

MARINE (AMENDMENT) ACT 2005

TABLE OF PROVISIONS

1. Short title and commencement
2. Section 3 amended
3. Sections 3A and 3B repealed
4. Section 5 amended
5. New Part 1A added
6. Section 22 amended
7. Section 27 amended
8. Section 32 amended
9. Section 51 amended
10. Section 56E deleted
11. Section 59 amended
12. New sections 76 to 80 added
13. New section 80A added
14. Section 97 re-inserted
15. Section 102 amended
16. Section 104 amended
17. Section 133 amended
18. Section 160 amended
19. Section 161 amended
20. Section 162 amended
21. Section 163 amended
22. Section 164 amended
23. Section 165 amended
24. Section 166 amended
25. Section 183 amended
26. Section 185 amended
27. Section 198 amended
28. Section 199 amended
29. New section 200A added
30. New section 201A added
31. Section 202 amended

ACT NO. 9 OF 2005

I assent.

[L.S.]

J. I. ULUIVUDA
President

[29th June 2005]

AN ACT

TO AMEND THE MARINE ACT 1986 TO GIVE EFFECT TO THE
REORGANISATION OF FIJI'S SEA PORTS, AND FOR RELATED MATTERS

ENACTED by the Parliament of Fiji—

Short title, etc

1.— (1) This Act may be cited as the Marine (Amendment) Act 2005.

(2) This Act comes into force on the same day the Sea Ports Management Act comes into force.

(3) In this Act, the Marine Act 1986 is referred to as the “the principal Act”.

Section 3 amended

2. Section 3 of the Principal Act is amended by deleting subsection (2) and replacing it with the following—

“(2) This Act applies to the operations of port management companies and to all ports and approaches to ports.”.

Section 3A and 3B repealed

3. Sections 3A and 3B of the principal Act are repealed.

Section 5 amended

4.—(1) Section 5(1) of the principal Act is amended by —

(a) inserting the following definitions in the appropriate alphabetical order —

“Chief Executive Officer” means —

- (a) for the purposes of sections 56 and 56C, the Chief Executive Officer of Fiji Ports Corporation Limited; or
- (b) in any other case, the Chief Executive Officer of the port management company which manages the port or approaches to the port relevant to the circumstances to which the respective section is being applied;”

“Fiji Islands Maritime Safety Administration” means the Fiji Islands Maritime Safety Administration recognised under section 6A;”

“port management company” means any port management company vested with the responsibility for managing a port in accordance with the Sea Ports Management Act, and the reference may be applied either generally or to a specific port management company, as the context requires;”

“shipping officer” means a shipping officer appointed under section 97;”

- (b) repealing the definitions of “Authority” and “Chief Executive”;
- (c) deleting the words “section 3 of the Ports Authority of Fiji Act” from the definitions of “approaches to a port” and “port”, and replacing them with the words “the Sea Ports Management Act”;
- (d) deleting the words “in Part VI” from the definition of “charterer”;
- (e) adding the following words to the definition of “dangerous goods” —

“, and includes aqua fortis, vitriol, naptha, benzine, gunpowder, lucifer matches, nitroglycerine, petroleum, any explosive within the meaning of the Explosives Act, and any other goods which the Director may declare to be dangerous goods for the purpose of this Act”;
- (f) deleting the definition of “Director” and replacing it with the following —

“ “Director” means the person holding the office of Director of Maritime Safety;”;

(g) repealing the definition of “Government authority” and substituting the following definition —

“ “Government authority” means an authority or body, whether a body corporate or not, established, incorporated, empowered or recognised for a public purpose by a law, and includes a body corporate in which the Government has a controlling interest;” and

(h) repealing the definition of “Port Master” and substituting the following definition —

“ “Port Master” means a Port Master appointed under 201A;”.

(2) The principal Act is amended by—

- (a) deleting all references to the “Ports Authority of Fiji Act” and “Maritime and Ports Authority of the Fiji Islands Act” wherever they appear, and replacing them with “Sea Ports Management Act”;
- (b) deleting all references to “the Authority” wherever they appear, and replacing them with “a port management company”;
- (c) deleting all references to the “Director of Marine” wherever they appear and replacing them with “Director of Maritime Safety”;
- (d) deleting all references to “the Chief Executive” wherever they appear, and replacing them with “a Chief Executive Officer”.

