

Serial 98
Cullen Bay
Marina Amendment
Mr Stone

NORTHERN TERRITORY OF AUSTRALIA
CULLEN BAY MARINA AMENDMENT BILL 1998

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the *Cullen Bay Marina Act*

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 *Cullen Bay Marina Amendment Act 1998*.

2. COMMENCEMENT

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Cullen Bay Marina Act* is in this Act referred to as the Principal Act.

4. PART HEADING

The Principal Act is amended by inserting before section 1 the following:

"PART 1 — PRELIMINARY".

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5. PART HEADING

The Principal Act is amended by inserting after section 2 the following:

"PART 2 - DEVELOPMENT".

6. PART HEADING

The Principal Act is amended by inserting after section 7 the following:

"PART 3 - MANAGEMENT CORPORATION".

7. NEW PART

The Principal Act is amended by inserting after section 12 the following:

"PART 4 - DISPUTE RESOLUTION

"12A. DEFINITIONS

"In this Part -

'owner', in relation to -

- (a) a unit - means the registered proprietor of the unit and includes an occupier of the unit; or
- (b) a lot - means the registered proprietor of a lot that has not been subdivided into units under the *Unit Titles Act* and includes an occupier of the lot,

and includes -

- (c) in the case of an owner who is a natural person - his or her heirs, executors, administrators or assigns or a person in whom the property of the natural person is vested, or by whom that property is controlled, under the *Bankruptcy Act 1966* of the Commonwealth; and
- (d) in the case of an owner who is a body corporate - its liquidators, receivers, administrators or assigns;

'registered' means registered in the Register -

- (a) under the *Real Property Act*; or
- (b) under the *Real Property (Unit Titles) Act*;

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'unit' means a unit, as defined in the *Unit Titles Act*, located on an area shown on the lot plan as a lot;

'unit corporation' means a body corporate constituted under section 27 of the *Unit Titles Act* in relation to a lot.

"12B. PERSONS WHO MAY MAKE APPLICATION FOR RESOLUTION OF DISPUTE

"(1) An application may be made to the Local Court if -

- (a) the Management Corporation;
- (b) an owner of a lot or unit;
- (c) a mortgagee of a lot or unit; or
- (d) a unit corporation,

claims that a breach of this Act, the Regulations or By-laws made under this Act has occurred.

"(2) An application may be made to the Local Court if -

- (a) an owner of a lot or unit; or
- (b) a unit corporation,

claims to have been prejudiced, as owner of the lot or unit or as the unit corporation in relation to a lot, by the wrongful act or default of the Management Corporation, a committee of the Management Corporation or a person exercising powers under this Act.

"(3) An application may be made to the Local Court if -

- (a) an owner of a lot or unit; or
- (b) a unit corporation,

claims to have been prejudiced, as owner of the lot or unit or as the unit corporation in relation to a lot, by the wrongful act or default of -

- (c) an owner of another lot;
- (d) an owner of a unit on another lot; or
- (e) the unit corporation in relation to another lot.

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"(4) An application may be made to the Local Court if —

- (a) an owner of a lot or unit; or
- (b) a unit corporation,

claims that a decision of the Management Corporation, a committee of the Management Corporation or a person exercising powers under this Act is unreasonable, oppressive or unjust.

"(5) An application may be made to the Local Court if a dispute arises between —

- (a) an owner of a lot or unit or a unit corporation; and
- (b) the Management Corporation or a committee of the Management Corporation,

in relation to any aspect of the occupation or use of the lot or unit or the common property vested in the Management Corporation.

"(6) An application may be made to the Local Court if a dispute arises between —

- (a) an owner of a lot or unit; and
- (b) the owner of another lot or a unit on another lot,

in relation to any aspect of the occupation or use of the lot or unit or the common property vested in the Management Corporation.

"(7) An application may be made to the Local Court if a dispute arises between —

- (a) the registered proprietor of Lot 5556 Town of Darwin; and
- (b) a person referred to in subsection (1),

in relation to a restrictive covenant imposed under section 14.

