

# AUSTRALIAN SHIPPING COMMISSION ACT 1974

## No. 83 of 1974

An Act to amend the *Australian Coastal Shipping Commission Act 1956-1973*.

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

Short title  
and citation.

1. (1) This Act may be cited as the *Australian Shipping Commission Act 1974*.<sup>1</sup>

(2) The *Australian Coastal Shipping Commission Act 1956-1973*<sup>2</sup> is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the *Australian Shipping Commission Act 1956-1974*.

Commence-  
ment.

2. This Act shall come into operation on the day on which it receives the Royal Assent.<sup>1</sup>

Title.

3. The title to the Principal Act is amended by omitting the word “Coastal”.

4. Section 5 of the Principal Act is repealed and the following section substituted:—

Definitions.

“5. In this Act, unless the contrary intention appears—

‘Acting Chairman’ means an Acting Chairman appointed under section 8C;

‘Acting Commissioner’ means an Acting Commissioner appointed under section 9;

‘approved bank’ means a bank approved by the Treasurer for the purposes of the provision in which the expression occurs;

‘Chairman’ means the Chairman of the Commission;

‘Commission’ means the Commission established by this Act.”.

Heading to  
Part II.

5. The heading to Part II of the Principal Act is amended by omitting the word “COASTAL”.

6. Sections 7 and 8 of the Principal Act are repealed and the following sections substituted:—

“7. (1) The body corporate established by the section for which this section was substituted by section 6 of the *Australian Shipping Commission Act 1974*—

Establishment of Australian Shipping Commission.

- (a) continues in existence by force of this sub-section as a body corporate, under and subject to the provisions of this Act, under the name ‘Australian Shipping Commission’, but so that the corporate identity of the body corporate shall not be affected;
- (b) shall have a common seal;
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue or be sued in its corporate name.

“(2) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Commission affixed to a document and shall presume that it was duly affixed.

“8. (1) The Commission shall consist of 7 Commissioners, namely—

Constitution of Commission.

- (a) the Chairman; and
- (b) 6 other Commissioners.

“(2) The Commissioners shall be appointed by the Governor-General, the Chairman being appointed as a full-time Commissioner and the other Commissioners being appointed as part-time Commissioners.

“(3) The performance of the functions or the exercise of the powers of the Commission is not affected by reason only of there being a vacancy or vacancies in the membership of the Commission.

“8A. (1) Subject to this section, a Commissioner shall be appointed for 5 years, but is eligible for re-appointment.

Period of appointment.

“(2) If a Commissioner ceases to hold office before the expiration of the period of his appointment, another person may, in accordance with this Division, be appointed in his place until the expiration of that period.

“(3) A person who has attained the age of 65 years shall not be appointed as the Chairman.

“(4) A person shall not be appointed as the Chairman for a period that extends beyond the date on which he will attain the age of 65 years, but may be appointed for a period of less than 5 years that expires on that date.

Vice-  
Chairman of  
Com-  
mission.

“8B. (1) The Governor-General shall appoint a Commissioner, other than the Chairman, to be Vice-Chairman of the Commission.

“(2) Subject to this section, a person appointed under this section holds office as Vice-Chairman until the expiration of his period of appointment or until he sooner ceases to be a Commissioner, but is eligible for re-appointment.

“(3) The Vice-Chairman may resign his office of Vice-Chairman by writing signed by him and delivered to the Governor-General.

Acting  
Chairman.

“8C. (1) Where the Chairman is, or is expected to be, absent from duty or from Australia or there is, or is expected to be, a vacancy in the office of Chairman, the Minister may appoint a Commissioner or other person to be Acting Chairman during the absence or until the filling of the vacancy.

“(2) An Acting Chairman appointed in the event of a vacancy shall not continue in office after the expiration of 6 months after the occurrence of the vacancy.

“(3) An Acting Chairman has all the powers and functions of the Chairman.

