

WESTERN AUSTRALIAN
COASTAL SHIPPING
COMMISSION.

No. 44 of 1965.

AN ACT to establish a Western Australian Coastal Shipping Commission to operate certain shipping services, and for incidental and other purposes.

[Assented to 8th November, 1965.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Western Australian Coastal Shipping Commission Act, 1965.* Short title.

2. This Act shall come into operation on a date to be fixed by proclamation. Commencement.

Arrange-
ment.

3. This Act is divided into Parts, as follows—

PART I.—PRELIMINARY, Sections 1-4.

PART II.—THE WESTERN AUSTRALIAN COASTAL SHIPPING COMMISSION.

Division 1.—Establishment and Constitution of the Commission, sections 5-12.

Division 2.—Functions, Powers and Duties of Commission, sections 13-20.

Division 3.—Staff, sections 21-24.

Division 4.—Finances of the Commission, sections 25-32.

Division 5.—Reports, sections 33-34.

PART III.—DISSOLUTION OF STATE SHIPPING SERVICE AND TRANSFER OF ASSETS, sections 35-36.

PART IV.—MISCELLANEOUS, sections 37-39.

Interpreta-
tion.

4. In this Act, unless the contrary intention appears—

“Commissioner” includes an acting Commissioner;

“the Chairman” means the Chairman of the Commission;

“the Commission” means the Western Australian Coastal Shipping Commission established by this Act;

“the State Shipping Service” means the trading concern carried on under and subject to the State Trading Concerns Act, 1916; and

“the Vice-Chairman” means the Vice-Chairman of the Commission.

PART II.—WESTERN AUSTRALIAN COASTAL
SHIPPING COMMISSION.*Division 1.—Establishment and Constitution*
of Commission.

5. (1) There is hereby established, for the purposes of this Act, a Commission to be called the “Western Australian Coastal Shipping Commission”. Establishment of Commission.

(2) The Commission—

- (a) is a body corporate with perpetual succession and shall have a common seal;
- (b) is capable, in its corporate name, of acquiring, holding and disposing of real and personal property in or outside the Commonwealth and of suing and being sued in that name;
- (c) is a corporate agency of the Crown in right of the State;
- (d) is capable of doing and suffering all such acts and things as bodies corporate may lawfully do and suffer; and
- (e) has, subject to the Minister, the general administration of this Act.

(3) All courts, judges and persons acting judicially shall take notice of the seal of the Commission affixed to a document and shall presume that it was duly affixed.

(4) The exercise or performance of the powers or functions of the Commission shall not be affected by reason only of there being a vacancy in the office of a Commissioner.

6. (1) The Commission shall consist of three Commissioners who shall be appointed by the Governor. Constitution of Commission.

(2) The Governor shall appoint one of the Commissioners to be Chairman, and another to be Vice-Chairman, of the Commission.

(3) The Commissioners first appointed under this Act shall be appointed to hold office—

- (a) in the case of the Chairman, for five years;
- (b) in the case of the Vice-Chairman, for four years; and
- (c) in the case of the remaining Commissioner, for three years.

(4) After the appointment of the three Commissioners first appointed under this Act, each further appointment shall, subject to this section, be for a period of five years.

(5) Where a Commissioner ceases to hold office before the termination of the period of his appointment, another Commissioner shall be appointed by the Governor for the remainder of the term of office of the Commissioner in whose place he is appointed.

(6) A Commissioner is eligible for re-appointment.

Acting Commissioners.

7. (1) Where the Minister is satisfied that any Commissioner is incapacitated by illness, absence, or other sufficient cause, from performing the duties of his office, the Minister may appoint a person to be an acting commissioner to act for that Commissioner during his incapacity and that person, while he so acts,—

- (a) shall be deemed to be a Commissioner; and
- (b) shall be paid such remuneration, travelling and other allowances as the Minister may determine from time to time.

(2) The Minister may at any time terminate the appointment of an acting commissioner.