New Part 1A added

5. The principal Act is amended by adding after Part 1 by adding the following Part—

“PART 1A – THE FIJI ISLANDS MARITIME SAFETY ADMINISTRATION

The Fiji Islands Maritime Safety Administration

6A.—(1) For the purposes of implementing the provisions of this Act and any other law relating to the regulation, registration and safety of shipping, the Fiji Islands Maritime Safety Administration is hereby recognised and shall include the lawful authority exercised under this Act and any other law by—

- (a) the Minister;
 - (b) the Marine Board;
 - (c) the Director of Maritime Safety; and
 - (d) any Port Master, shipping inspector, Port State control office or any other officer exercising authority on behalf of the Minister, the Marine Board or the Director.
- (2) Without derogating from any function or power conferred upon any Minister, the Marine Board, the Director, a Chief Executive Officer, a port management company or any other person, the Minister has principal responsibility for the management and administration of the Fiji Maritime Safety Administration.
- (3) The Fiji Islands Maritime Safety Administration shall have responsibility for implementing and enforcing Fiji Island's international maritime obligations arising from or relating to —
- (a) all international conventions having the force of law in Fiji by virtue of this Act;
 - (b) marine pollution incidents; and
 - (c) the security of vessels and ports.
- (4) The Fiji Islands Maritime Safety Administration may, in its name—
- (a) institute and defend any legal proceedings;
 - (b) pay and receive moneys;
 - (c) enter into contracts, agreements, arrangements and understandings;
 - (d) give notices and directions, or impose requirements in accordance with law;
 - (e) do any other act or thing in the exercise of the powers and authority vested in it under this Act or any other law.
- (5) The powers of the Fiji Islands Maritime Safety Administration may be delegated to a Chief Executive Officer or other officer of a port management company, by written notice signed by the Director, to ensure the effective

regulation of port operations and the proper control of vessels and persons within ports and approaches to ports.”

Section 22 amended

6. Section 22 of the principal Act is amended by inserting the words “and seaworthiness” after the word “ownership” in subsection (3).

Section 27 amended

7. Section 27 of the principal Act is amended by deleting the words “or an employee of the Authority” from paragraph (b) of subsection (5).

Section 32 amended

8. Section 33 of the principal Act is amended by deleting the words “or if requested by the Chief Executive or the Port Master” from subsection (1).

Section 51 amended

9. Section 51 of the principal Act is amended by—

- (a) deleting the words “the Chief Executive, or the Port Master” from subsection (1); and
- (b) deleting the words “or the Chief Executive or the Port Master” from subsection (3).

Section 56E repealed

10. The principal Act is amended by repealing section 56E.

Section 59 amended

11. Section 59 of the principal Act is amended by adding the words “or remain at sea” after the words “go to sea”.

Sections 76 to 80 added

12. The principal Act is amended by adding after section 75 the following sections—

“Hazardous cargo

76.—(1) This section applies to cargo or goods (other than dangerous goods) where the cargo or goods, if carried in a particular vessel would, in the opinion of the Port Master, endanger the vessel or constitute a danger to human life.

(2) The Port Master may, by direction to the master of a vessel —

- (a) prohibit the loading into the vessel;

- (b) prohibit the carriage in the vessel;
 - (c) order the removal from the vessel; or
 - (d) direct the manner of the stowage or carriage in the vessel,
- of cargo or goods to which this section applies.

- (3) A master of a vessel who fails to comply with a prohibition, order or direction given by a Port Master under subsection (2) commits an offence and is liable upon conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months, or both.
- (4) If the master of a vessel has been given a direction or order under subsection (2) the Port Master may detain the vessel until such time as the master has complied with the direction or order.

Powers of the master in relation to dangerous goods

77.—(1) The master or owner of a vessel may —

- (a) refuse to take on board a package which the master or owner suspects contain dangerous goods;
 - (b) open and inspect a package suspected of containing dangerous goods;
 - (c) discharge, destroy, render innocuous or otherwise deal with goods which may be dangerous or which have been shipped on board the vessel without the knowledge and consent of the master.
- (2) The master or owner of a vessel is not subject to any liability for taking any action under subsection (1) in good faith.

