

Western Australia

**Ports and Marine Legislation Amendment Act  
2003**

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As at 15 Dec 2003

No. 71 of 2003

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# Ports and Marine Legislation Amendment Act 2003

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Western Australia

## **Ports and Marine Legislation Amendment Act 2003**

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**No. 71 of 2003**

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**An Act to amend the —**

- *Port Authorities Act 1999*; and
  - *Pollution of Waters by Oil and Noxious Substances Act 1987*,
- and for related purposes.**

[Assented to 15 December 2003]

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Ports and Marine Legislation Amendment Act 2003*.

### **2. Commencement**

- (1) This Act, other than sections 5, 6 and 7, comes into operation on the day on which it receives the Royal Assent.
- (2) Sections 5 and 6 are deemed to have come into operation on 14 August 1999.
- (3) Section 7 comes into operation on a day to be fixed by proclamation.

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**Part 2 — Port Authorities Act 1999 amended**

**3. The Act amended**

The amendments in this Part are to the *Port Authorities Act 1999*\*.

[\* *Act No. 22 of 1999.*

*For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 295, and Act No. 20 of 2002.]*

**4. Section 25 amended and saving**

- (1) Section 25(1)(b) is deleted and the following paragraph is inserted instead —

“

(b) all navigational aids that, immediately before the coming into operation of section 4 of the *Ports and Marine Legislation Amendment Act 2003* —

- (i) were in the port, or used in connection with navigation into or out of the port; and
- (ii) belonged to the State;

”.

- (2) The amendment made by subsection (1) does not affect the operation of the *Port Authorities (Withdrawal and Revesting of Property) Order 2000* published in the *Gazette* on 2 June 2000.

**5. Section 27A inserted**

After section 27 the following section is inserted —

“

**27A. Creating interests in land**

The power of a port authority to grant easements, leases or licences in respect of port land extends to

easements, leases or licences for any purposes the port authority thinks fit.

”.

**6. Section 30 amended**

Section 30(2) is amended after paragraph (a) by deleting “or” and inserting —

“

- (aa) to use or exploit its fixed assets for profit so long as the proper performance of its functions under subsection (1) is not affected; or

”.

**7. Part 7 Divisions 6 and 7 inserted**

After section 114 the following Divisions are inserted in Part 7 —

“

**Division 6 — Powers of police officers and others**

**114A. Police officers and others may enter vessels and conduct examinations and enquiries**

- (1) An authorised officer may at any time enter a vessel in a port and conduct any examination or enquiry that the authorised officer considers necessary to determine whether there has been compliance with this Act.
- (2) In this section —
  - “**authorised officer**” means —
    - (a) a police officer; or
    - (b) a member of staff of the port authority, or another person, authorised by the port authority for the purposes of this section.



**Division 7 — Protection from liability**

**114B. Immunity from liability for damage to vessels**

- (1) Without limiting any other provision of this Part, a port authority is not liable for any loss or damage caused to a vessel in its port.
- (2) Without limiting subsection (1) or any other provision of this Part, a port authority is not liable for any loss or damage caused to a vessel in its port —
  - (a) that results from —
    - (i) the master of the vessel complying with a direction given in good faith; or
    - (ii) a thing done or omitted to be done in good faith in respect of the vessel, by the harbour master or a member of the staff of the port authority; or
  - (b) that results from a defect in a mooring, anchorage or berth, or anything else, provided by the port authority.

**114C. Immunity from liability for damaged goods**

- (1) A port authority is not liable for any loss or damage caused to any goods that a person (other than the port authority) —
  - (a) loads on to or unloads from a vessel at the port; or
  - (b) stores at the port.
- (2) The port authority does not become liable for any loss or damage caused to any goods referred to in subsection (1)(b) stored in an uncovered or unprotected manner at the port because the port authority provides,

or attempts to provide, any temporary cover or protection for those goods.

**114D. Immunity from liability for delay in delivery of goods**

A port authority is not liable for any loss caused by or relating to a delay in the delivery of any goods loaded on to or unloaded from a vessel at the port.

**114E. Immunity from liability for certain events and actions**

- (1) A port authority is not liable for any loss or damage resulting from an event outside the control of the port authority, including —
  - (a) an act of God;
  - (b) an act of war;
  - (c) an act of public enemies;
  - (d) any insurrection, revolution or civil disorder;
  - (e) the unlawful seizure or control of any people or any vessels, vehicles or other property;
  - (f) any industrial disputes of any kind, including strikes, lockouts, stoppages or restraints of labour (whether partial or general) from any cause; or
  - (g) the use for the purpose of war or defence, or training or preparation for war or defence, of any port facilities or other property of the port authority.
- (2) A port authority is not liable for any loss or damage resulting from any action taken or caused to be taken by the port authority under section 27 or 28 of the *Pollution of Waters by Oil and Noxious Substances Act 1987*.

