



REPUBLIC OF NAURU

## Shipping Licences Bill 2012

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Serial No. 21 of 2012

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A Bill for:

An Act to regulate the operation of commercial cargo services; and for other purposes.

*Certified on....*

Enacted by the Parliament of Nauru as follows:

### PART 1 – PRELIMINARY

**1 Short title**

This Act may be cited as the *Shipping Licences Act 2012*.

**2 Commencement**

This Act commences on a date fixed by the Minister by Gazette notice.

**3 Definitions**

In this Act, unless the contrary intention appears:

***‘commercial cargo service’*** means a service that transports cargo by sea to or from Nauru for reward, other than:

- (a) a service that is operated by the Republic or using a vessel that is wholly or partly owned by the Republic; or
- (b) a service that is comprised only of the transport of bulk phosphate; or
- (c) a service that is ancillary to operations under a licence within the meaning of the *Fisheries Act 1997*;

**'contravene'** includes fail to comply;

**'licensee'** means the holder of a shipping licence;

**'shipping licence'** means a licence granted under Part 2 Division 2;

**'special shipping permit'** means a permit issued under Part 2 Division 3.

## **PART 2 – SHIPPING LICENCES AND SPECIAL SHIPPING PERMITS**

### **Division 1 – Requirement for licence or permit**

#### **4 Requirement to hold shipping licence or special shipping permit**

A person must not operate a commercial cargo service unless authorised to do so by a shipping licence or a special shipping permit.

Maximum penalty: \$100,000.

#### **5 Acting as agent for illegal commercial cargo service**

A person must not act as an agent for a commercial cargo service unless the operator of the service holds a shipping licence or special shipping permit authorising the operation of the service.

Maximum penalty: \$100,000.

## **Division 2 – Shipping licences**

### **6 Criteria for grant of shipping licence**

The Minister may, on application, grant a shipping licence to the applicant if:

- (a) the application is made in accordance with this Act; and
- (b) the Minister is satisfied that:
  - (i) the fees and charges for using the service are reasonable; and
  - (ii) the service is financially viable; and
  - (iii) the service will be operated in a reliable way; and
  - (iv) the service can accommodate both specialised and conventional cargo; and
  - (v) the operator of the service has at least 3 years experience providing ocean transportation services; and
  - (vi) the applicant meets any other requirements specified by the Regulations; and
- (c) Cabinet consents to the grant of the licence.

### **7 Term of shipping licence**

The Minister may grant a shipping licence for a period of not less than 1 year and not more than 5 years.

### **8 Conditions of shipping licence**

- (1) A shipping licence is subject to the following conditions:
  - (a) the licensee must not increase fees and charges for using the commercial cargo service provided under the licence without the approval of the Minister under section 9;
  - (b) any other conditions that are specified in the licence or prescribed by the Regulations.

- (2) A licensee who contravenes a condition of the shipping licence is guilty of an offence.

Maximum penalty: \$20,000.

## **9 Increase in shipping fees and charges**

- (1) A licensee may apply to the Minister to increase a fee or charge for using the commercial cargo service provided under the shipping licence.
- (2) The application must be made:
- (a) at least 60 days before the licensee proposes to increase the fee or charge; or
  - (b) if the Minister is satisfied that, as a result of an unexpected and significant increase in the cost of bunker fuel, the licensee needs to increase the fee or charge within a shorter period – at least 30 days before the licensee proposes to increase the fee or charge.
- (3) The Minister may approve the increase if:
- (a) the Minister is satisfied the increase is reasonable; and
  - (b) the increase does not result in an increase in the fee or charge of more than 7% over the course of the financial year in which the decision on the application is made; and
  - (c) Cabinet consents to the increase.

## **10 Variation of shipping licence conditions**

- (1) The Minister may vary the conditions of a shipping licence:
- (a) on the application of the licensee; or
  - (b) on the Minister's own initiative.
- (2) Before deciding to vary the conditions of a shipping licence on the Minister's own initiative, the Minister must:
- (a) give the licensee a written notice:
    - (i) setting out the proposed variation; and
    - (ii) giving the reasons for the proposed variation; and

- (iii) stating that the person may make written submissions to the Minister about the proposed variation within 30 days after receiving the notice; and
  - (b) consider any submissions received in response to the notice.
- (3) If the Minister varies the conditions of a shipping licence, the Minister must:
  - (a) give a new licence to the licensee showing the new conditions; and
  - (b) if the variation is on the Minister's own initiative and the licensee made submissions, give the licensee written notice of the Minister's response to the submissions.
- (4) If the Minister decides not to vary the conditions of a shipping licence on the application of the licensee, the Minister must give the licensee written notice of the decision and the reasons for the decision.

