

Western Australia

Marine and Harbours Act 1981

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Marine and Harbours Act 1981

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Marine and Harbours Act 1981

An Act to provide for the advancement of efficient and safe shipping and effective boating and port administration through the provision of certain facilities and services, and for incidental and connected purposes.

[Long title amended by No. 47 of 1993 s. 18.]

1. Short title

This Act may be cited as the *Marine and Harbours Act 1981*¹.

2. Commencement

This Act shall come into operation on a day to be fixed by proclamation¹.

3. Interpretation

In this Act, unless the contrary intention appears —

“**chief executive officer**” means the chief executive officer of the Department;

“**Department**” means the department of the Public Service principally assisting the Minister in the administration of this Act;

“**departmental area**” means an area comprising one or more of the following —

- (a) departmental land;
- (b) waters;
- (c) shores;
- (d) seabed,

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within a port for the administration and operation of which the Department is responsible;

“departmental land” means land vested in the Minister by a proclamation under section 9 or land otherwise acquired by the Minister for the purposes of this Act;

“infringement notice” means an infringement notice served under section 18A(2);

“Port Authority” means a body corporate established under an Act as a port authority in relation to a port within the State.

[Section 3 inserted by No. 47 of 1993 s. 19; amended by No. 78 of 1994 s. 4.]

4. Officers and employees

[(1)-(3) repealed]

(4) There shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* such officers as may be necessary to provide administrative, professional, scientific, technical, and other services to the Department.

(5) The Minister may engage persons as employees and, subject to any industrial award or agreement that is applicable in relation to a particular case or class of cases, persons so engaged shall be employed on such terms and conditions as the Minister determines.

[Section 4 amended by No. 113 of 1987 s. 32; No. 47 of 1993 s. 20; No. 32 of 1994 s. 19.]

5. Functions of the Department

- (1) Subject to this Act, the functions of the Department are —
- (a) to administer, exercise and perform the powers and duties necessary or convenient for the control and regulation in the State of marine and port affairs and navigation;

- (b) to administer, exercise and perform the powers and duties necessary or convenient for the provision and regulation in the State of pilotage services, except in relation to ports where pilotage services are lawfully provided by a Port Authority;
- (c) to advise the Minister on marine and port affairs;
- (d) to provide assistance and advice, when requested by a Port Authority, on matters concerned with the promotion and development of the port for which that Port Authority is responsible and on proposals for, or policy in respect of, capital expenditure by the Port Authority;
- (e) to regulate, control, and promote measures desirable to ensure the safety of life in connection with shipping and boating and to construct, maintain, and manage facilities and equipment necessary for that purpose;
- (f) to construct, control, manage, operate, and maintain ports within the State, other than those for which a Port Authority is responsible, and to provide such plant, equipment, and facilities as are necessary for the administration and operation of such ports;
- (g) to provide for the commercial development and promotion of the ports referred to in paragraph (f);
- (h) to construct, control, manage, operate, and maintain fishing boat harbours within the State and to provide such plant, equipment, and facilities as are necessary for the administration and operation of such harbours;
- (i) to construct, provide, and maintain facilities and services, both on land and water, that are desirable to meet the needs of effective and efficient shipping and boating, both recreational and commercial, including —
 - (i) port works;
 - (ii) jetties, landing places, slips, platforms, grids, breakwaters, depots, and sheds;
 - (iii) moorings;

s. 5A

- (iv) fishing industry facilities;
 - (v) launching ramps;
 - (vi) navigation aids;
 - (vii) marine craft;
 - (j) to preserve and protect property vested in or acquired by the Minister for the purposes of this Act; and
 - (k) to perform such other duties relating to marine and port affairs within the State, not being inconsistent with this Act, as the Minister may from time to time require.
- (2) In this section “**port works**” in relation to a port, includes any pier, quay, wharf, jetty, bridge, viaduct, breakwater, embankment or dam, or any reclamation of land from the sea or a river, or excavation, deepening, dredging or widening of any channel, basin or other part of a harbour.

