



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

Select Legislative Instrument 2009 No. 191

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Sydney Harbour Federation Trust Act 2001*.

Dated 30 July 2009

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

PENELOPE YING YEN WONG
Minister for Climate Change and Water

1 Name of Regulations

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

2 Commencement

These Regulations commence on 1 August 2009.

3 Amendment of *Sydney Harbour Federation Trust Regulations 2001*

Schedule 1 amends the *Sydney Harbour Federation Trust Regulations 2001*.

Schedule 1 Amendments

(regulation 3)

[1] Regulation 3, after definition of *Act*

insert

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.

[2] Regulation 3, after definition of *identity card*

insert

ranger means a person appointed under regulation 27.

[3] Subregulation 6 (2), except the notes

substitute

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

[4] Subregulation 7 (3), except the notes

substitute

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

[5] Subregulation 8 (3), except the notes

substitute

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

[6] Subregulation 9 (3), except the notes

substitute

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

[7] Paragraph 10 (1) (b)

after

buoy,

insert

cultural feature,

[8] Subregulation 10 (2)

omit

[9] Subregulation 10 (3)

after

buoy,

insert

cultural feature,

[10] Subregulation 10 (4), except the notes

substitute

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

[11] Subregulation 11 (2), except the notes

substitute

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

[12] Subregulation 12 (6)

omit

(1) or (2)

insert

(1), (2) or (3)

[13] Subregulation 12 (7), except the notes

omit

[14] Subregulation 14 (4), except the notes

substitute

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

[15] After regulation 14

insert

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.

[16] Subregulation 15 (4), except the notes

substitute

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

[17] Subregulation 16 (2), except the notes

substitute

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

[18] Subregulation 17 (2), except the notes

substitute

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

[19] Subregulation 18 (2), except the notes

substitute

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

[20] Subregulations 19 (1) and (2)

omit

a reasonable person would believe

[21] After subregulation 19 (4)

insert

- (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.

[22] Subregulation 19 (5)

omit

(1) or (2)

insert

(1), (2), (3), (4) or (4A)

[23] Subregulation 19 (6), except the notes

omit

[24] Subregulation 20 (2), except the notes

substitute

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

[25] Paragraph 22 (3) (e)

omit

of the place.

insert

of the place;

[26] After paragraph 22 (3) (e)

insert

- (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.

[27] After subregulation 22 (5)

insert

- (6) A person on Trust land must comply with the terms of a notice.

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.

[28] Subregulation 29 (1)

omit

trust

insert

Trust

[29] Subregulation 31 (2)

omit

not fail to comply with a request made

insert

comply with a request made to the person

[30] Subregulation 34 (2)

omit

must not fail to comply with a direction

insert

must comply with a direction given to the driver

[31] After Division 3.3

insert

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.
- (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

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- (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
 - (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.
- (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

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- (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.
- (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.

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.

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- (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.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.