

South Australia



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ELIZABETHAE II REGINAE
A.D. 2000

**HARBORS AND NAVIGATION (CONTROL OF HARBORS)
AMENDMENT ACT 2000**

No. 81 of 2000

[Assented to 14 December 2000]

An Act to amend the Harbors and Navigation Act 1993.

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The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Harbors and Navigation (Control of Harbors) Amendment Act 2000*.

(2) The *Harbors and Navigation Act 1993* is referred to in this Act as "the principal Act".

Commencement

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

Amendment of s. 4—Interpretation

3. Section 4 of the principal Act is amended—

(a) by striking out from subsection (1) the definitions of "the Corporation" and "a Corporation port";

(b) by inserting after the definition of "pilot" in subsection (1) the following definitions:

"port" means land and waters (which must comprise or include the whole or some of the land and waters constituting a harbor) constituted as a port by the regulations;

"port management officer" means—

(a) a port management officer appointed under section 29; or

(b) an authorised person;

"port operator" means—

(a) a person authorised by a port operating agreement to operate a port;
or

(b) if there is no such person—the Minister;.

Amendment of s. 12—Appointment of authorised persons

4. Section 12 of the principal Act is amended—

(a) by striking out subsection (1a) and substituting the following subsection:

(1a) The CEO may, with the agreement of a port operator, appoint an officer or employee of the operator to be an authorised person in relation to the relevant port.;

(b) by striking out subsection (3) and substituting the following subsection:

(3) An authorised person appointed under this section must be issued with an identity card—

(a) containing a photograph of the person; and

(b) if the authorised person's authority is limited to a particular port—stating the name of the port; and

- (c) stating any conditions of appointment limiting the authorised person's authority.

Amendment of s. 15—Property of Crown

5. Section 15 of the principal Act is amended—

- (a) by striking out from subsection (3)(a) "by the Minister";
- (b) by striking out paragraph (ba) of subsection (3).

Amendment of s. 18A—By-laws

6. Section 18A of the principal Act is amended by striking out subsection (1) and substituting the following subsections:

(1) A council may, with the approval of the relevant authority, make by-laws that operate in relation to—

- (a) a port or part of a port; or
- (b) a harbor or part of a harbor; or
- (c) adjacent or subjacent land that is neither within a port nor a harbor.

(1a) The relevant authority is—

- (a) for a port—the port operator; or
- (b) in any other case—the Minister.

Amendment of s. 20—Rateability of land

7. Section 20 of the principal Act is amended by inserting in subsection (2) "(other than subjacent land in a port)" after "land" first occurring.

Amendment of s. 21—Liability for damage

8. Section 21 of the principal Act is amended by striking out from subsection (1) "(not being property of the Corporation)".

Amendment of s. 22—Control of navigational aids

9. Section 22 of the principal Act is amended—

- (a) by striking out "or the Corporation";
- (b) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsections:

(2) The Minister may, on terms and conditions consistent with any relevant port operating agreement, delegate to a port operator control over a navigational aid situated in, or on the approach to, the port.

(3) If a navigational aid existing at the commencement of this subsection is situated on land that was not then owned by the Minister, or is later disposed of, an easement over the land is created entitling the Minister—

- (a) to maintain a navigational aid on the land; and
- (b) to have such access to the land as may be necessary for operating, maintaining, repairing, replacing or removing the navigational aid.

(4) If the Minister reasonably requires access to land for the purpose of operating, maintaining, repairing, replacing or removing a navigational aid on adjacent land or waters, an easement is created conferring on the Minister the rights of access reasonably necessary for those purposes.

Amendment of s. 25—Clearance of wrecks, etc

10. Section 25 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection:

(1a) A port operator may, by notice in writing, require the owner of any wreck within the port to remove the wreck.;

(b) by inserting after subsection (2) the following subsection:

(2a) If a person deposits any substance or thing within a port so as to obstruct navigation, or to pollute waters, the port operator may, by notice in writing, require that person to take action specified in the notice to remove the substance or thing or to mitigate the consequences of the pollution.;

(c) by striking out subsection (3) and substituting the following subsection:

(3) If a person fails to comply with a requirement under this section within the time allowed in the notice, the Minister or the port operator (as the case requires) may remove the wreck or take the action specified in the notice and recover the costs of doing so, as a debt, from the person in default.;

(d) by inserting after subsection (4) the following subsection:

(5) A court by which a person is convicted of an offence against subsection (4) may, on application by the Minister or the port operator (as the case requires), order the convicted person to reimburse costs reasonably incurred by the applicant in acting under subsection (3) (to the extent those costs have not been already recovered).