Powers of the Port Master in relation to dangerous goods

- 78.—(1) The Port Master may, if satisfied that dangerous goods are being loaded into, unloaded from, or stowed, carried or used in a vessel otherwise than in accordance with this Act, any other applicable law or the Safety Convention, direct the owner or the master of the vessel to take such action on such goods as the Port Master thinks fit.
- (2) A master or owner of a vessel who fails to comply with a direction given under subsection (1) commits an offence and is liable upon conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 6 months, or both.

Requirements in relation to dangerous goods

79.—(1) A person who—

- (a) sends by a vessel;
- (b) sends on to a vessel;
- (c) brings on to a vessel;
- (d) carries, uses or keeps on a vessel—

any dangerous goods otherwise than as required or permitted by this Act or by the Safety Convention, commits an offence and is liable upon conviction to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 6 months or both.

(2) A person who, with the intent or purpose of concealing the character of dangerous goods —

- (a) sends by a vessel;
- (b) sends on to a vessel;
- (c) carries, uses or keeps on a vessel —

any dangerous goods under a false description, commits an offence and is liable upon conviction to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 6 months, or both.

Forfeiture of dangerous goods

80.—(1) A Court may order that dangerous goods carried, shipped or used in a vessel in contravention of this Act, any other applicable law or the Safety Convention be forfeited.

(2) If an order is made under subsection (1), the dangerous goods are to be forfeited notwithstanding—

- (a) no offence may have been committed by the owner of the goods or the master of the vessel;
- (b) that the owner of the goods or the master of the vessel has had no notice of the proceedings; or
- (c) that there is no evidence as to the ownership of the goods.”

New section 80A inserted

13. The principal Act is amended by inserting the following section 80A –

“Regulations applying to dangerous goods

80A.—(1) The Minister may make regulations relating to the conveyance, loading, discharging and storage of dangerous goods within a port.

(2) Without limiting the generality of subsection (1), the regulations may relate to the following matters—

- (a) declaring other goods and substances to be dangerous goods;
- (b) regulating the navigation and place of berthing or mooring of vessels carrying dangerous goods;
- (c) regulating the mode of stowing and keeping dangerous goods on board vessels;
- (d) regulating and controlling the ligherage, landing, loading and discharging, conveying and storage of dangerous goods;
- (e) prohibiting or subjecting to conditions and restrictions the conveyance of any kind of dangerous goods with any other goods;
- (f) regulating the times at which lights or fires are to be allowed on board vessels carrying dangerous goods;
- (g) any matter or thing necessary for the protection of person and property; and
- (h) prescribing any additional fee or charge to be applied in circumstances involving dangerous goods, which may be payable to a port management company or to the Fiji Islands Maritime Safety Administration.”

Section 97 re-inserted

14. The principal Act is amended by re-inserting section 97 as follows –

“Shipping Officers

97. The Minister, acting on the recommendation of the Director, may appoint officers of the Fiji Islands Maritime Safety Administration to be shipping officers.”

Section 102 amended

15. Section 102 of the principal Act is amended by re-inserting the words “a shipping officer” into paragraph (b).

Section 104 amended

16. Section 104 of the principal Act is amended by re-inserting the words “a shipping officer” into paragraph (c) of subsection (1).

Section 133 amended

17. Section 133 of the principal Act is amended by inserting the words “a person who is a Fiji citizen and is” after the words “may issue to” in subsection (1).

Section 160 amended

18. Section 160 of the principal Act is amended by repealing subsection (1A).

Section 161 amended

19. Section 161 of the principal Act is amended—

- (a) in subsection (1), by deleting “Authority’s written approval” and substituting “written approval of the Director”;
- (c) in subsection (2), by deleting “Authority” and substituting “Fiji Islands Maritime Safety Administration”;
- (d) in subsection (4), by deleting “Authority” and substituting “Director”.

Section 162 amended

20. Section 162 of the principal Act is amended in subsection (1) by deleting “Chief Executive” and substituting “Director”.

Section 163 amended

21. Section 163 of the principal Act is amended in subsection (2) by deleting “Chief Executive” and substituting “Director and Chief Executive Officer”.

