol free zone.

***Item 27 After subregulation 22(5)***

This item inserts new subregulation 22(6) and (7). Subregulation 22(6) requires a person to comply with the terms of a notice made under regulation 22. The offence is punishable by 10 penalty units. Subregulation 22(7) make an offence against subregulation 22(6) an offence of strict liability.

***Item 28 Subregulation 29(1)***

This item replaces the word ‘trust’ with ‘Trust’ in subregulation 29(1), to make this provision consistent with the definition of 'Trust' in section 3 of the Act and the way the Trust is referred to elsewhere in the Regulations.

***Item 29 Subregulation 31(2)***

For the sake of clarity of expression, this item omits the phrase ‘not fail to comply with a request made’ and inserts the phrase ‘comply with a request made to the person’ in its place.

### ***Item 30 Subregulation 34(2)***

For the sake of clarity of expression, this item omits the words ‘must not fail to comply with a direction’ and inserts ‘must comply with a direction given to the driver’ in its place.

### ***Item 31 After Division 3.3***

This item inserts a new Division 3.4 (regulations 40A to 40O) to provide for a new infringement notice scheme.

The purpose of the infringement notice scheme is to give practical effect to the offence provisions in Divisions 2.1 and 3.2 of the Regulations. The relevant offences are relatively minor, attract small penalties, and have clear cut physical elements. Increasing numbers of visitors to Trust land may result in a high volume of contraventions of the Regulations, and an infringement notice scheme will be a practical and effective way of dealing with such high volumes of offences. For example, if a large scale public event, such as an outdoor concert, were staged on Trust land there may be a high number of minor offences committed, and it may not be practical to prosecute all of the alleged offenders. By contrast, it is likely to be more practical to issue those alleged offenders with infringement notices. Furthermore, if rangers have power to issue a number of on-the-spot infringement notices, this will have a clear and direct deterrent effect on would-be offenders. The scheme has been designed to be consistent with the requirements of *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*.

### ***Regulation 40A Purpose and effect of Division***

This regulation sets out the purpose and effect of new Division 3.4.

Subregulation (1) provides that the purposes of this Division is to establish an infringement notice scheme, as a alternative to prosecution, for infringement notice offences.

Subregulation (2) provides that this Division does not:

- require an infringement notice to be issued for an offence;
- affect the liability of a person to be prosecuted if an infringement notice is not issued;
- prevent the issue of 2 or more infringement notices to a person for an offence;
- affect the liability of a person to be prosecuted if the person does not comply with an infringement notice;
- limit or otherwise affect the penalty that may be imposed by a court.



#### *Regulation 40B*

This regulation defines certain terms and describes where to find the meaning of certain terms.

In particular, the regulation defines 'Trust Officer' to mean an employee of the Sydney Harbour Federation Trust who is employed at Trust classification level 6 or higher, and is not a ranger. The Trust employs officers at various classification levels that generally correspond with equivalent classification levels for Australian Public Service Employees, as set out in the *Public Service Classification Rules 2000*. For example, a Trust classification level 6 is generally equivalent to an APS Level 6 classification under the *Public Service Classification Rules 2000*.

Under Division 3.4, Trust Officers have power to decide whether to extend the period for payment of an infringement notice that has been issued by a ranger, or to withdraw an infringement notice that has been issued by a ranger. Importantly, a Trust Officer cannot be a ranger, so extension and withdrawal decisions in relation to an infringement notice cannot be made by the ranger who issued the notice. The Trust will also take administrative steps to ensure, for far as possible, that Trust Officers who make extension and withdrawal decisions have not been involved in the decision to issue the infringement notice in question.

#### *Regulation 40C Infringement notice offences*

This regulations provides that an offence under Division 2.1 or Division 3.2 is an infringement notice offence. However, an offence against subregulation 29(4) is not an infringement notice offence. The note indicates that subregulation 29(4) relates to the return of a ranger's identity card.

#### *Regulation 40D Infringement penalty*

This regulation provides that 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.

#### *Regulation 40E When infringement notices can be served*

This regulation gives a ranger the power to serve an infringement notice within 12 months from the alleged commission of the offence if the ranger has reasonable grounds to believe that a person has committed an offence.

#### *Regulation 40F Contents of infringement notice*

This regulation sets out that an infringement notice must contain the following information:

- be identified by a unique identification;
- state that the notice is issued under the Regulations on behalf of the Trust;

