

BILL NO. 26 OF 2014

A BILL

FOR AN ACT TO AMEND THE MARITIME TRANSPORT DECREE 2013

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

1.—(1) This Act may be cited as the Maritime Transport (Amendment) Act 2014 and shall come into force on 1st January, 2015.

(2) The Maritime Transport Decree 2013 shall be referred to as the “Decree”.

Section 2 amended

2. Section 2 of the Decree is amended—

(a) by deleting the definition of “Articles of Agreement”;

(b) in the definition of “aids to navigation”—

(i) in paragraph (c) by—

A. inserting “, beacons” after “marks”; and

B. deleting “in aid of marine navigation” and substituting “to aid safety of navigation”;

(ii) in paragraph (d) by deleting “marine”.

- (c) in the definition of “commercial ship” in paragraph (c) by inserting “but does not include a pleasure craft;” after “business”.
- (d) by inserting the following new definitions—
- (i) after the definition of “demise charter” —

““Enforcement and Compliance Officer” means an Enforcement and Compliance Officer appointed under section 101 for the purpose prescribed under section 103(2) and section 119;”;
 - (ii) after the definition of “employer” —

““Exclusive Economic Zone” has the same meaning as under section 2 of the Marine Spaces Act (Cap. 158A);”;
 - (iii) after the definition of “fishing ship” —

““Flag State Surveyor” means a person appointed under section 101 for the purpose of surveying Fiji registered ships;”;
 - (iv) after the definition of “mishap” —

““mooring buoys” means a buoy secured to the bottom of the seabed by permanent moorings with means of mooring a ship by use of its anchor chains or mooring lines;”;
- (e) by deleting the definition of “Fiji-based operator”;
- (f) in the definition of “Fiji waters” by deleting paragraph (c) and substituting the following—
- “(c) the internal waters; and”;
- (g) in the definition of “internal waters of Fiji” by inserting “(Cap.158A)” after “Marine Spaces Act”;
- (h) by deleting the definition of “Maritime Appeals Committee”;
- (i) by deleting the definition of “Maritime Appeal Authority” and substituting the following—
- ““Maritime Appeal Tribunal” means the Tribunal established under section 62;”;
- (j) by deleting the definition of “master” and substituting the following—
- ““master” means any person who holds a current Certificate of Competency issued by the Chief Executive Officer in accordance with section 24 and who has command of a ship;”;
- (k) in the definition of “offshore installation” by deleting “constructive” and substituting “constructed”;

- (l) in the definition of “owner”—
 - (i) by deleting paragraph (d) and substituting the following—
 - “(d) a ship to which paragraphs (a), (b) or (c) applies, where, by virtue of any charter or demise or for any other reason, the registered owner is not responsible for the navigation and management of the ship, includes any charterer, company or every person who is in the time being so responsible; and”;
 - (ii) in paragraph (e) by deleting “or a registered ship that does not have a registered owner,” after “unregistered ship”;
- (m) by deleting the definition of “pilot” and substituting the following—
 - ““pilot” in relation to any ship, means any person who holds a current Pilot Licence issued by the Chief Executive Officer in accordance with section 24, not being the master or a member of the crew of the ship, who has command of the ship;”;
- (n) in the definition of “port” by inserting “jetties,” after “harbour;”;
- (o) in the definition of “Port Master” by inserting “and section 119” after “prescribed ports”;
- (p) in the definition of “Port State Control Officer” by inserting “and section 119” after “registered ships”;
- (q) by inserting the following new definition after the definition of “seafarer”—
 - ““Seafarers Employment Agreement” means a contract of employment or a collective agreement within the meaning of the Employment Relations Promulgation 2007 between an employer and one or more seafarers setting out the terms and conditions of the seafarers’ employment and the articles of agreement;”;
- (r) by deleting the definition of “serious harm” and substituting the following—
 - ““serious harm” or “seriously harmed” means—
 - (a) harm that results in death; or
 - (b) any of the following conditions that amounts to or results in permanent loss of bodily function or temporary severe loss of bodily function—
 - (i) respiratory disease;
 - (ii) noise-induced hearing loss;
 - (iii) neurological disease;
 - (iv) cancer;

- (v) dermatological disease;
- (vi) communicable disease;
- (vii) musculoskeletal disease;
- (viii) illness caused by exposure to infected material;
- (ix) decompression sickness;
- (x) poisoning;
- (xi) vision impairment;
- (xii) chemical or hot-metal burn of eye;
- (xiii) penetrating wound of eye;
- (xiv) bone fracture;
- (xv) laceration; or
- (xvi) crushing;
- (c) requiring referral to a specialist registered medical practitioner or specialist outpatient clinic;
- (d) burns requiring referral to a specialist registered medical practitioner or specialist outpatient clinic;
- (e) loss of consciousness from lack of oxygen;
- (f) loss of consciousness, or acute illness requiring treatment by a registered medical practitioner, from absorption, inhalation, or ingestion, of any substance;
- (g) any harm that causes the person harmed to be hospitalised for a period of 48 hours or more commencing within seven days of the harm's occurrence; and
- (h) accident as defined in section 5 of the Health and Safety at Work Act 1996;”.

Section 4 amended

3. Section 4 of the Decree is amended by inserting—

- (a) “.(1)” before “Unless otherwise”; and
- (b) the following new subsection—

“(2) The Authority shall be the designated Authority for all Conventions, Protocols and mandatory Codes specified in the Schedule.”

Section 9 amended

4. Section 9 of the Decree is amended in subsection (2) by deleting “36(5)” and substituting “36(4)” wherever it appears.

Section 11 amended

5. Section 11 of the Decree is amended in subsection (1)(d) by inserting “;” after “employer”.

Section 12 amended

6. Section 12 of the Decree is amended in subsection (1)(d) by deleting “in a form prescribed or”.

Section 14 amended

7. Section 14 of the Decree is amended in subsection (3) by—

- (a) deleting “and” and substituting “or”; and
- (b) inserting “, whichever is the most recent” after “crew agreement”.

Section 21 amended

8. Section 21 of the Decree is amended in subsection (1) by inserting “and aids to navigation” after “navigational aid”.

Section 23 amended

9. Section 23 of the Decree is amended in subsection (1) by deleting “prescribed form” and substituting “approved form.”

Section 24 amended

10. Section 24 of the Decree is amended—

- (a) in subsection (1)(c) by inserting “revalidated,” after “, granted”; and
- (b) in subsection (2) by inserting “, revalidating” after “granting”.

Section 27 amended

11. Section 27 of the Decree is amended—

- (a) in subsection(1)(a) by inserting “or marine environment protection Regulations” after “Regulations”; and
- (b) by deleting subsection (4) and substituting with the following—

“(4) When a maritime document or recognition of a document as a maritime document is suspended [or a maritime document] the holder of the document or the document of recognition, must immediately produce the maritime document or the document of recognition to the Chief Executive Officer, and the Chief Executive Officer shall withhold that maritime document or document of recognition while it is suspended.”

Section 31 amended

12. Section 31 of the Decree is amended in subsection (1) by inserting “document suspended” after “whether a maritime”.

Section 32 amended

13. Section 32 of the Decree is amended in subsection (1)(c) by deleting “;” and substituting “;”.

*Section 33 amended***14.** Section 33 of the Decree is amended in—

- (a) subsection (1) by inserting “the Minister in consultation with” after “subsection (2),”;
- (b) subsection (2) by deleting “Chief Executive Officer” and substituting with “Minister”; and
- (c) subsection (3) by deleting “Gazette” and substituting “daily newspaper and any other publication the Chief Executive Officer in consultation with the Minister deems fit”.

*Section 34 amended***15.** Section 34 of the Decree is amended—

- (a) in the heading by inserting “, revalidation” after “grant”; and
- (b) by inserting “, revalidating” after “granting”.

*Section 37 amended***16.** Section 37 of the Decree is amended—

- (a) in the heading by deleting “Suspended”;
- (b) by deleting subsections (1) and (2) and substituting the following—
 - “(1) A person shall not employ on board a ship any person whose maritime document has been suspended or revoked.
 - (2) Any person whose maritime document has been suspended or revoked shall not apply for employment on board a ship.”