5A. Provision of services at Broome and Wyndham

- (1) In this section —
- “**services**” means —
- (a) lighterage, salvage, and towage;
 - (b) cargo handling, storage and transport, chandlery, dredging, engineering, marine civil construction, mechanical, mooring, pollution management, security, shipping movement control, shore stabilization, stevedoring, and waste management services;
 - (c) the use or hire of equipment, helicopters, machinery, plant, vehicles, and vessels;
 - (d) the use or hire of facilities for the movement, storage, or handling of goods;
 - (e) labour for any purpose; and
 - (f) any other service prescribed by regulation.

- (2) The Department may provide such services as it considers are necessary for or in connection with the effective operation of the ports of Broome and Wyndham as ports.
- (3) Charges for services are to be determined by the Department in accordance with prudent commercial principles.
- (4) The functions conferred by this section on the Department are in addition to the functions conferred on it by section 5.
- (5) For the purpose of enabling the Department to perform its functions under this section, the Minister may enter into an agreement with any person.

[Section 5A inserted by No. 46 of 1993 s. 39.]

5B. Erection of notices and signs

- (1) The chief executive officer may cause to be erected, placed or marked, at places within or on the boundaries of a departmental area, such notices and signs as the chief executive officer considers necessary or desirable for the purpose of indicating publicly —
 - (a) that the area concerned is a departmental area;
 - (b) the general extent of the departmental area;
 - (c) any prohibition or restriction that applies under this Act to conduct in the departmental area or in a portion of it;
 - (d) the liability of any person who fails to comply with a prohibition or restriction referred to in paragraph (c); or
 - (e) any other matters relating to the departmental area or a portion of it.
- (2) It is not a defence to a charge of committing an offence under this Act to prove that a notice or sign is not erected, placed or marked under this section at any place unless an element of the offence is dependent on the existence of the notice or sign.

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- (3) A person shall not destroy, damage, deface, obliterate, move or otherwise interfere with a notice or sign erected, placed or marked under this section.

Penalty: \$500.

[Section 5B inserted by No. 78 of 1994 s. 5.]

6. Power of Minister to contract

- (1) The Minister may enter into contracts or arrangements with any person, including a Minister, department or instrumentality of the State, for the erection, construction or execution of any work permitted or authorised to be erected or constructed by it, or for furnishing materials or labour, or for the purchase or construction of machinery or appliances of any kind, or for the supply of professional, technical or other services, and any other contracts or arrangements necessary for the purpose of carrying out effectively the functions of the Department.
- (2) A contract or arrangement entered into by the Minister under subsection (1) with another Minister, a department or an instrumentality of the State shall be on such conditions and financial terms as may be agreed between the parties.

6A. Provision of services etc. other than in connection with this Act

- (1) Notwithstanding the *State Trading Concerns Act 1916*, the Department, in addition to performing its functions under this Act, may, with the prior approval of the Minister, provide services to any person, including a Minister, department or instrumentality of the State.
- (2) For the purposes of subsection (1), the Minister may enter into contracts or arrangements which may provide for payment to the Department for services provided.
- (3) In subsection (1), “**services**” means services of the kind that the Department provides for the purpose of performing its functions

under this Act and includes advice, the performance of work and the use of facilities.

[Section 6A inserted by No. 47 of 1993 s. 21.]

7. Power to appoint agents

- (1) The Minister may enter into written arrangements with any person for the performance by that person as agent of the Department of such of the functions of the Department as may be specified in the arrangement.
- (2) An arrangement under subsection (1) shall be on such terms and conditions as may be agreed by the parties, including provision for remuneration of the agent, and shall specify the area or port with respect to which the arrangement is to apply.

8. Minister to be body corporate

- (1) For the purposes of this Act, the Minister —
 - (a) is a body corporate, with perpetual succession, under the name of “The Minister for Transport”;
 - (b) shall have a common seal;
 - (c) may acquire, hold, and dispose of real and personal property; and
 - (d) may sue and be sued in his corporate name.
- (2) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Minister affixed to a document and shall presume that it was duly affixed.