Substitution of s. 26

11. Section 26 of the principal Act is repealed and the following section is substituted:

Licences for aquatic activities

26. (1) The CEO may grant a licence entitling an organisation or person to use, in accordance with the terms and conditions of the licence, any waters within the jurisdiction for the purposes of an aquatic sport or activity or for any other purposes stated in the licence.

(2) If the licence is to be granted in relation to waters within a port, the CEO may only grant the licence with the consent of the port operator (but the operator's consent must not be unreasonably withheld).

(3) The licensee may be required by the terms and conditions of the licence to take specified action for the purposes of informing the public of the area of waters to which the licence relates and of the times the licensee is entitled to use of those waters in accordance with the licence.

(4) A person who, without the consent of the licensee, intrudes into waters when the licensee has, under the licence, an exclusive right to use those waters is guilty of an offence.

Maximum penalty: \$750.

Expiation fee: \$105.

(5) The CEO may revoke a licence granted under this section for a breach of a term or condition of the licence.

Amendment of s. 27—Restricted areas

12. Section 27 of the principal Act is amended—

(a) by striking out subsection (1a) and substituting the following subsection:

(1a) A regulation may only be made under subsection (1) in relation to waters within a port with the consent of the port operator (but consent must not be unreasonably withheld).;

(b) by striking out subsection (3) and substituting the following subsection:

(3) If a regulation is made under this section at the request of a port operator (other than the Minister) or a council, the Minister may recover costs incurred under subsection (2) from the port operator or council as a debt.

Substitution of ss. 28 to 32 and headings

13. Sections 28 to 32, and the headings to Part 5 and Divisions 1 to 4 of Part 5, of the principal Act are repealed and the following headings and sections are substituted:

PART 5

HARBORS AND PORTS

DIVISION 1—CONTROL AND MANAGEMENT OF HARBORS AND PORTS

Control and management of harbors

28. Subject to this Part, the Minister has the control and management of all harbors in the State.

Power to assign control and management of ports

28A. (1) The Minister may, by agreement, confer on another (the proprietor) the right to carry on the business of operating a particular port.

(2) The proprietor must then enter into an agreement (a **port operating agreement**) under which the Minister assigns the control and management of the port to the proprietor or a nominee of the proprietor unless—

- (a) the Minister and the proprietor enter into an agreement under which the Minister is to continue to have the control and management of the port; or
- (b) the proprietor has committed a serious breach of a port operating agreement and the Minister has cancelled or refused to renew the agreement on that ground.

(3) If the Minister has the control and management of a port, the Minister may, subject to the terms of any agreement between the Minister and the proprietor, recover the costs of operating the port from the proprietor.

Port operating agreements

28B. (1) A **port operating agreement** is an agreement providing for the control and management of the port to which the agreement relates by the person (the **port operator**) to whom the control and management of the port is assigned under the agreement.

(2) A port operating agreement—

- (a) must require the port operator to have appropriate resources (including appropriate contingency plans and trained staff and equipment to carry the plans into action) to deal with emergencies; and
- (b) must require the port operator—
 - (i) to maintain the waters of the port to a specified navigable standard; and
 - (ii) to provide or maintain (or provide and maintain) navigational aids; and
 - (iii) to direct and control vessel movement in port waters; and
- (c) may require the port operator to enter into and maintain in operation an agreement with the Royal Australian Navy about access to the port and port facilities by naval vessels; and
- (d) may require the port operator to provide access to the port and port facilities for commercial fishing vessels on specified terms and conditions; and
- (e) may require the port operator to maintain and make available navigational charts and other information relating to the port; and
- (f) may regulate the performance of statutory powers by the port operator; and
- (g) may provide for the payment of an annual fee to the Minister (fixed by the Minister having regard to the cost of providing government supervision of the activities conducted under the agreement); and

- (h) may deal with any other matter relevant to the control and management of the port.

General responsibility of port operator

28C. (1) A port operator is responsible for the safe operation of the port.

(2) A port operator is responsible for managing the port in a way that avoids unfair discrimination against or in favour of any particular user of the port or port facilities.

