

# WESTERN AUSTRALIAN MARINE.

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No. 27 of 1979.

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**AN ACT to amend the Western Australian Marine  
Act, 1948-1978.**

*[Assented to 11th September, 1979.]*

**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 Act Amendment Act, 1979*. Short title and citation.

(2) In this Act the Western Australian Marine Act, 1948-1978, is referred to as the principal Act. Approved for reprint 13th June, 1968, and amended by Acts Nos. 30 of 1968, 1 of 1972, 94 of 1972 (as amended by No. 42 of 1975), 109 of 1973, 4 and 12 of 1976, 67 of 1977 and 21 of 1978.

(3) The principal Act as amended by this Act may be cited as the Western Australian Marine Act, 1948-1979.

Commence-  
ment.

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

Section 3  
amended.

3. Section 3 of the principal Act is amended by inserting, beneath the passage "*Division 7—ss. 89-94—Regulations for preventing collisions, etc., lights, signals, etc.*" in lines thirty-two and thirty-three, the passage "*Division 8—s. 94A—Removal of certain vessels constituting hazards or obstructions.*"

Section 17  
amended.

4. Section 17 of the principal Act is amended—

(a) in line four of paragraph (xvii) by deleting the word "and" at the end of that line;

(b) in line twenty-six of paragraph (xviii) by deleting the full stop after the word "imposed" and substituting the passage "; and"; and

(c) by inserting, after paragraph (xviii), the following paragraph—

(xix) prescribing all matters which by section two hundred and twelve A or two hundred and twelve B of this Act are required or permitted to be prescribed or are contemplated as being prescribed or which are, in the opinion of the Governor, necessary or expedient to be prescribed for the purposes of that section and, in particular, prescribing a modified penalty not exceeding one hundred dollars for any offence, or class of offence, if dealt with under section two hundred and twelve A of this Act. .

Section 43  
amended.

5. Section 43 of the principal Act is amended—

(a) in subsection (1) by deleting—

(i) in line one the words "go to sea" and substituting the words "be underway"; and

- (ii) in lines six and seven the words “proceed to sea” and substituting the words “be underway”;

and

- (b) in line one of subsection (2) by deleting the words “goes to sea” and substituting the words “is underway”.

6. Section 78 of the principal Act is amended— Section 78 amended.

- (a) in subsection (1) by deleting—

- (i) in lines eight and nine the words “take the ship to sea” and substituting the words “cause the ship to be underway”; and

- (ii) in line ten the words “go to sea” and substituting the words “be underway”;

and

- (b) in subsection (2) by deleting—

- (i) in line one the words “takes any ship to sea” and substituting the words “causes any ship to be underway”; and

- (ii) in line two the words “go to sea” and substituting the words “be underway”.

7. The principal Act is amended in Division 7 of Part V by inserting, before section 89, the following section— Section 88A inserted.

88A. In sections eighty-nine and ninety of this Act— Interpretation in sections 89 and 90.

“vessel” means coast-trade ship, harbour and river ship, vessel as defined by section one hundred and eighty-three of this Act and vessel as defined by section two hundred and five of this Act.

Section 89  
amended.

8. Section 89 of the principal Act is amended—
- (a) in lines five and six of subsection (1) by deleting the passage “coast-trade ships and harbour and river ships” and substituting the word “vessels”; and
  - (b) in line three of subsection (2) by deleting the words “that Schedule” and substituting the words “the Second Schedule”.

Section 90  
amended.

9. Section 90 of the principal Act is amended—
- (a) in lines one and two by deleting the passage “All owners and masters of coast-trade ships and harbour and river ships” and substituting the passage “All owners and masters, skippers or persons in charge of vessels”; and
  - (b) in line four by inserting, after the words “collisions at sea”, the passage “, including the regulations contained in the Second Schedule,”.

Section 91  
amended.

10. Section 91 of the principal Act is amended—
- (a) in line two by deleting the words “those regulations” and substituting the words “the regulations referred to in section ninety of this Act”; and
  - (b) in line nine by deleting the word “the” and substituting the word “those”.

Section 91B  
inserted.

11. The principal Act is amended by inserting, after section 91A, the following section—

Duties of  
persons in  
charge of  
private  
pleasure  
boats in case  
of collisions,  
etc.

91B. (1) When a private pleasure boat is involved in any collision, accident or other casualty within the jurisdiction, the person in charge of the private pleasure boat shall—

- (a) if and so far as he can do so without danger to the private pleasure boat, its crew and its passengers, if any, stand

by and render to any other persons or vessels involved in that collision, accident or other casualty such assistance as may be practicable and as may be necessary to save them from any danger resulting from that collision, accident or other casualty;

- (b) give his name and address and the identification particulars of the private pleasure boat—
  - (i) to any person injured as a result of; and
  - (ii) to the owner or person in charge of any other vessel involved in, that collision, accident or other casualty immediately after that collision, accident or other casualty; and
- (c) if that collision, accident or other casualty results in the death of or injury to any person, or any vessel involved in that collision, accident or other casualty is lost or sustains damage rendering it unseaworthy or incapable of being safely navigated, report in writing to the Department within seven days of the occurrence of that collision, accident or other casualty full particulars of the circumstances of that collision, accident or other casualty.

