

MARINE AND HARBOURS ACT 1981.

ARRANGEMENT.

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MARINE AND HARBOURS.

No. 21 of 1981.

AN ACT to make provision concerning the functions of the Department of Marine and Harbours and to provide for the advancement of efficient and safe shipping and effective boating and port administration through the provision of certain facilities and services, and for incidental and connected purposes.

[Assented to 26 May 1981.]

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. This Act may be cited as the *Marine and Harbours Act 1981*. Short title.

Commence-
ment.

2. This Act shall come into operation on a day to be fixed by proclamation.

Interpreta-
tion.

3. In this Act, unless the contrary intention appears—

“Department” means the Department of Marine and Harbours referred to in section 4;

“General Manager” means the General Manager referred to in section 4;

“Port Authority” means a body established under an Act of the Parliament of the State as the Port Authority in relation to a port within the State;

“section” means a section of this Act;

“subsection” means a subsection of the section in which the word is used.

Department
of Marine
and
Harbours.

4. (1) For the purposes of this Act there may be established under the Public Service Act 1978 as a department of the Public Service of the State a department to be known as the Department of Marine and Harbours.

(2) A person shall be appointed under and subject to the Public Service Act 1978 to the office of General Manager and he shall be the permanent head of the Department.

(3) The General Manager is responsible, subject to the general control of the Minister, for the administration of this Act.

(4) There shall be appointed under and subject to the Public Service Act 1978 such officers as may be necessary to provide administrative, professional, scientific, technical, and other services to the Department.

(5) The Minister may engage persons as employees and, subject to any industrial award or agreement that is applicable in relation to a

particular case or class of cases, persons so engaged shall be employed on such terms and conditions as the Minister, on the recommendation of the Public Service Board, determines.

5. (1) Subject to this Act, the functions of the Department are—

Functions
of the
Department.

- (a) to administer, exercise and perform the powers and duties necessary or convenient for the control and regulation in the State of marine and port affairs and navigation;
- (b) to administer, exercise and perform the powers and duties necessary or convenient for the provision and regulation in the State of pilotage services, except in relation to ports where pilotage services are lawfully provided by a Port Authority;
- (c) to advise the Minister on marine and port affairs;
- (d) to provide assistance and advice, when requested by a Port Authority, on matters concerned with the promotion and development of the port for which that Port Authority is responsible and on proposals for, or policy in respect of, capital expenditure by the Port Authority;
- (e) to regulate, control, and promote measures desirable to ensure the safety of life in connection with shipping and boating and to construct, maintain, and manage facilities and equipment necessary for that purpose;
- (f) to construct, control, manage, operate, and maintain ports within the State, other than those for which a Port Authority is responsible, and to provide such plant, equipment, and facilities as are necessary for the administration and operation of such ports;

- (g) to provide for the commercial development and promotion of the ports referred to in paragraph (f) of this subsection;
- (h) to construct, control, manage, operate, and maintain fishing boat harbours within the State and to provide such plant, equipment, and facilities as are necessary for the administration and operation of such harbours;
- (i) to construct, provide, and maintain facilities and services, both on land and water, that are desirable to meet the needs of effective and efficient shipping and boating, both recreational and commercial, including—
 - (i) port works;
 - (ii) jetties, landing places, slips, platforms, grids, breakwaters, depots, and sheds;
 - (iii) moorings;
 - (iv) fishing industry facilities;
 - (v) launching ramps;
 - (vi) navigation aids;
 - (vii) marine craft;
- (j) to preserve and protect property vested in or acquired by the Minister for the purposes of this Act; and
- (k) to perform such other duties relating to marine and port affairs within the State, not being inconsistent with this Act, as the Minister may from time to time require.

(2) In this section “port works” in relation to a port, includes any pier, quay, wharf, jetty, bridge, viaduct, breakwater, embankment or dam, or any reclamation of land from the sea or a river, or excavation, deepening, dredging or widening of any channel, basin or other part of a harbour.

6. (1) The Minister may enter into contracts or arrangements with any person, including a Minister, department or instrumentality of the State, for the erection, construction or execution of any work permitted or authorized to be erected or constructed by it, or for furnishing materials or labour, or for the purchase or construction of machinery or appliances of any kind, or for the supply of professional, technical or other services, and any other contracts or arrangements necessary for the purpose of carrying out effectively the functions of the Department.

Power of
Minister to
contract.

(2) A contract or arrangement entered into by the Minister under subsection (1) with another Minister, a department or an instrumentality of the State shall be on such conditions and financial terms as may be agreed between the parties.

