Authorised Version

Environment Protection (Ships' Ballast Water) Regulations 2017
S.R. No. 28/2017

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Authorised Version

STATUTORY RULES 2017

S.R. No. 28/2017

Environment Protection Act 1970

Environment Protection (Ships' Ballast Water) Regulations 2017

The Governor in Council, on the recommendation of the Authority, makes the following Regulations:

Dated: 16 May 2017

Responsible Minister:

LILY D'AMBROSIO
Minister for Energy, Environment and Climate Change

ANDREW ROBINSON
Clerk of the Executive Council

Part 1—Preliminary

1 Objective

The objective of these Regulations is to support the implementation of the Waste management policy (Ships' Ballast Water) by prescribing—

(a) the administrative requirements and services necessary to protect the beneficial uses of Victorian State waters; and

(b) the fees for ships visiting a port in Victoria to recover the costs associated with delivering these services.

Note

2 Authorising provision

These Regulations are made under section 71 of the Environment Protection Act 1970.

3 Commencement

These Regulations come into operation on 26 May 2017.

4 Revocation

The Environment Protection (Ships' Ballast Water) Regulations 2006¹ are revoked.

5 Definitions

In these Regulations—

annual fee agreement means an agreement between the Authority and a ship's owner made under regulation 10;

ballast water means water, including any entrained marine organisms and other sediments and solids, used to alter the draught, trim, manoeuvrability and stability of ships;

Note
Ballast water is an industrial waste in Victoria.

ballast water log means a form in the form approved by the Authority under regulation 7(2);

ballast water report form means a form in the form approved by the Authority under regulation 7(1);

domestic ballast water means ballast water that originates from an Australian port or within the territorial seas of Australia;
domestic ballast water accreditation agreement means an agreement entered into between a ship's owner and the Authority as provided by the Policy;

high-risk domestic ballast water means domestic ballast water that if discharged is considered by the Authority to pose a high risk of introducing a marine pest to the receiving waters;

master has the same meaning as it has in the Marine (Drug, Alcohol and Pollution Control) Act 1988;

owner has the same meaning as it has in the Marine (Drug, Alcohol and Pollution Control) Act 1988;

port has the same meaning as it has in the Marine (Drug, Alcohol and Pollution Control) Act 1988;

State means the State of Victoria;

the Act means the Environment Protection Act 1970;

the Policy means the Waste management policy (Ships' Ballast Water), published by the Authority in Government Gazette S 100 on 27 April 2004.
Part 2—Application

6 Application of the Regulations

(1) Subject to subregulation (2), these Regulations apply only to ships that have capacity to carry ballast water.

(2) These Regulations do not apply to a ship which—

(a) utilises permanent fresh water ballast solely to alter the draught, trim, manoeuvrability and stability of the ship; and

(b) does not take up or discharge marine waters as part of its operation.
Part 3—Reporting

7 Victorian ballast water reporting requirements

(1) The owner and master of any ship visiting a port must ensure that a completed ballast water report form, in the form approved by the Authority, is provided to the Authority in accordance with the Policy.

Penalty: 20 penalty units.

(2) The owner and master of any ship visiting a port and carrying domestic ballast water must ensure that a completed ballast water log, in the form approved by the Authority, is provided to the Authority in accordance with the Policy.

Penalty: 20 penalty units.

(3) For the purposes of subregulations (1) and (2), the Authority must ensure that the ballast water report form and the ballast water log are available in both paper and electronic forms.

(4) In relation to a ship, the Authority may exempt a ship's owner and master from the need to comply with the reporting requirements of subregulations (1) and (2)—

(a) if that ship is the subject of a current domestic ballast water accreditation agreement; or

(b) in any other case, in accordance with the Policy.

Note

See also the "Protocol for Environmental Management — Domestic Ballast Water Management in Victorian State Waters". The Protocol is adopted and applied, as amended from time to time, by clause 14 of the Policy.
Section 2 of the Protocol deals with the timing and accuracy of reporting, among other things. Section 2.4 of the Protocol provides for exemption from reporting requirements, in certain circumstances, for ships that have permanent fresh water ballast.
Part 4—Discharge

8 Discharge of ballast water into Victorian State waters

(1) The owner and master of a ship must ensure there is no discharge of domestic ballast water in Victorian State waters unless written authorisation to discharge has been received from the Authority.

Penalty: 50 penalty units.

(2) In making a decision to authorise the discharge of domestic ballast water under subregulation (1) the Authority may have regard to, but is not limited by, the following—

(a) the satisfactory completion of the forms submitted under regulation 7;

(b) the Authority's assessment of the information provided in accordance with regulation 7;

(c) whether the ship is carrying high-risk domestic ballast water;

(d) the general level of risk posed to the environment by the domestic ballast water;

(e) if any compliance monitoring or inspections have been conducted by or on behalf of the Authority, the outcomes of that compliance monitoring or inspection;

(f) if the ship is subject to a domestic ballast water accreditation agreement, the terms of that agreement;
(g) if an environmental improvement plan is in force in accordance with the Policy, the terms of that environmental improvement plan;

Note

Clause 16(3) of the Policy adopts and applies the "Guidelines for the Preparation of Environmental Improvement Plans (2002)", as amended from time to time.

(h) any other safety or environmental issues that the Authority considers relevant.
Part 5—Cost recovery

9 Fees payable

(1) Subject to regulation 10, the fees specified in Table 1, payable by or on behalf of the owner of a ship, are prescribed.