Variation of port operating agreement

28D. The Minister may, by agreement with the port operator, vary a port operating agreement.

Agreements to be tabled in Parliament

28E. The Minister must, as soon as practicable after entering into a port operating agreement or an agreement for the variation of a port operating agreement, have copies of the agreement laid before both Houses of Parliament.

Power to deal with non-compliance

28F. (1) The Minister may take disciplinary action against a port operator for non-compliance with a port operating agreement or this Act.

(2) The disciplinary action may consist of—

- (a) a reprimand; or
- (b) a fine not exceeding a limit fixed in the port operating agreement; or
- (c) cancellation of the port operating agreement.

(3) Before the Minister takes disciplinary action against a port operator under this section, the Minister must give written notice to the port operator—

- (a) specifying the non-compliance; and
- (b) stating the disciplinary action the Minister proposes to take in respect of the non-compliance; and
- (c) allowing the port operator a reasonable opportunity to make written representations.

(4) After considering the port operator's representations, the Minister may—

- (a) refrain from taking disciplinary action; or
- (b) by written notice to the port operator—
 - (i) administer a reprimand; or
 - (ii) impose a fine (to be recoverable as a debt due to the Crown) of an amount stated in the earlier notice or of a lesser amount; or

- (iii) if cancellation of the port operating agreement was proposed in the earlier notice—
 - (A) impose a fine not exceeding the maximum permissible under the port operating agreement; or
 - (B) cancel the port operating agreement.

(5) A port operator may appeal to the Court of Marine Enquiry against the disciplinary action.

(6) On an appeal, the Court may—

- (a) confirm, vary or reverse the Minister's decision; and
- (b) make any consequential or ancillary order the Court thinks fit.

(7) The port operating agreement may contain provisions governing the exercise of the Minister's powers under this section.

Power to appoint manager

28G. (1) If—

- (a) a port operator is seriously in breach of its obligations under a port operating agreement; or
- (b) a port operating agreement is cancelled or expires without renewal,

the Minister may appoint an official manager to operate the port.

(2) If a port operator—

- (a) becomes insolvent within the meaning of Part 7.10 of the *Corporations Law*; or
- (b) goes into liquidation,

the Minister may appoint an official manager to operate the port.

(3) An appointment under subsection (1) or (2) may be terminated at any time by the Minister.

(4) The port operating agreement may contain provisions governing the exercise of the Minister's powers under this section.

Powers of the manager

28H. (1) The official manager—

- (a) is to assume the control and management of the port; and

- (b) is entitled to possession and control of property of the port operator (or former port operator)—
 - (i) used for the purpose of operating the port; and
 - (ii) defined in the port operating agreement as property subject to the application of this paragraph; and
- (c) is, while the appointment continues in force, taken to be the port operator.

(2) Any proceeds of the business while under official management are to be applied as follows:

- (a) first, the proceeds are to be applied towards the costs of official management (including the official manager's remuneration); and
- (b) secondly, a reasonable rental for the property over which the manager has assumed control is to be paid out of the proceeds while the property remains in the manager's possession; and
- (c) thirdly, any remaining balance is to be paid into the Consolidated Account.

(3) A port operating agreement may exclude or modify the provisions of subsection (1) or (2).

(4) The regulations may confer powers and impose duties on official managers and regulate official management in other ways.

DIVISION 2—PORT MANAGEMENT OFFICERS

Port management officers

29. (1) A port operator may appoint officers or employees of the operator to be port management officers.

(2) The port operator must issue to each port management officer appointed by it an identity card—

- (a) containing a photograph of the officer; and
- (b) stating the name of the port for which the officer is appointed; and
- (c) stating any conditions of appointment limiting the officer's authority.

(3) A port management officer must, at the request of any person in relation to whom the officer is exercising or about to exercise powers under this Act, produce his or her identity card for inspection by that person.

DIVISION 2A—OPERATIONAL POWERS**Interpretation**

29A. In this Division—

"authorised officer" means—

- (a) in relation to a port—a port management officer;
- (b) in relation to a harbor that is not a port, or a part of a harbor that is not within a port—an authorised person.

Power of direction

29B. (1) An authorised officer may give a direction (orally, by signal, radio communication, or in any other appropriate manner) to a person in charge, or apparently in charge, of a vessel in or in the vicinity of a harbor or a port.

