

NORTHERN TERRITORY OF AUSTRALIA

MARINE AMENDMENT ACT 1989

No. 16 of 1989

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NORTHERN TERRITORY OF AUSTRALIA

No. 16 of 1989

AN ACT

to amend the *Marine Act*

[Assented to 15 June 1989]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Marine Amendment Act 1989*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Marine Act* is in this Act referred to as the Principal Act.

4. INTERPRETATION

Section 7(1) of the Principal Act is amended -

- (a) by inserting in the definition of "certified person" after "issued" the words "or recognized and endorsed,";
- (b) by omitting the definition of "commercial vessel" and substituting the following:

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"'commercial vessel' means a vessel the use of which is made, allowed or authorized in the course of any business or in connection with any commercial transaction and, subject to any law in force in the Territory, includes a Government vessel, but does not include a vessel which is used solely for pleasure or recreation;"

(c) by omitting the definition of "ship" and substituting the following:

"'ship' includes every description of vessel used in navigation not propelled by oars;" and

(d) by omitting the definition of "Uniform Code" and substituting the following:

"'Uniform Code' means the code known as the Uniform Shipping Laws Code adopted for the time being by the conference of Commonwealth and State Ministers known as the Australian Transport Advisory Council and certified by a Minister for the Commonwealth in accordance with section 427 of the *Navigation Act* of the Commonwealth as amended from time to time;"

5. SHIPPING INSPECTORS

Section 8 of the Principal Act is amended -

(a) by omitting from subsection (3)(e) "and";

(b) by omitting from subsection (3)(f) "crew." and substituting "crew; and";

(c) by adding at the end of subsection (3) the following:

"(g) detain or delay a vessel in order to obtain any advice, information or evidence."; and

(d) by omitting from subsection (6) "written authorization from the Director and his".

6. FEES, &c.

Section 20 of the Principal Act is amended by omitting "The" and substituting "Subject to this Act, the".

7. APPLICATION OF PART III

Section 23 of the Principal Act is amended by inserting after paragraph (c) the following:

"(ca) a commercial vessel not more than 5 m long which does not carry more than 4 persons and is operated -

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- (i) in inland waters; or
- (ii) in waters of the sea declared pursuant to a law in force in the Territory to be smooth or partially smooth waters within the meaning of clause 5.2 of Section 1 of the Uniform Code;".

8. VESSELS TO BE PROPERLY MANNED

Section 25(1) of the Principal Act is amended by inserting after "Regulations" the words ", being persons having the designation, class or grade so required".

9. NEW SECTION

The Principal Act is amended by inserting after section 29 the following:

"29A. RECOGNITION OF CERTIFICATES

"(1) A person may apply to the Director for the recognition of a valid certificate issued by a statutory marine authority of the Commonwealth or of a State within the Commonwealth and held by that person.

"(2) An application under subsection (1) shall be in the prescribed form and be accompanied by the prescribed fee (if any).

"(3) The Director may, on presentation of a certificate referred to in subsection (1), endorse on the certificate the Director's recognition of its validity within the Northern Territory, subject to such limitations or extensions as may be specified in the endorsement."

10. EFFECT OF CERTIFICATE

Section 30 of the Principal Act is amended by inserting after "certificate" (first occurring) "issued under section 29 or the limitations or extensions, if any, specified in an endorsement under section 29A".

11. SUSPENSION OR CANCELLATION

Section 31 of the Principal Act is amended by inserting after "certificate" the words ", or revoke an endorsement on a certificate,".

12. APPLICATION OF PART IV

Section 75 of the Principal Act is amended -

- (a) by omitting subsection (1) and substituting the following:

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"(1) In this section, 'existing fishing vessel' means a fishing vessel which, at 1 January 1989, had been recognized by the Director as an existing fishing vessel for the purposes of this section.";

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

"(fa) a commercial vessel not more than 5 m long which does not carry more than 4 persons and is operated -

(i) in inland waters; or

(ii) in waters of the sea declared pursuant to a law in force in the Territory to be smooth or partially smooth waters within the meaning of clause 5.2 of Section 1 of the Uniform Code;

(fb) a pontoon or a vessel hulk that, with the prior approval in writing of the Director, is permanently moored in an approved location and is not used nor available for use by the general public as a place for accommodation or entertainment;

(fc) a hire-and-drive vessel;"; and

(c) by adding at the end the following:

"(4) A commercial vessel to which paragraph (fa) applies that is not surveyed pursuant to subsection (3) shall be subject to the same regulations relating to the carrying of safety equipment as if it were a pleasure craft.".

