



ANNO VICESIMO SEPTIMO

ELIZABETHAE II REGINAE

A.D. 1978

No. 109 of 1978

An Act to amend the Harbors Act, 1936-1974; and to make consequential or related amendments to the Local Government Act, 1934-1978, the Crown Lands Act, 1929-1978, and the Coast Protection Act, 1972-1975.

[Assented to 7th December, 1978]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Harbors Act Amendment Act, 1978". Short title.
 (2) The Harbors Act, 1936-1974, is hereinafter referred to as "the principal Act".
 (3) The principal Act, as amended by this Act, may be cited as the "Harbors Act, 1936-1978".

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

3. Section 4 of the principal Act is amended—
 - (a) by striking out the item:

PART II—ACQUISITION BY THE CROWN OF
WHARVES AND WATER FRONTAGES—

 and inserting in lieu thereof the item:

PART II—ACQUISITION OF PROPERTY FOR THE
PURPOSES OF THIS ACT—;
 - (b) by striking out the items:

DIVISION III—MODE OF ACQUISITION:

DIVISION IV—COMPENSATION;;

 and
 - (c) by inserting after the item:

DIVISION IV—POWERS AND DUTIES OF THE MINISTER:

Amendment of
principal Act,
s. 4—
Arrangement of
Act.

the following item:

DIVISION IVA—CERTAIN POWERS RELEVANT TO ADMINISTRATION AND ENFORCEMENT OF THIS PART:.

Amendment of heading of principal Act.

4. The heading immediately preceding section 5 of the principal Act is amended by striking out the passage "ACQUISITION BY THE CROWN OF WHARVES AND WATER FRONTAGES" and inserting in lieu thereof the passage "ACQUISITION OF PROPERTY FOR THE PURPOSES OF THIS ACT".

Amendment of principal Act s. 5—
Interpretation.

5. Section 5 of the principal Act is amended by striking out from the proviso to subsection (2) the passage "two chains" and inserting in lieu thereof the passage "forty metres".

Repeal of s. 6 of principal Act.

6. Section 6 of the principal Act is repealed.

Amendment of principal Act, s. 8—
Power to acquire wharves and water frontages and other properties.

7. Section 8 of the principal Act is amended—

(a) by striking out from subsection (1) the word "Governor" and inserting in lieu thereof the word "Minister";

(b) by inserting after paragraph (d) of subsection (2) the following paragraphs:—

(e) any land that is reasonably required for commercial or industrial development related to a port or wharf;

(f) any other land that is reasonably required for the purposes of this Act.;

and

(c) by inserting after subsection (3) the following subsection:—

(4) The Land Acquisition Act, 1969-1972, shall apply to the acquisition of land under this Act.

Repeal of Division III and Division IV of Part II of principal Act.

8. Division III and Division IV of Part II of the principal Act are repealed.

Amendment of principal Act, s. 32—
No compensation for closing public streets, etc.

9. Section 32 of the principal Act is amended—

(a) by striking out the second sentence thereof;

and

(b) by inserting after the present contents, as amended by this section (which are hereby designated subsection (1) thereof) the following subsection:—

(2) Any such compensation shall be determined by agreement or, in default of agreement, by the Land and Valuation Court.

Repeal of ss. 34, 35, 36, 37 and 40 of principal Act and enactment of section in their place.

10. Sections 34, 35, 36, 37 and 40 of the principal Act are repealed and the following section is enacted and inserted in their place:—

34. Subject to this Act, the Minister may, deal with, or dispose of, property acquired, or vested in him, under this Act as he thinks fit.

Power to deal with and dispose of property.

11. Section 43 of the principal Act is amended—

Amendment of principal Act, s. 43—
Interpretation.