"12C. APPLICATION TO BE DEALT WITH AS SMALL CLAIMS MATTER

"(1) An application under section 12B is to be made in accordance with the *Small Claims Act* and the *Small Claims Rules* as if it were an application under that Act.

"(2) Subject to this Part —

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- (a) the *Small Claims Act* (other than sections 5 and 23) and the *Small Claims Rules*; and
- (b) the *Local Court Act* and the *Local Court Rules* to the extent that they are applied by the *Small Claims Act* and the *Small Claims Rules*,

apply to the proceedings.

"12D. LOCAL COURT MAY DECLINE SMALL CLAIMS JURISDICTION

"(1) The Local Court may order that an application under section 12B be dealt with as if it were an application under —

- (a) the *Local Court Act*; or
- (b) the *Supreme Court Act*.

"(2) In respect of an order under subsection (1), the Local Court may give directions that it thinks appropriate.

"(3) An order may be made under subsection (1) —

- (a) at any stage in the proceedings; and
- (b) on the application of a party or of the Court's own motion.

"(4) If the Local Court makes an order under subsection (1)(a), the *Local Court Act* and the *Local Court Rules* apply to the proceedings.

"(5) If the Local Court makes an order under subsection (1)(b) —

- (a) the proceedings before the Local Court are discontinued;
- (b) the record and all documents relating to the proceedings are to be transmitted by the Registrar to the Supreme Court; and
- (c) the *Supreme Court Act* and the *Supreme Court Rules* apply to the proceedings.

"12E. POWERS OF COURT TO RESOLVE DISPUTE

"(1) The powers of a court under this section are in addition to any other powers that the court has under any other law.

"(2) A court may in respect of an application under section 12B do one or more of the following:

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- (a) attempt to settle the proceedings between the parties by the processes of mediation and arbitration;
- (b) require a party to provide reports or other information for the purposes of the proceedings;
- (c) order that a party take the action specified in the order that, in the opinion of the court, is necessary to remedy a breach or default or to resolve a dispute;
- (d) order a party to refrain from a further action of a kind specified in the order;
- (e) confirm, vary or reverse a decision of the Management Corporation, a committee of the Management Corporation or a person exercising powers under this Act;
- (f) give judgment on a monetary claim;
- (g) order compensation be paid by a party to the dispute to a party to the dispute who has suffered loss because of —
 - (i) a wrongful act or default referred to in section 12B(2) or (3);
 - (ii) an unreasonable, oppressive or unjust decision referred to in section 12B(4); or
 - (iii) the unlawful or unauthorised use or occupation of a lot or unit or the common property vested in the Management Corporation;
- (h) order the Management Corporation to refund to an owner of a lot or unit, or a former owner of a lot or unit, money paid to the Management Corporation by the owner or former owner;
- (j) make any incidental or ancillary orders that it thinks fit.

"12F. INTERIM ORDERS

"(1) If an application is made under section 12B and the court is satisfied that an interim order is justified by the urgency of the case, the court may make an interim order —

- (a) to preserve the status quo between the parties to the proceedings pending the final resolution of the proceedings; or

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(b) to minimise the risk of loss or damage to persons or property.

"(2) An interim order —

(a) has effect for the period that the court specifies in the order;

(b) may be renewed by the court from time to time;

(c) may be made or renewed whether or not notice of the application has been given to a respondent; and

(d) unless it is sooner revoked or it expires, ceases to have effect on the determination or resolution of the application under this Part.

"12G. CORPORATION MAY BE REPRESENTED BY PERSON

"(1) A person who is appointed by the Management Corporation may represent the Management Corporation in proceedings under this Part.

"(2) An owner of a lot or unit who is appointed by —

(a) a unit corporation; or

(b) the owner of another lot or unit,

may represent the unit corporation or owner in proceedings under this Part.

"12H. OTHER REMEDIES NOT AFFECTED

"This Part does not limit or derogate from any civil remedy at law or in equity.

"PART 5 — MISCELLANEOUS".

8. TRANSITIONAL

Part 4 of the Principal Act as inserted by this Act applies in relation to a dispute or matter notwithstanding that the dispute or matter arose before the commencement of this Act.