”.

**8. Section 131 amended**

Section 131(2) is amended after paragraph (a) by deleting “or” and inserting —

“

- (aa) obstructs, impedes or interferes with —
  - (i) port facilities or other property of a port authority; or
  - (ii) the operation of port facilities or other property of a port authority;
- (ab) causes a nuisance in a port; or

”.

**9. Schedule 7 amended**

Schedule 7 item 39 is deleted and the following item is inserted instead —

“

- 39. The protection of port facilities or other property of a port authority.

”.

**Part 3 — *Pollution of Waters by Oil and Noxious Substances Act 1987* amended**

**10.      The Act amended**

The amendments in this Part are to the *Pollution of Waters by Oil and Noxious Substances Act 1987*\*.

[\* Reprinted as at 12 October 2001.]

**11.      Section 3 amended**

- (1) Section 3(1) is amended in the definition of “harbour master” by deleting “22 of the *Ports (Functions) Act 1993*” and inserting instead —

“ 102 of the *Port Authorities Act 1999* ”.

- (2) Section 3(1) is amended by inserting in the appropriate alphabetical position the following definition —

“

**“port authority”** means a port authority established under the *Port Authorities Act 1999*;

”.

**12.      Section 6 amended**

After section 6(3) the following subsection is inserted —

“

- (4) Without limiting subsection (1), a delegation under that subsection may be made to a port authority and, in that case, the port authority is authorised to exercise the power or powers so delegated.

”.

**13. Section 27 amended**

- (1) Section 27(1) is amended as follows:
  - (a) by inserting before “the appropriate authority” —  
“  
or the appropriate authority is of the opinion that there is a probability of such a discharge occurring,  
”;
  - (b) in paragraph (e) by deleting “dispose” and inserting instead —  
“ disperse ”.
- (2) Section 27(2) is amended as follows:
  - (a) in paragraph (a) by deleting “from which the discharge occurred” and inserting instead —  
“ concerned ”;
  - (b) in paragraph (b) by deleting “on land from which the discharge occurred” and inserting instead —  
“ concerned ”;
  - (c) in paragraph (c) by deleting “from which the discharge occurred” and inserting instead —  
“ concerned ”.
- (3) Section 27(3)(b) is amended by deleting “the discharge” and inserting instead —  
“ a discharge ”.
- (4) Section 27(5) is amended as follows:
  - (a) in paragraph (a) by inserting after “occurs” —  
“ or is anticipated ”;
  - (b) in paragraph (a) by deleting “established under an Act”;
  - (c) in paragraph (b) by inserting after “occurs” —  
“ or is anticipated ”.

**14. Section 28 amended**

- (1) Section 28(1) is repealed and the following subsections are inserted instead —

“

- (1) Where a discharge occurs into State waters from a ship or from transfer apparatus, or the appropriate authority is of the opinion that there is a probability of such a discharge occurring, the appropriate authority may take or cause to be taken such action as it thinks fit —
- (a) to prevent or limit the discharge;
  - (b) to disperse or contain the substance or mixture that has been discharged;
  - (c) to remove any liquid substance or mixture containing a liquid substance from waters or land affected by the discharge; or
  - (d) to minimize the damage from pollution resulting from or likely to result from the discharge.

- (1a) In subsection (1) —

“**discharge**” means a discharge of a liquid substance, or of a mixture containing a liquid substance, being a substance or mixture carried as cargo or part cargo in bulk;

“**transfer apparatus**” means apparatus used for transferring liquid substances or mixtures containing liquid substances from or to any ship.

”.

- (2) Section 28(2) is amended as follows:

- (a) in paragraph (a) by deleting “from which the discharge occurred” and inserting instead —  
“ concerned ”;

- (b) in paragraph (b) by deleting “from which the discharge occurred” and inserting instead —  
“ concerned ”.
- (3) Section 28(4)(b) is amended by deleting “the discharge” and inserting instead —  
“ a discharge ”.
- (4) Section 28(6) is amended as follows:
  - (a) in paragraph (a) by inserting after “occurs” —  
“ or is anticipated ”;
  - (b) in paragraph (a) by deleting “established under an Act”;
  - (c) in paragraph (b) by inserting after “occurs” —  
“ or is anticipated ”.

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