(a) by striking out from subsection (1) the definition of “buoys and beacons”;

(b) by striking out from subsection (1) the definition of “harbormaster” and inserting in lieu thereof the following definition:—

“harbormaster” means any person holding office under the Public Service Act, 1967-1978, as a harbormaster or assistant harbormaster and includes any person authorized in writing by the Minister to exercise the powers and functions of a harbormaster;

(c) by striking out from subsection (1) the definition of “lighthouse”;

(d) by inserting after the definition of “master” the following definition:—

“mile” means a nautical mile of 1 852 metres;

(e) by inserting after the definition of “navigable river” in subsection (1) the following definition:—

“navigational aid” means—

(a) any lighthouse, lightship, beacon, buoy, or other mark or structure (whether equipped with a light or not);

(b) any device (including a radio beacon),

intended to be an aid to marine navigation;

(f) by striking out from subsection (1) the definition of “vessel” and inserting in lieu thereof the following definition:—

“vessel” means—

(a) a floating structure of any description;

(b) a structure designed or intended to traverse water, or to float in or upon water;

or

(c) a hovercraft or other air cushion vehicle,

and includes any part of any such vessel, or the wreck or any part of the wreck of any such vessel;

and

(g) by striking out from the definition of “within the limits of the jurisdiction of the Minister” in subsection (1) the passage “one nautical league” and inserting in lieu thereof the passage “three miles”.

12. Sections 44 and 45 of the principal Act are repealed and the following section is enacted and inserted in their place:—

Repeal of ss. 44 and 45 of principal Act and enactment of section in their place.

Care, control
and manage-
ment of
foreshore, etc.

44. (1) Subject to subsection (2) and subsection (3) of this section—

- (a) the foreshore of the sea;
- (b) any water or other reserve, wharf or breakwater situated within any harbor, in the sea, or upon the foreshore of the sea,

shall be under the care, control and management of the Minister.

(2) Subject to subsection (3) of this section, any part of the foreshore of the sea (not being within a harbor) that is within the area of a municipal or district council shall be under the care, control and management of that council.

(3) Notwithstanding the provisions of subsection (1) and subsection (2) of this section, the Governor may, by proclamation, place—

- (a) any part of the foreshore of the sea;
- or
- (b) any water or other reserve, wharf or breakwater situated within any harbor, in the sea, or upon the foreshore of the sea,

under the care, control and management of—

- (c) any Minister of the Crown;
- (d) a council;
- or
- (e) the Coast Protection Board.

(4) Where—

- (a) any part of the foreshore of the sea is under the care, control and management of a council or the Coast Protection Board;

and

- (b) land comprising, or comprised within, that part of the foreshore—

- (i) is declared by proclamation to be land to which this subsection applies;

or

- (ii) forms a strip of land lying under, and extending five metres beyond each side of, a wharf that is under the care, control and management of the Minister,

the council or the Coast Protection Board (as the case may require) shall not—

- (c) erect, or permit to be erected, on that land, any permanent structure;
- (d) remove, or permit to be removed, from that land, any sand, shells, seaweed or other material;
- (e) alter that land, or permit it to be altered, in a manner that may prejudice the exercise by the Minister of his powers and functions;

or

(f) make any by-law, or seek the making of any regulation, affecting the occupation, management, use or control of the land,

without having first obtained the consent in writing of the Minister.

(5) The Governor may, by subsequent proclamation, vary or revoke a proclamation under subsection (3) or (4) of this section.

(6) In this section—

“the foreshore of the sea” means the land extending from low water mark to the nearest road or section boundary, or to a distance of thirty metres from high water mark (whichever is the lesser distance) but does not include land alienated in fee simple from the Crown or subject to any agreement, lease or licence granted by or on behalf of the Crown.

13. Section 48 of the principal Act is repealed.

Repeal of
s. 48 of
principal Act.

14. Section 64 of the principal Act is amended—

Amendment of
principal Act,
s. 64—
Property vested
in Minister.

(a) by striking out from subsection (1) the passage “any property acquired by the Crown under Part II of this Act or Part I of the Harbors Act, 1913, or any other” and inserting in lieu thereof the word “any”;

(b) by striking out from paragraph (b) of subsection (2) the passage “harbor lights, buoys and beacons” and inserting in lieu thereof the passage “navigational aids”;

(c) by striking out from subsection (4) all the words after the passage “any lease thereof granted by the Governor to the Minister”;

and
(d) by striking out subsection (6).

