

WESTERN AUSTRALIA

WESTERN AUSTRALIAN MARINE AMENDMENT ACT

No. 35 of 1990

AN ACT to amend the *Western Australian Marine Act 1982*.

[Assented to 9 October, 1990]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Western Australian Marine Amendment Act 1990*.

Commencement

2. The provisions of this Act shall come into operation on such day as is, or days as are, respectively, fixed by proclamation.

Principal Act

3. In this Act the *Western Australian Marine Act 1982** is referred to as the principal Act.

[*Act No. 55 of 1982.]

Section 3 amended

4. Section 3 of the principal Act is amended in subsection (1)–

(a) by inserting after the definition of “casualty” the following definition–

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

(b) by deleting the definition of “General Manager”;

(c) in the definition of “inspector” by deleting “appointed” and inserting the following–

“ designated ”;

(d) by deleting the definition of “Manning Committee”;

(e) by deleting the definitions of “Part”, “regulations”, “section” and “subsection”;

(f) in the definition of “ship” or “vessel” by deleting “water” in the second place where it occurs and substituting the following–

“ water,
but does not include pontoons or floating jetties used only for the purposes of walkways or storage and similar platforms situated adjacent to river banks or any other shore in circumstances in which they are not being towed or moored away from the shore ”;

(g) by inserting after the definition of “special personnel” the following definition–

“ “surveyor” means a surveyor designated under section 117 for the purposes of this Act; ”;

and

(h) in the definition of “trading ship” by deleting “a Government vessel or”.

Section 8 repealed

5. Section 8 of the principal Act is repealed.

Section 12 amended

6. Section 12 of the principal Act is amended in paragraphs (a) and (b) by deleting "by the Manning Committee" wherever occurring.

Sections 15, 16, 17 and 18 repealed and section 15 inserted

7. Sections 15, 16, 17 and 18 of the principal Act are repealed and the following section is inserted—

Safety manning

" 15. (1) The chief executive officer may determine the safety manning of trading ships by determination made in accordance with the regulations in relation to a particular trading ship or in relation to a class of trading ship specified in the determination.

(2) A person or organization who or which in the opinion of the chief executive officer has a legitimate interest in the operation of the trading ship in relation to which a determination has been made under subsection (1), or, if the determination is made in respect of a class of trading vessel, a trading vessel of that class, who or which is aggrieved by the determination may request the chief executive officer to review the determination so made.

(3) For the purposes of reviewing a determination made under subsection (1) the chief executive officer may consult with any person or organization in addition to the person or organization referred to in subsection (2), who or which, in the opinion of the chief executive officer, has a legitimate interest in the operation of the trading ship the subject of the determination.

(4) Subject to any variation under section 19, a determination under this section has effect in relation to the trading ship or class of trading ship in relation to which the determination is made until varied or revoked by the chief executive officer. "

Section 19 amended

8. Section 19 of the principal Act is amended—

(a) by repealing subsection (1) and substituting the following subsection—

“ (1) Subject to subsection (3), the Minister may by instrument signed by the Minister vary a determination made by the chief executive officer under section 15 and the determination as so varied by the Minister shall thereafter be deemed to be the determination for the purposes of this Act and the regulations in relation to the trading ship or trading ships in question. ”;

and

(b) in subsection (3)—

(i) by deleting “, review or provision” and substituting the following—

“ or provision ”; and

(ii) by deleting “, review, or provision” and substituting the following—

“ or provision ”.

Section 20 repealed

9. Section 20 of the principal Act is repealed.

Section 51 repealed

10. Section 51 of the principal Act is repealed.

Sections 58A and 58B inserted

11. After section 58 of the principal Act the following sections are inserted—

Compensation in respect of false distress signals

“ 58A. The master of a ship who uses or displays, or causes or permits any person to use or display, any of the signals of distress,

except where the ship is in distress, is liable to pay compensation and costs incidental thereto, recoverable in any court of competent jurisdiction, for any labour undertaken, risk incurred, or loss sustained in consequence of the signal having been regarded as a genuine signal of distress.

Offence to take unsafe ship to sea

58B. (1) A person shall not send or take a vessel to sea if the vessel is an unsafe ship.

Penalty: \$5 000.

(2) It is a defence in a prosecution for an offence against subsection (1) to show—

- (a) that the person charged used all reasonable means to ensure that the vessel was not an unsafe ship; or
- (b) that the sending or taking of the vessel to sea was, in the circumstances, reasonably justified for the purposes of protecting the vessel from imminent danger.