Penalty: Five hundred dollars.

(2) In this section—

“private pleasure boat” means vessel as defined by section two hundred and five of this Act. .

Section 92  
amended.

12. Section 92 of the principal Act is amended—

- (a) in lines three and four of subsection (2) by deleting the words “indictable offence and liable to imprisonment for not more than two years” and substituting the words “offence and liable to a penalty not exceeding five hundred dollars”; and
- (b) by inserting, after subsection (2), the following subsection—
  - (3) In this section—

“ship” includes vessel licensed, or required to be licensed, by or under the Fisheries Act, 1905, the Pearling Act, 1912, or the Whaling Act, 1937.

Division 8  
inserted in  
Part V.

13. The principal Act is amended in Part V by inserting, after Division 7, the following Division—

*Division 8.—Removal of certain vessels constituting hazards or obstructions.*

Removal of  
certain  
vessels con-  
stituting  
hazards or  
obstructions.

94A. (1) Whenever a vessel which is in navigable waters within the jurisdiction and, in the opinion of a marine inspector, constitutes or is likely to constitute a hazard or obstruction to other vessels using those waters, whether as a result of being abandoned, derelict, stranded, sunk, unfit for sea service, wrecked or otherwise, the Department may by notice in the prescribed form—

- (a) served on the owner of that vessel; or
- (b) if the identity or whereabouts or both of the owner of that vessel cannot be ascertained after the making of reasonable inquiries, published once in a newspaper circulating throughout the State,

declare that vessel to be a navigational hazard and require that vessel to be removed within such period, being not less than seven days after the date of service or publication of that notice,

as is specified in that notice from all navigable waters in the jurisdiction or to the place specified in that notice.

(2) If a requirement under subsection (1) of this section is not complied with, the Department may remove or cause to be removed the navigational hazard from all navigable waters in the jurisdiction or to the place specified in the notice referred to in that subsection, as the case may be.

(3) The cost of removal under subsection (2) of this section is a debt due to the Crown and the Department may recover that cost by—

(a) action in a court of competent jurisdiction against the owner of the navigational hazard; or

(b) selling or causing to be sold the navigational hazard in the prescribed manner.

(4) The proceeds of a sale referred to in paragraph (b) of subsection (3) of this section shall be applied—

(a) first in payment of the costs of that sale; and

(b) second in payment of the costs of removing the navigational hazard,

and the balance, if any, of those proceeds shall be paid to the owner of the navigational hazard or, if the identity or whereabouts or both of that owner cannot be ascertained after making reasonable inquiries, into the Consolidated Revenue Fund.

(5) In this section—

“marine inspector” means inspector appointed under section fourteen of this Act;

“the navigational hazard” means the relevant vessel declared to be a navigational hazard under subsection (1) of this section;

“vessel” includes any wreckage derived from a vessel. .

Section 96  
amended.

14. Section 96 of the principal Act is amended by repealing subsection (3) and substituting the following subsection—

(3) In this section—

“ship” includes vessel licensed, or required to be licensed, by or under the Fisheries Act, 1905, the Pearling Act, 1912, or the Whaling Act, 1937. .

Sections 212A  
and 212B  
inserted.

15. The principal Act is amended by inserting, after section 212, the following sections —

Proceedings  
by way of  
infringement  
notice.

212A. (1) An authorised person who has reason to believe that a person has committed an offence against this Act in connexion with a vessel, in respect of which offence a modified penalty is prescribed, may serve by personal delivery to the person or by posting to him at his address ascertained from him at or about the time that offence is believed to have been committed a notice in the prescribed form informing the person that, if he does not wish to have a complaint of that offence heard and determined by a court, he may pay to a person employed in the Department or a designated officer, not being a person or designated officer who is the authorised person serving that notice, within a period of twenty-one days after the date of service of that notice, the amount of the modified penalty.



(2) An authorised person may—

- (a) if the identity of the alleged offender is not known and cannot immediately be ascertained, address the infringement notice concerned to, and serve it on, the owner of the vessel concerned within a period of thirty days after the date on which the alleged offence is believed to have been committed; or
- (b) if the identity of the alleged offender is not known and cannot immediately be ascertained and the identity of the owner of the vessel is not known and cannot be ascertained after reasonable enquiry, address the infringement notice concerned to the owner of that vessel, without naming him or stating his address, and serve that infringement notice by attaching it to that vessel or by leaving it in or on the vessel within the period referred to in paragraph (a) of this subsection.