*Section 38 amended***17.** Section 38 of the Decree is amended—

- (a) in subsection (1) by—
 - (i) deleting “or carry out such” after “to undergo”;
 - (ii) inserting “,” after “inspection”;
 - (iii) deleting “and such” after “inspection,”; and
 - (iv) inserting “or ship clearance” after “audits”;
- (b) in subsection (2) by—
 - (i) deleting “respect of any person described in subsection (1),” and substituting “writing appoint an authorised officer to”;
 - (ii) inserting “,” after “inspections”;
 - (iii) deleting “and” after “inspections,”; and
 - (iv) inserting “and ship clearance” after “audits”;

- (c) in subsection (3)—
 - (i) by deleting “(2)” and substituting “(1)”;
 - (ii) paragraph (a) by—
 - A. inserting “,” after “inspection”;
 - B. deleting “or” after “inspection,”; and
 - C. inserting “or ship clearance” after “audit”.

Section 39 amended

18. Section 39 of the Decree is amended—

- (a) in the heading by inserting “or on arrival” after “to sea”; and
- (b) in subsection (1) by deleting “heaves anchor” and substituting with “goes to sea or during arrival”.

Section 40 amended

19. Section 40 of the Decree is amended—

- (a) in the heading by inserting “, expulsion” after “seizure”;
- (b) by inserting the following new paragraph after paragraph (d)—
 - “(e) expel any foreign flag ship;”;and
- (c) in subsection (2) by inserting after (f)—
 - “(g) any breach under this Decree or the Ship Registration Decree 2013.”

Section 45 amended

20. Section 45 of the Decree is amended by deleting subsection (8) and substituting the following new subsections—

“(8) The person conducting the investigation or inquiry under subsection (6) shall immediately upon completing the investigation or inquiry forward a written report of his or her findings to the Chief Executive Officer.

- (9) Upon receipt of a report under subsection (8), the Chief Executive Officer may—
 - (a) request the Minister to cause a marine inquiry to be held in accordance with sections 75, 75A, 75B, and 75C; and
 - (b) if the Chief Executive Officer considers it is necessary or desirable to do so, suspend any maritime document pending the outcome of that marine inquiry; or
 - (c) suspend or revoke a maritime document in accordance with section 27 or 29.”

Sections 62 to 75 deleted

21. Sections 62 to 75 of the Decree are deleted and substituted with the following—

“Establishment of Maritime Appeal Tribunal

62. This section establishes the Maritime Appeal Tribunal.

Composition of the Maritime Appeal Tribunal

63.—(1) The Minister shall, appoint four members to the Maritime Appeal Tribunal

(2) The Minister shall appoint a member of the Maritime Appeal Tribunal as Chairperson.

(3) In the absence of the Chairperson of the Tribunal, the Minister may appoint any such person who, in the opinion of the Minister is qualified to act as the Chairperson of the Tribunal for the duration of the Chairperson’s absence.

(4) The members shall be persons who, in the opinion of the Minister, have either extensive experience as a legal practitioner, chief engineer or a master or pilot and is knowledgeable of employment matters, without any potential conflicts of interests.

Tenure of office

64. A person appointed as a member of the Maritime Appeal Tribunal shall be appointed for a term not exceeding 3 years and shall be eligible for re-appointment.

Revocation and resignation

65.—(1) The Minister may, at any time, revoke the appointment of any person appointed under section 63.

(2) A person appointed under section 63 may, at any time resign, by giving 30 days’ notice in writing to the Minister.

Vacation of office

66. The office of a member of the Maritime Appeal Tribunal shall become vacant if the member—

- (a) has been declared an undischarged bankrupt;
- (b) has in Fiji or elsewhere been convicted of an offence punishable by imprisonment or involving dishonesty; or
- (c) is unable to perform the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehavior; or
- (d) resigns or the Minister revokes his or her appointment under section 65.

Remuneration of members

67. The members of the Tribunal are entitled to such remuneration as the Minister deems necessary.

Meetings

68. The Maritime Appeal Tribunal shall meet at such times and places as may be necessary for the performance of its functions.

Functions of the Maritime Appeal Tribunal

69.—(1) An appeal lies to the Maritime Appeal Tribunal against the decisions of the Chief Executive Officer in matters concerning the following—

- (a) the registration of ships;
- (b) survey certification of ships;
- (c) certification of seafarers whose certificates are suspended for a period exceeding 6 months or cancelled; and
- (d) those matters specifically stated under this Decree or the Ship Registration Decree 2013.

(2) In making its determinations, the Maritime Appeal Tribunal shall have regard to the potential effect to maritime safety.

Evidence that may be received by the Maritime Appeal Tribunal

70. The Maritime Appeal Tribunal may receive as evidence any statement, document, information, or matter that may, in the opinion of the Tribunal, assist the Tribunal to deal with the application being considered.

Rights of applicants to the Maritime Appeal Tribunal

71. The applicant shall be entitled to appear before the Maritime Appeal Tribunal in support of the application or be represented by counsel or a solicitor or an agent.

Procedure of Maritime Appeal Tribunal

72. Except as otherwise provided by this section and subject to the rules of natural justice, the Maritime Appeal Tribunal may determine its own process and procedure.

Application to the Maritime Appeal Tribunal

73.—(1) Any application to the Maritime Appeal Tribunal shall be—

- (a) made within 30 days of the date on which notice of the Chief Executive Officer's decision is given to him or her; or
- (b) such extended period as the Tribunal, on application made either before or after the period of 30 days referred in paragraph (a), orders; and
- (c) in writing specifying the grounds for the application.

(2) The appeal shall be lodged with such persons as appointed by the Chief Executive Officer, who shall forthwith refer the application to the Maritime Appeal Tribunal.

Decision of the Maritime Appeal Tribunal

74.—(1) On appeal under section 69, the Maritime Appeal Tribunal may—

- (a) confirm the decision of the Chief Executive Officer;
- (b) revoke the suspension or cancellation, as the case may be; or
- (c) vary the decision of the Chief Executive Officer in such manner as it considers appropriate.

(2) A decision of the Tribunal under subsection (1) shall be deemed to a decision of the Chief Executive Officer and shall have effect accordingly.

(3) Any decision made by the Tribunal shall be in writing.

Further appeals

74A.—(1) Where any person is dissatisfied with the decision of the Maritime Appeal Tribunal, that person may appeal to the High Court against that decision.

(2) On any appeal under subsection (1), the High Court may make such order or determination as it deems appropriate.

(3) Where either party wishes to appeal the decision of the High Court, that party may, with leave of the High Court, appeal to the Court of Appeal on that question of law.

(4) Subject to this section, the procedure in respect of any appeal under this section shall be in accordance with the relevant Rules of the court.

Decision of Chief Executive Officer to continue in force pending appeal

74B.—(1) Every decision of the Chief Executive Officer that is appealed against under section 69 shall continue in force pending the determination of the appeal, except where the Court has granted a Stay on the decision of the Chief Executive Officer.

(2) Notwithstanding any appeal under section 69 being determined in favour of the appellant, the Chief Executive Officer may, subject to the same right of appeal, apply for a stay of execution of the Court's decision where the Chief Executive Officer has, since the hearing of the appeal, discovered facts or evidence warranting a stay of the court's decision and that such facts or evidence concerns—

- (a) the seaworthiness of the ship;
- (b) compliance with the marine environment protection Regulations; and
- (c) the qualification of the seafarers.

Marine Inquiry

75.—(1) Where the Minister believes that an inquiry should be held into any marine accident, incident or mishap or agrees to a request made to him or her by the Chief Executive Officer, the Chief Justice shall, on the request of the Minister, appoint a person appearing to the Chief Justice to be suitably qualified by—

- (a) the holding of or by having held judicial office; or
- (b) experience as a barrister and solicitor,

to hold an inquiry into an accident, incident or mishap.

(2) A person appointed under subsection (1) shall conduct the inquiry with the assistance of at least 2 assessors appointed by the Chief Justice after consultation with the person appointed under subsection (1).

(3) Subject to subsections (4) and (5), a marine inquiry, is to be conducted in the prescribed manner.

(4) Where it is likely that during the course of a marine inquiry the conduct of a person will be called into question or it is likely that a person will be affected by a decision of the inquiry, the person appointed under subsection (1) to hold the inquiry shall—

- (a) give to that first mentioned person at least 72 hours' notice of the place, day and hour for the holding of the inquiry; and
- (b) furnish to that person—
 - (i) where an investigation has been held, a copy of the report and any other documents sent to the Chief Executive Officer; or
 - (ii) in any other case, a statement of the case on which the inquiry was ordered.