(3) No appointment of an acting commissioner and no acts done by him as such shall in any proceedings be questioned on the ground that the occasion for his appointment has not arisen or had ceased.

8. The Minister may grant leave of absence to a Commissioner upon such terms and conditions as to remuneration or otherwise as the Minister determines.

Leave of
absence.

9. Each Commissioner shall be paid such remuneration, travelling and other allowances, as the Governor from time to time determines.

Remunera-
tion of Com-
missioners.

10. The Governor may terminate the appointment of a Commissioner for inability, inefficiency or misbehaviour.

Dismissal of
Commis-
sioners.

11. (1) If a Commissioner—

Vacation of
office.

- (a) become bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration payable under this Act, for their benefit;
- (b) resigns his office by writing under his hand addressed to the Governor and his resignation is accepted by the Governor;
- (c) is absent, without the consent of the Minister, from three consecutive meetings of the Commission; or
- (d) fails to comply with his obligation under subsection (2) of this section,

the Governor shall, by notice in the *Gazette*, declare that the office of the Commissioner is vacant, and thereupon the office shall be deemed to be vacant.

(2) A Commissioner who is directly or indirectly interested in a contract made or proposed to be made by the Commission, otherwise than as a member, and in common with the other members, of an incorporated company consisting of not less than fifty-one persons, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Commission.

(3) A disclosure under subsection (2) of this section shall be recorded in the minutes of the Commission, and the Commissioner—

(a) shall not take part after the disclosure in any deliberation or decision of the Commission with respect to that contract; and

(b) shall be disregarded for the purpose of constituting a quorum of the Commission for any such deliberation or decision.

(4) Subsection (2) of this section does not apply in relation to a contract of carriage of a Commissioner or of any of his goods.

**Meetings of
Commission.**

12. (1) The Commission shall hold such meetings as are necessary for the performance of its functions.

(2) The Minister or the Chairman may at any time convene a meeting of the Commission.

(3) The Chairman shall convene the first meeting of the Commission as soon as practicable after the coming into operation of this Act and shall preside at all meetings of the Commission at which he is present.

(4) Where the Chairman is absent from a meeting of the Commission, the Vice-Chairman shall preside at that meeting.

- (5) At a meeting of the Commission—
- (a) two Commissioners form a quorum;
 - (b) a question arising at the meeting shall be determined by a majority of the valid votes of the Commissioners present.
- (6) Subject to this Act and the regulations, the Commission may regulate its procedure in such manner as it thinks fit.

Division 2.—Functions, Powers and Duties of the Commission.

13. The functions of the Commission are—

Functions of Commission.

- (a) to maintain and operate shipping services carried on by the State Shipping Service before the coming into operation of this Act; and
- (b) to establish, maintain and operate, or to provide for the establishment, maintenance and operation of additional shipping services for the carriage of passengers, goods and mails—
 - (i) between a place in the State and another place in the State;
 - (ii) between a place in the State and any other place outside the State;
 - (iii) between a place outside the State and another place outside the State;
- (c) to establish, maintain and operate either alone or in conjunction with any other person any shipping service incidental to a shipping service operated by the Commission under the foregoing provisions of this section.

in such manner and to such extent as the Commission thinks fit.

14. (1) Subject to this section, the Commission may do all things necessary or convenient to be done for or in connection with the performance of its functions.

Power of the Commission.

(2) Without limiting the generality of subsection (1) of this section, the Commission may—

