



## NORTHERN TERRITORY OF AUSTRALIA

# A BILL for AN ACT

to amend the *Marine Act*

**B**E 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 1994*.

2. COMMENCEMENT

This Act shall come into operation on 1 January 1995.

3. PRINCIPAL ACT

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

4. NEW SECTION

The Principal Act is amended by inserting after section 8 the following:

"8A. POLICE TO HAVE POWERS OF SHIPPING INSPECTOR

"A member of the Police Force has the powers and functions of a shipping inspector under this Act."

Marine Amendment

5. REPEAL AND SUBSTITUTION OF PART V

Part V of the Principal Act is repealed and the following substituted:

"PART V - LICENSING OF CERTAIN  
COMMERCIAL OPERATIONS

"129. APPLICATION OF PART

"This Part does not apply to or in relation to a commercial operation in which a Government vessel, a vessel belonging to the Commonwealth or an instrumentality of the Commonwealth, a vessel used for the purposes of a commercial fishing licence within the meaning of the *Fisheries Act* or a permit granted under that Act or a hire-and-drive vessel is operated.

"130. INTERPRETATION

"In this Part -

'commercial operation' means any voyage undertaken by a vessel for fee or reward or provided in relation to the provision of another service or goods for fee or reward;

'declared service' means a commercial operation declared under section 131 to be an operation for which a licence is required;

'interim licence' means an interim licence granted under section 133;

'licence' means a licence for the purposes of this Part and includes an interim licence;

'licensee' means the holder of a licence;

'operator', in relation to a commercial operation, includes a person, partnership, co-operative or company that has the whole responsibility for the management of the commercial operation and control of the vessels engaged in the operation.

"131. DECLARATION OF DECLARED SERVICES

"(1) The Minister may, for the purposes of ensuring the orderly conduct of a particular industry or area of water, the safety of the public, the interests of tourism generally or for purposes otherwise in the public interest, by notice in the *Gazette*, declare -

(a) specified commercial operations; or

(b) all commercial operations within a specified area,

to be declared services in respect of which a licence is required for the purposes of this Part.

*Marine Amendment*

"(2) A declaration under subsection (1) comes into operation -

- (a) 30 days after the date on which it is published in the *Gazette*; or
- (b) where a later date is specified in the declaration, on that date.

"(3) As soon as practicable after making a declaration under subsection (1), the Director shall -

- (a) publish a notice in a newspaper circulating in the Territory; and
- (b) give notice in writing to persons who are, to his or her knowledge, likely to be affected by the declaration,

of the declaration and of its effect.

"132. APPLICATION FOR LICENCE

"(1) An operator, or a person who intends to establish a commercial operation that is a declared service, may apply to the Director for the grant or renewal of a licence in respect of a declared service.

"(2) An application shall be in accordance with the form approved by the Director accompanied by the prescribed fee.

"133. INTERIM LICENCES

"(1) Where -

- (a) an application has been made in respect of commercial operations in existence before the relevant declaration was published in the *Gazette* under section 131; and
- (b) the Director is of the opinion that a final determination of the application cannot be made in as brief a period as is necessary to avoid unreasonable detriment to those commercial operations,

the Director may grant an interim licence, subject to the conditions specified in section 136 and such other conditions as he or she thinks fit, before finally determining the application in accordance with this Part.

"(2) The grant of an interim licence does not give rise to a legitimate expectation by the applicant that a licence shall be granted to him or her.

Marine Amendment

"(3) Where an application in respect of which an interim licence was granted is determined by the Director, the interim licence is deemed to have been revoked from the date of service of the final determination of the application on the applicant.

"134. GRANT OF LICENCE

"(1) The Director may grant or renew, or refuse to grant or renew, a licence.

"(2) The matters that the Director shall take into consideration before granting or renewing a licence include -

- (a) the necessity for or desirability of the declared service;
- (b) the public interest in relation to the declared service;
- (c) whether the applicant is a fit and proper person to be granted the licence sought; and
- (d) such other matters as the Director thinks fit.