(5) A person—

- (a) whose conduct is likely to be questioned during the course of a marine inquiry; or
- (b) who is likely to be affected by a decision of the inquiry, is entitled—
 - (i) to attend the inquiry personally and also to be represented at the inquiry by a barrister and solicitor;
 - (ii) to be sworn and given evidence before the inquiry;
 - (iii) to subpoena and call witnesses;
 - (iv) to examine, cross-examine and re-examine in accordance with the customary rules of courts of law all witnesses giving evidence before the inquiry;
 - (v) to take all proper exception to the admissibility of evidence; and
 - (vi) at the conclusion of the inquiry or other proper time, to address the inquiry.

(6) For the purpose of a marine inquiry, the person appointed under subsection (1) and the assessors assisting him or her may—

- (a) go on board any ship where it is relevant to the inquiry to do so;
- (b) require any person to answer questions relating to the subject matter of the inquiry; and
- (c) require the production of any document or certificate relevant to the inquiry.

(7) A person shall not—

- (a) hinder or obstruct a person appointed under subsection (2);
- (b) fail to answer fully and truthfully a question put to him or her by a person acting in accordance with subsection (6)(b); or

- (c) fail to produce a document or certificate he or she has in his or her possession or under his or her control when requested to do so by a person acting in accordance with subsection (6)(c).

(8) Any person who acts in contravention of subsection (7) commits an offence and is liable upon conviction to a fine not exceeding \$4,000 or imprisonment for a term not exceeding 12 months.

(9) The person conducting a marine inquiry, shall, after the conclusion of inquiry –

- (a) give his or her decision within 21 days; and
- (b) make a full report to the Minister together with such report or extracts from the evidence and such observations as he or she thinks fit,

and each assessor shall either sign the report referred to in paragraph (b) or state in writing to the Minister his or her dissent from the report and the reasons for dissent.

(10) A person conducting a marine inquiry may make such order as he or she thinks just to regain the costs of the inquiry or any part of those costs, and any such costs which a person may be ordered to pay may be recovered from that person by the Government as a debt due to the Government.”

New sections inserted

22. The Decree is amended by inserting the following new sections after section 75—

“Powers of marine inquiry as to maritime document

75A.—(1) Where as a result of a marine inquiry the person conducting the inquiry is satisfied that a holder of a maritime document—

- (a) is unfit to discharge his or her duties because of incompetence or misconduct or for any other reason;
- (b) has been seriously negligent in the discharge of his or her duty; or
- (c) has failed to give any assistance or information required by section 98,

and, in a case coming under paragraph (a) or (b), is further satisfied that the unfitness or negligence caused or contributed to the accident, incident or mishap, he or she may—

- (i) order the Chief Executive Officer to revoke or suspend for such period as shall be specified on any maritime document issued; or
- (ii) censure the seaman or operator or owner concerned.

(2) The Chief Executive Officer shall comply with an order given to it under subsection (1).

(3) Where a revocation or suspension of a maritime document is ordered under subsection (1) the person concerned shall forthwith deliver that certificate to the Chief Executive Officer.

(4) Any person who acts in contravention of subsection (3) commits an offence and is liable upon conviction to a fine not exceeding \$1,000 or imprisonment for a term not exceeding 12 months.

(5) A person conducting a marine inquiry shall not order the revocation or suspension of a maritime document under subsection (1) unless—

- (a) at least half of the number of assessors appointed to assist at the inquiry concur with the revocation or suspension; and
- (b) the provisions of section 75(5) have been complied with in respect of the maritime document holder.

Re-hearings and the power of the Minister to restore maritime document

75B.—(1) Where a marine inquiry has been held under this Part, the Minister may order the whole or a part of the inquiry to be re-heard, and shall do so, if—

- (a) in his or her opinion new and important evidence which could not be produced at the inquiry has been discovered; or
- (b) there appears to the Minister to be other grounds for suspecting that a miscarriage of justice may have occurred.

(2) Where a maritime document has been revoked or suspended under section 75A(1), the Minister may, on the recommendation of the person who conducted the marine inquiry, order the issue by the Chief Executive Officer of a new maritime document of a lower grade in place of the revoked or suspended maritime document.

(3) The Chief Executive Officer shall comply with an order given to it by the Minister under subsection (2).

Appeals

75C.—(1) Subject to subsections (2) and (3), where—

- (a) the maritime document is revoked or suspended under section 75A(1);
- (b) a maritime document holder is censured under section 75A(1);
- (c) the costs or a part of the costs of any inquiry are awarded against any person under section 75(10); or
- (d) the person conducting a marine inquiry finds that the accident, incident or mishap has been caused or contributed to by the wrongful act of any person,

any person who appeared at the hearing and is affected by the decision, may appeal to the Court and the Court may make such order as the justice of the case requires.

(2) Subject to subsection (3), an appeal under subsection (1) shall be made within—

- (a) 30 days from—
 - (i) the date the person conducting the marine inquiry gives his or her decision under section 75 (9)(a); or

(ii) where a re-hearing has been ordered under section 75B(1) on the date the decision in respect of that re-hearing is given; or

(b) such extended period as the Court, on application made either before or after the relevant period of 30 days referred to in paragraph (a) orders.

(3) Where a re-hearing has been ordered under section 75B(1), no appeal may be made under subsection (1) until the decision in respect of the re-hearing under section 75B (1) has been given.”

Section 92 amended

23. Section 92 of the Decree is amended—

(a) in the definition of “shipwrecked persons” by inserting “and” after “shipwrecked ships;”; and

(b) by deleting the definition of “tidal water”.

Section 99 amended

24. Section 99 of the Decree is amended in subsection (2) by deleting paragraph (g).

Section 100 amended

25. Section 100 of the Decree is amended by inserting the following new subsection after subsection (2)—

“(3) The Authority shall be the World-Wide Navigational Warning Service National Coordinator for Fiji and be responsible for collecting information, assessing, drafting and disseminating maritime safety information to the public, operators and seafarers.”

Section 101 amended

26. Section 101 of the Decree is amended—

(a) in paragraph (c) by deleting “and” after “;”;

(b) in paragraph (d) by—

(i) deleting “,” and substituting “;”; and

(ii) inserting “and” after “;”; and

(c) by inserting the following new paragraph after paragraph (d)—

“(e) Enforcement and Compliance Officers.”

Section 102 amended

27. Section 102 of the Decree is amended—

(a) in subsection (1)—

(i) paragraph (b) by deleting “and” after “;”;

(ii) paragraph (c) by deleting “.” and substituting “;” after “law”;

(iii) by inserting the following new paragraphs after paragraph (c)—

- “(d) go onboard the ship with such assistance and equipment as the Port State Control Officer considers necessary to verify compliance with any IMO Conventions;
- (e) require the Master of the ship to take such steps as the Port State Control Officer directs to facilitate the boarding;
- (f) examine and take samples of any substance onboard the ship or any designated external surface of the ship;
- (g) inspect any part of the ship or each machinery or equipment as may be necessary;
- (h) require the Master of the ship to take such step as the Port State Control Officer directs to facilitate the inspection of any part of the ship or each machinery or equipment;
- (i) open or require the Master of the ship to cause to be opened any hold, compartment, tank, or receptacle in or onboard the ship and inspect the contents thereof;
- (j) require the Master of the ship to produce—
 - (i) any certificate, declaration, endorsement or record that is required by any maritime and marine environment protection Regulations to be carried on the ship; or
 - (ii) any other document, records, or books relating to the ship or its cargo that are carried on the ship;
- (k) make copies of, or take extracts from, any such documents, records or books;
- (l) require the Master to certify that a true copy or extract made by the Port State Control Officer under paragraph (i) is a true copy of the original;
- (m) take photographs including video recordings of the ship or of equipment, or anything else, in or onboard the ship;
- (n) require persons on board a ship to answer questions; and
- (o) detain a ship.”;

(b) in subsection (2)—

- (i) paragraph (a) by deleting “and” after “;”;
- (ii) paragraph (b) by deleting “.” and substituting “; and” after “her”;