15. Section 66 of the principal Act is amended by striking out from subsection (1) the passage “one nautical league” and inserting in lieu thereof the passage “three miles”.

Amendment of
principal Act,
s. 66—
Powers of
Minister to
be exercised
within three
miles to
seaward.

16. Section 68 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of
s. 68 of
principal Act
and enactment
of section
in its place.

68. (1) The Minister shall have the exclusive control and management of navigational aids (other than navigational aids that are the property of the Commonwealth) within the limits of the jurisdiction of the Minister.

Control and
management of
navigational
aids.

(2) No civil liability attaches to the Minister, or any person acting in the administration of this Act for an act or omission, in good faith, in relation to—

(a) the positioning;

or

(b) the operation,

of a navigational aid.

Amendment of principal Act, s. 69—
Harbor works to be carried out by Minister.

17. Section 69 of the principal Act is amended by striking out the passage “and all lighthouses, lightkeepers’ residences, buoys, and beacons,”.

Amendment of principal Act, s. 70—
Deepening and dredging near private wharf.

18. Section 70 of the principal Act is amended by striking out from subsection (1) the passage “one hundred feet” and inserting in lieu thereof the passage “sixty metres”.

Repeal of ss. 71 and 71a of principal Act.

19. Sections 71 and 71a of the principal Act are repealed.

Amendment of principal Act, s. 75—
Powers of Minister.

20. Section 75 of the principal Act is amended by striking out paragraph (f) and inserting in lieu thereof the following paragraph:—

(f) establish, alter or remove navigational aids as the Minister considers necessary or expedient.

Enactment of Division IVA of Part III of principal Act.

21. The following Division is enacted and inserted in the principal Act after Division IV of Part III thereof:—

DIVISION IVA—CERTAIN POWERS RELEVANT TO ADMINISTRATION AND ENFORCEMENT OF THIS PART

Powers of authorization.

86. (1) A member of the Police Force, a harbormaster or a person authorized in writing by the Minister may, for any purpose connected with the administration or enforcement of this Act, exercise any of the following powers:—

(a) he may direct the master of a vessel—

(i) to manoeuvre the vessel in a specified manner;

or

(ii) to stop the vessel and secure it in a specified manner;

(b) he may board a vessel for the purpose of investigating an offence that he reasonably suspects to have been committed by a person on board the vessel;

(c) he may require any person—

(i) whom he reasonably suspects of having committed an offence against this Act;

or

(ii) who is, in his opinion, in a position to give evidence relating to the commission of an offence,

to state his name and address.

(2) A person who—

(a) fails to obey a direction or requirement under subsection (1) of this section;

(b) hinders a member of the Police Force, a harbormaster or an authorized person acting in the exercise of powers conferred by subsection (1) of this section;

or

(c) when required to state his name and address states a false name or address,

shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars or imprisonment for three months.

(3) Where a person is charged with an offence consisting of a failure to obey a direction given under paragraph (a) of subsection (1) of this section, it shall be a defence to prove that compliance with the direction would have endangered life or property.

22. Section 89 of the principal Act is amended by striking out from subsection (1) the passage "one hundred tons" and inserting in lieu thereof the passage "two hundred tons".

Amendment of principal Act, s. 89—
Duty to take in pilot.

23. Sections 92 and 93 of the principal Act are repealed.

Repeal of ss. 92 and 93 of principal Act.

24. Section 94 of the principal Act is repealed.

Repeal of s. 94 of principal Act.

25. Section 109 of the principal Act is amended—

(a) by striking out paragraphs (a), (b) and (f) of subsection (1);

(b) by striking out from paragraph (g) of subsection (1) the passage "upon the signal for a pilot being made by the ship, or";

and

(c) by striking out paragraph (h) of subsection (1).

Amendment of principal Act, s. 109—
Offences by pilots.

26. Section 116a of the principal Act is amended by striking out from subsection (1) the passage "one hundred tons" and inserting in lieu thereof the passage "two hundred tons".

