

Shipping Licences Bill 2012

EXPLANATORY MEMORANDUM

BACKGROUND

The *Shipping Licences Bill 2012* regulates the operation of commercial cargo services to and from Nauru. Services operated by the Republic and the transport of bulk phosphate are beyond the scope of the measure. The Bill requires the operator of a service to be licensed or to hold a permit for the particular consignment and obliges agents to check that operators are licensed.

EXPLANATION OF CLAUSES

PART 1 – PRELIMINARY

Clauses 1 and 2 are formal provisions.

PART 2 – INTERPRETATION

Clause 3 contains definitions for the purposes of the measure.

A '**commercial cargo service**' means a service that transports cargo by sea to or from Nauru for reward. It does not capture:

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

PART 3 – SHIPPING LICENCES AND SPECIAL SHIPPING PERMITS

Division 1 – Requirement for licence or permit

Clause 4 is the pivotal provision. It requires a person who operates a commercial cargo service to hold a shipping licence or a special shipping permit. A licence is designed for an ongoing operation. A permit is designed for a once off operation necessitated because it is not feasible to get a licensee to transport the consignment.

Clause 5 makes it an offence to act as an agent for a commercial cargo service if the operator of the service does not hold a licence or permit.

Division 2 – Shipping licences

Clause 6 sets out the criteria for the grant of a shipping licence. Cabinet must consent to the grant of the licence and the Minister must be satisfied that:

- the fees and charges for using the service are reasonable; and
- the service is financially viable; and
- the service will be operated in a reliable way; and
- the service can accommodate both specialised and conventional cargo; and
- the operator of the service has at least 3 years experience providing ocean transportation services; and
- the applicant meets any other requirements specified by the regulations.

Clause 7 provides that a licence may be granted for a period between 1 and 5 years. A later provision provides for renewal of a licence.

Clause 8 provides for licence conditions to be specified in the licence or in the regulations. The clause directly imposes the condition that the licensee must not increase fees and charges for using the commercial cargo service provided under the licence without the approval of the Minister.

Clause 9 sets out the procedure for obtaining the approval of the Minister to an increase in fees and charges. An increase can only be approved if:

- the Minister is satisfied the increase is reasonable; and
- 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
- Cabinet consents to the increase.

Clause 10 provides for variation of licence conditions on the application of the licensee or at the initiative of the Minister. The licensee must be given an opportunity to make submissions about a proposed variation of conditions.

Clause 11 provides for suspension pending cancellation of a licence and for the cancellation of a licence for contravention of a licence condition or the provision of misleading information in obtaining a licence. The licensee must be given an opportunity to make submissions about a proposed cancellation.

Clause 12 provides for renewal of a licence. A renewal is assessed in the same way as the initial grant of the licence.

Division 3 – Special shipping permits

Clause 13 provides that 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.

Clause 14 sets down the criteria for the issue of a permit. The Minister must be satisfied that the consignment of cargo cannot be transported in a timely or economical way by a licensee and the applicant meets any requirements specified by the regulations and Cabinet must consent to the issue of the permit.

Clause 15 provides for the imposition of conditions in the permit or by the regulations.

Division 4 – Applications

Clause 16 is a machinery provision about the making of applications.

PART 4 – MISCELLANEOUS

Clause 17 is a confidentiality provision needed because of the commercially sensitive information that will need to be considered by the Minister and the Department.

Clause 18 provides for director liability in the event of the commission of an offence by a corporation.

Clause 19 makes providing false or misleading information under the measure an offence.

Clause 20 provides an evidentiary aid in relation to the contents of licences and permits.

Clause 21 provides for delegation by the Minister.

Clause 22 provides general regulation making power.