



## ANALYSIS

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1992, No. 9

An Act to amend the Cook Islands Shipping Licence Ordinance 1963

(11 December 1992)

**BE IT ENACTED** by the Parliament of the Cook Islands in Session assembled and by the authority of the same as follows:

1. Short Title - This Act may be cited as the Cook Islands Shipping Licence Ordinance Amendment (No. 2) Act 1992 and shall be read together with and deemed part of the Cook Islands Shipping Licence Ordinance 1963 (hereinafter referred to as "the Ordinance").

2. Long Title - The Ordinance is amended by deleting from the long title the words "and goods principally within the Cook Islands" and substituting the words "or goods to, from or within the Cook Islands".

3. Interpretation - Section 2 of the Ordinance is repealed and the following sections substituted -

"2. Interpretation - In this Ordinance unless the context shall otherwise require -

"Minister" means the Minister responsible for Shipping;

"Operator" in relation to a ship includes a master and any person in charge or apparently in charge of the activities of the ship;

"Owner" in relation to a ship means any person exercising or discharging any of the powers or duties of an owner whether on his own behalf or on behalf of another and includes a person who is the owner jointly with any other person or persons and also includes a charterer;

"Ship" means every description of vessel (including barges, lighters, and like vessels) used in navigation on the sea, however propelled."

"Transshipment" means transferring cargo to or from one ship to another;

4. Part I - Licences - The heading to Part I of the Ordinance is amended by adding after the word "LICENCES" the words "IN RESPECT OF SHIPS ENGAGED WITHIN THE COOK ISLANDS".

5. Amendments to Part I - The provisions of Part I of the Ordinance set out in the first column of the First Schedule are amended in the manner set out in the second column of that Schedule.

6. New Parts - The Ordinance is amended by inserting after Part I the following new Parts.

## "PART II

### APPROVALS IN RESPECT OF SHIPS ENGAGED IN THE CARRIAGE OF CARGO TO AND FROM THE COOK ISLANDS

11. Application - This Part shall apply to all ships engaged in the carriage of cargo to and from the Cook Islands.

12. Minister to approve certain ships - (1) No ship shall be engaged in the carriage of cargo from -

- (a) any port in New Zealand to any port in the Cook Islands whether or not that ship shall proceed directly from a New Zealand port to a Cook Islands port; or
- (b) any port in the Cook Islands to any port in New Zealand whether or not that ship shall proceed directly from a Cook Island port to a New Zealand port,

without that ship having the prior written approval of the Minister to be so engaged.

(2) The Minister may in his discretion grant an approval under subsection (1) for either -

- (a) a single voyage; or
- (b) a series of voyages; or
- (c) a period of time; or
- (d) an unlimited period of time.

(3) Every approval may be granted by the Minister on such terms and conditions as the Minister may in his discretion determine, including the type of cargo that may be carried

13. Transshipment of cargo - (1) No ship shall be engaged in the transshipment of cargo if either -

- (a) the point of origin of that cargo is a place in New Zealand and the final destination of such cargo is a place in the Cook Islands; or
- (b) the point of origin of that cargo is a place in the Cook Islands and the final destination of such cargo is a place in New Zealand,

without that ship having the prior written approval of the Minister to be so engaged.

(2) No approval shall be granted under this section unless the Minister is satisfied that -

- (a) commercial circumstances justify a ship being engaged in the transshipment of cargo;
- (b) there are adequate arrangements to avoid pilferage, damage, loss or destruction of the cargo to be transhipped;
- (c) consignors and consignees will be made aware that cargo to be carried by the ship will be transhipped.

(3) The Minister may in his discretion grant an approval under subsection (1) for either -

- (a) a single voyage; or
- (b) a series of voyages; or
- (c) a period of time; or
- (d) an unlimited period of time.

(4) Every approval granted under subsection (1) may be withdrawn by the Minister at any time if the pilferage, damage, loss or destruction of cargo is of an extent or frequency that in the opinion of the Minister is unacceptable.

(5) Every owner or operator of a ship that has been approved to tranship cargo under subsection (1) shall within 7 days of being requested by the Minister to do so, furnish in writing to the Minister all information relating to claims arising out of transhipped cargo as a result of pilferage, damage, loss or destruction.

(6) Where information requested by the Minister pursuant to subsection (5) is not supplied by the owner or operator in accordance with that subsection the Minister may suspend the approval of the ship of that owner or operator until such information is supplied.