- (a) carry on the general business of a ship owner in relation to any shipping service operated by the Commission;
- (b) purchase or take on lease or charter, ships required for carrying on the business of the Commission;
- (c) dispose of, lease or charter, any ship vested in or acquired by the Commission, and sub-lease or sub-charter any ship on lease or charter to the Commission;
- (d) purchase or take on lease land, buildings, easements or wharves or other property whatsoever which the Commission considers necessary for carrying on the business of the Commission;
- (e) exchange, dispose of, or grant leases of land, buildings, wharves, or any other property whatsoever acquired by, or vested in, the Commission;
- (f) purchase, or take on hire, plant, equipment, stocks, or other goods necessary for carrying on the business of the Commission;
- (g) dispose of plant, equipment, stocks or other goods acquired by, or vested in, the Commission;
- (h) engage in stevedoring operations;
- (i) appoint agents for the purposes of the business of the Commission;
- (j) act as agent for other persons;
- (k) train, or arrange for the training of, persons to fit them for employment as officers or seamen in merchant ships;
- (l) compound, release or settle claims by or against the Commission, whether in contract or tort; and
- (m) do anything incidental to any of the powers conferred on the Commission by this Act.

(3) The Commission shall not, except with the written consent of the Minister, purchase or dispose of assets for a consideration exceeding fifty thousand pounds.

15. (1) The Commission may, in respect of any particular matters or class of matters or in respect of any particular area, by writing under its seal, delegate to any Commissioner or to the General Manager all or any of its powers under this Act, other than this power of delegation, so that the delegated powers may be exercised by him in respect of the matters or class of matters or area specified in the instrument of delegation.

Delegation
of powers by
Commission.

(2) Every delegation under this section is revocable at will, and no such delegation prevents the exercise of any power by the Commission.

16. Subject to the provisions of this Act, the Commission may contract for the execution by any person of any work or service authorised by this Act to be executed by the Commission, in such manner and upon and subject to such terms and conditions, as the Commission thinks fit.

Work may
be carried
out by
contractors.

17. Subject in every case to the limitations and provisions of this Act and of any regulations and by-laws or of any contract made by the Commission, the Commission has the same liabilities, obligations, rights and protection as in the case of common carriers.

Liability of
Commission
as carrier.

18. (1) Where, in the opinion of the Governor, a shipping service of the Commission is necessary to meet the requirements of a particular area, and it is desirable in the public interest that the shipping service should be provided, the Governor may direct the Commission to establish, maintain and operate, or to continue to maintain and operate, a shipping service for the purpose of meeting those requirements.

Powers of
Governor in
relation to
shipping
services.

(2) While such a direction remains in force, the Commission shall comply therewith.

(3) Nothing in this section authorises the Governor to give a direction for the establishment, maintenance or operation of, or requires the Commission to establish, maintain or operate, a shipping service that it is not within the functions of the Commission to establish, maintain or operate.

Duties of Commission.

19. (1) The Commission shall pursue a policy directed towards securing revenue sufficient to meet all its expenditure properly chargeable to income and to permit the payment to the State of a reasonable return on the capital of the Commission.

(2) The Commission shall conduct its shipping services as efficiently as possible and shall, subject to subsection (1) of this section, make its shipping services available at the lowest possible rates of charges.

Charges to be approved by Minister.

20. (1) The rates of charges of the Commission for the carriage of persons or goods are subject to the approval of the Minister.

(2) In exercising his powers under this section the Minister shall have regard to the duties of the Commission under section nineteen of this Act.

Division 3.—Staff.

Appointment of officers.

21. (1) Subject to this Act, the Commission may appoint such officers or employees as it thinks necessary for the purposes of this Act.

(2) On the date of the coming into operation of this Act, all officers and employees who were employed immediately preceding that date in the State Shipping Service, and who are willing and able to be employed by the Commission, shall be deemed to be appointed officers and employees of

the Commission under this Act on the same terms and conditions as they were employed by the State Shipping Service immediately preceding that date.

(3) Where an officer or employee appointed or deemed to be appointed in pursuance of this section was, immediately before such appointment, an officer or employee in the State Shipping Service—

- (a) he retains his existing and accruing rights and in particular his rights, if any, under the Superannuation and Family Benefits Act, 1938; and
- (b) for the purpose of determining those rights, his service as an officer or employee of the State Shipping Service shall be taken into account as if it were service with the Commission.

22. (1) Subject to this section and to any relevant award or industrial agreement in force under the Industrial Arbitration Act, 1912, the terms and conditions of employment of officers or employees shall be such as are determined by the Commission, including conditions with respect to punishment for breaches of discipline.

