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Sydney Harbour Federation Trust Regulations 2001

Statutory Rules 2001 No. 1

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I, PETER JOHN HOLLINGWORTH, 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 ' 8 OCT 2001 2001

PETER HOLLINGWORTH

Governor-General

By His Excellency's Command

ROBERT HILL

Minister for the Environment and Heritage

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Regulation 1

Part 1 Preliminary

1 Name of Regulations

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*.

engage in conduct means:

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

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

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.

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.

Regulation 5**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.

Regulation 6

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) Strict liability applies to the physical element of an offence against subregulation (1) that is constituted by the circumstance that the conduct occurred on Trust land.

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;

Regulation 8

- (f) collect or attempt to collect money;
- (g) busk.

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) Strict liability applies to the physical element of an offence against subregulation (1) that is constituted by the circumstance that the conduct occurred on Trust land.

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) Strict liability applies to the physical element of an offence against subregulation (1) that is constituted by the circumstance that the conduct occurred on Trust land.

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

Regulation 9

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

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) Strict liability applies to the physical element of an offence against subregulation (1) that is constituted by the circumstance that the conduct occurred on Trust land.

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, natural feature, tree, plant or other vegetation on Trust land.

Penalty: 10 penalty units.

- (2) Strict liability applies to the physical element of an offence against subregulation (1) that is constituted by the circumstance that the thing defaced, destroyed, damaged or interfered with, was on Trust land.

Regulation 12

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

Penalty: 10 penalty units.

- (4) Strict liability applies to the physical element of an offence against subregulation (3) that is constituted by the circumstance that the thing removed was on Trust land.

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) Strict liability applies to the physical element of an offence against subregulation (1) that is constituted by the circumstance that the conduct occurred on Trust land.

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.

Regulation 13

- (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.

- (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) or (2) is an offence of strict liability.

- (7) Strict liability applies to the physical element of an offence against subregulation (3) that is constituted by the circumstance that the conduct occurred on Trust land.

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.

Regulation 14

- (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.

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.

Regulation 15

- (4) Strict liability applies to the physical element of an offence against subregulation (1) or (3) that is constituted by the circumstance that the conduct occurred on, or in relation to, Trust land.

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.

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.

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) Strict liability applies to the physical element of an offence against subregulation (1) or (3) that is constituted by the circumstance that the conduct occurred on, or in relation to, Trust land.

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.

Regulation 18

- (2) Strict liability applies to the physical element of an offence against subregulation (1) that is constituted by the circumstance that the conduct occurred on Trust land.

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) Strict liability applies to the physical element of an offence against subregulation (1) that is constituted by the circumstance that the conduct occurred on Trust land.

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):
- 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.

Regulation 19

- (2) Strict liability applies to the physical element of an offence against subregulation (1) that is constituted by the circumstance that the conduct occurred on Trust land.

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 a reasonable person would believe 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 reasonable person would believe:
- (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:
- (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.

Regulation 20

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

Penalty: 5 penalty units.

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

- (6) Strict liability applies to the physical element of an offence against subregulation (3) or (4) that is constituted by the circumstance that the conduct occurred on Trust land.

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) Strict liability applies to the physical element of an offence against subregulation (1) that is constituted by the circumstance that the conduct occurred on Trust land.

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) 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.

Regulation 21

21 Failing to comply with safety directions

- (1) If a ranger or warden believes that the safety of a person on Trust land is, or is likely to be, endangered, the ranger or warden 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
 - (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.

- (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.

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 warden; 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

Regulation 24

- (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 warden; or
 - (ii) a police officer or an emergency services officer in the performance of his or her duties.

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.

Regulation 26

- (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*.

Regulation 27

Part 3 Enforcement

Division 3.1 Rangers and wardens

27 Appointment of rangers and wardens

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

- (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 and wardens

- (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 or wardens 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 or wardens under these Regulations.

29 Identity cards

- (1) The Trust must issue to each ranger and to each warden (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 or warden for the purposes of these Regulations.
- (3) If a person ceases to be a ranger or warden, 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 and wardens

30 Request to state name and address

- (1) A ranger or warden 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 or warden, 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 or warden 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 not fail to comply with a request made under subregulation (1).

Penalty: 5 penalty units.

- (3) Despite subregulation (2), a person does not commit an offence under that subregulation unless the ranger or warden, 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 or warden.
- (6) Reasonable force may be used to effect the person's removal.

32 Removal of certain animals from Trust land

A ranger or warden 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 or warden may order the removal from Trust land of anything that the ranger or warden 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 or warden 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 or warden removes an obstruction or encroachment, neither the ranger or warden, 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 or warden 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 not fail to comply with a direction under subregulation (1).

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

Regulation 35

(b) warned the person that the failure to comply with the direction is an offence.

(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 or warden (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 or warden believes, on reasonable grounds, has been abandoned.

(2) The ranger or warden 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.

Regulation 36

- (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.
- (7) If a ranger or warden removes property under this regulation, neither the ranger or warden, 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 40

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.

Regulation 41

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).

Note

1. Notified in the *Commonwealth of Australia Gazette* on *L* 2001.

9 October