

AMERICA'S CUP YACHT RACE (SPECIAL ARRANGEMENTS) ACT

No. 43 of 1986

AN ACT to make special provision with respect to the America's Cup Yacht Race and associated yacht races and activities.

[Assented to 1 August 1986]

WHEREAS it is proposed to hold the America's Cup Yacht Race and associated yacht races and other activities in the seas off Fremantle:

AND WHEREAS it is necessary because of those races and activities to make special provision with respect to navigation and the safety and convenience of the ships, vessels and persons using the Port of Fremantle and other parts of the State and for other purposes:

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:—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *America's Cup Yacht Race (Special Arrangements) Act 1986*.

Commencement and duration

2. (1) Subject to this section, the provisions of the Act shall come into operation on such day as is or such days as are, respectively, fixed by proclamation.

(2) For the purpose of facilitating the holding of the America's Cup Yacht Race and associated yacht races and activities and any other races or activities that may be held in connection with, incidentally to or with reference to the America's Cup Yacht Race the Governor may from time to time by proclamation appoint a period or periods during which the provisions of Part II or such of the provisions thereof as are specified in the proclamation have effect.

(3) Where a proclamation is in force under subsection (2), Part II or the provisions thereof specified in the proclamation, as the case may be, has or have effect accordingly.

(4) If, by reason of any change in plans for the holding of the races or activities referred to in subsection (2), or for any other reason deemed by the Governor to be sufficient, the Governor is of the opinion that a proclamation under subsection (2) should be amended or cancelled, the Governor may by proclamation amend or cancel a proclamation made under subsection (2).

(5) Subsections (2) to (4) have effect until 30 June 1987 and no longer.

(6) A proclamation shall not be made under this section in relation to Part II in respect of any period after 30 June 1987.

PART II—NAVIGATION

Interpretation

3. In this Part—

“authorized person” means—

- (a) any officer of the Fremantle Port Authority;
- (b) any officer of the Department of Marine and Harbours of the State;
- (c) any member of the police force; and
- (d) any person designated as an authorized person under section 5;

“control area” means the stippled area in the map in the Schedule being the area more particularly delineated by the boundary marking in Land Administration Miscellaneous Plan No. 1558 comprising parts of waters and land within—

- (a) the limits of the Port of Fremantle under the *Fremantle Port Authority Act 1902*;
- (b) the territorial seas of the State; and
- (c) the seas on the landward side of the territorial sea adjacent to the Port of Fremantle;

“controlled waters” means—

- (a) the control area; and
- (b) the Port of Perth;

“law of the State” means any present or future law of the State, whether written or unwritten and as in force from time to time, and includes any instrument made under such a law;

“Navigation Authority” in relation to controlled waters that are within—

- (a) the control area—means the person holding or acting in the office of Harbour Master of the Port of Fremantle under the *Fremantle Port Authority Act 1902*;
- (b) the Port of Perth—means the person holding or acting in the office of Harbour Master of the Port of Perth under the *Shipping and Pilotage Act 1967*;

“Port of Perth” means the Port of Perth under the *Shipping and Pilotage Act 1967*;

“vessels” includes ships and all manner of craft however propelled and includes barges, rafts, boards, floating restaurants and other floating structures.

Application of laws

4. (1) Without affecting the application which any law of the State would otherwise have to and in relation to the control area for convenience and certainty it is declared that—

- (a) the provisions of every law of the State shall be taken to have effect in and in relation to the control area, including the seabed and subsoil beneath and the airspace above the control area, as if the control area were part of Western Australia;
- (b) any reference in a written law of the State to Western Australia or to the State or to the jurisdiction or any other like reference shall be read as including a reference to the control area; and
- (c) for the purposes of this Act the *Fremantle Port Authority Act 1902* applies to and in relation to the control area.

(2) This Act does not limit the application of the *Shipping and Pilotage Act 1967* to the Port of Perth.

Designation of authorized persons

5. (1) A Navigation Authority may designate any person as an authorized person for the purposes of this Part.

(2) A Navigation Authority shall issue to each person designated as an authorized person under subsection (1) a certificate specifying that the person is an authorized person for the purposes of this Part.

Navigation Authority may give directions

6. (1) Without affecting anything in the *Fremantle Port Authority Act 1902* or the *Shipping and Pilotage Act 1967*, as the case requires, a Navigation Authority may in relation to the controlled waters subject to that Authority give such directions as appear to it to be necessary or convenient to facilitate the safe, orderly or convenient use of controlled waters subject to that Navigation Authority by vessels and persons and the efficient conduct of any race or activity referred to in section 2 (2).

(2) A Navigation Authority may in relation to controlled waters subject to that Authority empower an authorized person to give directions with respect to the conduct of persons and the control of vessels and without limiting the generality of the foregoing a Navigation Authority may empower an authorized person—

- (a) to prohibit or restrict the entry of persons or vessels or the departure of persons or vessels into or from or in or about the controlled waters or portion of the controlled waters;
- (b) to prohibit or restrict the movement of persons or vessels or both in or about the controlled waters;
- (c) to prohibit or restrict the mooring or berthing of vessels in or about the controlled waters.