9. Vesting by proclamation of Governor

- (1) For the purposes of this Act, the Governor may by proclamation —
 - (a) vest in the Minister any real or personal property of any kind, or interest in any such property; and
 - (b) withdraw any land or other property of any kind from the Minister and vest or re-vest it in the Crown.

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- (2) The Governor may by further proclamation cancel or vary any proclamation made under subsection (1).

10. Compulsory acquisition of land

Subject to this Act, where any land is required for the purposes of this Act, that land may be entered upon, surveyed and taken under the powers contained in and in accordance with the procedure set out in Part 9 of the *Land Administration Act 1997*.

[Section 10 amended by No. 31 of 1997 s. 142.]

11. Exemption from rates, etc.

- (1) Subject to subsection (2), all land vested in the Minister under this Act is exempt from any rate, tax or imposition that might, but for this section, be lawfully levied or imposed by or under any Act.
- (2) Nothing in subsection (1) precludes a local government, or other statutory authority from levying and collecting rates and other lawful charges in respect of land, houses and buildings of the Minister that are for the time being let or occupied for private purposes.

[Section 11 amended by No. 14 of 1996 s. 4.]

12. Leases of vested land

- (1) The vesting of any property in the Minister under section 9 shall not in any way affect or derogate from any lease, tenancy, licence or other like agreement to which that property was subject immediately before the property was vested in the Minister and the property shall be vested subject to any such lease, tenancy, licence or other like agreement.
- (2) The Minister may grant a lease of land or other property vested in the Minister under this Act —
- (a) for purposes falling within the purposes of this Act or relating to the functions of the Department; or

-
- (b) for such other purposes including —
 - (i) the use of the land or property for community activities; and
 - (ii) the commercial development of the land or property by any person,
as the Minister thinks fit.
 - (2a) A lease may be granted for such term and on such terms and conditions, including a right of renewal, as the Minister thinks fit.
 - (3) Where a development to which the proposed lease relates is required to be approved under section 50 of the *Swan River Trust Act 1988* or under the Metropolitan Region Scheme as that term is defined in the *Planning and Development Act 2005*, a lease shall not be granted under this section —
 - (a) unless that approval has been granted; or
 - (b) on any term or condition that is contrary to or inconsistent with an approval so granted.
 - (4) If an approval referred to in subsection (3) has been granted for a development to which a proposed lease under this section relates, the Minister shall not refuse to grant a lease under this section but he may grant the lease, in accordance with subsection (3)(b), subject to the inclusion in the lease of any term or condition.

[Section 12 amended by No. 21 of 1988 s. 9; No. 78 of 1994 s. 6; No. 38 of 2005 s. 15.]

13. Revenue to be paid to Consolidated Fund

Subject to section 14, all moneys received by the Minister or the Department are to be credited to the Consolidated Fund.

[Section 13 inserted by No. 47 of 1993 s. 22.]

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14. Trust accounts

- (1) With the prior approval of the Treasurer and the Minister, trust accounts forming part of the Trust Fund referred to in section 9 of the *Financial Administration and Audit Act 1985* may be established for such purposes, on such terms and conditions, and comprising such moneys, as the Treasurer and the Minister determine.
- (2) Section 14 of the *Financial Administration and Audit Act 1985* does not apply to such trust accounts.

[Section 14 amended by No. 6 of 1993 s. 11; No. 47 of 1993 s. 22.]

14A. Interest on overdue amounts

- (1) If any dues or charges payable to the Department for the use of facilities, or for services provided by the Department, at the ports of Broome and Wyndham are not paid in full by the time when they are payable, or such time after then as the Department may allow, interest on the amount outstanding at the rate prescribed by regulations is to be paid to the Department.
- (2) Interest under subsection (1) may be recovered by the Department in the same way as moneys, dues or charges payable to it may be recovered.