“(4) The Minister may, at any time, terminate an appointment under this section.

“(5) An Acting Chairman may resign his office by writing signed by him and delivered to the Minister.

“(6) Subject to this section, a person appointed under this section holds office as Acting Chairman on such terms and conditions as the Minister determines.

“(7) The validity of anything done by a person in his capacity as Acting Chairman shall not be called in question in any proceedings on the ground that the occasion for his appointment under this section had not arisen or that the appointment had ceased to have effect.”.

Acting Com-  
missioners.

7. Section 9 of the Principal Act is amended—

(a) by inserting in sub-section (1), after the word “Commissioner” (first occurring), the words “, other than the Chairman”; and

(b) by adding at the end thereof the following sub-sections:—

“(3) An Acting Commissioner may resign his office by writing signed by him and delivered to the Minister.

“(4) Subject to this section, a person appointed under this section holds office as an Acting Commissioner on such terms and conditions as the Minister determines.”.

8. Section 11 of the Principal Act is repealed and the following section substituted:—

“11. (1) A Commissioner shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed. Remuneration and allowances.

“(2) Subject to the *Remuneration Tribunals Act 1973-1974*, a Commissioner shall be paid such allowances as are prescribed.”

9. Section 13 of the Principal Act is amended—

(a) by omitting paragraphs (b) and (c) of sub-section (1) and substituting the following paragraphs:— Vacation of office.

“(b) being the Chairman, engages in paid employment outside the duties of his office without the approval of the Minister;

“(c) being the Chairman, is absent from duty, except on leave of absence granted by the Minister or with the approval of the Minister, for 14 consecutive days or for 28 days in any 12 months;

“(ca) not being the Chairman, is absent, except on leave granted by the Minister, from 3 consecutive meetings of the Commission; or”; and

(b) by adding at the end thereof the following sub-section:—

“(5) A reference in sub-section (2), (3) or (4) to a Commissioner shall be read as including a reference to an Acting Commissioner and to an Acting Chairman who is not a Commissioner at the time he is appointed to be an Acting Chairman.”

10. After section 13 of the Principal Act the following section is inserted:—

“13A. A Commissioner may resign his office by writing signed by him and delivered to the Governor-General.” Resignation of Commissioners.

11. Section 14 of the Principal Act is amended—

(a) by omitting from sub-section (7) the word “three” and substituting the word “four”; and Meetings of Commission.

(b) by adding at the end thereof the following sub-section:—

“(9) A reference in this section to the Chairman shall be read as including a reference to an Acting Chairman, and a reference in this section to a Commissioner shall be read as including a reference to an Acting Commissioner and to an Acting Chairman who is not a Commissioner at the time he is appointed to be an Acting Chairman.”

Powers of  
Commission.

**12.** Section 16 of the Principal Act is amended by omitting sub-section (3) and substituting the following sub-section:—

“(3) The Commission shall not, without the approval of the Minister—

- (a) acquire any property, right or privilege for a consideration exceeding in amount or value \$100,000 or, if a higher amount is prescribed, that higher amount;
- (b) dispose of any property, right or privilege where the amount or value of the consideration for the disposal, or the value of the property, right or privilege, exceeds \$100,000 or, if a higher amount is prescribed, that higher amount;
- (c) enter into a contract for the construction of a building for the Commission, being a contract under which the Commission is to pay an amount exceeding \$100,000 or, if a higher amount is prescribed, that higher amount; or
- (d) enter into a lease of land for a period exceeding 10 years.”.

Powers of  
Minister in  
relation to  
shipping  
services.

**13.** Section 17 of the Principal Act is amended by omitting sub-section (4) and substituting the following sub-sections:—

“(4) Where—

- (a) the Commission establishes, maintains and operates, or continues to maintain and operate, a shipping service in accordance with a direction given under sub-section (1); and
- (b) the Commission satisfies the Minister that the shipping service has, while being operated in accordance with the direction, operated at a loss in any financial year,

the Commission is entitled to be reimbursed by Australia to the extent of the loss.