- (iii) by inserting the following new paragraphs after paragraph (b)—
- “(c) go onboard the ship with such assistance and equipment as the Flag State Surveyor considers necessary to verify compliance to any maritime or marine environment protection Regulations;
 - (d) require the Master of the ship to take such steps as the Flag State Surveyor directs to facilitate the boarding;
 - (e) examine and take samples of any substance onboard the ship or any designated external surface of the ship;
 - (f) survey any part of the ship or each machinery or equipment;
 - (g) require the Master of the ship to take such steps as the Flag State Surveyor directs to facilitate the inspection of any part of the ship or each machinery or equipment;
 - (h) open or require the Master of the ship to cause to be opened any hold, compartment, tank, or receptacle in or onboard the ship and inspect the contents thereof;
 - (i) require the Master of the ship to produce any —
 - (i) certificate, declaration, endorsement or record that is required by any maritime and marine environment protection Regulations to be carried on the ship; or
 - (ii) other documents, records, or books relating to the ship or its cargo that are carried on the ship;
 - (j) make copies of, or take extracts from, any such documents, records or books;
 - (k) require the Master to certify that a true copy or extracts of certificates or documents produced under paragraph (i) are true copy of the original;
 - (l) take photographs including video recordings of the ship or of equipment, or anything else, in or onboard the ship;
 - (m) require persons to answer questions;
 - (n) give any direction to dangerous goods and hazardous cargoes in accordance with this Decree and any other written law; and
 - (o) detain a ship;”;
- (c) in subsection (3)(b) by deleting “control officer” and substituting “Control Officer”.

Section 103 amended

28. Section 103 of the Decree is amended—

- (a) by deleting the heading and substituting “Power of Port Master, Jetty Masters and Enforcement and Compliance Officers”;
- (b) by inserting the following new subsection (1A) after subsection (1)—
 - “(1A) An Enforcement and Compliance Officer shall have the power to—
 - (a) at any reasonable time, go on board a ship and inspect or verify the certificates of the Master or of any crew of the ship, or any certificate or any other statutory documents relating to the ship to be produced to him or her;
 - (b) inspect or verify any other documents, records, or books relating to the ship or its cargo carried onboard the ship;
 - (c) make copies of or take extracts from statutory documents, records or books relating to the ship or its cargo;
 - (d) require the Master to certify that a true copy or extract made by Flag State Surveyors is a true copy of the original;
 - (e) take photographs including video recordings of the ship or of any equipment or anything else in or onboard the ship;
 - (f) require any person to answer questions; and
 - (g) give any direction to dangerous goods and hazardous cargoes in accordance with this Decree and any other written law.”; and
- (c) in subsection (2) by inserting “or Enforcement and Compliance Officer” after “or Jetty Master” wherever it appears.

New section inserted

29. The Decree is amended by inserting the following new section after section 103—

“Clearance of ships by Enforcement and Compliance Officer

103A.—(1) This section applies to a ship in respect of which a licence is held for coasting-trade or for fishing ships berthed at a prescribed port or place in Fiji.

(2) Subject to subsection (5), a ship to which this section applies shall not go to sea unless an Enforcement and Compliance Officer at the prescribed port or place has issued a Marine Clearance to that ship in the prescribed form.

(3) Neither the owner or operator nor the Master of a ship to which this section applies shall allow the ship to leave a prescribed port or place without the clearance required under subsection (2).

(4) Any owner, operator or master who, without reasonable excuse, fails to comply with this section commits an infringement offence in accordance with section 262 and is liable to a fine not exceeding \$2,000.

(5) The Chief Executive Officer may by way of an exemption notice, exempt a ship from obtaining a Marine Clearance in accordance with this section.

(6) An exemption notice issued in accordance with subsection (5) may be subject to such terms and conditions prescribed by the Chief Executive Officer.”

Section 109 amended

30. Section 109 of the Decree is amended in—

(a) subsection (1)(b) by deleting “territorial sea and archipelagic waters including Rotuma” and substituting “Fiji waters”; and

(b) subsection (2) by inserting “the Minister in consultation with” after “Subject to this Decree,”.

Section 110 amended

31. Section 110 of the Decree is amended in subsection (5) by inserting “the Minister in consultation with” after “shipping service,”

Section 111 amended

32. Section 111 of the Decree is amended by deleting “5 years” and substituting “1 year”.

Section 112 amended

33. Section 112 of the Decree is amended in subsection (5) by inserting “, the Minister in consultation with” after “section 109”.

Section 113 amended

34. Section 113 of the Decree is amended—

(a) by deleting “Chief Executive Officer” and substituting with “Minister” wherever it appears;

(b) in subsection (1)(a) by deleting “or” after “service;”,

(c) in subsection (1)(b) by deleting “and where, in the opinion of the Chief Executive Officer, it is desirable in the interest of safety of the ship, passengers and cargoes to do so” and by deleting “,” after “costly” and substituting “; or”; and

(d) by inserting after subsection (1)(b) the following—

“(c) maritime history of the applicant, and where, in the opinion of the Minister, it is desirable in the interest of safety of the ship, passengers and cargoes to do so.”

Section 115 amended

35. Section 115 of the Decree is amended in—

- (a) subsection (1) by inserting “Minister in consultation with the” after “The”;
and
- (b) subsection (2) by deleting “Chief Executive Officer” and substituting with “Minister” where ever it appears.

Section 116 amended

36. Section 116 of the Decree is amended—

- (a) in subsection (2) by inserting “marine aquaculture, offshore installation, marine protected areas, offshore pipelines, dive sites,” after “marina, jetty,”;
- (b) in subsection (3)(a) by deleting “navigational aid” and substituting “aids to navigation”; and
- (c) by deleting subsection (5) and substituting the following—

“(5) Any person or operator who operates a port, cargo terminal, marina, jetty, marine aquaculture, offshore installation, marine protected areas, offshore pipelines, dive sites, marine farm, or other maritime facility shall, as and when required by the Chief Executive Officer, install, remove, replace, alter or maintain an aid to navigation.”;
- (d) in subsection (6) by deleting “, Authority” after “any person”;
- (e) in subsection (7) by deleting “a navigational aid” and substituting “an aid to navigation” wherever it appears.

New section inserted

37. The Decree is amended by inserting the following new section after section 116—

“Fiji Hydrographic Services

116A.—(1) The Fiji Hydrographic Service administered by the Fiji Navy shall perform the following functions—

- (a) be responsible for the provision of hydrographic services required by the SOLAS Convention and the International Hydrographic Organisation;
- (b) collect, compile and collate hydrographic data;
- (c) maintain and disseminate hydrographic and other nautical information and nautical publications; and
- (d) maintain and disseminate nautical charts, including authorising charts for use in Fiji waters.

Taking a ship to sea without nautical charts and publications

116B.—(1) Subject to maritime Regulations the owner and master of a Fiji ship or a foreign ship in Fiji waters shall not take the ship to sea, or cause or permit another person to take the ship to sea, if—

- (a) the ship is not supplied with up-to-date—
 - (i) nautical charts (including charts in electronic form), of a suitable scale and properly corrected at the time of sailing; and
 - (ii) nautical publications, necessary for use on the particular voyage; or
- (b) the ship is supplied with the charts and publications referred to in paragraph (a), but free access to them is not made available to seafarers involved in the navigation of the ship.

(2) Any person who fails without reasonable excuse, to comply with this section, commits an infringement offence in accordance with section 262 and shall be liable to a fine not exceeding \$5,000.”

Section 118 amended

38. Section 118 of the Decree is amended in—

- (a) subsection (1) by deleting “*Gazette*” and substituting “daily newspaper and any other publication the Minister deems fit”;
- (b) subsection (3)(d) by deleting “*Gazette*, and in such”; and
- (c) subsection (4) by deleting “*Gazette*” and substituting “daily newspapers”.

Section 119 amended

39. Section 119 of the Decree is amended in subsection (6) by deleting paragraph (c) and substituting the following—

- “(c) the Port State Control Officer, Port Master and Enforcement and Compliance Officer.”.

Section 120 amended

40. Section 120 of the Decree is amended in subsection (1) by deleting paragraph (b) and substituting the following—

- “(b) foreign ships in port in Fiji waters.”

