ANNO VICESIMO SEPTIMO
ELIZABETHAE II REGINAE
A.D. 1978

No. 109 of 1978


[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".

(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.

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:
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”.

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”.

6. Section 6 of the principal Act is repealed.

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.

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 Division III and Division IV of Part II of the principal Act are repealed.

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.

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.

11. Section 43 of the principal Act is amended—

(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:—
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;
(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.

14. Section 64 of the principal Act is amended—
(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”.

16. Section 68 of the principal Act is repealed and the following section is enacted and inserted 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.

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

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”.

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 Sections 71 and 71a of the principal Act are repealed.

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.

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

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”.

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 Sections 92 and 93 of the principal Act are repealed.

24. Section 94 of the principal Act is repealed.

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).

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”.

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”.

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,”.

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.

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 Section 132a of the principal Act is repealed.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

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,

33. Section 188 of the principal Act is repealed.

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”.

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 The third schedule to the principal Act is repealed.

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 The fourth schedule to the principal Act is repealed.

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 (f.1) of section 5 the passage “or any association, corporate or unincorporate” and inserting in lieu thereof the passage “any body corporate, or any association”.

(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:

(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