[Section 14A inserted by No. 46 of 1993 s. 40.]

[15, 16. Repealed by No. 47 of 1993 s. 22.]

[17. Repealed by No. 98 of 1985 s. 3.]

18. Delegation

- (1) The Minister may delegate to the chief executive officer, or to any other officer of the Department, the performance of any of the Minister's functions under this Act.

- (2) A delegation under subsection (1) to the chief executive officer may authorise the chief executive officer to subdelegate to any other officer of the Department.
- (3) Sections 58 and 59 of the *Interpretation Act 1984* apply to a subdelegation under subsection (2).
- (4) A delegation or a subdelegation must be in writing.
[Section 18 inserted by No. 47 of 1993 s. 23.]

18A. Infringement notices

- (1) A reference in subsection (2), (3), (5) or (7) to an “**authorised officer**” is a reference to an officer of the Department appointed under subsection (11) to be an authorised officer for the purposes of the subsection in which the term is used.
- (2) Subject to section 18B, an authorised officer who has reason to believe that a person has committed a prescribed offence against this Act may, within 21 days after the alleged offence is believed to have been committed, serve an infringement notice on the alleged offender.
- (3) An infringement notice shall —
 - (a) be in the prescribed form; and
 - (b) in every case —
 - (i) contain a description of the alleged offence;
 - (ii) state that, if the alleged offender does not wish to be prosecuted for the alleged offence in a court, the amount of money specified in the infringement notice as being the modified penalty for the alleged offence may be paid to an authorised officer within a period of 28 days after the giving of the infringement notice; and
 - (iii) inform the alleged offender what persons are authorised officers for the purposes of receiving payment of modified penalties.

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- (4) The amount specified in an infringement notice as being the modified penalty for the alleged offence referred to in the infringement notice shall be the amount that was the prescribed modified penalty at the time when that offence is believed to have been committed.
- (5) An authorised officer may, in a particular case, extend the period of 28 days within which the modified penalty may be paid, and that extension may be allowed whether or not the period of 28 days has elapsed.
- (6) When the modified penalty specified in an infringement notice has been paid within the period of 28 days or that period as extended and the infringement notice has not been withdrawn, the bringing of proceedings and the imposition of penalties are prevented to the same extent as they would have been if the alleged offender had previously been convicted by a court of, and punished for, the alleged offence.
- (7) An authorised officer may, whether or not the modified penalty has been paid, withdraw an infringement notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.
- (8) When an infringement notice is withdrawn after the modified penalty has been paid, the amount shall be refunded.
- (9) The amount of any modified penalty paid pursuant to an infringement notice shall, subject to subsection (8), be dealt with as if it were a fine imposed by a court as a penalty for an offence.
- (10) Payment of a modified penalty shall not be regarded as an admission for the purposes of any proceedings, whether civil or criminal.
- (11) The chief executive officer may in writing appoint persons, or the members of classes of persons, to be authorised officers for the purposes of subsection (2), (3), (5) or (7) or for the purposes of 2 or more of those subsections, but a person who is

authorised to serve infringement notices under subsection (1) is not eligible to be an authorised officer for the purposes of any of the other subsections.

- (12) The chief executive officer shall issue to each authorised officer who is authorised to serve infringement notices under subsection (1) a certificate stating that the authorised officer is so authorised, and each such authorised officer shall produce the certificate whenever required to do so by a person to whom the authorised officer has given or is about to give an infringement notice.

[Section 18A inserted by No. 78 of 1994 s. 7; amended by No. 78 of 1995 s. 69; No. 84 of 2004 s. 80.]