Terms and conditions of employment.

(2) The Commission shall not, except with the approval of the Minister, determine the salary of a position in the service of the Commission at a rate exceeding the equivalent of the rate for the time being shown for the classification Group 1, Class 8 Administrative Division in the Public Service of the State.

23. (1) Subject to subsection (2) of section twenty-one of this Act, and of this section, the Governor, on the recommendation of the Commission, shall appoint a person to be the General Manager of the Commission and the General Manager shall be the Chief Executive Officer of the Commission.

General Manager.

(2) The person who on the date of the coming into operation of this Act held the office of General Manager of the State Shipping Service shall be deemed to be appointed the General Manager of the Commission under this section.

Temporary
and casual
employees.

24. Subject to any relevant award or industrial agreement in force under the Industrial Arbitration Act, 1912, the Commission may employ such temporary or casual employees as it thinks fit, on such terms and conditions as the Commission determines, including conditions with respect to punishment for breaches of discipline.

Division 4.—Finances of the Commission.

Funds of
Commission.

25. (1) The funds available to the Commission for the purpose of enabling it to exercise its powers and functions under this Act are—

- (a) moneys appropriated from time to time by Parliament for that purpose;
- (b) all other moneys received by the Commission; and
- (c) moneys borrowed by the Commission under this Act.

(2) The moneys referred to in subsection (1) of this section shall be paid into, and be placed to the credit of an account at the Treasury or at a bank, approved by the Treasurer, to be called "The Western Australian Coastal Shipping Commission Account".

(3) The Commission shall, out of the moneys standing to the credit of that account—

- (a) defray the costs, charges and expenses incurred by the Commission in the exercise of its powers and functions under this Act;
- (b) pay the remuneration, travelling and other allowances of the Commissioners and the salaries, wages and allowances of the General Manager and the officers and employees of the Commission.

26. (1) If at any time the funds of the Commission are not sufficient for the purpose of defraying the costs, charges and expenses incurred by it in the exercise of its powers and functions under this Act, the Commission may borrow from the Treasurer, or from a bank approved by the Treasurer, moneys for that purpose, and where moneys are borrowed from the Treasurer under this subsection, those moneys may be paid to the Commission out of moneys appropriated by Parliament for the purpose.

Power of
Commission
to borrow.

(2) The Commission shall pay to the Treasurer on moneys borrowed by it from him under this section, interest at such rate and at such times as the Treasurer determines.

(3) The amount of moneys borrowed by the Commission under this section that remains from time to time unpaid, and any interest thereon that is unpaid, is a charge upon the moneys from time to time standing to the credit of the account of the Commission at the Treasury or in any account of the Commission at any bank, and upon any assets vested in the Commission, and the due repayment of that amount and the payment of such interest is hereby guaranteed by the Treasurer in the name and on behalf of the Crown in right of the State.

27. (1) Subject to subsection (2) of this section the Commission in addition to the powers conferred on it by section twenty-six of this Act, may at any time and from time to time, with the approval of the Governor, borrow money on the security of the assets of the Commission or upon a guarantee as provided in subsection (3) of this section—

Additional
power of
Commission
to borrow.

- (a) for the effectual exercise by the Commission of its powers and functions under this Act;
- (b) to discharge the principal moneys and interest thereon owing by the Commission in respect of any existing loan or for the consolidation of the debts of the Commission;

(c) for any other purpose approved by the Governor.

(2) The Governor shall not approve, for the purposes of subsection (1) of this section, unless a written proposal specifying—

- (a) the term and particulars of the proposed loan;
- (b) the rate of interest to be paid on the amount of the loan;
- (c) the purposes to which the amount of the loan is to be applied; and
- (d) the manner in which the loan is to be repaid,

is first submitted by the Commission to, and approved by, the Treasurer.