- state the name of the ranger who issued the notice;
- be signed by the ranger who issued the notice;
- state the name and address of the person to whom it is issued, unless it is served in accordance with paragraph 40G(3)(b);
- set out brief details of the offence the person is alleged to have committed, including:
  - the provision that was allegedly contravened;
  - the maximum penalty that may be imposed by a court for the offence;
  - the time (if known) and the day on which the offence was allegedly committed; and
  - the place on Trust land where the offence was allegedly committed.
- if a vehicle or vessel was involved, state its registration number;
- state the amount of the infringement penalty that is payable under the notice;
- state how and where the infringement penalty can be paid, and if the penalty can be paid by posting the payment, the place to which it should be posted;
- state that if the person pays the infringement penalty in time:
  - any liability of the person for the offence is discharged;
  - a prosecution of the offence may not be brought against the person;
  - the person is not regarded as having admitted guilt or liability for the offence;
  - the person is not regarded as having been convicted of the offence;
- state that the person may apply to a Trust officer for an extension of time in which to pay the penalty;
- set out how the notice is withdrawn;
- state that if the notice is withdrawn:
  - any amount of penalty paid under the notice must be refunded to the person;
  - the person may be prosecuted in a court for the offence;
- state that the person may apply in writing to a Trust officer requesting the withdrawal of the notice.

The notice may also include any other information that the Trust considers necessary.

#### *Regulation 40G Method of serving infringement notices*

This regulations sets out the various methods for serving infringement notices.

Subregulation (1) provides that an infringement notice may be served on an individual:

- personally or by post; or
- by leaving the notice:
  - at the last-known place of residence or business of the person; and
  - with a person, apparently over the age of 16 years, who appears to live or work at the place.

Subregulation (2) provides that an infringement notice may be served on a corporation:

- 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
- by giving it, at an office mentioned above, to someone who is, or who the person serving the notice reasonably believes is, an officer or employee of the corporation.

Subregulation (3) provides that an infringement notice for an offence involving a motor vehicle or vessel may be served:

- personally on a person who appears to be in charge of the vehicle or vessel; or
- by securely placing the notice on the vehicle or vessel in a conspicuous place; or
- by posting it to the address of the person who is registered as the owner or operator of the vehicle or vessel.

#### *Regulation 40H*

This regulation provides that the infringement notice penalty must be paid:

- within 28 days after the day on which the notice is served on the person;
- 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;
- 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
- 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.

#### *Regulation 40I Extension of time to pay penalty*

This regulation allows an application to be made for an extension of time to pay on an infringement notice.

Subregulation (1) gives a person the option to apply in writing for an extension of time of up to 28 days.

Subregulation (2) provides that if the application is made after the 28 day period for the payment of the penalty, the applicant must include a statement explaining why the person could not deal with the notice within that period.

Subregulation (3) provides that the Trust officer must make a decision to grant or refuse an extension of time and notify the recipient in writing of the decision within 14 days after receiving the application. If there is a decision to refuse an extension of time, the reason for this refusal must be given also.

Subregulation (4) provides that notice of the decision may be served on the person in any way in which the infringement notice could have been served on the recipient.

#### *Regulation 40J Withdrawal of infringement notice*

Subregulation (1) allows a person to make a written application to have an infringement notice withdrawn.

Subregulation (2) provides that the Trust officer must make a decision to grant or refuse to withdraw the notice and notify the recipient in writing of the decision within 14 days after receiving the application. If there is a decision to refuse to withdraw the notice the reason for this refusal must be given also.

Subregulation (3) requires the Trust officer to give consideration to the following matters before withdrawing or refusing to withdraw a notice:

- whether the person has been convicted previously of an offence against these Regulations;
- the circumstances of the offence stated in the notice;
- 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
- any other relevant matter.

Subregulation (4) allows a Trust officer to 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.

#### *Regulation 40K Notice of withdrawal of infringement notices*

This regulation sets out how a notice of the withdrawal of an infringement notice may be made.

Subregulation (1) provides that a 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.

Subregulation (2) sets out the following requirements for the content of the notice withdrawing an infringement notice:

- the notice must include:
  - the name and address of the person;
  - the number of the infringement notice;
  - the date of issue of the infringement notice;
- must state that the notice is withdrawn;
- must state that the person may be prosecuted in a court for the offence, if it is proposed that a prosecution be brought against the person for the offence.

*Regulation 40L Refund of infringement notice penalty*

This provision provides that 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.

*Regulation 40M Effect of payment of infringement penalty*

This regulation provides that once a person pays an infringement notice penalty within the period specified in the notice (or such further period of time allowed under regulation 40I):

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

*Regulation 40N Payment of infringement notice penalty - cheques*

This regulation provides that if a penalty is paid by cheque, payment is not taken to have been made until the cheque has been honoured on presentation.

*Regulation 40O Evidentiary certificates*

This regulation provides for certain matters to be proved by way of a certificate signed by a Trust officer.

Subregulation (1) allows a Trust officer to sign a certificate that states any of the following in relation to an infringement notice served on a person:

- that the infringement penalty specified in the infringement notice was not paid by the person within the time specified in the notice;
- that the Trust officer granted, or refused to grant, an extension of time to the person to pay the infringement penalty;
- that the infringement penalty was not paid by the person within the period specified in the extension;
- that the infringement notice was withdrawn under regulation 40J on a day specified in the certificate.

Subregulation (2) provides that 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.

Subregulation (3) provides that 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.