"(3) For the purposes of subsection (2), a person is not a fit and proper person if he or she -

- (a) is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with the person's creditors or made an assignment of the person's remuneration for the benefit of his or her creditors;
- (b) has held a licence granted under this Part which has been cancelled on a ground specified in section 138(1) (a), (b), (d) or (e);
- (c) was a director within the meaning of the Corporations Law of a body corporate at the time when an offence was committed by that body corporate which led to the cancellation of a licence held by the body corporate;
- (d) has been convicted of a prescribed offence against this Act or any other Act;
- (e) is unable to demonstrate the capacity to meet standards of passenger and public safety to the Director's satisfaction; or
- (f) otherwise engages in conduct that is improper.

*Marine Amendment*

"(4) The Director shall not grant a licence to, or renew the licence of, a body corporate -

- (a) if the body corporate is, by its memorandum of association, prevented from carrying on the commercial operations in respect of which the licence application is made;
- (b) unless each of the directors of the body corporate, as an individual, would not be prevented by this Act from being granted a licence or having the licence renewed; and
- (c) in respect of which a liquidator, receiver, receiver and manager or official manager have been appointed under the Corporations Law, unless the Director is of the opinion that it would be inequitable not to grant or renew the licence.

"(5) Where the Director refuses to grant or renew a licence he or she shall notify the applicant in writing of the refusal and specify the grounds for the refusal.

"135. DIRECTOR MAY REQUIRE INFORMATION

"(1) The Director may, by notice in writing given to an applicant for a licence or a licensee, require him or her to furnish to the Director, within the time specified in the notice, the information specified in the notice in relation to the declared service that is the subject of the application or licence.

"(2) A licensee shall comply with a notice under subsection (1).

Penalty: \$5,000.

"136. CONDITIONS OF LICENCE

"(1) It is a condition of a licence that the licensee shall -

- (a) comply with all laws applicable to the maintenance and operation of the vessel engaged in the declared service;
- (b) comply with all requirements by the Director to furnish information or prescribed records relating to the declared service; and
- (c) comply with all directions by the Director relating to the use of boarding structures or landing areas.

"(2) The grant, renewal or variation of a licence may be subject to such conditions as the Director thinks fit, including, but not limited to, the condition that the declared service shall be carried out -

- (a) at a specified place or on a specified route;

*Marine Amendment*

- (b) in accordance with a specified timetable; and
- (c) in compliance with specified operating procedures.

"137. PERIOD OF LICENCE

"A licence shall be in a form approved by the Director and is valid for the period, not exceeding 5 years, endorsed on the licence.

"138. CANCELLATION, &c., OF LICENCE

"(1) The Director may, by notice in writing given to a licensee, notify that the Director intends to cancel, suspend or vary a licence where the Director is satisfied that -

- (a) the licensee has contravened or failed to comply with this Part;
- (b) information or a statement required in connection with an application for a licence or a renewal of a licence is materially false or misleading;
- (c) there has been a change of circumstances since the grant of the licence;
- (d) the licensee has contravened or failed to comply with a condition of his or her licence;
- (e) the licensee has ceased to be a fit and proper person; or
- (f) it is in the public interest to do so.

"(2) A notice under subsection (1) shall specify -

- (a) particulars of the grounds for cancellation, suspension or variation of the licence;
- (b) the action that the Director intends to take;
- (c) where the Director intends to suspend or vary the licence, the terms and conditions of the proposed suspension or variation; and
- (d) the time before which the licensee may show cause why the licence should not be cancelled, suspended or varied.

"(3) The Director may, after the expiration of the date by which the licensee may show cause under subsection (2) and after considering any submissions made by the licensee, cancel, suspend or vary the licence.

Marine Amendment

"139. INSPECTION

"(1) Where the Director believes on reasonable grounds that a licensee has failed to comply with or contravened the conditions of his or her licence, the Director may require the licensee to permit a shipping inspector or a shipping officer authorised by the Director under subsection (2) to exercise the powers of a shipping inspector under section 8(3), to board a vessel or enter premises for the purposes of inspection or questioning of passengers.

"(2) The Director may authorise a shipping officer to exercise the powers of a shipping inspector under section 8(3) and the person so authorised may exercise those powers accordingly.

"(3) A shipping inspector or a person authorised to exercise the powers of a shipping inspector under subsection (2) may, during an inspection under subsection (1), require the licensee to produce for inspection and reproduction such documents relating to the declared service as the shipping inspector or authorised person requires.

"(4) A licensee shall comply with a requirement under subsection (1) or (3).

Penalty: \$10,000.

"140. OFFENCES, &c.

