

Western Australia

## **Shipping and Pilotage Amendment Act 2006**

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As at 13 Dec 2006

No. 71 of 2006

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## Shipping and Pilotage Amendment Act 2006

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Western Australia

## Shipping and Pilotage Amendment Act 2006

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No. 71 of 2006

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**An Act to amend the *Shipping and Pilotage Act 1967* and to cancel certain proclamations made under that Act.**

[Assented to 13 December 2006]

The Parliament of Western Australia enacts as follows:

**1. Short title**

This is the *Shipping and Pilotage Amendment Act 2006*.

**2. Commencement**

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

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**3. The Act amended**

The amendments in this Act are to the *Shipping and Pilotage Act 1967*\*.

[\* *Reprint 3 as at 21 March 2003.*

*For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1, p. 415.]*

**4. Section 3 amended**

Section 3 is amended as follows:

- (a) by inserting in the appropriate alphabetical positions —

“

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

“**controlled area**” means an area of water outside a port that is declared under section 10(1c) to be an area in which pilotage services are to be used;

“**marine safety plan**” has the meaning given to that term in section 7B(1);

“**pilotage area**” means a port or a controlled area;

”;

- (b) by deleting the definitions of “harbour master” and “port” and inserting instead —

“

“**harbour master**” of a port means —

- (a) a harbour master of the port appointed under section 4; or
- (b) an acting harbour master of the port appointed under the *Interpretation Act 1984* section 52(1)(b); or
- (c) a deputy harbour master of the port appointed under section 7A when

performing a function of the harbour master  
as authorised by section 7A(2), (3) or (5);

“port” means an area of water, or land and water, for  
the time being declared to be a port under  
section 10(1).

”.

**5. Section 4 replaced**

Section 4 is repealed and the following section is inserted  
instead —

“

**4. Appointment of harbour masters**

The Minister may, in writing, appoint any person to be  
the harbour master of a port.

”.

**6. Section 6 amended**

Section 6(4) is amended by deleting “section.” and inserting  
instead —

“ section or section 5(1)(d) or (3). ”.

**7. Section 7A inserted**

After section 7 the following section is inserted —

“

**7A. Deputy harbour masters: appointment and  
functions**

- (1) The Minister may, in writing, appoint any person to be  
a deputy harbour master of any port.
- (2) If there is one deputy harbour master of a port, the  
deputy harbour master may perform the functions of  
the harbour master under this Act during any absence,  
illness or incapacity of the harbour master.

**s. 8**

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- (3) If there are 2 or more deputy harbour masters of a port, one of them may if —
- (a) nominated to do so by the CEO; or
  - (b) authorised to do so under arrangements approved by the CEO,
- perform the functions of the harbour master under this Act during an absence, illness or incapacity of the harbour master.
- (4) Subsections (2) and (3) do not limit the Minister's power under the *Interpretation Act 1984* section 52(1)(b) to appoint an acting harbour master of the port.
- (5) Even if the harbour master of a port is able to perform a function under this Act, a deputy harbour master of the port may perform that function subject to the supervision of the harbour master.

”.

**8. Section 7B inserted**

Before section 8 the following section is inserted —

“

**7B. Marine safety plans**

- (1) In this section —
- “**marine department**” means the department of the Public Service principally assisting the Minister administering the *Marine and Harbours Act 1981* in the administration of that Act;
- “**marine safety plan**” means a plan prepared by the safety operator for an MSP area and approved by the CEO setting out the arrangements for marine safety in the MSP area;



“**MSP area**” means an area of water, or land and water, declared to be an MSP area under this section;

“**safety operator**” has the meaning given to that term in subsection (4).

- (2) For the purposes of this section, the CEO may, by notice published in the *Gazette*, declare an area of water, or land and water, to be an MSP area.
- (3) An MSP area cannot include —
  - (a) any land or water that is outside a port or outside any controlled area outside a port; or
  - (b) any land that is controlled or managed by the marine department; or
  - (c) any part of a mooring control area or fishing boat harbour; or
  - (d) any land or water where the marine department controls and manages shipping movements and the use of facilities provided for shipping.
- (4) If under subsection (2) the CEO declares an MSP area, the CEO must, by notice published in the *Gazette*, designate a person as the “**safety operator**” for the MSP area.
- (5) In designating a person as the safety operator for an MSP area the CEO must take into account —
  - (a) the ability of the person to undertake the functions of a safety operator; and
  - (b) the views of the person, or persons, who control or manage shipping movements, and the use of facilities provided for shipping, in the MSP area.