Section 121 amended

41. Section 121 of the Decree is amended by deleting the definition of “coastal or inland waters”.

Section 135 amended

42. Section 135 of the Decree is amended by inserting—

- (a) “Fiji” after “No” wherever it appears; and

(b) the following new subsection after subsection (2)—

“(2A) A foreign ship in Fiji waters shall discharge sewage in accordance with Annex 4 of the International Convention for the Prevention of Pollution from Ships of 1973 and 1978 (MARPOL).”

Section 136 amended

43. Section 136 of the Decree is amended by deleting section 136 and substituting the following—

“Discharge of Grade A treated sewage and Grade B treated sewage in Fiji waters

136.—(1) Any foreign ship may discharge Grade A treated sewage or Grade B treated sewage beyond 3 nautical miles from the baseline.

(2) Any Fiji ship engaged in domestic voyage, offshore installation or device may discharge Grade A treated sewage within Fiji waters provided—

- (a) that they are underway and making way of minimum speed of 3 knots; and
- (b) moving from one place or port to another place or port.

(3) Any Fiji ship engaged in domestic voyage may discharge Grade B treated sewage outside the nearest reef system provided—

- (a) that they are underway and making way of minimum speed of 3 knots; and
- (b) moving from one place or port to another place or port.”

Section 137 amended

44. Section 137 of the Decree is amended—

(a) by deleting subsection (1) and substituting the following—

“(1) Subject to subsections (3) to (6), the discharge of garbage from any ship is prohibited, offshore installation or device into Fiji waters is prohibited.”; and

(b) by deleting subsections (3), (4) and (5) and substituting the following new subsections—

“(3) Any Foreign ship whilst en route in the Fiji waters may discharge food wastes other than those items specified in the maritime protection regulations, when—

- (a) the food wastes have been grounded to a particle size of 25 millimeters or less, the discharge shall occur at least 3 nautical miles from the nearest land; or
- (b) if the food wastes have not been grounded, the discharge shall occur at least 12 nautical miles from the nearest land.

(4) Any Fiji ship, offshore installation or device, whilst en route in the Fiji waters, may discharge from the ship food wastes other than those items specified in the maritime protection regulations, when—

- (a) the food wastes have been grounded to a particle size of 25 millimeters or less then the discharge shall occur at least 3 nautical miles from the nearest reef system; or
- (b) if the food wastes have not been grounded, the discharge shall occur at least 12 nautical miles from the nearest reef system.

(5) Any ship when alongside offshore installations or within 500 meters of such installations may discharge food wastes, if the food waste have been grounded to a particle size of 25 millimeters or less.

(6) A person must not discharge garbage from an offshore installation except food wastes that—

- (a) are uncontaminated by other waste;
- (b) have passed through a grinder;
- (c) have been ground to a particle size of 25 millimeters or less; and
- (d) the discharge shall occur not less than 12 nautical miles from the nearest reefing system.

(7) Any person who acts in contravention of subsections (3), (4), (5) and (6) commits an infringement offence in accordance with section 262 of the Decree and shall be liable if discharge has been made from—

- (a) a ship of 15 meters or less in registered length, to a fine not exceeding \$2,000;
- (b) a ship of more than 15 meters in registered length, to a fine not exceeding \$10,000; or
- (c) an offshore installation or device, to a fine not exceeding \$15,000.

Section 154 amended

45. Section 154 of the Decree is amended—

- (a) by deleting the definition of “marine spill contingency plan” and substituting the following—

““Marine Spill Contingency Plan” means the Shipboard Marine Spill Contingency Plan, the Site Marine Spill Contingency Plan, the Provincial Marine Spill Contingency Plan, the Municipal Marine Spill Contingency Plan or the National Marine Spill Contingency Plan prepared and reviewed for the purpose of section 160;”;

- (b) by deleting the definition of “municipal marine spill contingency plan” and substituting the following—

““Municipal Marine Spill Contingency Plan” means a plan prepared by a municipal council and approved by the Chief Executive Officer or prepared by the Chief Executive Officer under section 177;”;

- (c) by inserting the following new definition after the definition of “National On-Scene Commander”—

““National Marine Spill Contingency Plan” or “NATPLAN” means the plan prepared or reviewed under Section 179 and 180;”;

- (d) in the definition of “National Marine Spill Response Strategy” by deleting “or “national plan”;

- (e) in the definition of ““Marine Spill Pollution Advisory Committee” or “Committee”” by deleting “155” and substituting “156”;

- (f) by inserting the following new definition after the definition of “on-scene commander”—

““Provincial Marine Spill Contingency Plan” means a plan prepared and reviewed for the purpose of Section 162;”;

- (g) by deleting the definition of “shipboard marine spill contingency plan” and substituting the following—

““Shipboard Marine Spill Contingency Plan” means a plan prescribed in the marine environment protection Regulations in respect of a ship and providing for the measures to be taken in respect of marine oil, harmful substance, and noxious liquid substance spills from the ship;”;

- (h) by deleting the definition of “site marine spill contingency plan” and substituting the following—

““Site Marine Spill Contingency Plan” means a plan prepared under the marine environment protection Regulations in respect of an offshore installation or device, or oil transfer site, and providing for the measures to be taken in respect of marine oil, harmful substance, and noxious liquid substance spills from the offshore installation or device, or oil transfer site, as the case may be; and”.

Section 158 amended

46. Section 158 of the Decree is amended in subsection (1)(c) by deleting “marine spill contingency plans” and substituting “Marine Spill Contingency Plans”.

Section 159 amended

47. Section 159 of the Decree is amended in the heading by deleting “response strategy” and substituting “National Marine Spill Response Strategy”.

*Section 160 amended***48.** Section 160 of the Decree is amended—

- (a) in the heading by deleting “marine spill contingency plans” and substituting “Marine Spill Contingency Plans”;
- (b) by deleting “marine spill contingency plan” and substituting “Marine Spill Contingency Plan”;
- (c) by inserting “,” after “shipboard” wherever it appears; and
- (d) in paragraph (a) by deleting “municipality” and substituting “municipal”.

*Section 161 amended***49.** Section 161 of the Decree is amended by—

- (a) inserting “The” after “Shipboard”;
- (b) inserting “Marine Spill Contingency Plan” after “Shipboard”; and
- (c) deleting “site marine spill contingency plans” and substituting “Site Marine Spill Contingency Plan”.

*Section 162 amended***50.** Section 162 of the Decree is amended—

- (a) in the heading by deleting “provincial marine spill contingency plan” and substituting “Provincial Marine Spill Contingency Plan”; and
- (b) by deleting “provincial marine spill contingency plan” and substituting “Provincial Marine Spill Contingency Plan”.

*Section 163 amended***51.** Section 163 of the Decree is amended—

- (a) in subsection (1) by deleting “municipality” and substituting “province”; and
- (b) in subsection (2)—
 - (i) in paragraph (a) by deleting “first provincial marine spill response strategy” and substituting “National Marine Spill Response Strategy”;
 - (ii) in paragraph (b) by deleting “first provincial marine spill contingency plan” and inserting “National Marine Spill Contingency Plan or NATPLAN”; and
 - (iii) in paragraph (c) by deleting “provincial marine spill contingency plans” and substituting “Provincial Marine Spill Contingency Plans”.

Section 164 amended

52. Section 164 of the Decree is amended by deleting “marine spill contingency plan” and inserting “Provincial Marine Spill Contingency Plan”.

Section 165 amended

53. Section 165 of the Decree is amended—

- (a) in subsection (1)—
 - (i) by deleting “provincial marine spill contingency plan” and substituting “Provincial Marine Spill Contingency Plan”; and
 - (ii) in paragraph (a) by deleting “national marine spill contingency plan” and substituting “National Marine Spill Contingency Plan or NATPLAN”; and
- (b) in subsections (2) and (3) by deleting—
 - (i) “under section 171” and substituting “under section 163”;
 - (ii) “under section 172” and substituting “under section 164”; and
 - (iii) “marine spill contingency plan” and substituting “Provincial Marine Spill Contingency Plans”.

Section 166 amended

54. Section 166 of the Decree is amended—

- (a) in subsection (1)—
 - (i) by deleting “marine spill contingency plan” and substituting “Provincial Marine Spill Contingency Plan” wherever it appears; and
 - (ii) by deleting “sections 171 or 172” and substituting “section 163”; and
- (b) in subsections (2) and (3) by deleting “provincial marine spill contingency plan” and substituting “Provincial Marine Spill Contingency Plan”.

