

STATUTORY RULES 2010

S.R. No. /2010

*Port Services Act 1995*

**Port Services (Port of Melbourne Safety and Other  
Matters) Regulations 2010**

The Governor in Council makes the following Regulations:

Dated:

Responsible Minister:

TIM PALLAS

Minister for Roads and Ports

Clerk of the Executive Council

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**PART 1—PRELIMINARY**

**1 Objective**

The objective of these Regulations is to provide for the safe and effective management within the Port of Melbourne of.

- 
- (a) hazardous port activities; and

- (b) bunkering and the transfer of other liquid substances to and from vessels and wharves in the port; and
- (c) abandoned things.

## **2 Authorising provision**

These Regulations are made under section 98 of the **Port Services Act 1995**.

## **3 Commencement**

These Regulations come into operation on xxxx.

## **4 Definitions**

In these Regulations—

*authority* means an authority issued under regulation 11;

*bunkering* means the transfer of liquid fuel to or from a vessel or a wharf in the port;

*dangerous goods* has the same meaning as in the **Dangerous Goods Act 1985**;

*manifest* means an inventory of dangerous goods;

*master* has the same meaning as in the **Marine Act 1988**;

*liquid transfer* means the transfer of a liquid (other than fuel) which is not cargo to or from a vessel or wharf;

*“the Act”* means **Port Services Act 1995**.

## **5 Application of Regulations**

These Regulations only apply to the Port of Melbourne and the Port of Melbourne Corporation.

## **6 Notices under section 15 of the Marine Act to prevail**

If a provision of these Regulations as it applies to the port corporation is inconsistent with a provision of any notice published under section 15 of the **Marine Act 1988** as it

applies to the port corporation, the latter provision prevails to the extent of the inconsistency.

**7 Regulations under Marine Act 1988 to prevail**

If a provision of these Regulations as it applies to the port corporation is inconsistent with a provision of any regulations made under section 105 of the **Marine Act 1988** as it applies to the port corporation, the latter provision prevails to the extent of the inconsistency.

**8 Harbour master's directions prevail**

If a direction given by the port corporation, a port safety officer or a member of the police force under these Regulations is inconsistent with a direction given by a harbour master under Part 3A of the **Marine Act 1988**, the direction of the port corporation, port safety officer or member of the police force is, to the extent of the inconsistency, of no effect.

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**PART 2—MANAGEMENT OF HAZARDOUS PORT  
ACTIVITIES, BUNKERING AND OTHER LIQUID  
TRANSFERS**

**Division 1 - Authorisation**

- 9 Application for authorisation to carry out a hazardous port activity**
- (1) A person who proposes to carry out a hazardous port activity in the port must apply to the port corporation for an authority to carry out the hazardous port activity.
  - (2) An application for authorisation under subregulation (1) must include details of —
    - (a) the type of activities;
    - (b) the proposed location of the activities in the port (if known).
  - (3) A person must not conduct hazardous port activities unless an authority has been obtained.
- Penalty: 20 penalty units.
- 10 Application for authorisation to carry out bunkering or liquid transfers**
- (1) A person who proposes to carry out bunkering or a liquid transfer in the port must apply to the port corporation for an authority.
  - (2) An application for authorisation under subregulation (1) must include details of the proposed location of the activity in the port.
  - (3) A person must not conduct bunkering or a liquid transfer unless an authority has been obtained.
- Penalty: 20 penalty units.

## **11 Port corporation may authorise an activity at the port**

- (1) The port corporation may authorise a person to —
  - (a) carry out a hazardous port activity at the port; or
  - (b) carry out bunkering or a liquid transfer at the port.
- (2) An authority under subregulation (1)—
  - (a) must be in writing;
  - (b) is valid for the period specified in the authority;
  - (c) is valid only as specified in the authority in respect of—
    - (i) the person, or classes of person;
    - (ii) the vessel, or classes of vessel;
    - (iii) the location in the port.
- (3) The port corporation must issue an authority unless the port corporation is of the opinion that the carrying out of the hazardous port activity, bunkering or liquid transfer —
  - (a) would create a significant risk of injury to any person, damage to any property or harm to the environment; or
  - (b) would significantly interfere with the orderly operation of the port or of any other authorised activities; or
  - (c) would potentially cause interference with, or danger to, other users of the port.
- (4) An authority is valid for up to three years from the date it is issued.<sup>1</sup>

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<sup>1</sup> The authority does not exempt a person proposing to carry out hazardous activities or bunkering and other liquid transfers from notifying the port corporation each time they intend to undertake the activity as specified in regulation 20.

