

WESTERN AUSTRALIA

WESTERN AUSTRALIAN MARINE AMENDMENT ACT

No. 15 of 1987

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

[Assented to 25 June 1987]

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:—

Short title

1. This Act may be cited as the *Western Australian Marine Amendment Act 1987*.

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 76 amended

4. Section 76 of the principal Act is amended by inserting after the definition of "Prevention of Collisions Convention" the following definition—

“ “Prevention of Pollution from Ships Convention” has the same meaning as ‘Convention’ has in the *Pollution of Waters by Oil and Noxious Substances Act 1987*; ”.

Section 78 amended

5. Section 78 of the principal Act is amended by inserting after “the Safety Convention”, in both places where it occurs, the following—

“ , the Prevention of Pollution from Ships Convention ”.

Divisions 6 and 7 of Part IV inserted

6. After Division 5 of Part IV of the principal Act, the following Divisions are inserted—

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Division 6.—Prevention of Pollution from Ships Convention (Ships Carrying or Using Oil)

Interpretation

90A. (1) In this Division, unless the contrary intention appears—

“Annex I” means Annex I to the Prevention of Pollution from Ships Convention;

“foreign ship” means a ship that is not an Australian ship.

(2) Except in so far as the contrary intention appears, an expression that is used in this Division and in the Prevention of Pollution from Ships Convention, including Annex I but not including any other Annex to that Convention, (whether or not a particular meaning is assigned to it by that Convention) has, in this Division, the same meaning as in that Convention.

(3) For the purposes of this Division, a ship shall not be taken to comply with the provisions of Annex I if it does not comply with the regulations and orders referred to in section 90B.

Regulations to give effect to Regulations 13
to 19 (inclusive) of Annex I

90B. (1) The regulations may make provision for and in relation to giving effect to Regulations 13 to 19 (inclusive) of Annex I.

(2) Without limiting the generality of subsection (1), regulations made for the purposes of that subsection may empower the Minister to make orders with respect to any matter for or in relation to which provision may be made by the regulations by virtue of this section.

(3) Sections 37, 41 and 42 of the *Interpretation Act 1984* apply in relation to orders made in pursuance of regulations made under subsection (1) as if references in those sections to regulations were references to such orders and references in those sections to an Act included a reference to regulations.

(4) Unless the contrary intention appears, expressions used in orders made in pursuance of the regulations made under subsection (1) have the same meanings as in this Division.

(5) Orders made in pursuance of the regulations made under subsection (1) shall be read subject to this Act and the regulations and so as not to exceed the power conferred by this Act and the regulations to the intent that where such orders would, but for this subsection, have been construed as being in excess of the power conferred by subsection (1) and the regulations, they shall be deemed to be valid orders to the extent that they are not in excess of that power.

(6) Where an order made in pursuance of the regulations made under subsection (1) is inconsistent with a provision of this Act or the regulations, the latter shall prevail and the former shall, to the extent of the inconsistency, be of no force or effect.

Ship construction certificates

90C. Where, on receipt of declarations of survey in respect of a ship, the Minister is satisfied that the ship is constructed in accordance with the provisions of Annex I, he may, whether or not the ship is required by Annex I to be constructed in accordance with those provisions, issue in respect of the ship a ship construction certificate in the prescribed form attesting such compliance.

Alteration, etc. of construction of ships and cancellation of certificates

90D. (1) Where the construction of a ship in respect of which a ship construction certificate issued under section 90C is in force is altered, or such a ship is damaged, in a manner which affects its compliance with the provisions of Annex I, the master or owner of the ship shall, within 7 days after the construction of the ship is altered or the ship is damaged, as the case may be, give a notice in writing of the alteration or damage to such person, and in such form, as are prescribed and, if the notice is not so given, the master and the owner of the ship are each guilty of an offence punishable upon conviction by a fine not exceeding—

- (a) if the offender is a natural person—\$1 000; or
- (b) if the offender is a body corporate—\$5 000.

(2) Where a notice required to be given under subsection (1) is not given within the period referred to in that subsection, the following provisions of this subsection have effect—

- (a) the obligation to give the notice continues, notwithstanding that that period has expired, until the notice is given;

- (b) the master and the owner of the ship are each guilty of a separate and further offence in respect of each day during which the notice is not given, being a day after the expiration of that period;
 - (c) the penalty applicable to each such separate and further offence is a fine not exceeding—
 - (i) if the offender is a natural person—\$1 000; or
 - (ii) if the offender is a body corporate—\$5 000.
- (3) Where the Minister has reason to believe that—
- (a) the report of a surveyor concerning a ship in respect of which a ship construction certificate issued under section 90C is in force was fraudulently or erroneously made or obtained;
 - (b) a ship construction certificate has been issued under section 90C in respect of a ship upon false or erroneous information;
 - (c) the construction of a ship in respect of which a ship construction certificate issued under section 90C is in force has been altered, or such a ship has been damaged, in a manner which affects its compliance with the provisions of Annex I; or
 - (d) the owner of a ship in respect of which a ship construction certificate issued under section 90C is in force has failed to comply with section 90E in respect of the ship,

he may, by instrument signed by him, cancel the certificate.