“(5) The Minister shall cause a copy of any direction given by him under sub-section (1) to be laid before each House of the Parliament within 15 sitting days of that House after the direction is made by him.”.

Terms and  
conditions of  
employment.

**14.** Section 22 of the Principal Act is amended—

- (a) by omitting from sub-section (2) the words “Seven thousand dollars per annum” and substituting the words “\$15,739 per annum or, if a higher rate is prescribed, that higher rate”; and
- (b) by omitting sub-section (3) and substituting the following sub-section:—

“(3) Where the Chairman or an officer of the Commission, whether appointed before or after the commencement of this sub-section, was, immediately before his appointment, an officer of the Public Service or a person to whom the *Officers’ Rights Declaration Act 1928-1973* applied—

- (a) he retains his existing and accruing rights; and

- (b) for the purposes of determining those rights, his service under this Act shall be taken into account as if it were service in the Public Service.”.

15. After section 24 of the Principal Act the following section is inserted:—

“24A. (1) The Commission is an approved authority for the purposes of the *Superannuation Act* 1922-1973. Super-annuation.

“(2) For the purposes of sub-sections 4 (3A) and (4) of that Act, the Chairman shall be deemed to be required, by the terms of his appointment, to give the whole of his time to the duties of his office.

“(3) For the purposes of sections 145 and 146 of that Act, the Chairman shall be deemed to be employed by the Commission.

“(4) For the purposes of that Act, the termination under section 12 of this Act of the appointment of the Chairman by reason of physical or mental incapacity shall be deemed to be retirement on the ground of invalidity.

“(5) Nothing in this Act authorizes the provision of superannuation benefits otherwise than under the *Superannuation Act* 1922-1973 to a person appointed or employed under this Act.”.

16. Section 30 of the Principal Act is amended—

- (a) by omitting sub-sections (2) and (3) and substituting the following sub-section:— Borrowing  
by  
Commission.

“(2) The Treasurer may, on behalf of Australia, out of moneys appropriated by the Parliament for the purpose, lend to the Commission, at such rate of interest and on such other terms and conditions as he determines, moneys that the Commission is authorized to borrow under sub-section (1).”; and

- (b) by omitting from sub-section (5) the words “, with the concurrence of the Minister,”.

17. Section 32 of the Principal Act is amended by omitting paragraph (c) of sub-section (2) and substituting the following paragraph:— Application  
of moneys.

“(c) in any other manner approved by the Treasurer.”.

18. Section 33 of the Principal Act is amended—

- (a) by inserting in sub-section (1), after the word “expenditure”, the words “and provision for expenditure”; and Profits of  
Commission.
- (b) by omitting sub-section (2).

19. Sections 34, 35 and 36 of the Principal Act are repealed and the following sections substituted:—

Proper  
accounts to  
be kept.

“34. The Commission shall cause to be kept proper accounts and records of the transactions and affairs of the Commission in accordance with the accounting principles generally applied in commercial practice and shall do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorized and that adequate control is maintained over the assets of, or in the custody of, the Commission and over the incurring of liabilities by the Commission.

Audit.

“35. (1) The Auditor-General shall inspect and audit the accounts and records of financial transactions of the Commission and records relating to assets of, or in the custody of, the Commission and shall forthwith draw the attention of the Minister to any irregularity disclosed by the inspection and audit that is, in the opinion of the Auditor-General, of sufficient importance to justify his so doing.

“(2) The Auditor-General may, at his discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in sub-section (1).

“(3) The Auditor-General shall, at least once in each financial year, report to the Minister the results of the inspection and audit carried out under sub-section (1).

“(4) The Auditor-General or a person authorized by him is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Commission relating directly or indirectly to the receipt or payment of moneys by the Commission or to the acquisition, receipt, custody or disposal of assets by the Commission.