- (6) The *Interpretation Act 1984* section 52 applies to the designation of a person as the safety operator for an MSP area as if the designation were an appointment.
- (7) The CEO, by notice published in the *Gazette*, may at any time cancel or amend a declaration or designation made under this section.
- (8) The safety operator for an MSP area is to have, maintain and implement a marine safety plan for the MSP area.
- (9) The CEO is to monitor the maintenance and implementation of the marine safety plan and may give directions to the safety operator as to the maintenance and implementation of the plan.
- (10) The safety operator is to give effect to any direction given under subsection (9).
- (11) When required to do so under the regulations, and whenever else directed to do so by the CEO, the safety operator is to —
  - (a) review a marine safety plan; and
  - (b) submit modifications of the plan to the CEO for approval.
- (12) If the marine department controls and manages shipping movements and the use of facilities provided for shipping in an area that —
  - (a) is not, or is not part of, an MSP area; but
  - (b) is, or is a part of, a port or any controlled area outside a port,

the chief executive officer of the marine department is to have, maintain and implement a plan setting out the arrangements for marine safety in the area.

”.

**9. Section 9 amended**

- (1) Section 9(1) is amended by deleting “port or a prescribed pilotage area outside a port.” and inserting instead —  
“ pilotage area. ”.
- (2) Section 9(2)(a) is deleted and the following paragraphs are inserted instead —  
“
  - (a) provide for the issue of a licence to a person to act as a pilot for a pilotage area specified in the licence (a “**pilot’s licence**”);
  - (aa) provide for the period for which a pilot’s licence has effect;
  - (ab) provide for the imposition of conditions on a pilot’s licence and for the revocation or amendment of conditions so imposed;
  - (ac) prescribe procedures and prerequisites for, and other matters relating to, the issue or renewal of a pilot’s licence;
  - (ad) provide for the suspension or revocation of a pilot’s licence;
  - (ae) provide for a person aggrieved by —
    - (i) a decision not to issue a pilot’s licence to the person or not to renew the person’s pilot’s licence; or
    - (ii) a decision made in respect of that person under regulations made under paragraph (ab) or (ad),  
to apply to the State Administrative Tribunal for a review of the decision;
  - (af) prohibit a person from moving a vessel in a pilotage area without it being under the control”

**s. 10**

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of a person who holds a pilot's licence for the pilotage area unless under the regulations —

- (i) that person is permitted to do so; or
- (ii) the vessel does not have to be under the control of a person who has a pilot's licence;
- (ag) prohibit a person from acting as pilot in a pilotage area unless the person does so under and in accordance with a pilot's licence for the pilotage area;
- (ah) provide for persons appointed as pilots under section 4 before the coming into operation of the *Shipping and Pilotage Amendment Act 2006* to be regarded for a prescribed period as holding pilot's licences;

”.

Note: The heading to section 9 will be altered to read “**Pilotage and pilotage charges**”.

**10. Section 10 amended**

- (1) Section 10(1) is repealed and the following subsections are inserted instead —

“

- (1) The regulations may declare an area of water, or land and water, intended for use either wholly or partly in connection with the movement, loading, unloading, maintenance or provisioning of vessels to be a port for the purposes of this Act.
- (1a) A port is to be —
  - (a) known by the name; and
  - (b) bounded by the limits,specified in the regulations in relation to that port.