7. (1) The Minister may enter into written arrangements with any person for the performance by that person as agent of the Department of such of the functions of the Department as may be specified in the arrangement.

Power to
appoint
agents.

(2) An arrangement under subsection (1) shall be on such terms and conditions as may be agreed by the parties, including provision for remuneration of the agent, and shall specify the area or port with respect to which the arrangement is to apply.

8. (1) For the purposes of this Act, the Minister—

Minister to
be body
corporate.

- (a) is a body corporate, with perpetual succession, under the name of "The Minister for Transport";
- (b) shall have a common seal;
- (c) may acquire, hold, and dispose of real and personal property; and
- (d) may sue and be sued in his corporate name.

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

Vesting by
proclamation
of Governor.

9. (1) For the purposes of this Act, the Governor may by proclamation—

- (a) vest in the Minister any real or personal property of any kind, or interest in any such property; and
- (b) withdraw any land or other property of any kind from the Minister and vest or re-vest it in the Crown.

(2) The Governor may by further proclamation cancel or vary any proclamation made under subsection (1).

Compulsory
acquisition
of land.

10. Subject to this Act, where any land is required for the purposes of this Act, that land may be entered upon, surveyed and taken under the powers contained in and in accordance with the procedure set out in the Public Works Act 1902.

Exemption
from rates,
etc.

11. (1) Subject to subsection (2), all land vested in the Minister under this Act is exempt from any rate, tax or imposition that might, but for this section, be lawfully levied or imposed by or under any Act.

(2) Nothing in subsection (1) precludes a municipal council under the Local Government Act 1960, or other statutory authority from levying and collecting rates and other lawful charges in respect of land, houses and buildings of the Minister that are for the time being let or occupied for private purposes.

Leases of
vested land.

12. (1) The vesting of any property in the Minister under section 9 shall not in any way affect or derogate from any lease, tenancy, licence or other

like agreement to which that property was subject immediately before the property was vested in the Minister and the property shall be vested subject to any such lease, tenancy, licence or other like agreement.

(2) The Minister may grant a lease of land or other property vested in him under this Act for such term and upon such terms and conditions, including a right of renewal, as the Minister thinks fit.

13. (1) The Minister shall not later than 6 months after the coming into operation of this Act cause a schedule to be made of property vested in him pursuant to this Act and shall determine in consultation with the Treasurer the value of such property to be charged against the Department in its accounts.

Schedules of vested property and determination of value.

(2) The Minister shall at the end of each financial year cause a schedule to be made of the cost of all additional works and improvements constructed and the proportionate cost of works in the course of construction and of all lands and other property vested in, or otherwise acquired by, the Minister during the preceding financial year to be charged against the Department in its accounts.

14. All rents, charges and other moneys received by the Minister or the Department under this Act shall be paid to the Consolidated Revenue Fund of the State.

Collection of revenue.

15. The moneys required for the purposes of this Act, including moneys required for revenue and capital purposes, shall be provided by the Treasurer out of moneys from time to time appropriated by Parliament for such purposes.

Appropriation of funds.

Financial
records and
statements.

16. (1) The General Manager shall, in addition to the books of account and records that are required to be kept and maintained under the Audit Act 1904 and the regulations made under that Act, cause such further books of account and records to be kept and maintained as are necessary for the preparation as the Minister may from time to time require of a profit and loss account, a balance sheet of assets and liabilities, and any other statement in respect of a function of the Department.

(2) The General Manager shall in every year cause financial statements to be compiled in a form approved by the Minister from the books of account and records and submitted to the Auditor General for audit.

(3) The Auditor General shall as soon as practicable certify, if such is the case, that—

- (a) he has found the accounts in order, or otherwise;
- (b) in his opinion the accounts are properly drawn up in accordance with generally accepted accounting standards so as to present a true and fair view of the transactions for the period under review and the financial position at the end of that period as shown by the books and records.

Annual
report.

17. (1) The General Manager shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister an annual report on the administration of this Act, the work of the Department, and such other matters as the Minister may direct.

(2) The Minister shall cause every report furnished to him under subsection (1) to be laid before each House of Parliament within 12 sitting days of that House after receipt of the report by the Minister.

18. (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to the General Manager or some other officer of the Department any of his powers or duties under this Act, other than this power of delegation and his duties under section 13.

Delegation.

(2) For the purposes of this Act, the exercise of a power or the performance of a duty by a delegate under this section shall be deemed to be the exercise of the power or the performance of the duty by the Minister.

(3) A delegation under this section may be made to a specified person or to the holder or holders for the time being of a specified office or class of offices.

