

EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 48

Subject - *Sydney Harbour Federation Trust Act 2001*

Sydney Harbour Federation Trust Amendment Regulations 2010 (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 amended Regulations will regulate parking or the use of vehicles on Trust land under the *Sydney Harbour Federation Trust Regulations 2001*.

The amended Regulations will give effect to the objects of the Trust, in establishing a parking control system to better manage increasing numbers of people visiting Trust land. Improving the management of parking will foster increase access and visitation to Trust land, and will allow for parking offence provisions to be readily enforced in relation to the use of vehicles and vessels on Trust land.

Details of the amended Regulations are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

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

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

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

Attachment

Details of the *Sydney Harbour Federation Trust Amendment Regulations 2010 (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 will regulate parking or the use of vehicles on Trust land under the *Sydney Harbour Federation Trust Regulations 2001* (the Principal Regulations). The Regulations are designed to give effect to the objects of the Trust, in establishing a parking control system to better manage increasing numbers of people visiting Trust land. Improving the management of parking will foster increases access and visitation to Trust land, and will allow for parking offence provisions to be readily enforced in relation to the use of vehicles and vessels on Trust land.

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

The Regulations will impose strict liability in relation to a number of offences under Division 2.3 of the Principal Regulations. The effectiveness of each of the relevant offence provisions will be enhanced by the imposition of strict liability, and, as a result, each provision will be more effective as a deterrent and as a protection for important public interests.

The amending regulations create an offences relating to parking of vehicles

The Regulations will also provide for an infringement notice scheme for offences against Divisions 2.3 of the Principal Regulations. This scheme is designed to give practical effect to the offence provisions in the Division. 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 will only apply 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 2010 (No. 1)*.

Regulation 2 Commencement

This regulation provides that the Regulations will commence on the day after registration.

Regulation 3 Amendment of Sydney Harbour Federation Trust Regulations 2001

This regulation provides that the *Sydney Harbour Federation Trust Regulations 2001* (the Regulations) will 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 ‘assistance animal’ into regulation 3 and item 8 removes it from subregulation 14(5) in order that the definition applies generally to the Regulations. The definition covers animals trained to help a person who has a disability to lessen the effects of the disability.

Item 2 Regulation 3, after definition of identity card

This item inserts a definition of ‘infringement notice’ into regulation 3 and item 24 removes it from subregulation 40B in order that the definition applies generally to the Regulations. An ‘infringement notice’ is a notice served under subregulation 40G(1). This item also inserts a definition of ‘parking control sign’ into regulation 3, a ‘parking control sign’ is a notice erected by the Trust for the purpose of regulating parking, or the use of vehicles, on Trust land as set out in regulation 22A.

Item 3 Regulation 3, after definition of ranger

This item inserts definitions of :

‘ranger identification number’ into regulation 3. A ‘ranger identification number’ will be allocated to a person appointed as a ranger under subregulation 27(2) and will be used to identify the ranger in lieu of the Ranger’s name on an infringement notice;

‘road’ into regulation 3 to clarify where on Trust land parking is and is not controlled. A ‘road’ means a road that is open to the public but excludes a path for the use of cyclists or pedestrians;

‘trailer’ into regulation 3 to clarify that a trailer, something attached to the vehicle, includes a caravan. A ‘trailer’ will be included as part of a vehicle to be inserted by item 5.

‘Trust officer’ into regulation 3 and item 24 removes it from subregulation 40B in order that the definition applies generally to the Regulations. ‘Trust officer’ means an employee of the Trust who is employed at Trust classification level 6 or higher and is not a ranger.

Item 4 Regulation 3, definition of vehicle, paragraph (c)

This item corrects punctuation to allow for a new paragraph (d) to be inserted by item 5.

Item 5 Regulation 3, definition of vehicle, after paragraph (c)

This item provides that a trailer attached to the vehicle is included in the definition of vehicle.

Item 6 Regulation 5, Application of road transport legislation

This item substitutes new subregulations 5(1) and (2) to provide that the road transport legislation (within the meaning of the *Road Transport (General) Act 2005* of New South Wales) applies in relation to roads and road-related areas on Trust land for other than subregulation 5(2) which notes that a parking control sign erected by the Trust has effect in the area to which it applies according to its terms.

