

WESTERN AUSTRALIAN MARINE.

No. 40 of 1980.

AN ACT to amend the Western Australian Marine Act 1948-1979.

[Assented to 5 November 1980.]

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:—

1. (1) This Act may be cited as the *Western Australian Marine Amendment Act 1980*.

Short title
and citation.

(2) In this Act the Western Australian Marine Act 1948-1979 is referred to as the principal Act.

Reprinted as
approved 13
June 1968
and
amended by
Acts Nos.
3J of 1968,
1 of 1972,
94 of 1972
(as amended
by 42 of
1975),
109 of 1974,
4 of 1976,
12 of 1976,
67 of 1977,
21 of 1978
and
27 of 1979.

(3) The principal Act as amended by this Act may be cited as the Western Australian Marine Act 1948-1980.

Commence-
ment.

2. This Act shall come into operation on the twenty-eighth day after the day on which it is assented to by the Governor.

Section 3
and
Divisional
heading
before s. 205
amended.

3. (1) Section 3 of the principal Act is amended—

(a) as to the reference to *Division 2* of Part VIII, by deleting "*Private pleasure boats.*" and substituting the following—

" *Other vessels.* " ; and

(b) as to the reference to Part IX, by deleting "220." and substituting the following—

" 220—MISCELLANEOUS. " .

(2) The heading to *Division 2*, preceding section 205 of the principal Act, is amended by deleting "*Private Pleasure Boats.*" and substituting the following—

" *Other vessels.* " .

Section 8
amended.

4. Section 8 of the principal Act is amended in paragraph (b) of subsection (2) by deleting "The Governor may make regulations prescribing" and substituting the following—

" Regulations made under section seventeen of this Act may prescribe " .

Section 16D
inserted.

5. The principal Act is amended by inserting, after section 16C, the following section—

" 16D. (1) In this section—

Closure of
navigable
waters in
certain
circum-
stances.

"authorised person" means a member of the Police Force, an inspector of the Department, or a person authorised for the purpose by the Department in

writing either generally or in a particular case;

and

“the person in charge of a vessel” includes the person who is the driver, master, owner, possessor, skipper, or user of the vessel or the person causing, permitting, or suffering the vessel to be navigated, as the case requires.

(2) Where the Department is satisfied that for reasons of safety, or by reason of an emergency, it is expedient that any waters should be closed to navigation, the Department may direct an authorised person by order to close those waters to navigation, and upon the order being made effect shall be given to the order according to its tenor.

(3) An order made by an authorised person under subsection (2) of this section—

- (a) may be served on the person in charge of a vessel;
- (b) shall be published for general information in such part of the State as is likely to be affected by the order as soon as practicable and in such manner as the Department considers likely to be appropriate having regard to the circumstances and what may be practicable;
- (c) may be varied, renewed or cancelled by a subsequent order so made;
- (d) has effect and the force of law in relation to the waters therein specified on and from the time of the making of the order, or such other subsequent time as is specified in the order, and ceases to have effect seven days thereafter unless previously renewed or cancelled;

- (e) may be made so as to be unconditional and so as to apply to any vessel, or so as to provide, whether subject to conditions or unconditionally, that specified persons or vessels may be exempted; and
- (f) may confer a discretionary authority on any person therein specified.

(4) Any person who—

- (a) obstructs the Department or any person acting pursuant to a power, authority or discretion conferred by this section; or
- (b) being the person in charge of a vessel, knowingly navigates that vessel in contravention of the terms of any order made and published under this section,

is guilty of an offence.

Penalty: Five hundred dollars.

(5) The variation or cancellation of an order made under this section does not affect any penalty or punishment incurred, imposed, or liable to be incurred or imposed, prior to that variation or cancellation, or any investigation or legal proceedings in respect of such a penalty or punishment, notwithstanding section eleven of The Criminal Code.

(6) Regulations made under section seventeen of this Act for the purpose of this section may—

- (a) provide that in relation to specified waters the giving of notice in a specified manner shall be deemed to be sufficient evidence of the publication of the order in any proceedings for an offence against this section; and
- (b) make provision generally to give effect to the objects of this section. ”.