Section 167 amended

55. Section 167 of the Decree is amended in—

- (a) subsection (1) by deleting “provincial marine spill contingency plan” and substituting “Provincial Marine Spill Contingency Plan”; and
- (b) subsection (2) by deleting “marine spill contingency plan” and substituting “Provincial Marine Spill Contingency Plan”.

Section 168 amended

56. Section 168 of the Decree is amended—

- (a) by deleting “provincial marine spill contingency plan” and substituting “Provincial Marine Spill Contingency Plan” wherever it appears; and
- (b) by deleting “national marine spill contingency plan” and substituting “National Marine Spill Contingency Plan or NATPLAN”.

Section 169 amended

57. Section 169 of the Decree is amended—

- (a) by deleting “provincial marine spill contingency plan” and substituting “Provincial Marine Spill Contingency Plan” wherever it appears; and
- (b) in subsection (2) by deleting “Authority” after “the costs of the” and substituting “Chief Executive Officer”.

Section 170 amended

58. Section 170 of the Decree is amended—

- (a) in the heading by deleting “municipality marine spill contingency plan” and substituting “Municipal Marine Spill Contingency Plan”; and
- (b) by deleting “municipality marine spill contingency plan” and substituting “Municipal Marine Spill Contingency Plan”.

Section 171 amended

59. Section 171 of the Decree is amended—

- (a) in the heading by deleting “municipality marine spill contingency plans” and substituting “Municipal Marine Spill Contingency Plans”;
- (b) in subsection (1) by deleting “municipal marine spill contingency plan” and substituting “Municipal Marine Spill Contingency Plan”; and
- (c) in subsection (2)—
 - (i) paragraph (a) by deleting “first municipal marine spill response strategy” and substituting “National Marine Spill Response Strategy”;
 - (ii) paragraph (b) by deleting “first municipal marine spill contingency plan” and substituting “National Marine Spill Contingency Plan or NATPLAN”; and
 - (iii) paragraph (c) by deleting “municipality marine spill contingency plans” and substituting “the Municipal Marine Spill Contingency Plans”.

Section 172 amended

60. Section 172 of the Decree is amended—

- (a) in the heading by deleting “municipality marine spill contingency plans” and substituting “Municipal Marine Spill Contingency Plans”;
- (b) by deleting “marine oil spill, harmful substance, and noxious liquid substance contingency plan” and substituting “Municipal Marine Spill Contingency Plan”; and
- (c) by deleting “marine spill contingency plan” and substituting “Municipal Marine Spill Contingency Plan”.

Section 173 amended

61. Section 173 of the Decree is amended—

- (a) in the heading by deleting “municipality marine spill contingency plans” and substituting “Municipal Marine Spill Contingency Plans”;
- (b) in subsection (1)(b) by inserting “environment” after “marine”;
- (c) in subsection (2)—
 - (i) by deleting “marine spill contingency plan” and substituting “Municipal Marine Spill Contingency Plan”; and
 - (ii) paragraph (a) by deleting “municipality marine spill contingency plans” and substituting “Municipal Marine Spill Contingency Plans”.
- (d) in subsection (3) by deleting “marine spill contingency plan” and substituting “Municipal Marine Spill Contingency Plan”.

Section 174 amended

62. Section 174 of the Decree is amended—

- (a) in the heading by deleting “municipality marine spill contingency plan” and substituting “Municipal Marine Spill Contingency Plan”;
- (b) in subsection (1) by deleting “marine spill contingency plan” and substituting “Municipal Marine Spill Contingency Plan”; and
- (c) in subsections (2) and (3) by deleting “municipality marine spill contingency plan” and substituting “Municipal Marine Spill Contingency Plan” wherever they appears.

Section 175 amended

63. Section 175 of the Decree is amended—

- (a) in the heading by deleting “municipality marine spill contingency plans” and substituting “Municipal Marine Spill Contingency Plans”;
- (b) in subsection (1) by deleting “municipality marine spill contingency plan” and substituting “Municipal Marine Spill Contingency Plan”; and
- (c) in subsection (2) by deleting “marine spill contingency plan” and substituting “Municipal Marine Spill Contingency Plan”.

Section 176 amended

64. Section 176 of the Decree is amended—

- (a) in the heading by deleting “Municipality marine spill contingency plan” and substituting “Municipal Marine Spill Contingency Plan”;
- (b) by deleting “municipality marine spill contingency plan” and substituting “Municipal Marine Spill Contingency Plan” wherever it appears;

- (c) by deleting “national marine spill response strategy” and substituting “National Marine Spill Response Strategy”; and
- (d) by deleting “national marine spill contingency plan” and substituting “National Marine Spill Contingency Plan or NATPLAN”.

*Section 177 amended***65.** Section 177 of the Decree is amended—

- (a) in the heading by deleting “Municipality marine spill contingency plan” and substituting “Municipal Marine Spill Contingency Plan”;
- (b) by deleting “municipality marine spill contingency plan” and substituting “Municipal Marine Spill Contingency Plan” wherever it appears; and
- (c) in subsection (1) by deleting “marine spill contingency plan” and substituting “Municipal Marine Spill Contingency Plan”.

*Section 178 amended***66.** Section 178 of the Decree is amended—

- (a) in the heading by deleting “national marine spill contingency plan” and substituting “National Marine Spill Contingency Plan or NATPLAN”;
- (b) by deleting “national marine spill contingency plan” and substituting “National Marine Spill Contingency Plan or NATPLAN”; and
- (c) in paragraphs (a) and (b) by inserting “province or” before “municipality”.

*Section 179 amended***67.** Section 179 of the Decree is amended—

- (a) in the heading by deleting “national marine spill contingency plan” and substituting “National Marine Spill Contingency Plan or NATPLAN”;
- (b) in subsection (1) by deleting “national marine spill contingency plan” and substituting “National Marine Spill Contingency Plan or NATPLAN”; and
- (c) in subsection (2) by deleting “plan” and substituting “NATPLAN”.

*Section 180 amended***68.** Section 180 of the Decree is amended—

- (a) in the heading by deleting “national plan” and substituting “NATPLAN”;
- (b) by deleting “national plan” and substituting “NATPLAN” wherever it appears;
- (c) in subsection (1) by deleting “national marine spill contingency plan” and substituting “National Marine Spill Contingency Plan or NATPLAN”; and

- (d) in subsection (3)—
 - (i) by deleting “officer” and substituting “Officer”;
 - (ii) in paragraph (a) by deleting “in the internal waters of Fiji or Fiji’s marine spaces” and substituting “within the Fiji waters”; and
 - (iii) in paragraph (b) by inserting “Marine” after “National”.

Section 181 amended

69. Section 181 of the Decree is amended—

- (a) in subsection (1)—
 - (i) by deleting “in the internal waters of Fiji or Fiji’s marine spaces”;
 - (ii) by deleting “or,” after “he or she must notify the Authority”;
 - (iii) by deleting “territorial sea, the Authority” and substituting “Fiji waters,”; and
 - (iv) by inserting “or the provincial council within whose province the spill is located” after “municipality the spill is located,”;
- (b) in subsection (2)—
 - (i) by deleting “internal waters of Fiji or Fiji’s marine spaces” and substituting “Fiji waters”;
 - (ii) by deleting “site marine spill contingency plan” and substituting “Site Marine Spill Contingency Plan”;
 - (iii) by inserting “environment” after “under the marine”;
 - (iv) in paragraph (a)—
 - A. by inserting “provincial council or the” before “municipal council”; and
 - B. by inserting “province or” before “municipality”;
 - (v) in paragraph (b) by deleting “not located within the municipality of a municipal council” and substituting “outside the boundaries of the municipality or the province”; and
- (c) in subsection (3) by deleting “Fiji’s marine spaces” and substituting “Fiji waters”; and
- (d) in subsection (4) by deleting “marine spill contingency plan” and substituting “Marine Spill Contingency Plan”.

Section 195 amended

70. Section 195 of the Decree is amended—

- (a) in the heading by deleting “marine spill contingency plans” and substituting “Marine Spill Contingency Plans”;

- (b) in subsection (1) by deleting “shipboard or site marine spill contingency plan” and substituting “Shipboard Marine Spill Contingency Plan or Site Marine Spill Contingency Plan” wherever it appears; and
- (c) in subsection (2) by deleting “provincial marine spill contingency plan” and substituting “Provincial Marine Spill Contingency Plan”.