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## **12 Conditions concerning authority**

- (1) An authority issued by the port corporation is subject to any conditions specified in the authority by the port corporation relating to—
  - (a) the classes of people or vessels to which the authority applies;
  - (b) any other matter relevant to the conduct of the hazardous port activity, bunkering or liquid transfer for which the authority is issued.
- (2) For the purposes of subregulation (1), the conditions attaching to the authority may include requiring the holder of the authority to comply with standards, procedures, guidelines or protocols in respect of the hazardous port activity, bunkering or liquid transfer developed, published or nominated by the port corporation.
- (3) A person to whom an authority has been issued must comply with any conditions under subregulation (1) that are specified in the authority.

Penalty: 20 penalty units.

## **13 Suspension of authority**

- (1) The port corporation may suspend an authority by notifying the holder of the authority of the suspension, if the port corporation reasonably believes that the continuing use of an authority could—
  - (a) cause a significant risk of injury to any person;
  - (b) cause a significant risk of damage to any property;
  - (c) cause a significant risk of harm to the environment;



- (d) significantly interfere with the orderly and efficient management of the port or with any other authorised activities in the port.
- (2) A notice for the purposes of subregulation (1)—
- (a) must be in writing;
  - (b) must set out the reasons for the suspension;
  - (c) must state the period for which the authority is suspended;
  - (d) takes effect immediately on being provided to the holder of the authority or the holder's employee, agent or contractor undertaking the hazardous port activity, bunkering or liquid transfer.
- (3) A suspension of an authority ceases to have effect on the expiry of the period stated under subregulation (2)(c).

#### **14 Written notice of suspension of authority**

- (1) Before suspending an authority under regulation 13, the port corporation—
- (a) must give the holder of the authority a written notice—
    - (i) stating that the port corporation is of the opinion that a ground for the suspension may exist; and
    - (ii) stating the reasons for that opinion; and
    - (iii) inviting the holder of the authority to make a written submission in response to the notice within the time specified by the port corporation in the notice; and
  - (b) must consider any submission received under subregulation (a)(iii).
- (2) The port corporation must not specify a period of less than 7 days under subregulation (1)(a)(iii).
- (3) The port corporation may suspend an authority at the request of the holder of the authority.
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- (4) Subregulations (1) and (2) do not apply to a suspension under subregulation (3).

## **15 Port corporation may cancel or vary authority**

- (1) The port corporation may cancel or vary an authority if the port corporation reasonably believes that—
- (a) the conduct of a hazardous port activity, bunkering or liquid transfer under an authority could place the safety of people, property or the environment at risk; or
  - (b) the conduct of a hazardous port activity, bunkering or liquid transfer under an authority could interfere with the orderly and efficient management of the port or of other activities authorised in the port; or
  - (c) the holder of the authority has not complied with a condition of the authority; or
  - (d) the holder of the authority has contravened any provision of these Regulations.
- (2) The port corporation may cancel or vary an authority on the grounds set out in subregulation (1) during a period in which that authority is suspended under regulation 13.

## **16 Written notice of cancellation or variation of authority**

- (1) Before cancelling or varying an authority under regulation 15, the port corporation—
- (a) must give the holder of the authority a written notice—
    - (i) stating that the port corporation is of the opinion that a ground for the cancellation or variation may exist; and
    - (ii) stating the reasons for that opinion; and
    - (iii) inviting the holder of the authority to make a written submission in response
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to the notice within the time specified  
by the port corporation in the notice;  
and

- (b) must consider any submission received under subregulation (a)(iii).
- (2) The port corporation must not specify a period of less than 7 days under subregulation (1)(a)(iii).
- (3) The port corporation may cancel or vary an authority (including the conditions of an authority) at the request of the holder of the authority.
- (4) Subregulations (1) and (2) do not apply to a cancellation or variation under subregulation (3).

### **17 Person to produce authority for inspection on request**

A person to whom an authority has been issued must produce the authority for inspection if requested to do so by the port corporation, a port safety officer or a member of the police force.

Penalty: 10 penalty units.