6. Section 17 of the principal Act is amended— Section 17
amended.

- (a) by inserting after the designation “17.” the subsection designation “(1)”;
- (b) by deleting “Subject to the provisions of this Act, the Governor may make regulations for” and substituting the following—

“ The Governor may make regulations not inconsistent with the provisions of this Act 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 for ” ;

- (c) by repealing the paragraphs designated “(xvi)” to “(xix)” inclusive and substituting the following—

“ (xvi) without restricting the general power, the particular purposes for which regulations may be required in respect of the several Parts and Divisions of this Act;
(xvii) generally administering this Act and carrying out the powers duly conferred upon the Minister or the Department, or any person, pursuant to this Act. ” ; and

- (d) by inserting the following subsections—

“ (2) Regulations may be made under this section, whether or not for the particular purposes of any Part or Division of this Act,—

- (a) so as to provide that—

- (i) contravention or failure to comply with a regulation;
or

- (ii) the breach of a condition imposed in relation to any exemption from the provisions of the regulations, or of a requirement of a proclamation or rule made, or order or notice published, pursuant to this Act,

constitutes an offence, and may provide for penalties not exceeding a fine of two hundred dollars, and if the offence is a continuing offence a further fine not exceeding forty dollars for every day or part of a day during which the offence continues after notice of the offence, for such offences other than in those cases where a special penalty may be imposed under this Act in respect of a specific offence;

- (b) so as to prescribe a modified penalty not exceeding one hundred dollars for any offence, or class of offence, if dealt with under a section of this Act authorising the service of an infringement notice and the payment of a modified penalty in relation to such an offence;
- (c) 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) in all waters or in specified waters, or throughout the State or in a specified part

or specified parts of the State;

(d) 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 or person or body;

(e) so as to confer on a specified person or body or a specified class of person or body a discretionary authority;

(f) 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 or of a requirement of any proclamation or rule made, or order or notice published pursuant to this Act, either wholly or to such extent as is specified; and

(g) so as to authorise the Department, at any time, to cancel an exemption wholly or in part, and to cancel, or from time to time waive, add to, or otherwise vary the condition of an exemption.

(3) In subsection (2) “specified” means specified in the regulations. ” .

Section 69
amended.

7. Section 69 of the principal Act is amended in subsection (1) by deleting “made under” and substituting the following—

“ for the purposes of this Division made pursuant to ” .

Section 72
amended.

8. Section 72 of the principal Act is amended by deleting “The Governor may make regulations prescribing all matters which by this Division are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Division, and in particular but without prejudice to the generality of the foregoing” and substituting the following—

“ Regulations made under section seventeen of this Act for the purposes of this Division may make provision ” .

Section 79
amended.

9. Section 79 of the principal Act is amended in subsection (1) by deleting “The Governor may make regulations, prescribing all matters necessary or convenient to be prescribed in regard to the carriage of dangerous goods in ships, and in particular in relation to” and substituting the following—

“ Regulations made under section seventeen of this Act for the purposes of this Division may prescribe ” .

Section 85
amended.

10. Section 85 of the principal Act is amended in subsection (1) by deleting “The Governor may make regulations” and substituting the following—

“ Regulations made under section seventeen of this Act for the purposes of this Division may make provision ” .

11. Section 89 of the principal Act is amended— Section 89 amended.

(a) in subsection (1), by deleting “the next succeeding subsection” and substituting the following—

“ section seventeen of this Act and subsection (2) of this section ” ; and

(b) in subsection (2), by inserting after “The Governor” the following—

“ , pursuant to the powers conferred under section seventeen of this Act, for the purposes of this Division ”.

12. Section 182C of the principal Act is amended— Section 182C amended.

(a) by deleting “(1) The Governor may make regulations” and substituting the following—

“ Regulations made under section seventeen of this Act for the purposes of this Part may make provision ” ;

and

(b) by repealing subsection (2).

13. Section 204 of the principal Act is amended by deleting “(1) The Governor may make any regulations not inconsistent with the provisions of this Act which may be necessary or convenient for carrying into operation or facilitating the operation of this Division of this Part of this Act, and without restricting the general power may make regulations with respect to” and substituting the following— Section 204 amended.

“ Regulations made under section seventeen of this Act for the purposes of this Division may make provision with respect to ” .

Section 207
amended.

14. Section 207 of the principal Act is amended—

- (a) in subsection (1), by deleting “The Governor may make any regulations not inconsistent with the provisions of this Act which may be necessary or convenient for carrying into operation or facilitating the operation of the Act, and without restricting the general power may make regulations with respect to” and substituting the following—

“ Regulations made under section seventeen of this Act for the purposes of this Division may make provision with respect to ” ;

and

- (b) by inserting the following subsection—

“ (3) Regulations made, or a notice published under subsection (2) of this section, prescribing safety regulations for the purposes of this Division may provide that where the Department is satisfied that appropriate measures are taken to ensure the safety of competitors certain vessels or persons or classes of vessels or persons engaged in aquatic events approved by the Department may be exempted from the requirement to carry all, or any specified part, of the prescribed safety equipment, whether on specified conditions or unconditionally. ” .