(3) The fact that an unsafe ship has been detained under section 61 is not a bar to proceedings under this section.

(4) A vessel is an unsafe ship for the purposes of this section if by reason of—

- (a) the defective condition of a part of the vessel;
- (b) the overloading or improper loading of the vessel; or
- (c) the undermanning of the vessel,

the vessel is unfit to proceed on its proposed voyage without risk of injury or danger to human life.

(5) No proceedings for an offence against subsection (1) shall be brought without the consent of the chief executive officer. ”.

Section 65 repealed

12. Section 65 of the principal Act is repealed.

Section 66 amended

13. Section 66 of the principal Act is amended in subsection (2) (d) by deleting “and ceases to have effect 7 days thereafter unless previously renewed or cancelled” and substituting the following—

“ and may be made so as to apply only to the period specified in the notice or without specifying any such period ”.

Section 99 amended

14. Section 99 of the principal Act is amended in subsection (1) by inserting after paragraph (h) the following paragraph—

“ (ha) regulating, controlling or prohibiting water related activities generally or any kind of water related activity specified in the regulations; ”.

Section 115A inserted

15. After section 115 of the principal Act the following section is inserted—

Exemptions and equivalents

“ 115A. (1) The chief executive officer may exempt a vessel, or vessels included in a specified class of vessel, from the application of any of the provisions of this Act or regulations made under this Act to the extent that the chief executive officer is satisfied that compliance with such provision or provisions is unreasonable or impractical in relation to that vessel or those vessels.

(2) In exercising the power conferred on him by subsection (1), the chief executive officer shall have regard to the principles embodied in this Act and the regulations made under this Act.

(3) Where under this Act provision is made that a particular fitting, material, appliance, or apparatus, or type thereof, shall be fitted or carried in a vessel, or that any particular provision shall be made, the chief executive officer may allow any other fitting, material, appliance, or apparatus, or type thereof, to be fitted or carried, or any other provision to be made if the chief executive

officer is satisfied, by trial or otherwise, that such fitting, material, appliance, or apparatus, or such provision is at least as effective as that required under this Act.

(4) The chief executive officer may grant an exemption or make an allowance under this section subject to such conditions as he thinks fit. ”.

Section 116 amended

16. Section 116 of the principal Act is amended—

- (a) in subsection (1) by inserting after “Minister” the following—
“ or the chief executive officer, as the case may be, (“the delegator”) ”;
- (b) in subsections (2), (4), (5) and (6), by deleting “Minister” wherever occurring and substituting in each case the following—
“ delegator ”;
- (c) in subsection (6), by deleting “state of mind of that” and substituting the following—
“ state of mind of the ”.

Section 117 amended

17. Section 117 of the principal Act is amended by repealing subsection (1) and substituting the following subsection—

“ (1) The chief executive officer may designate officers of the Department or any other persons to be inspectors or surveyors for the purposes of this Act. ”.

Section 120A inserted

18. After section 120 of the principal Act the following section is inserted—

Inspector may request name and address

“ 120A. (1) An inspector may request any person whom the inspector reasonably believes to have committed an offence against this Act to give his or her name and address to the inspector.

(2) A person who fails to comply with a request made under subsection (1) or who gives a false name or address when such a request is made commits an offence.

Penalty: \$200. ”.

Section 125A inserted

19. After section 125 of the principal Act the following section is inserted—

Limitation of time for complaints

“ 125A. Notwithstanding any other written law a complaint for an offence against this Act or any subsidiary legislation under this Act may be commenced at any time within 3 years from the time when the matter of the complaint arose. ”.

Section 132 amended

20. Section 132 of the principal Act is amended in subsection (1) by deleting “21” and substituting the following—

“ 28 ”.

General amendment

21. The provisions of the Act specified in the Schedule to this section are amended by deleting “General Manager” wherever occurring and substituting in each case the following—

“ chief executive officer ”.

SCHEDULE

- (a) Section 3 in the definitions of “Australian coastal and middle-water operations”, “inshore operations”, “offshore operations” and “restricted offshore operations”; and
- (b) Sections 9, 11, 22, 26, 29, 52, 61, 64, 66, 67, 70, 71, 97, 98, 99, 101, 103, 106, 114, 115, 117, 118, 122, 123, 124, 125, 134.