



HARBORS AND NAVIGATION (PORTS CORPORATION AND MISCELLANEOUS) AMENDMENT ACT 1994

No. 45 of 1994

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A.D. 1994

No. 45 of 1994

An Act to amend the Harbors and Navigation Act 1993.

[Assented to 2 June 1994]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. (1) This Act may be cited as the *Harbors and Navigation (Ports Corporation and Miscellaneous) Amendment Act 1994*.

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

**PART 2
AMENDMENTS CONSEQUENTIAL ON THE ESTABLISHMENT OF THE SOUTH
AUSTRALIAN PORTS CORPORATION**

Amendment of s. 4—Interpretation

2. Section 4 of the principal Act is amended by inserting in subsection (1) after the definition of "Commonwealth Act" the following definitions:

"the Corporation" means the South Australian Ports Corporation established under the *South Australian Ports Corporation Act 1994*;

"a Corporation port" means a port vested in the Corporation;

Amendment of s. 12—Appointment of authorised persons

3. Section 12 of the principal Act is amended by inserting after subsection (1) the following subsection:

(1a) The CEO may, with the concurrence of the Corporation, appoint a person who is an authorised person under the *South Australian Ports Corporation Act 1994* to be an authorised person for the purposes of this Act.

Amendment of s. 15—Property of Crown

4. Section 15 of the principal Act is amended by inserting in subsection (3) after paragraph (b) the following paragraph:

- (ba) real or personal property (including navigational aids) subsequently vested in the Corporation under the *South Australian Ports Corporation Act 1994*;

Amendment of s. 21—Liability for damage

5. Section 21 of the principal Act is amended by striking out from subsection (1) "(or the Minister)" and substituting "or the Minister (not being property of the Corporation)".

Amendment of s. 22—Control of navigational aids

6. Section 22 of the principal Act is amended by inserting "or the Corporation" after "Commonwealth".

Amendment of s. 26—Licences for aquatic activities

7. Section 26 of the principal Act is amended by inserting in subsection (1) "(other than waters within a Corporation port)" after "waters within the jurisdiction".

Amendment of s. 27—Restricted areas

8. Section 27 of the principal Act is amended by inserting after subsection (1) the following subsection:

- (2) The power under subsection (1) is not exercisable in relation to waters within a Corporation port.

Amendment of s. 28—Control and management of harbors and harbor facilities

9. Section 28 of the principal Act is amended by inserting after its present contents (now to be designated subsection (1)) the following subsection:

- (2) This section does not apply to a port or port facilities vested in the Corporation.

Amendment of s. 83—Regattas, etc.

10. Section 83 of the principal Act is amended by inserting in subsection (2)(a) "(but an exemption cannot be granted in respect of an activity that is to take place within a Corporation port unless the Corporation concurs)" after "CEO".

PART 3 MISCELLANEOUS AMENDMENTS

Amendment of s. 4—Interpretation

11. Section 4 of the principal Act is further amended by striking out from subsection (1) the definition of "fishing vessel" and substituting the following definition:

"fishing vessel" means—

- (a) a vessel (not propelled solely by oars) used in the taking of fish for sale; or

- (b) a vessel (not propelled solely by oars) used in connection with a fish farm whether or not it is used in the taking of fish for sale;

Insertion of s. 18A

12. The following section is inserted after section 18 of the principal Act:

By-laws

18A. (1) A council may, with the approval of the Minister, make by-laws that operate in relation to—

- (a) a harbor, or part of a harbor; or
(b) any other adjacent or subjacent land vested in the Minister.

(2) The *Local Government Act 1934* applies to by-laws made under this section as if—

- (a) any part of the harbor or land in relation to which the by-laws operate that is not within the area of the council were within the area of the council; and
(b) any part of the harbor or land in relation to which the by-laws operate that is not under the care, control and management of the council were under the care, control and management of the council.

(3) The Governor may at any time, by notice in the *Gazette*, revoke by-laws made under this section.

(4) The Minister must consult with the council concerned before by-laws are revoked under subsection (3).

Amendment of s. 25—Clearance of wrecks, etc.

13. Section 25 of the principal Act is amended—

- (a) by striking out from subsection (2) "materials" first occurring and substituting "any substance or thing";
(b) by striking out from subsection (2) "materials" second occurring and substituting "substance or thing".

Amendment of s. 33—Licensing of pilots

14. Section 33 of the principal Act is amended—

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

(1a) A licence remains in force for the period specified in the regulations and may be renewed in accordance with the regulations.;

- (b) by striking out subsection (5) and substituting the following subsection:

(5) The CEO may, by notice in writing to a licensed pilot, cancel the licence if satisfied that the pilot—

- (a) has been guilty of incompetence or breach of duty; or
- (b) has breached a condition of licence; or
- (c) has suffered mental or physical incapacity rendering the pilot incapable of satisfactorily performing the duties of a pilot.