18B. Owner onus in relation to motor vehicles

- (1) If an allegation is made of a prescribed offence against this Act and an element of that offence is the use, driving, parking, standing or leaving of a motor vehicle and the identity of the driver or person in charge of the motor vehicle at the time of the commission of that offence cannot be immediately established, an infringement notice in respect of that allegation may be served under section 18A(2) on the owner of the motor vehicle —
- (a) at his or her own last known place of residence or business; or
 - (b) by leaving the infringement notice in or on, or attaching it to, the motor vehicle.
- (2) Where an infringement notice is served on the owner of a motor vehicle in the circumstances referred to in subsection (1), then, unless within the period stated in the infringement notice or that period as extended —
- (a) the modified penalty is paid; or

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- (b) the owner —
 - (i) identifies to an authorised officer the person who was the driver or person in charge of the motor vehicle at the relevant time; or
 - (ii) satisfies an authorised officer that, at the relevant time, the motor vehicle had been stolen or unlawfully taken or was being unlawfully used,

the owner is deemed to be the driver or person in charge of the motor vehicle at the time of the commission of the alleged offence.

- (3) In this section —

“authorised officer” means an authorised officer appointed for the purposes of section 18A(2);

“motor vehicle” has the meaning given by the *Road Traffic Act 1974*.

[Section 18B inserted by No. 78 of 1994 s. 7.]

19. Power to make regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act and, in particular —

- (a) regulating or prohibiting —
 - (i) the entry or remaining within the boundaries of departmental areas or any specified part of such areas by any person or class of persons or thing or class of things;
 - (ii) the doing or omitting to do any thing or class of things within the boundaries of departmental areas or any specified part of such areas,
either at all times and on all occasions or at any specified time or times or on any specified occasion or occasions;

- (b) regulating or prohibiting the entry, movement, use, driving, parking, standing or leaving of vehicles in or on departmental land and imposing speed restrictions in respect of the use of vehicles on such land;
- (c) providing for the preservation of order on or in relation to departmental land and installations vested in, acquired by, or managed by the Department including provisions for or in respect of preventing the entry of persons to departmental land and provisions for the removal of persons loitering, squatting or otherwise conducting themselves in a manner likely to prejudice the efficient and convenient use of the land or the port facilities on such land;
- (d) regulating and making provision for all matters relating to the protection of life and property within departmental areas;
- (e) regulating the use of departmental areas and in particular —
 - (i) prohibiting the removal of soil, sand, gravel, stone, rock or other material from or otherwise interfering with such areas without the written permission of the Department;
 - (ii) prohibiting the deposit of any matter, rubbish or litter or the lighting of fires or endangering by other means of departmental areas or property on such areas; or
 - (iii) prohibiting the erection of any structure, post, pile, stake, fence, mooring or any other thing placed or fixed to land or seabed within departmental areas without the written permission of the Department;
- (f) authorising and regulating the removal by or on behalf of the Department of any structure or other thing erected contrary to a regulation made under this Act and

providing for the recovery of the cost and expenses of such removal;

- (g) prescribing the dues and charges to be paid for services provided by the Department and the charges to be paid for the parking of vehicles on departmental land;
- (h) providing that contravention or failure to comply with a regulation constitutes an offence and providing for penalties not exceeding a fine of \$500 for offences against the regulations; and
- (i) for other purposes relating to the convenience of shipping or of the public within departmental areas and generally for the effective administration and performance of the functions vested in the Minister and the Department by this Act.

(2) Regulations may be made under this section adopting —

- (a) wholly or in part;
- (b) with or without modifications; and
- (c) specifically or by reference,

any rules, regulations, other subordinate legislation, codes, standards, or instructions made, determined, or issued in respect of —

- (d) the safety or handling of dangerous or other goods;
- (e) the construction of buildings or other structures; or
- (f) the use of departmental areas or conduct of any activity in such areas,

by or under any other Act or under any Act of the Parliament of the Commonwealth or the United Kingdom or by Standards Australia, the British Standards Institution, The Association of Australian Port and Marine Authorities, the Marine and Ports Council of Australia or other like body specified in the regulations.