Section 214 amended

71. Section 214 of the Decree is amended in subsection (1) by deleting “in the prescribed form or, if there is no prescribed form,”.

Section 230 amended

72. Section 230 of the Decree is amended by inserting “.” after “purpose”.

Section 240 amended

73. Section 240 of the Decree is amended in subsection (1)—

- (a) paragraph (b) by inserting “, Protocol and Codes” after “Convention”;
- (b) paragraph (i) by deleting “pilotage limits” and substituting “pilotage area” and by deleting “pilotage licence” and substituting “pilot licence”.
- (c) paragraph (cc) by deleting “and” after “;”;
- (d) by deleting paragraph (dd) and substituting the following—
 - “(dd) standards and requirements for mooring buoys;
 - (ee) prescribing maritime labour standards and requirements for seafarers;
 - (ff) prescribing standards and requirements for pleasure crafts; and
 - (gg) prescribing standards and requirements for ships bunkers;
 - (hh) prescribing standards and requirements for pollution by substances other than oil on the High Seas; and
 - (ii) any other matter contemplated by a provision of this Decree.”

Section 243 amended

74. Section 243 of the Decree is amended by deleting paragraph (e) and substituting the following—

“(e) sea route licenses.”

Section 245 amended

75. Section 245 of the Decree is amended by deleting subsection (4).

Section 246 amended

76. Section 246 of the Decree is amended—

- (a) in paragraphs (a) and (b) by inserting “and marine environment protection Regulations” after “maritime Regulations” wherever it appears; and
- (b) in paragraph (d) by deleting “fee” and substituting “fines”.

Sections deleted

77. Sections 264, 265, 266 and 267 of the Decree are hereby deleted.

Section 268 amended

78. Section 268 of the Decree is amended in subsection (3) by deleting “ship,”.

Section 277 amended

79. Section 277 of the Decree is amended in subsection (1)(a) by deleting “executive” and substituting “Executive”.

Section 284 amended

80. Section 284 of the Decree is amended by deleting paragraph (b) and substituting the following paragraph—

“(b) by deleting section 29 (2); and”.

Schedule 1 amended

81. The Decree is amended by deleting Schedule 1 and substituting the following—

“SCHEDULE 1
(Section 2)

LIST OF CONVENTIONS

1. Articles of, and Annexes to, the International Convention on Load Lines 1966, Protocol 1998, and future amendments to the Conventions and Protocol.
2. Convention on the International Regulations for Preventing Collisions at Sea, 1972, and future amendments to the Conventions.
3. International Convention for the Safety of Life at Sea, 1974, Protocol 1978, Protocol 1988, all mandatory Codes and future amendments to the Conventions, Protocol & Codes.
4. International Convention on Standards of Training Certification and Watchkeeping (STCW), 1978 and future amendments to the Convention and Code.
5. International Convention Relating to the Limitation of the Liability of Owners of Sea-Going Ships and Protocol 1957 and future amendments to the Conventions and Protocol.
6. International Convention on Tonnage Measurement of Ships, 1969 and future amendments to the Convention.
7. International Convention for the Prevention of Pollution from Ships of 1973, Protocol 1978, Protocol 1997 and future amendments to the Conventions and Protocols.
8. International Convention on Maritime Search and Rescue 1979 and future amendments to the Convention.
9. International Convention for the Control and Management of Ships Ballast Water and Sediments (BWM Convention) 2004 and future amendments to the Convention.

10. International Convention on the Control of Anti-Fouling Systems on Ships 2001 and future amendments to the Convention.
11. International Convention on Facilitation of International Maritime Traffic 1965 and future amendments to the Convention.
12. International Convention on Oil Pollution Preparedness, Response and Cooperation, OPRC-HNS Protocol 2000 and future amendments to the Convention and Protocols.
13. International Convention on Salvage, 1989 (Salvage Convention) and future amendments to the Convention.
14. Maritime Labour Convention 2006 and future amendments to the Convention.
15. International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 and future amendments to the Convention.
16. Protocol Relating to the Intervention on the High Seas in Cases of Pollution by Substances other than Oil 1973 and future amendments to the Protocol.
17. Convention on the International Maritime Mobile Satellite Organisation 1976 and future amendments to the Convention.”

Amendment to references in the Decree

82. The Decree is amended—

- (a) by deleting “authorised person” and “any authorised person” or “person duly authorised” or “person authorised” and substituting “authorised officer” wherever it appears;
- (b) by deleting “erect”, “erects” and “erected” and substituting “install”, “installs” and “installed” respectively wherever it appears;
- (c) in Parts 10, 11, 12, 13, 14 and 15 excluding sections 240, 245 and 246 by deleting “maritime regulations” and substituting “marine environment protection Regulations” wherever it appears;
- (d) by deleting “marine protection Regulations” and substituting “marine environment protection Regulations” wherever it appears;
- (e) by deleting “Maritime Appeal Authority” and substituting “Maritime Appeal Tribunal” wherever it appears;
- (f) by deleting “Maritime Appeals Committee” and substituting “Maritime Appeal Tribunal” wherever it appears; and
- (g) by deleting “section 264” and substituting “section 69” wherever it appears.

*Office of the Attorney-General
Suvavou House
Suva*

December 2014

MARITIME TRANSPORT (AMENDMENT) BILL 2014

EXPLANATORY NOTE

(This note is not part of the Bill and is intended only to indicate its general effect)

1.0 BACKGROUND

1.1 This Bill seeks to amend the Maritime Transport Decree 2013 (“Decree”).

2.0 CLAUSES

2.1 The main objectives of the Maritime Transport (Amendment) Bill 2014 are to facilitate the introduction of the 30 maritime Regulations and the 4 marine environment protection Regulations in preparation for the commencement of the Decree. The Decree including the changes incorporated by the Bill and the Regulations will also see a new era for maritime safety in Fiji and advancement in the protection of our marine environment.

A second and important objective of the Amendment Bill is to incorporate the relevant requirements and introduce provisions in the Decree to reflect Fiji’s obligations under the Maritime Conventions and Protocols Fiji has ratified or has endorsed for ratification.

Clause 1 provides for the short title and the commencement provision.

Clause 2 The following are the notable changes to certain definitions in section 2 of the Decree for the purposes of clarity and to align the definitions with the changes in the Bill—

- (i) the term “Articles of Agreement” was deleted and substituted with “Seafarers Employment Agreement” which takes into account the requirements of the Maritime Labour Convention 2006 and Employment Relation Promulgation 2007 with respect to seafarers working conditions;
- (ii) the definition of “commercial ship” was amended to exclude a pleasure craft since the commercial requirements are not applicable to the private use of pleasure craft;

- (iii) provides for the insertion of four new definitions namely “Enforcement and Compliance Officer”, “Exclusive Economic Zone”, “Flag State Surveyor” and “Mooring Buoys” which are terms reflected in the newly introduced maritime Regulations and marine environment protection Regulations;
- (iv) the definition of “Fiji waters” is amended to delete inland waters and substitute with “internal waters” which includes inland waters;
- (v) the definition of “Maritime Appeals Committee” and “Maritime Appeals Authority” are deleted and substituted with “Maritime Appeals Tribunal” to reflect its establishment under Section 62 of the Decree;
- (vi) the definition of “Master” to include any persons issued with a Certificate of Competency by the Chief Executive Officer in accordance with Section 24 of the Decree which authorises the Chief Executive Officer to issue such certificates;
- (vii) the definition of “Pilot” is amended to include any persons in possession of a current pilot license issued by the Chief Executive Officer; and
- (viii) the definition of “serious harm” and “seriously harmed” is amended to include a list of several conditions of permanent or temporary loss of bodily functions and incorporating the definition of serious harm that is reflected in the Employment Relations Promulgation 2007.

Clause 3 amend section 4 of the Decree to state that the Maritime Safety Authority (“MSAF”) shall be the designated and the liaising Authority for all the Conventions, protocols and mandatory codes regarding maritime affairs. This is in accordance with the requirement of International Maritime Organisation of which Fiji a member state.

Clauses 4-5 amended for the purposes of providing clarity and editorial changes in section 9 and 11.