(2) A direction may, for example—

- (a) require that vessels proceed to load or unload in a particular order; or
- (b) require that a vessel be moored or anchored in a particular position; or
- (c) require that a vessel be secured in a particular way; or
- (d) require that a vessel be moved from a particular area or position; or
- (e) require the production of documents relating to the navigation, operation, pilotage, use or loading of the vessel.

(3) A person who fails, without reasonable excuse, to comply with a direction under this section is guilty of an offence.

Maximum penalty: \$5 000.

Power to board vessel

29C. (1) A person in charge of a vessel in a harbor or port must, at the request of an authorised officer, permit the officer—

- (a) to board the vessel; and
- (b) to inspect the vessel and its cargo; and
- (c) to carry out on the vessel any investigation necessary to ensure that the vessel and the business in the course of which the vessel is being used is being operated lawfully.

(2) If there is no-one on board a vessel to whom a request may be given under subsection (1), the authorised officer may board the vessel and cause the vessel to be moved as the officer thinks fit.

(3) Any costs incurred by an authorised officer under subsection (2) are recoverable as a debt from the owner of the vessel.

(4) A person who fails to comply with a request under this section is guilty of an offence.

Maximum penalty: \$2 500.

DIVISION 3—HARBOR IMPROVEMENT WORK

Dredging or other similar work

30. (1) The Minister or a port operator may carry out dredging or other work to deepen, extend or clear a harbor or port.

(2) If the owner of a wharf benefits from work carried out by the Minister under subsection (1), the Minister may recover a reasonable proportion of the cost of the work from that owner.

(3) The proportion of the cost to be recovered is to be determined by agreement between the Minister and the owner or, in default of agreement, by an arbitrator appointed under the *Commercial Arbitration Act 1986*.

Development of harbors and maritime facilities

30A. (1) The Minister or a port operator may carry out work of any kind for the development or improvement of a harbor or port.

(2) The Minister or port operator may, for example, establish facilities for—

- (a) the anchorage or mooring of vessels;
- (b) the maintenance and repair of vessels;
- (c) the loading and unloading of passengers or goods;
- (d) the storage of goods;
- (e) facilitating industrial or commercial development associated with or to be associated with a harbor or port;
- (f) sporting or recreational purposes.

(3) A port operator—

- (a) must establish and maintain facilities and equipment for the safety of life and property in the port as required under a port operating agreement; and
- (b) may establish and maintain other facilities and equipment for the safety of life and property.

Application of Development Act 1993

30B. The powers conferred by this Division are subject to the *Development Act 1993*.

DIVISION 4—HARBOR CHARGES ETC**Power to fix charges**

31. (1) Subject to any relevant law or determination, the Minister may fix charges—

- (a) for the use of facilities provided by the Minister for—
 - (i) the mooring of vessels;
 - (ii) the loading or unloading of passengers or goods;
 - (iii) the storage of goods;
 - (iv) the safe navigation of vessels;
 - (v) any other purpose; or
- (b) for the entry of vessels into waters under the Minister's control and management; or
- (c) for services provided by the Minister.

(2) The Minister may fix default charges to be paid if a charge fixed under this section is not paid within a specified period.

(3) The Minister must publish schedules of the charges and default charges fixed under this section.

Power to waive or reduce charges

31A. The Minister may waive or reduce a charge (or default charge), or extend the time for payment of a charge (or default charge), as the Minister thinks fit.

Charges in respect of goods

31B. (1) A charge (or default charge) payable under this Division in respect of the unloading or storage of goods is recoverable as a debt from the consignor or consignee of the goods.

(2) The Minister may retain possession of goods until the appropriate charge is paid.

(3) If the charge is not paid within 60 days after the goods are unloaded, the Minister may, after giving notice in writing to the consignee of the goods, sell the goods and retain the charge (together with any default charges and the costs of conducting the sale) from the proceeds of sale.

Charges in respect of vessels

31C. (1) If a charge to which the Minister is entitled in respect of a vessel is not paid by the date payment falls due, an authorised person may, at the Minister's direction, arrest the vessel and take it into the Minister's custody.

(2) If the charge remains unpaid 60 days after the vessel is taken into the Minister's custody, the Minister may, after giving notice to the owner of the vessel, sell the vessel and retain the charge (together with any default charges and the costs of conducting the sale) from the proceeds of sale.