"(1) A person shall not carry on a declared service without a licence.

Penalty: \$50,000.

"(2) The operator of a declared service shall not carry on, or purport to carry on, the declared service except in accordance with a licence.

Penalty: \$50,000.

"(3) The master of a vessel that is engaged in a declared service shall not cause or permit the vessel to be used for that purpose except in accordance with a licence.

Penalty: \$5,000.

"(4) The operator of a declared service shall comply with and not contravene a notice given by the Director or a requirement under section 136(1)(b).

Penalty: \$5,000.

*Marine Amendment*

"141. APPEALS AGAINST DECISION BY DIRECTOR

"(1) Subject to this section, a person aggrieved by a decision of the Director (other than a decision of the Director pursuant to a direction of the Local Court under subsection (7)(c)) -

- (a) refusing an application for the grant or renewal of a licence;
- (b) determining or varying the conditions upon which a licence was granted, varied or renewed;
- (c) cancelling or suspending a licence; or
- (d) requiring information or prescribed records to be furnished,

may appeal to the Local Court against the decision.

"(2) A person shall not appeal against a decision of the Director unless the person has, within 28 days after notice of the decision was given to the person, requested in writing the Director to reconsider the decision and the Director has not, within 14 days after receiving the request, varied the decision.

"(3) Notwithstanding subsection (2), if as a result of a request referred to in that subsection, the Director within 14 days after receiving the request, varies the decision, the person may appeal against the decision as so varied as if it were the original decision except that the person is not required to request the Director to reconsider the decision so varied.

"(4) Notwithstanding subsection (1)(c), a person may not appeal against a decision of the Director to suspend a licence unless the suspension is for a period of more than 7 days.

"(5) Subject to subsection (6), an appeal shall not be lodged -

- (a) after 28 days after the day on which the Director has given notice of a variation of a decision; or
- (b) where the Director has not varied a decision within 14 days of the receipt of the request for reconsideration - after 28 days after the expiry of that period.

"(6) The Local Court may, if it is satisfied that it is reasonable in the circumstances to do so, permit a person to lodge an appeal against a decision of the Director, notwithstanding that the period under this section during which an appeal may be lodged has expired.



Marine Amendment

"(7) The Local Court may -

- (a) confirm or set aside the decision appealed against;
- (b) substitute its decision for the decision made by the Director;
- (c) direct the Director to reconsider all or part of the matter to which the appeal relates and shall provide to the Director its reasons for such a direction; and/or
- (d) make such further orders as to costs or other matters as it thinks fit.

"(8) Where the Director is directed to reconsider a matter under subsection (7)(c), he or she shall, in reconsidering the matter, have regard to the reasons given by the Local Court for its direction.

"142. RIGHTS OF PERSON PENDING APPEAL

"Where an application for appeal is lodged within the time specified in section 141(5) against a decision of the Director -

- (a) to vary a licence - the decision is of no effect unless and until the decision is confirmed by the Local Court under section 141 or by the Director pursuant to a direction of the Court under section 141(7)(c); or
- (b) to refuse to renew a licence - then, notwithstanding that the licence to which the request for renewal relates may have expired by virtue of section 137, it remains valid until a final decision is made in respect of the matter by the Court under section 141 or by the Director pursuant to a direction of the Court under subsection 141(7)(c), whichever is the later.

"142A. SERVICE OF NOTICES

"(1) A notice for the purposes of this Part may be given to or served on a person by -

- (a) delivering it personally to the person;
- (b) leaving it at the person's usual or last known place of residence with another person, apparently resident at the place;
- (c) leaving it at the person's usual or last known place of business with another person, apparently in a position of authority at the place; or

Marine Amendment

(d) posting it in a prepaid letter addressed to the person at the person's usual or last known place of residence or business.

"(2) Subsection (1) is in addition to and not in derogation of sections 220 and 363 of the Corporations Law."

6. FURTHER AMENDMENTS

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

SCHEDULE

Section 6

| Provision                                 | Amendment            |            |
|---|----------------------|------------|
|   | omit                 | substitute |
| Section 7<br>- definition of<br>"licence" | the whole definition |            |
| - definition of<br>"permit"               | the whole definition |            |
| Section 191A                              | "137(3), 140(2),"    | "135"      |
| Section 207                               | the whole section    |            |