- (3) Regulations may be made under this section —
- (a) so as to apply —
 - (i) generally or in a particular class of case or in particular classes of cases;
 - (ii) at all times or at a specified time or at specified times; and
 - (iii) throughout the State or in a specified part or specified parts of the State;
 - (b) so as to require a matter affected by them to be —
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) as approved by, or to the satisfaction of, a specified person or body or a specified class of person or body;
 - (c) so as to confer on a specified person or body or a specified class of person or body a discretionary authority; and
 - (d) so as to provide that, in specified cases or a specified class of case or specified classes of cases whether on specified conditions or unconditionally, persons or things of a class or classes of persons or things may be exempted from the provisions of the regulations, either wholly or to such extent as is specified.
- (4) In subsection (3) “**specified**” means specified in the regulations.
- [Section 19 amended by No. 78 of 1994 s. 8; No. 74 of 2003 s. 80.]*

20. References to former departments and offices

- (1) In this section —
- “**former department**” means —
- (a) the Harbour and Light Department; or
 - (b) the Department of Marine and Harbours;

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“former office” means —

- (a) the Manager of the Harbour and Light Department; or
 - (b) the General Manager of the Department of Marine and Harbours.
- (2) Unless the contrary intention appears, a reference in any law or document to a former department is to be read and construed as a reference to the Department.
- (3) Unless the contrary intention appears, a reference in any law or document to a former office is to be read and construed as a reference to the chief executive officer.

[Section 20 inserted by No. 47 of 1993 s. 24.]

Notes

- ¹ This is a compilation of the *Marine and Harbours Act 1981* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Marine and Harbours Act 1981</i>	21 of 1981	26 May 1981	1 Mar 1982 (see s. 2 and <i>Gazette</i> 5 Feb 1982 p. 410)
<i>Acts Amendment (Financial Administration and Audit) Act 1985 s. 3</i>	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Acts Amendment (Public Service) Act 1987 s. 32</i>	113 of 1987	31 Dec 1987	16 Mar 1988 (see s. 2 and <i>Gazette</i> 16 Mar 1988 p. 813)
<i>Acts Amendment (Swan River Trust) Act 1988 Pt. 5</i>	21 of 1988	5 Oct 1988	1 Mar 1989 (see s. 2 and <i>Gazette</i> 27 Jan 1989 p. 264)
<i>Financial Administration Legislation Amendment Act 1993 s. 11</i>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Ports (Functions) Act 1993 Pt. 3</i>	46 of 1993	20 Dec 1993	15 Jun 1994 (see s. 2 and <i>Gazette</i> 10 Jun 1994 p. 2373)
<i>Acts Amendment (Department of Transport) Act 1993 Pt. 9</i>	47 of 1993	20 Dec 1993	1 Jan 1994 (see s. 2 and <i>Gazette</i> 31 Dec 1993 p. 6861)
<i>Acts Amendment (Public Sector Management) Act 1994 s. 19</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Marine and Harbours Amendment Act 1994²</i>	78 of 1994	13 Dec 1994	13 Dec 1994 (see s. 2)
<i>Sentencing (Consequential Provisions) Act 1995 Pt. 50</i>	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
Reprint of the <i>Marine and Harbours Act 1981</i> as at 25 Nov 1996 (includes amendments listed above)			
<i>Acts Amendment (Land Administration) Act 1997 s. 142</i>	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)

Short title	Number and year	Assent	Commencement
<i>Statutes (Repeals and Minor Amendments) Act 2003 s. 80</i>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
Reprint 2: The Marine and Harbours Act 1981 as at 14 May 2004 (includes amendments listed above)			
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15</i>	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)

² The *Marine and Harbours Amendment Act 1994* s. 6(2) reads as follows:

“

- (2) A lease which was granted or purportedly granted under section 12 of the principal Act before the commencement of this section —
- (a) to enable land or property to be used for community activities; or
 - (b) to enable the commercial development of land or property by any person,

is to be taken to be, and always to have been, as valid as it would have been if it had been granted for a purpose falling within the purposes of the principal Act or relating to the functions of the Department.

”