Item 7 Subregulation 14(2), except the notes

This item substitutes a new subregulation 14(2) to provide that subregulation 14(1) does not apply to an assistance animal that is used by a person with a disability and is at all times restrained on a lead or by other reasonable means.

Item 8 Subregulation 14(5)

This item omits subregulation 14(5) which contains a definition of ‘assistance animal’ as this term is inserted into regulation 3 by item 1.

Item 9 After subregulation 14A(2), including the penalty

This item inserts a new subregulation 14A(2A) to provide that paragraphs 14A(1)(d) and (f), do not apply to a person with an assistance animal. Paragraphs 14A(1)(d) and (f) provide that a person may not have an animal in his or her possession or feed an animal on Trust land respectively; Regulation 14A is to protect native animals on Trust land.

Item 10 Subregulation 16(1), including the penalty

This item inserts new subregulations 16(1) and (1A). New subregulation 16(1) provides that a person must not drive, ride or tow a vehicle on Trust land that is not a road. The offence is punishable by 10 penalty units.

New subregulation 16(1A) provides that a person must not park a vehicle on Trust land that is not a parking area. The offence is punishable by five penalty units.

Item 11 Subregulation 16(2)

This item inserts a reference to new subregulation 16(1A) so that subregulation 16(1A) is also an offence of strict liability.

Item 12 After subregulation 22(6), including the penalty

This item inserts a new subregulation 22(6A) noting that subregulation 22(6) which states a person on Trust land must comply with the terms of a notice, does not apply to a parking control sign. Non-compliance with a parking control sign is set out in Division 2.3.

Item 13 After regulation 22

This item inserts new Regulations 22A and 22B(1) to (6) to provide the definition of 'parking control sign' as a sign erected by the Trust under Regulation 22 for the purpose of regulating parking or the use of vehicles on Trust land and provides examples of parking control signs and the meaning of information on parking control signs.

Item 14 After Regulation 24

This item inserts new regulations 24A(1) to (8) and 24B(1) to (3) to provide for known and unknown user declarations where the owner of the vehicle or vessel, at the time when an offence relating to the vehicle or vessel under the Regulations is committed, and is not taken to have committed the relevant offence. Regulation 24A provides guidance for an owner to make a Known or Unknown user declaration regarding the use of the vehicle at the time of the alleged offence.

Subregulation 24A(8) inserts a definition of 'owner' for a vehicle or vessel that apparently is registered, to be the registered owner or the person who is legally entitled to possession of the vehicle or vessel.

Regulation 24B provides guidance for service of the statutory declaration set out in regulation 24A to be served on the person who was in charge of the vehicle or vessel at the time of an alleged offence involving the vehicle or vessel.

Item 15 After Division 2.2

This item inserts a new Division 2.3 (Regulations 26A to 26I) to provide for offences relating to parking of vehicles.

The purpose of the offences relating to parking of vehicles is to give effect to a parking control system to better manage increasing numbers of people visiting Trust land. Given a number of the existing offences under the Regulations are strict liability offences and due to the nature of the parking offences, it is consistent and appropriate that strict liability should apply to parking offences.

Regulation 26A Definitions

This regulation defines certain terms and describes where to find the meaning of certain terms used in this Division 2.3.

Regulation 26B Meaning of driver and rider

This regulation defines *driver* and *rider*, to mean persons driving a vehicle or riding a motor cycle, bicycle or animal-drawn vehicle but does not include a passenger; and *Drive* and *ride* to mean be in control of, and unless otherwise stated a reference in this Division to a *driver* includes a reference to a *rider* and vice versa.

Regulation 26C Parking for longer than indicated

This regulation inserts new subregulations 26C(1) to (5). Subregulation 26C(1) requires that a driver must not park continuously on a length of road, or in an area, to which a parking control sign applies for longer than the period indicated by information on the sign. The offence is punishable by five penalty units.

Subregulation 26C(2) provides that subregulation 26C(1) does not apply to people with disabilities as covered by regulation 26E.

Subregulation 26C(3) provides that a driver may park continuously if the parking control sign does not indicate a period and does not indicate that it applies at particular times, or at particular times on particular days unless another parking control sign applies to the length of road or area or if the driver is prohibited from parking on the length of road or in the area.