(3) The Treasurer may, in the name and on behalf of the Crown in right of the State, guarantee repayment of the principal moneys and interest thereon in respect of moneys borrowed by the Commission under this section and any liability of the Crown arising out of the guarantee is payable out of moneys in the Public Account as defined in the Audit Act, 1904, which, to the necessary extent, is appropriated accordingly.

(4) Any moneys borrowed by the Commission under this section may be raised as one loan or as several loans and in such manner as may be prescribed or as the Governor may approve.

(5) The Commission shall set aside half-yearly by way of a sinking fund, for the purpose of redeeming any moneys borrowed by it under this section, an amount calculated at a rate approved by the Governor and the Treasurer.

Contributions,
interest and
sinking
fund.

28. (1) There shall be entered and debited each year in the accounts of the Commission such amounts as shall be fixed by the Treasurer as

interest and sinking fund contributions payable for the year in respect of such portion of the General Loan Fund as has been applied to the exercise by the Commission of any of its powers and functions under this Act.

(2) Such contributions shall be paid by the Commission to the Treasurer.

29. Any moneys standing to the credit of any account of the Commission may, until required by the Commission for the purposes of this Act, be temporarily invested, as the Treasurer may direct, in any securities in which money in the Public Account, as defined in the Audit Act, 1904, may lawfully be invested, and all interest derived from those securities shall be paid into an account of the Commission.

Power of
Commission
to invest
certain
funds.

30. Where in respect of any financial year a profit results from business carried on by the Commission under this Act and the amount of the profit is available in cash after making full allowance for interest and sinking fund contributions, and depreciation, obsolescence and maintenance of the assets of the Commission, the amount of the profit may be used by the Commission for any of the purposes of this Act, unless the Treasurer requires payment to be made to the credit of the Public Account as defined in the Audit Act, 1904.

Application
of profit of
Commission.

31. For the purposes of section thirty of this Act, the Commission shall determine the amount of the depreciation and obsolescence of the assets of the Commission in relation to the exercise by the Commission of its powers and functions under this Act and that amount applies for those purposes, unless in the opinion of the Auditor General that amount should be increased to an amount determined by him, in which case the amount so determined applies for those purposes.

Duty of
Commission
to determine
depreciation,
etc.

Duty of Commission to keep proper accounts.

32. (1) The Commission shall keep proper accounts and records in accordance with the accounting principles generally applied in commerce and shall do all things necessary to ensure that all payments out of its funds are correctly made and properly authorised and that adequate control is maintained over its assets and the incurring by it of liabilities.

(2) The Commission may, if the Treasurer approves, in respect of business carried on by it under this Act, establish in its accounts and records such reserve accounts as it thinks fit, and may in each year credit to each of those reserve accounts and establish therein, such sums as it thinks fit.

(3) The accounts and records of the Commission shall be audited by the Auditor General, who for that purpose has and may exercise all such powers as he has under the Audit Act, 1904 in respect of public moneys under that Act.

Division 5.—Reports.

Commission to keep Minister informed and give information when required.

33. The Commission shall—

- (a) from time to time inform the Minister concerning the general conduct of its business; and
- (b) furnish to the Minister such information relating to its operations as the Minister requires.

Annual report of Commission.

34. (1) The Commission shall in each year, prepare and furnish to the Minister a report of its operations under this Act during the preceding year, together with financial statements in respect of that year in such form as the Treasurer approves.

(2) The report shall deal specifically with the operations of the Commission in relation to any service in respect of which a direction by the Governor under section eighteen of this Act was in

force during the year and the financial statement shall show separately the financial results of those operations.

(3) Before furnishing the financial statements to the Minister the Commission shall submit them to the Auditor General, who shall report to the Minister—

- (a) whether the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records and show fairly the financial operations and the state of the affairs of the Commission;
- (c) whether the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Commission during the year to which the financial statements relate, have been in accordance with this Act;
- (d) as to the adequacy of provision in the nature of reserves made in the accounts of the Commission; and
- (e) as to such other matters arising out of the statements as the Auditor General considers should be reported to the Minister.

