

WESTERN AUSTRALIA

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**MARINE AND HARBOURS  
AMENDMENT ACT 1994**

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**No. 78 of 1994**

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**AN ACT to amend the *Marine and Harbours Act 1981*, and  
for related purposes.**

*[Assented to 13 December 1994.]*

The Parliament of Western Australia enacts as follows:

**Short title**

1. This Act may be cited as the *Marine and Harbours  
Amendment Act 1994*.

**Commencement**

2. This Act comes into operation on the day on which it receives the Royal Assent.

**Principal Act**

3. In this Act, the *Marine and Harbours Act 1981*\* is referred to as the principal Act.

[\* *Act No. 21 of 1981.*

*For subsequent amendments, see 1993 Index to Legislation of Western Australia, Table 1, p. 128 and Act No. 32 of 1994.]*

**Section 3 amended**

4. Section 3 of the principal Act is amended by inserting after the definition of "Department" the following definitions —

“

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

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

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);

”.

### **Section 5B inserted**

**5.** After section 5A of the principal Act the following section is inserted —

“

#### **Erection of notices and signs**

**5B.** (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.

(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 12 amended, and validation**

**6.** (1) Section 12 (2) of the principal Act is repealed and the following subsections are substituted —

“

(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.

”.

(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.

### **Sections 18A and 18B inserted**

7. After section 18 of the principal Act the following sections are inserted —

“

#### **Infringement notices**

**18A.** (1) A reference in subsection (2), (3), (5) or (7) to an “**authorized officer**” is a reference to an officer of the Department appointed under subsection (11) to be an authorized officer for the purposes of the subsection in which the term is used.

(2) Subject to section 18B, an authorized 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 have a complaint of the alleged offence heard and determined by 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 authorized officer within a period of 28 days after the giving of the infringement notice; and

(iii) inform the alleged offender what persons are authorized officers for the purposes of receiving payment of modified penalties.

(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 authorized 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 authorized 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) An amount paid as a modified penalty shall, subject to subsection (8), be dealt with as if it were a penalty imposed summarily under the *Justices Act 1902*.

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

(12) The chief executive officer shall issue to each authorized officer who is authorized to serve

infringement notices under subsection (1) a certificate stating that the authorized officer is so authorized, and each such authorized officer shall produce the certificate whenever required to do so by a person to whom the authorized officer has given or is about to give an infringement notice.

### **Owner onus in relation to motor vehicles**

**18B.** (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
- (b) the owner —
  - (i) identifies to an authorized officer the person who was the driver or person in charge of the motor vehicle at the relevant time; or

- (ii) satisfies an authorized 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 —

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

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

”.

### **Section 19 amended**

8. (1) Section 19 (1) of the principal Act is amended —

- (a) by inserting after “all matters that are” the following —

“

required or permitted by this Act to be prescribed, or are

”;

- (b) in paragraph (b) by deleting “and parking” and substituting the following —

“ driving, parking, standing or leaving ”; and

- (c) in paragraph (g) by inserting after “Department” the following —

“

and the charges to be paid for the parking  
of vehicles on departmental land

”

- (2) Section 19 (5) of the principal Act is repealed.