Subregulation 26C(4) provides that parking continuously means from the time when the driver parks on the length of road or in the area, until the driver, or another driver, moves the vehicle off the length of road, or out of the area to which the parking control sign applies.

Subregulation 26C(5) provides that an offence against subregulation 26C(1) is an offence of strict liability.

Regulation 26D Parking outside times indicated

This regulation inserts new Regulations 26D. Regulation 26D provides that a driver may park on a length of road, or in an area, when the sign does not apply unless another parking control sign applies to the length of road or area or if the driver is prohibited from parking on the length of road or in the area.

Regulation 26E Provision for people with disabilities

This regulation inserts new subregulations 26E(1) and (2). Subregulation 26E(1) provides that a driver's vehicle that displays a current parking permit or a mobility parking scheme authority for people with disabilities where the driver complies with the conditions of use of the permit/authority is eligible to park on a length of road, or in an area to which a parking control sign applies.

Subregulation 26E(2) allows for the driver to park continuously or for an unlimited period of time on a length of road, or in an area to which a parking control sign applies.

Regulation 26F Parking in ticket parking areas

This regulation inserts new subregulations 26F(1) to 26F(9). Subregulation 26F(1) provides that a driver must not park in a ticketed parking area unless a current parking ticket is displayed on the dashboard of the vehicle clearly visible to persons outside the driver's vehicle. The offence is punishable by five penalty units.

Subregulation 26F(2) defines 'ticket parking area' as a parking area designated by one or more parking control signs where information on the sign or signs includes the word 'TICKET'.

Subregulation 26F(3) provides that a driver has time to obtain and display a current parking ticket after parking the driver's vehicle without contravening subregulation 26F(1).

Subregulation 26F(4) provides that a driver must not allow the driver's vehicle to remain parked in a ticket parking area after the expiry of the parking ticket displayed in or on the vehicle. The offence is punishable by five penalty units.

Subregulation 26F(5) provides that a driver must not allow the driver's vehicle to remain parked in a ticket parking area for more than the period of time indicated on the parking control sign or signs that designate the area as the maximum time for which a vehicle may be parked in the area. The offence is punishable by five penalty units.

Subregulation 26F(6) provides that a driver may park for a period not exceeding the period for which no fee is payable, or parks outside the controlled parking hours, or if regulation 26E applies to the driver, without contravening subregulation 26F(1).

Subregulation 26F(7) provides that a driver may park in different parts of the same ticket parking area while displaying the same parking ticket (if the ticket has not expired).

Subregulation 26F(8) provides that this regulation does not apply to the rider of a motor cycle.

Subregulation 26F(9) provides that an offence against subregulation 26F(1), (4) or (5) is an offence of strict liability.

Regulation 26G Stopping or parking in restricted access areas

This regulation inserts new subregulations 26G(1) to (3). Subregulation 26G(1) provides that a driver must not stop or park in a restricted access area unless the driver satisfies the conditions mentioned in regulation 26H for stopping or parking

that apply to the restricted access area. The offence is punishable by five penalty units.

Subregulation 26G(2) defines ‘restricted access area’ as a parking area to which a parking control sign applies that permits a driver to stop or park in the area only if the particular conditions are satisfied.

Subregulation 26G(3) provides that an offence against subregulation 26G(1) is an offence of strict liability.

Regulation 26H Restricted access areas and conditions for stopping or parking in them

This regulation inserts a new subregulation 26H. Subregulation 26H sets out the kinds of restricted access areas, and the conditions for stopping or parking in them such as loading zone, drop off/pick up zone, reserved parking zone, authorised access zone, parking area for people with disabilities, parking area for long vehicles and motor cycle parking area.

Regulation 26I Parking with parking spaces

This regulation inserts new subregulations 26I(1) to (3). Subregulation 26I(1) specifies how a vehicle must be parked within the road markings which indicate the parking space and in accordance with information on a parking control sign that applies to the parking space. The offence is punishable by five penalty units.

Subregulation 26I(2) specifies that a driver of a vehicle that includes a trailer must not detach the trailer from the vehicle so as to leave the trailer in a parking space so that it lies over the road markings or not in accordance with the information on a parking control sign that applies to the space. The offence is punishable by five penalty units.

