

EXPLANATORY MEMORANDUM

MARINE SAFETY BILL 2012

Introduction

This Bill proposes to provide a legislative foundation for the management and control of marine safety issue arising in the course of maritime activity in the waters of Norfolk Island.

Background

In March of 2010 the then Norfolk Island Minister for Fisheries, Mr Chris Magri, a member of the 12th Assembly, signed a Memorandum of Understanding (MOU) between the Norfolk Island Government (NIG), and the Australian Fisheries Management Authority (AFMA).

The signing of the MOU was a requirement of the Norfolk Island Fishery Management Policy developed and adopted by the NIG during 2009.

The objectives of the signed MOU are as follows —

- To formalise and strengthen current effective, cooperative and self-regulating fishery management practices, consistent with obligations under national and international laws and AFMA's obligations as a fisheries regulator under Australian Federal laws.
- To support ecologically sustainable development of the fishery, in line with the precautionary principle, to ensure its long-term viability as a recreational and economic resource for Norfolk Island.
- To improve upon available information on the fishery.
- To maintain biologically diverse and productive marine ecosystems to foster long-term ongoing use of NI Fishery resources in an ecologically sustainable and culturally sensitive manner.
- To encourage and provide for ongoing participation of the local community in conservation and management of the NIIF.
- To improve the quantity and quality of available information for the sustainable management of the fishery.
- To develop cost-effective and efficient fishery management practices.
- to ensure that use of fishery resources and the operation of related activities are conducted in a culturally-sensitive manner, consistent with principles of ecologically sustainable development and exercise of the precautionary principle, in particular the need to have regard to any impacts of fishing activities, especially on species listed un the EPBC Act.
- To ensure that fishers operating under the FMP take all reasonable steps to ensure that members of protected species are not killed or injured as a result of fishing, or the fishery does not, or is not likely to adversely affect the survival or conservation status of a protected species or population of that species.
- To ensure accountability to stakeholders by those managing the fishery.

The NIG, following the signing of the MOU, undertook to develop and implement appropriate management strategies to ensure that some of the objectives that are described above are achieved.

Consultation processes

The 13th Assembly commenced implementation of the MOU by preparing a Policy Discussion Paper on a Marine Safety Bill for Norfolk Island in 2010 which at that time also included references to Fish Management. Agreement was not reached and this particular attempt was abandoned.

In the second half of 2011 stakeholders were identified, a Working Group was established by the Minister for Tourism, Industry and Development, Mr Andre Nobbs (Chair of the Group). The Group includes participants drawn from the Norfolk Island Fishing Association (NIFA), Norfolk Island Administration Legal Services Unit, Registrar, Norfolk Island Police, Risk Management Officer and the Chief of Staff, Norfolk Island Assembly (acting as Secretary to the Working Group).

Following the Working Group's initial deliberations the Minister made a decision to exclude Fishery Management from legislation at this point and to concentrate efforts on preparing and consulting appropriately with stakeholder participants and the local community in order to develop responsible marine safety legislative parameters. This work commenced in January 2012 when an early public meeting with NIFA was attended by the Minister and Deputy Crown Counsel, Mr Geoff Atkinson. Submissions were sought from the local Norfolk Island community, all of which were examined by the Working Group and some ideas included in the legislation which was tabled as an Exposure Draft in the Legislative Assembly at its October Sitting.

The decision to split the legislation came about due to the Australian Government's consultation around the declaration of the Temperate East Marine Reserve that was proclaimed on 17 November 2012. The next phase in this process is for the commencement of the consultation on Fishery Management within the Reserves which has recently been announced by the Australian Government and is scheduled to commence early in 2013 on dates yet to be advised. Given the local community concerns expressed around Marine Safety issues to date, it was also agreed by the Working Group that it would be inappropriate to include fish management in this Bill.

During the Working Group's deliberations it became clear that the Australian Government was also involved in a comprehensive re-write of the 1912 *Navigation Act 1912* which contained no mention of Norfolk Island. The *Navigation Act 2012 (Cth)*, proclaimed in September 2012, applies to Norfolk Island and will take precedence over the Norfolk Island Marine Safety legislation in the event of conflict and will apply in situations not dealt with by Norfolk Island legislation. It is difficult to predict examples of how this might occur. In developing this Bill close attention has been paid to ensure that it is complementary to, rather than in conflict with, the new Australian legislation.

The Australian Federal Police (AFP) Legal Unit has been consulted and has provided comment throughout the Bill's development. As well the Australian Marine Safety Authority (AMSA) has been kept informed during the preparation of this legislation.

If any emergency at sea is declared close to Norfolk Island, the AFP Officer in Command (OIC) will take charge of any rescue. In 2004 a Council of Australian Government Agreement signed by the Commonwealth and the States and Territories Ministers appointed the AFP as the responsible Australian Government Agency in all emergency rescues at sea for Australia's External Territories, including Norfolk Island.

