House of Assembly—No 20
As laid on the table and read a first time, 31 May 2007

South Australia

Harbors and Navigation (Australian Builders Plate) Amendment Bill 2007

A BILL FOR

An Act to amend the *Harbors and Navigation Act 1993*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Harbors and Navigation (Australian Builders Plate) Amendment Act 2007*.

2—Commencement

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

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Harbors and Navigation Act 1993*

4—Amendment of heading to Part 9

Heading to Part 9—delete the heading and substitute:

Part 9—Registration, certificates of survey, loadline certificates and Australian Builders Plates

5—Insertion of Part 9 Division 4

After Part 9 Division 3 insert:

Division 4—Australian Builders Plates

64A—Application of this Division

(1) This Division applies in respect of vessels of a class declared by regulation to be a class of vessels in respect of which an Australian Builders Plate is required.

(2) Nothing in this Division affects a provision under this Act requiring—

(a) the operator of a recreational vessel to ensure that the number of persons carried on the vessel does not exceed the number stated on a compliance plate affixed to the vessel or set out in the regulations (as the case may require); or

(b) a compliance plate to be affixed to a recreational vessel.

64B—Certain vessels not to be sold without Australian Builders Plate affixed etc

(1) A person must not, without the approval of the CEO, sell or supply a vessel to which this Division applies unless—

(a) an Australian Builders Plate is affixed to the vessel in accordance with the regulations; and

(b) the information contained on the Australian Builders Plate is correct at the time of the sale or supply.

Maximum penalty: $10 000.

(2) This section does not apply in the case of the sale or supply of a vessel—

(a) declared by the regulations to have been constructed before the commencement of this section; or

(b) that is the second, or a subsequent, sale or supply of the vessel (disregarding any sale or supply that is for a purpose related to the manufacture of the vessel).

(3) A person must not affix, or cause to be affixed, an Australian Builders Plate to a vessel if the person knows, or ought reasonably to have known, that the information contained on the plate was incorrect.

Maximum penalty: $5 000.

(4) A person must not alter an Australian Builders Plate affixed to a vessel if the person knows, or ought reasonably to have known, that the alteration would result in the information contained on the plate being incorrect.

Maximum penalty: $5 000.

(5) A person must not remove an Australian Builders Plate that is affixed to a vessel except—

(a) in order to replace it with another Australian Builders Plate; or

(b) with the approval of the CEO.

Maximum penalty: $5 000.

(6) A person must not deface or conceal an Australian Builders Plate that is affixed to a vessel.

Maximum penalty: $5 000.

(7) In this section—
sell or supply includes offer for sale or supply.

64C—General defence

(1) It is a defence to a charge of an offence against section 64B(1) if the defendant believed on reasonable grounds that the vessel—

(a) was to be exported as soon as practicable after the sale of the vessel by the defendant; or

(b) was to be used solely for the purpose of racing in organised events (including training in, or testing of, the vessel in respect of such racing).

(2) It is a defence to a charge of an offence against section 64B(1), (5) or (6) if the defendant proves that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

(3) In this section—

Australia includes the external Territories;

exported means exported to a place outside of Australia.

6—Insertion of section 86

After section 85 insert:

86—Liability of directors

(1) If a corporation commits an offence against this Act, each director of the corporation is guilty of an offence and liable to the same penalty as is fixed for the principal offence unless it is proved that the principal offence did not result from failure on the director's part to take reasonable care to prevent the commission of the offence.

(2) A director of a corporation may be prosecuted and convicted of an offence under this Act whether or not the corporation has been prosecuted or convicted of the offence committed by the corporation.

(3) In this section—

director of a corporation includes a person occupying or acting in the position of director of the corporation whether validly appointed to occupy or duly authorised to act in the position or not, and includes a person in accordance with whose directions or instructions the directors of the corporation are accustomed to act.

7—Amendment of section 87—Evidentiary provision

Section 87(1)—after paragraph (g) insert:

(h) a certificate apparently signed by the CEO or a delegate of the CEO certifying an approval or lack of approval under this Act is, in the absence of proof to the contrary, proof of the matter certified.

8—Amendment of section 91—Regulations

(1) Section 91(1)—delete "regulations for the purposes of this Act" and substitute:

such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act

(2) Section 91(2)—after paragraph (ab) insert:

(aba) regulate the sale of vessels to which Part 9 or a Division of Part 9 applies;

(abb) provide for and regulate the affixing of a plate to the hull of vessels of a specified class for the purposes of identifying the hull.

Schedule 1—Validation provision

Part 9 Division 1A of the *Harbors and Navigation Regulations 1994* has the same force and effect, and will be taken to always have had the same force and effect, as if made under the *Harbors and Navigation Act 1993* as amended by section 8(2) of this Act.