## **11 Suspension or cancellation of shipping licence**

- (1) The Minister may suspend a shipping licence if:
  - (a) the Minister suspects on reasonable grounds that:
    - (i) the licensee has contravened a condition of the licence; or
    - (ii) the licence was granted on the basis of information that is misleading in a material particular because it does not include relevant information or includes misinformation; and
  - (b) the suspension is, in the opinion of the Minister, necessary while the Minister determines whether the licence should be cancelled.
- (2) If the Minister suspends a shipping licence, the Minister must give the licensee a notice specifying:
  - (a) the reason for the suspension; and
  - (b) the circumstances in which the suspension will be lifted.

- (3) The Minister may cancel a shipping licence if the Minister believes on reasonable grounds that:
  - (a) the licensee has contravened a licence condition, even if the licensee has not been charged with or convicted of an offence in respect of the contravention; or
  - (b) the licence was granted on the basis of information that is misleading in a material particular because it does not include relevant information or includes misinformation.
- (4) Before deciding to cancel a shipping licence, the Minister must:
  - (a) give the licensee a written notice:
    - (i) giving the reasons for the proposed cancellation; and
    - (ii) stating that the person may make written submissions to the Minister about the proposed cancellation within 30 days after receiving the notice; and
  - (b) consider any submissions received in response to the notice.
- (5) If the Minister decides to cancel a shipping licence, the Minister must give the licensee written notice of the decision and, if the licensee made submissions, give the licensee written notice of the Minister's response to the submissions.
- (6) If the Minister decides not to cancel a shipping licence, the Minister must inform the licensee of that decision.

## **12        Renewal of shipping licence**

- (1) A licensee must apply for renewal of the shipping licence at least 3 months before the licence expires.
- (2) The Minister may accept a late application for renewal.
- (3) If an application for renewal is made or accepted before a shipping licence expires, the licence continues in force until the application is decided even if the application is not decided before the licence expires.
- (4) This Division applies to an application for renewal of a shipping licence as if it were an application for a new licence.



- (5) However, in addition, the Minister may refuse to renew a shipping licence if the Minister is satisfied that the licensee contravened the conditions of the licensee's existing licence in a way that is more than trivial.

### **Division 3 – Special shipping permits**

#### **13 Application for special shipping permit**

A person may apply to the Minister for a special shipping permit to transport a single consignment of cargo to or from Nauru by sea for reward.

#### **14 Deciding application for special shipping permit**

The Minister may issue a special shipping permit if:

- (a) the application is made in accordance with this Act; and
- (b) the Minister is satisfied that:
  - (i) the consignment of cargo cannot be transported in a timely or economical way by a licensee; and
  - (ii) the applicant meets any requirements specified by the Regulations; and
- (d) Cabinet consents to the issue of the permit.

#### **15 Conditions of special shipping permit**

- (1) A special shipping permit is subject to any conditions specified in the permit or prescribed by the Regulations.
- (2) The holder of a special shipping permit who contravenes a condition of the permit is guilty of an offence.

Maximum penalty: \$20,000.

### **Division 4 – Applications**

#### **16 Applications**

- (1) An application under this Part:

- (a) must be made in the manner and form approved by the Minister; and
- (b) must be accompanied by:
  - (i) any documents required by the Minister; and
  - (ii) the application fee fixed by the Regulations or evidence that the applicant has paid the application fee fixed by the Regulations.
- (2) An applicant must provide the Minister with any information required by the Minister in connection with the determination of the application, verified, if the Minister so requires, by statutory declaration.

## **PART 4 – MISCELLANEOUS**

### **17 Confidentiality**

- (1) Subject to subsection (2), a person engaged or formerly engaged in the administration of this Act must not disclose commercially sensitive information obtained in the course of administration of this Act except to the extent that the person may be authorised or required to disclose that information by the Head of Department.

Maximum penalty: \$25 000.

- (2) Subsection (1) does not prevent a person from:
  - (a) disclosing information as required by law, or as required for the administration of this Act; or
  - (b) disclosing information at the request, or with the consent, of the person to whom the information relates; or
  - (c) disclosing information in accordance with the Regulations.

### **18 Liability of directors**

- (1) If a body corporate commits an offence against this Act, each director of the body corporate is guilty of an offence and liable to the same penalty as is fixed for the principal offence.

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

**19 Providing false or misleading information**

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in information provided under this Act.

Maximum penalty: \$10,000.

**20 Evidentiary presumption**

In proceedings for an offence against this Act, an apparently genuine document purporting to be a certificate signed by the Minister certifying a matter relating to a shipping licence or special shipping permit is, in the absence of proof to the contrary, proof of the matters so certified.

**21 Delegation**

The Minister may delegate any of the Minister's functions or powers under this Act (other than a function or power specified by the Regulations) to another person.

**22 Regulations**

- (1) Cabinet may make regulations under this Act.
- (2) The regulations may:
  - (a) be of general application or vary in their application according to prescribed factors; and
  - (b) give the Minister discretion to decide a matter.