Subregulation 26I(3) provides that an offence against subregulation 26I(1) or (2) is an offence of strict liability.

Item 16 Regulation 27

This item renames current regulation 27 as subregulation 27(1) in order for new subregulation 27(2) to be inserted by item 17.

Item 17 Regulation 27

This item inserts subregulation 27(2) to provide that a ranger must be allocated an identification number on appointment.

Item 18 After paragraph 29(2)(b)

This item substitutes the persons ‘ranger identification number’ for the persons ‘full name’ on their identity card to avoid any potential misuse of the persons full name.

Item 19 Subregulation 33(4)

This item substitutes the word ‘direction’ with the word ‘order’ for clarity of expression as subregulation 33(1) makes provision for a ranger to give an order.

Item 20 Regulation 35, heading

This item substitutes a new heading, ‘Removal of certain vehicles and abandoned property from Trust land’ in place of ‘Removal of abandoned property’ for consistency in that the regulation includes provision to remove vehicles.

Item 21 Subregulation 35(1)

This item inserts new subregulations 35(1) and (1A). Subregulation 35(1) provides for the removal of a vehicle, if the driver fails to comply with a direction or cannot be found after reasonable enquiries by a ranger, or to any property on Trust land that a ranger believes, on reasonable grounds, to have been abandoned.

Subregulation 35(1A) provides for a ranger to move property to a place on Trust land or some other place.

Item 22 Subregulation 35(3)

This item inserts new subregulations 35(3) and (3A). Subregulation 35(3) provides for placement of an advertisement containing information describing abandoned property and its found location in a newspaper circulating generally in an appropriate place. Subregulation 35(3A) defines an ‘appropriate place’ for a motor vehicle as the state or territory in which it is registered, or in any other case, as New South Wales.

Item 23 Subregulation 35(8)

This item omits subregulation 35(8) which contains a definition of ‘property’ as this term is included in subregulation 35(1) by item 21.

Item 24 Regulation 40B, definitions of infringement notice and Trust officer

This item omits regulation 40B which contains a definition of ‘infringement notice’ and Trust officer” as these terms are inserted into regulation 3 by item 2 and item 3 respectively.

This item omits these definitions as these terms are now defined in regulation 3.

Item 25 Subregulation 40C(1)

This item omits the phrase ‘Division 2.1 or Division 3.2’ from subregulation 40C(1) and inserts ‘Division 2.1, 2.3 or 3.2’ in its place. The purpose of this amendment is to make an offence against Division 2.1, 2.3 or 3.2 infringement notice offences.

Item 26 Paragraph 40F(1)(c)

This item substitutes the ‘ranger identification number’ for the ‘name’ to effect the use of the identification number in place of the name of the ranger on infringement notices.

Item 27 Paragraph 40F(1)(e)

This item omits the phrase ‘40G(3)(b)’ from subregulation 40F(1)(e) and inserts ‘Division 40G(4)(b)’ in its place. The purpose of this amendment is to apply the correct paragraph reference.

Item 28 Paragraph 40G(4)

This item omits the phrase ‘may by’ from subregulation 40G(4) and insert ‘may be’ in its place. The purpose is to correct a typographical error.

Item 29 Paragraph 40G(4)(c)

This item changes the punctuation to allow for an additional paragraph 40G(4)(d) to be inserted by item 30.

Item 30 After paragraph 40G(4)(c)

This item inserts a new paragraph 40G(4)(d) to provide an infringement notice to be served personally, or by post, on a person named in a statutory declaration as being the person in charge of the vehicle at the time of the alleged offence.

Item 31 After subregulation 40G(4)

This item inserts a new subregulation 40G(5) to provide that a person may not remove, deface or interfere with an infringement notice placed on a vehicle or vessel unless the person is in charge of the vehicle or vessel or authorised by the person in charge of the vehicle or vessel. The offence is punishable by two penalty units.

Item 32 Paragraph 40H(b)

This item substitutes the paragraph 40H(b) to provide for payment of an infringement notice penalty within any extension period granted.

Item 33 After subregulation 40I(4)

This item inserts a new subregulation 40I(5) to provide for the Trust to grant an extension of time to pay a penalty specified in an infringement notice penalty based on the circumstances of the case.