(3) A direction by a Navigation Authority under subsection (1)—

- (a) may be given orally or in writing and where given orally shall be reduced to writing as soon as is practicable;
- (b) shall be published for general information by whatever means the Navigation Authority considers to be practicable in the circumstances of the particular case and where such publication has not been in writing shall be published in writing as soon as is practicable.

(4) The Fremantle Port Authority constituted under the *Fremantle Port Authority Act 1902* may, with the approval of the Minister, by notice published in a newspaper circulating in the State impose charges with respect to the mooring or berthing of vessels or classes of vessels in or about the control area or any portion thereof.

(5) Any moneys received by the Fremantle Port Authority under subsection (4) shall be applied for the purposes specified by, and, in accordance with directions given by, the Treasurer.

(6) Section 43 (7), (8) and (9) of the *Interpretation Act 1984* applies to a direction given by a Navigation Authority under this Part as though the direction were subsidiary legislation.

(7) Notwithstanding anything in section 41 of the *Interpretation Act 1984* a direction given by a Navigation Authority under this Part is not required to be published in the *Government Gazette*.

Navigation Authority and authorized person may stop, move, etc. vessels

7. For the purposes of giving effect to any direction given under this Act a Navigation Authority and any authorized person using such assistance as may be necessary—

- (a) may direct any person in charge or appearing to be in charge of a vessel to stop or move or moor the vessel or cause the vessel to be stopped or moved or moored in accordance with the direction;
- (b) may board any vessel;
- (c) may take charge of any vessel where it appears to the Navigation Authority or authorized person that—
 - (i) there is no person on the vessel or in charge of the vessel;
 - (ii) the person in charge of the vessel has not obeyed a direction; or
 - (iii) navigation is obstructed or endangered or is likely to be obstructed or endangered by the vessel,

and may where it is necessary to prevent a contravention of a direction detain any vessel.

Penalty for refusing to give name and address

8. A person who is reasonably suspected of—

- (a) failing to comply with a direction given by a Navigation Authority or an authorized person; or
- (b) having committed any offence under any written law,

and who on being asked by a Navigation Authority or an authorized person, as the case may be, neglects or refuses to give his name or residential address or gives a false name or false residential address is guilty of an offence.

Penalty: \$500.

Offences

9. (1) A person who fails to comply with any direction given by a Navigation Authority or authorized person commits an offence and is liable—

- (a) in the case of a direction given by a Navigation Authority to a penalty of \$10 000;
- (b) in the case of a direction given by an authorized person to a penalty of \$1 000,

and if the offence is a continuing one—

- (c) in the case of a direction given by a Navigation Authority, to a further penalty of \$5 000;
- (d) in the case of a direction given by an authorized person, to a further penalty of \$500,

for every day or part of a day during which the offence has continued.

(2) The relevant infringement notice provisions apply as though—

- (a) a failure to comply with a direction given under this Part were a prescribed offence under the relevant infringement notice provision;
- (b) a person who is an authorized person under this Part were an authorized person under the relevant infringement notice provision; and
- (c) the penalty prescribed for the failure to comply with a direction given under this Part—
 - (i) in relation to a direction given by a Navigation Authority were \$100;
 - (ii) in relation to a direction given by an authorized person were \$50.

(3) In subsection (2)—

“the relevant infringement notice provisions” in relation to—

- (a) the control area, means section 66B of the *Fremantle Port Authority Act 1902*;
- (b) the Port of Perth, means section 132 of the *Western Australian Marine Act 1982*.

Obstructing authorized persons

10. A person, whether on board a vessel or elsewhere, who assaults, obstructs, or endeavours to intimidate an authorized person is guilty of an offence and is liable to a penalty not exceeding \$2 000 and may be detained by that authorized person or by any person whom he may call to his assistance until the offender can be conveniently taken before a court of competent jurisdiction.

Harbour Master may consult

11. Before giving directions under section 6 in relation to the control area the Harbour Master of the Port of Fremantle may consult with any one or more of the following—

- (a) a person nominated by the General Manager appointed under the *Western Australian Marine Act 1982*;
- (b) a person nominated by the persons controlling the conduct of the America's Cup Yacht Race;
- (c) any other persons who in the opinion of the Harbour Master have an interest in safe navigation in the control area;
- (d) a police officer nominated by the Commissioner of Police.

Evidentiary

12. (1) A statement signed or purporting to be signed by a Navigation Authority—

- (a) to which is attached a copy of a direction;
- (b) stating that the direction—
 - (i) was given;
 - (ii) was given by the Navigation Authority;
 - (iii) was in force during the time, the day, days or period, as the case requires, specified in the statement,

is, in the absence of evidence to the contrary, sufficient evidence of the direction and facts set out in the statement.