### PART III

#### OFFENCES AND PENALTIES

14. Suspension or cancellation of licence or approval - (1) Where the terms and conditions of a licence or approval are contravened, the Minister may by notice of suspension to the owner or operator of the ship to which the licence or approval shall relate, suspend that licence or approval for such period and upon such terms and conditions as the Minister may in his discretion determine and specified in the notice.

(2) Where, an owner or operator of a ship or the agent of either of them is convicted pursuant to section 15, and any of them shall hold a licence under Part I or, they shall be the owner, operator or agent of a ship in respect of which there has been granted an approval under Part II, then, the Minister may by warrant of cancellation and without notice of his intention to do so, cancel such licence or approval and every such cancellation shall take effect on the date specified in the warrant.

(3) Every constable, who has reasonable grounds to believe that a ship is being operated in contravention of the provisions of this Ordinance, or any terms or conditions contained in a notice of suspension, may without warrant seize that ship together with its gear, equipment, stores and cargo.

(4) Where a ship is seized under this Ordinance -

- (a) the master and crew shall take it to such port as the constable shall designate; and

- (b) the master shall be responsible for the safety of the vessel and each person on board the vessel including the crew, himself and any constable until the ship arrives at the designated port.

(5) Subject to subsection (6) every ship seized pursuant to subsection (3) shall be held by the Government of the Cook Islands pending the outcome of any legal proceedings under this Ordinance and the payment of any fine in consequence thereof, or until such time that it is determined that no charges will be laid.

(6) The High Court may on application order the release of any ship or its gear, equipment, stores or cargo or any other items seized on receipt of a bond or other security.

(7) Where legal proceedings are to be brought in relation to a ship seized pursuant to subsection (3), those proceedings shall be commenced within 48 hours of the date that the ship was seized.

15. Offences - (1) Every owner or operator and agent of either of them who shall cause a ship to be engaged contrary to the provisions of this Ordinance or contrary to the terms and conditions of either a licence or an approval granted under this Ordinance commits an offence, and shall upon conviction be liable to a fine of not less than \$100,000 unless in the opinion of the High Court there are special circumstances that shall warrant a lesser fine and if the offence shall be a continuing one to a further fine of not less than \$5,000 for each day or part of a day that the offence shall continue unless in the opinion of the High Court there are special circumstances that shall warrant a lesser further fine.

(2) Where a person is convicted of an offence against this Ordinance, the High Court may in addition to any other penalty imposed, order that any ship (together with its gear, equipment, stores and cargo) involved in the commission of that offence be forfeited to the Crown."

7. Transitional - Every written authorisation granted by the Minister permitting a ship to be engaged in the carriage of cargo between the Cook Islands and New Zealand before the coming into force of this Act, shall be deemed to be an approval granted under section 12 of the Ordinance (as inserted by section 6 of this Act) and shall subject to the provisions of this section continue and have effect according to its tenor.

8. Repeals - The enactments referred to in the Second Schedule are repealed.

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This Act is administered by the Ministry of Trade, Labour & Transport

FIRST SCHEDULEAMENDMENTS TO PART I OF THE ORDINANCESection 5

<u>First column</u>	<u>Second column</u>
Section 3	By inserting in subsection (1) after the words "No ship" the words "engaged in the carriage of cargo or passengers between islands comprising the Cook Islands."  By deleting from subsection (2) the words "High Commissioner with the consent and approval of the Executive Committee" and substituting the word "Minister".
Section 4	By deleting from subsection (1) the words "High Commissioner" and substituting the word "Minister".  By deleting from subsection (2) the words "High Commissioner" and substituting the word "Minister".
Section 5	By deleting from section 5 the words "High Commissioner acting with the approval and consent of the Executive Committee" and substituting the word "Minister".
Section 6	By repealing that section.
Section 7	By deleting from section 7 the words "High Commissioner" and substituting the word "Minister".
Section 8	By repealing that section.
Section 9	By deleting from section 9 the words "High Commissioner" and substituting the word "Minister".
Section 10	By deleting from section 10 the words "High Commissioner acting with the approval and consent of the Executive Committee" and substituting the word "Minister".

SECOND SCHEDULESection 8ENACTMENTS REPEALED

Shipping Licence Amendment Act 1988 (No.7)

Shipping Licence Ordinance Amendment Act 1990 (No.6)

Shipping Licence Ordinance Amendment Act 1992 (No.2)