The Exposure draft of the *Marine Safety Bill 2012* was forwarded on 8 November to the Department of Regional Australia via the Norfolk Island Administrator, who indicated to the Department that both the AFP and AMSA had been consulted. The Administrator was advised by the Department on 20 November, that "At this time the Department of Regional Australia has no comment to make, other than to note, that bringing modern maritime legislation into effect on Norfolk Island is to be commended and it should contribute to the long term development of the Island." The Department of Regional Australia has advised that it has passed a copy of the Exposure Draft Bill to AMSA for its information and comment.

The Bill

In seeking to prescribe safety issues, to protect the public and discourage unsafe practises the *Marine Safety Bill 2012* will require registration of local boats, prohibit operating vessels while under the influence of liquor or drugs, and authorise the direction of local and visiting vessels to positions at sea that do not endanger lives, coastline or property. Through regulation, boat owners will be required to carry safety equipment and (in a manner similar to that of motor vehicles) local craft will be required to be passed as seaworthy through checks prior to the issue of a licence. The Bill will enable authorised officers to ensure that watercraft are operated safely.

The jurisdiction of the Coroner to conduct an inquiry should there be a death on a vessel locally or in Norfolk Island waters, is clarified by an amendment to the *Coroners Act 1993*.

The Bill establishes the Norfolk Island Marine and Harbour Authority and a Harbour Master. It also provides for authorised persons with powers to act in various circumstances.

Proposed penalties for breaches of the proposed Act will be similar in extent to those currently provided under the *Traffic Act 2010*.

It is intended that there be no licence fees in the first year of operation, and that the Act will be subject to review after 12 months of operation.

This Bill has drawn on the legislative experience of New South Wales, Victoria and Tasmania.

The Bill is divided into 10 parts and 2 Schedules

Part 1 – Preliminary, deals with a number of preliminary and definitional matters that describe the objects of the proposed law.

Part 2 – Safety of navigation, deals with various safety issues concerning the navigation in Norfolk Island waters including such matters as speed limits and the operations of vessels in places where the public may be endangered or subject to nuisance, reckless and dangerous navigation, and the regulation of aquatic activities.

Part 3 – Boating safety – Alcohol and drugs, deals with the safety issues relating to the use of alcohol and drugs and generally mirrors the requirements concerning the driving of motor vehicles.

Part 4 – Marine certificates, makes provision for the issue of various kinds of marine certificates – vessel registration, seaworthy certificates, boat drivers licences and other certificates that may be required by law and which are declared to be maritime certificates. Provision is made for the review of decisions to refuse to grant, to cancel, or to impose conditions on, a marine certificate, regulation of vessel safety and for investigating and enforcing the safety of vessels including such issues as overloading, stowage of cargo, number and qualifications of crew where persons are placed in danger. Regulations may be made concerning the installation of safety equipment, wearing of safety equipment, maximum number of persons who may be carried and the conduct of passengers on a vessel.

Part 5 – Requirement for Vessels, deals with several matters including prohibiting operation of an unsafe vessel and providing powers to detain unsafe vessels.

Part 6 – Marine investigation and enforcement, deals with the investigation of marine accidents, the appointment of persons to enforce the legislation and regulations, the obligation upon the masters of vessels involved in accidents, the ordering and carrying out of investigations and the reporting of findings.

Part 7 – Legal Proceedings, deals with general powers concerning the bringing of legal proceedings under the Act and regulations and matters relating thereto. The Schedule to the Bill provides the various powers that are exercisable by authorised officers.

Part 8 – Search and rescue, deals with matters concerning maritime or water-related search and rescue operations. Where a marine search and rescue operation is to be carried out, an officer of the Australian Federal Police as the designated Search and Rescue mission coordinator for Norfolk Island (as described in the background notes above) will take charge. In respect only of maritime disaster these provisions override the *Disaster and Emergency Management Act 2001*. The Part also provides for circumstances under which payment of claims for loss or damage incurred by persons engaged in search and rescue operations may be made and costs incurred recovered from parties involved.

Part 9 - Norfolk Island Marine and Harbour Authority (NIMAHA) and Harbour Master, deals with the establishment of the Authority with the object of providing advice and recommendations to the Minister on matters dealt with by the Bill and the appointment of the Harbour Master who has primary obligation to administer day to day matters provided by the Bill.

Part 10 – Miscellaneous, deals with various miscellaneous matters such as delegations, binding the Crown, the making of rules and regulations, adoption of standards and the provision of exemptions. The final section requires the Minister to conduct an inquiry into the operation of the Act as soon as possible after the first 12 months of the Act's operation.

Schedule 1 provides the powers of authorised officers.

Schedule 2 provides for amendment to the *Coroners Act 1993* to clarify the powers of the Coroner with respect to certain deaths at sea.

5 December 2012.