- (1b) A port named in the *Port Authorities Act 1999* Schedule 1 is not a port for the purposes of this Act and a declaration under subsection (1) cannot relate to a port so named.
- (1c) The regulations may declare an area of water outside a port to be an area in which pilotage services are to be used.
- ”.
- (2) Section 10(2) is amended as follows:
- (a) in paragraph (a) by deleting “port,”;
  - (b) after paragraph (a) by inserting —  
“ or ”;
  - (c) by deleting paragraph (b) and inserting instead —  
“
    - (b) vary the boundaries of a place declared to be a fishing boat harbour or mooring control area under this subsection, or declare a fishing boat harbour or mooring control area to be no longer a fishing boat harbour or mooring control area, as the case may be, for the purposes of this Act; or”.
- (3) Section 10(3) is repealed and the following subsections are inserted instead —
- “
- (3) In subsections (4) and (5) —
- “**existing port**” means a port specified in the Schedule repealed by the *Shipping and Pilotage Amendment Act 2006* section 14;
- “**regulations**” means regulations made for the purposes of subsection (1).

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(4) An area declared to be a port by the initial regulations is taken to be the same port as an existing port of the same name even if it is bounded by different limits.

(5) If —

(a) the initial regulations divide an existing port into 2 or more ports; or

(b) subsequent regulations divide a port into 2 or more ports,

the regulations may contain any transitional provisions that are necessary or convenient in relation to the division.

”.

**11. Section 11 amended**

Section 11 is amended in the penalty by deleting “\$200” and inserting instead —

“ \$12 000 ”.

**12. Section 11A inserted**

After section 11 the following section is inserted —

“

**11A. Delegation**

(1) The Minister may delegate to any officer of the Department any power or duty of the Minister under another provision of this Act.

(2) The delegation must be in writing signed by the Minister.

(3) A person to whom a power or duty is delegated under this section cannot delegate the power or duty.

(4) A person exercising or performing a power or duty that has been delegated under this section, is to be taken to

do so in accordance with the terms of the delegation unless the contrary is shown.

- (5) Nothing in this section limits the ability of the Minister to perform a function through an officer or agent.

”.

**13. Section 12 amended**

- (1) Section 12(1) is amended as follows:

- (a) after paragraph (a) by inserting —

“

- (aa) relating to the movement, mooring, berthing, loading and unloading of vessels generally;

”;

- (b) after paragraph (bb) by inserting —

“

- (bc) in relation to marine safety plans, providing for —

- (i) their form and the matters to be dealt with in them; and
- (ii) the procedures for submitting and obtaining approval of them; and
- (iii) their review and procedures for submitting and obtaining approval of modifications of them; and
- (iv) the powers that the CEO can exercise in order to monitor their maintenance and implementation;

”;

- (c) in paragraph (d) by deleting “Act.” and inserting instead —

“ Act; ”;

- (d) after paragraph (d) by inserting —

**s. 13**

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“

- (e) providing for the period for which the appointment of a person as a harbour master or deputy harbour master has effect;
- (f) providing for the imposition of conditions on the appointment of a harbour master or deputy harbour master and for the revocation or amendment of conditions so imposed;
- (g) prescribing procedures and prerequisites for, and other matters relating to, the appointment of a person as a harbour master or deputy harbour master or the renewal of an appointment;
- (h) providing for the revocation of the appointment of a harbour master or deputy harbour master;
- (i) relating to the continuation for a prescribed period of appointments of harbour masters made under section 4 before the coming into operation of the *Shipping and Pilotage Amendment Act 2006*.

”.

(2) Section 12(2) is amended as follows:

- (a) in paragraph (a) by deleting “\$2 000” and inserting instead —

“ \$12 000 ”;

- (b) after paragraph (b) by inserting —

“

- (ba) provide for fees or charges to be paid in respect of matters to which the regulations relate and prescribe or provide for those fees or charges;

”.



**14. Schedule repealed and certain proclamations cancelled**

- (1) The Schedule is repealed.
- (2) The following proclamations made under section 10(2) are cancelled —
  - (a) the proclamation about the port of Jurien published in the *Gazette* 23 March 1989;
  - (b) the proclamation varying the boundaries of the port of Onslow published in the *Gazette* 24 August 1990;
  - (c) the proclamations varying the boundaries of the port of Perth published in the *Gazette* 13 June 1986 and 13 February 1987;
  - (d) the proclamation about the port of Varanus Island published in the *Gazette* 18 April 1986;
  - (e) the proclamation varying the boundaries of Port Walcott published in the *Gazette* 17 November 1989.

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