(4) Where the Minister cancels a ship construction certificate issued by him in respect of a ship, the certificate is of no force or effect after the Minister has given notice in writing of the cancellation addressed to the owner, agent or master of the ship and served in accordance with the regulations.

(5) Where a ship construction certificate issued in respect of a ship is cancelled under this section, the Minister may, by notice in writing addressed to the owner, agent or master of the ship and served in accordance with the regulations, require the certificate to be delivered up to the Minister or to such other person as the Minister specifies, and the Minister may detain the ship until the requirement is complied with.

Ships to be surveyed periodically

90E. (1) The owner of a ship in respect of which a ship construction certificate issued under section 90C is in force shall, at least once during each period that is a prescribed period in relation to the ship for the purposes of this section, cause the ship to be surveyed for the purpose of ensuring its compliance with the provisions of Annex I.

(2) Where the owner of a ship in respect of which a ship construction certificate issued under section 90C is in force fails to comply with subsection (1) in relation to the ship and to a period that is a prescribed period in relation to the ship, the owner is guilty of an offence punishable on conviction by a fine not exceeding—

- (a) if the owner is a natural person—\$2 000; or
- (b) if the owner is a body corporate—\$10 000.

Requirement for ship construction certificates

90F. (1) This section applies to—

- (a) a trading ship proceeding on an intra-state voyage;
- (b) an Australian fishing vessel proceeding on a voyage other than an overseas voyage; or
- (c) a pleasure vessel,

that is—

- (d) an oil tanker of 150 tons gross tonnage and above; or
- (e) a ship, other than an oil tanker, of 400 tons gross tonnage and above.

(2) The master of a ship to which this section applies shall not begin a voyage unless there is in force in respect of the ship a ship construction certificate.

Penalty: \$10 000 or imprisonment for 4 years, or both.

(3) The owner of a ship to which this section applies shall not permit the ship to begin a voyage unless there is in force in respect of the ship a ship construction certificate.

Penalty—

- (a) if the offender is a natural person—\$10 000, or imprisonment for 4 years, or both; or
- (b) if the offender is a body corporate—\$50 000.

(4) The regulations may exempt ships included in a prescribed class of ships from the application of subsection (1), either absolutely or subject to conditions.

(5) In this section “ship construction certificate” means—

- (a) a ship construction certificate issued under section 90C;
- (b) a ship construction certificate issued under section 267B of the Navigation Act;
- (c) a ship construction certificate issued under a law of another State or the Northern Territory and being a certificate of a kind prescribed as acceptable for the purposes of this Division;
- (d) an International Oil Pollution Prevention Certificate issued to a foreign ship under section 267C of the Navigation Act; or
- (e) an International Oil Pollution Prevention Certificate issued to an Australian ship under the law of a country other than Australia giving effect to Regulation 6 of Annex I.

(6) The owner of a ship to which this section applies in respect of which a ship construction certificate is in force shall cause the certificate to be carried on board the ship.

Penalty: \$1 000.

Division 7.—Prevention of Pollution from Ships Convention (Ships Carrying Noxious Liquid Substances in Bulk)

Interpretation

90G. (1) In this Division, unless the contrary intention appears—

“Annex II” means Annex II to the Prevention of Pollution from Ships Convention;

“foreign ship” means a ship that is not an Australian ship.

(2) Except in so far as the contrary intention appears, an expression that is used in this Division and in the Prevention of Pollution from Ships Convention, including Annex II but not including any other Annex to that Convention, (whether or not a particular meaning is assigned to it by that Convention) has, in this Division, the same meaning as in that Convention.

(3) For the purposes of this Division, a ship shall not be taken to comply with the provisions of Annex II if it does not comply with the regulations and orders referred to in section 90H.

Regulations to give effect to
Regulation 13 of Annex II

90H. (1) The regulations may make provision for and in relation to giving effect to Regulation 13 of Annex II.

(2) Without limiting the generality of subsection (1), regulations made for the purposes of that subsection may empower the Minister to make orders with respect to any matter for or in relation to which provision may be made by the regulations by virtue of this section.

(3) Sections 37, 41 and 42 of the *Interpretation Act 1984* apply in relation to orders made in pursuance of regulations made under subsection (1) as if references in those sections to regulations were references to such orders and references in those sections to an Act included a reference to regulations.

(4) Unless the contrary intention appears, expressions used in orders made in pursuance of the regulations made under subsection (1) have the same meanings as in this Division.

(5) Orders made in pursuance of the regulations made under subsection (1) shall be read subject to this Act and the regulations and so as not to exceed the power conferred by this Act and the regulations to the intent that where such orders would, but for this subsection, have been construed as being in excess of the power conferred by subsection (1) and the regulations, they shall be deemed to be valid orders to the extent that they are not in excess of that power.

(6) Where an order made in pursuance of the regulations made under subsection (1) is inconsistent with a provision of this Act or the regulations, the latter shall prevail and the former shall, to the extent of the inconsistency, be of no force or effect.