(4) A delegation under this section may—

- (a) be made subject to such conditions, qualifications and exceptions as are set out in the instrument of delegation;
- (b) be revoked or varied by instrument in writing signed by the Minister.

(5) The Minister may exercise a power or perform a duty notwithstanding that he has delegated its exercise or performance under this section.

19. (1) The Governor may make regulations prescribing all matters that are necessary or convenient to be prescribed for giving effect to the purposes of this Act and, in particular—

Power to
make
regulations.

(a) regulating or prohibiting—

- (i) the entry or remaining within the boundaries of departmental areas or any specified part of such areas by any person or class of persons or thing or class of things;
- (ii) the doing or omitting to do any thing or class of things within the boundaries of departmental areas or any specified part of such areas,

either at all times and on all occasions or at any specified time or times or on any specified occasion or occasions;

- (b) regulating or prohibiting the entry, movement, use, and parking of vehicles in or on departmental land and imposing speed restrictions in respect of the use of vehicles on such land;
- (c) providing for the preservation of order on or in relation to departmental land and installations vested in, acquired by, or managed by the Department including provisions for or in respect of preventing the entry of persons to departmental land and provisions for the removal of persons loitering, squatting or otherwise conducting themselves in a manner likely to prejudice the efficient and convenient use of the land or the port facilities on such land;
- (d) regulating and making provision for all matters relating to the protection of life and property within departmental areas;
- (e) regulating the use of departmental areas and in particular—
 - (i) prohibiting the removal of soil, sand, gravel, stone, rock or other material from or otherwise interfering with such areas without the written permission of the Department;
 - (ii) prohibiting the deposit of any matter, rubbish or litter or the lighting of fires or endangering by other means of departmental areas or property on such areas; or
 - (iii) prohibiting the erection of any structure, post, pile, stake, fence, mooring or any other thing placed or fixed to land or seabed within departmental areas without the written permission of the Department;

- (f) authorizing and regulating the removal by or on behalf of the Department of any structure or other thing erected contrary to a regulation made under this Act and providing for the recovery of the cost and expenses of such removal;
- (g) prescribing the dues and charges to be paid for services provided by the Department;
- (h) providing that contravention or failure to comply with a regulation constitutes an offence and providing for penalties not exceeding a fine of \$500 for offences against the regulations; and
- (i) for other purposes relating to the convenience of shipping or of the public within departmental areas and generally for the effective administration and performance of the functions vested in the Minister and the Department by this Act.

(2) Regulations may be made under this section adopting—

- (a) wholly or in part;
- (b) with or without modifications; and
- (c) specifically or by reference,

any rules, regulations, other subordinate legislation, codes, standards, or instructions made, determined, or issued in respect of—

- (d) the safety or handling of dangerous or other goods;
- (e) the construction of buildings or other structures; or
- (f) the use of departmental areas or conduct of any activity in such areas,

by or under any other Act or under any Act of the Parliament of the Commonwealth or the United Kingdom or by the Standards Association of Australia, the British Standards Institution, The

Association of Australian Port and Marine Authorities, the Marine and Ports Council of Australia or other like body specified in the regulations.

(3) Regulations may be made under this section—

(a) 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) throughout the State or in a specified part or specified parts of the State;

(b) 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 of person or body;

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

(d) 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, either wholly or to such extent as is specified.

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

(5) In this section—

“departmental areas” means departmental lands and waters, shores and seabed within ports for the administration and operation of which the Department is responsible; and

“departmental lands” means lands vested in the Minister by a proclamation under section 9 and lands otherwise acquired by the Minister for the purposes of this Act.

20. (1) A reference in any Act or regulation to the Harbour and Light Department shall, unless the context otherwise requires, be read and construed as a reference to the Department of Marine and Harbours and on a reprint of the Act or regulation pursuant to statutory authority the reference may be altered accordingly.

References to Harbour and Light Department and Manager in other laws.

(2) A reference in any Act or regulation to the Department where the context is such that the reference relates to the Harbour and Light Department shall, unless the context otherwise requires, be read and construed as a reference to the Department of Marine and Harbours.

(3) A reference in any Act or regulation to the Manager of the Harbour and Light Department shall, unless the context otherwise requires, be read and construed as a reference to the General Manager of the Department of Marine and Harbours and on a reprint of the Act or regulation pursuant to statutory authority the reference may be altered accordingly.

(4) A reference in any Act or regulation to the Manager where the context is such that the reference relates to the Manager of the Harbour and Light Department shall, unless the context otherwise requires, be read and construed as a reference to the General Manager and on a reprint of the Act or regulation pursuant to statutory authority the reference may be altered accordingly.