Clauses 6-10 amended for the purposes of providing clarity in sections 12, 14, 21, 23 and 24 of the Decree with regard to the proper usage of maritime terms such as aids to navigation and other terminology.

- Clause 11 provides new provisions for the suspension and withholding of maritime documents or documents of recognition by the Chief Executive Officer where the holder or seafarers of such a document acts in contravention with the provisions of the Decree or where the seaworthiness of a ship is called into question.
- Clauses 12-13 amended for the purposes of providing clarity in sections 31 and 32 of the Decree.
- Clause 14 amends section 33 of the Decree to give the Minister the power to issue necessary exemptions for any issue or matter warranted under the Decree. This is to allow exemptions to be issued to ship owners and operators and to seafarers where adhering to the requirements of the Decree or the Maritime Conventions would not be practicable or exemption of fees is required.
- Clauses 15-18 amended for the purposes of providing clarity in sections 34, 37, 38 and 39 of the Decree with regard to regulating the certification of ships and seafarers with respect to the survey and registration of ships and the manning of ships by seafarers holding relevant documentations.
- Clause 19 amends section 40 of the Decree to provide for the expulsion of any foreign flag ships that breaches Fiji's maritime laws with regard to safety, not carrying the appropriate and valid documentation and the use of any maritime equipment that is hazardous or endangers or is likely to endanger human life and property.
- Clause 20 amends section 45 of the Decree to provide for the Minister to request for a marine inquiry into any major accident in Fiji waters involving Fiji registered ship and to suspend or revoke the maritime documents of those ships involved in the accident where it is necessary to do so.
- Clause 21 deletes sections 62 to 75 of the Decree to provide for the establishment of the Maritime Appeal Tribunal and to provide for its functions, compositions, decisions, tenure of office, revocation, resignation, vacation of office and procedures for further appeals.
- Clause 22 inserts new provisions in the Decree being sections 75(A) to 75(C) to provide for the powers of the marine inquiry, the re-hearing provisions of the marine inquiry, powers of the Minister to restore maritime documents and the repeal provisions.

- Clauses 23-24 amended for the purposes of providing clarity in section 92 and ensuring that only relevant documents that are issued by the Chief Executive Officer under the Decree and the Regulations such as documents pertaining to the notification of accidents, incidents and mishaps, the delegation, authorisation and notification of the recognition of a document, and any exemptions are recorded in the Maritime Register.
- Clause 25 amends section 100 of the Decree to designate MSAF as the World-Wide Navigational Service Coordinator for Fiji tasked with disseminating maritime safety information to all the maritime stakeholders and members of the public.
- Clause 26 amended for the purposes of providing clarity in section 101 and allowing for the appointment of MSAF enforcement and compliance officers by the Chief Executive Officer for the purpose of carrying out all or any other function vested in the Chief Executive Officer under the Decree. These functions include the control of safe approaches to port, safe anchorages, inspections and survey of ships.
- Clause 27 provides for the powers of enforcement and compliance officers and also expands on the powers of flag state surveyors to include boarding, inspections and verification of documents and gathering evidence of non-conformances in section 102.
- Clause 28 provides for the expansion on the powers of enforcement and compliance officers to include boarding, inspections and verification of documents and gathering evidence of non-conformances and for provisions for marine clearance of ships in section 103 of the Decree.
- Clauses 29-35 amended for the purposes of providing clarity in sections 109,110, 111, 112, 113 and 115 of the Decree with regards to the administration of coasting-trade licence, sea route licensing, and coasting trade permits by MSAF and gives the Minister the power to grant these licences and permits in consultation with the Chief Executive Officer.
- Clause 36 amends section 116 of the Decree for the purposes of providing clarity with regards to the requirements of MSAF relating to the proper maintenance and management of aids to navigation which includes lighthouses and beacons.

- Clause 37 amends the Decree by inserting a new section 116A to provide for the administration of the Fiji Hydrographic Services by the Fiji Navy which will be responsible for carrying out hydrographic surveys in Fiji waters and the dissemination of current nautical charts and publications in compliance to the requirements of the International Hydrographic Organisation and the International Maritime Organisation standards.
- Clause 38 amends section 118 of the Decree to provide clarity on the administration and organisation of special maritime events in Fiji with respect to publication of a notice of the special maritime event in a daily newspapers or a media the Minister deems fit. The notice shall describe the event, the designated area and the period during which the notice applies.
- Clause 39 provides for the inclusion of the enforcement and compliance officer as enforcement officers for the purpose of special maritime events or occasions to preserve the safety of people, ships, seaplanes etc in section 119 of the Decree.
- Clause 40 provides specific mention in section 120 of the Decree to include foreign ships in Fiji ports in carriage of dangerous goods to ensure that these foreign ships adhere to the provisions of the Decree relating to the opening and testing of packages containing dangerous goods.
- Clause 41 provides for the deletion of the definition “coastal or inland waters” in section 121 of the Decree since the term Fiji waters is already defined in Section 2 of the Decree covers all waters in Fiji.
- Clause 42 amends section 135 of the Decree to make provisions for the conditions to be complied with by foreign ships in discharging sewage whether grade A or B in Fiji waters in accordance with the MARPOL Convention.
- Clause 43 amends section 136 of the Decree to set out the requirements to be complied with by Fiji ships and foreign ships for the discharge of grade A and grade B treated sewage in Fiji waters.
- Clause 44 amends section 137 of the Decree to provide for the requirements to be complied with by Fiji ships and foreign ships when discharging garbage including food waste in Fiji waters.

- Clause 45 provides for the amendments of definitions in Section 154 of the Decree which include Marine Spill Contingency Plan, National Marine Spill Contingency Plan or NATPLAN, Municipal Marine Spill Contingency Plan, Provincial Marine Spill Contingency Plan and site marine spill contingency plan to align to changes made to part 11 of the Decree.
- Clauses 46-72 amended for the purposes of providing clarity from sections 158 to 181, 195, 214 and 230 with regard to the use of the use of the term Provincial Marine Contingency Plan, Marine Spill Contingency Plan and Site marine Spill Contingency Plan which are newly introduced terms. These plans specify the emergency oil spill response procedures that are required to be put in place by municipal and provincial councils, oil transfer sites and ships trading in Fiji waters.
- Clause 73 amends section 240 of the Decree for the purposes of providing clarity and includes the power of the Minister to make regulations for the purpose of prescribed standard and requirements under the Bunker Convention.
- Clause 74 provides for the inclusion of sea route licences and to standardise the term used in issuance of such licences in section 243 of the Decree and the regulations to this Decree.
- Clause 75 provides for the removal of the Minister's obligation to publish notices in the media and publish in the Gazette before the making of any regulations in Section 245 of the Decree. This task shall be managed by MSAF which includes the publication of the notice and hosting of consultations with stakeholders prior to the making of any regulations.
- Clause 76 amended for the purposes of providing clarity in section 246 of the Decree with regard to the inclusion and the use of the term marine environment protections Regulations which specifically relates to the protection of the marine environment.
- Clause 77 provides for the deletion of sections 264 to 267 which stipulates the rights to an appeal to the Maritime Appeals Committee and its procedures, these same rights and procedures to appeal are now available under the Maritime Appeal Tribunal established under section 62 of this Bill.

- Clauses 78-79 amended for the purposes of providing clarity in sections 268 and 277 of the Decree to state that the consent of the occupier of a building, dwelling house or place is required by a duly authorised officer who should also be in possession of a warrant issued by the Court prior to entering such building, dwelling house or place for the purpose of verifying or validating contravention of the requirements of the Decree and the regulations.
- Clause 80 amends section 284 of the Decree to clarify the consequential amendment to section 29(2) of the Maritime Safety Authority of Fiji Decree 2009 with regard to the substitution of the Maritime Appeals Committee by the Maritime Appeal Tribunal established under section 62 of this Bill.
- Clause 81 amends Schedule 1 to provide for the inclusion of future amendments to the Conventions, Protocol and Codes in order to allow Fiji to adopt future changes to international instruments Fiji is a party to.
- Clause 82 provides for the editorial amendments in various sections of the Decree with regard to the proper usage of newly introduced terms in this Bill such as marine environment protections Regulations, authorised officers and Maritime Appeal Tribunal.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The Act comes under the responsibility of the Minister responsible for Infrastructure and Transport.

A. SAYED-KHAIYUM
Attorney-General