## Division 2 – Notice

### 18 Notice of proposal to carry out a hazardous port activity

- (1) For the purposes of section 88M(2) of the Act, the notice must be given at least 24 hours before the person proposes to carry out the hazardous port activity.

Penalty: 20 penalty units

- (2) A notice under subregulation (1) must include details of the activity including —
  - (a) the type of activity;
  - (b) the proposed location in the port;
  - (c) the date and time of the activity.

### 19 Notice of proposal to carry out bunkering and liquid transfers

- (1) A person who proposes to carry out bunkering or a liquid transfer under an authority must give notice to the port corporation of his or her intention at least 24 hours before the person proposes to carry out bunkering or liquid transfer.

Penalty: 20 penalty units

- (2) A notice under subregulation (1) must include details of the activity including —
  - (a) the proposed location in the port;
  - (b) the date and time of the activity.

### 20 Transfers of cargo involving dangerous goods

- (1) A person who proposes to transfer dry or liquid cargo that are dangerous goods to and from vessels or wharves must prepare a manifest which —
  - (a) details the type and quantity of dangerous goods to be loaded, unloaded or transferred; and

(b) has been signed by the master, owner or agent of the ship or vessel.

Penalty: 20 penalty units.

(2) A person must not load, unload or transfer dangerous goods within the port or port waters unless the port corporation has been given a manifest prepared in accordance with subregulation (1) at least 24 hours before that activity is to occur.

Penalty: 20 penalty units

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### Division 3 - Incidents

**21 Notice to the port corporation of any incident involving a hazardous port activity or bunkering and liquid transfers**

The person managing a hazardous port activity, bunkering or liquid transfer must immediately notify the port corporation of any incident involving the activity including, but not limited to—

- (a) an explosion, fire or harmful reaction involving a hazardous port activity;
- (b) the escape, spillage or leakage of bulk cargo;
- (c) the escape, spillage or leakage of liquids.

Penalty: 20 penalty units

**23 Recovery of costs**

(1) The port corporation may recover reasonable costs incurred by it in taking any clean up action resulting from any incident arising out of a hazardous port activity, bunkering or liquid transfer.

(2) The port corporation may recover any reasonable costs incurred in taking action under subregulation (1) from—

- (a) the person managing the hazardous port activity, bunkering or liquid transfer whose action or inaction caused the incident to occur; or
  - (b) the owner, master or agent of the vessel on which the hazardous port activity, bunkering or liquid transfer has occurred or been permitted to occur; or
  - (c) the occupier of any premises or vessel upon which an incident has occurred or been permitted to occur.
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- (3) The costs that may be recovered by the port corporation under subregulation (1) include labour, administrative and overhead costs determined on any reasonable basis that the port corporation considers appropriate.
- (4) An amount payable under subregulation (1) may be recovered in any court of competent jurisdiction as a debt due to the port corporation.

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## **PART 3 - ABANDONED THINGS**

### **24 Port corporation to notify the owner**

- (1) If the port corporation is able to ascertain the identity of the rightful owner of an abandoned thing, the port corporation must serve written notice of the removal and storage of the thing on the owner as soon as reasonably practicable after the thing is moved or stored.
- (2) The notice issued under subregulation (1) must state –
  - (a) the owner's name;
  - (b) a description of the thing;
  - (c) the date and time the thing was moved and stored;
  - (d) the process by which the thing may be collected, including –
    - (i) the location of the thing;
    - (ii) details of how the owner of the thing can claim the thing;
    - (iii) the contact details of the port corporation (or the person) who can release the thing;
    - (iv) the type of evidence required to establish the entitlement of a person seeking to have the thing released that must be produced before the thing will be released;
  - (e) the date on which the port corporation intends to sell and or otherwise dispose of the thing;
  - (f) the ability of port corporation to recover, in the Magistrates' Court, costs incurred by the port corporation associated with moving or storing the thing.



## **25 Port corporation to keep a register**

- (1) The port corporation must keep a register of all abandoned things recovered by the port corporation.
- (2) The register must contain the following information –
  - (a) the thing recovered by the port corporation;
  - (b) the name of the port safety officer who recovered the thing and the reason why the thing was recovered;
  - (c) the date and time that the thing was recovered;
  - (d) the actions taken by the port corporation to ascertain the owner of the thing;
  - (e) details of what the port corporation did with the thing;
  - (f) the method of disposing of the thing and the date of disposal.