(2) A certificate signed or purporting to be signed by a Navigation Authority stating that at the time stated in the certificate a person named in the certificate was an authorized person under this Part is evidence of that fact in the absence of evidence to the contrary.

(3) In any legal proceedings in relation to an offence under any written law it is a defence to prove that the act or omission complained of was in compliance with or permitted by a direction given under this Part.

(4) In any legal proceedings for an offence against this Part or a direction given under this Part an averment that the place at which an offence was committed was a place in controlled waters is evidence of that fact in the absence of proof to the contrary.

(5) The production of a copy of a paper certified or purporting to be certified by the Surveyor General of the State of Western Australia to be a true copy of Department of Land Administration Miscellaneous Plan No. 1558 prepared for the purposes of this Part is sufficient proof of the limits of the controlled waters.

(6) All courts and persons acting judicially shall take judicial notice of—

(a) the signature of every person who is for the time being and of every person who has at any time been—

(i) the Harbour Master of the Port of Fremantle;

(ii) the Harbour Master of the Port of Perth;

(iii) the Surveyor General of the State of Western Australia;

and

(b) the fact that such person holds or has held such office,

if the signature purports to be attached or appended to any official document.

PART III—MISCELLANEOUS

Reserve 24410

13. (1) Reserve No. 24410, classified as of Class C, containing 9.731 7 hectares set apart for Harbour Trust Purposes and vested in the Fremantle Port Authority shall be deemed to have been amended by the excision of the portion of land described in the Schedule to this section with effect on and from 17 July 1986.

(2) The land excised from Reserve No. 24410 by subsection (1) (hereinafter referred to as the Scheduled land) shall by force of this subsection and without further order be deemed to have been vested in the Minister for the purposes of "America's Cup Media Centre".

(3) For the purposes of this section the Minister to whom the administration of this Act is committed by the Governor shall be a body corporate and shall be known by such designation as is conferred on him by the Governor under the *Constitution Acts Amendment Act 1899*, and—

- (a) shall have a seal; and
- (b) is capable of acquiring, holding, giving security over and disposing of real and personal property and of suing and being sued in his corporate name.

(4) The Minister may, with the approval of the Treasurer, enter into any agreement or arrangement to facilitate the holding of the America's Cup Yacht Race or any race or activity associated with or incidental thereto.

(5) Any property real or personal (including money and choses in action) received by the Minister under any agreement or arrangement entered into by the Minister shall be applied for the purposes specified by, and, in accordance with directions given by, the Treasurer.

(6) All courts and judges and persons acting judicially shall take judicial notice of the seal of the Minister affixed to any document and presume that it was duly affixed.

(7) Notwithstanding any other law, with effect on and from 17 July 1986—

- (a) the scheduled land is deemed to have been freed and discharged from all trusts, mortgages, charges, obligations, estates, interests, rights-of-way, or other easements whatsoever; and
- (b) except as provided by this section, no claim shall be brought or continued against the State, the Minister, the Fremantle Port Authority or any other person for any loss, damage or compensation arising by virtue of or in consequence of the operation of subsection (1), (2) or paragraph (a).

(8) The Governor may, on application by a party to a claim or contemplated claim, exempt the claim or contemplated claim from the provisions of subsection (7) (b).

(9) Any decision or purported decision of the Governor under subsection (8) shall not be challenged, appealed against, reviewed, quashed or called in question by or in any proceedings before a court on any ground.

(10) The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Minister as a body corporate and the report to be submitted under section 66 of that Act to the Minister shall be submitted to the Treasurer.

(11) In this section—

“claim” includes any form of action, claim or proceedings including proceedings by way of arbitration, however founded.

SCHEDULE

Scheduled land

- (1) The land in Reserve No. 24410 on which is erected the building known as the “America's Cup Media Centre”; and
- (2) Any other building or structure or portion of building or structure on Reserve 24410 used or proposed or intended to be used for or in connection with reporting the America's Cup Yacht Race and any race or event associated with or connected with the America's Cup Yacht Race.

Recovery of fees and charges

14. Where the Fremantle Port Authority imposes any fees or charges under section 6 (4) the Port Authority may recover the amount of such fee or charge that remains unpaid in any court of competent jurisdiction.

Immunity of Minister and officials

15. No liability shall attach to the Minister, a Navigation Authority, an authorized person, member of the police force or any other official under this Act or any person acting with the authority or under the direction of the Minister, a Navigation Authority, an authorized person, a member of the police force or any other official acting in good faith and in the exercise or purported exercise of a function under this Act.

Savings and reversioning

16. (1) Without affecting anything in the *Interpretation Act 1984*, the expiry of Part II shall not affect the previous operation thereof or the validity of any action taken under Part II or affect any payment made or to be made in consequence of that Part.

(2) On and after 30 June 1987 or on such day fixed by the Minister by notice published in the *Gazette* whichever is earlier, the land described in the Schedule to section 13 is hereby reinstated as Reserve 24410 and is reversioned in the Fremantle Port Authority.

SCHEDULE
Section 3
Control Area