Chemical tanker construction certificates

90I. Where, on receipt of declarations of survey in respect of a ship, the Minister is satisfied that the ship is constructed in accordance with the provisions of Annex II, he may, whether or not the ship is required by Annex II to be constructed in accordance with those provisions, issue in respect of the ship a chemical tanker construction certificate in the prescribed form attesting such compliance.

Alteration, etc. of construction of ships and cancellation of certificates

90J. (1) Where the construction of a ship in respect of which a chemical tanker construction certificate issued under section 90I is in force is altered, or such a ship is damaged, in a manner which affects its compliance with the provisions of Annex II, the master or owner of the ship shall, within 7 days after the construction of the ship is altered or the ship is damaged, as the case may be, give a notice in writing of the alteration or damage to such person, and in such form, as are prescribed and, if the notice is not so given, the master and the owner of the ship are each guilty of an offence punishable upon conviction by a fine not exceeding—

- (a) if the offender is a natural person—\$1 000; or
- (b) if the offender is a body corporate—\$5 000.

(2) Without limiting the generality of subsection (1), a ship in respect of which a chemical tanker construction certificate is in force shall, for the purposes of that subsection, be taken to be damaged if the ship becomes unfit to proceed to sea without presenting an unreasonable threat of harm to the marine environment.

(3) Where a notice required to be given under subsection (1) is not given within the period referred to in that subsection, the following provisions of this subsection have effect—

- (a) the obligation to give the notice continues, notwithstanding that that period has expired, until the notice is given;
- (b) the master and the owner of the ship are each guilty of a separate and further offence in respect of each day during which the notice is not given, being a day after the expiration of that period;
- (c) the penalty applicable to each such separate and further offence is a fine not exceeding—
 - (i) if the offender is natural person—\$1 000; or
 - (ii) if the offender is a body corporate—\$5 000.

(4) Where the Minister has reason to believe that—

- (a) the report of a surveyor concerning a ship in respect of which a chemical tanker construction certificate issued under section 90I is in force was fraudulently or erroneously made or obtained;
- (b) a chemical tanker construction certificate has been issued under section 90I in respect of a ship upon false or erroneous information;
- (c) the construction of a ship in respect of which a chemical tanker construction certificate issued under section 90I is in force has been altered, or such a ship has been damaged, in a manner which affects its compliance with the provision of Annex II; or

- (d) the owner of a ship in respect of which a chemical tanker construction certificate issued under section 90I is in force has failed to comply with section 90K in respect of the ship,

he may, by instrument signed by him, cancel the certificate.

(5) Where the Minister cancels a chemical tanker construction certificate issued by him in respect of a ship, the certificate is of no force or effect after the Minister has given notice in writing of the cancellation addressed to the owner, agent or master of the ship and served in accordance with the regulations.

(6) Where a chemical tanker construction certificate issued in respect of a ship is cancelled under this section, the Minister may, by notice in writing addressed to the owner, agent or master of the ship and served in accordance with the regulations, require the certificate to be delivered up to the Minister or to such other person as the Minister specifies, and the Minister may detain the ship until the requirement is complied with.

Ships to be surveyed periodically

90K. (1) The owner of a ship in respect of which a chemical tanker construction certificate issued under section 90I is in force shall, at least once during each period that is a prescribed period in relation to the ship for the purposes of this section, cause the ship to be surveyed for the purpose of ensuring its compliance with the provisions of Annex II.

(2) Where the owner of a ship in respect of which a chemical tanker construction certificate issued under section 90I is in force fails to comply with subsection (1) in relation to the ship and to a period that is a prescribed period in relation to the ship, the owner is guilty of an offence punishable on conviction by a fine not exceeding—

- (a) if the owner is a natural person—\$2 000; or
- (b) if the owner is a body corporate—\$10 000.

Requirement for chemical tanker construction certificates

90L. (1) Where a trading ship proceeding on an intrastate voyage is constructed or adapted so that it can carry as cargo, or part cargo, in bulk any substance that, for the purposes of Part III of the *Pollution of Waters by Oil and Noxious Substances Act 1987*, is a substance in Category A, B, C or D, the master of that ship shall not begin a voyage, and the owner of that ship shall not permit that ship to begin a voyage, unless there is in force in respect of that ship a chemical tanker construction certificate.

Penalty—

- (a) if the offender is a natural person—\$10 000, or imprisonment for 4 years, or both; or
- (b) if the offender is a body corporate—\$50 000.

(2) The regulations may exempt ships included in a prescribed class of ships from the application of subsection (1), either absolutely or subject to conditions.

(3) In this section “chemical tanker construction certificate” means—

- (a) a chemical tanker construction certificate issued under section 90I;
- (b) a chemical tanker construction certificate issued under section 267Q of the Navigation Act;
- (c) a chemical tanker construction certificate issued under a law of another State or the Northern Territory and being a certificate of a kind prescribed as acceptable for the purposes of this Division; or
- (d) an International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk issued to a foreign ship under section 267R of the Navigation Act.

(4) The owner of a ship of the kind referred to in subsection (1) in respect of which a chemical tanker construction certificate is in force shall cause the certificate to be carried on board the ship.

Penalty: \$1 000. ”.