13. POWERS OF SURVEYORS

Section 77(1)(c) of the Principal Act is amended by inserting after "owner of vessel" the words "or, if he is not available".

14. REPEAL AND SUBSTITUTION

Section 79 of the Principal Act is repealed and the following substituted:

"79. SURVEY CERTIFICATES

"Subject to this Act, the owner shall not permit nor the master undertake the operation of a vessel unless -

(a) a certificate of survey is in force for that vessel;

(b) the vessel is being operated in compliance with the terms of that certificate; and

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(c) such evidence of compliance with the terms of the certificate as is approved by the Director is displayed on board.

Penalty: For an offence against paragraph (a) or (b) - \$5,000.

For an offence against paragraph (c) - \$500."

15. REPEAL AND SUBSTITUTION

Section 87 of the Principal Act is repealed and the following substituted:

"87. ALTERATION OF VESSELS

"(1) The owner or the master of a vessel who proposes to alter the vessel so that the certificate of survey will or may become inapplicable to its altered state shall notify the Director in writing of the proposed alterations before commencing them.

Penalty: \$5,000.

"(2) The owner or the master of a vessel which is altered so that the certificate of survey is or may be inapplicable to the altered state of the vessel shall notify the Director of the alterations before the vessel is operated in its altered state.

Penalty: \$5,000."

16. SUSPENSION, &c., OF CERTIFICATE OF SURVEY

Section 88(c) of the Principal Act is amended by inserting after "efficiency" the word ", safety".

17. UNSAFE SHIPS NOT TO GO TO SEA

Section 97 of the Principal Act is amended by omitting subsection (5) and substituting the following:

"(5) In this section, 'sea' includes Northern Territory waters."

18. COLLISION REGULATIONS

Section 110 of the Principal Act is amended by adding at the end of subsections (1) and (2) "Penalty: \$10,000."

19. REPEAL AND SUBSTITUTION

Section 112 of the Principal Act is repealed and the following substituted:

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"112. FALSE DISTRESS SIGNALS

"A person shall not, without reasonable cause -

- (a) set off or cause to be set off a flare or EPIRB (Emergency Position Indicating Radio Beacon), or display or cause to be displayed lights, sheets, or signs which indicate distress; or
- (b) make or cause to be made any other distress signal or a signal which may be confused with a prescribed distress signal."

20. NEW SECTIONS

The Principal Act is amended by inserting after section 115 the following:

"115A. DUTY NOT TO OBSTRUCT

"The owner or the master of a vessel shall not operate, moor, anchor or secure the vessel or allow the vessel to be operated, moored, anchored or secured in a manner that is likely to -

- (a) obstruct or impede the safe passage or navigation of another vessel; or
- (b) create a hazard to the safe passage, navigation or operation of another vessel.

Penalty: \$5,000.

"115B. PERSON NOT TO ENDANGER SAFE PASSAGE OF VESSEL

"A person shall not by any means, including the unlawful use of nets, lines, pots, or other gear, obstruct, hinder, or endanger the safe passage of a vessel or other person.

Penalty: \$2,000.

"Division 6A - Vessels Wrecked

"115C. INTERPRETATION

"(1) In this Division, unless the contrary intention appears -

'owner', in relation to a vessel wrecked, means any person to whom the vessel wrecked -

- (a) belongs;
- (b) belonged at the time at which it became a vessel wrecked; or

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(c) has belonged at any time after the time at which it became a vessel wrecked,

and a vessel wrecked shall be deemed to belong to a person if, at the relevant time, the person by virtue of a charter or other agreement had the responsibility for the management and operation of the vessel as if the person were the owner;

'vessel' includes a vessel, part of a vessel, and any item of equipment, cargo, stores, fuel, or ballast of or belonging to a vessel;

'vessel wrecked' means a vessel that is wrecked, stranded, sunk, abandoned or which is lying on the sea bed within Northern Territory waters and includes wreckage.

"115D. MINISTER MAY DEAL WITH VESSEL WRECKED

"(1) Where, in the opinion of the Minister, a vessel wrecked is, or is likely to be, an obstruction or danger to navigation or to the environment, or it is in the public interest to do so, the Minister may -

- (a) direct the owner of the vessel wrecked to raise, remove, or destroy the vessel, or to light or buoy the vessel until it is raised, removed, or destroyed;
- (b) where the owner of the vessel wrecked cannot be located within a reasonable time or fails to comply with a direction under paragraph (a) within a reasonable time, remove, destroy, or deal with the vessel wrecked in such a manner as the Minister thinks fit; and
- (c) recover from the owner any or all expenses incurred in the lighting, buoys, raising, removal, or destruction of the vessel wrecked.