<table>
<thead>
<tr>
<th>Classification of ship</th>
<th>Fee units per ship per visit to a port</th>
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<tr>
<td>Ships which are the subject of a current Victorian domestic ballast water accreditation agreement</td>
<td>6 fee units</td>
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<tr>
<td>All other ships</td>
<td>10 fee units</td>
</tr>
</tbody>
</table>

(2) An owner of a ship must pay the fee prescribed in subregulation (1) within 30 days of issue of final notice.

Penalty: 20 penalty units.

10 Annual fee agreement for ships that are subject to a domestic ballast water accreditation agreement

(1) This regulation applies to ships that are the subject of a current domestic ballast water accreditation agreement.

Note

A domestic ballast water accreditation agreement must be in accordance with the Policy—see the definition of domestic ballast water accreditation agreement in regulation 5.

The Policy is published in Government Gazette S 100 on 27 April 2004.

See also the "Protocol for Environmental Management — Domestic Ballast Water Management in Victorian State Waters". The Protocol is adopted and applied, as amended from time to time, by clause 14 of the Policy. In particular, section 5 of the Protocol sets out the aim of domestic ballast water accreditation agreements and criteria that the
Authority takes into account in considering applications for an accreditation agreement.

(2) The ship's owner may apply to the Authority to pay a fee of 200 fee units to the Authority to enter into an annual fee agreement for the ship.

(3) Subject to subregulation (4), an annual fee agreement operates for a 12-month period following receipt of payment by the Authority under subregulation (2).

(4) An annual fee agreement may provide for the payment of the fee under subregulation (2) in 4 quarterly instalments payable in advance as specified in the agreement.

(5) If subregulation (4) applies, the annual fee agreement operates for a 12-month period following receipt of the first quarterly payment but is terminated if a further quarterly payment is not received in accordance with subregulation (4).

(6) If a ship's owner has an annual fee agreement, regulation 9 does not apply to the ship for the duration of the annual fee agreement.

(7) Despite subregulation (6), if the Authority revokes a Victorian domestic ballast water accreditation agreement for a ship—

(a) the annual fee agreement ceases to apply; and

(b) the fees specified in regulation 9 will apply from the date of the revocation.

11 Fee collection

(1) The fee prescribed by regulation 9 or 10 is payable by or on behalf of the owner of a ship to the Authority.
(2) The Authority may authorise a third party in writing to collect the fees prescribed by these Regulations on its behalf.

(3) If a third party has been authorised in accordance with subregulation (2), the prescribed fee is payable by or on behalf of the owner of a ship to the relevant third party.

12 Refund of fees paid

The Authority may refund all, or a relevant portion of, fees paid in accordance with these Regulations if—

(a) the fees paid are more than the amount that is required; or

(b) an annual fee agreement has been entered into in accordance with regulation 10 and any of the following applies—

(i) the domestic ballast water accreditation agreement of the ship is revoked;

(ii) the ship is sold during the term of the annual fee agreement;

(iii) the ship is not operational in Victoria for a minimum period of one month.
Endnotes


Fee Units

These Regulations provide for fees by reference to fee units within the meaning of the Monetary Units Act 2004.

The amount of the fee is to be calculated, in accordance with section 7 of that Act, by multiplying the number of fee units applicable by the value of a fee unit.

The value of a fee unit for the financial year commencing 1 July 2016 is $13.94. The amount of the calculated fee may be rounded to the nearest 10 cents.

The value of a fee unit for future financial years is to be fixed by the Treasurer under section 5 of the Monetary Units Act 2004. The value of a fee unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.

Penalty Units

These Regulations provide for penalties by reference to penalty units within the meaning of section 110 of the Sentencing Act 1991. The amount of the penalty is to be calculated, in accordance with section 7 of the Monetary Units Act 2004, by multiplying the number of penalty units applicable by the value of a penalty unit.

The value of a penalty unit for the financial year commencing 1 July 2016 is $155.46.

The amount of the calculated penalty may be rounded to the nearest dollar.

The value of a penalty unit for future financial years is to be fixed by the Treasurer under section 5 of the Monetary Units Act 2004. The value of a penalty unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.
Table of Applied, Adopted or Incorporated Matter

The following table of applied, adopted or incorporated matter is included in accordance with the requirements of regulation 5 of the Subordinate Legislation Regulations 2014.

<table>
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<th>Statutory rule provision</th>
<th>Title of applied, adopted or incorporated document</th>
<th>Matter in applied, adopted or incorporated document</th>
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<tr>
<td>Regulations 5 (definitions of domestic ballast water accreditation agreement and the Policy), 7, 8 and 10</td>
<td>Waste management policy (Ships' Ballast Water) made by the Governor in Council on 27 April 2004 and published in Government Gazette S 100 on 27 April 2004</td>
<td>The whole</td>
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<tr>
<td>Regulations 5 (definitions of domestic ballast water accreditation agreement and the Policy), 7, 8 and 10</td>
<td>Protocol for Environmental Management — Domestic Ballast Water Management in Victorian State Waters, Environment Protection Authority Victoria publication no. 949.7 March 2017 published by the Environment Protection Authority in Government Gazette S 77 on 20 March 2017, as amended from time to time</td>
<td>To the extent to which this Protocol, as amended from time to time, is incorporated by reference by Waste management policy (Ships' Ballast Water), published by the Authority in Government Gazette S 100 on 27 April 2004, which has been incorporated by reference by regulations 5, 7, 8 and 10</td>
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<td>Regulations 5 (definition of the Policy) and 8</td>
<td>Guidelines for the Preparation of Environmental Improvement Plans (2002) published by the Environment Protection Authority</td>
<td>To the extent to which these Guidelines are incorporated by reference by Waste management policy (Ships' Ballast Water), published by the Authority in Government Gazette S 100 on 27 April 2004, which has been incorporated by reference by regulations 5 and 8</td>
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