Amendment of s. 34—Pilotage exemption certificate

15. Section 34 of the principal Act is amended—

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

(1a) A pilotage exemption certificate remains in force for the period specified in the regulations and may be renewed in accordance with the regulations.;

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

(4a) A pilotage exemption certificate lapses if the holder does not continue to have the periodic experience in the navigation of vessels required by the regulations.

Amendment of s. 35—Compulsory pilotage

16. Section 35 of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) The CEO may, subject to such conditions as the CEO thinks fit, exempt a vessel from the requirements of this section.

Amendment of s. 46—Vessels to which this Part applies

17. Section 46 of the principal Act is amended by striking out from paragraph (a) "of a capacity or power exceeding a limit prescribed by regulation".

Amendment of s. 47—Requirement for certificate of competency

18. Section 47 of the principal Act is amended—

- (a) by striking out from subsection (1)(b) "by regulation" and substituting "by the CEO in accordance with the regulations";
- (b) by striking out from subsection (2)(b) "by regulation" and substituting "by the CEO in accordance with the regulations".

Amendment of s. 50—Cancellation of certificate of competency by Minister

19. Section 50 of the principal Act is amended—

- (a) by striking out "or" between paragraphs (b) and (c) of subsection (1) and inserting after paragraph (c) the following:

or

(d) is shown to have suffered mental or physical incapacity rendering him or her incapable of satisfactorily operating a vessel or performing duties pursuant to the certificate of competency,;

(b) by striking out "or" between paragraphs (a) and (b) of subsection (2) and inserting after paragraph (b) the following:

or

(c) is shown to have suffered mental or physical incapacity rendering him or her incapable of satisfactorily operating a vessel or performing duties pursuant to the qualification,.

Insertion of s. 52A

20. The following section is inserted after section 52 of the principal Act:

Duration and granting of licence

52A. (1) A licence under this Part remains in force for the period specified in the regulations and may be renewed in accordance with the regulations.

(2) The regulations may set out the circumstances in which the CEO may grant or refuse to grant a licence under this Part.

Amendment of s. 54—Application of Division

21. Section 54 of the principal Act is amended by striking out from paragraph (a) "of a capacity or power exceeding a limit prescribed by regulation".

Amendment of s. 57—Appointment of surveyors

22. Section 57 of the principal Act is amended by inserting after subsection (3) the following subsections:

(4) The CEO may, by notice in writing to a licensed surveyor, cancel the surveyor's licence if the surveyor is shown to have been guilty of incompetence or breach of duty or to have breached a condition of the licence.

(5) On cancellation of a licence under this section, the former licensee must return the licence to the CEO.

Penalty: Division 9 fine.

Substitution of s. 81

23. Section 81 of the principal Act is repealed and the following section is substituted:

Application of Commonwealth Act

81. The regulations may apply the Commonwealth Act or specified provisions of the Commonwealth Act (subject to exclusions, adaptations and modifications set out in the regulations) to vessels in the jurisdiction or to the owners and crews of such vessels.

Amendment of sched. 1—Harbors

24. Schedule 1 of the principal Act is amended—

- (a) by striking out from clause 1(1) "Beachport" and substituting "Beachport and Southend";
- (b) by striking out from clause 1(1) "Kleins Point" and substituting "Klein Point";
- (c) by inserting in clause 1(1) after the entry for Port Wakefield the following entry:

Rapid Bay;
- (d) by striking out from clause 1(1) "Southend".

Amendment of sched. 2—Repeal and Transitional Provisions

25. Schedule 2 of the principal Act is amended by inserting in clause 2 after subclause (3) the following subclauses:

(4) A loadline certificate in force under the *Marine Act 1936* immediately before the commencement of this Act continues in force subject to this Act as if it were a loadline certificate issued under this Act.

(5) A special permit to operate a vessel in force under the *Boating Act 1974* immediately before the commencement of this Act continues in force subject to this Act as if it were a special permit issued under this Act.

(6) A licence in force under Part 3A of the *Boating Act 1974* immediately before the commencement of this Act continues in force subject to this Act as if it were a licence issued under Part 8 and as if the conditions of the licence had been imposed under Part 8.

(7) The registration of a vessel in force under the *Boating Act 1974* immediately before the commencement of this Act continues in force subject to this Act as if it were registration of the vessel under this Act.

(8) By-laws in force under the *Harbors Act 1936* immediately before the commencement of this Act continue in force subject to this Act as if they were made under this Act.

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

ROMA MITCHELL Governor