Amendment of principal Act, s. 116a—
Pilotage permits.

27. Section 117 of the principal Act is amended by striking out from subsection (1) the passage "two yards" and inserting in lieu thereof the passage "1.5 metres".

Amendment of principal Act, s. 117—
Duty of master.

28. Section 122 of the principal Act is amended by striking out from subsection (1) the passage "in such a way as, in the opinion of the Minister, to tend to the injury of navigation,".

Amendment of principal Act, s. 122—
Removal of wreck.

29. Section 127 of the principal Act is amended by striking out subsection (1) and inserting in lieu thereof the following subsection:—

(1) The Governor may make regulations prescribing, and providing for the levying of, harbor improvement rates upon goods discharged at, or shipped from, any specified harbor.

Amendment of principal Act, s. 127—
Harbor improvement rates.

30. Section 132a of the principal Act is repealed.

Repeal of s. 132a of principal Act.

Amendment of
principal Act,
s. 144—
Regulations.

31. Section 144 of the principal Act is amended—

(a) by striking out from paragraph (19) the passage “lighthouses, buoys, beacons, and all harbor marks” and inserting in lieu thereof the passage “navigational aids”;

and

(b) by inserting after paragraph (70a) the following paragraph:—

(70b) requiring compliance with standards or requirements made or recommended, from time to time, by any specified authority, body or person;

Amendment of
principal Act,
s. 161—
Penalties
for damaging
navigational
aids, etc.

32. Section 161 of the principal Act is amended by striking out paragraphs (a), (b), (c) and (d) and inserting in lieu thereof the following paragraphs:—

(a) damages or destroys any navigational aid;

(b) removes or alters any navigational aid;

or

(c) makes fast to, or runs foul of, any navigational aid.

Repeal of
s. 188 of
principal Act.

33. Section 188 of the principal Act is repealed.

Amendment of
principal Act,
s. 193—
Space
occupied
by deck
cargo to
be liable
to dues.

34. Section 193 of the principal Act is amended by striking out from subsection (3) the passage “directed by the third schedule” and inserting in lieu thereof the passage “prescribed by regulation”.

Repeal of
third
schedule of
principal Act.

35. The third schedule to the principal Act is repealed.

Repeal of
fourth
schedule of
principal Act.

36. The fourth schedule to the principal Act is repealed.

Amendment of
Local
Government
Act.

37. (1) The Local Government Act, 1934-1978, is amended—

(a) by striking out subsections (1), (2) and (3) of section 476;

(b) by striking out section 480;

(c) by striking out from subparagraph xxx of paragraph 8 of subsection (1) of section 667 the passage “fishing from” and inserting in lieu thereof the passage “occupation or use of”;

(d) by striking out from subparagraph xxxi of paragraph 8 of subsection (1) of section 667 the passage “Subject to section 671” and inserting in lieu thereof the passage “Subject to the Harbors Act, 1936-1978”;

(e) by striking out subsection (1) of section 671;

and

(f) by striking out the sixteenth schedule.

(2) The Local Government Act, 1934-1978, as amended by this Act, may be cited as the “Local Government Act, 1934-1978”.

38. (1) The Crown Lands Act, 1929-1978, is amended by striking out from paragraph (f1) of section 5 the passage "or any association, corporate or unincorporate" and inserting in lieu thereof the passage "any body corporate, or any association".

Amendment of
Crown Lands
Act.

(2) The Crown Lands Act, 1929-1978, as amended by this Act, may be cited as the "Crown Lands Act, 1929-1978".

39. (1) The Coast Protection Act, 1972-1975, is amended by inserting after paragraph (c) of subsection (1) of section 14 the following paragraph:—

Amendment of
Coast
Protection
Act.

(ca) to manage, maintain and, where appropriate, develop and improve coast facilities that are vested in, or are under the care, control and management of, the Board.

(2) The Coast Protection Act, 1972-1975, as amended by this Act, may be cited as the "Coast Protection Act, 1972-1978".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor