

GOVERNMENT OF FIJI
MARITIME TRANSPORT DECREE 2013
(DECREE NO. 20 OF 2013)

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SCHEDULE 1—LIST OF CONVENTIONS

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SCHEDULE 3—FORM OF SUMMONS

IN exercise of the powers vested in me as the President of the Republic of Fiji and the Commander in Chief of the Republic of Fiji Military Forces by virtue of the Executive Authority of Fiji Decree 2009, I hereby make the following Decree—

FOR THE IMPLEMENTATION OF FIJI'S OBLIGATIONS UNDER THE IMO CONVENTIONS AND TO ENSURE THAT PARTICIPANTS IN THE MARITIME TRANSPORT SYSTEM ARE RESPONSIBLE FOR THEIR ACTIONS AND TO CONSOLIDATE RELATED MARITIME LAWS INCLUDING THE PROTECTION OF THE MARINE ENVIRONMENT AND FOR RELATED MATTERS

PART 1—PRELIMINARY

Short title and commencement

1.—(1) This Decree may be cited as the Maritime Transport Decree 2013, and shall come into force on a date or dates appointed by the Minister by notice in the *Gazette*.

(2) The Minister may appoint different dates for coming into force of different sections or Parts of this Decree.

Interpretation

2. In this Decree, unless the context otherwise requires—

"accident" means an occurrence that involves a ship and in which—

(a) a person is seriously harmed as a result of—

(i) being on the ship;

(ii) direct contact with any part of the ship, including any part that has become detached from the ship;

(iii) direct exposure to the wash of the ship or interaction (other than direct contact) between 2 ships; or

(iv) being involved in the salvage of any ship—

except where the injuries are self-inflicted or inflicted by other persons, or when injuries are to stowaways hiding outside the areas normally available to passengers and crew;

(b) the ship sustains damage or structural failure that—

(i) adversely affects the structural strength, performance, or seaworthiness of the ship;

(ii) would normally require major repair or replacement of the affected component; or

(iii) poses a threat to the safety of people on board the ship;

(c) there is a complete or partial failure of machinery or equipment that affects the seaworthiness of the ship;

(d) there is a loss of, or damage to, or movement of, or change in the state of the cargo of the ship which poses a risk to the ship or other ships;

(e) there is a significant loss of, or significant damage to property, not being the cargo carried by the ship or the property of any person (whether or not on board the ship), whether or not the loss or damage arises from an interaction between 2 ships;

(f) there is a loss or escape of any substance or thing that may—

(i) result, or has resulted, in serious harm to any person;

(ii) pose a risk, or has resulted in damage, to the ship or other ships; or

(iii) pose a risk, or has resulted in damage, to any property, whether or not on board the ship;

(g) a person is lost at sea, whether or not subsequently found; or

(h) the ship is foundering, capsizing, being abandoned, stranding, missing, or has foundered, capsized, been abandoned, stranded, been in a collision, or has had a major fire on board;

"aids to navigation" includes—

- (a) any lightship and any floating or other light exhibited for the guidance of ships;
- (b) any description of a fog signal not carried on a ship;
- (c) all marks and signs in aid of marine navigation;
- (d) any electronic or other aid to marine navigation not carried on board any ship;

"archipelagic waters" means all areas of sea contained within the straight baselines bounded by the base points;

"Articles of Agreement" means an agreement including a contract 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;

"authorised officer" means any person or persons authorised for any purpose under this Decree by the Chief Executive Officer;

"Authority" means the Maritime Safety Authority of Fiji established under the Maritime Safety Authority of Fiji Decree 2009;

"base lines" has the same meaning as under section 2 of the Marine Spaces Act (Cap. 158A);

"base points" means a position of the outermost of land with an altitude of zero based on Lowest Astronomical Tide (LAT) which is either determined by range and bearing from a concrete Base point Reference Monument (BRM) or based on topographic maps, chart and remotely sensed imagery;

"Chief Executive Officer" means the Chief Executive Officer of the Maritime Safety Authority of Fiji;

"commercial ship" means a ship that is used for hire or reward and including but not limited to—

- (a) a ship that is provided for transport or sport or recreation by or on behalf of any institution, hotel, motel, place of entertainment, or other establishment or business;
- (b) a ship that is used on any voyage for pleasure if it is normally used or intended to be normally used as a fishing ship or for the carriage of passengers or cargo for hire or reward;
- (c) a ship that is operated or provided by any club, incorporated society, trust, or business;

but does not include—

- (i) a pleasure craft;
- (ii) a ship solely powered manually; or
- (iii) a ship solely powered by sail;

"continental shelf" or "continental shelf of Fiji" has the same meaning as in section 2 of the Continental Shelf Act (Cap. 149);

"Convention" or "Conventions" in relation to this Decree means such Conventions as listed under Schedule 1 and as may be declared for the purposes of this Decree and includes the amendments to such Conventions, being amendments to which Fiji is a party that are declared in the same manner;

"crew" means the persons employed or engaged in any capacity on board a ship, except a master, a pilot, or a person temporarily employed on the ship while it is in port;

"demise charter" has the same meaning as in the Ship Registration Decree 2013;

"emergency directions" means emergency directions issued by the Minister under this Decree;

"employer" means a person who employs or engages any other person, other than a person temporarily employed on the ship while it is in port or a pilot to do any work for hire or reward on board a commercial ship or pleasure craft;

"fail" includes refuse; and failure has a corresponding meaning;

"Fiji-based operator" means—

(a) a Fiji national who is ordinarily resident or carries on business in Fiji; or

(b) a Fiji National and any other person where the Fiji national is in a position to control the exercise of the rights and powers of the charterers under the charter agreement;

"Fiji national" means—

(a) a Fiji citizen; or

(b) a body corporate established by or under the law of Fiji;

"Fiji ship" means a ship that is registered under the Ship Registration Decree 2013;

"Fiji waters" means all the waters in Fiji comprising of—

(a) the territorial seas;

(b) the archipelagic waters;

(c) the inland waters; and

(d) the exclusive economic zone;

"fishing ship" means any ship or boat used for taking fish by way of trade or business; and includes a ship that is recognised by the Authority as being engaged in fisheries research;

"foreign ship" means any ship that is not a Fiji ship;

"gross tonnage or gross tons" in relation to a ship, means the gross tonnage of that ship determined or recognised in accordance with the provisions of this Decree or any maritime Regulations, or where a ship has been assigned alternative gross tonnages, the higher of those gross tonnages;

"harm" means illness, injury, or both; and to harm and harmed have corresponding meanings;

"hazard" means an activity, arrangement, circumstance, event, occurrence, phenomenon, process, situation, or substance, whether or not arising or caused on board a ship that is an actual or potential cause or source of harm, including wrecks and derelict ships and "hazardous" has a corresponding meaning;

"incident" means any occurrence, other than an accident or a mishap, that is associated with the operation of a ship and affects or could affect the safety of operation;

"internal waters of Fiji" means the internal waters of Fiji as defined by section 3 of the Marine Spaces Act including inland waters open to, or used for, navigation on the landward side of internal waters;

"Jetty Master" means a person appointed under section 101 for the purpose of controlling movement of ships within jetties, wharves and marinas;

"load lines" means the marks indicating several maximum depths to which a ship is permitted to be loaded in various circumstances prescribed by maritime Regulations or Regulations made under this Decree;

"marine protection Regulations" means marine protection Regulations made by the Minister under Part 15;

"Maritime Appeal Authority" means the Authority established under section 62 for the purposes of hearing appeals against decisions made under section 36;

"Maritime Appeals Committee" means the committee appointed under section 29 (2) of the Maritime Safety Authority of Fiji Decree 2009, for the purposes outlined under that Decree and section 264 of this Decree;

"maritime document" means those documents that certify the seaworthiness of a ship and the suitability of a person to carry out the relevant maritime activity and such documents include—

- (a) any license, permit, certificate or other document issued under Part 3 to, or in respect of any person, ship, cargo, maritime procedure, or maritime equipment; and
- (b) any foreign license, permit, certificate, or other document recognised by the Chief Executive Officer under section 25 or accepted by the Chief Executive Officer under section 26;

"marine protection documents" means those documents that certify the suitability of—

- (a) a ship to carry environmentally harmful substance including but not limited to noxious liquid substances and oil, onboard overseas bound cargo-carrying ships; and
- (b) offshore sites to discharge harmful substances associated with the operations;

"maritime equipment" means anything that comprises or is intended to comprise of any part of a ship or that is intended to be installed in or fitted or supplied to a ship and includes—

- (a) safety equipment;
- (b) nautical instruments and publications, whether or not computerised or electronic, used or intended to be used in the operation of a ship;
- (c) electronic navigational aids used or intended to be used in the operation of a ship;
- (d) radio and other communication equipment;

(e) fuel and other similar consumable items necessary for the operation of a ship;

"maritime Regulations" means maritime Regulations made by the Minister under this Decree;

"master" means any person except a pilot having command or charge of any ship at a particular time;

"Minister" means the Minister responsible for Transport;

"Ministry" means the Ministry responsible for Transport;

"mishap" means an event that—

(a) causes any person to be harmed; or

(b) in different circumstances, might have caused any person to be harmed;

"municipality" of a city or town, includes ports and marinas that are located both within and outside the municipal boundary but within the province;

"nautical instruments and publications" means those instruments and publications including computerised or electronic instruments and publications used or intended to be used in the navigation of a ship;

"navigational aid" means any aid to marine navigation that is carried on board any ship;

"net tonnage" in relation to any ship means—

(a) the net tonnage of that ship determined or recognised in accordance with the provisions of this Decree; or

(b) where a ship has been assigned alternative net tonnages, the higher of those net tonnages;

"offshore installation" or "device" means any installation, or equipment or other property whatsoever that is constructive, erected or placed in Fiji waters for the purpose of the exploration of the sea-bed or subsoil or the exploitation of mineral resources or natural resources thereof but does not include a pipeline;

"operate" in relation to a ship, means to sail or use the ship, or cause or permit the ship to sail, be used, or be in any place, whether or not the person is present with the ship; and operating, operation, and operator shall have corresponding meanings;

"operating in Fiji waters" means any activity undertaken in Fiji waters that involves calling in to a Fiji port; but does not include the passage by a ship through Fiji waters that does not involve calling in to a Fiji port;

"owner" in relation to—

(a) a ship registered in Fiji under the Ship Registration Decree 2013, means the registered owner of the ship;

(b) in relation to a ship registered in any place outside Fiji, means the registered owner of the ship;

(c) a fishing ship, other than one to which paragraph (a) or paragraph (b) applies, means the person registered as the owner under section 6 of the Fisheries Act (Cap. 158);

(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 management of the ship, includes the charterer or other person who is for the time being so responsible; and

(e) an unregistered ship or a registered ship that does not have a registered owner, means the person who is responsible for the management of the ship;

"participant" means any person who engages in or carries out any maritime activity for which a maritime document is required;

"passenger" means any person on a ship, other than—

(a) the master and members of the crew, and any other person employed or engaged in any capacity on board the ship on the business of the ship;

(b) a person on board the ship either in pursuance of an obligation laid upon the master to carry shipwrecked, distressed, or other persons, or by reason of any circumstance that neither the master nor the owner nor the charterer (if any) could have prevented or forestalled; and

(c) a child under the age of one year;

"pilot" in relation to any ship, means any person not being the master or a member of the crew of the ship who has the conduct of the ship;

"plant" includes—

(a) appliance, equipment, fitting, furniture, implement, machine, machinery, tool, and vehicle;

(b) part of any plant, the controls of any plant, and anything connected to any plant;

"pleasure craft" means a ship that is used exclusively for the owner's pleasure or as the owner's residence, and is not offered or used for hire or reward;

"port" means prescribed ports including marinas, wharves, harbour, including a port that is declared under the Sea Ports Management Act 2005, the Customs Act 1986, and under section 117 of this Decree;

"Port Master" means the Port Master appointed under section 101 for the purpose of controlling the movement of ships within prescribed ports;

"Port State Control Officer" means a person appointed under section 101 for the purpose of inspecting foreign registered ships;

"prescribed" means prescribed by this Decree or by Regulations made under this Decree or made under other written law;

"proper officer" in relation to any country other than Fiji, means—

(a) the person who is, by the law of that country, authorised or required—

(i) to do or perform the act or duty to which reference is made in the provisions of this Decree in which the expression occurs; or

(ii) to do or perform, in relation to ships registered in or belonging to that country, any act

or duty of the same nature as the act or duty to which reference is made in the provisions of this Decree in which the expression occurs;

(b) a consular officer of Fiji in any other country;

"reward"—

(a) in the definition of the term employer and in the definition of the term seafarer, means any remuneration, recompense, or other payment for service whether of money or money's worth;

(b) in the definition of the term pleasure craft—

(i) includes the payment either of money or money's worth and whether directly or indirectly, to or for the benefit of the owner or master of a ship, of a contribution towards the expenses of a voyage by or on behalf of persons, or the owners of cargo, carried on board the ship during the voyage; but

(ii) does not include the payment of any such contributions exclusively by part owners of the ship or by persons engaged as bona fide crew members;

"Regulations" includes maritime Regulations and marine protection Regulations;

"safety equipment" means any equipment carried on a ship for the health or safety of any person during the normal operation and working of the ship or for fire or the abandonment of the ship or other emergency; and includes anchors and chain cables;

"seafarer"—

(a) means any person who—

(i) is employed or engaged on any ship in any capacity for hire or reward; or

(ii) works on any ship for gain or reward otherwise than under a contract of employment; but

(b) does not include a pilot or any person temporarily employed on a ship while it is in port;

"serious harm" and "seriously harmed" means—

(a) harm that results in death; or

(b) accident as defined in section 5 of the Health and Safety at Work Act of 1996;

"ship" means every description of boat or craft used in navigation, whether or not it has any means of propulsion and includes—

(a) a barge, lighter, or other like ship;

(b) a hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates;

(c) a submarine or other submersible;

"system" in relation to a ship, means any system incorporated in the ship which contributes to the safe navigation and working of the ship during normal operation or is required in the event of any emergency;

"territorial sea of Fiji or territorial sea" means the territorial sea of Fiji as defined by section 5 of the Marine Spaces Act (Cap. 158A);

"tonnage measurement" means measurement of a ship in accordance with the requirements of maritime Regulations;

"unit of account" means 1 special drawing right as defined by the International Monetary Fund, the calculation of which, in Fiji currency, is in accordance with section 82;

"voyage" means a journey by water from one port—

(a) to another port; or

(b) back to the same port without calling at any other port;

"warship"—

(a) means a ship belonging to the armed forces of a State and bearing the external marks distinguishing the nationality of ships of that State, being a ship—

(i) under the command of an officer duly commissioned by the Government of that State whose name appears in the appropriate service list or its equivalent; and

(ii) crewed by crew subject to regular armed forces discipline; and

(b) includes any ship requisitioned by the Republic of Fiji Military Forces; but

(c) does not include any ship operated by the Republic of Fiji Military that operates, for the time being, for a commercial purpose.

Decree to bind the State

3. This Decree shall bind the State.

Application of this Decree

4. Unless otherwise provided, this Decree shall not apply to—

(a) warships; or

(b) any ship owned or operated by a State other than Fiji, if the ship is being used by that State for governmental purposes, and not commercial purposes.

PART 2—DUTIES IN RELATION TO MARITIME ACTIVITY

Duties of master

5.—(1) The master of a ship shall be responsible for the safe operation of the ship on a voyage, including the safety and wellbeing of all passengers, crew and cargo carried.

(2) For the avoidance of doubt, subject to subsection (1), the Master shall have the final authority to control the ship while in command and for the discipline of all persons on board.

(3) The Master shall, in exercising his or her authority in subsection (2), comply with the provisions of this Decree.

(4) It shall be a defence for the Master, in the event of any breach of the provisions of this Decree or Regulations made under this Decree if he or she acted in a manner pursuant to section 6.

(5) Any 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.

Event of emergency

6.—(1) Notwithstanding section 5 (3), the Master shall, during an emergency, perform any act, whether or not it is contrary to any provision of this Decree, in which in his or her discretion, is required to fulfil his or her responsibilities.

(2) For the purposes of subsection (1), a breach of any prescribed requirement is permitted only if—

(a) the emergency involves a danger to life or property;

(b) the extent of the breach of the prescribed requirement goes only as far as is necessary to deal with the emergency;

(c) there is no other reasonable means of alleviating, avoiding, or assisting with the emergency; and

(d) the degree of danger involved in complying with the prescribed requirement is clearly greater than the degree of danger involved in deviating from it.

Notification of emergency

7.—(1) In the event of an emergency, the Master shall, as soon as practicable, notify the Chief Executive Officer or any authorised person of the emergency.

(2) The Master shall, if requested by the Chief Executive Officer or the authorised person, provide a written report in respect of the action.

Duty to assist persons in danger and to respond to distress calls

8.—(1) The master of a Fiji ship or a foreign ship in Fiji waters shall provide assistance to any person found at sea or any ship in distress.

(2) If the Master of a ship receives a signal that a ship, aircraft, or survival craft is in distress, the master of a ship shall, subject to subsection (5)—

(a) proceed with all reasonable speed to the assistance of the persons in distress and, if possible, inform them of that fact; and

(b) comply with any requisition to the master's ship by the master of the ship in distress by continuing to proceed with all speed to the assistance of persons in distress.

(3) In the event of a collision, the Master shall provide the Master of the other ship the following information—

(a) his or her name;

(b) the name of his or her ship;

(c) port of registry; and

(d) the nearest port at which it will call.

(4) If, as a result of a collision, a ship becomes un-seaworthiness, the Master shall accommodate the passengers and crew of the other ship.

(5) Notwithstanding the provisions of this section the master may restrain from providing assistance if he or she—

(a) is unable due to reasonable danger to his or her ship and crew, or, in the special circumstances of the case, considers it unreasonable, impracticable or unnecessary to proceed to the assistance of the persons in distress;

(b) is informed that one or more ships have been requisitioned and are complying with the requisition; or

(c) is informed by the person in distress or by the master of another ship which has reached the persons in distress that assistance is no longer necessary.

(6) The master of a Fiji ship that is required to carry a logbook shall enter in the logbook a record of every distress signal received and any reason for failing to attend to the assistance of persons in distress in accordance with subsection (2) (a).

(7) Any master who fails to comply with this section commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or imprisonment of a term not exceeding 12 months or to both.

Duty to report dismissals

9.—(1) The employer of any seafarer on a Fiji ship shall report in writing to the Chief Executive Officer any dismissal from employment of a seafarer that is related to violence or alcohol and such report shall be provided within 14 days from the date of dismissal, stating the reasons for the dismissal.

(2) The Chief Executive Officer shall not release the name of any person reported under subsection (1) unless the person's name appears on a list maintained under section 36 (5); and any release of such a name shall be made only to the extent provided for in section 36 (5).

Pleasure craft departing for overseas'

10.—(1) The Chief Executive Officer shall not permit a pleasure craft to depart from any port in Fiji for any place outside Fiji unless he or she—

(a) has been notified in writing of the proposed voyage and the full name of the person who is in command of the pleasure craft;

(b) is satisfied that the pleasure craft, its crew and its safety equipment are adequate for the voyage;

(c) is satisfied that the pleasure craft and the master comply with any relevant maritime Regulations; and

(d) is satisfied that a certificate of clearance has been issued pursuant to section 72 of the Customs Act 1986.

(2) Any person who operates a pleasure craft and causes it to depart from any port in Fiji without the permission of the Chief Executive Officer, commits an offence.

Employer's duties in relation to seafarers on Fiji ships on overseas voyages

11.—(1) An employer of a seafarer on any Fiji ship, other than a pleasure craft, going on an overseas voyage shall,

(a) prior to the departure of the ship—

(i) enter into articles of agreement, in a form approved by the Chief Executive Officer and in the manner prescribed in Part 5 of the Employment Relations Promulgation 2007 with every seafarer, except the master, in relation to the voyage; and

(ii) post the articles of agreement up in a place on the ship easily accessible from the seafarer's quarters; and

(b) ensure that any termination of a period of employment of a seafarer is by notice in writing; and

(c) make provision on termination of the voyage to return each seafarer to his or her own country, the port where that seafarer was employed, the port where the voyage commenced or such other place (if any), where the seafarer has been left behind by the ship by reason of—

(i) injury sustained during his or her employment on the ship;

(ii) shipwreck;

(iii) illness, which is not due to the seafarer's own wilful act or default; or

(iv) discharge for any cause for which the seafarer cannot be held responsible,

(d) meet all expenses that is incurred by the seafarer under paragraph (c) or as may be agreed by the seafarer and employer and

(e) provide to the seafarer, if requested by the seafarer, a certificate as to the quality of the seafarer's work and whether the seafarer has fully discharged his or her obligations under any articles of agreement with the employer.

(2) The articles of agreement shall include a statement that the agreement shall be terminated by—

(a) either party according to the principles of the Employment Relations Promulgation 2007;

(b) mutual consent of the employer and the seafarer;

(c) death of the seafarer; or

(d) loss or total unseaworthiness of the ship.

(3) Where the employer fails to comply with his or her obligations under subsection (1) (c), the seafarer on a Fiji ship may recover from his or her employer, or any agent of the employer, the reasonable expenses incurred by the

seafarer in returning to his or her own country, or to the port where the seafarer was employed.

(4) Any employer who fails to comply with this section, commits an offence and shall be liable upon conviction to a fine not exceeding \$4,000.

(5) For the purposes of this section—

"overseas voyage" means a voyage to a port outside Fiji;

"reasonable expenses" means all reasonable transportation charges, accommodation, medical expenses and food expenses, in respect of the period commencing when the seafarer was left behind and ending with the end of the return journey; and includes maintenance in respect of the period commencing when the seafarer was left behind and ending with the time fixed for the seafarer's return journey departure.

Employer's duties in relation to seafarers on Fiji ships

12.—(1) Every employer of seafarers on a Fiji ship shall—

(a) provide food and water supplies which, having regard to the size of the crew and the duration and nature of the voyage, are suitable in respect of quantity, nutritive value, quality, and variety taking into account each crew member's different cultural and religious beliefs and background;

(b) ensure that any seafarer requiring medical attention while overseas and whether onboard or offshore receives all necessary medical attention at the employer's expense;

(c) in the event of the loss or foundering of the ship, pay to every seafarer wages at the normal rate until —

(i) the seafarer is otherwise employed; or

(ii) the expiry of 2 months from the date of the loss or foundering—

whichever first occurs;

(d) maintain a record (in a form prescribed or in a form approved by the Chief Executive Officer) of the employment on board a Fiji ship of every seafarer employed on that ship by that employer and provide to a seafarer, if requested by that seafarer, a copy of the record applying to that seafarer; and

(e) maintain employment grievances and employment dispute procedures in accordance with Part 13 and Part 17 of the Employment Relations Promulgation 2007, and post such procedures up in a place on the ship easily accessible from the crew quarters.

(2) Any wages payable under subsection (1) shall be recoverable in the same manner as wages earned by the seafarer during his or her normal employment.

(3) Any employer who fails to comply with this section commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000.

Inspection of provision of supplies

13.—(1) Without limiting section 226, the Chief Executive Officer shall, upon receipt of a written complaint from not less than half the crew of a Fiji ship, carry out such inspections and audits under that section as he or she considers appropriate to ascertain compliance with section 12 (1) (a).

(2) The Chief Executive Officer shall carry out such inspections and audits only after the procedures in section 12 (1) (e) have been exhausted.

Body and effects of deceased seafarer

14.—(1) Subject to subsection (2), every employer of seafarers on a Fiji ship shall make suitable arrangements for the body and effects of any seafarer who dies in the course of a voyage, which may include the return of the body to the deceased's next of kin or the burial or cremation of that body.

(2) The employer shall make reasonable attempts to return the body and personal effects of the deceased seafarer to the next of kin and bear any such costs incidental to the repatriation of the body and return of personal effects where in the circumstances it is practicable to do so.

(3) For the purpose of this section, a person's next of kin shall be a person or persons nominated by the deceased seafarer as per the ship's seamen's record book and the crew agreement.

Provisions relating to crewing of Fiji ships and young persons

15.—(1) Every employer of seafarers on a Fiji ship shall keep a register of all persons under the age of 18 years who are employed on that ship and the register shall include the date of birth of each such person.

(2) No person shall employ on any Fiji ship—

(a) any person who is neither certified as competent nor otherwise qualified to perform their duties; or

(b) any person under the age of 18 years as an engine room rating or deck watch rating.

(3) Notwithstanding subsection (2), where an employer has not been able, after taking all reasonable steps, to obtain a person over 18 years of age as an engine room rating or deck watch rating, the employer may employ on a Fiji ship a person over the age of 16 years as an engine room rating or deck watch rating in that port, but in any such case 2 persons over the age of 16 years shall be employed to do the work which would otherwise have been performed by 1 person over the age of 18 years.

(4) Subject to the provisions of the Employment Relations Promulgation 2007, nothing in subsection (2) applies to the employment of a person to carry out work on a training ship if the carrying out of such work by a person of that age is approved by the Chief Executive Officer.

(5) Any person who acts in contravention of this section commits an offence and is liable upon conviction to a fine not exceeding \$1,000.

Prohibition on receiving remuneration for placing seafarers in employment

16.—(1) Any person other than an authorized person under Regulation 11 of the Employment Relations (Employment Agencies) Regulation 2008, shall not carry on for pecuniary gain, charge, or fee directly or indirectly, any undertaking in relation to the finding of employment for seafarers on any ship.

(2) Any person who acts in contravention of subsection (1) commits an offence and is liable upon conviction to a fine not exceeding \$1,000.

Members of crew not to contract out of rights

17.—(1) Any member of the crew of a ship shall not by any agreement—

- (a) forfeit his or her lien on the ship;
- (b) be deprived of any remedy for the recovery of his or her wages;
- (c) abandon his or her right to wages in case of the loss of the ship; or
- (d) abandon any right that he or she may have or obtain in the nature of salvage.

(2) Any stipulation in an agreement inconsistent with subsection (1) shall be void to the extent of that inconsistency.

Master to have same rights as members of crew

18.—(1) The master of a ship shall, so far as the case permits, have the same rights, liens, and remedies for the recovery of his or her wages as a member of the crew of the ship has under this Decree or by any other written law.

(2) The master of a ship, and every person lawfully acting as master, shall have the same rights, liens and remedies for the recovery of disbursements and liabilities properly made or incurred, by the master and every person lawfully acting as master, as a master has for the recovery of his or her wages.

Recording of accidents, incidents and mishaps

19. Every employer of seafarers on a Fiji ship shall maintain, in a form approved by the Chief Executive Officer, a register of accidents, incidents, and mishaps and shall record in the register particulars relating to—

- (a) every accident or incident; and
- (b) every mishap.

Obligation to notify all accidents, incidents and mishaps

20.—(1) The master of a Fiji ship or a foreign ship in Fiji waters which is involved in a mishap, an accident, or an incident, shall notify the accident, incident or mishap to the Authority as soon as practicable.

(2) If, due to injuries or death or for other good reason, the master of a ship is unable to give the notice under subsection (1), the operator of the ship shall provide the notice.

(3) Any person who—

- (a) operates, maintains, or services, or does any other act in respect of any Fiji ship, any foreign ship in Fiji waters, or any maritime equipment; and
- (b) is involved in an accident, incident or mishap, involving a Fiji ship, or a foreign ship in Fiji waters—

shall, where required to do so under maritime Regulations, notify the accident, incident or mishap to the Authority as soon as practicable.

(4) Any person who fails to comply with subsections (1) to (3) commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.

(5) The coordinator of any search and rescue operation for any ship or person missing at sea shall notify the Authority of the operation as soon as practicable.

(6) The Authority may, on being notified under this section, request such additional information as it considers appropriate in each specific case, and the master or operator or person to whom the request is made shall provide the additional information requested.

(7) Any person who fails to comply with subsections (5) and (6) commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000.

Reporting of dangers to navigation

21.—(1) The master of a Fiji ship or a foreign ship in Fiji waters, shall report to ships in the vicinity, and the nearest radio communication station with which it is possible for the ship to communicate, any danger to navigation, including the failure or displacement of any navigational aid.

(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.

PART 3—FURTHER REGULATION OF MARITIME ACTIVITY

Maritime Regulations relating to maritime documents

22.—(1) Maritime Regulations made pursuant to this Decree may require that a maritime document be held by or in respect of all or any of the following—

- (a) Fiji ships;
- (b) all ships, including foreign ships operating in Fiji waters;
- (c) the owners and operators of, and seafarers on, Fiji ships or foreign ships operating in Fiji waters;
- (d) persons or organisations having a direct involvement in ship operations, ship or maritime equipment safety services;
- (e) maritime equipment used on, by, or in relation to Fiji ships or foreign ships operating in Fiji waters;
- (f) persons from the Authority or organisations that provide—
 - (i) maritime training;
 - (ii) the testing, inspecting or surveying, audit, or certification of ships or maritime products; or
 - (iii) the design, manufacture, or maintenance of ships or maritime equipment;
- (g) shipping operations and management;
- (h) shipping containers;
- (i) navigational aid installations;
- (j) such other persons, ships, maritime equipment, maritime related services, facilities, and equipment as may be operated or engaged or used in Fiji waters or in support of the maritime system.

(2) Subject to any maritime Regulations, a maritime document may be issued or a document may be recognised

as a maritime document, by the Chief Executive Officer for such period and subject to such conditions as the Chief Executive Officer considers appropriate in each particular case.

Application for maritime document

23.—(1) Any application for the grant or renewal of a maritime document or the recognition of a document as a maritime document shall be made to the Chief Executive Officer in the prescribed form.

(2) Any applicant for a maritime document shall include in his or her application, his or her address for service in Fiji including where applicable, telephone and facsimile numbers.

(3) Any holder of a maritime document whose address for service, telephone number or facsimile number has changed must as soon as reasonably practicable, notify the Chief Executive Officer of the change in writing.

(4) Any person who acts in contravention of subsection (3) commits an offence and is liable upon conviction to a fine not exceeding \$2,000.

(5) The Chief Executive Officer shall ensure that a record of all information provided under this section is maintained by the person in-charge of the Maritime Register.

(6) Service of any notification under this Decree on a holder of, or an applicant for, a maritime document shall be effective service if served at the address last provided by that holder or applicant under this section.

Issue of maritime documents and recognition of documents

24.—(1) After considering any application under section 23, the Chief Executive Officer shall, as soon as practicable, grant the application if he or she is satisfied that—

(a) the document or an application for recognition of a document as a maritime document, meet any relevant prescribed requirements;

(b) the applicant and any person who is to have or is likely to have control over the exercise of the privileges under the document—

(i) either holds the relevant prescribed qualifications and experience or hold such qualifications as are acceptable to the Chief Executive Officer under subsection (2);

(ii) are fit and proper persons to have such control or hold such document; and

(iii) meet all other relevant prescribed requirements; and

(c) it is not contrary to the interests of maritime safety for the document to be granted, renewed, or recognised.

(2) For the purpose of granting or renewing a maritime document, or recognising a document as a maritime document, the Chief Executive Officer may, subject to any provisions in the maritime Regulations, recognise such qualifications or certifications as he or she considers appropriate in each case.

Foreign qualifications or foreign certificates

25.—(1) The Chief Executive Officer shall not recognise foreign qualifications or foreign certificates where—

(a) the requirements to gain such qualifications or to obtain such certificates are less than the requirements

to gain similar qualifications or to obtain similar certificates in Fiji; and

(b) the Chief Executive Officer believes that to recognise such qualifications or certificates might pose a risk or danger to the safety of any person, to property, or to the marine environment.

(2) Where a licence, permit, certificate, or other document is recognised by the Chief Executive Officer under this section, the Chief Executive Officer shall either—

(a) issue an equivalent maritime document to the holder or applicant of the document under this section; or

(b) notify the holder or applicant of the document in writing of such recognition.

(3) It shall be a condition of every current maritime document issued or recognised by the Chief Executive Officer that the holder shall continue to satisfy the criteria specified in section 24 (1) (b) (ii).