"(2) Where the Minister has dealt with a vessel wrecked in accordance with subsection (1)(b), the Minister may sell, in such manner as the Minister thinks fit, any vessel wrecked or any part of it so raised or removed and any other property recovered in the raising or removal.

"(3) The Minister shall, out of the proceeds of any sale under subsection (2), after the deduction of expenses incurred, pay the net proceeds of the sale to the owner or person entitled to them.

"(4) The powers given to the Minister under this section for the removal of a vessel wrecked shall be in addition to and not in derogation of any other powers given in respect of a declared port for a like object under any other law."

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21. FORMAL INVESTIGATIONS

Section 122 of the Principal Act is amended -

- (a) by inserting in subsection (1)(d) after "suspended" the words "or the Director's endorsement on it be revoked";
- (b) by inserting in subsection (2) after "a certificate" the words "or the revocation of the Director's endorsement on it"; and
- (c) by inserting in subsection (3) after "cancelled" the words "or the Director's endorsement on it revoked" and by adding at the end "Penalty: \$250."

22. PILOTAGE AUTHORITIES

Section 161(1) of the Principal Act is amended by omitting "Northern Territory" and substituting "Darwin".

23. REPEAL OF SECTION 164

Section 164 of the Principal Act is repealed.

24. FAILURE TO TAKE PILOT ON BOARD

Section 165 of the Principal Act is amended by adding at the end the following:

"(2) The prohibition expressed in subsection (1) does not apply where the pilotage authority has advised the master that no licensed pilot will be available before the expiry of the period of 24 hours commencing with the time the ship arrives within the compulsory pilotage area."

25. MASTER RESPONSIBLE FOR SHIP

Section 182 of the Principal Act is amended by inserting after "certificate" the words "or being navigated in a pilotage area or compulsory pilotage area without a pilot".

26. NEW SECTIONS

(1) The Principal Act is amended by inserting after section 188 the following:

"188A. ERECTION OF STRUCTURES

"(1) A person shall not, without the prior approval in writing of the Director, erect below the high water mark in or on Northern Territory waters any jetty, wharf, pontoon or structure, whether temporary or permanent.

Penalty: \$2,000.

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"(2) The Director shall not withhold an approval under subsection (1) except on reasonable grounds set out in writing.

"(3) A person aggrieved by the refusal of the Director to give an approval under subsection (1) may, within 28 days after the receipt of the grounds for refusal under subsection (2), appeal to the Tribunal.

"188B. CLOSURE OF WATERS

"(1) The Minister may, by notice in writing, close any specified area of Northern Territory waters to shipping for a period of not more than 48 hours so as to -

- (a) enable the safe staging of regattas and races;
- (b) facilitate salvage or construction operations;
- (c) clean up polluted waters; or
- (d) deal with any matter relating to safety.

"(2) The Minister shall, as far as practicable, publicize the proposed closure beforehand in such manner as the Minister thinks fit.

"(3) A person shall comply with, and not breach, the terms of a notice given under subsection (1).

Penalty: \$500."

(2) A person who, at the commencement of this Act, has erected, is an owner of, has possession of, or maintains, a jetty, wharf, pontoon, or structure, whether temporary or permanent, below the high water mark in or on Northern Territory waters, shall, for the purposes of section 188A(1) of the Principal Act (as inserted by subsection (1) of this section), be deemed to have erected the jetty, wharf, pontoon, or structure on the expiry of the last day of a period of 3 months commencing with the date of commencement of this Act.

27. NEW SECTION

The Principal Act is amended by inserting after section 191 the following:

"191AA. GENERAL PENALTY FOR OFFENCES

"A person who commits an offence against this Act or the Regulations for which no other penalty is prescribed shall, on being found guilty of the offence, be liable to a penalty not exceeding \$2,000."

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28. UNIFORM CODE

Section 196(3) of the Principal Act is amended by omitting "Marine and Ports Council of Australia" and substituting "Australian Transport Advisory Council".

29. REPEALS

(1) The *Marine Ordinance 1911* (No. 5 of 1911) is repealed.

(2) So much of the *Marine Board and Navigation Act, 1881* of South Australia (No. 237 of 1881) as still applies as a law in force in the Territory immediately before the date of commencement of this Act is declared to cease to apply as such a law from that date.