(3) When, under subsection (2) of this section, an infringement notice is addressed to and served on the owner of a vessel within the period referred to in paragraph (a) of that subsection or addressed to the owner of a vessel and served by attaching it to the vessel or leaving it in or on the vessel within that period, then, unless within a period of twenty-one days after the date of service of the infringement notice—

- (a) the modified penalty concerned is paid;  
or
- (b) the owner of the vessel—
  - (i) informs an authorised person of the identity and address of the person who was in charge of the vessel; or

- (ii) satisfies an authorised person that the vessel had been stolen or unlawfully taken, or was being unlawfully used,

at the time when the alleged offence is believed to have been committed,

the owner of the vessel is, in the absence of proof to the contrary, deemed to be the person who was in charge of the vessel at the time when the alleged offence is believed to have been committed.

(4) A person on whom an infringement notice is served—

- (a) may decline; or
- (b) if he fails to pay the modified penalty concerned within a period of twenty-one days after the date of that service, is deemed to have declined,

to be dealt with under the provisions of this section.

(5) An authorised person may, whether or not the modified penalty concerned has been paid, withdraw an infringement notice at any time within a period of twenty-eight days after it is served by sending to the alleged offender a notice in the prescribed form signed by the authorised person and advising the alleged offender that the infringement notice has been withdrawn.

(6) The amount of any modified penalty paid pursuant to an infringement notice which has been withdrawn under subsection (5) of this section shall be refunded.

(7) When a modified penalty has been paid pursuant to an infringement notice and the infringement notice has not been withdrawn under subsection (5) of this section, proceedings

shall not be brought against any person in respect of the alleged offence specified in the infringement notice.

(8) A person, other than the owner or person in charge of a vessel in respect of which an alleged offence is believed to have been committed, shall not remove an infringement notice relating to the alleged offence attached to or left in or on that vessel by an authorised person.

Penalty: One hundred dollars.

(9) An infringement notice served under subsection (2) of this section shall contain, *inter alia*, a short statement of the effect of subsection (3) of this section.

(10) The Minister may by notice published in the *Government Gazette* designate an officer or class of officer, as defined by section five of the Public Service Act, 1978, to receive payment of the amounts of modified penalties.

(11) In this section, unless the context otherwise requires—

“alleged offence” means offence referred to in subsection (1) of this section;

“alleged offender” means person who is believed by the authorised person concerned to have committed an alleged offence;

“authorised person” means—

(a) marine inspector; or

(b) person authorised in writing for the purposes of this section by the Manager of the Department;

“designated officer” means person designated under subsection (10) of this section;

“infringement notice” means notice referred to in subsection (1) of this section;

“marine inspector” means inspector appointed under section fourteen of this Act. .

(12) In subsection (3) of this section—

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

Onus on owner of vessel to identify person in charge thereof.

212B. (1) Any owner of a vessel and any person to whom for the time being the possession or control of a vessel may be entrusted shall, if required by an authorised person, give to the authorised person any information—

- (a) which it is in his power to give; and
- (b) which may lead to the identification of any person who was in charge of the vessel when an offence against this Act is alleged to have been committed.

Penalty: Two hundred dollars.

(2) When an offence against this Act is alleged to have been committed and the identity of the person who was in charge of the vessel in respect of which that allegation is made is not known and cannot immediately be ascertained, an authorised person may, within a period of thirty days after the date on which that offence is alleged to have been committed, serve on the owner of that vessel a notice in the prescribed form containing particulars of that offence and requiring that owner to identify the person who was in charge of that vessel at the time when that offence is alleged to have been committed.

(3) When, under the provisions of subsection (2) of this section, notice is served on the owner of a vessel within the period specified in that subsection then, unless within twenty-one days after the date of the service of the notice that owner—

- (a) informs an authorised person of the identity and address of the person who was in charge of the vessel; or
- (b) satisfies an authorised person that the vessel had been stolen or unlawfully taken, or was being unlawfully used,

at the time when the offence concerned is alleged to have been committed, that owner is, in the absence of proof to the contrary, deemed to be the person who was in charge of the vessel at the time when that offence is alleged to have been committed.

(4) A notice served under subsection (2) of this section shall contain, *inter alia*, a short statement of the effect of subsection (3) of this section.

(5) In this section—

“authorised person” has the meaning given by section two hundred and twelve A of this Act. .

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

212C. (1) The Department shall issue to each authorised person, other than an authorised person who is a marine inspector, a certificate in the prescribed form.

Production  
of proof of  
identity by  
authorised  
persons.

(2) An authorised person—

- (a) who is not a marine inspector shall produce the certificate issued to him under subsection (1) of this section; or
- (b) who is a marine inspector shall produce the authority card issued to him by the Department in connexion with his appointment as a marine inspector,

whenever required to do so by any person in respect of whom he has exercised or is about to exercise any of his powers under section two hundred and twelve A or two hundred and twelve B of this Act.

(3) In any proceedings under this Act, production of a certificate or authority card referred to in subsection (2) of this section is conclusive evidence in any court of the authorisation or appointment, as the case requires, by reason of which the person to whom that certificate or authority card relates became an authorised person and of his authority to exercise the powers conferred on an authorised person by sections two hundred and twelve A and two hundred and twelve B of this Act.

(4) In this section—

“authorised person” has the meaning given by section two hundred and twelve A of this Act.

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