(4) Where the Chief Executive Officer refuses to grant an application under section 23, the applicant may appeal against that decision to Maritime Appeals Committee under section 264.

(5) Nothing in this section applies in respect of any ship, crew, or maritime equipment in respect of which section 26 applies.

Acceptance of Convention documents

26.—(1) Subject to subsection (2), the Chief Executive Officer shall accept every valid licence, permit, certificate, or other document issued or approved by a State, other than Fiji, under a Convention to which that State and Fiji are both parties; and, for the purposes of this Decree, such documents shall be deemed to be maritime documents.

(2) The Chief Executive Officer shall not accept, or shall suspend acceptance of, any documents referred to in subsection (1) where he or she has reasonable grounds for believing that—

(a) the condition of the ship or maritime equipment does not correspond with the particulars of any document relating to the ship or maritime equipment;

(b) the condition of the ship or maritime equipment has not been maintained in accordance with the provisions of any requirements leading to the issue of that document;

(c) the ship is not in all respects fit to proceed to sea without danger to the ship or the persons on board or without presenting an unreasonable threat of harm to the marine environment;

(d) the ship or maritime equipment has been materially altered without the sanction of the State that issued or approved the document;

(e) the document has been fraudulently obtained; or

(f) the holder of the document is not the person to whom the document was originally issued.

(3) This section shall apply to—

(a) every ship, other than a Fiji ship, registered in a country that is a party to any Convention to which Fiji is also a party;

(b) the crew of every ship referred to in paragraph (a);

(c) the maritime equipment of every ship referred to in paragraph (a).

(4) Any person who without reasonable excuse contravenes this section commits an infringement offence in accordance with section 262 and shall be liable—

(a) in the case of an individual, to a fine not exceeding \$5,000; and

(b) in the case of a body corporate, to a fine not exceeding \$30,000.

Suspension of maritime documents or imposition of conditions

27.—(1) The Chief Executive Officer may—

(a) suspend whole or part of any maritime document under this Decree or under any maritime Regulations;

(b) impose conditions in respect of any such maritime document;

(c) suspend the recognition of the whole or part of a document as a maritime document issued by another person or organisation; or

(d) impose conditions in respect of such recognition—

if he or she considers such action necessary in the interests of maritime safety, and if he or she—

(i) is satisfied that the holder has failed to comply with any conditions of the relevant maritime document or with the requirements of this Decree;

(ii) is satisfied the holder has contravened or failed to comply with section 250;

(iii) is satisfied that such action is necessary to ensure compliance with any provisions of this Decree or any Regulations made under this Decree;

(iv) considers that the privileges or duties for which the document has been granted, or the relevant document has been recognised as a maritime document, are being carried out by the holder in a careless or incompetent manner; or

(v) considers that there is reasonable doubt as to the seaworthiness of the ship or as to the quality or safety of the maritime equipment to which the document relates.

(2) Unless the suspension or the imposition of conditions is extended under subsection (3) or remains in force by virtue of subsection (5), the suspension of a maritime document, the suspension of recognition of a document as a maritime document, or the imposition of conditions under this section remains in force until—

(a) the close of the 14th day after the date of the imposition of the suspension or conditions; or

(b) the Chief Executive Officer decides what action under subsection (3) or section 39 is to be taken,—

whichever happens first.

(3) Before the expiry of the 14-day period referred to in subsection (2) (a), the Chief Executive Officer may, on the grounds set out in subsection (1) do one or more of the following—

(a) extend the period of a suspension, or the period during which conditions apply, by a specified further period;

(b) impose, vary, or lift conditions; or

(c) suspend the maritime document, or recognition of the document as a maritime document, for a specified period.

(4) When a maritime document or recognition of a document as a maritime document is suspended or a maritime document is made subject to conditions under this section, the holder of the document or recognition, must immediately produce the maritime document or the document of recognition to the Chief Executive Officer, and—

(a) the Chief Executive Officer must endorse the document to indicate the action taken under this section; and

(b) the Chief Executive Officer may retain a document while it is suspended.

(5) If notice of a proposed revocation of a maritime document or recognition of a document as a maritime document is given in accordance with section 35 either at the same time as the suspension of the document or recognition under this section or while the suspension is in force, the document or recognition to which the notice relates remains suspended until the Chief Executive Officer decides whether to revoke the document or recognition under section 29.

(6) Any person who without reasonable excuse contravenes this section commits an infringement offence in accordance with section 262 and shall be liable—

(a) in the case of an individual, to a fine not exceeding \$5,000;

(b) in the case of a body corporate, to a fine not exceeding \$30,000.

(7) Any person in respect of whom any decision is taken under this section may appeal against that decision to the Maritime Appeals Committee under section 264.

Suspension or revocation of maritime document where prescribed fees or charges unpaid

28.—(1) Where any fee or charge payable under this Decree or any Regulations made under this Decree, is not paid by the date prescribed or fixed for payment of that fee or charge, the Chief Executive Officer may suspend the maritime document, or suspend recognition of the document as a maritime document, to which the unpaid fee or charge relates.

(2) Where any fee or charge payable under this Decree or under any Regulations made under this Decree is not paid within 6 months after the date prescribed or fixed for payment of that fee or charge, the Chief Executive Officer may revoke the maritime document, or revoke recognition of the document as a maritime document, to which the fee or charge relates.

(3) Before undertaking any action under subsections (1) or (2), the Chief Executive Officer shall notify the holder of that document of—

(a) the Chief Executive Officer's intention to act under subsections (1) or (2); and

(b) the right of appeal available to the holder of that document in the event of the Chief Executive Officer taking such action.

(4) Where a maritime document or recognition of a document as a maritime document has been revoked under this section, the holder shall forthwith handover that document or notification of recognition of that document to the Chief Executive Officer.

(5) Where a fee or charge is payable to the Authority in respect of an application or the provision of a service, the Chief Executive Officer, may, unless the safety of any person would be put at risk, decline to process that application or provide that service until the appropriate fee or charge has been paid, or arrangements acceptable to the Authority or the Chief Executive Officer, for payment of the fee or charge have been made.

(6) Any person in respect of whom any decision is taken under this section may appeal against that decision to the Maritime Appeals Committee under section 264.

Revocation of maritime documents

29.—(1) The Chief Executive Officer may after an investigation is carried out to decide whether any action should be taken under section 27, revoke any document or the recognition of any such document where the Chief Executive officer believes on the basis of the results of the investigation that such action is necessary.

(2) Where the Chief Executive Officer proposes to revoke a maritime document or the recognition of a document as a maritime document, the Chief Executive Officer shall give notice in accordance with section 35, which shall apply as if the proposed revocation were a proposed adverse decision under this Decree.

(3) Where a maritime document or recognition of a document as a maritime document has been revoked under this section, the holder shall forthwith surrender that document or notification of recognition of that document to the Chief Executive Officer.

(4) Any person in respect of whom any decision is taken under this section may appeal against that decision to the Maritime Appeals Committee under section 264.

Amendment or revocation in other cases

30.—(1) The Chief Executive Officer may,—

(a) if so requested in writing by the holder of any maritime document amend or revoke the document as requested;

(b) amend any maritime document to correct any clerical error or obvious mistake on the face of the document.

(2) Subject to subsection (3), the Chief Executive Officer may do any of the following—

(a) amend any maritime document where any privilege or duty for which the document has been granted is no longer being carried out, or is no longer able to be carried out, by the holder;

(b) revoke any maritime document, or revoke the recognition of any document as a maritime document, if none of the privileges or duties for which the document has been granted are being carried out, or are able to be carried out, by the holder.

(3) Before taking any action under subsection (2), the Chief Executive Officer shall notify the holder in writing of the proposed action and give the holder a reasonable opportunity to comment or make submissions on the proposed action.

(4) The power to amend a maritime document under this section includes—

- (a) power to revoke the document and issue a new document in its place; and
- (b) power to impose reasonable conditions.

(5) When the holder of a maritime document is notified that the specified action is proposed under this section, the holder shall forthwith handover the document to the Chief Executive Officer.

Criteria for action under sections 27 and 29

31.—(1) The provisions of this section shall apply for the purpose of determining whether a maritime under section 27 or revoked under section 29.

(2) Where this section applies, the Chief Executive Officer may have regard to, and give such weight as the Chief Executive Officer considers appropriate to, the following matters—

- (a) the person's compliance history with transport safety regulatory requirements;
- (b) any conviction for any transport safety offence, whether or not—
 - (i) the conviction was in a Fiji court; or
 - (ii) the offence was committed before the commencement of this Decree;
- (c) any evidence that the person has committed a transport safety offence or has contravened or failed to comply with any maritime Regulation made under this Decree.

(3) The Chief Executive Officer may take into account such other matters and evidence as may be relevant and as he or she thinks fit.

(4) Nothing in subsection (3) shall require the Chief Executive Officer to—

- (a) disclose any information, the disclosure of which would be likely to endanger the safety of any person; or
- (b) disclose any information before—
 - (i) suspending a maritime document or suspending the recognition of a document as a maritime document; or
 - (ii) imposing conditions in respect of a maritime document under section 27.

Criteria for fit and proper person

32.—(1) For the purpose of determining whether or not a person is a fit and proper person for any purpose under this Decree, or under the maritime Regulations, the Chief Executive Officer shall, have regard to, and give such weight as he or she considers appropriate to the following matters—

- (a) the person's compliance history with transport safety regulatory requirements;
- (b) the person's related experience (if any) within the transport industry;
- (c) the degree and nature of the person's proposed involvement in maritime activities,

(d) the person's knowledge of the applicable maritime regulatory requirements;

(e) any history of physical or mental health problems or serious behavioural problems;

(f) any conviction for any offence involving violence, or causing danger to any person, or criminal damage, whether or not—

(i) the conviction was in a Fiji court; or

(ii) the offence was committed before the commencement of this Decree;

(g) any evidence that the person has committed a transport safety offence or has contravened or failed to comply with any maritime Regulation;

(h) seek and receive such information, including medical reports as the Chief Executive Officer thinks fit;

(i) consider information obtained from other reliable sources;

(j) take into account such other matters and evidence as may be relevant and as the Chief Executive Officer thinks fit.

(2) In the case of a conviction under subsection (1) (f), no person shall be unduly prejudiced if such offence does not, either in its trivial nature or from the circumstances under which it is committed, render such person unfit, in the public interest.

(3) Subsection (1) applies to a body corporate with the following modifications—

(a) paragraphs (a), (b), (c), (d), and (e) of that subsection shall be read as if they refer to the body corporate and its officers;

(b) paragraph (f) of that subsection shall be read as if it refers only to the officers of the body corporate.

(4) If the Chief Executive Officer proposes to take into account any information that is or may be prejudicial to a person, he or she shall, subject to subsection (5), disclose that information to that person and, in accordance with section 35, give that person a reasonable opportunity to provide written reasons as to why that information should not be taken into account.

(5) Nothing in subsection (4) shall require the Chief Executive Officer to disclose any information, the disclosure of which would be likely to endanger the safety of any person.

Exemption

33.—(1) Subject to subsection (2), the Chief Executive Officer may exempt any person, ship or maritime equipment from any specified requirement in this Decree or any maritime Regulation where it is necessary in the circumstances of the particular case.

(2) The Chief Executive Officer shall not grant an exemption under subsection (1) unless he or she is satisfied in the circumstances of each case that—

(a) the granting of the exemption will not breach Fiji's obligations under any Convention; and

(b) either—

(i) the action taken or provision made in respect of the matter to which the requirement relates is as effective or more effective than actual compliance with the requirement;

(ii) the prescribed requirements are clearly unreasonable or inappropriate in the particular case; or

(iii) events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case; and

(c) the risk to safety will not be significantly increased by the granting of the exemption.

(3) The number and nature of any exemptions granted under subsection (1) shall be notified as soon as practicable by notice published in the *Gazette*.

(4) Nothing in this section shall apply in any case where any maritime Regulation specifically provides that no exemptions are to be granted.

Examinations and tests for grant or renewal of maritime documents

34. For the purposes of granting or renewing maritime documents in respect of seafarers, master and crew under this Decree, the Chief Executive Officer or authorised persons may set, conduct, and administer examinations and tests, and carry out such other functions in relation to such examinations and tests as may be necessary.

Notice to persons affected by proposed adverse decisions

35.—(1) In this section, unless the context otherwise requires, —

"adverse decision" means a decision of the Chief Executive Officer to the effect that a person is not a fit and proper person for the purpose under this Decree or under the maritime Regulations;

"affected document holder" in relation to a person directly affected by an adverse decision, means the holder of or the applicant for the maritime document;

"person directly affected" in relation to any adverse decision, means the person who would be entitled under section 264 to appeal against that adverse decision;

"person on the basis of whose character the adverse decision arises" in relation to any adverse decision made or proposed to be made on the grounds referred to in section 30, means the person whom the Chief Executive Officer assesses as not being a fit and proper person.

(2) Where the Chief Executive Officer proposes to make an adverse decision under this Decree in respect of any person, he or she by notice in writing, shall—

(a) notify the person directly affected by the proposed decision;

(b) subject to subsection (4), inform that person of the grounds for the proposed decision;

(c) specify a date not less than 21 days after the date on which the notice is given, by which submissions may be made to the Chief Executive Officer in respect of the proposed decision;

(d) where appropriate, specify the date not less than 28 days after the date on which the notice is given, on which the proposed decision will, unless the Chief Executive Officer otherwise determines, take effect;

(e) notify the person of the person's right of appeal under section 264, in the event of the Chief Executive Officer proceeding with the proposed decision; and

(f) specify such other matters as in any particular case may be required by any provision of this or any other written law.

(3) Where the Chief Executive Officer gives a notice under subsection (2), he or she—

(a) shall also provide a copy of the notice to—

(i) any person on the basis of whose character the adverse decision arises, where that person is not the person directly affected by the proposed decision; and

(ii) any affected document holder, where the Chief Executive Officer considers that the proposed decision is likely to have a significant impact on the operations of the document holder; and

(b) may provide a copy of the notice to any other affected document holder.

(4) No notice or copy of a notice given under this section shall include or be accompanied by any information referred to in section 32 (1), except to the extent that—

(a) the notice or copy is supplied to the person to whom the information relates; or

(b) that person consents to the supply of that information to any other person.

(5) Where any notice or copy of a notice is given to any person under this section, the following provisions shall apply—

(a) it shall be the responsibility of that person to ensure, that all information that that person needs the Chief Executive Officer to consider in relation to the proposed decision, is received by the Chief Executive Officer within the period specified in the notice under subsection (2) (c), or within such further period as the Chief Executive Officer may allow;

(b) the Chief Executive Officer may consider any information supplied by that person after the expiry of the period referred to in paragraph (a), other than information requested by him or her and supplied by that person within such reasonable time as the Chief Executive Officer may specify;

(c) the Chief Executive Officer shall consider any submissions made in accordance with paragraph (a), other than information requested by him or her and supplied pursuant to a request referred to in paragraph (b).

(6) After considering the matters referred to in subsection (5), the Chief Executive Officer shall—

(a) determine whether or not to make the proposed adverse decision; and

(b) as soon as practicable thereafter, notify in writing the person directly affected, and any other person of a kind referred to in subsection (3) (a), of—

(i) the Chief Executive Officer's decision and the grounds for the decision;

(ii) the date on which the decision will take effect; and

(iii) in the case of an adverse decision, the consequences of that decision and any applicable right

of appeal under section 264.

Suspension of seafarers from employment

36.—(1) The Chief Executive Officer may direct any person who is required by this Decree or Regulations made under this Decree to be in possession of a maritime document, who engages a seafarer, to suspend the employment of that seafarer if—

(a) the Chief Executive Officer considers such action necessary in the interests of maritime safety; and

(b) either—

(i) the person is convicted of any offence relating to violence, or causing danger to any person, or criminal damage, whether or not the conviction was in a Fiji court or the offence was committed before the commencement of this Decree; or

(ii) the person has previously been dismissed from employment, which dismissal is related to violence or alcohol.

(2) Any person who does not comply with the directions given by the Chief Executive Officer in subsection (1) may have his or her maritime documents suspended or have conditions imposed pursuant to section 27.

(3) Any person who suspends a seafarer in accordance with this section shall immediately notify the Chief Executive Officer.

(4) The Chief Executive Officer shall maintain a list of persons suspended under this section, and employers of seafarers or potential employers of seafarers may request for such information to ascertain whether a particular person is a suspended person and the Chief Executive Officer shall advise accordingly.

Suspended persons not to be employed

37.—(1) No person shall employ on board a Fiji ship, or any ship involved in coastal shipping under section 109 a person who has been suspended under section 36.

(2) Any person who has been suspended under section 36 shall not apply for employment on board a Fiji ship, or any ship involved in coastal shipping under section 109.

(3) Any person who acts in contravention of this section commits an infringement offence in accordance with section 262 and is liable—

(a) in the case of an individual, to a fine not exceeding \$2,000; and

(b) in the case of a body corporate, to a fine not exceeding \$10,000.

Inspections, audits and ship clearance

38.—(1) The Chief Executive Officer may, in writing, require any person who—

(a) holds a maritime document; or

(b) operates, maintains, or services, or does any other act in respect of any ship or maritime equipment,—

to undergo or carry out such inspections and such audits as the Authority considers necessary in the interests of

maritime safety or the health or safety of seafarers and passengers or for any other related purposes under this Decree.

(2) The Chief Executive Officer may, in respect of any person described in subsection (1), carry out such inspections and audits as the Chief Executive Officer considers necessary in the interests of maritime safety or the health or safety of seafarers and passengers.

(3) For the purposes of any inspection or audit carried out in respect of any person under subsection (2), the Chief Executive Officer may, in writing require,—

(a) from that person, such information as the Chief Executive Officer considers relevant to the inspection or audit;

(b) that person to demonstrate the familiarity of the master or crew with essential shipboard procedures for the safe operation of the ship;

(c) that person to demonstrate that any operational, maintenance, or servicing procedure in respect of a ship or a maritime equipment is capable of being carried out in a competent manner.

(4) Any person who fails to comply with any requirements under subsections (1) or (3) commits an infringement offence in accordance with section 262 and is liable,—

(a) in the case of an individual, to a fine not exceeding \$10,000 and, if the offence is a continuing one, to a further fine not exceeding \$2,000 for every day or part of a day during which the offence is continued to be committed;

(b) in the case of a body corporate, to a fine not exceeding \$100,000 and, if the offence is a continuing one, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence is continued to be committed;

(c) in any case, to an additional penalty under section 251.

Certificates to be produced before ship goes to sea

39.—(1) The Chief Executive Officer or authorised officers may, before a ship heaves anchor, direct the master of the ship to produce to him or her—

(a) such maritime documents as are required under this Decree to be in force in respect of the ship; or

(b) the Chief Executive Officer's endorsement referred to in section 27 (4) (a).

(2) The master of the ship must comply with a direction given to him under subsection (1).

(3) Any person who fails to comply with this section commits an infringement offence in accordance with section 262 and is liable to a fine not exceeding \$5,000.

Grounds for detention, seizure and imposition of conditions

40.—(1) The Chief Executive Officer may when necessary do all or any of the following—

(a) detain any ship or any ship of a particular class;

(b) seize any maritime equipment of a particular class;

(c) prohibit or impose conditions on the use or operation of any ship of a particular class, or the use of any maritime equipment of a particular class; or

(d) impose conditions on the release from detention or seizure of the ship or maritime equipment.

(2) The powers under subsection (1) may be exercised where the Chief Executive Officer believes on clear grounds that—

(a) the operation or use of any ship or maritime equipment or class of ship, as the case may be, endangers or is likely to endanger any person or property, or is hazardous to the health or safety of any person;

(b) the appropriate prescribed maritime document is not for the time being in force in respect of the ship, or the master or any member of the crew of that ship, or the maritime equipment, as the case may be;

(c) any maritime document required by maritime Regulations in respect of the ship or maritime equipment, has expired;

(d) the conditions under which a maritime document in respect of a ship or maritime equipment was issued or recognised, or the requirements of that document, are not being met;

(e) the watch keeping requirements specified for a ship by the State in which the ship is registered are not being met; or

(f) the conditions imposed under subsections (1) (c) or (d) are not being met.

(3) The powers under subsection (1) may also be exercised where the Chief Executive Officer is satisfied, on clear grounds, that the master is not, or crew are not, familiar with essential shipboard procedures for the safe operation of the ship.

(4) Subject to the provisions of this Decree, nothing in this section shall permit the Chief Executive Officer to detain a ship where that detention would constitute a breach of any Convention.

Detention to be maintained for such time as necessary

41.—(1) Any detention or seizure under section 40 shall be maintained subject to subsection (2) for only such time as is necessary in the interests of maritime safety or the health or safety of any person.

(2) Where ships, maritime equipment, or parts thereof are required for the purpose of evidence in any prosecution under this Decree, those ships, products, or parts thereof may be retained by the Chief Executive Officer for such period as the Chief Executive Officer considers necessary for that purpose.

Reasons for detention to be in writing

42.—(1) The Chief Executive Officer shall, if requested by the owner or the person for the time being in charge of a ship detained or a maritime equipment seized under section 40, provide in writing to the owner or that person the reasons for the detention or seizure.

(2) Any person in respect of whom any decision is taken under section 40 may appeal against that decision to the Maritime Appeals Committee under section 264.

Notification of any prohibition or conditions

43.—(1) For the purposes of section 40, the Chief Executive Officer shall notify in writing any prohibitions or conditions to such persons as he or she considers necessary or by such other means as the Chief Executive Officer considers appropriate in the circumstances.

(2) Any person who acts in contravention of or fails to comply with any prohibition or condition notified under this section commits an offence and is liable upon conviction—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$5,000; and

(b) in the case of a body corporate, to a fine not exceeding \$20,000.

Costs of detention

44.—(1) Where the Chief Executive Officer acts under section 40 to detain a ship, the provisions of section 277 shall apply to the costs of and incidental to the detention.

(2) Where the Chief Executive Officer acts under section 40 to seize a maritime equipment, the Authority may recover from the owner of such maritime equipment all reasonable costs of and incidental to such seizure.

(3) The Authority shall be liable to pay to the owner of a ship or a maritime equipment compensation for any loss resulting from the Chief Executive Officer unduly—

(a) detaining the ship or maintaining the seizure of a maritime equipment; or

(b) delaying the ship or the use of the maritime equipment.

(4) Where the Chief Executive Officer has taken action under section 40 on the information of a complainant and the information is subsequently found to be frivolous or vexatious, the complainant is liable to indemnify the Authority for all costs for which the Authority is liable under this section.

(5) Any person who acts in contravention of subsection (4) shall be guilty of an infringement offence in accordance with section 262 and shall be liable to a fine not exceeding \$10,000.

Investigation and inquiry

45.—(1) Where an accident, incident, or mishap occurs that is required to be notified to the Authority under section 20, the Chief Executive Officer shall appoint authorised officers to undertake—

(a) an investigation of the accident, incident, or mishap; and

(b) an inquiry where—

(i) a death or serious injury on board a ship has occurred;

(ii) a seaman belonging to a ship dies or suffers serious injury whilst away from the ship; or

(iii) any other matter which in the opinion of the Chief Executive Officer is in the public interest.

(2) For the purposes of subsection (1), the Chief Executive Officer shall appoint a person or persons to undertake the investigation or inquiry and permit the participation or representation of foreign States in any investigation or inquiry in which they have an interest.

(3) Subject to subsection (5) where the Chief Executive Officer is in charge of an investigation, no person other than the Fiji Police, without the consent of the Authority shall—

(a) participate in any investigation;

(b) undertake any independent investigation at the site of any accident, incident, or mishap; or

(c) examine or cause to be examined any material removed from the site of any accident, incident, or mishap.

(4) Where the Chief Executive Officer refuses consent under subsection (3), he or she shall give the applicant a statement in writing of the reasons for his or her refusal.

(5) Where an accident, incident, or mishap is being investigated by—

(a) a person or persons appointed by the Chief Executive Officer; and

(b) any one or more of the following, namely,—

(i) a visiting force; or

(ii) an inspector or other person under the Health and Safety At Work Act 1996;

they shall take all reasonable measures to ensure that the investigations are co-ordinated.

(6) An investigation or an inquiry carried out under this Decree shall be in the manner prescribed by Regulations.

(7) An inquiry under subsection (6) must not be held in the case of the death of a person if there is a requirement under the Inquests Act (Cap. 46) to hold an inquest into the manner and cause of the death of that person.

(8) The person conducting an inquiry under subsection (6) shall immediately upon completing the inquiry forward a written report of his or her findings to the Chief Executive Officer, who may in turn make a copy of the report available upon request—

(a) if the report relates to the death of a person—

(i) the next of kin of that person; and

(ii) any person who appears to the Chief Executive Officer to have sufficient interest in the contents of the report; and

(b) if the report relates to a serious injury to a person—

(i) that person or a person acting with a port management company of that person; and

(ii) any other person who appears to the Chief Executive Officer to have a sufficient interest in the contents of the report.

Further investigation or inquiry by the Authority

46.—(1) For the purposes of carrying out an investigation or inquiry under section 45, a person authorised for the purpose by the Chief Executive Officer, may—

(a) make inquiries from any person who he or she has reason to believe is in possession of information that may lead to discovery of the cause of the accident, incident, mishap, death or serious injury;

(b) issue in writing a summons requiring any person to attend at the time and place specified in the summons and to give evidence, and to produce any documents or things in that person's possession or under that person's control that are relevant to the subject of the investigation or inquiry;

(c) take possession of and remove any such document from the place where it is kept for such period of time as is reasonable in the circumstances; or

(d) require a person to reproduce, or to allow the Chief Executive Officer, or authorised person, to reproduce in usable form any information recorded or stored on a document electronically or by other means.

(2) A person who is required by the Chief Executive Officer or an authorised person, to do anything under subsection (1) for the purposes of an inquiry under section 45, has the same privileges as a person giving evidence before a commission of inquiry under the Commissions of Inquiry Act (Cap. 47).

(3) A summons issued to witnesses under this section shall be in the form prescribed in Schedule 3.

(4) For the purposes of this section,

"document" means a document in any form; and includes—

(a) any writing on or in any material;

(b) information recorded or stored by means of a tape recorder, computer, or other device; and material subsequently derived from information so recorded or stored;

(c) a record, book, graph, or drawing; and

(d) a photograph, film, negative, tape, disk, or other device in which one or more visual images are embodied or stored so as to be capable with or without the aid of equipment, of being reproduced.

(5) Any person who fails without reasonable cause to comply with any requirements under this section commits an infringement offence in accordance with section 262 and is liable to a fine not exceeding \$2,000.

Additional powers of investigation

47. Without limiting the powers conferred by section 45, for the purpose of exercising any of the functions, duties, or powers of the Chief Executive Officer under this Decree, the Authority shall, in addition to any other powers conferred by this Decree, have power to do the following—

(a) where it believes on reasonable grounds that it is necessary to preserve or record evidence, or to prevent the tampering with or alteration, mutilation, or destruction of any ship, place, maritime equipment, or any other thing involved in any manner in an accident, incident, or mishap;

(b) to prohibit or restrict access of persons or classes of persons to the site of any accident, incident, or mishap; and

(c) to seize, detain, remove, preserve, protect, or test any ship, maritime equipment, or anything that the Authority believes on reasonable grounds will assist in establishing the cause of an accident, incident, or mishap.

Master to ensure Regulations relating to pilotage are complied with

48.—(1) The master of a ship must ensure that a pilot is taken on board the ship in accordance with and whenever required by maritime Regulations.

(2) Notwithstanding anything in the maritime Regulations, the Chief Executive Officer may direct that a pilot be taken on board a ship in Fiji waters if the Chief Executive Officer is satisfied that, in the circumstances the interests of navigation safety or marine environmental protection require that a pilot be taken on board.

(3) The Chief Executive Officer while directing that a pilot be taken on board a ship may have regard but not limited to the following factors—

(a) weather conditions;

(b) damage to the ship; or

(c) incapacity of the master.

(4) A direction under subsection (2) must, whenever practicable, be in writing and must be given to the owner or master of the ship to which it applies.

(5) Once a direction is given under subsection (2), the ship may not proceed from or enter a port in Fiji without a pilot on board if to do so is contrary to that direction or to a provision of the maritime Regulations.

(6) Where a ship proceeds without a pilot in contravention of this section, the owner and master of the ship, each commit an offence and are liable upon conviction—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000;

(b) in the case of a body corporate, to a fine not exceeding \$100,000; and

(c) in any case, to an additional penalty under section 251.

Limitation of liability where pilot engaged

49.—(1) Any port company, other body corporate or person, who provides a pilot shall not be liable nor vicariously liable for any neglect or want of skill of the pilot.

(2) The owner or master of a ship navigating under circumstances in which pilotage is required is liable for any loss or damage caused by the ship or by any fault of the navigation of the ship in the same manner and to the same extent as that person would be if pilotage were not required.

(3) A pilot is not liable for neglect or want of skill while on board a ship and acting as a pilot.

PART 4—OFFENCES IN RELATION TO MARITIME ACTIVITY

Unnecessary danger caused by holder of maritime document

50. Where a holder of a maritime document in respect of any activity or service to which the document relates, acts or omits to act, causes or permits any act or omission, where the act or omission poses unnecessary danger or risk to any other person or property, whether such injury or damage does or does not occur, commits an offence

and is liable upon conviction—

(a) in the case of an individual, to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 12 months;

(b) in the case of a body corporate, to a fine not exceeding \$50,000; and

(c) in any case, to an additional penalty under section 251.

Dangerous activity involving ships or maritime equipment

51.—(1) Any person who—

(a) operates, maintains, or services; or

(b) does any other act in respect of—

any ship or maritime equipment in a manner which causes unnecessary danger or risk to any other person or to any property, irrespective of whether or not in fact any injury or damage occurs, commits an offence.

(2) Any person who—

(a) causes or permits any ship or maritime equipment to be operated, maintained, or serviced; or

(b) causes or permits any other act to be done in respect of—

any ship or maritime equipment in a manner which causes unnecessary danger or risk to any other person or to any property, irrespective of whether or not in fact any injury or damage occurs, commits an offence.

(3) Any person who commits an offence under subsections (1) or (2) is liable upon conviction—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000;

(b) in the case of a body corporate, to a fine not exceeding \$100,000; and

(c) in any case, to an additional penalty under section 251.

Effect of breach of maritime Regulation

52.—(1) Where any person is charged with any offence against sections 50 or 51, and the court is satisfied that any act or omission of that person, or caused or permitted by that person, constitutes a breach of a relevant maritime Regulation, then, in the absence of proof to the contrary, it shall be presumed that the act or omission caused unnecessary danger or risk to another person or to property, irrespective of whether or not in fact any injury or damage occurred.

(2) Nothing in this section shall be construed so as to require the proof of a breach of a maritime Regulation as an element of any offence described in sections 50 or 51.

Communicating false information affecting safety

53.—(1) Any person who by any means provides to another person information relating to the safety of a ship, maritime equipment, or any other facility or product used in or connected with maritime activities, or any

associated person knowing the information to be false or in a manner reckless as to whether it is false, commits an offence and is liable upon conviction—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000; and

(b) in the case of a body corporate, to a fine not exceeding \$100,000.

(2) Where the commission of an offence against subsection (1) causes financial loss to any person and the court imposes a fine in respect of the offence against subsection (1), the court may also order that, such part of the fine as it thinks fit, be awarded to the person or persons who have suffered financial loss.

Acting without necessary maritime document

54.—(1) Any person who—

(a) operates, maintains, or services; or

(b) does any other act in respect of—

any ship or maritime equipment, without holding the appropriate current maritime document commits an offence.

(2) Any person who—

(a) operates, maintains, or services; or

(b) does any other act in respect of—

any ship or maritime equipment knowing that a current maritime document is required to be held in respect of that ship or product before that act may lawfully be done and knowing that the appropriate document is not held, commits an offence.

(3) Any person who commits an offence against subsections (1) or (2) is liable upon conviction—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000;

(b) in the case of a body corporate, to a fine not exceeding \$100,000; and

(c) in any case, to an additional penalty under section 251.

(4) For the purposes of this section a maritime document is not a current maritime document—

(a) if it is for the time being suspended under this Decree; or

(b) in relation to an act if the endorsement that is required to authorise that act is for the time being suspended under this Decree.

Disqualification and imposition of conditions by the Court

55. In addition to any penalty a court may impose under sections 50, 51 or 56, the court, on convicting any person of an offence against any of those sections, may by order do all or any of the following, namely,—

(a) disqualify the person convicted from holding or obtaining a maritime document, or a particular maritime document, issued by the Chief Executive Officer; or

(b) impose on any maritime document held by or issued to the person convicted such restrictions or conditions or both as the court, having regard to the circumstances of the offence, for such period not exceeding 12 months as the court thinks fit.

Effect of disqualification

56.—(1) Where the holder of a maritime document is disqualified by an order of a court from holding or obtaining a maritime document, the document shall be deemed to be suspended while the disqualification continues in force, and during the period of suspension shall be of no effect.

(2) Where the holder of a maritime document is disqualified by an order of a court from holding or obtaining such a document, and the disqualification will expire before the expiration of the term of the document, the document shall, on the expiration of the disqualification, continue to be of no effect until the holder of such document undergoes and passes such tests and fulfils such requirements as prescribed.

Commencement of period of disqualification

57. Where an order is made by a court disqualifying any person for a period from holding or obtaining a maritime document, the period of disqualification shall commence on the date of the making of the order unless the court making the order directs otherwise.

Retention and custody of documents

58.—(1) Where, by an order of a court, the holder of a maritime document is disqualified from holding or obtaining a document, the person in respect of whom the order is made shall immediately surrender the document to the Authority.

(2) Where a maritime document is so surrendered, the Chief Executive Officer shall endorse the terms of the disqualification on the document and retain it until the disqualification has expired or been removed and the person entitled to the document has made a request in writing for its return.

(3) If the person entitled to the document is a person to whom section 56 (2) applies, the document shall not be returned to that person until that person has passed the tests and fulfilled the requirements referred to in that provision.

Removal of disqualification

59.—(1) Subject to this section, any person who by order of a court is—

(a) disqualified for a period exceeding 6 months from holding or obtaining a maritime document; or

(b) disqualified from being recognised as the holder of a maritime document—

may, after the expiration of 6 months after the date on which the order of disqualification became effective, make an application to the court to have the order of disqualification removed.

(2) On an application under this section, the court may, having regard to—

(a) the character of the applicant;

- (b) the applicant's conduct subsequent to the order;
- (c) the nature of the offence and;
- (d) any other circumstances of the case—

remove the disqualification from such date as may be specified in the order or refuse the application as the Court deems appropriate.

(3) Notice of every application under this section shall be served by the Applicant on the Chief Executive Officer who shall have a right to appear and be heard in respect of the matter.

Applying for maritime document while disqualified

60.—(1) Any person who applies for or obtains a maritime document while being disqualified by an order of a court from obtaining such a document commits an offence and any such document so obtained shall be of no effect.

(2) Any person who commits an offence against subsection (1) is liable upon conviction—

- (a) in the case of an individual, to imprisonment for a term not exceeding 6 months or a fine not exceeding \$2,000; and
- (b) in the case of a body corporate, to a fine not exceeding \$20,000.

Appeals

61.—(1) Where an order is made by the Court disqualifying any person from holding or obtaining a maritime document and a notice of appeal is filed against such order, the said order shall have immediate effect pending finalisation of the appeal unless a stay of execution of the order of the court has been filed.

Establishment of Maritime Appeal Authority

62. This section establishes the Maritime Appeal Authority.

Composition of the Maritime Appeal Authority

63.—(1) The Minister shall appoint three members to the Maritime Appeal Authority after consultation with the Minister for Justice.

(2) The chairperson of the Authority shall be a person with qualifications of a barrister and solicitor of not less than 7 years practice experience.

(3) The Minister may appoint any such person who, in the opinion of the Minister is qualified to be appointed as the deputy chairperson to act in the absence of the Chairperson of the Authority.

(4) The members shall be persons who, in the opinion of the Minister, have extensive experience in employment matters and who do not have any potential conflicts of interests.

Tenure of office

64. A person appointed as a member of the Maritime Appeal Authority 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 a member.

(2) A member may at any time resign, by giving 30 days' notice in writing to the Minister.

Vacation of office

66. The office of the member 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) has by any reason of disability become incapable of performing the functions of the office.

Remuneration of members

67. Members of the Authority are entitled to such remuneration as the Minister may deem necessary.

Meetings

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

Functions of the Maritime Appeal Authority

69.—(1) The functions of the Maritime Appeal Authority shall be to consider and determine applications made to the Authority pursuant to section 36.

(2) In making its determinations the Maritime Appeal Authority shall have regard to the potential effect on the risk to maritime safety of the suspended person being employed as a seafarer.

Evidence that may be received by the Maritime Appeal Authority

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

Maritime Appeal Authority deemed to be a Commission of Inquiry

71. The Maritime Appeal Authority shall, within the scope of the Authority's jurisdiction, be deemed to be a commission of inquiry under the Commissions of Inquiry Act (Cap. 47); and, subject to the provisions of this Decree, the provisions of that Act shall apply accordingly.

Rights of applicants to the Maritime Appeal Authority

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

Procedure of Maritime Appeal Authority

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

Application to the Maritime Appeal Authority

74. Any application to the Maritime Appeal Authority shall be in writing specifying the grounds for the application and shall be lodged with such persons as appointed by the Chief Executive Officer, who shall forthwith refer the application to the Maritime Appeal Authority.

Decision of the Maritime Appeal Authority to be in writing

75. Any decision made by the Authority shall be in writing.

PART 5—LIABILITY OF SHIP OWNERS AND OTHERS

Application of this Part

76. This Part applies to every ship, whether registered or unregistered and whether a Fiji ship or not, in any circumstances in which the High Court has jurisdiction under section 18 (2) of the High Court Act (Cap. 13).

Interpretation

77. In this Part, unless the context otherwise requires,—

"limitation of liability" means limitation of the aggregate amount of liability of any one or more persons in accordance with this Part;

"owner", in relation to a ship—

(a) means every person who owns the ship or has any interest in the ownership of the ship;

(b) where the ship has been chartered, means the charterer; and

(c) where the owner or charterer is not responsible for the navigation and management of the ship, includes every person who is responsible for the navigation and management of the ship;

"salvage" includes all expenses properly incurred by the salvor in the performance of the salvage services; "salvage operations" or "salvage services" includes—

(a) operations in respect of the raising, removal, destruction, or rendering harmless of a ship which is sunk, wrecked, stranded, or abandoned, or of anything that is or has been on board such a ship;

(b) operations in respect of the removal, destruction, or rendering harmless of the cargo of a ship; and

(c) measures taken in order to avert or minimise any loss or injury or damage in respect of which liability may be limited in accordance with this Part;

"salvor", in relation to a ship, means every person rendering services directly connected with salvage operations carried out in relation to that ship;

Persons entitled to limitation of liability under this Part

78.—(1) Subject to subsection (2), the following persons are not personally liable for any act done in good faith, in accordance with the provisions of this Decree—

(a) owners of ships, and any master, seafarer, or other person for whose act, omission, neglect, or default the owner of the ship is responsible;

(b) salvors, and any employee of a salvor or other person for whose act, omission, neglect, or default the salvor is responsible; and

(c) insurers of liability for claims subject to limitation of liability, to the extent that the person assured is entitled to such limitation.

(2) No person shall be entitled to limitation of liability in respect of claims for loss or injury or damage resulting from that person's personal act or omission where the act or omission was committed, or omitted, with intent to cause such loss or injury or damage, or recklessly and with knowledge that such loss or injury or damage would probably result.

Claims subject to limitation of liability

79.—(1) Any person who is entitled to limitation of liability shall not be liable for an amount greater than the limit calculated in accordance with section 82 in respect of claims for loss or injury or damage arising on any occasion, being, in relation to any ship.

(2) The following claims shall be subjected to limitation of liability—

(a) claims in respect of—

(i) loss of life or personal injury; or

(ii) loss of or damage to property, including damage to harbour works, basins, waterways, and aids to navigation,

where the loss or injury or damage occurs on board the ship or is directly connected with the operation of the ship or with salvage operations, or is consequential upon any such loss or injury or damage; or

(b) claims in respect of loss or damage resulting from delay in the carriage by sea of cargo, passengers, or luggage;

(c) claims in respect of loss or damage resulting from infringement of rights other than contractual rights, where the loss or damage is directly connected with the operation of the ship or salvage operations;

(d) claims in respect of the raising, removal, destruction, or rendering harmless of a ship which is sunk, wrecked, stranded, or abandoned, or of anything that is or has been on board such a ship;

(e) claims in respect of the removal, destruction, or rendering harmless of the cargo of a ship; or

(f) claims of a person (other than the person liable) in respect of measures taken in order to avert or minimise any loss or injury or damage for which the person liable is entitled to limitation of liability, including claims for further loss or injury or damage caused by the taking of such measures.

Claims not subject to limitation of liability

80.—(1) Notwithstanding anything in section 89 and subject to subsection (2), the following claims shall not be

subject to limitation of liability—

(a) claims for salvage or contribution in general average; and

(b) claims in respect of nuclear damage.

(2) Claims in respect of the matters specified in sections 79 (2) (d), (e), and (f) shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

Application of limitation of liability

81.—(1) The limitation of liability under this Part—

(a) applies to the aggregate of relevant claims arising on any distinct occasion against—

(i) the owner of the ship, and any seafarer or other person for whose act, omission, neglect, or default the owner is responsible;

(ii) the owner of a ship rendering salvage services, and the salvor operating from that ship, and any employee of the salvor or other person for whose act, omission, neglect, or default that owner or salvor is responsible; or

(iii) a salvor who is not operating from a ship, or is operating solely on the ship to or in respect of which the salvage services are rendered, and any employee of the salvor or other person for whose act, omission, neglect, or default the salvor is responsible; and

(b) relates to all relevant claims for loss or injury or damage arising on any distinct occasion, whether or not the loss or injury or damage is sustained by more than 1 person;

(c) applies in respect of each distinct occasion, without regard to any liability arising on any other distinct occasion; and

(d) applies, subject to subsection (4), whether the liability arises at common law or under any other written law, and notwithstanding anything in any other written law.

(2) This section shall not limit or affect section 96 of this Decree.

Units of account

82.—(1) For the purpose of determining the monetary value of the number of units of account calculated in any case to be the relevant limit of liability under this Decree,—

(a) the units of account shall be converted to their monetary value according to the value of the Fiji currency at the date on which the limitation fund is constituted, or payment is made on the claims, or satisfactory security for any such payment is given; and

(b) the value of the Fiji currency in terms of the special drawing right shall be treated as equal to such a sum in Fiji currency as is fixed by the International Monetary Fund as being the equivalent of one special drawing right for—

(i) the relevant date; or

(ii) if no sum has been fixed for that date, the last preceding date for which a sum has been so fixed.

(2) For the purposes of subsection (1) (b), a certificate given by or on behalf of the Permanent Secretary of Finance stating—

(a) that a particular sum in Fiji currency has been fixed as the equivalent of one special drawing right for a particular date; or

(b) that no sum has been fixed for that date, and that a particular sum has been so fixed for the date most recently preceding a particular date,—

shall, in any proceedings, be received in evidence and, in the absence of proof to the contrary, be sufficient evidence of the value of the Fiji currency for the purposes of subsection (1) (b).

(3) For the purposes of this Part—

"unit of account" means a unit of measurement of monetary value;

"limitation fund" means a guarantee or deposit made by a ship owner to meet any damage claim, and calculated on the negligent ship's tonnage; and

"special drawing right" means the official monetary unit of the International Monetary Fund which acts as a supplemental reserve for national banking systems.

Calculation of limits of liability

83.—(1) Subject to subsection (4), the limit of liability for the purposes of this Part in respect of claims for loss of life or personal injury (other than claims specified in subsection (2)) shall be as follows—

(a) in the case of a ship of not more than 300 gross tons, 166,677 units of account;

(b) in the case of a ship of more than 300 gross tons, but not more than 500 gross tons, 333,000 units of account;

(c) in the case of a ship of more than 500 gross tons, 333,000 units of account plus a further number of units of account calculated as follows;

(i) for each gross ton of the ship from 501 to 3,000 tons, 500 units of account;

(ii) for each gross ton of the ship from 3,001 to 30,000 tons, 333 units of account;

(iii) for each gross ton of the ship from 30,001 to 70,000 tons, 250 units of account; and

(iv) for each gross ton of the ship in excess of 70,000 tons, 167 units of account.

(2) The limit of liability of the owner of a ship (including any person for whom that owner is responsible) in respect of claims for the loss of life of, or injury to, passengers of that ship, shall be 46,666 units of account multiplied by the number of passengers which the ship is authorised to carry, up to a maximum limit of 25,000,000 units of account.

(3) The limit of liability in respect of any claim other than a claim for which a limit is set under subsection (1) or subsection (2) shall be—

(a) in the case of a ship of not more than 300 gross tons, 83,333 units of account;

(b) in the case of a ship of more than 300 gross tons, but not more than 500 gross tons, 167,000 units of account;

(c) in the case of a ship of more than 500 gross tons, 167,000 units of account plus a further number of units of account calculated as follows—

(i) for each gross ton of the ship from 501 to 30,000 tons, 167 units of account;

(ii) for each gross ton of the ship from 30,001 to 70,000 tons, 125 units of account; and

(iii) for each gross ton of the ship in excess of 70,000 tons, 83 units of account.

(4) Where the amount available under the limit of liability calculated in accordance with subsection (1) is insufficient to pay all relevant claims under that subsection in full,—

(a) the amount available under the limit calculated in accordance with subsection (3) shall also be available for payment of the unpaid balance of any such claims; and

(b) that unpaid balance shall rank rateably with claims under subsection (3).

(5) For the purposes of this section,—

(a) the limits of liability for any salvor not operating from any ship, or for any salvor operating solely on the ship to or in respect of which the salvor is rendering salvage services, shall be calculated as if the salvor were operating from a ship of 1,500 gross tons;

(b) the tonnage of a ship shall be the gross tonnage calculated in accordance with the tonnage measurement Regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships 1969, and maritime Regulations made under this Decree;

(c) where the gross tonnage of a ship is unable to be ascertained,—

(i) the Chief Executive Officer, on receiving from or by the direction of the court, hearing the case in which the tonnage of the ship is in question, such evidence of the dimensions of the ship as is available, shall estimate what the gross tonnage of the ship would have been if the ship had been duly measured in accordance with the relevant tonnage measurement Regulations, and give a certificate of the tonnage as estimated by the Chief Executive Officer; and

(ii) the tonnage so estimated shall be taken to be the gross tonnage of the ship; and

(d) the reference in subsection (2) to claims for the loss of life of, or personal injury to, passengers of a ship refers to claims brought by, through, or on behalf of any person carried in that ship—

(i) under a contract of passenger carriage; or

(ii) who, with the consent of the carrier, was accompanying a vehicle or live animals carried

under a contract for the carriage of goods.

Court may consolidate claims

84.—(1) Where two or more claims are made or expected against any person who is alleged to have incurred

liability in respect of any claim of a kind referred to in section 81 (2), that person may apply to the High Court to have the claims consolidated.

(2) On any such application, the court may—

- (a) determine the amount of the applicant's liability, and distribute that amount rateably among the several claimants;
- (b) stay any other proceedings pending in the same or any other court in relation to the same matter; and
- (c) proceed in such manner and give such directions relating to the joining or excluding of interested persons as parties, the giving of security, the payments of costs, or otherwise, as the court thinks just.

Part owners to account in respect of damages

85. All sums paid for or on account of any loss or damage in respect of which the liability of owners is limited under this Part, and all costs incurred in relation to that loss or damage, may be brought into account among those part owners of the same ship who are jointly and severally liable in the same manner as money disbursed for the use of that ship.

Release of ship where security given

86. Where any ship or other property is arrested or seized in respect of a claim that appears to be one for which liability is limited by this Part, or security has been given to prevent or obtain release from any such arrest or seizure, the High Court may, on the application by the owner of the ship or other property or any other person having an interest in the ownership of the ship or other property, order the release of the ship, property, or security if the court is satisfied that—

- (a) satisfactory security of such nature, in this section referred to as the guarantee has been given, whether in Fiji or elsewhere, in respect of the claim;
- (b) that if the claim is established the amount of the guarantee will in fact be available to the claimant and
- (c) that the amount, either by itself or together with any further security that the court may require to be given, is at least equal to the maximum amount that may be allowed to the claimant in accordance with the provisions of sections 79 and 83.

PART 6—LIABILITY WHERE TWO OR MORE SHIPS INVOLVED

Application of this Part

87. This Part applies to every registered and unregistered ship and, whether a Fiji ship or not, in any circumstances in which the High Court has jurisdiction under section 18 (2) of the High Court Act (Cap. 13).

Interpretation

88.—(1) In this Part, unless the context otherwise requires, "owner", in relation to a ship—

- (a) means every person who owns the ship or has any interest in the ownership of the ship;
- (b) where the ship has been chartered, means the charterer; and
- (c) where the owner or charterer is not responsible for the navigation and management of the ship, includes

every person who is responsible for the navigation and management of the ship;

"salvage services" includes—

(a) operations in respect of the raising, removal, destruction, or rendering harmless of a ship which is sunk, wrecked, stranded, or abandoned, or of anything that is or has been on board such a ship;

(b) operations in respect of the removal, destruction, or rendering harmless of the cargo of a ship; and

(c) measures taken in order to avert or minimise any loss or injury or damage in respect of which liability may be limited in accordance with this Part.

(2) In this Part, reference to damage or loss caused by the fault of a ship shall be construed as including references to any salvage or other expenses consequent upon that fault recoverable in law by way of damages.

Division of loss

89.—(1) Subject to subsections (2) and (3), where, by the fault of two or more ships, damage or loss is caused to one or more of the ships, or to their cargoes or freight, or to any other property on board, the liability to compensate for the damage or loss shall be in proportion to the degree to which each ship was at fault.

(2) If, in any case to which subsection (1) applies, it is not possible to establish different degrees of fault, having regard to all the circumstances of the case, the liability shall be apportioned equally.

(3) Nothing in this section shall—

(a) render any ship liable for any loss or damage to which the fault of that ship has not contributed; affect the liability of any person under a contract of carriage, or any other contract;

(b) impose any liability upon any person from which that person is exempted by any contract or by any provision of law; or

(c) affect the right of any person to limit that person's liability in the manner provided by law.

Damages for personal injury

90.—(1) Subject to subsection (2), where, by the fault of two or more ships, any person on board one of the ships is killed or injured, the liability of the owners of the ships shall be joint and several.

(2) Nothing in subsection (1) shall—

(a) deprive any person of any right of defence on which, had this section not been enacted, that person might have relied on, in an action brought against that person by the injured person or by any person entitled to claim in respect of the death of any person on board; or

(b) affect the right of any person to limit that person's liability in the manner provided by law.

Right of contribution and limitation

91.—(1) Subject to subsection (2), where, by the fault of two or more ships, any person on board one of the ships is killed or injured, and a proportion of the damages is recovered against the owners of one of the ships that exceeds the proportion in which that ship was at fault, those owners may recover the amount of the excess by way of contribution from the owners of the other ship or ships to the extent to which those ships were respectively at

fault.

(2) No amount shall be recovered under subsection (1) that could not, by reason of any statutory or contractual limitation of or exemption from liability, or for any other reasons, have been recovered in the first instance as damages by the persons entitled to sue for damages.

(3) In addition to any other remedy provided by law, the persons entitled to any contribution under this section shall, for the purpose of recovering the contribution, have, subject to the provisions of this Decree, the same rights and powers as the persons entitled to claim for damages in the first instance.

(4) Subject to subsections (5) and (6), no action shall be maintainable under section 91 to recover any contribution in respect of an overpaid proportion of any damages for loss of life or personal injuries unless proceedings are commenced within one year after the date of payment.

(5) If, in any case to which subsection (1) applies, the High Court is satisfied that there has not been a reasonable opportunity to arrest the defendant ship—

(a) at any port in Fiji;

(b) within Fiji waters; or

(c) locally within the jurisdiction of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his or her principal place of business,—

within the period specified by subsection (1) the court shall, on the application of the plaintiff, extend that period to a period of time sufficient and with such conditions necessary to give such a reasonable opportunity.

(6) This section shall not apply to proceedings in respect of any alleged fault of a ship used by or set aside for the Fiji Navy.

(7) Subsection (3) shall not apply to any ships of the State.

(8) This section shall not limit or affect section 96.

PART 7—WRECK OF SHIPS AND AIRCRAFT

Interpretation

92. In this Part, unless the context otherwise requires—

"Fiji waters" means Fiji waters as defined in section 2 but does not include a port or approaches to a port as declared or deemed to be declared under the Sea Ports Management Act 2005;

"Search and Rescue Manual" means an official manual approved by the Ministry responsible for Defence for the purposes of providing assistance to persons in danger at sea;

"shipwrecked persons" means passengers and crew on a shipwrecked ship;

"tidal water" means—

(a) any part of the sea; or

(b) any part of a river within the ebb and flow of the tide at mean spring tides; and

"wreck" includes—

(a) any ship or aircraft which is abandoned, stranded or wrecked at sea or in any river or other inland water, or any equipment or cargo or other articles belonging to or separated from any such ship or aircraft or belonging to or separated from any ship or aircraft which is lost at sea or in any river or other inland water; and

(b) shipping containers and property lost overboard or separated from a ship, other than cargo lost in the course of its unloading or discharge from the ship while the ship is in a port.

Directions where ship or aircraft in distress

93.—(1) If any ship or aircraft is wrecked, stranded or in distress in Fiji waters, the Chief Executive Officer may give such reasonable directions as he or she thinks fit for the preservation of all or any of the following—

(a) the ship or aircraft;

(b) the lives of the passengers and crew; and

(c) the equipment and cargo of the ship or aircraft.

(2) The Chief Executive Officer may use the Search and Rescue Manual for guidance when issuing reasonable directions under this section.

(3) The Chief Executive Officer shall, with a view to the preservation of the lives of the shipwrecked persons or of the ship or aircraft or of its cargo or equipment—

(a) seek assistance from such persons as the Chief Executive Officer deems necessary to assist the Authority;

(b) require the master or other person having the charge of any ship nearby to give such aid with his or her crew or ship as may be within the master's power; and

(c) require the use of any vehicle that may be nearby.

(4) Any person who—

(a) wilfully disobeys the lawful direction under this section; or

(b) refuses without reasonable cause to comply with any lawful requisition made by the Authority under this section,

commits an offence and shall be liable upon conviction—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$2,000; and

(b) in the case of a body corporate, to a fine not exceeding \$10,000.

(5) Any power conferred under this section which is in conflict with the exercise of a power or any lawful directions given by—

- (a) a Port State Control Officer or a Port Master;
- (b) an on-scene commander; or
- (c) a Search and Rescue Co-ordinator,

shall not be exercised.

(6) The Chief Executive Officer may recover as a debt due from the owner of the ship or aircraft, or of the cargo or equipment, the costs of his or her intervention under this section in respect of that ship, aircraft, cargo, or equipment, other than costs in respect of the preservation of life.

Responsibility of owner of ship or aircraft in distress

94.—(1) If any ship or aircraft is wrecked, stranded or in distress in Fiji waters, and the Authority notifies the owner of the ship or aircraft that it considers that the ship or aircraft, or its equipment or cargo, is a hazard to navigation, the owner shall make arrangements to secure and remove the hazard.

(2) Nothing in this section affects or limits any right, privilege, or power exercisable in relation to a ship or aircraft, or its equipment or cargo, by the Chief Executive Officer or any other person authorised under this Decree.

(3) Any person who acts in contravention of this section commits an offence and shall be liable upon conviction—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$2,000; and

(b) in the case of a body corporate, to a fine not exceeding \$10,000.

Finding of wreck

95.—(1) If a person finds or takes possession of any wreck within the Fiji waters, or takes possession of and brings within the Fiji waters any wreck found beyond the Fiji waters, the following provisions shall apply—

(a) the person shall notify the Authority that he or she has found or taken possession of the wreck; and

(b) if the person is not the owner of the wreck, he or she shall inform the nearest police station of the finding as soon as practicable, and the police shall then take possession of the wreck.

(2) Any person who, without reasonable excuse, fails to comply with this section commits an offence and shall be liable upon conviction—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$2,000; and

(b) in the case of a body corporate, to a fine not exceeding \$10,000.

(3) Any person who is not the owner shall be liable to forfeit any claim to salvage and shall be liable to the owner of the wreck if it is claimed, or if the wreck is unclaimed, shall be liable to the person entitled to the same.

Removal of hazards to navigation

96.—(1) The Authority may cause to be removed, any ship or aircraft referred to under section 94, which is a hazard, if the—

- (a) owner of the hazard has not made arrangements under that section to secure and remove the hazard;
- (b) Chief Executive Officer considers the hazard is a hazard to navigation; and
- (c) action taken to remove the hazard is consistent with the Environment Management Act 2005.

(2) The Chief Executive Officer may, by notice in writing require the owner, master or person in command of the hazard, or to any agent of the owner, to raise, remove or destroy the whole or any part of that hazard in a manner satisfactory to, and within such time as may be specified in the notice.

(3) If a person fails to comply with the notice, or if a person to whom the notice can be given cannot be found, the Chief Executive Officer or a person authorised by the Chief Executive Officer may—

- (a) take possession of and raise, remove or destroy the whole or any part of the hazard;
- (b) sell, in such manner as he or she thinks fit, the hazard or any part of it that is so removed, and any property recovered from it, and in the exercise of his or her powers under this section, recover the whole of the expenses of removal, from the proceeds of sale of such hazard or any part thereof; and
- (c) if the proceeds of the sale are insufficient to pay the whole of the expenses of removal, recover the balance from the owner or master or person in command of the hazard, or from the owner of any ship or aircraft or from any other person if the sinking, stranding, or abandonment occurred through the fault or negligence of that ship, aircraft, or person.

(4) This section applies to every article belonging to or forming part of a ship or aircraft, as it applies to a ship or aircraft, and the proceeds of the sale under this section of any ship or aircraft or any part of it or other property recovered from it shall be regarded as the fund of the Authority pursuant to section 38 (d) of the Maritime Safety Authority of Fiji Decree 2009.

(5) For the purposes of this part,

"hazard" means any derelict ship or aircraft, any floating or submerged or stranded object.

(6) In this section, "owner" in relation to any hazard, includes not only the owner or owners at the time of the sinking, stranding, abandonment, or other event, but also any subsequent purchaser of the hazard or of any article belonging to it or forming part of it, as long as the hazard remains a hazard to navigation.

(7) Any person who acts in contravention of this section commits an infringement offence in accordance with section 262 and shall be liable to a fine not exceeding \$5,000 and, if the offence is a continuing one, to a further fine not exceeding \$250 for every day or part thereof during which the offence is continued.

Foreign wreck subject to duties as an importation

97.—(1) Where a foreign wreck is sold under this Part, the proceeds of sale shall be applied in the following order—

- (a) the duties, if any;
- (b) the expenses of sale reasonably incurred; and

(c) the rent and charges due to the Authority.

(2) If, after the proceeds of sale have been applied in accordance with subsection (1) and there is a balance, the balance shall be payable to the person claiming to be the owner of the foreign wreck if he or she makes an application within 6 months of the date of the sale or such further period as the Chief Executive Officer may allow.

(3) If a foreign wreck that is to be sold under this section is unlikely to raise a sum sufficient to cover the charges set out in subsection (1), then the foreign wreck may be destroyed or disposed of in such manner as the Chief Executive Officer may direct.

PART 8—GENERAL PROVISIONS RELATING TO SHIPPING

Duty of assistance

98. Any person on whom any duty is imposed under this Decree—

(a) shall at all reasonable times furnish; and

(b) shall ensure that at all reasonable times the person's agents and employees furnish,

the means required by the Authority, its employees, the Chief Executive Officer, or their respective agents for an entry, inspection, examination, audit, inquiry, or the exercise of any other power, under this Decree in relation to their duty.

Maritime Register

99.—(1) This section establishes the Maritime Register to be kept and maintained by the Authority.

(2) Copies or appropriate evidence of the following shall be recorded and maintained in the Register—

(a) every maritime document and marine protection document issued by the Chief Executive Officer;

(b) every Regulation made under this Decree;

(c) every accident, incident, and mishap notification given under section 20;

(d) every delegation, authorisation, notification of recognition of a document as a maritime document or marine protection document, and exemption granted in writing under this Decree;

(e) the address for service of—

(i) every current applicant for a maritime document or marine protection document;

(ii) every current holder of a maritime document or marine protection document; and

(iii) every person who holds a document recognised under this Decree as a maritime document or marine protection document;

(f) a list of the Conventions and the parties to each of those Conventions;

(g) the current performance agreement; and

(h) the current service charter.

(3) Any person has the right to inspect the Register and may obtain a copy of any entry in the Register upon payment of the prescribed fee.

Maritime Safety Information service

100.—(1) The Authority shall ensure that information service is provided to the public and that such service shall include the collection and dissemination of information regarding maritime safety requirements, marine protection requirements, and the placement and operation of aids to navigation in respect of Fiji waters.

(2) The Authority may require the payment of a reasonable charge fixed by the Authority for any costs incurred by the Authority under this section.

Appointment of Port State Control Officers, Port Master, Flag State Surveyor, and Jetty Masters

101. The Chief Executive Officer shall appoint—

- (a) Port State Control Officers;
- (b) Port Master;
- (c) Flag State Surveyor; and
- (d) Jetty Masters,

for the purposes of carrying out all or any of the functions and duties vested in the Chief Executive Officer by or under this Decree or any other written law including the controlling of safe approaches to ports, inspections and survey of ships.

Power of Port State Control Officers and Flag State Surveyor

102.—(1) Port State Control officers shall have the power to—

- (a) manage port state control responsibilities, and to implement international obligations concerning the security of ships and ports;
- (b) board any ship; and
- (c) require any action and give any directions in relation to dangerous goods and hazardous cargoes in accordance with this Decree and any other written law.

(2) A Flag State Surveyor may—

- (a) at any reasonable time go on board a ship and inspect or survey a ship and any part of the ship, including the hull, boilers, machinery and equipment of the ship; and
- (b) require the certificates of the master or of any officer of the ship, or any certificate or other statutory documents relating to the ship to be produced to him or her.

(3) Any person who—

- (a) fails to comply with a direction given by a Port State control officer or a Flag State Surveyor;

(b) fails to take any action in accordance with a direction given by a Port State control officer or a Flag State Surveyor;

(c) prevents a Port State control officer or a Flag State Surveyor from boarding a ship; or

(d) prevents or interferes with a Port State control officer or a Flag State Surveyor 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.

Power of Port Master and Jetty Masters

103.—(1) A Port Master and Jetty Masters shall have the power to—

(a) determine safety and security issues relating to the berthing, mooring or anchoring of ships within ports, approaches to ports, and jetties;

(b) direct the removal of any ship from any berth, station or anchorage, on the 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 ships generally to ensure the safety and security of ships, ports, and jetties;

(d) require any action and give any direction in relation to fires on board ships, including an order that a ship be scuttled or be removed to any other place;

(e) board any ship;

(f) require any action and give any directions in relation to dangerous goods and hazardous cargoes in accordance with this Decree and any other written law; and

(g) take any other action or give any direction that is necessary to ensure the security of ports, port approaches, jetties, and the safety of ships and persons in these areas.

(2) Any person who—

(a) fails to comply with a direction given by a Port Master or Jetty Master;

(b) fails to take any action in accordance with a direction given by a Port Maser or Jetty Master;

(c) prevents a Port Master or Jetty Master from boarding a ship; or

(d) prevents or interferes with a Port Master or Jetty Master 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.

Appointment of agents to collect marine safety charges

104.—(1) The Chief Executive Officer may appoint the Comptroller of Customs or the holder for the time being of any office, whether or not within the Public Service or any other person to be the agent of the Chief Executive Officer for the purpose of collecting marine safety charges or any class of marine safety charges.

(2) Any appointment under subsection (1) may—

(a) provide for the payment of a fee by the Chief Executive Officer for the collection of marine safety charges; and/or

(b) permit the agent to retain a specified portion of the marine safety charges as a collection fee.

Power of agent of ship, to retain marine safety charges out of other money

105. Any agent of ships who by any Regulations made under this Decree is liable for the payment of marine safety charges to the Authority in respect of any ship may, out of the money received by the agent on account of that ship or belonging to the owner thereof, retain the amount of all such charges, together with any reasonable expenses incurred by reason of the payment of the charges.

Recovery in certain cases where marine safety charges not paid

106.—(1) This section shall apply only where a marine safety charge is payable to the Chief Executive Officer or the Comptroller of Customs, and not where the charge is payable to any other person or any agent of the Chief Executive Officer.

(2) If the person liable to pay any marine safety charge in respect of any ship fails to do so on demand, and the charge is not paid by any other person, the Chief Executive Officer or the Comptroller of Customs may, in addition to any other remedy, go on board the ship and detain the cargo and any other property belonging to or on board the ship, and may maintain such detained property until that charge is paid.

(3) For the purposes of subsection (1), the term "agent" does not include the Comptroller of Customs.

Issue of receipt for marine safety charge

107. Any person who receives any marine safety charge shall, on demand, issue to the person paying the charge a receipt showing clearly the ship in respect of which the charge is paid and the period to which the charge relates.

Detention of ship where marine safety charges not paid or receipt not produced

108.—(1) Where, on demand being made by any person for the payment of any marine safety charge—

(a) the charge is not paid; or

(b) evidence for the earlier payment of the charge is not produced,

the Chief Executive Officer or the Comptroller of Customs may detain the ship concerned until the charge is paid or the receipt is produced.

(2) If payment of the charge is not made, or evidence of the earlier payment not produced, within the period of 60 days following the detention, the Authority may at any time during the continuance of the non-payment, or non-production, sell the ship, and apply the proceeds in payment of that charge, together with all reasonable expenses incurred by the Authority under this subsection, paying the surplus if any, on demand, to the owner or other person for the time being responsible for the management of the ship, or the master of the ship.

(3) Where a ship is detained or sold under this section, the State, the Chief Executive Officer, and the Comptroller of Customs, or any person acting under their direction or authority under this section shall not be liable for any loss or damage arising directly or indirectly from the detention or sale of the ship unless it is proved

to the satisfaction of a court that the person failed to act in good faith.

(4) The Comptroller of Customs shall advise the Chief Executive Officer of every ship detained pursuant to subsection (1) by the Comptroller or by a person acting under the Comptroller's direction or authority.

Coasting-trade

109.—(1) For the purposes of this Part, a coastal ship is engaged in the coasting-trade when the coastal ship—

(a) takes on board coastal cargo or passengers for commercial purposes; or

(b) leaves a port or place in Fiji to undertake a commercial shipping service within the territorial sea and archipelagic waters including Rotuma.

(2) Subject to this Decree, the Chief Executive Officer may, in respect of a coastal ship and subject to any conditions he or she thinks fit to impose, grant to a person a licence to engage that ship in the coasting-trade.

Coasting-trade licence

110.—(1) A licence granted under section 109 (2) shall be either—

(a) a general coasting-trade licence; or

(b) a special coasting-trade licence.

(2) A general coasting-trade licence entitles the holder of the licence to engage the ship in respect of which the licence is granted in the coasting-trade.

(3) A special coasting-trade licence entitles the holder of the licence to engage the ship in respect of which the licence is granted in the particular shipping service specified in the licence.

(4) Provided that a ship is a registered ship under the Ship Registration Decree 2013, a coasting-trade licence can be granted in respect of that ship to—

(a) the owner of the ship; or

(b) a person who is, either by himself, herself or with other persons, the charterer of the ship and,

in this section "owner" in relation to a ship, includes, where the ship is operated by a person other than the owner, that person.

(5) Where, in respect of a particular shipping service, the Chief Executive Officer is satisfied that the service that could be provided by a person referred to in subsection (1) (a) would be at least equal to or superior to the service that could be provided by a person referred to in subsection (1) (b) he or she shall grant the coasting-trade licence in respect of that service to the person referred to in subsection (1) (a).

Duration of coasting-trade licence

111. A coasting-trade licence shall not be granted for a period exceeding 5 years.

Determination for granting of a coasting-trade licence

112. In making a determination under section 109 the Chief Executive Officer shall have regard to—

- (a) the age, size and condition of the ship;
- (b) the adequacy of existing licensed services to provide the proposed service; and
- (c) the suitability of the ship for the proposed trade or service.

Coasting-trade permits

113.—(1) Where in the opinion of the Chief Executive Officer—

- (a) no ship in respect of which a coasting-trade licence has been granted is available to provide a particular shipping service; or
- (b) a particular shipping service offered by a ship in respect of which a coasting-trade licence has been granted is inadequate, inefficient or unreasonably costly, 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,

the Chief Executive Officer may, subject to any conditions he or she thinks fit to impose, issue a coasting-trade permit to the owner or master of any other ship, to operate that service.

(2) Any permit issued under subsection (1) shall only be in respect of a single voyage by a specified ship.

(3) A ship in respect of which a coasting-trade permit is issued shall not, for the purposes of this section, be deemed to be engaged in the coasting-trade solely by reason of the fact that the ship is engaged in the shipping service specified in the permit.

Failure to observe the conditions of a coasting-trade licence or permit

114.—(1) The Chief Executive Officer may require—

- (a) the holder of a coasting-trade licence or a coasting-trade permit; or
- (b) an applicant for the grant of a coasting-trade licence or the issue of a coasting-trade permit,

to furnish him or her with such information as is prescribed about the shipping service in respect of which the licence or permit is granted or issued or is sought to be granted or issued.

(2) Where the Chief Executive Officer has reasonable cause to believe that a person has in respect of a ship failed to comply with a requirement of this section, he or she or any other authorised person may, for the purpose of this section—

- (a) go on board the ship;
- (b) make a check on cargo or passengers carried on board the ship; and
- (c) examine any accounts, shipping documents, manifests and other documents relating to the ship.

(3) Any person who, without reasonable cause fails—

- (a) to comply with a requirement made under subsection (1); or
- (b) to permit a person authorised by the Chief Executive Officer to do any of the acts referred to in

subsection (2),

commits an infringement offence in accordance with section 262 and shall be liable to a fine not exceeding \$5,000.

(4) A person shall not, otherwise than in the performance of his or her official duties—

(a) make available any record; or

(b) divulge or communicate to any person any information,

acquired by him or her or furnished to the Chief Executive Officer under subsections (1) or (2).

(5) Any person who acts in contravention of subsection (2) commits an offence and shall be liable upon conviction to imprisonment for 1 year or to a fine not exceeding \$4,000.

(6) Any holder of a coasting-trade licence or a coasting-trade permit that was granted or issued subject to conditions, who fails to comply with such conditions, commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.

Cancellation or suspension of coasting-trade licence or permit

115.—(1) The Chief Executive Officer may cancel the coasting-trade licence or coasting-trade permit in respect of a ship in relation to which an offence is committed under this section.

(2) Where, in the opinion of the Chief Executive Officer, it is necessary or desirable for the safety of ships, passengers and cargo, the Chief Executive Officer may—

(a) cancel or suspend a coasting-trade licence; or

(b) vary any condition subject to which a coasting-trade licence was granted.

Aids to navigation

116.—(1) The Authority shall be responsible for the management of all aids to navigation on or near the coasts of Fiji and the adjacent seas and islands, except those to which subsection (2) applies.

(2) Any person, authority or operator who operates a port, cargo terminal, marina, jetty, marine farm, or other maritime facility must provide aids to navigation for that facility and is responsible for them.

(3) The Authority may—

(a) erect or place any navigational aid;

(b) add to, alter, remove, or maintain any aids to navigation or

(c) inspect any aids to navigation or property related to any aids to navigation.

(4) Any person who is authorised by the Chief Executive Officer for that purpose either generally or specifically may inspect and examine any aids to navigation that is privately or publically owned and may for that purpose enter, with such assistants as he or she may deem necessary, any such aids to navigation and any premises and property that is appurtenant to the aids to navigation.

(5) Any person, authority or operator who operates a port, cargo terminal, marina, jetty, marine farm, or other maritime facility must, as and when required by the Chief Executive Officer, do the following in or for that port as the Chief Executive Officer may require—

(a) erect lights, lay down buoys and beacons, and replace, remove, or discontinue any harbour light, signal, buoy, beacon, or other sea mark; or

(b) make any variation in the character of any harbour light, signal, buoy, beacon, or other sea mark or in the mode of exhibiting it.

(6) If any person, Authority or operator fails or neglects to comply with a requisition made under subsection (5) within the period specified in the requisition—

(a) the Chief Executive Officer may take all such steps and do all such acts as may be necessary to give effect to the requisition; and

(b) the cost and charges of doing so shall be debt due from the operator to the Authority and may be recovered accordingly.

(7) Any person who erects or places a navigational aid, alters the character of a navigational aid, or alters or removes the position of a navigational aid, without the approval of the Chief Executive Officer, commits an offence and is liable upon conviction—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$2,000; and

(b) in the case of a body corporate, to a fine not exceeding \$10,000.

(8) Aids to navigation shall be provided and maintained in accordance with, and comply with the requirements of the maritime Regulations.

Declaration of ports by the Minister

117.—(1) The Minister may, after consultation with the Minister for Finance and by notification in the *Gazette*, declare certain places in Fiji as port areas, where it is in his or her view that such a declaration is in the interest of the safe embarking and disembarking of passengers, cargoes and safe approaching and berthing of ships.

(2) Every declaration under subsection (1) shall define the limits of the port areas.

Provisions relating to special maritime events

118.—(1) The Minister may, on application made by any person or organisation, declare by notice published in the *Gazette*, a major maritime event or occasion to be an event or occasion to which section 119 applies.

(2) A notice under subsection (1)—

(a) shall describe the event or occasion to which it applies;

(b) shall describe the waters "the designated area" to which it applies;

(c) shall specify the period during which the notice applies;

(d) may set out requirements for the purposes of navigation safety and to enable the event or occasion to be

properly managed, including requirements specifying the classes of ships that are authorised to enter the designated area, and the conditions and requirements to be complied with by persons in the designated area; and

(e) may contain such other information as may be necessary to explain the effect of the notice.

(3) A notice under subsection (1) may not be given unless the Minister—

(a) is satisfied that—

(i) the application is reasonable;

(ii) the applicant has provided the information referred to in subsection (2) (a), (b), and (c); and

(iii) the applicant has provided any information required for the purposes of subsection (2) (d) and (e);

(b) is satisfied that the application of section 119 is in the interests of navigation safety or is an appropriate way to manage and control the event or occasion;

(c) is satisfied that the applicant has considered the needs of commercial shipping;

(d) has published in the *Gazette*, and in such daily newspapers as the Minister considers appropriate, a notice stating the Minister's intention to give the notice under subsection (1) and specifying a period (which may not be less than 10 days) within which interested persons and organisations may make written representations about the proposal; and

(e) has considered all representations received within the specified time.

(4) The Minister may from time to time, by notice published in the *Gazette*—

(a) extend the period during which a notice under subsection (1) applies; or

(b) amend any description or correct any obvious mistake in a notice under subsection (1).

(5) An applicant must pay the costs and expenses of the notices referred to in subsection (3) that are published for the purposes of that person's application under this section.

(6) This section applies only to special maritime events and occasions that are to be held in Fiji waters.

Special enforcement powers may be exercised when this section applies

119.—(1) This section applies to a special maritime event or occasion that is subject to a notice under section 118.

(2) During the period specified for the purpose in the notice under section 118 that applies to the event or occasion, an enforcement officer who has reasonable cause to believe that the action is necessary to maintain public order, or to preserve the safety of any person or ship, craft, or seaplane, or to enforce the provisions of the notice may do all or any of the following—

(a) stop and detain any ship, craft, or seaplane in the designated area;

(b) remove any ship, craft, or seaplane or person from the designated area;

(c) prevent any ship, craft, or seaplane or person from entering the designated area;

(d) prohibit the use of a ship, craft, or seaplane in the designated area, if the enforcement officer considers its use in the designated area would pose an unreasonable risk to the safety of those on board or of other persons; and

(e) board a ship, craft, or seaplane, give directions for the purposes of this section to the person appearing to be in charge, and require that person to give his or her name and address.

(3) The exercise of any power conferred by subsection (2) does not prevent an enforcement officer or any other person from taking any further action against a person under any other provision of this Decree or under any other written law.

(4) An enforcement officer exercising any power under this section must produce evidence of identity and evidence that he or she is an enforcement officer, whenever reasonably requested to do so.

(5) The person in charge of a ship, craft, or seaplane commits an infringement offence and is liable to the penalty prescribed by Regulations if—

(a) the ship, craft, or seaplane enters or remains in a designated area in contravention of a notice given under section 118 or otherwise contravenes the notice;

(b) the person obstructs an enforcement officer while the officer is lawfully exercising a power under subsection (2); or

(c) the person fails to comply with the lawful exercise by an enforcement officer of a power under subsection (2).

(6) For the purposes of this section, the following persons are enforcement officers—

(a) all Police Constables and all police employees who are not constables authorised for the purpose by the Commissioner of Police;

(b) all members of the Fiji Navy authorised for the purpose by the Commander of the Fiji Navy; and

(c) the Port State control officer and Port Master.

Opening and testing of packages containing dangerous goods

120.—(1) This section applies to—

(a) registered ships in Fiji; and

(b) other ships in a port in Fiji or in Fiji waters that load or unload cargo or fuel or embark or disembark passengers.

(2) A person referred to in subsection (3) may require a package or container to be opened and subjected to such tests as may be necessary to identify the contents if—

(a) the package or container is, or is intended to be, loaded or carried on a ship to which this section applies; and

(b) the person reasonably believes the package or container contains dangerous goods, as defined in Regulations made under this Decree, that are not marked or packed in accordance with the Regulations.

(3) The persons referred to in subsection (2) are—

(a) the owner, master, or charterer of a ship to which this section applies;

(b) the agent of the owner or charterer;

(c) the consolidator of any freight container or other form of secondary containment intended for shipment on the ship; or

(d) a person authorised by the—

(i) Chief Executive Officer;

(ii) Director of the Department of Labour;

(iii) Fiji Revenue and Customs Authority; or

(iv) Minister for Agriculture, Fisheries and Forests, Rural and Maritime Development and National Disaster Management.

(4) The shipper of the package or container is liable for the costs of inspections and tests carried out under subsection (2) and of any delay caused by the inspections and tests.

PART 9—SALVAGE

Interpretation

121. In this Part, unless the context otherwise requires—

"coastal or inland waters" means—

(a) all waters within the exclusive economic zone of Fiji;

(b) the territorial sea of Fiji; and

(c) the internal waters of Fiji;

"Convention" means the International Convention on Salvage, 1989, as set out in Schedule 2;

"Court" means the Magistrates' Court or High Court of Fiji; and

"freight at risk" includes payments due to an owner or charterer for the carriage of cargo.

Application of Convention

122. The provisions of the Convention shall have the force of law in Fiji.

Salvage claims against the State

123. Subject to the provisions of the State Proceedings Act (Cap. 24), the provisions of this Part shall apply to

salvage operations which assist any State-owned ship or other property, in the same manner as if the ship or property belonged to a private person.

Salvage claims by the State

124. Where salvage operations are rendered by any Fiji Navy ship, or any other State-owned ship, the State shall be entitled to claim salvage in respect of those operations to the same extent as any other salvor, and shall have the same rights as any other salvor.

Apportionment between salvors

125. A payment in respect of a salvage operation that is due to more than one person shall, in the absence of agreement between those persons, be apportioned among those persons in such manner as the court thinks fit, having regard to the terms of the Convention.

Salvage for saving life

126.—(1) Where services are rendered—

(a) wholly or in part within Fiji waters in saving life from any ship or aircraft, whether or not it is a registered ship in Fiji or an aircraft registered in or belonging to Fiji; or

(b) elsewhere in saving life from any registered ship in Fiji or any aircraft which is registered in or belongs to Fiji,

there shall be payable to the salvor, by the owner of the ship or aircraft or cargo or equipment, a reasonable amount of salvage, to be determined in case of dispute in the manner set out in subsections (2) and (3).

(2) Salvage in respect of the preservation of life, when payable by the owner of the ship or aircraft, is payable in priority to all other claims for salvage.

(3) Where the ship or aircraft and its cargo and equipment are destroyed, or the value of it is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage payable in respect of the preservation of life, the Minister may in consultation with the Minister for Finance award to the salvor, out of any money appropriated by Government for the purpose, such sum as he or she thinks fit in whole or part satisfaction of any amount of salvage so left unpaid.

Actions for indemnity

127. Any person who—

(a) is liable for payment in respect of a salvage operation; and

(b) is indemnified against that liability,

shall take action to enforce that indemnity within 2 years of the liability arising and, in the event of failure to do so, that right of enforcement shall no longer be available to that person.

PART 10—MARINE POLLUTION PREVENTION AND MANAGEMENT

Interpretation

128. In this Part, unless the context otherwise requires—

"carrying in bulk" means the carriage of a noxious liquid substance in the cargo spaces of a ship without any form of intermediate containment or packaging;

"clean ballast water" means ballast water and contaminants carried in a tank used to carry a noxious liquid substance or oil—

(a) where the tank has been thoroughly cleaned since last used to carry a noxious liquid substance, and the residue from that cleaning discharged with the tank being emptied; or

(b) where the tank has been thoroughly cleaned since last used to carry oil and the ballast water and contaminants, when discharged, would not contain oil exceeding 15 parts per million;

"coastal marine area" means the waters adjacent to the coastline;

"discharge" includes any release, disposal, spilling, leaking, pumping, emitting, or emptying but does not include release of harmful substances for the purposes of legitimate scientific research into pollution abatement and control and "to discharge" and "discharged" have corresponding meanings;

"en route" means that a ship is under way at sea on a course, or courses;

"Fiji waters" means Fiji waters as defined in section 2 but does not include a port or approaches to a port as declared or deemed to be declared under the Sea Ports Management Act 2005;

"garbage" means all kinds of victual, domestic, and operational waste generated during the normal operation of the ship or offshore installation and liable to be discharged continuously or periodically but does not include oil, noxious liquid substances, sewage, fresh fish or parts thereof;

"grade A treated sewage" means sewage discharged from a treatment system prescribed in the maritime Regulations, specifically for grade A treated sewage, that is maintained and operated in good working order and in accordance with any instructions of the system's manufacturer;

"grade B treated sewage" means sewage discharged from a treatment system prescribed in the maritime Regulations, specifically for grade B treated sewage, that is maintained and operated in good working order and in accordance with any instructions of the system's manufacturer;

"harmful substance" means—

(a) petroleum in any form, including crude oil, fuel oil, sludge, oil refuse and refined petroleum products (other than petrochemicals which are noxious liquid substances) and includes the substances specified in the maritime Regulations;

(b) any substance specified in the maritime Regulations and any mixture of those substances if carried in bulk in a ship;

(c) drainage and other wastes from any form of toilet, urinal, or toilet scupper on a ship or offshore installation;

(d) drainage from wash basins, wash tubs, and scuppers located in the dispensary, sick bay, or other medical premises of a ship or offshore installation;

(e) drainage from spaces on a ship or offshore installation containing living animals;

(f) waste water from a ship or offshore installation mixed with the drainage and waste specified in paragraphs (c), (d), or (e);

(g) harmful Antifouling Systems on ships such as a coating, paint, surface treatment, surface or device that is used on a ship to control or prevent attachment of unwanted organisms; and

(h) all victual, domestic, and operational waste (other than fresh fish or parts of fresh fish) generated during the normal operations of a ship or offshore installation and liable to be discharged continuously or periodically;

"hazardous ship" means a ship that is in the internal waters of Fiji and as a result of a shipping casualty or acts related to such a casualty, is discharging, or is likely to discharge, a harmful substance into the internal waters of Fiji or the seabed below them;

"hazardous structure" means a hazardous offshore installation or a hazardous pipeline;

"noxious liquid substance" means any substance specified in the maritime Regulations and includes any mixtures of those substances;

"oil" means petroleum in any form, including crude oil, fuel oil, sludge, oil refuse, and refined petroleum products (other than petrochemicals which are noxious liquid substances), and includes the substances specified in the maritime Regulations;

"marine spill" means any actual or probable release, discharge, or escape of oil, harmful substance, and noxious liquid substance;

"plastics" includes synthetic ropes, synthetic fishing nets, plastic garbage bags, and incinerator ashes from plastic products that may contain toxic or heavy metal residues;

"platform drainage" means the drainage water from the machinery space on an offshore installation and—

(a) includes all water and contaminants from generators, fuel tanks, and pumps; but

(b) does not include any water or contaminant from processing, production, or displacement associated with exploration, drilling, or production activities which are undertaken by the offshore installation;

"provincial council" means the council established under section 7 of the iTaukei Affairs Act (Cap. 120);

"segregated ballast water" means ballast water and contaminants in a ship's tank where that tank is completely separated from cargo oil and fuel oil systems and is permanently allocated to the carriage of ballast water or cargoes other than oil or noxious liquid substances;

"sewage" means, in relation to a ship or offshore installation—

(a) drainage and other wastes from any form of toilet, urinal, or toilet scupper;

(b) drainage from wash basins, wash tubs, and scuppers located in any dispensary, sick bay or other medical premises;

(c) drainage from spaces containing living animals; or

(d) waste waters mixed with the drainage and wastes specified in paragraphs (a), (b), or (c); and

"territorial water" has the same meaning given in section 2 of the Marine Spaces Act (Cap. 158A).

Control of discharges

129.—(1) For the purpose of this Decree, no harmful substances shall be discharged or allowed to escape —

(a) from any ship, offshore installation, or pipeline—

(i) into the sea within the exclusive economic zone of Fiji; or

(ii) onto or into the seabed below that sea;

(b) from any ship or offshore installation involved with the exploration or exploitation of the sea or the seabed, or any pipeline—

(i) into the sea beyond the outer limits of the exclusive economic zone of Fiji but over the continental shelf of Fiji; or

(ii) onto or into the seabed below that sea;

(c) from any registered ship in Fiji—

(i) into the sea beyond the outer limits of the exclusive economic zone of Fiji; or

(ii) onto or into the seabed below that sea; and

(d) as a result of any marine operations—

(i) into the sea within the exclusive economic zone of Fiji or beyond the outer limits of that exclusive economic zone but over the continental shelf of Fiji; or

(ii) onto or into the seabed below that sea.

(2) If any harmful substance is discharged or escapes into the sea or onto the seabed, the following persons commit an offence—

(a) from a ship, the master and owner of the ship;

(b) from an offshore installation or device, the owner of the offshore installation or device;

(c) from a pipeline, the owner of the pipeline;

(d) as a result of any marine operations, the person in charge of and carrying out such operations; or

(e) of a kind referred to in paragraphs (a), (b), (c) or (d) and results from intentional damage caused by a person not referred to in that paragraph, the person who committed the damage.

(3) Subject to subsection (4), any person who commits an offence against this section shall be liable upon conviction—

(a) to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$200,000 and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part thereof during

which the offence is continued; and

(b) to pay such amount as the Court may assess in respect of the costs incurred in respect of or associated with removing, containing, rendering harmless, or dispersing any harmful substance discharged as a result of the offence.

(4) The Court shall not sentence to imprisonment any person who commits an offence against this section unless the Court is satisfied that—

(a) where the person is the master or owner of a foreign ship—

(i) that the offence was committed within the internal waters, archipelagic waters and territorial sea;

(ii) that the person intended to commit the offence, or the offence occurred as a consequence of any reckless act or omission by the person with the knowledge that that act or omission would or would be likely to cause serious damage to the marine environment within the internal waters, archipelagic waters and territorial sea; and

(iii) that the commission of the offence has caused or is likely to cause serious damage to the marine environment within the internal waters, archipelagic waters and territorial sea;

(b) in any other case—

(i) that the person intended to commit the offence, or the offence occurred as a consequence of any reckless act or omission by the person with the knowledge that that act or omission would or would be likely to cause serious damage to the marine environment; and

(ii) that the commission of the offence has caused or is likely to cause serious damage to the marine environment.

Defences to offences against section 129

130. It shall be a defence to proceedings for an offence against section 129 if the defendant proves that—

(a) the harmful substance was discharged for the purpose of securing the safety of a ship, installation or device or for the purpose of saving life, and the discharge was a reasonable step to take to effect that purpose; or

(b) the harmful substance escaped as a consequence of damage to a ship or its equipment, to an offshore installation or device or its equipment, to a pipeline, or to any apparatus (other than a ship) used in connection with any marine operations and—

(i) such damage occurred without the negligence or deliberate act of the defendant; and

(ii) as soon as practicable after that damage occurred, all reasonable steps were taken to prevent the escape of the harmful substance or, if any such escape could not be prevented, to minimise the escape.

Duty to report discharge or escape of harmful substances

131.—(1) Where there is any discharge or escape of a harmful substance into the sea, or onto or into the seabed in breach of section 129 of this Decree, notice of such discharge or escape shall immediately be given to the—

(a) Authority;

(b) Director of the Department of Environment; and

(c) provincial council within whose provincial boundary the discharge or escape has occurred; or

(d) municipality within whose municipality boundary the discharge or escape has occurred.

(2) The following persons shall be under a duty to give notice of a discharge or escape of a harmful substance in accordance with subsection (1) and failure to do so shall be constituted as an offence—

(a) if the discharge or escape was from a ship, the owner and the master of the ship;

(b) if the discharge or escape was from an offshore installation, the owner of the offshore installation;

(c) if the discharge or escape was from a pipeline, the owner of the pipeline; or

(d) if the discharge or escape was a result of any marine operations, the person in charge of and carrying out such operations.

(3) The giving of notice of a discharge or escape in accordance with subsection (2) by one person shall be sufficient to relieve every other person from a duty to give such notice in respect of that discharge or escape.

(4) Any person found guilty under subsection (2) shall be liable upon conviction—

(a) in the case of an individual, to a fine not exceeding \$100,000 and, if the offence is a continuing one, to a further fine not exceeding \$2,000 for every day or part thereof during which the offence is continued; or

(b) in the case of a body corporate, to a fine not exceeding \$100,000,000 and, if the offence is a continuing one, to a further fine not exceeding \$50,000 for every day or part thereof during which the offence is continued.

Discharge of substances for the purpose of avoiding, remedying, or mitigating marine spill

132. Any person may, within the Fiji waters, discharge from a ship or offshore installation any substance for the purpose of avoiding, remedying, or mitigating the adverse effects of a marine spill.

Discharge of oil

133.—(1) Any person may, within the Fiji waters, discharge oil, or mixtures containing oil, from any ship if—

(a) the oil is not derived from the cargo of the ship;

(b) the ship is proceeding en route; and

(c) the oil content of the discharge before dilution with any other substance does not exceed 15 parts per million.

(2) Any person may, in the coastal marine area, discharge oil, or mixtures containing oil, from an offshore installation, if—

(a) the oil content of the discharge before dilution with any other substance does not exceed 15 parts per million; and

(b) the discharge is platform drainage.

Discharge of noxious liquid substances

134. Any person may, within the Fiji waters, discharge from any ship carrying in bulk a noxious liquid substance, any noxious liquid substance if that noxious liquid substance is part of a discharge of clean ballast water or segregated ballast water.

Discharge of sewage in Fiji waters

135.—(1) No ship of 15 meters or less in length shall discharge sewage within 3 miles from the nearest reef system.

(2) No ship more than 15 meters in length, offshore installations or devices shall discharge sewage within 12 nautical miles from the nearest reef system.

(3) Any person who acts in contravention of this section commits an infringement offence in accordance with section 262 and shall be liable—

(a) if the ship is of 15 meters or less in length, to a fine not exceeding \$2,000; and

(b) if the ship is more than 15 meters in length, offshore installations or devices to a fine not exceeding \$10,000.

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

136. Any ship, offshore installation or device may discharge Grade A treated sewage or Grade B treated sewage beyond Fiji's internal waters.

Discharge of garbage

137.—(1) The discharge of plastics, dunnage, lining, and packaging materials within Fiji waters from any ship is prohibited.

(2) Any person who acts in contravention of subsection (1) commits an infringement offence in accordance with section 262 and shall be liable—

(a) if the ship from which the discharge has been made is less than 15 meters in length, to a fine not exceeding \$2,000; and

(b) if the ship from which the discharge has been made is 15 meters or more in length, to a fine not exceeding \$10,000.

(3) Any ship, offshore installation or device may, within Fiji waters, discharge garbage other than those items specified in subsection (1), including food wastes, paper, rags, glass, metal, bottles, and crockery if—

(a) the garbage has been ground to a particle size of 25 millimetres or less; and

(b) the discharge occurs at least—

(i) 3 nautical miles from the nearest reef system; and

(ii) 0.5 nautical miles from any offshore installation or device.

(4) The discharge of garbage within Fiji waters from any offshore installation or device is prohibited.

(5) Any person who acts in contravention of subsections (3) and (4) commits an infringement offence in accordance with section 262 and shall be liable—

(a) if the ship from which the discharge has been made is less than 10 meters in length, to a fine not exceeding \$2,000; and

(b) if the ship from which the discharge has been made is above 10 meters in length, to a fine not exceeding \$10,000.

Discharge of ballast water

138. Ballast water exchange with marine water may be carried out by a ship or offshore installation, at least 200 nautical miles from the nearest land and in water at least 200 meters in depth or where this is not possible, then at least 50 nautical miles from shore and in water at least 200 meters in depth.

Discharges made as part of normal operations of ship, offshore installation or device

139. Any person may discharge, within Fiji waters, a contaminant that is incidental to, or derived from, or generated during, the operations prescribed in the maritime Regulations as the normal operations of a ship, offshore installation or device.

Notice of pollution incidents

140.—(1) Where a pollution incident occurs within the internal waters or the territorial sea of Fiji, the Chief Executive Officer, Director of the Department of Environment, the provincial council within whose provincial boundary the incident occurs or municipality within whose municipal boundary the incident occurs, shall be given notice of any pollution incident involving—

(a) ships;

(b) offshore installations or devices; or

(c) pipelines within Fiji archipelagic waters.

(2) The following persons shall be under a duty to give notice of the occurrence of a pollution incident in accordance with subsection (1) and failure to do so shall be constituted as an offence—

(a) if a ship is involved, the owner and master of the ship;

(b) if an offshore installation or device is involved, the owner of the offshore installation or device;

(c) if a pipeline is involved, the owner of the pipeline;

(d) if marine operations are involved, the person in charge of and carrying out such operations; or

(e) if a land based operations is involved, the owner or person in charge of operating those offshore installations.

(3) Where one person gives notice of a pollution incident in accordance with subsection (1) it shall be sufficient

to discharge every other person from a duty to give such notice in respect of that pollution incident.

(4) Where any pollution incident involving a registered ship in Fiji occurs beyond the outer limits of the exclusive economic zone of Fiji, the master of the ship shall, as soon as is practicable, report the incident to the appropriate authority of the nearest State.

(5) Any person found guilty under subsection (2) shall be liable upon conviction—

(a) in the case of an individual, to a fine not exceeding \$100,000 and, if the offence is a continuing one, to a further fine not exceeding \$2,000 for every day or part thereof during which the offence is continued; and

(b) in the case of a body corporate, to a fine not exceeding \$100,000,000 and, if the offence is a continuing one, to a further fine not exceeding \$50,000 for every day or part thereof during which the offence is continued.

Notice of prospective arrival of ship carrying oil or noxious liquid substance

141.—(1) The master or owner of a ship which arrives at a port in Fiji carrying oil or any noxious liquid substance in bulk as cargo, shall give prior notice of its arrival to the Chief Executive Officer or the provincial council within whose provincial boundary the port of prospective arrival is located.

(2) Any master or owner who acts in contravention of subsection (1) commits an infringement offence in accordance with section 262 and shall be liable upon conviction to a fine not exceeding \$20,000.

Notice of transfer of oil or noxious liquid substances to or from ships

142. Unless the master or owner of the ship gives written notice to the Chief Executive Officer in accordance with the requirements of the marine protection Regulations, no oil or noxious liquid substance—

(a) carried in bulk by a ship shall be transferred from that ship in the internal waters or territorial sea of Fiji; or

(b) carried in bulk shall be transferred to a ship in the internal waters or the territorial sea of Fiji.

Requirement of provision of financial security

143.—(1) If the Chief Executive Officer has reasonable cause to believe that a harmful substance has been discharged or has escaped from a ship in breach of this Part, the Chief Executive Officer may require the owner, operator, or agent of that ship to provide a contract of insurance or other financial security of a kind and for an amount that is sufficient security for the payment of any amounts that may be payable by the owner, or the master of the ship, under this Decree, in respect of that discharge or escape.

(2) Any person who fails to comply with the requirements of the Chief Executive Officer commits an offence and shall be liable upon conviction—

(a) to imprisonment for a term not exceeding 4 years or to a fine not exceeding \$100,000,000 and if the offence is a continuing one, to a further fine not exceeding \$50,000 for every day or part thereof during which the offence is continued to be committed;

(b) to pay such amount as the Court may assess in respect of the costs incurred in respect of or associated with removing, containing, rendering harmless, or dispersing any harmful substance discharged as a result of the offence.

Investigation of any discharge or escape of any harmful substance

144.—(1) The Chief Executive Officer shall appoint a person or persons to investigate any discharge or escape of a harmful substance in breach of this Part, or any pollution incident.

(2) For the purposes of carrying out an investigation under this Part, a person or persons appointed for the purpose by the Chief Executive Officer may—

(a) make inquiries from any person who he or she has reason to believe is in possession of information that may lead to the discovery of the cause of the discharge or escape or pollution incident;

(b) issue in writing a summons requiring any person to attend at the time and place specified in the summons and to give evidence, and to produce any documents or things in that person's possession or under that person's control that are relevant to the subject of the investigation;

(c) seek orders from Court to take possession of and remove any such document from the place where it is kept for such period of time as is reasonable in the circumstances; or

(d) require a person to reproduce, or to allow an authorised person to reproduce, in usable form any information recorded or stored on a document electronically or by other means.

(3) A summons served under this Part shall be served by—

(a) delivering it to the person summoned; or

(b) sending it by registered post addressed to the person summoned at his or her usual or last known place of residence.

(4) The summons shall—

(a) where it is served under subsection (3) (a) be served at least 48 hours before the attendance of the witness is required; or

(b) where it is served under subsection (3) (b) be served at least 10 days before the date in which the attendance of the witness is required.

(5) If the summons is sent by registered post it shall be deemed for the purposes of subsection 4 (b) to have been served at the time when the letter would be delivered in the ordinary course of post.

(6) For the purposes of this section—

"document" means a document in any form and includes—

(a) any writing on or in any material;

(b) information recorded or stored by means of a tape-recorder, computer, or other devices and material subsequently derived from information so recorded or stored;

(c) a record, book, graph, or drawing; and

(d) a photograph, film, negative, tape, disk, or other device in which one or more visual images are embodied or stored so as to be capable with or without the aid of equipment of being reproduced.

(7) Any person who fails to comply with a requirement made under subsection (2) commits an infringement offence in accordance with section 262 and is liable to a fine not exceeding \$1,000.

Additional powers of Investigators

145. The person or persons appointed by the Chief Executive Officer, may for the purposes of an investigation under section 144, but without limiting the powers conferred by that section—

(a) prohibit or restrict access of persons or classes of persons to the site of the discharge, escape, or pollution incident to which the investigation relates, if he or she believes on reasonable grounds that it is necessary to preserve or record evidence, or to prevent the tampering with or alteration, mutilation, or destruction of anything involved in the discharge, escape, or pollution incident;

(b) collect oil samples; or

(c) seek orders from Court to seize, detain, remove, preserve, protect, or test anything that the Authority believes on reasonable grounds will assist in establishing the cause of the discharge, escape, or pollution incident.

Requirement for reception facilities

146.—(1) The Chief Executive Officer may from time to time, by notice in writing, require any person who operates a port, marina or slipway in Fiji to provide at that port, marina or slipway a reception facility for the reception of harmful substances from ships.

(2) Any person who fails to comply with the requirements of the Chief Executive Officer commits an offence and shall be liable upon conviction—

(a) to imprisonment for a term not exceeding 4 years or to a fine not exceeding \$100,000,000 and if the offence is a continuing one, to a further fine not exceeding \$50,000 for every day or part thereof during which the offence is continued to be committed; or

(b) to pay such amount as the Court may assess in respect of the costs incurred in respect of or associated with removing, containing, rendering harmless, or dispersing any harmful substance discharged as a result of the offence.

Powers of Chief Executive Officer in relation to hazardous ships

147.—(1) Where the Chief Executive Officer is of the opinion that a ship is a hazardous ship, the Chief Executive Officer may from time to time—

(a) issue any instructions to the master, owner, or agent of the ship, or to any person in charge of any salvage operation in respect of the ship and an employee or agent of that person, with respect to the ship, or its cargo, or both; or

(b) take any measures with respect to the ship, or its cargo, or both, including taking over the control of the ship.

(2) Without limiting subsection (1), the Chief Executive Officer may take, or require any person referred to in subsection (1) (a) to take, all or any of the following measures—

(a) the removal of the ship to another place;

(b) the removal of cargo from the ship;

(c) the salvage of the ship, or its cargo, or both; or

(d) the sinking or destruction of the ship, or its cargo, or both.

(3) The Chief Executive Officer shall use reasonable means to notify the master, owner, or agent of the ship of any measures he or she proposes to take under subsections (1) or (2) with respect to the ship, or its cargo, however, the Chief Executive Officer shall not be obliged to give such notification where, in his or her opinion, the urgency of the situation is such that the measures shall be taken immediately.

(4) The Chief Executive Officer may from time to time, in order to carry out, or assist in carrying out, any measures taken under this section, after making reasonable endeavours to consult the owner, or the agent, of the ship to whose master the instructions are to be given—

(a) instruct the master of any registered ship in Fiji, or of any other ship within Fiji waters to render assistance to a ship that, in the opinion of the Chief Executive Officer, is a hazardous ship; and

(b) instruct the master of any registered ship in Fiji to do all or any of the following—

(i) take on board any item or equipment;

(ii) sail to any place;

(iii) render assistance to a ship assisting a ship that, in the opinion of the Chief Executive Officer, is a hazardous ship; or

(iv) assist in operations for the cleaning up and control of a harmful substance.

(5) Any person who fails to comply with the requirements of this section commits an offence and shall be liable upon conviction—

(a) to imprisonment for a term not exceeding 4 years or to a fine not exceeding \$50,000 and if the offence is a continuing one, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence is continued to be committed; or

(b) to pay such amount as the Court may assess in respect of the costs incurred in respect of or associated with removing, containing, rendering harmless, or dispersing any harmful substance discharged as a result of the offence.

Powers of Chief Executive Officer in relation to hazardous structures and operations

148.—(1)mThe Chief Executive Officer may from time to time—

(a) issue any instructions to the owner of the structure; or

(b) take any measures with respect to the structure,

which in the opinion of the Chief Executive Officer is a hazardous structure.

(2) Pursuant to subsection (1), the Chief Executive Officer also has the power to take either or both of the following measures—

(a) the removal to another place of the structure to another place; or

(b) the sinking or destruction of the structure.

(3) In the case of marine operations that, in the opinion of the Chief Executive Officer, are hazardous marine operations, the Chief Executive Officer may from time to time—

(a) issue any instructions to the owner or the person in charge of the marine operations; or

(b) take, or require that owner or person in charge to take any measures with respect to the marine operations.

(4) The Chief Executive Officer shall use reasonable means to notify the owner of a structure, or the owner or person in charge of marine operations, of any measures the Chief Executive Officer proposes to take under this section with respect to the structure or marine operations, but the Chief Executive Officer shall not be obliged to give such notification where in his or her opinion the urgency of the situation is such that the measures must be taken immediately.

(5) Any person who fails to comply with the requirements of the Chief Executive Officer commits an offence and shall be liable upon conviction—

(a) to imprisonment for a term not exceeding 4 years or a fine not exceeding \$50,000 and if the offence is a continuing one, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence is continued to be committed; or

(b) to pay such amount as the Court may assess in respect of the costs incurred in respect of or associated with removing, containing, rendering harmless, or dispersing any harmful substance discharged as a result of the offence.

Costs of detention under section 148

149.—(1) Where the Chief Executive Officer acts under section 148 to detain a ship, the provisions of section 277 shall apply to the costs of and incidental to the detention.

(2) Where the Chief Executive Officer acts under section 148 to seize a marine protection product, the Authority may recover from the owner of such marine protection product all reasonable costs of and incidental to such seizure.

(3) The Authority may become liable to pay to the owner of a ship or a marine protection product compensation for any loss resulting from the Chief Executive Officer unduly —

(a) detaining the ship or maintaining the seizure of the marine protection product; or

(b) delaying the ship or the use of the marine protection product.

(4) Where the Chief Executive Officer has taken action under section 148 on the information of a complainant and the information is subsequently found to be frivolous or vexatious, the complainant shall be liable to indemnify the Authority for all costs incurred by the Authority.

Exercise of power by Chief Executive Officer

150.—(1) The Chief Executive Officer shall not issue any instructions, or take any measures, under sections 147 or 148 unless the issue of such instructions, or the taking of such measures, appears necessary to the Chief

Executive Officer to avoid, reduce, or remedy pollution, or a significant risk of pollution, by a harmful substance that is causing, will cause, or will likely cause serious harmful consequences to the marine environment or marine interests.

(2) Any person who fails to comply with the requirements of the Chief Executive Officer commits an offence and shall be liable upon conviction—

(a) to imprisonment for a term not exceeding 4 years or to a fine not exceeding \$50,000 and if the offence is a continuing one, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence is continued to be committed; or

(b) to pay such amount as the Court may assess in respect of the costs incurred in respect of or associated with removing, containing, rendering harmless, or dispersing any harmful substance discharged as a result of the offence.

Protection of Chief Executive Officer and other persons

151. Subject to section 152, neither the Chief Executive Officer who has taken measures under the provisions of sections 143, 146, 147, 148, or 150, nor any person who has complied with any instructions under those sections, shall be liable for any action, suit, proceeding, dispute or challenge in any Court, Tribunal or any other adjudicating body for or in respect of any act or omission done in good faith or intended to be done in the execution or purported execution of this Decree or any other written law.

Right to compensation

152. Any person who has incurred expense, or suffered loss or damage, as a result of any action duly taken under instructions issued by the Chief Executive Officer under sections 147 or 148, or as a result of any measure taken by the Chief Executive Officer under either of those sections, may recover compensation from the Authority if the action or measure—

(a) was not reasonably necessary—

(i) to protect the marine environment or marine interests from a harmful substance; or

(ii) to prevent or reduce the risk of a harmful substance being discharged into the sea; or

(b) was such that the good done by the action or measure, or the good likely to be done, was disproportionately less than the expense incurred, or the loss or damage suffered, as a result of that action or that measure.

Factors the court shall take into account

153. Where a claim is brought against the Authority for compensation under this section, the Court, in determining whether section 152 applies, shall take into account—

(a) the probability of a harmful substance being discharged into the sea if the action or measure had not been taken;

(b) the likelihood of the action or measure taken being effective; and

(c) the extent of the loss or the damage which has been caused by the action or measure taken.

PART 11—PLANS AND RESPONSES TO PROTECT THE MARINE ENVIRONMENT FROM

MARINE SPILLS

Interpretation

154. In this Part, unless the context otherwise requires—

"National Oil Pollution Pool" means the pool established under section 197;

"marine spill" means any actual or probable release, discharge or escape of oil, harmful substance, and noxious liquid substance into Fiji waters;

"marine spill contingency plan" or "plan" means a shipboard or site marine spill contingency plan or the national marine spill contingency plan;

"marine spill response" or "response" means any action taken by or under the authority, or with the approval, of an on-scene commander in relation to a marine spill;

"municipal marine spill contingency plan" means a marine spill contingency plan prepared by a municipal council and approved by the Chief Executive Officer or prepared by the Chief Executive Officer under section 177;

"municipality on-scene commander" means a municipality on-scene commander appointed under section 183;

"National On-Scene Commander" means the National On-Scene Commander appointed under section 182;

"National Marine Spill Response Strategy" or "national plan" means the strategy most recently prepared or reviewed under section 157;

"Marine Spill Pollution Advisory Committee" or "Committee" means the committee appointed under section 155;

"oil transfer site" or "site" means any port facility, land, site, building, structure, or facility whether on land or above the seabed that is used to transfer oil, or, at or from which oil is transferred to, or from, a ship, or offshore installation;

"on-scene commander" means either the National On-Scene Commander or the municipality on-scene commander or the provincial on-scene commander as the case may be;

"provincial on-scene commander" means a provincial on-scene commander appointed under section 183;

"requisitioned property" means any land, building, vehicle, registered ship in Fiji, or any other real or personal property requisitioned under section 189 (1) (g);

"shipboard marine spill contingency plan" means a plan prescribed in the maritime 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;

"site marine spill contingency plan" means a plan prepared under the marine 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

"transfer site" means any port facility, land, site, building, structure, or facility whether on land or above the seabed that is used to transfer harmful substances, or, at or from which a harmful substance is transferred to, or from, a ship, or offshore installation.

Marine Spill Pollution Advisory Committee

155. This section establishes the Marine Spill Pollution Advisory Committee, to give advice to the Authority on the following matters—

- (a) the National Marine Spill Response Strategy;
- (b) the fixing of oil pollution levies imposed under this Decree;
- (c) the use of the National Oil Pollution Pool; and
- (d) any other matters related to marine oil spills that the Minister may from time to time specify by notice in writing to the Committee.

Composition of the Committee

156.—(1) The Committee shall consist of a Chairperson, the Chief Executive Officer, and such other persons, appointed by the Minister.

(2) In appointing the other members of the Committee, the Minister shall ensure that they comprise of the following as and when necessary—

- (a) the ship owner;
- (b) the shipping agencies;
- (b) the oil and gas exploration industry;
- (c) the oil and gas production and distribution industry;
- (d) the Petroleum Industry Emergency Action Committee;
- (e) representatives from the municipalities;
- (f) representatives from the provincial councils;
- (g) the Authority;
- (h) Ministry of Transport;
- (i) Ministry of Environment;
- (j) Ministry of Lands and Mineral Resources;
- (k) the National Fire Authority; and
- (l) Ministry of Defence.

(3) Members of the Committee shall be appointed on such terms and conditions, including travelling allowances

and expenses, as the Minister may from time to time determine.

(4) Any travelling allowances and expenses determined by the Minister under subsection (3) shall be paid out of the National Oil Pollution Pool.

(5) Subject to the provisions of this Decree, the Committee may regulate its own proceedings.

Preparation and review of National Marine Spill Response Strategy

157. The Chief Executive Officer shall prepare, by a date specified by the Minister by notice in the *Gazette*, the National Marine Spill Response Strategy and shall review that response strategy at least once every 5 years.

Purpose and contents of response strategy

158.—(1) The purpose of the National Marine Spill Response Strategy is to—

(a) describe the action to be taken, and by whom the action is to be undertaken, in response to a marine spill in Fiji's marine waters;

(b) promote a standard response to marine spills in Fiji; and

(c) promote the co-ordination of marine spill contingency plans and the action taken in response to marine spills under such plans.

(2) The National Marine Spill Response Strategy shall include such matters as the Chief Executive Officer considers appropriate to achieve its purpose as specified in subsection (1) and any other matters that the marine protection Regulations require to be included in the response strategy.

Consultation in respect of response strategy

159. In preparing and reviewing the National Marine Spill Response Strategy, the Chief Executive Officer shall consult with the Marine Spill Pollution Advisory Committee and such other persons as the Chief Executive Officer considers appropriate.

Purpose of marine spill contingency plans

160. The purpose of the marine spill contingency plan is to—

(a) promote planned responses to marine spills at shipboard site, provincial, municipality, and national levels; and

(b) specify the functions and responsibilities of persons with respect to responses to marine spills at shipboard site, provincial, municipal, and national levels.

Preparation, review, and keeping of shipboard and site marine spill contingency plans

161. Shipboard and site marine spill contingency plans shall be prepared, reviewed, and kept in accordance with the provisions of the Decree.

Purpose of provincial marine spill contingency plan

162. The purpose of a provincial marine spill contingency plan is to promote a planned and provincial co-ordinated response to any marine spill within a province that is beyond the resources of the persons who have

caused the marine spill or that has not been appropriately responded to by such persons.

Initial provincial marine spill contingency plans

163.—(1) Every provincial council whose boundary includes any coastline or riverbank shall, within the time specified by the Chief Executive Officer for the purpose, submit to the Chief Executive Officer for his or her approval a draft marine spill contingency plan for its municipality.

(2) Any date or dates specified by the Chief Executive Officer for the purposes of subsection (1), shall not be earlier than 12 months after all of the following have been prepared or issued, as the case may be, under this Decree—

- (a) the first provincial marine spill response strategy;
- (b) the first provincial marine spill contingency plan; and
- (c) Regulations prescribing requirements for provincial marine spill contingency plans.

Regular review of provincial marine spill contingency plans

164. Every provincial council shall review its marine spill contingency plan every 3 years and submit a draft marine spill contingency plan after such review to the Chief Executive Officer for his or her approval.

Preparation and consultation of, and matters to be included in, provincial marine spill contingency plans

165.—(1) In preparing its draft provincial marine spill contingency plan, a provincial council shall ensure that—

- (a) the draft plan is consistent with the National Marine Spill Response Strategy and the national marine spill contingency plan; and
- (b) the draft plan complies with any relevant requirements of the marine protection Regulations.

(2) The following matters shall be considered by a provincial council when preparing under section 171 or reviewing under section 172, its draft marine spill contingency plan—

- (a) the marine spill contingency plans of adjacent provinces;
- (b) such other marine spill contingency plans as it considers appropriate;
- (c) any provincial coastal plan applying to that province;
- (d) any conservation management strategies and conservation management plans;
- (e) the harmful effects that marine spills may have on the marine environment and measures that can be taken to limit these effects;
- (f) the substances that are suitable to contain and clean up marine spills; and
- (g) such other matters as it considers appropriate.

(3) A provincial council shall consult the following when preparing under section 171 or reviewing under section 172 its draft marine spill contingency plan—

(a) the Department of Environment;

(b) such persons who use the coastal resources within its boundary as the provincial council considers appropriate; and

(c) any other persons whom the provincial council considers appropriate.

Approval of draft provincial marine spill contingency plan

166.—(1) A provincial council shall, upon being required by the Chief Executive Officer to do so, include in, or omit from, its draft marine spill contingency plan submitted to the Chief Executive Officer under sections 171 or 172, such provisions as the Chief Executive Officer may specify.

(2) The Chief Executive Officer may, in his or her discretion, determine what provisions if any he or she requires under subsection (1) to be included in or omitted from a draft provincial marine spill contingency plan, except that the Chief Executive Officer shall not require any inclusion or omission of a provision that will result in the plan being inconsistent with any relevant requirements of the marine protection Regulations.

(3) The Chief Executive Officer shall, once his or her requirements if any, under subsection (1) have been complied with, approve the relevant provincial marine spill contingency plan.

Amendment of provincial marine spill contingency plans

167.—(1) The Chief Executive Officer may from time to time, by written notice to a provincial council, require the inclusion or omission of any provision in a provincial marine spill contingency plan if, in the opinion of the Chief Executive Officer, it is necessary to ensure an appropriate response by the provincial council to a marine spill within its boundary.

(2) A provincial council may from time to time amend its marine spill contingency plan and such amendment may be approved by the Chief Executive Officer.

Provincial marine spill contingency plan overridden in certain cases

168. Where any provincial marine spill contingency plan is inconsistent with the National Marine Spill Response Strategy, the national marine spill contingency plan, or the provisions of this Decree, the provincial marine spill contingency plan shall be void to the extent of that inconsistency.

Preparation of provincial marine spill contingency plan

169.—(1) The Chief Executive Officer may prepare the provincial marine spill contingency plan for a province where a provincial council has not submitted a draft marine spill contingency plan in accordance with sections 171 or 172.

(2) Where a provincial marine spill contingency plan is prepared by the Chief Executive Officer under subsection (1), the provincial council responsible for the plan shall meet out of its own resources the costs of the Authority in preparing the provincial marine spill contingency plan, and shall not be entitled under any provision of this Decree to reimbursement from the National Oil Pollution Pool for those costs.

Purpose of municipality marine spill contingency plan

170. The purpose of a municipality marine spill contingency plan shall be to promote a planned and municipality co-ordinated response to any marine spill within a municipality that is beyond the resources of the persons who have caused the marine spill or that has not been appropriately responded to by such persons.

Initial municipality marine spill contingency plans

171.—(1) Every municipality whose boundary includes any coastline or riverbank shall, by a date specified by the Chief Executive Officer for the purpose, submit to the Chief Executive Officer for his or her approval a draft municipal marine spill contingency plan.

(2) The date specified under subsection (1) shall be stated after all of the following have been prepared or issued under this Decree—

- (a) the first municipality marine spill response strategy;
- (b) the first municipality marine spill contingency plan; and
- (c) Regulations prescribing requirements for municipality marine spill contingency plans.

Regular review of municipality marine spill contingency plans

172. Every municipality shall review its marine oil spill, harmful substance, and noxious liquid substance contingency plan every 3 years and submit a draft marine spill contingency plan after such review to the Chief Executive Officer for his or her approval.

Preparation and consultation of, and matters to be included in, municipality marine spill contingency plans

173.—(1) In preparing its draft municipality marine spill contingency plan, a municipality shall ensure that—

- (a) the draft plan is consistent with the National Marine Spill Response Strategy and the national marine spill contingency plan; and
- (b) the draft plan complies with any other relevant requirements of the marine protection Regulations.

(2) The municipality shall when preparing under section 171 or reviewing under section 172 the draft marine spill contingency plan, consider the following matters—

- (a) the municipality marine spill contingency plans of adjacent municipalities;
- (b) such other marine spill contingency plans as it considers appropriate;
- (c) any municipality coastal plan applying to that municipality;
- (d) any conservation management strategies and conservation management plans;
- (e) the harmful effects that marine spills may have on the marine environment and measures that can be taken to limit these effects;
- (f) the substances that are suitable to contain and clean up marine spills; and
- (g) such other matters as it considers appropriate.

(3) The municipality shall when preparing under section 171 or reviewing under section 172, its draft marine spill contingency plan, consult—

- (a) the Department of Environment;

(b) such persons who use the coastal resources within its boundary as the municipality considers appropriate; and

(c) any other persons whom the municipality considers appropriate.

Approval of draft municipality marine spill contingency plan

174.—(1) A municipality shall, upon being required by the Chief Executive Officer to do so, include in, or omit from, its draft marine spill contingency plan submitted to the Chief Executive Officer under sections 171 or 172, such provisions as he or she may specify.

(2) The Chief Executive Officer may, in his or her discretion, determine what provisions if any, he or she requires under subsection (1) to be included in or omitted from a draft municipality marine spill contingency plan, except that the Chief Executive Officer shall not require any inclusion or omission of a provision that will result in the plan being inconsistent with any relevant requirements of the marine protection Regulations.

(3) The Chief Executive Officer shall, once the requirements, if any, under subsection (1) have been complied with, approve the relevant municipality marine spill contingency plan.

Amendment of municipality marine spill contingency plans

175.—(1) The Chief Executive Officer may from time to time, by written notice to a municipality, require the inclusion or omission of any provision in a municipality marine spill contingency plan if, in the opinion of the Chief Executive Officer, it is necessary to ensure an appropriate response by the provincial council to a marine spill within its boundary.

(2) A municipality may from time to time amend its marine spill contingency plan if such amendment is approved in writing by the Chief Executive Officer.

Municipality marine spill contingency plan overridden in certain cases

176. Where any municipality marine spill contingency plan is inconsistent with the national marine spill response strategy, the national marine spill contingency plan, or the provisions of this Decree, that municipality marine spill contingency plan shall be void to the extent of that inconsistency.

Preparation of municipality marine spill contingency plan

177.—(1) The Chief Executive Officer may prepare the municipality marine spill contingency plan for a municipality where a municipality has not submitted a draft marine spill contingency plan in accordance with sections 171 or 172.

(2) Where a municipality marine spill contingency plan is prepared by the Chief Executive Officer under subsection (1), the municipality responsible for the plan shall meet out of its own resources the costs of the Chief Executive Officer in preparing the municipality marine spill contingency plan, and shall not be entitled under any provision of this Decree to reimbursement from the National Oil Pollution Pool for those costs.

Purpose of national marine spill contingency plan

178. The purpose of the national marine spill contingency plan is to promote a planned and nationally co-ordinated response to any marine spill that—

(a) is beyond the resources of the municipality within whose boundary it is located; or

(b) is outside the municipality, but within the exclusive economic zone of Fiji, and is a spill for which the Chief Executive Officer considers that a national response is required.

Preparation and review of national marine spill contingency plan

179.—(1) The Chief Executive Officer shall prepare the national marine spill contingency plan by a date specified by the Minister for the purpose by notice published in the *Gazette*.

(2) The Chief Executive Officer shall review the plan made under subsection (1) at least once every three years.

Consultation in respect of and matters to be included in national plan

180.—(1) The Chief Executive Officer shall consult with such persons as he or she considers appropriate in preparing or reviewing the national marine spill contingency plan.

(2) The national plan shall contain such matters as the Chief Executive Officer considers appropriate and shall be consistent with the National Marine Spill Response Strategy.

(3) The Chief Executive officer shall consider the following matters when preparing or reviewing the national plan under section 179—

(a) Fiji's obligations under international Conventions and agreements in relation to responses to marine spills in the internal waters of Fiji or Fiji's marine spaces;

(b) the National Spill Response Strategy; and

(c) any other matters the Chief Executive Officer considers appropriate.

Duty to notify if unable to contain and clean up marine spills

181.—(1) Where there is any spill in the internal waters of Fiji or Fiji's marine spaces from a ship and the master of that ship considers that the spill cannot be contained and cleaned up using the resources available to that person for that purpose, then he or she must notify the Authority or, where the spill has occurred within the territorial sea, the Authority or the municipal council within whose municipality the spill is located, of his or her inability to contain and clean up the spill.

(2) Where there is a spill into the internal waters of Fiji or Fiji's marine spaces from an offshore installation, device or an oil transfer site in respect of which there is required to be a site marine spill contingency plan under the marine protection Regulations, and the person responsible for implementing the marine spill contingency plan in respect of that offshore installation or site considers that the spill cannot be contained and cleaned up by the resources available to that person for that purpose, he or she shall notify—

(a) the municipal council within whose municipality the spill is located; or

(b) the Authority, if the spill is not located within the municipality of a municipal council.

(3) Nothing in this section shall derogate from any other duty under this Decree, or any other written law, or any marine protection Regulations, to give notice to the Chief Executive Officer or any other person of a spill into Fiji's marine spaces.

(4) Any master of a ship or a person who is responsible for implementing a marine spill contingency plan in respect of an offshore installation or an oil transfer site and pipeline who acts in contravention of subsections (1) or (2) commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.

Appointment of National On-Scene Commander

182.—(1)The Minister shall from time to time appoint—

(a) a National On-Scene Commander; and

(b) a person or persons, who shall perform the functions and duties and may exercise the powers of the National On-Scene Commander if the office of the National On-Scene Commander is vacant or the National On-Scene Commander is absent, for as long as that vacancy or absence continues.

(2) When making the appointment, the Minister shall take the following into account—

(a) the person's experience;

(b) the person's knowledge of the Government systems that are in place and which can be used during an emergency response situation;

(c) the person's established network at the national and regional level; and

(d) any other factor that the Minister deems necessary.

(3) Any person appointed under subsection (1) (b) shall, during any vacancy or absence, be deemed to be a National On-Scene Commander.

(4) The National On-Scene Commander shall manage and co-ordinate the response of, and direct the use of resources available to the Authority in relation to any marine oil, harmful substance, and noxious liquid substance spill in respect of which the Authority is taking action.

Appointment of municipality and provincial on-scene commanders

183.—(1)Every municipality and provincial council shall from time to time appoint—

(a) an on-scene commander for their respective boundaries; and

(b) a person or persons, who shall perform the functions and duties and may exercise the powers of a municipality or provincial on-scene commander, if the office of the municipality or provincial on-scene commander is vacant or the municipality or provincial on-scene commander is absent, for as long as that vacancy or absence continues.

(2) Any person appointed under subsection (1) (b) shall, subject to the terms of appointment, be deemed to be an on-scene commander during any vacancy or absence.

(3) The on-scene commander of a municipality or provincial council shall manage and co-ordinate the response of, and direct the use of the resources available to that municipality or province, in relation to any marine spill in respect of which the municipality or province is taking action.

(4) In making the appointment, the municipality or provincial council may take the following into account—

(a) the person's experience in emergency response;

(b) the person's knowledge of the municipality or provincial systems that are in place and which can be used during an emergency response situation; and

(c) the person's established network at the municipal, provincial and Government level.

Appointments under sections 181 or 183

184. Any appointment under sections 181 or 183 and any revocation of the appointment shall be made on such terms and conditions as the Minister thinks appropriate.

Function of municipality and provincial on-scene commanders after notification

185.—(1) Subject to section 183 where a municipality or provincial on-scene commander is notified or otherwise becomes aware, of a marine spill within the municipality or provincial boundary by whom that on-scene commander is appointed, he or she shall—

(a) decide whether or not it is appropriate for any action to be taken in response to that marine spill; or

(b) decide whether any measures should be taken under the municipality or provincial marine spill contingency plan or under this Decree.

(2) Subject to section 183, if, in the opinion of any municipality or provincial on-scene commander, containing and cleaning up any marine spill within the municipality or provincial boundary of that municipality or province is or may be beyond the capacity of the resources available to that municipality or province, that municipality or provincial on-scene commander shall notify the Chief Executive Officer that assistance is or may be sought from the Authority.

(3) Where the municipality or provincial on-scene commander notifies the Chief Executive Officer under subsection (2), such notification shall not relieve a municipality or provincial council from its obligations under section 183 to comply with its municipality or provincial marine oil, harmful substance, and noxious liquid substance spill contingency plan.

Function of National On-Scene Commander after notification

186.—(1) Where a National On-Scene Commander is notified by the Chief Executive Officer or otherwise becomes aware of a marine spill, he or she shall decide whether or not it is appropriate for any action to be taken in response to that marine spill, including the taking of any measures under the national marine spill contingency plan or the exercise of any powers under this Decree.

(2) If, in the opinion of the Chief Executive Officer, containing and cleaning up any marine spill is beyond the capacity of the Authority, the Chief Executive Officer may seek assistance from other States or persons in accordance with the national marine oil spill contingency plan.

National On-Scene Commander to take precedence

187. Notwithstanding any other provisions of this Decree or any other written law, a National On-Scene Commander may give directions to any municipality or provincial council or its on-scene commander in relation to any marine spill within the municipality or province and the municipality or provincial council, and its on-scene commander shall comply with any such directions.

Objective of on-scene commander

188. If a municipality on-scene commander, the provincial on-scene commander or the National On-Scene Commander decides that it is appropriate for a municipality or a province or the Authority, to take action in respect of marine spill, the principal objective of that on-scene commander shall be to—

(a) prevent further pollution from the marine spill; and

(b) contain and clean up the spill in accordance with the relevant municipal marine spill contingency plan or the national spill contingency plan, as the case may be,

in such a way that does not cause any unreasonable danger to human life or cause an unreasonable risk of injury to any person.

Powers of on-scene commander

189.—(1) Where a municipality on-scene commander, the provincial on-scene commander or the National On-Scene Commander decides to take action in respect of a marine spill, he or she may do all or any of the following—

(a) direct the master or owner of any Fiji ship, or the owner of any offshore installation, device, or the owner of any oil transfer site that is the subject of a marine oil spill response to do anything, or refrain from doing anything, that the on-scene commander considers necessary or desirable to control or clean up the marine oil spill, or both;

(b) remove any person obstructing a marine spill response from an area, or any part of an area, where a marine spill response is being carried out;

(c) require the evacuation or the exclusion of persons, ships, and vehicles from any area, or any part of an area, where a marine oil spill response is being carried out;

(d) totally or partially prohibit, or restrict, public access on any road or to any public area or any part of the sea, that is within an area where a marine spill response is being carried out;

(e) remove from any road, public place, or from the sea, in an area where a marine spill response is being carried out, any ship, vehicle, or other thing impeding that response, and where reasonably necessary for the purpose, may enter forcibly any such ship, vehicle, or other thing;

(f) carry out such inspections as he or she thinks appropriate in respect of any Fiji ship, any vehicle, or other thing in an area where a marine spill response is being carried out; or

(g) subject to the provisions of section 193, require the owner or person for the time being in control of any land, building, vehicle, registered ship, or any other real or personal property to place that property under his or her control and direction.

(2) The powers under subsection (1) may be exercised by any on-scene commander, any person authorised by him or her, and any member of the Police.

(3) Nothing in subsection 1 (g) applies to any land, building, ship, vehicle, or other real or personal property under the control of the Republic of Fiji Military Forces.

(4) Any person who acts in contravention of this section commits an offence and shall be liable upon conviction—

(a) in the case of an individual, to a fine not exceeding \$10,000; or

(b) in the case of a body corporate, to a fine not exceeding \$100,000.

Additional powers of on-scene commander

190. If a municipal on-scene commander, a provincial on-scene commander or the National On-Scene Commander decides that it is appropriate for a municipality, a provincial council or the Authority, as the case may be, to take action in respect of a marine spill, he or she may, without limiting anything else do all of the following—

- (a) disseminate information and advice to the public relating to the marine spill;
- (b) carry out such works as will control and clean up the marine spill; and
- (c) provide any item, equipment, or facility to assist with the control and clean-up of the marine spill.

Limits on powers of on-scene commander

191. Any power conferred by sections 189 or 190 shall be exercised so as not to be inconsistent with any power exercised by the Chief Executive Officer or the Minister under this Decree.

Termination of marine spill response

192. The National On-Scene Commander may, with the consent of the Chief Executive Officer, terminate any marine spill response.

Matters to be complied with in requisitioning

193.—(1) Any person exercising any power conferred by section 189 (1) (g) shall give to the owner or person in charge of the requisitioned property a written statement specifying the property being requisitioned and the person under whose control the property is to be placed.

(2) Where the owner or person for the time being in control of any property that may be requisitioned under section 189 (1) (g) cannot immediately be found, an on-scene commander, member of the Police, or person so authorised by an on-scene commander may assume the control and direction of the requisitioned property.

(3) Where any person assumes the control and direction of requisitioned property under subsection (2), that person shall ensure that, as soon as is reasonably practicable in all the circumstances, a written statement specifying the property that has been requisitioned and the person under whose control it has been placed is returned to the owner or person formerly in charge of the requisitioned property.

(4) Where such person who assumes the control and direction of the requisitioned property under subsection (2) is unable to return the requisitioned property for reason of being unable to find the owner or person formerly in charge of the requisitioned property, the property shall continue to remain with the person who assumed control and direction of it, until such time the owner or person formerly in charge of the requisitioned property is found.

Proof of identity

194. Any person exercising any power conferred by section 189 shall—

- (a) carry, and produce if requested to do so, evidence of his or her identity; and
- (b) if requested to do so, produce evidence of, or give a general explanation of, the authority under which he or she is acting and the powers he or she is exercising.

Compliance with marine spill contingency plans

195.—(1) In the event of a marine spill from a ship, an offshore installation, or an oil transfer site and pipeline in respect of which a shipboard or site marine spill contingency plan has been prepared under this Decree, the provisions of the relevant shipboard or site marine spill contingency plan shall be complied with except to the extent that a person is directed otherwise by an on-scene commander.

(2) In the event of a marine spill within the province of a provincial council, the provincial marine spill contingency plan shall be complied with except to the extent that a person is directed otherwise by the National On-Scene Commander.

Offences in respect of marine spill contingency plans

196. Any master and owner of a ship, owner of an offshore installation or device, or owner of an oil transfer site and pipeline, who acts in contravention of section 195, commits an offence and shall be liable upon conviction—

(a) in the case of an individual, to a fine not exceeding \$10,000; or

(b) in the case of a body corporate, to a fine not exceeding \$100,000.

PART 12—FINANCING PLANS AND RESPONSES TO MARINE OIL POLLUTION

National Oil Pollution Pool

197.—(1) The Authority shall establish and administer a pool of levies to be known as the National Oil Pollution Pool.

(2) The oil pollution levies payable under section 198, and any other money that is lawfully payable to the Pool, shall be paid into the Pool.

(3) All money payable to the Pool shall be paid to the credit of a bank account established under the Financial Management Act 2004 for that purpose.

(4) Subject to the provisions of this Decree, payments made out of the Pool shall be for those purposes prescribed in section 201.

(5) The financial statements of the Pool shall form part of the financial reports of the Authority.

Oil pollution levies

198.—(1) Subject to subsections (3) and (4), the Minister shall, by notice published in the *Gazette*, impose on all of the persons referred to in subsection (2), oil pollution levies for the purposes of providing money for the National Oil Pollution Pool.

(2) Levies under subsection (1) shall be imposed on all of the following—

(a) the owners and masters of ships, except ships that carry less than 2 tonnes of oil that enter or operate within the Fiji waters;

(b) the oil companies; and

(c) the owners and operators of offshore installation, transfer sites and pipelines.

(3) For the purposes of this section, any order made under this Decree and published by way of a notice in the

Gazette shall be made on the recommendation of the Chief Executive Officer.

(4) The Chief Executive Officer shall not make any recommendation under subsection (3) unless—

(a) he or she is satisfied that the planned expenditure from the Pool is reasonable and the levies recommended will enable that expenditure to be met without reducing the level of reserves referred to in section 199 (6); and

(b) he or she has consulted the Marine Spill Pollution Advisory Committee as required by section 200.

(5) An order made by the Minister by a notice published in the *Gazette* under this Decree shall—

(a) require returns to be made by persons by whom any levy is payable; and

(b) prescribe requirements and conditions relating to the making of such returns.

Expenditure budgets required before certain money paid from Pool

199.—(1) For the purpose of this Decree, no payment shall be made under sections 201 (a), (b) or (d) from the National Oil Pollution Pool to the Authority in any financial year unless such payment is in accordance with an expenditure budget submitted by the Authority from time to time and approved by the Minister in his or her discretion.

(2) For the purpose of this Decree, no payment shall be made under section 201 (f) from the Pool to any municipality or provincial council in any financial year unless such payment is in accordance with an expenditure budget submitted from time to time by the municipality or provincial council to the Authority and approved by the Authority in its discretion.

(3) The Authority shall, before submitting a budget under subsection (1) to the Minister for approval, consult the Marine Spill Pollution Advisory Committee about that budget and shall consider the budgets received by the Authority from the municipality and provincial councils under subsection (2).

(4) The obligations of the Authority in respect of its expenditure budget shall be in addition to its obligations under the Financial Management Act 2004.

(5) Expenditure budgets are not required under this Decree in respect of the application of the Pool for the purposes provided in sections 201 (c), (e) or (g).

(6) The Minister shall, after consultation with the Minister for Finance, determine what financial reserves is desirable for the Pool to hold.

Consultation on oil pollution levies

200. The Chief Executive Officer shall consult the Marine Spill Pollution Advisory Committee before advising the Minister on the imposition of and the rate or rates of any oil pollution levies.

Application of money in the National Oil Pollution Pool

201.—(1) Subject to the provisions of this Decree, the Authority shall apply the National Oil Pollution Pool only for the following purposes—

(a) to meet the costs of the Marine Spill Pollution Advisory Committee;

(b) to purchase plant, equipment, or any other thing to make preparations for, or to implement, or assist in implementing, any responses to marine oil spills;

(c) to meet the reasonable costs of the Authority, including the costs incurred by the Chief Executive Officer and the National On-Scene Commander, in controlling, dispersing, and cleaning up any marine oil spill;

(d) to meet the costs of services associated with planning and responses for marine oil spills including training and oil spill exercises that are services provided under a contract or arrangement with the Authority;

(e) to meet the costs of the Authority in—

(i) the performance of its functions and duties and the exercise of powers of the Authority, the Chief Executive Officer, and the National On-Scene Commander under Part 11 of this Decree; and

(ii) taking measures to avoid marine oil spills;

(f) to meet the reasonable costs of any municipality or provincial council in—

(i) the performance of the functions and duties and the exercise of the powers of the municipality or provincial council and its on-scene commander under Part 11 of this Decree; and

(ii) taking steps to avoid marine oil spills;

(g) to meet the reasonable costs incurred by any person, in assisting any animal or plant life affected by any marine oil spill, with the consent or in accordance with the requirements of an on-scene commander;

(h) to meet any other expenditure for which this Decree contemplates that reimbursement may be made from the Pool; and

(i) such other expenditure or classes of expenditure, related to marine oil spills, as may from time to time be approved by the Minister by order through notice published in the *Gazette*.

(2) The following provisions shall apply to payments made under subsections (1) (c) and (e) and to payments made under subsection (1) (g) for the purpose of assisting any wildlife—

(a) the payments may be made if, and to the extent that, the costs for which the payments may be made have not been recovered from the person who caused the oil spill;

(b) the recipient must make all reasonable efforts to recover those costs from that person; or

(c) payments may be made on an interim or periodic basis and each time it recovers money from the person who caused the oil spill, the recipient must pay to the Pool a proportionate amount.

Compensation payable where property requisitioned

202.—(1) Where any requisitioned property has come under the control of any person acting under section 189 of this Decree, any person having an interest in the requisitioned property may recover from the National Oil Pollution Pool, reasonable compensation for—

(a) the use of that requisitioned property while under that control; and

(b) any loss of or damage or injury to that requisitioned property suffered or incurred while under that control.

(2) Where the National Oil Pollution Pool does not have sufficient resources to pay the whole or any part of any compensation payable under subsection (1), the State may, but is not obliged to, pay the compensation that the Pool is unable to pay.

(3) The State, and the Authority on behalf of the National Oil Pollution Pool, may recover as pollution damages under sections 206 or 207 any compensation paid under this Decree.

Compensation for loss or damage to personal property

203.—(1) Any person who carries out a marine oil spill response and who suffers loss of or damage to his or her personal property in the course of carrying out that marine oil spill response shall be entitled to receive from the National Oil Pollution Pool compensation equal to—

(a) the value of any personal property that has been so lost; or

(b) the reduction in value of any property that has been so damaged.

(2) Where the National Oil Pollution Pool does not have sufficient resources to pay the whole or any part of any compensation payable under subsection (1), the Authority may, but is not obliged to, pay the amount of compensation that the Pool is unable to pay.

(3) The State, and the Authority on behalf of the National Oil Pollution Pool, may recover as damages for pollution damage under sections 206 or 207, any compensation paid under this section.

(4) Subsection (1) shall not apply in respect of any loss or damage to property to the extent to which a person is indemnified for that loss or damage by a contract of insurance.

(5) To the extent to which, in respect of any loss or damage to personal property, any person has recovered or, having regard to the circumstances of the case, may reasonably be expected to recover any damages, compensation, or ex gratia payment, he or she shall not be entitled to receive any compensation under subsection (1).

PART 13—MISCELLANEOUS PROVISIONS

Absence from duty not to affect employment rights

204.—(1) Any person who is absent from his or her usual employment as a result of carrying out any instructions or directions under section 189 shall not be liable to dismissal from his or her employment by reason only of such absence.

(2) Nothing in this section shall impose on the employer of any person, any obligation to pay any remuneration in respect of any period of absence in carrying out any instructions or directions under section 189.

Minister's power of direction

205. The Minister may, if he or she considers it is expedient to do so having regard to all the circumstances, give directions to the Authority, a municipality, a provincial council or an on-scene commander in respect of the performance of any functions or duties, or the exercise of any powers under Parts 11 and 13, and the Authority, municipality, provincial council or on-scene commander shall comply with those directions.

Purchases by Authority to prepare for and implement responses to marine spills

206.—(1)The Authority may purchase anything it considers necessary to make preparations for, or to implement or assist in implementing, any response to a marine spill in Fiji waters, including internal waters, by the municipalities or any provincial council, and as contemplated by the National Marine Spill Response Strategy.

(2) The Authority shall be entitled to be reimbursed for any expenditure under subsection (1) out of the National Oil Pollution Pool if such expenditure is provided for in the expenditure budget approved by the Minister under section 199 of this Decree.

Distribution and responsibility for maintenance of purchases under section 206

207.—(1)Where it considers appropriate, the Authority may distribute anything purchased under section 206 to municipalities, provincial councils or other persons in accordance with the National Marine Spill Response Strategy.

(2) Where anything is distributed to a municipality, provincial council or person under subsection (1), it shall remain the property of the Authority, and the municipality, provincial council or person shall maintain it in good order in accordance with any instructions issued by the Authority.

(3) The Authority shall meet the reasonable costs incurred by a municipality, provincial council or person in maintaining anything in accordance with the Authority's instructions under subsection (2).

Authority may inspect

208. The Authority may, at any time, inspect anything distributed to a municipality, provincial council or another person under section 207.

Chief Executive Officer responsible for training

209.The Chief Executive Officer shall be responsible for the development and co-ordination of training necessary to successfully implement a marine spill response under the National Marine Spill Response Strategy.

Chief Executive Officer may review responses

210.The Chief Executive Officer may, at any time within 2 years of a marine spill response being carried out, review such response with a view of improving such responses in the future.

Protection from liability

211.Except as provided in sections 202 and 203 of this Decree, neither—

- (a) the State;
- (b) any organisation;
- (c) the Authority;
- (d) any municipality;
- (e) any provincial council;
- (f) any officer or employee of any of the above;

(g) any member of a municipality or a provincial council; nor

(h) any on-scene commander,

shall be liable to recover damages for any loss of or damage to property that is due directly or indirectly to a marine spill response having been taken or for any action, suit, proceeding, dispute or challenge in any Court, Tribunal or any other adjudicating body for or in respect of any act or omission done in good faith in the exercise or non-exercise of the powers conferred by or duties prescribed under the provisions of this Decree or any other written law.

Contracts

212.—(1) Notwithstanding the provisions of any other written law, the chairperson, deputy chairperson, Chief Executive Officer, treasurer, engineer, or any other employee of a municipality or provincial council specified in the municipality or provincial marine spill contingency plan, or any municipality or provincial on-scene commander, may, from time to time, when a marine spill response is determined to be needed, with the consent of the Minister, enter into contracts for the purposes of this Decree.

(2) Any person who exercises the power conferred by this section shall report the full circumstances of its exercise to the municipality or to the provincial council at its next ordinary meeting, or where that is not practicable, at its next succeeding ordinary meeting.

PART 14—OBLIGATIONS AND POWERS IN RELATION TO MARINE PROTECTION DOCUMENTS

Marine protection documents to be held and complied with

213.—(1) Any person who does anything, or uses or operates anything, for which a marine protection document is required under the marine protection Regulations made under this Decree, shall ensure that the—

(a) appropriate document is held in accordance with the marine protection Regulations; and

(b) provisions of that document and all relevant marine protection Regulations are complied with.

(2) Every holder of a marine protection document shall—

(a) if so required by the marine protection Regulations, establish and follow a management system that shall ensure compliance with the relevant prescribed standards for protection of the marine environment and the conditions attached to the marine protection document;

(b) provide training and supervision to all employees of the holder who are engaged in doing anything to which the marine protection document relates, so as to maintain compliance with the relevant prescribed standards for protection of the marine environment and the conditions attached to the marine protection document; and

(c) provide sufficient resources to ensure compliance with the relevant prescribed standards and the conditions attached to the marine protection document.

Application for marine protection document

214.—(1) Any application for the grant or renewal of a marine protection document, or for the recognition of a document as a marine protection document, shall be made to the Chief Executive Officer in the prescribed form or, if there is no prescribed form, in such form as the Chief Executive Officer may require.

(2) Every applicant under subsection (1) shall include in his or her application his or her address for service in Fiji including, where applicable, telephone and facsimile numbers.

(3) It shall be the duty of every holder of a marine protection document to maintain the currency of the information provided under subsection (2) by promptly notifying the Chief Executive Officer of any change in address, telephone number or facsimile number.

(4) The Chief Executive Officer shall ensure that a record of all information provided under this section is maintained at the Maritime Register.

(5) The service of any notice, notification, or other document under this Decree on a holder of a marine protection document, or on an applicant under subsection (1), shall be effective service if served at the address last provided by that holder or applicant.

Issue of marine protection documents and recognition of documents

215.—(1) After considering any application under section 214, the Chief Executive Officer shall, as soon as practicable, grant the application if he or she is satisfied that—

(a) all things in respect of which the document is sought or, in the case of an application for recognition of a document as a marine protection document, the document meets any relevant prescribed requirements; and

(b) the applicant and any person who is to have or is likely to have control over the exercise of the privileges under the document, meet any prescribed requirements.

(2) The Chief Executive Officer may, subject to any provisions in the marine protection Regulations, recognise such qualifications or certifications as he or she considers appropriate for the purpose of granting or renewing a marine protection document, or recognising a document as a marine protection document.

(3) The Chief Executive Officer shall not recognise foreign qualifications or foreign certificates where the—

(a) requirements to gain such qualifications or to obtain such certificates are less than the requirements to gain similar qualifications or to obtain similar certificates in Fiji; and

(b) Chief Executive Officer believes that to recognise such qualifications or certificates might pose a risk or danger to the marine environment.

(4) Where a licence, permit, certificate, or other document is recognised by the Chief Executive Officer under this section, the Chief Executive Officer shall either—

(a) issue an equivalent marine protection document under this section; or

(b) notify the applicant in writing of such recognition.

(5) Where the Chief Executive Officer declines to grant an application under section 214, the applicant may appeal against that decision to the Maritime Appeals Committee under section 264.

(6) Nothing in this section applies in respect of any ship, crew or marine protection product in respect of which section 214 applies.

Acceptance of documents

216.—(1) Subject to subsection (2), the Chief Executive Officer shall accept every valid licence, permit, certificate, or other document issued by or approved by a State, other than Fiji, under a marine protection Convention to which that State and Fiji are both parties, and for the purposes of this Decree, such documents shall be deemed to be marine protection documents.

(2) The Chief Executive Officer shall not accept, or may suspend acceptance of, any document referred to in subsection (1) where he or she has reasonable grounds to believe that—

(a) the condition of the ship or marine protection product does not correspond substantially with the particulars of any document relating to the ship or marine protection product;

(b) the ship or marine protection product has been materially altered without the sanction of the State that issued or approved the document;

(c) the ship is not fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment; or

(d) any provision or condition of the document is not being met.

(3) Sections 214, 215, 217, 219, 220, 222, 240, 223, 225 and 250 (b) shall not apply to any document to which this section relates.

(4) This section applies in respect of—

(a) every ship, other than a Fiji ship, registered in a country that is a party to any marine protection Convention to which Fiji is also a party;

(b) the crew of every ship referred to in paragraph (a); and

(c) the marine protection products of every ship referred to in paragraph (a).

Suspension of marine protection documents or imposition of conditions

217.—(1) The Chief Executive Officer may, from time to time suspend—

(a) any marine protection document issued under this Decree, or under any marine protection Regulations, or impose such conditions in respect of any marine protection document; or

(b) the recognition of a document as a marine protection document, where such document was issued by another person or organisation, or impose conditions in respect of such recognition.

(2) The Chief Executive Officer may carry out his or her powers under subsection (1) where he or she considers that such action necessary in the interests of protecting the marine environment and if he or she is satisfied that—

(a) the holder fails or has failed to comply with any conditions of the relevant marine protection document;

(b) the holder has failed to comply with section 250;

(c) such action is necessary to ensure compliance with any—

(i) provision of this Decree; or

(ii) Regulations or marine protection Regulations made under this Decree; or

(d) considers that the privileges or duties for which the marine protection document has been granted, or the relevant document has been recognised as a marine protection document, are being or have been carried out by the holder in a careless or incompetent manner.

(3) Any—

(a) suspension of marine protection document;

(b) suspension of recognition of any document as a marine protection document; or

(c) imposition of conditions in respect of any such document,

by the Chief Executive Officer, shall remain in force until the Chief Executive Officer has within 28 days determined, after due investigation, the action to be taken in respect of the cause of the suspension or imposition of conditions.

(4) For the purposes of subsection (2), the Chief Executive Officer may direct by way of a written notice that a further specified period is necessary for the purposes of such investigation.

Further suspension

218.—(1) If, after investigation, the Chief Executive Officer considers such action to be warranted, he or she may suspend for a further period the marine protection document, or the recognition of a document as a marine protection document, or impose further conditions, and he or she shall cause the appropriate endorsement to be made on the marine protection document or on the notification of recognition, as the case may require.

(2) The Chief Executive Officer may, suspend for a further period of time the marine protection document, or the recognition of a document as a marine protection document, or impose further conditions, if after the investigation the Chief Executive Officer considers such action necessary.

(3) For the purposes of subsection (4), the Chief Executive Officer may cause the appropriate endorsement to be made on the marine protection document, if the document is issued under this Decree or the marine protection Regulations, or on the notification of recognition, as the case may require.

(4) Where a marine protection document or recognition of a document as a marine protection document has been suspended or a marine protection document has been made subject to conditions under this section, the holder shall forthwith produce that document or notification of recognition of that document to the Chief Executive Officer for appropriate endorsement.

(5) The whole or any part of a marine protection document, or the recognition of the whole or any part of a document recognised as a marine protection document, may be suspended under this section.

(6) Any person in respect of whom any decision is taken under this section may appeal against that decision to the Maritime Appeals Committee under section 264.

Revocation of marine protection documents

219.—(1) The Chief Executive Officer may revoke a marine protection document or the recognition of a document as a marine protection document if, after an investigation under section 217 the Chief Executive Officer believes that such action is necessary.

(2) Where the Chief executive Officer proposes to revoke any marine protection document, or the recognition of a document as a marine protection document, the Chief Executive Officer shall give written notice to the persons specified by, and in accordance with the provisions of, the marine protection Regulations.

(3) Where a marine protection document or recognition of a marine protection document has been revoked under this section, the holder shall immediately surrender that document or notification of recognition of that document to the Chief Executive Officer.

(4) Any person in respect of whom any decision is taken under this section may appeal against that decision to the Maritime Appeals Committee under section 264.

Criteria for action under sections 217 or 219

220.—(1) The Chief Executive Officer may have regard to, and give such weight as he or she considers appropriate, the following matters when making a determination under sections 217 and 219—

(a) the person's compliance history with any regulatory requirements relating to the protection of the sea from harmful substances and the person's compliance history with the Environment Management Act 2005 in respect of discharge of harmful substances;

(b) any conviction for any offence related to the discharge of harmful substances into the sea, whether or not the—

(i) conviction was in a Fiji court; or

(ii) offence was committed before the commencement of this Decree; and

(c) any conviction for any offence under the Environment Management Act 2005 in respect of the discharge of harmful substances.

(2) The Chief Executive Officer shall not be confined to consideration of the matters specified in subsection (1) and may take into account such other matters and evidence as may be relevant.

(3) The Chief Executive Officer may—

(a) seek and receive such information as he or she deems appropriate; and

(b) consider information obtained from other reliable sources.

(4) Where the Chief Executive Officer proposes to take into account any information that is or may be prejudicial to a person, the Chief Executive Officer shall, subject to subsection (5), as soon as is practicable, disclose that information to that person and give that person a reasonable opportunity to show in writing his or her reasons for or against the proposed action.

(5) Nothing in subsection (4) shall require the Chief Executive Officer to—

(a) disclose any information, the disclosure of which would be likely to endanger the safety of any person;
or

(b) disclose any information before—

(i) suspending a marine protection document or suspending the recognition of a document as a marine protection document; or

(ii) imposing conditions in respect of a marine protection document under section 215.

Suspension or revocation of marine protection document where prescribed fees or charges unpaid

221.—(1) The Chief Executive Officer may suspend the marine protection document, or the recognition of the document as a marine protection document, where any fee or charge that is payable under this Decree, or any Regulations made under this Decree, is not paid by the date prescribed or fixed for payment of that fee or charge.

(2) The Chief Executive Officer may revoke a marine protection document, or revoke the recognition of the document as a marine protection document, where any fee or charge payable under this Decree, or any Regulations made under this Decree, is not paid within 6 months after the date prescribed or fixed for payment of that fee or charge.

(3) The Chief Executive Officer shall, before undertaking any action under subsections (1) or (2), notify the holder of such document of—

(a) the Chief Executive Officer's intention to act under subsections (1) or (2); and

(b) the right of appeal available to the holder of that document if the Chief Executive Officer takes such action.

(4) Where a marine protection document or recognition of a document as a marine protection document has been revoked under this section, the holder shall forthwith surrender that document or notification of that document to the Chief Executive Officer.

(5) Where a fee or charge is payable to the Authority in respect of an application or the provision of a service, the Authority, may, unless the marine environment would as a result be put at risk, decline to process that application or provide that service until the appropriate fee or charge has been paid, or arrangements acceptable to the Authority, for payment of the fee or charge have been made.

(6) Any person in respect of whom any decision is taken under this section may appeal against that decision to the Maritime Appeals Authority under section 264.

Amendment or revocation in other cases

222.—(1) The Chief Executive Officer may—

(a) if so requested in writing by the holder of any marine protection document issued by the Chief Executive Officer, amend or revoke the document as requested; or

(b) amend any marine protection document issued by the Chief Executive Officer to correct any clerical error or obvious mistake on the face of the document.

(2) Subject to subsection (3), the Chief Executive Officer may amend or revoke any marine protection document issued by the Chief Executive Officer where any or all of the privileges or duty for which the document has been granted is no longer being carried out, or is no longer able to be carried out, by the holder.

(3) Before taking any action under subsection (2), the Chief Executive Officer shall notify the holder in writing of the proposed action and give the holder a reasonable opportunity to show cause the reasons for or against the proposed action by the Chief Executive Officer.

(4) For the purposes of this section, the power to amend a marine protection document includes the power to—

(a) revoke the document and issue a new document in its place; and

(b) impose reasonable conditions.

(5) Where the holder of a marine protection document is notified that a specified action is proposed to be undertaken under this section, the holder of such document shall produce the document to the Chief Executive Officer.

Acting without necessary marine protection document

223.—(1) Any person who—

(a) operates, maintains or services; or

(b) does any other act in respect of,

any ship or marine protection product, without holding the appropriate current marine protection document, commits an offence and shall be liable upon conviction—

(i) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$10,000; or

(ii) in the case of a body corporate, to a fine not exceeding \$100,000.

(2) Any person who operates, maintains or services, or does any other act in respect of any ship or marine protection product knowing that a current marine protection document is required to be held in respect of that ship or product before that act may lawfully be done and knowing that the appropriate document is not held, commits an offence and shall be liable upon conviction—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$10,000 and an additional penalty under section 251; or

(b) in the case of a body corporate, to a fine not exceeding \$100,000 and to an additional penalty under section 251.

(3) For the purposes of this section, a marine protection document is not a current marine protection document—

(a) if it is for the time being suspended under this Decree; or

(b) in relation to an act, if the endorsement that is required to authorise that act is for the time being suspended under this Decree.

Acting in breach of marine protection document

224. Any person who—

(a) operates, maintains or services; or

(b) does any other act in respect of,

a ship or marine protection product where the provisions and conditions of the appropriate marine protection document are not complied with commits an offence and shall be liable upon conviction—

(i) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$10,000 and an additional penalty under section 251; or

(ii) in the case of a body corporate, to a fine not exceeding \$100,000 and to an additional penalty under section 251.

General powers of Chief Executive Officer in relation to protection of marine environment

225.—(1) The Chief Executive Officer may, if he or she considers it appropriate, and upon such conditions as he or she considers necessary, exempt any person, ship, marine protection product, offshore installation, pipeline, reception facility or any real or personal property, from any specified requirement in this Decree or any marine protection Regulations.

(2) The Chief Executive Officer shall not grant an exemption under subsection (1) unless he or she is satisfied in the circumstances of each case that—

(a) the granting of the exemption shall not breach Fiji's obligations under any marine protection Convention;

(b) either—

(i) the requirement has been substantially complied with and that further compliance is unnecessary;

(ii) the action taken or provision made in respect of the matter to which the requirement relates is as effective or more effective than actual compliance with the requirement;

(iii) the prescribed requirements are clearly unreasonable or inappropriate in the particular case; or

(iv) events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case; and

(c) the risk of harm to the marine environment shall not be significantly increased by the granting of the exemption.

(3) The number and nature of exemptions granted under subsection (1) shall be notified by the Chief Executive Officer as soon as practicable by notice published in the *Gazette*.

(4) Nothing in this section shall apply in any case where any marine protection Regulations specifically provide that no exemptions are to be granted.

Inspections and audits

226.—(1) The Chief Executive Officer may, from time to time, in writing require any person who—

(a) holds any marine protection document;

(b) is required to hold any marine protection document by this Decree or any Regulations or marine protection Regulations made under this Decree; or

(c) operates, maintains, or services, or does any other act in respect of any ship, marine protection product, offshore installation, pipeline, transfer or reception facility,

to undergo, or carry out, such inspections or audits, or both, as the Chief Executive Officer considers necessary in the interests of protecting the marine environment from harm.

(2) The Chief Executive Officer may, in respect of any person referred to in subsection (1), carry out such inspections or audits, or both, as the Chief Executive Officer considers necessary in the interests of protecting the marine environment from harm.

(3) For the purposes of any inspection or audit carried out in respect of any person under subsection (2), the Chief Executive Officer may, in writing, require that person to—

(a) provide such information as the Chief Executive Officer considers relevant to the inspection or audit;

(b) demonstrate to the Chief Executive Officer the familiarity of the master or crew with essential shipboard procedures for the prevention of marine pollution; or

(c) demonstrate to the Chief Executive Officer that any operational, maintenance or servicing procedure in respect of a ship or marine protection product is capable of being carried out in a competent manner.

(4) Any person who fails to comply with any requirement of the Chief Executive officer under this section commits an offence and shall be liable upon conviction—

(a) in the case of an individual, to a fine not exceeding \$10,000 and, if the offence is a continuing one, to a further fine not exceeding \$2,000 for every day or part of a day during which the offence is continued; and

(b) in the case of a body corporate, to a fine not exceeding \$100,000 and, if the offence is a continuing one, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence is continued.

Detention of ships and seizure of marine protection products

227.—(1) The Chief Executive Officer may, from time to time, do any or all of the following—

(a) detain any ship;

(b) prohibit or impose conditions on the use or operation of any ship or the use of a marine protection product;

(c) seize any marine protection product;

(d) impose conditions on the release from detention of the ship or the release from seizure of a marine protection product; or

(e) prohibit a ship from entering a port or calling at an offshore terminal.

(2) For the purpose of subsection (1), the Chief Executive Officer shall notify any prohibitions or conditions to such persons as he or she considers necessary by such means of communication, whether or not of a permanent nature, as the Chief Executive Officer considers appropriate in the circumstances.

(3) Any person who acts in contravention of or fails to comply with any prohibition or condition under this section commits an offence and shall be liable upon conviction—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not

exceeding \$10,000;

(b) in the case of a body corporate, to a fine not exceeding \$100,000; or

(c) in any case, to an additional penalty under section 251.

Grounds for detention of ships and seizure of marine protection products

228.—(1) The powers under section 227 (1) may be exercised where the Chief Executive Officer believes on reasonable grounds that—

(a) the master or crew are not familiar with essential shipboard procedures for the prevention of marine pollution;

(b) there is an existing discharge from the ship of a harmful substance in breach of this Decree or the Environment Management Act 2005;

(c) there is likely to be a discharge from the ship of a harmful substance in breach of this Decree or the Environment Management Act 2005;

(d) ships of a particular class are likely to give rise to a discharge of a harmful substance in breach of this Decree or of the Environment Management Act 2005;

(e) there has not been issued in respect of the ship or the marine protection product, as the case may be, a marine protection document as required by this Decree or any Regulations or marine protection Regulations made under this Decree;

(f) a marine protection document in respect of the ship or marine protection product, as the case may be, has expired;

(g) any provision or condition of a marine protection document in respect of the ship, or marine protection product, as the case may be, is not being met;

(h) the ship or the marine protection product presents an unreasonable threat of harm to the marine environment; or

(i) any condition imposed under subsections (1) (b) and (d) have not been complied with.

(2) Without limiting the generality of subsection (1), the Chief Executive Officer may detain any ship to which section 143 applies if the owner of that ship has not provided a contract of insurance or other financial security in accordance with the provisions of that section.

(3) Any detention under subsection (2) shall be maintained until the Chief Executive Officer is satisfied that either—

(a) the owner of the ship has complied with the obligation under section 143 to provide a contract of insurance or financial security; or

(b) such obligation to provide a contract of insurance or financial security is no longer necessary where it has been determined that there is no liability to pay the amounts in respect of which the security was sought or all such amounts have been paid.

(4) Subject to subsections (3), any detention or seizure under subsection (1) shall be maintained for only such

time as the grounds under subsection (1) which gave rise to the detention or seizure continue.

(5) Any person in respect of whom any decision is made under this section may appeal against that decision to the Maritime Appeals Committee under section 264.

Reasons for detention or seizure if requested

229. The Chief Executive Officer shall, if requested by the owner of a ship detained or a marine protection product seized under section 227 (1), provide in writing to the owner the reasons for the detention or seizure.

Retention for evidence purposes

230. If any ship, marine protection product, or parts thereof are required for the purpose of evidence in any prosecution under a provision in this Decree or the Environment Management Act 2005, those ships, products, or parts thereof may be retained by the Chief Executive Officer for such period as the Chief Executive Officer considers necessary for that purpose

PART 15—MAKING OF MARINE PROTECTION REGULATIONS AND TAKING OF OTHER MEASURES TO PROTECT THE MARINE ENVIRONMENT

Marine protection Regulations to implement international standards

231.—(1) The Minister may, from time to time, make marine protection Regulations for any or all of the following purposes—

- (a) to implement Fiji's obligations under any marine protection Convention;
- (b) to make such Regulations as may be necessary to enable Fiji to become a party to any international Convention, protocol, or agreement relating to the protection of the marine environment;
- (c) to implement such international practices or standards relating to the protection of the marine environment as may, from time to time, be recommended by the International Maritime Organisation.

(2) Nothing in subsection (1) limits any other provision of this Decree that empowers the making of marine protection Regulations.

Marine protection Regulations relating to marine protection documents

232.—(1) The Minister may, from time to time, make marine protection Regulations requiring that a marine protection document be held by or in respect of any or all of the following—

- (a) Fiji ships;
- (b) foreign ships;
- (c) offshore installations;
- (d) pipelines;
- (e) marine incineration facilities;
- (f) transfer sites;

(g) cargo loading and unloading terminals;

(h) marine protection products;

(i) reception facilities;

(j) persons or organisations that provide—

(i) maritime training;

(ii) the testing, inspection, audit or certification of ships or marine protection products; or

(iii) the design, manufacture or maintenance of ships or marine protection products; and

(k) any other ship, equipment, person or organisation engaged or used in maritime activities or activities that, in the opinion of the Minister, relate to maritime activities.

(2) Marine protection Regulations may provide for the recognition in writing by the Chief Executive Officer of licences, permits, certificates or other documents.

(3) The requirements, standards and application procedure for each marine protection document and the maximum period for which each document may be issued or recognised, as the case may be, shall be prescribed by the marine protection Regulations.

(4) Subject to any marine protection Regulations, a marine protection document may be issued or a document may be recognised as a marine protection document, by the Chief Executive Officer for such specified period and subject to such conditions as the Chief Executive Officer considers appropriate in each particular case.

(5) Any person in respect of whom any decision is made under this section may appeal against that decision to the Maritime Appeals Committee under section 264.

Marine protection Regulations in relation to harmful and other substances

233. The Minister may, from time to time, make marine protection Regulations for any or all of the following purposes—

(a) for the purposes of section 128, specifying the substances that are—

(i) harmful substances;

(ii) noxious liquid substances; or

(iii) not to be noxious liquid substances for the purposes of section 128;

(b) specifying things and substances that are to be included as marine protection products for the purposes of section 128;

(c) prescribing requirements for the design and construction of ships and other real or personal property for which a marine protection document is required;

(d) prescribing areas of ships where harmful substances, or any specified harmful substance, or ballast water, may not be held;

- (e) prescribing the maximum quantities of harmful substances, or any specified harmful substance, that may be held on ships or any class of ship;
- (f) prescribing standards and requirements in respect of marine protection products and reception facilities;
- (g) regulating or prohibiting, in relation to ships and offshore installations, any or all of the following—
- (i) the discharge of harmful substances or any specified harmful substance, whether generally or in any specified area;
 - (ii) the removal or retention on board of harmful substances;
 - (iii) the stowage, packaging, containment, marking, labelling, documentation, and notification of harmful substances carried in packaged form;
 - (iv) plans for emergencies involving harmful substances or any specified harmful substance;
- (h) prescribing the requirements, and in particular, in the case of any notice, the time periods to be complied with and the form and manner in which the notice is to be given, in respect of ships, offshore installations, pipelines, transfer facilities, reception facilities and marine operations for the following—
- (i) giving notice under section 131 of the discharge or escape of any harmful substance;
 - (ii) giving notice under section 140 of any pollution incident;
 - (iii) giving notice under sections 141 or 142 of the prospective arrival of any ship carrying oil or a noxious liquid substance or the transfer of oil or any such substance to or from a ship;
 - (iv) surveys and inspections; and
 - (v) records to be kept in respect of activities involving harmful substances or any specified harmful substance;
- (i) prescribing shipping exclusion zones and navigation and shipping lanes within the territorial seas of Fiji;
- (j) prescribing the requirements and procedures for the discharge or escape of water produced from geologic formations by marine operations in Fiji waters; and
- (k) prescribing the requirements and procedures for the transfer of oil or noxious liquid substances to or from transfer facilities or ships.

Power of Minister to make emergency marine protection directions

234.—(1) The Minister may, from time to time, issue directions to be called emergency directions for any of the purposes if the Minister considers that such directions are necessary to alleviate or minimise any damage to the marine environment or threat of imminent damage to the marine environment.

(2) The Minister may revoke any emergency direction in subsection (1).

(3) Any person who acts in contravention of any emergency direction under this section commits an offence and shall be liable upon conviction—

(a) in the case of an individual, to a fine not exceeding \$5,000; or

(b) in the case of a body corporate, to a fine not exceeding \$30,000.

Notification of emergency directions

235.—(1) For reasons of safety, or because of the imminence of the threat to the marine environment, the Minister may by written notice direct the Chief Executive Officer to notify such persons, as he or she considers appropriate, of the making of a direction by the Minister and such direction shall immediately, upon such notification, come into force in respect of any person or persons notified.

(2) Notification may be given by the Chief Executive Officer under subsection (1) by telephone, facsimile, or such other manner as the Chief Executive Officer considers appropriate in the circumstances.

Other provisions in respect of emergency directions

236. Any emergency direction made under this Decree shall be in force for such period as is specified in the direction which shall not exceed 90 days, and may be renewed once only for a further period not exceeding 30 days.

Matters to be taken into account in making marine protection Regulations

237. In making any marine protection Regulations, the Minister shall have regard to and shall give such weight as he or she considers appropriate in each case to the following—

(a) the need to—

(i) protect the marine environment; and

(ii) maintain and improve maritime safety;

(b) whether the proposed Regulations—

(i) assist economic development;

(ii) improve access and mobility;

(iii) promote and protect public health; and

(iv) ensure environmental sustainability;

(c) the recommended international practices of the International Maritime Organisation relating to protection of the marine environment;

(d) the costs of implementing measures for which the Regulations are being made;

(e) the risk to the marine environment if the proposed Regulations are not made; and

(f) such other matters as the Minister considers appropriate in the circumstances.

Further provisions relating to marine protection Regulations

238. Sections 236 and 237 apply in relation to marine protection Regulations.

Regulations

239.—(1) Without limiting any other provision of this Decree, the Minister may, from time to time, make Regulations for any or all of the following purposes—

- (a) prescribing purposes for which expenditure budgets are not required under section 199;
- (b) requiring insurance and other financial guarantees, and certification thereof, in respect of offshore installations and classes of offshore installations;
- (c) requiring insurance and other financial guarantees, and certification thereof in respect of ships, or classes of ships, other than regulated oil tankers;
- (d) prescribing those breaches of marine protection Regulations that constitute offences against this Decree;
- (e) prescribing those breaches of marine protection Regulations that constitute infringement offences against this Decree;
- (f) prescribing the penalty for each offence prescribed under paragraph (d) and where the offence is a continuing one, impose further fines for each day or part of a day on which the offence is committed;
- (g) prescribing the infringement fee for each offence prescribed under paragraph (e) and where the offence is a continuing one, impose further fines for each day or part of a day on which the offence is committed;
- (h) prescribing offences for breaches of any Regulations made under this section and, except where some other penalty is prescribed by this Decree, prescribing the penalty for each such offence and where the offence is a continuing one, impose further fines for each day or part of a day on which the offence is committed; and
- (i) such other matters as are considered necessary for giving full effect to the provisions of Parts 10 to 15 and for their due administration.

Maritime Regulations relating to other matters

240.—(1) The Minister may, from time to time, make maritime Regulations for any or all of the following purposes—

- (a) classifying ships as to type, nature of service, operating limits, or otherwise;
- (b) the implementation of technical standards, codes of practice, performance standards and other requirements of the Conventions;
- (c) prescribing standards and requirements for the design and construction of, or major alteration to, any ship;
- (d) prescribing standards and requirements for the accommodation and recreational facilities of seafarers or passengers on any commercial ship;
- (e) prescribing the provision of medical supplies and facilities on any ship, their stowage, maintenance and periodic inspection, and requiring medical officers on ships;

- (f) prescribing the requirements for the maintenance and periodic survey and inspection or testing of the hull, machinery and systems of any ship, safety equipment or any maritime equipment of any ship;
- (g) prescribing safe navigational and maritime operational and emergency procedures, including such procedures for any seaplane, and any training requirements in respect of such procedures;
- (h) prescribing operational and emergency procedures for the assistance of persons in distress at sea and in respect of collisions;
- (i) defining operating limits and pilotage limits, and the training of pilots and the manner of application for the issue of a pilotage licence, including the required qualifications for such licence, and specifying requirements concerning pilotage, including when and where pilotage is required or is not required, and the classes of ships that shall carry a pilot in circumstances described in the Regulations;
- (j) prescribing standards and requirements for the safe management of commercial shipping operations;
- (k) requiring the recording and retention of operational information and prescribing the details of any reporting that is required by this Decree;
- (l) prescribing criteria for determining the maximum number of passengers or persons that may be carried on any ship and for assigning and marking load lines on any ship;
- (m) prescribing standards and requirements for the carriage on a ship of any cargo, container, or personal property, including any item brought on to the ship by a passenger or other person, or carried in or on a vehicle on the ship, and prescribing standards and requirements concerning containers carried on a ship;
- (n) prescribing the minimum number of seafarers to be employed on any commercial ship, their qualifications and experience;
- (o) prescribing standards, specifications, qualifications, restrictions and licensing requirements for persons engaged in maritime activities, including any medical requirements and requirements relating to the keeping of records of qualifications, restrictions and licences;
- (p) prescribing technical standards or requirements relating to the health and safety of seafarers;
- (q) prescribing the format of maritime documents, forms and applications;
- (r) prescribing the requirements and criteria for determining the tonnage measurement, length and size of any ship;
- (s) prescribing the criteria and conditions under which foreign licences, permits, certificates, or other documents shall be recognised by the Chief Executive Officer;
- (t) prescribing standards and requirements for maritime equipment, including safety equipment, and prescribing the maritime equipment to be carried on any ship;
- (u) prescribing standards and requirements for navigational aid;
- (v) regulating the conduct of ships in Fiji waters or the conduct of ships in any defined part of Fiji waters, for the purpose of securing safe navigation in those waters;
- (w) prescribing or providing for such matters as may be necessary to—

(i) enable Fiji to become a party to any international Convention, protocol or agreement relating to maritime transport;

(ii) implement such international practices or standards relating to maritime transport as may, from time to time, be recommended by the International Maritime Organisation;

(x) assisting maritime safety and security, including but not limited to personal security;

(y) assisting economic development;

(z) improving access and mobility;

(aa) protecting and promoting public health;

(ab) ensuring environmental sustainability;

(cc) investigation and inquiry into accidents, incidents, mishaps, deaths and serious injury on board a ship; and

(dd) any other matter contemplated by a provision of this Decree.

(2) Without limiting anything in subsection (1), Regulations under this section may apply to river rafts and other manually-powered water craft and to their operators, crew and passengers.

Marine protection Regulations in relation to marine spills and other matters

241.—(1) The Minister may, from time to time, make marine protection Regulations for any or all of the following purposes—

(a) specifying the matters that shall be contained in—

(i) shipboard or site marine spill contingency plans; and

(ii) regional marine spill contingency plans;

(b) specifying the qualifications to be held by on-scene commanders or any class of on-scene commander;

(c) specifying the manner in which any notice, notification or instruction under this Decree, or any Regulations or marine protection Regulations made under this Decree, may be given by the Chief Executive Officer;

(d) requiring the Chief Executive Officer to notify any person or persons in respect of any action taken by the Chief Executive Officer under this Decree or any Regulations or marine protection Regulations made under this Decree and, in particular, requiring the Chief Executive Officer to comply with any obligations to notify any persons under any international Conventions binding on Fiji; and

(e) prescribing or providing for such matters as may be necessary to enable Fiji to become a party to any international Convention, protocol or agreement relating to protection of the marine environment.

(2) The Minister may, from time to time, make marine protection Regulations to provide for such other matters as are contemplated by or necessary for giving full effect to the provisions of Parts 10 to 15.

Regulations relating to fees and charges

242.—(1)The Minister may, from time to time, make Regulations providing for the payment of marine safety charges in respect of ships entering any port in Fiji or operating in Fiji waters.

(2) The purpose of marine safety charges shall be to provide funding to enable the provision of—

- (a) aids to navigation;
- (b) distress and safety radio services;
- (c) marine safety information; and
- (d) other services related to the safety of shipping.

(3) Any such Regulations may—

- (a) specify the persons by whom the marine safety charges are payable including, without limitation, any master, owner, charterer, person responsible for the management of the ship, or any agent of any of those persons who by law or by contract are liable to pay any other charge on account of the ship;
- (b) prescribe different marine safety charges for different classes of ship based on length, tonnage, equipment available for use on board the ship, or such other criteria as may be specified in the Regulations;
- (c) provide for the refund or waiver of any marine safety charge in whole or in part, in any specified case or cases;
- (d) provide that the marine safety charges are payable on an annual or other equal basis in advance or otherwise, or on a per voyage basis at the option of either the Chief Executive Officer or the person liable to pay the marine safety charges, and provide for the changing of those options, and for the making of adjustments where an option is changed,

whether or not persons levied use, or the ship in respect of which the levy arises uses, any such services.

(4) Nothing in this section limits the provisions of section 246.

(5) Without limiting the power to make Regulations conferred by any other section of this Decree, but subject to the provisions of this Decree, the Minister may, from time to time, make Regulations prescribing or providing for the fixing of fees or charges, or both, for the following purposes—

- (a) to provide funds for the establishment, maintenance and operation of facilities, works, goods and services under this Decree;
- (b) to meet or assist in meeting, the costs and expenses incurred by the Authority, the Chief Executive Officer, the Maritime Appeal Authority or the State in the exercise of functions or powers, or in the performance of duties, or the provision of services under this Decree;
- (c) to meet or assist in meeting, the costs and expenses incurred by the Authority, the Chief executive Officer or the State in providing goods, services, facilities or works for maritime purposes or for the purposes of protecting the marine environment.

(6) Different rates of fees or charges, or both, may be so prescribed or fixed in respect of different classes of persons, ships, offshore installations, pipelines, maritime equipment, marine protection products, or any other property or item, or on the basis of different times of use, or on any other differential basis.

(7) Any Regulations made under subsection (5) may—

- (a) specify the persons by whom, and to whom, any fees or charges, or both, are payable;
- (b) prescribe, or provide for the fixing of, additional fees or charges, or both, for services or work carried out outside normal working hours, at weekends, or on statutory holidays;
- (c) prescribe, or provide for the fixing of, charges for reimbursement of travelling time, accommodation and other expenses;
- (d) providing for the refund, waiver, or rebate or enabling the refund, waiver, or rebate, of any fee or charge, or both;
- (e) fixing, or enabling the fixing, of a date by which any fee or charge is to be paid;
- (f) providing, or enabling the fixing of, a discount for early payment of any fee or charge as a penalty for late payment, or both; or
- (g) prescribe any returns, and the conditions relating to such returns, to be made by persons by whom any fee or charges are payable.

Regulations in relation to coasting-trade licences

243. The Minister may make Regulations providing for or in relation to—

- (a) applications for the grant of coasting-trade licences;
- (b) application for the issue of coasting-trade permits;
- (c) the submission and verification of information related to the operation of ships in respect of which coasting-trade licences or coasting-trade permits have been granted or issued;
- (d) coasting-trade licence and permit fees; or
- (e) licensing of trade routes.

Regulations for ports declared under this Decree

244.—(1) The Minister may make Regulations in relation to the following—

- (a) the port boundaries;
- (b) the dues to be levied for the use of aids to navigation erected by the Authority;
- (c) for such other matters that are relevant to the safety of ships, passengers and cargoes within the Port boundaries; and
- (d) for international ship and port facility security.

(2) Any person who, without reasonable excuse, acts in contravention of or fails to comply with any Regulations made under subsection (1) commits an offence and is liable on conviction—

(a) in the case of an individual, to a fine not exceeding \$5,000; or

(b) in the case of a body corporate, to a fine not exceeding \$20,000.

Matters to be taken into account in making maritime Regulations

245.—(1) The maritime Regulations made by the Minister shall not be inconsistent with international standards relating to maritime safety, and the health and welfare of seafarers, to the extent adopted by Fiji.

(2) The Minister shall have regard to, and shall give such weight as he or she considers appropriate in each case, to the following when making any maritime Regulations—

(a) the recommended international practices relating to maritime safety and to the health and welfare of seafarers;

(b) the level of risk existing to maritime safety in each proposed activity or service;

(c) the nature of the particular activity or service for which the Regulations are being made;

(d) the level of risk existing to maritime safety in Fiji in general;

(e) the need to maintain and improve maritime safety and security, including but not limited to personal security;

(f) whether the proposed Regulations—

(i) assist economic development;

(ii) improve access and mobility;

(iii) promote and protect public health;

(iv) ensure environmental sustainability;

(g) the costs of implementing measures for which the Regulations are being made;

(h) the international circumstances in respect of maritime safety;

(i) such other matters as the Minister considers appropriate in the circumstances.

(3) The provisions of section 247 apply in relation to Regulations made under this section.

(4) Before making any Regulations under this Decree, the Minister shall—

(a) publish a notice of his or her intention to make the Regulations in each of the daily newspapers published in Fiji, announce his intention through the local radio station in the three main languages, and publish the notice in the *Gazette*;

(b) give interested persons a reasonable time, which shall be specified in the notice published under paragraph (a), to make submissions on the proposal; and

(c) consult with such persons, representative groups within the maritime industry or elsewhere, government departments, State entities, or with such regional councils or other local authorities, as the

Minister in each case considers appropriate.

Regulations in relation to offences and penalties

246. The Minister may, from time to time, make Regulations for any or all of the following purposes—

- (a) prescribing those breaches of maritime Regulations that constitute offences against this Decree;
- (b) prescribing those breaches of maritime Regulations that constitute infringement offences against this Decree;
- (c) prescribing the penalty for each offence prescribed under paragraph (a) which—
 - (i) in the case of an individual, shall be a fine not exceeding \$5,000; or
 - (ii) in the case of a body corporate, shall be a fine not exceeding \$30,000;
- (d) prescribing the infringement fee for each offence prescribed under paragraph (b) and for infringement offences which—
 - (i) in the case of an individual, shall be a fine not exceeding \$2,000; or
 - (ii) in the case of a body corporate, shall be a fine not exceeding \$12,000;
- (e) such other matters as are necessary for giving full effect to the provisions of this Decree

Incorporation in Regulations of material by reference

247.—(1) The following may be incorporated into Regulations made under this Decree—

- (a) standards, requirements or recommended practices of international or national organisations;
- (b) standards, requirements or Regulations in force in any other jurisdiction;
- (c) standards, requirements or Regulations of any classification society or similar organisation; or
- (d) standards, requirements or Regulations of any maritime sporting or maritime recreational organisation;

(2) The Chief Executive Officer shall make available for inspection free of charge or purchase at a reasonable price, at such place or places as he or she shall, from time to time, appoint copies of all material incorporated in Regulations by reference under subsection (1) and copies of all amendments deemed to be part of any Regulations.

PART 16—GENERAL OFFENCES AND PROVISIONS RELATING TO OFFENCES AND APPEALS

Obstruction of persons duly authorised by Chief Executive Officer

248.—(1) Any person who, obstructs, impedes, delays, hinders or deceives or causes to be obstructed, impeded, delayed, hindered or deceived—

- (a) the Authority;
- (b) its employees;

(c) the Chief Executive Officer; or

(d) any other person who is duly authorised by the Authority or the Chief Executive Officer,

while the Authority, employee, Chief Executive Officer, or any other person is acting in the performance or exercise of any functions, duties or powers conferred on it or him or her under this Decree or any Regulations made under this Decree, commits an offence and shall be liable upon conviction—

(i) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$2,000; or

(ii) in the case of a body corporate, to a fine not exceeding \$10,000.

(2) Subsection (1) shall apply only where the obstructed or impeded person produces evidence of his or her authority.

Failure to maintain accurate records

249. Any person who contravenes any provision of this Decree or any Regulations made under this Decree that requires that person to—

(a) make accurate entries in a record;

(b) maintain an accurate record; or

(c) produce to the Authority or the Chief Executive Officer an accurate record,

commits an offence and shall be liable upon conviction—

(i) in the case of an individual, to a fine not exceeding \$5,000; and

(ii) in the case of a body corporate, to a fine not exceeding \$30,000.

Communicating false or insufficient information

250. Any person who—

(a) by any means, provides to the Authority or to the Chief Executive Officer information relevant to the Authority or the Chief Executive Officer's exercise of powers under this Decree, or under Regulations made under this Decree, knowing the information to be false;

(b) being an applicant for a maritime document, or a marine protection document, or an applicant for recognition of a document as a maritime document or a marine protection document, fails, without reasonable excuse, to provide to the Authority or the Chief Executive Officer information known to that person which is relevant to the Authority or the Chief Executive Officer's exercise of powers under this Decree, or under Regulations made under this Decree; or

(c) being the holder of a maritime document, or the holder of a document recognised as a maritime document, fails, without reasonable excuse, to provide to the Authority or the Chief Executive Officer information known to that person which is relevant to the condition specified in section 25 (3),

commits an offence and shall be liable upon conviction—

(i) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$5,000; or

(ii) in the case of a body corporate, to a fine not exceeding \$30,000.

Additional penalty for offence involving commercial gain

251. For the purposes of the sections, to which this section applies, in addition to any other penalty the court may impose, the Court may, on convicting any person of an offence against those sections, order that person to pay an amount not exceeding 3 times the value of any commercial gain resulting from the commission of that offence if the Court is satisfied that the offence was committed in the course of producing a commercial gain.

Liability of principal for acts of agent

252.—(1) Where an offence is committed against this Decree by any person acting as the agent or employee of another person, that other person shall, without prejudice to the liability of the agent or employee, be liable under this Decree in the same manner and to the same extent as if he or she had personally committed the offence.

(2) Notwithstanding anything in subsection (1), where any proceedings are brought by virtue of that subsection, it shall be a defence if the defendant proves—

(a) in the case of a natural person, including a partner in a firm, that—

(i) he or she did not know nor could reasonably be expected to have known that the offence was to be or was being committed; or

(ii) he or she took all reasonable steps to prevent the commission of the offence;

(b) in the case of a body corporate, that—

(i) neither the directors nor any person involved in the management of the body corporate knew or could reasonably be expected to have known that the offence was to be or was being committed; or

(ii) the body corporate took all reasonable steps to prevent the commission of the offence;

(c) in all cases, that the defendant took all reasonable steps to remedy any effects of the act or omission giving rise to the offence.

(3) Every director and every person concerned in the management of any body corporate, convicted of an offence against this Decree, shall be guilty of the offence if it is proved—

(a) that the act that constituted the offence took place with his or her authority, permission or consent; and

(b) that he or she knew or could reasonably be expected to have known that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

Limitation of proceedings

253.—(1) Subject to subsection (2) and to any special provisions of this Decree, no person shall be charged with an offence against this Decree unless information charging that person with that offence is laid within 6 months after the matter arose.

(2) The period of 6 months shall not run while the person charged is beyond the limits and territorial seas of Fiji.

Place where offences deemed to be committed

254. For the purpose of giving jurisdiction under this Decree, every offence shall be deemed to have been committed either in the place in which the offence actually was committed.

Presumption as to master of ship

255.—(1) Where, in any proceedings for an offence against this Decree or any Regulations made under this Decree, the informant alleges in any information that any person was or was not, the master of any ship at any specified time, the allegation shall be presumed to be true in the absence of proof to the contrary.

(2) The presumption in subsection (1) shall apply whether or not separate or further evidence is adduced by or on behalf of the informant in support of the relevant allegation or presumption.

Offences committed in foreign ports or on high seas by seafarers of Fiji ships

256.—(1) Where any complaint is made to any proper officer in a foreign country that—

(a) any person who is employed as a seafarer on any Fiji ship has committed an offence against property or persons at any place outside Fiji, whether on shore or afloat; or

(b) any seafarer belonging to a Fiji ship has committed an offence on the high seas,

that proper officer may inquire into the case upon oath or affirmation, and may, if required, take any measures in his or her power for the purpose of placing the person alleged to have committed the offence, under the necessary restraint and of sending that person as soon as practicable in safe custody to Fiji or any such country where Courts in such country are capable of taking cognisance of that offence.

(2) Any master of a Fiji ship or pilot in command of a Fiji aircraft in whose charge any person alleged to have committed an offence has been placed shall, on the arrival of the ship or aircraft in Fiji or, in the country to which the ship or aircraft is bound, give the alleged offender into the custody of the Police.

(3) Any expense of placing any person referred to in subsection (1) under restraint, and of conveying him or her and any witnesses to Fiji or any other country in any manner other than on board the ships to which they respectively belong, shall, where not paid as part of the costs of the prosecution, be paid by the Authority out of money appropriated by Government.

Evidence and proof

257. In any proceedings for an offence against this Decree, the following provisions shall apply—

(a) a copy of any maritime document or marine protection document or permit which is endorsed by the Chief Executive Officer or any other authorised officer of the Authority shall be sufficient, in the absence of proof to the contrary, to prove that document;

(b) the production of a certificate signed by the Chief Executive Officer or any other authorised officer of the Authority to the effect that on a specified date a person or organisation was or was not the holder of any maritime document or marine protection document or any permit or any specified type of maritime document or marine protection document shall be prima facie evidence of the matter certified until the contrary is proved;

(c) until the contrary is proved, it shall be presumed that every certificate purporting to have been certified or given under this section has been certified or given by the Chief Executive Officer or any other employee of the Authority authorised in that behalf by the Chief Executive Officer to certify documents or give certificates under this section.

Mode of service of summons on master or owner

258.—(1) Where the defendant is a master or owner of a ship in any prosecution for an offence against any provision of this Decree, and notwithstanding any other written law, service on the defendant of any summons or other document shall be deemed to be effected by—

(a) being delivered personally to the agent of the ship on behalf of the defendant or being brought to the notice of that agent if that agent refuses to accept it on behalf of the defendant; or

(b) being sent to the agent of the ship, by registered mail addressed to that agent on behalf of the defendant at that agent's last known or usual place of residence or to the registered office of the agent's business.

(2) Unless the contrary is shown, the time at which service shall be deemed to have been effected on the defendant shall be where service is effected in accordance with—

(a) subsection (1) (a), the time when the summons or other document is personally delivered to the agent of the ship or brought to that agent's attention; or

(b) subsection (1) (b), the seventh day after the date on which the document was sent to, or inserted through the mail box for the address in question in the ordinary course of post.

(3) Nothing in this section limits anything in section 273.

Proceedings for offences

259.—(1) Any proceedings for an offence against this Decree or any Regulations made under this Decree may be brought by the Chief Executive Officer.

(2) Where any fine imposed by the court in proceedings under this Decree or Regulations made under this Decree is not paid on time, the court may direct the amount unpaid to be levied by distress and sale of any real or personal property involved in the committing of the offence.

Offence under more than one written law

260.—(1) Where an act or omission constitutes an offence under this Decree and under any other written law, the offender may be prosecuted and punished either under this Decree or under that other written law.

(2) Where an act or omission constitutes an offence under two or more provisions of this Decree, the offender may be prosecuted and punished under any one of those provisions.

Application of fines

261. Notwithstanding any other written law, where a person is convicted of an offence against section 129, the court before which that person is convicted may order that the whole or part of the fine, or other monetary penalty, imposed under this Decree in respect of that offence be paid to such person or persons as the court deems appropriate, to meet the costs of the—

(a) removal, containment, rendering harmless, or dispersal of the harmful substance or other matter; or

(b) damage resulting from the discharge of the harmful substance or dumping of waste or matter.

Infringement offences

262.—(1) In this Decree, "infringement offence" means an offence specified as such in this Decree or Regulations made under this Decree.

(2) Where any person is alleged to have committed an infringement offence, that person may either be—

(a) proceeded against summarily for the alleged offence; or

(b) served with an infringement notice as provided in section 263.

Infringement notices

263.—(1) Where the Chief Executive Officer, or any person duly authorised by the Chief Executive Officer, observes a person committing an infringement offence or has reasonable grounds to believe such an offence is being or has been committed by that person, an infringement notice in respect of that offence may be issued to that person by the Chief Executive Officer or the authorised person.

(2) An infringement notice for an infringement offence may be issued by—

(a) the Chief Executive Officer;

(b) a person duly authorised by the Chief Executive Officer;

(c) a constable; or

(d) a person duly authorised by the regional council or other local authority in whose region or district the offence was committed.

(3) An infringement notice may be served—

(a) by delivering it personally to the person who appears to have committed the infringement offence;

(b) by sending it by post addressed to him or her at his or her last known place of residence or business; or

(c) where the person is a holder of a maritime document or marine protection document, by serving it by post on that person at his or her last address for service.

(4) An infringement notice sent to a person by post under subsections (3) (b) or (c) shall be deemed to have been served on the person after the seventh day after the date on which the notice was sent to or inserted through the mail box for the address in question in the ordinary course of post.

(5) Every infringement notice shall be in the prescribed form and shall contain the following particulars—

(a) such details of the alleged infringement offence as are sufficient fairly to inform a person of the time, place and nature of the alleged offence;

(b) the amount of the infringement fee for that offence;

(c) the address at which the infringement fee may be paid;

(d) the time within which the infringement fee shall be paid;

(e) a statement of the right of the person served with the notice to request a hearing;

(f) a statement of the consequences if the person served with the notice does not pay the infringement fee and does not make a request for a hearing; and

(g) such other particulars as are prescribed in Regulations made under this Decree.

(6) Different forms of infringement notices may be prescribed by Regulations made under this Decree in respect of different kinds of infringement offences.

(7) Where an infringement notice has been issued under this section, proceedings in respect of the offence to which the notice relates may be commenced.