“(5) The Auditor-General or a person authorized by him may make copies of, or take extracts from, any such accounts, records, documents or papers.

“(6) The Auditor-General or a person authorized by him may require any person to furnish him with such information in the possession of the person or to which the person has access as the Auditor-General or authorized person considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person shall comply with the requirement.

“(7) A person who contravenes sub-section (6) is guilty of an offence punishable, upon conviction, by a fine not exceeding \$200.

Taxation.

“36. (1) The Commission is subject to taxation under the laws of Australia.

“(2) Subject to sub-section (3), the Commission is not subject to taxation under any law of a State or Territory, other than Papua New Guinea.

“(3) The regulations may provide that sub-section (2) does not apply in relation to taxation under a specified law of a State or Territory.

“(4) The Commission is not a public authority for the purposes of paragraph (d) of section 23 of the *Income Tax Assessment Act 1936-1974*.

“(5) The Commission is not a public transport authority for the purposes of item 77 in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935-1973*.”.

**20.** Section 39 of the Principal Act is amended—

(a) by inserting after sub-section (2) the following sub-section:—

“(2A) In its report the Commission shall give particulars of any directions given to it by the Minister under sub-section (2D) of section 16 or sub-section (1) of section 17.”;

(b) by inserting after paragraph (c) of sub-section (3) the word “and”; and

(c) by omitting paragraph (d) of sub-section (3).

Annual  
report of  
Commission.

**21.** The Principal Act is amended as set out in the Schedule.

Formal  
amendments.

**22.** (1) A person who held office as a Commissioner immediately before the commencement of this Act continues to hold office as a Commissioner as if he had been appointed as a Commissioner under the Principal Act as amended by this Act and holds office, subject to the Principal Act as amended by this Act, for the remainder of the period of his appointment under the Principal Act.

Continuation  
of certain  
appointments.

(2) The person who was, immediately before the commencement of this Act, the Vice-Chairman of the Commission continues to be the Vice-Chairman of the Commission as if he had been appointed as the Vice-Chairman of the Commission under the Principal Act as amended by this Act and holds office, subject to the Principal Act as amended by this Act, for the remainder of the period of his appointment under the Principal Act.

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## SCHEDULE

Section 21

### FORMAL AMENDMENTS

1. The following provisions of the Principal Act are amended by omitting any number expressed in words that is used to identify a section of that Act, of another Act or of an Imperial Act, and substituting that number expressed in figures:—

Sections 30 (7), 33 (3), 39 (2), 44 (a), 44 (b) and 49 (4).

2. The following provisions of the Principal Act are amended by omitting the words “of this Act” and “of this section”:—

Sections 13 (4), 30 (7), 33 (3) and 39 (2).

3. The following provisions of the Principal Act are amended by omitting the words “the Commonwealth” (wherever occurring), and substituting the word “Australia”:—



## SCHEDULE—continued

Sections 15, 16 (2A), 18 (1) and (4), 28, 29 (1) and (2), 30 (5), 32 (1), 40 (2) and (4), 41 (2), 43 (2) and 47.

4. The Principal Act is further amended as set out in the following table:—

Provision	Amendment
Section 39 (1)	Omit “thirtieth day of June”, substitute “30 June”.
Section 45 (1)	Omit “Third Schedule to this Act”, substitute “Schedule”.
Section 48 (7)	Omit “the first day of January”, substitute “1 January”.
The Schedules	(a) Omit “THE SCHEDULES.” (b) Omit “THIRD SCHEDULE.”, substitute “SCHEDULE”.

## NOTES

1. Act No. 83, 1974; assented to 18 October 1974.
2. Act No. 41, 1956, as amended by No. 87, 1962; No. 88, 1964; No. 4, 1966; No. 145, 1968; No. 55, 1969; and No. 216, 1973 (as amended by No. 20, 1974).