Power to prevent use of harbor or port facilities

31D. (1) If a person is in default in the payment of a charge (or default charge) payable under this Division, the Minister may, by written notice given to the person in default, prohibit the person from using harbor or port facilities provided by the Crown until the charge has been paid.

(2) A person must not use facilities in contravention of a prohibition imposed under subsection (1).

Maximum penalty: \$2 500.

Substitution of heading to Division 5 of Part 5

14. The heading to Division 5 of Part 5 is repealed and the following heading is substituted:

**PART 5A
PILOTAGE**

Amendment of s. 33—Licensing of pilots

15. Section 33 of the principal Act is amended by striking out from subsections (3) and (4) "this Division" wherever it occurs and substituting, in each case, "this Part".

Amendment of s. 34—Pilotage exemption certificate

16. Section 34 of the principal Act is amended by striking out from subsections (3) and (4) "this Division" wherever it occurs and substituting, in each case, "this Part".

Amendment of s. 35—Compulsory pilotage

17. Section 35 of the principal Act is amended by striking out from subsection (1)(b) "this Division" and substituting "this Part".

Substitution of s. 67

18. Section 67 of the principal Act is repealed and the following section is substituted:

Minister's power to act in an emergency

67. (1) In an emergency, the Minister may take action for the purpose of avoiding or minimising danger to human life or damage to property.

(2) The Minister may (for example) exercise one or more of the following powers:

- (a) take control of a harbor or harbor facility;
- (b) issue directions to the master or owner of a vessel (including a direction to sink or destroy the vessel);
- (c) issue any other directions the Minister considers appropriate in the circumstances.

(3) A person who—

- (a) obstructs the Minister in the exercise of powers under this section; or

(b) fails to comply with a direction under this section,
is guilty of an offence.

Maximum penalty: \$10 000.

(4) A port operating agreement may contain provisions governing the exercise of the Minister's powers under this section in relation to the port.

Amendment of s. 80—Review of administrative decisions

19. Section 80 of the principal Act is amended—

(a) by striking out subsection (2) and substituting the following subsection:

(2) The following decisions and determinations are reviewable:

(a) a decision by the Minister—

(i) to insist on the inclusion of a particular provision or particular provisions in a port operating agreement; or

(ii) not to renew a port operating agreement;

(b) a decision by the CEO to refuse or cancel a pilot's licence or a pilotage exemption certificate, or to impose conditions on such a licence or certificate;

(c) a decision by the CEO to refuse a certificate of competency;

(d) a decision by the Minister to cancel a certificate of competency or to disqualify a person from holding a certificate of competency;

(e) a decision by the Minister to declare a qualification that is under the regulations equivalent to a certificate of competency to be inoperative in the jurisdiction;

(f) a decision by the CEO to refuse or cancel a licence permitting the hiring out of vessels or to impose conditions on such a licence;

(g) a decision by the CEO to refuse a certificate of survey or to impose conditions on a certificate of survey or to refuse consent to a structural alteration to the hull of a vessel, or material alteration to the equipment of a vessel, in respect of which a certificate of survey is in force;

(h) a decision by the CEO to refuse a loadline certificate or to impose conditions on a loadline certificate or to refuse to consent to a structural alteration to the hull of a vessel, or a material alteration to the markings on a vessel, in respect of which a loadline certificate is in force;

(i) a decision by the CEO to prohibit use of a vessel;

(j) a determination by the State Crewing Committee.

Amendment of s. 83—Regattas, etc.

20. Section 83 of the principal Act is amended by striking out paragraph (a) of subsection (2) and substituting the following paragraph:

- (a) may be granted or refused at the discretion of the CEO (but an exemption cannot be granted in respect of an activity that is to take place within a port unless the port operator has first been consulted); and.

Amendment of s. 89—Officers' liability

21. Section 89 of the principal Act is amended by striking out subsection (3) and substituting the following subsections:

(3) A liability that would, but for subsection (2), attach to an authorised person attaches instead—

- (a) if the authorised person is an officer or employee of a port operator—to the port operator; or
- (b) in any other case—to the Minister.

(4) A port management officer (other than an authorised person) incurs no civil liability for an honest act or omission in the exercise or purported exercise of powers under this Act.

(5) Any liability that would, but for subsection (4), attach to a port management officer attaches instead to the port operator that appointed the officer.