(4) The Minister shall lay the report and financial statements of the Commission, together with the report of the Auditor General, before each House of Parliament within fifteen sitting days of that House after their receipt by the Minister.

PART III.—DISSOLUTION OF STATE SHIPPING SERVICE AND TRANSFER OF ASSETS.

35. On the date of the coming into operation of this Act—

- (a) the Minister of the Crown charged with the administration of the State Shipping Service (in this section called “the Minister

Dissolution
of State
Shipping
Service and
transfer of
assets to
Commission.

for State Shipping Services") ceases to be a body corporate under section six of the State Trading Concerns Act, 1916;

- (b) the State Shipping Service ceases to be a State Trading Concern under that Act, and shall discontinue its business and operations;
- (c) all real and personal property and every right and interest therein that immediately before that date was vested in the Minister for State Shipping Services under section six of that Act, shall, by force of this section without any conveyance, transfer or assignment be transferred to and vested in and belong to the Commission for the purposes of this Act, subject to any debts, trusts and liabilities affecting them;
- (d) all rights accruing or accrued to the Minister for State Shipping Services in respect of any property vested in the Commission by virtue of this section—
 - (i) are vested in the Commission; and
 - (ii) may be enforced against the Commission;
- (e) all contracts, agreements and undertakings made by the Minister for State Shipping Services and all securities lawfully given to or by that Minister for and on behalf of the State Shipping Service and in force immediately before that date have effect as contracts, agreements and undertakings by and with the Commission and securities given to or by the Commission and may be enforced by and against the Commission accordingly;
- (f) all debts due and money payable by the Minister for State Shipping Services for and on behalf of the State Shipping Service and all claims, liquidated or unliquidated, recoverable against that Minister shall be debts due and moneys payable by and claims recoverable against the Commission;

- (g) any legal or other proceedings that might, but for this section, have been continued or commenced by or against that Minister under his corporate name may be continued or commenced by or against the Commission under its corporate name.

36. A reference—

- (a) in a law of the State; and
(b) in any document,

Construction
of law and
documents.

in force immediately before the date of the coming into operation of this Act, to the Minister of the Crown charged with the administration of the State Shipping Service or the State Shipping Service shall be read, deemed and taken to refer to the Commission.

PART IV.—MISCELLANEOUS.

37. If on demand a person fails to pay the fares or charges due to the Commission in respect of a service rendered by the Commission, the Commission may, without prejudice to the right to sue for and recover any part of the fares or charges not recovered under this section, detain and sell all or any of the goods of the person that are in its possession, and out of the moneys arising from the sale, retain the fares or charges so payable, and all charges and expenses of the detention and sale, and shall render the surplus, if any, of the moneys arising by the sale, and such of the goods as remain unsold, to the person entitled to the surplus or to the goods, as the case may be.

Recovery of
fares or
charges.

38. The Commission may, with the approval of the Governor, make by-laws not inconsistent with this Act, prescribing matters providing for or in relation to—

By-laws.

- (a) the operation of the shipping services and the conditions governing the performance of any service that the Commission may, under this Act, carry out or authorise;

- (b) the protection and preservation of property of, or property in the custody or under the control of, the Commission;
- (c) the maintenance of order in connection with the operation of the shipping services;
- (d) the sale or other disposal of unclaimed goods in the possession of the Commission and the disposal of the proceeds of any such sale;
- (e) the prohibition of interference with the shipping services or with property of the Commission or of interference with or obstruction of any officer or employee of the Commission;
- (f) the limitation of the liability of, and the conditions governing the making of claims upon, the Commission in respect of damage to or loss of goods; and
- (g) the provision of penalties, not exceeding a fine of fifty pounds or imprisonment for a period not exceeding three months, for a breach of a by-law.

Regulations.

39. The Governor may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and in particular for prescribing penalties, not exceeding a fine of fifty pounds or imprisonment for a period not exceeding three months, or both, for offences against the regulations.