Section 164 amended

22. Section 164 of the principal Act is amended by deleting “Authority” and substituting “Fiji Islands Maritime Safety Administration”.

Section 165 amended

23. Section 165 of the principal Act is amended by deleting the word “Authority” from subsection (1) and replacing it with the words “Fiji Islands Maritime Safety Administration or a relevant port management company which is entitled to receive the payment on behalf of the Fiji Islands Maritime Safety Administration in accordance with section 18 of the Fiji Sea Ports Management Act”;

Section 166 amended

24. Section 166 of the principal Act is amended—

- (a) by deleting “Authority” and substituting “Fiji Islands Maritime Safety Administration”; and
- (b) in paragraph (c), by deleting “Chief Executive” and substituting “Director”.

Section 183 amended

25. The principal Act is amended in section 183 by deleting “and the Authority”.

Section 185 amended

26. Section 185 of the principal Act is amended by repealing subsection (1A).

Section 198 amended

27. Section 198 of the principal Act is amended by deleting “the Authority” and substituting “any port management company”.

Section 199 amended

28. Section 199 of the principal Act is amended by repealing subsection (1) and substituting the following subsection—

“(1) Pilotage dues and charges for pilotage services in respect of a vessel are payable—

- (a) in accordance with the provisions of the Fiji Sea Ports Management Act if the services are provided by or on behalf of a port management company; or
- (b) as may be otherwise negotiated with a service provider if such services are lawfully provided.”.

New section 200A added

29. The principal Act is amended by adding after section 200 the following section—

“Training of pilots

200A. It shall be a responsibility of the Fiji Islands Maritime Safety Administration to develop and implement policies and programmes to ensure that qualified and experienced pilots are available to meet the needs of Fiji in relation to the piloting of vessels in pilotage areas.”.

New section 201A added

30. The principal Act is amended by adding after section 201 the following section—

“Port Masters

201A. – (1) The Director shall appoint Port Masters for the purposes of applying the provisions of this Act in the regulation of port operations and in the approaches to ports, and may also appoint such number of Deputy Port Masters and Port State control officers as are necessary.

(2) Port Masters and Deputy Port Masters have the power, inter alia, to—

- (a) determine safety and security issues relating to the berthing, mooring or anchoring of vessels within ports and approaches to ports;
 - (b) direct the removal of any vessel from any berth, station or anchorage, on grounds of safety and security, to any other place, and the time within which such removal is to be effected;
 - (c) regulate the movements of vessels generally to ensure the safety and security of vessels and ports;
 - (d) manage port state control responsibilities, and to implement international obligations concerning the security of ships and ports;
 - (e) require any action and give any direction in relation to fires on board vessels, including an order that a vessel be scuttled or for it to be removed to any other place;
 - (f) board any vessel;
 - (g) require any action and give any directions in relation to dangerous goods and hazardous cargoes in accordance with this Act and any other law; and
 - (h) take any other action or give any direction that is necessary to ensure the security of ports and port approaches and the safety of vessels and persons in these areas.
- (3) A Deputy Port Master may exercise any of the powers given to a Port Master under this section, subject to any qualification to these powers determined by the Director or the Port Master.
- (4) Port State control officers may exercise any power given to them by the Director or a Port Master and shall have the power to board any vessel, inspect any goods and exercise any other power prescribed by law.

(3) Any person who—

- (a) fails to comply with a direction given by a Port Master, Deputy Port Master or Port State control officer;
- (b) fails to take any action in accordance with a direction given by a Port Master, Deputy Port Master or Port State control officer;
- (c) prevents a Port Master, Deputy Port Master or Port State control officer from boarding a vessel;
- (d) prevents or interferes with a Port Master, a Deputy Port Master or a Port State control officer in the exercise of any lawful power—

commits an offence and is liable upon conviction to a fine not exceeding \$25,000 or to a term of imprisonment not exceeding 2 years, or both.

(6) Port Masters, Deputy Port Masters and Port State control officers shall be officers of the Fiji Islands Maritime Safety Administration.”

Section 202 amended

31. Section 202 of the principal Act is amended by deleting “or the Authority”.

Passed by the House of Representatives this 25th day of May 2005.

Passed by the Senate this 9th day of June 2005.