Rights of appeal

264. An appeal lies to the Maritime Appeals Committee against any decision made under this Decree, except for those made under section 36.

Procedure

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

Further appeals

266.—(1) Where any person is dissatisfied with the decision of the Maritime Appeals Committee, 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

267.—(1) Every decision of the Chief Executive Officer that is appealed against under section 36 or section 264 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 that any appeal under sections 36 or 264 may have been 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 protection Regulations; and
- (c) the qualification of the maritime person.

PART 17—MISCELLANEOUS PROVISIONS APPLYING TO THIS DECREE GENERALLY

General power of entry

268.—(1) Subject to subsections (3) and (4), every person duly authorised by the Chief Executive Officer may, at any reasonable time or times, go on board any ship or enter any building or place for the purpose of carrying out his or her functions, duties or powers under this Decree or any Regulations made under this Decree.

(2) Subject to subsections (3) and (4), but without limiting the power conferred by subsection (1), every person duly authorised by the Chief Executive Officer who has reasonable grounds to believe that—

(a) any breach of this Decree or of any Regulations made under this Decree is being or about to be committed;

(b) a condition imposed under any maritime document or marine protection document is not being complied with; or

(c) a situation exists within the maritime system or is about to exist that constitutes a danger to persons or property or a threat to the marine environment,

may at any reasonable time go on board any ship, or enter any building or place, and carry out an inspection to determine whether or not a matter referred to in paragraphs (a) to (c) exists.

(3) No such duly authorised person shall enter a ship, building, dwelling house or place under subsection (1), except with—

(a) the consent of an occupier; or

(b) a warrant issued under section 269.

(4) Where a warrant under section 269 has been issued to a duly authorised person subject to conditions, the duly authorised person shall—

(a) not enter the dwelling house specified in the warrant otherwise than in accordance with the conditions; and

(b) in all other respects comply with the conditions.

(5) Subject to subsection (4), a duly authorised person exercising the powers of inspection conferred by subsections (1) or (2) may use such force in going on, into, or under, the place concerned as is reasonable in the circumstances.

Warrant to enter and inspect any ship, building, dwelling house or place

269. A Magistrate who, on a written application made on oath by a person duly authorised by the Chief Executive Officer, is satisfied that the entry is essential to enable the inspection to be carried out, may issue to the duly authorised person, unconditionally or subject to conditions, a warrant in the prescribed form authorising that person to enter the place on one occasion within 14 days of the issue of the warrant.

Entry in respect of offences

270.—(1) Subject to subsection (2), a Magistrate who, on a written application made on oath by a person duly authorised by the Chief Executive Officer, is satisfied that there are reasonable grounds for believing that there is on or in any place specified in the application anything—

- (a) in respect of which an offence against this Decree has been or may have been committed;
- (b) that is or may be evidence of the commission of an offence against this Decree; or
- (c) that is intended to be used for the commission of an offence against this Decree,

may issue, unconditionally or subject to conditions, a warrant in the prescribed form, authorising the entry and search of the place, at any reasonable time on one occasion within 14 days of the issue of the warrant.

(2) The duly authorised person applying for a warrant under subsection (1) shall—

(a) first make reasonable inquiries as to whether any other applications for such a warrant or a similar warrant under a provision of any written law repealed by this Decree have been made in respect of the place concerned, and if so, the following matters—

- (i) the offence or offences alleged in respect of each application; and
- (ii) the result of each application; and

(b) disclose on the application for the warrant the results of the inquiries.

(3) Every warrant under subsection (1) shall be directed to and exercisable only by—

- (a) a constable specified in the warrant;
- (b) a duly authorised person specified in the warrant, if accompanied by a constable;
- (c) any constable; or
- (d) any duly authorised person, if accompanied by a constable.

(4) Where a warrant under subsection (1) has been issued subject to conditions, the person exercising it shall—

- (a) not enter or search the place specified in it otherwise than in accordance with the conditions; and
- (b) in all other respects comply with the conditions.

(5) Subject to subsection (4), a person exercising a warrant under subsection (1) may use such force in entering the place specified in it as is reasonable in the circumstances.

Duties on exercising power of entry

271. Any person duly authorised by the Chief Executive Officer, or constable, exercising a power of entry conferred by sections 269 or 270—

- (a) shall have with him or her evidence of his or her identity and appointment as a duly authorised person or constable;

(b) shall produce such evidence in paragraph (a) to any person appearing to be in charge of the place entered—

(i) on entering the place, if such a person is then present; and

(ii) at any reasonable time thereafter, if asked to do so by the person; and

(c) if there is no person appearing to be in charge of the place at any time between the time of entry and the time the inspection or search concerned has been completed, shall, as soon as is practicable after completing the inspection or search, give an occupier or person in charge of the place written notice stating that the place has been entered, and specifying the following matters—

(i) the time and date of entry;

(ii) the circumstances and purpose of entry;

(iii) the name, office or position, and employer of every person entering;

(iv) if entry was under warrant, the principal contents of the warrant; and

(v) list of items seized or statement that nothing has been seized.

Additional powers

272.—(1) A person lawfully exercising the powers conferred by sections 269 or 270 may make or take copies of any document or any information recorded or stored in a computer or other device, and for that purpose may take possession of and remove any document, tape, or disk from the place where it is kept for such period of time as is reasonable in the circumstances, or may require a person to reproduce, or assist the person duly authorised by the Chief Executive Officer to reproduce, in usable form, information recorded or stored in a computer or other device.

(2) A duly authorised person who has lawfully entered premises under sections 269 or 270 may do on or in respect of any such premises all such acts and things reasonably necessary or expedient in the particular circumstances of the case.

Service of documents

273. Where for the purposes of this Decree, any document is to be served on, or any notice, notification or instruction is to be given to, any person, that document may be served and any notice, notification or instruction may be given—

(a) in any case, by delivering a copy personally to the person concerned or by leaving a copy at his or her last known place of abode;

(b) if the person concerned is a master of a ship, where there is a master, or a person belonging to a ship, by leaving a copy for him or her on board the ship with the person appearing to be in command or charge of the ship and explaining to that person the nature of the document, notice, notification or instruction;

(c) if the person concerned is a master of a ship, where there is no master and the ship is within the limits or territorial seas of Fiji, on the owner of the ship resident in Fiji, or the agent of the ship in Fiji, or, where no such agent is known or can be found, by fixing a copy to the mast of the ship or if there is no mast, to some other conspicuous part of the ship; or

(d) in any other manner provided for service of that document, notice, notification or instruction by this Decree or by Regulations made under this Decree.

Recovery of fines by distress

274.—(1) Where any court—

(a) orders any person convicted of an offence against this Decree to pay any fine or other money;

(b) orders any person to pay wages owing to any seafarer or master; or

(c) makes any order for payment of costs or expenses of or incidental to any such proceeding,

and the person ordered to pay the same is the owner or master of a ship, and the same are not paid within the time and in the manner specified in the order of the court, or, if in the case of a proceeding or the recovery of wages, no time for payment is specified, within 7 days after judgment is given or the order made, the court may exercise the powers specified in subsection (2).

(2) In any such case the court may—

(a) in addition to any other power it may have to compel payment, direct the amount remaining unpaid to be levied by distress or by the sale of the ship and the ship's equipment; and

(b) if, at any time thereafter while that fine or those wages or other money remains unpaid, that ship is found within the internal waters or the territorial seas of Fiji, issue an order for the detention of the ship.

(3) An order for the detention of a ship under this section shall be directed to the Chief Executive Officer, the Comptroller of Customs and Excise, or other officer named in the order, requiring him or her to detain the ship until the judgment or order of the court has been satisfied.

Enforcing detention of ships

275.—(1) Where under this Decree a ship is to be or may be detained, the Chief Executive Officer, the Comptroller of Customs and Excise, or any person to whom an order for detention made by any court under powers conferred by this Decree is directed, may detain the ship, and if, after detention or after service on the master of any notice of or order for detention, the ship proceeds to sea before it is released by competent authority, the master and the owner, and also any person who sends the ship to sea if he or she is a party or privy to the offence, each commits an offence and shall be liable upon conviction—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000; or and

(b) in the case of a body corporate, to a fine not exceeding \$100,000.

(2) If a ship proceeds to sea while there is on board any person who is detaining the ship under this Decree, the owner and the master of the ship each commits an offence against this Decree and shall, in addition to the liability he or she incurs under subsection (1), be liable in respect of each offence—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$10,000; and

(b) in the case of a body corporate, to a fine not exceeding \$100,000.

(3) Where under this Decree a ship is to be or may be detained, a Customs officer may refuse to grant a clearance to that ship.

Consular officer to be notified of detention of foreign ship

276.—(1) Where pursuant to any provision of this Decree any foreign ship is detained at a port in Fiji, or any proceeding is taken against the owner of a foreign ship or any other person for the time being responsible for the navigation and management of the ship or against the master of the ship, the following provisions shall apply—

(a) in any case where the person ordering or giving notice of that detention, or, as the case may be, instituting that proceeding, is not the Chief Executive Officer, that person shall forthwith inform the Chief Executive Officer thereof and of the reason therefore;

(b) in every case the Chief Executive Officer shall forthwith cause notice thereof to be served on a consular officer of the country in which the ship is registered or to which the ship belongs, and the notice shall specify the grounds on which the ship has been detained or, as the case may be, the grounds on which the proceeding has been taken.

(2) Nothing in this section shall affect the provisions of section 45.

Cost of detention and inspection to be paid by owner

277.—(1) Where any ship is detained at a port in Fiji under or pursuant to this Decree, the owner of the ship, or other person for the time being responsible for the navigation and management of the ship, shall be liable to pay to the—

(a) Authority where the ship is detained by the Chief executive Officer; or

(b) State in any other case,

the costs of and incidental to the detention and to any inspection and audit under this Decree, and those costs shall, without prejudice to any other remedy, be recoverable as a debt due to the Authority or the State, as the case may be, in any court of competent jurisdiction.

(2) Nothing in this section shall affect the provisions of sections 44 or 274.

Detention in lieu of security for civil claims

278.—(1) For the purposes of this section, where the owner of a ship is a corporation, it shall be deemed to reside in Fiji if it has an office in Fiji at which service can be effected.

(2) Subject to subsection (3), where a person has been convicted of an offence under this Decree in respect of the discharge of a harmful substance from a ship or convicted of an offence of contravening or permitting a contravention of the Environment Management Act 2005 in respect of the discharge of a harmful marine substance and—

(a) property has been or is likely to be damaged by that discharge; and

(b) none of the owners of that ship reside in Fiji,

the High Court may, on being satisfied as to the matters in paragraphs (a) and (b), order any Customs officer or other officer named by the High Court to detain that ship until such time as security for costs, damages, or other

money that may be payable as a result of any civil proceedings has been given.

(3) On any order being made under subsection (2), the officer to whom the order is directed shall detain the ship.

(4) Any person affected by an order made under subsection (2) may appeal against that order to the Court of Appeal.

Agents' contracts of indemnity

279.—(1) Where any person enters into an agreement to act as the agent in Fiji of the owner, charterer, manager or operator of a ship, he or she shall be entitled to enter into a contract of indemnity whereby the owner, charterer, manager or operator agrees to indemnify the agent for any sum for which the agent may become liable as a result of any proceedings, whether civil or criminal, against the agent, in the capacity of such agency, in any court under any provision of this Decree or the Environment Management Act 2005, or both.

(2) Where any proceedings are brought in a Fiji court by an agent seeking to enforce a contract of indemnity entered into with the owner, charterer, manager or operator of a ship, the court may enforce the contract of indemnity except where the proceedings have resulted from the wilful act or neglect or default of the agent.

Designation of parties to Conventions

280.—(1) The Minister shall keep a list of and may give a certificate stating the contracting parties to any Convention declared by notice published in the *Gazette*.

(2) Any list or certificate under subsection (1) shall specify the date on which any such Government or State became or ceased to be a Contracting Government, a State Party, a Contracting Party, or a Contracting State, as the case may be.

(3) In the absence of proof to the contrary, a certificate issued under subsection (1) shall be conclusive evidence of the matters stated in the certificate.

Other written laws not affected

281. Subject to section 283, and except where this Decree or any other enactment otherwise provides, the provisions of Parts 10 to 18 are in addition to and not in substitution for the provisions of any other enactment, and, except as expressly provided by this Decree, nothing in this Decree shall derogate from the provisions of any other written law.

Provisions of the Environment Management Act 2005 not to apply

282. The provisions of the Environment Management Act 2005 shall not apply to—

(a) anything done by or on behalf of the Chief Executive Officer under section 147 or section 148 or by or on behalf of any person in accordance with any instructions under either of those sections;

(b) anything done by or on behalf of an on-scene commander—

(i) under sections 189 or 190; or

(ii) in accordance with a direction given under section 205;

(c) anything done by or on behalf of the master or owner of any ship, or the owner or operator of any oil storage or transfer site or offshore installation or any other person in accordance with a direction given

under sections 189 or 190; or

(d) anything done by—

(i) or on behalf of the Chief Executive Officer; or

(ii) any person in accordance with any instructions issued by the Chief Executive Officer, under sections 189 or 190.

PART 18—CONSEQUENTIAL AMENDMENTS, TRANSITIONAL PROVISIONS AND REPEALS

Repeal, savings and transitional provisions

283.—(1) Subject to subsection (2), the following laws referred to as repealed Acts are hereby repealed—

(a) Marine Act 1986; and

(b) Wreck and Salvage Act and all its subsidiary laws.

(2) The subsidiary laws made under the Marine Act 1986 continue in force as if made under this Decree until amended, replaced or repealed under this Decree, unless and to the extent that the—

(a) matter is provided for in this Decree; and

(b) subsidiary laws are inconsistent with the provisions of this Decree or the Maritime Safety Authority of Fiji Decree 2009 or other written laws.

(3) A certificate, licence, instrument or document having a like or a similar effect to a—

(a) certificate of competency;

(b) certificate of satisfactory service;

(c) safety certificate;

(d) survey certificate;

(e) coasting-trade licence or permit; or

(f) pilot licence,

in force immediately prior to the commencement date remains in force—

(i) for a period of 2 years and 4 months from the appointed day; or

(ii) until the date of the expiration of that certificate, licence, instrument or document,

whichever is the earlier.

(4) The Regulations made under the Marine Act 1986 dealing with the—

(a) issuance of certificates or licences issued by the Marine Board are deemed to have been issued by the Chief Executive Officer;

(b) issuance of any other certificates or licences issued by the Director are deemed to have been issued by the Chief Executive Officer; and

(c) information kept or roles undertaken by the Registrar are deemed to have been kept and undertaken by the Chief Executive Officer.

(5) The Delegations, directions, notices, agreements and other administrative actions or decisions of the Minister, the Director of Fiji Maritime Safety Administration and officers appointed under the repealed Acts which could be issued or made by equivalent officers under this Decree or the Maritime Safety Authority of Fiji Decree 2009 shall continue to have effect as if issued or made under this Decree or Maritime Safety Authority of Fiji Decree 2009 until varied or revoked under this Decree or Maritime Safety Authority of Fiji Decree 2009.

Amendment to Maritime Safety Authority of Fiji Decree 2009

284. The Maritime Safety Authority of Fiji Decree 2009 is amended—

(a) in section 26 (a) by deleting "Marine Act" and substituting "Schedule";

(b) by deleting section 29 (2) and substituting the following—

"(2) The Authority shall appoint a Maritime Appeals Committee which shall hear and determine appeals pursuant to section 264 of the Maritime Transport Decree 2013."; and

(c) by inserting the following new Schedule—

"SCHEDULE

Laws to be administered by the Authority

1. Maritime Transport Decree 2013; and
2. Ship Registration Decree 2013."

Amendment to Public Health Act (Cap. 111)

285. 285. The Public Health Act (Cap. 111) is amended by repealing sections 113 and 114.

SCHEDULE 1

(Section 2)

LIST OF CONVENTIONS

1. Articles of, and Annexes to, the Load Line Convention
2. Convention on the International Regulations for Preventing Collisions at Sea, 1972
3. International Convention for the Safety of Life at Sea, 1974 & the Protocol, 1978
4. International Convention on the Standard of Training Certification and Watch-keeper (STCW), 1978 as Amended
5. International Convention Relating to the Limitation of the Liability of Owners of Sea-Going Ships & the Protocol Amending the Convention, 1957
6. International Convention on Tonnage Measurement of Ships, 1969

7. International Convention for the Prevention of Pollution from Ships of 1973 and 1978 (MARPOL) & the Protocol, 1997
8. International Convention on Maritime Search and Rescue, 1979 (SAR Convention)
9. International Convention for the Control and Management of Ships Ballast Water and Sediments (BWM Convention), 2004
10. International Convention on the Control of Anti-Fouling Systems on Ships, 2001 (AFS Convention)
11. International Convention on Facilitation of International Maritime Traffic, 1965 (FAL Convention)
12. International Convention on Preparedness, Response and Cooperation to Pollution Incidents by Hazardous and Noxious Substances, 2000 (OPRC-HNS Protocol)
13. International Convention on Salvage, 1989 (Salvage Convention) 2513

SCHEDULE 2
(Section 122)

INTERNATIONAL CONVENTION ON SALVAGE, 1989

THE STATES PARTIES TO THE PRESENT CONVENTION,

RECOGNIZING the desirability of determining by agreement uniform international Regulations regarding salvage operations,

NOTING that substantial developments, in particular the increased concern for the protection of the environment, have demonstrated the need to review the international Regulations presently contained in the Convention for the Unification of Certain Regulations of Law relating to Assistance and Salvage at Sea, done at Brussels, 23 September 1910,

CONSCIOUS of the major contribution which efficient and timely salvage operations can make to the safety of ships and other property in danger and to the protection of the environment,

CONVINCED of the need to ensure that adequate incentives are available to persons who undertake salvage operations in respect of ships and other property in danger,

HAVE AGREED as follows—

CHAPTER I
GENERAL PROVISIONS

Article 1—Definitions

For the purpose of this Convention:

(a) Salvage operation means any act or activity undertaken to assist a ship or any other property in danger in navigable waters or in any other waters whatsoever.

(b) Ship means any ship or craft, or any structure capable of navigation.

(c) Property means any property not permanently and intentionally attached to the shoreline and includes freight at risk.

(d) *Damage to the environment* means substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents.

(e) *Payment* means any reward, remuneration or compensation due under this Convention.

(f) *Organization* means the International Maritime Organization.

(g) *Secretary-General* means the Secretary-General of the Organization.

Article 2—Application of the Convention

This Convention shall apply whenever judicial or arbitral proceedings relating to matters dealt with in this Convention are brought in a State Party.

Article 3—Platforms and drilling units

This Convention shall not apply to fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral sources.

Article 4—State-owned ships

1. Without prejudice to article 5, this Convention shall not apply to warships or other non-commercial ships owned or operated by a State and entitled, at the time of salvage operations, to sovereign immunity under generally recognized principles of international law unless that State decides otherwise.

2. Where a State Party decides to apply the Convention to its warships or other ships described in paragraph 1, it shall notify the Secretary-General thereof specifying the terms and conditions of such application.²⁵¹⁴

Article 5—Salvage operations controlled by public authorities

1. This Convention shall not affect any provisions of national law or any international Convention relating to salvage operations by or under the control of public authorities.

2. Nevertheless, salvors carrying out such salvage operations shall be entitled to avail themselves of the rights and remedies provided for in this Convention in respect of salvage operations.

3. The extent to which a public authority under a duty to perform salvage operations may avail itself of the rights and remedies provided for in this Convention shall be determined by the law of the State where such authority is situated.

Article 6—Salvage contracts

1. This Convention shall apply to any salvage operations save to the extent that a contract otherwise provides expressly or by implication.

2. The master shall have the authority to conclude contracts for salvage operations on behalf of the owner of the ship. The master or the owner of the ship shall have the authority to conclude such contracts on behalf of the owner of the property on board the ship.

3. Nothing in this article shall affect the application of neither article 7 nor duties to prevent or minimize damage to the environment.

Article 7—Annulment and modification of contracts

A contract or any terms thereof may be annulled or modified if—

(a) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or

(b) the payment under the contract is in an excessive degree too large or too small for the services actually rendered.

CHAPTER II PERFORMANCE OF SALVAGE OPERATIONS

Article 8—Duties of the salvor and of the owner and master

1. The salvor shall owe a duty to the owner of the ship or other property in danger:

(a) to carry out the salvage operations with due care;

(b) in performing the duty specified in subparagraph (a), to exercise due care to prevent or minimize damage to the environment;

(c) whenever circumstances reasonably require, to seek assistance from other salvors; and

(d) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the ship or other property in danger; provided however that the amount of his reward shall not be prejudiced should it be found that such a request was unreasonable.

2. The owner and master of the ship or the owner of other property in danger shall owe a duty to the salvor—

(a) to co-operate fully with him during the course of the salvage operations;

(b) in so doing, to exercise due care to prevent or minimize damage to the environment; and

(c) when the ship or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so.

Article 9—Rights of coastal States

Nothing in this Convention shall affect the right of the coastal State concerned to take measures in accordance with generally recognized principles of international law to protect its coastline or related interests from pollution or the threat of pollution following upon a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful consequences, including the right of a coastal State to give directions in relation to salvage operations.²⁵¹⁵

Article 10—Duty to render assistance

1. Every master is bound, so far as he can do so without serious danger to his ship and persons thereon, to render assistance to any person in danger of being lost at sea.

2. The States Parties shall adopt the measures necessary to enforce the duty set out in paragraph 1.

3. The owner of the ship shall incur no liability for a breach of the duty of the master under paragraph 1.

Article 11—Co-operation

A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of ships in distress or the provisions of facilities to salvors, take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general.

CHAPTER III RIGHTS OF SALVORS

Article 12—Conditions for reward

1. Salvage operations which have had a useful result give right to a reward.
2. Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result.
3. This chapter shall apply, notwithstanding that the salvaged ship and the ship undertaking the salvage operations belong to the same owner.

Article 13—Criteria for fixing the reward

1. The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below—

- (a) the salvaged value of the ship and other property;
- (b) the skill and efforts of the salvors in preventing or minimizing damage to the environment;
- (c) the measure of success obtained by the salvor;
- (d) the nature and degree of the danger;
- (e) the skill and efforts of the salvors in salvaging the ship, other property and life;
- (f) the time used and expenses and losses incurred by the salvors;
- (g) the risk of liability and other risks run by the salvors or their equipment;
- (h) the promptness of the services rendered;
- (i) the availability and use of ships or other equipment intended for salvage operations;
- (j) the state of readiness and efficiency of the salvor's equipment and the value thereof.

2. Payment of a reward fixed according to paragraph 1 shall be made by all of the ship and other property interests in proportion to their respective salvaged values. However, a State Party may in its national law provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other interests for their respective shares. Nothing in this article shall prevent any right of defence.

3. The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salvaged value of the ship and other property.

Article 14—Special compensation

1. If the salvor has carried out salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment and has failed to earn a reward under Article 13 at least equivalent to the special compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that ship equivalent to his expenses as herein defined.²⁵¹⁶

2. If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimized damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1 may be increased up to a maximum of 30% of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in article 13, paragraph 1, may increase such special compensation further, but in no event shall the total increase be more than 100% of the expenses incurred by the salvor.

3. Salvor's expenses for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, paragraph 1 (h), (i) and (j).
4. The total special compensation under this article shall be paid only if and to the extent that such compensation is greater than any reward recoverable by the salvor under article 13.
5. If the salvor has been negligent and has thereby failed to prevent or minimize damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.
6. Nothing in this article shall affect any right of recourse on the part of the owner of the ship.

Article 15—Apportionment between salvors

1. The apportionment of a reward under Article 13 between salvors shall be made on the basis of the criteria contained in that article.
2. The apportionment between the owner, master and other persons in the service of each salving ship shall be determined by the law of the flag of that ship. If the salvage has not been carried out from a ship, the apportionment shall be determined by the law governing the contract between the salvor and his servants.

Article 16—Salvage of persons

1. No remuneration is due from persons whose lives are saved, but nothing in this article shall affect the provisions of national law on this subject.
2. A salvor of human life, who has taken part in the services rendered on the occasion of the accident giving rise to salvage, is entitled to a fair share of the payment awarded to the salvor for salvaging the ship or other property or preventing or minimizing damage to the environment.

Article 17—Services rendered under existing contracts

No payment is due under the provisions of this Convention unless the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger arose.

Article 18—The effect of salvor's misconduct

A salvor may be deprived of the whole or part of the payment due under this Convention to the extent that salvage operations have become necessary or more difficult because of fault or neglect on his part or if the salvor has been guilty of fraud or other dishonest conduct.

Article 19—Prohibition of salvage operations

Services rendered notwithstanding the express and reasonable prohibition of the owner or master of the ship or the owner of any other property in danger which is not and has not been on board the ship shall not give rise to payment under this Convention. 2517

**CHAPTER IV
CLAIMS AND ACTIONS**

Article 20—Maritime lien

1. Nothing in this Convention shall affect the salvor's maritime lien under any international Convention or national law.
2. The salvor may not enforce his maritime lien when satisfactory security for his claim, including interest and costs, has been duly tendered or provided.

Article 21—Duty to provide security

1. Upon the request of the salvor a person liable for payment due under this Convention shall provide satisfactory security for the claim, including interest and costs of the salvor.
2. Without prejudice to paragraph 1, the owner of the salvaged ship shall use his best endeavours to ensure that the owners of the cargo provide satisfactory security for the claims against them including interest and costs before the cargo is released.
3. The salvaged ship and other property shall not, without the consent of the salvor, be removed from the port or place at which they first arrive after the completion of the salvage operations until satisfactory security has been put up for the salvor's claim against the relevant ship or property.

Article 22—Interim payment

1. The tribunal having jurisdiction over the claim of the salvor may, by interim decision, order that the salvor shall be paid on account such amount as seems fair and just, and on such terms including terms as to security where appropriate, as may be fair and just according to the circumstances of the case.
2. In the event of an interim payment under this article the security provided under article 21 shall be reduced accordingly.

Article 23—Limitation of actions

1. Any action relating to payment under this Convention shall be time-barred if judicial or arbitral proceedings have not been instituted within a period of two years. The limitation period commences on the day on which the salvage operations are terminated.
2. The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration to the claimant. This period may in the like manner be further extended.
3. An action for indemnity by a person liable may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs, if brought within the time allowed by the law of the State where proceedings are instituted.

Article 24—Interest

The right of the salvor to interest on any payment due under this Convention shall be determined according to the law of the State in which the tribunal seized of the case is situated.

Article 25—State-owned cargoes

Unless the State owner consents, no provision of this Convention shall be used as a basis for the seizure, arrest or detention by any legal process of, nor for any proceedings in rem against, non-commercial cargoes owned by a State and entitled, at the time of the salvage operations, to sovereign immunity under generally recognised principles of international law.

Article 26—Humanitarian cargoes

No provision of this Convention shall be used as a basis for the seizure, arrest or detention of humanitarian cargoes donated by a State, if such State has agreed to pay for salvage services rendered in respect of such humanitarian cargoes.²⁵¹⁸

Article 27—Publication of arbitral awards

States Parties shall encourage, as far as possible and with the consent of the parties, the publication of arbitral awards made in salvage cases.

**CHAPTER V
FINAL CLAUSES**

Article 28—Signature, ratification, acceptance, approval and accession

1. This Convention shall be open for signature at the Headquarters of the Organization from 1 July 1989 to 30 June 1990 and shall thereafter remain open for accession.

2. States express their consent to be bound by this Convention by:

(a) signature without reservation as to ratification, acceptance or approval; or

(b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

Article 29—Entry into force

1. This Convention shall enter into force one year after the date on which 15 States have expressed their consent to be bound by it.

2. or a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect one year after the date of expression of such consent.

Article 30—Reservations

1. Any State may, at the time of signature, ratification, acceptance, approval or accession, reserve the right not to apply the provisions of this Convention

— (a) when the salvage operation takes place in inland waters and all ships involved are of inland navigation;

(b) when the salvage operations take place in inland waters and no ship is involved;

(c) when all interested parties are nationals of that State;

(d) when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed.

2. Reservations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.

3. Any State which has made a reservation to this Convention may withdraw it at any time by means of a notification addressed to the Secretary-General. Such withdrawal shall take effect on the date the notification is received. If the notification states that the withdrawal of a reservation is to take effect on a date specified therein, and such date is later than the date the notification is received by the Secretary-General, the withdrawal shall take effect on such later date.

Article 31—Denunciation

1. This Convention may be denounced by any State Party at any time after the expiry of one year from the date on which this Convention enters into force for that State.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.2519

Article 32—Revision and amendment

1. A conference for the purpose of revising or amending this Convention may be convened by the Organization.

2. The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of eight States Parties, or one fourth of the States Parties, whichever is the higher figure.

3. Any consent to be bound by this Convention expressed after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

Article 33—Depositary

1. This Convention shall be deposited with the Secretary-General.

2. The Secretary-General shall:

(a) inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;

(ii) the date of the entry into force of this Convention;

(iii) the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect;

(iv) any amendment adopted in conformity with article 32;

(v) the receipt of any reservation, declaration or notification made under this Convention;

(b) transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.

3. As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 34—Languages

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned* being duly authorized by their respective Governments for that purpose have signed this Convention.

DONE at LONDON this twenty-eighth day of April one thousand nine hundred and eighty-nine.

*Signatures omitted.2520

SCHEDULE 1

Common Understanding Concerning Articles 13 and 14 of the International Convention on Salvage, 1989

It is the common understanding of the Conference that, in fixing a reward under article 13 and assessing special compensation under article 14 of the International Convention on Salvage, 1989 the tribunal is under no duty to fix a reward under article 13 up to the maximum salvaged value of the ship and other property before assessing the special compensation to be paid under article 14.

SCHEDULE 2

Resolution requesting the amendment of the York-Antwerp Regulations, 1974

THE INTERNATIONAL CONFERENCE ON SALVAGE, 1989, HAVING ADOPTED the International Convention on Salvage, 1989

CONSIDERING that payments made pursuant to article 14 are not intended to be allowed in general average, REQUESTS the Secretary-General of the International Maritime Organization to take the appropriate steps in order to ensure speedy amendment of the York-Antwerp Regulations, 1974, to ensure that special compensation paid under article 14 is not subject to general average.

SCHEDULE 3

Resolution on international co-operation for the implementation of the International Convention on Salvage, 1989

The International Conference on Salvage, 1989,

IN ADOPTING the International Convention on Salvage, 1989 (hereinafter referred to as “The Convention”), Considering it Desirable that as many States as possible should become Parties to the Convention,

RECOGNIZING that the entry into force of the Convention will represent an important additional factor for the protection of the marine environment,

CONSIDERING that the international publicizing and wide implementation of the Convention is of the utmost importance for the attainment of its objectives,

I RECOMMENDS:

(a) that the Organization promote public awareness of the Convention through the holding of seminars, courses or symposia;

(b) that training institutions created under the auspices of the Organization include the study of the Convention in the corresponding courses of study.

II REQUESTS:

(a) Member States to transmit to the Organization the text of the laws, orders, decrees, Regulations and other instruments that they promulgate concerning the various matters falling within the scope of application of the Convention;

(b) Member States, in consultation with the Organization, to promote the giving of help to those States requesting technical assistance for the drafting of laws, orders, decrees, Regulations and other instruments necessary for the implementation of the Convention; and

(c) the Organization to notify Member States of any communication it may receive under paragraph II (a).

SCHEDULE 3

(Section 46 (4))

FORM OF SUMMONS

To *[name of person summoned and his calling and residence if known]*

You are hereby summoned to appear before *[name and title of the investigators]* appointed under the Maritime Transport Decree 2013 to inquire *[state briefly the subject of inquiry]* at *[place]* upon the day of 20 , at *[time]*, and to give evidence in respect of such inquiry *[if the person summoned has to produce any documents, add]* and you are required to bring with you *[specify the books and documents required]*.

Dated this day of, 20.....

.....
Chief Executive Officer

GIVEN under my hand this 2nd day of July 2013.

EPELI NAILATIKAU
President of the Republic of Fiji