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INTERNATIONAL CONVENTION ON TONNAGE
MEASUREMENT OF SHIPS, 1969

FIJI

ACT No. 35 OF 1986 505



I assent.

[L.S.]

P. K. GANILAU
Governor-General
16th December 1986

AN ACT

**TO REGULATE SHIPPING, TO GIVE EFFECT TO CERTAIN
INTERNATIONAL MARITIME CONVENTIONS AND FOR RE-
LATED PURPOSES.**

ENACTED by the Parliament of Fiji—

[]

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Marine Act, 1986.

Commencement

2. This Act shall come into force on a date to be notified by the Minister in the Gazette, and different dates may be notified for the purposes of different provisions of this Act.

Application

3.—(1) This Act binds the Crown but nothing in this Act renders the Crown liable to be prosecuted for an offence.

(2) Unless a contrary intention appears—

- (a) this Act does not apply in a declared port or an approach to a declared port insofar as it is inconsistent with the Ports Authority of Fiji Act; and
- (b) nothing in this Act derogates from a duty imposed or a power granted by or under the Ports Authority of Fiji Act.

Act does not to apply to naval ships, etc.

4. Except where a contrary intention appears this Act does not apply to or in relation to a vessel belonging to—
- (a) the Royal Fiji Military Forces; or
 - (b) the naval, military or air forces of a country other than Fiji.

Interpretation and application

- 5.—(1) In this Act, unless the contrary intention appears—
- “agreement”, in relation to a vessel, means the agreement made under subsection 106(1) between the owner of the vessel or a person acting in his behalf and the crew of the vessel, and, in relation to a seaman belonging to a vessel, means the agreement made under subsection 106(1) between the owner of the vessel or a person acting on his behalf and the seaman;
 - “air-cushioned vehicle” means a vehicle designed to be supported when in motion wholly or partly by air expelled from the vehicle and forming a cushion the boundaries of which include the water or other surface below the vehicle;
 - “appointed day” means, in relation to a provision of this Act, the day notified by the Minister in the Gazette pursuant to section 2 as being the date on which that provision shall come into force;
 - “approaches to a declared port” means any area or navigable channel adjacent to a declared port so declared under section 3 of the Ports Authority of Fiji Act;
 - “appropriate coasting-trade licence” means a coasting-trade licence which permits, or would permit, the vessel in respect of which the licence is granted to be engaged in the coasting-trade for the provision of shipping service on which the vessel is, or is about to be, engaged;
 - “archipelagic waters” means the archipelagic waters of Fiji as defined in subsection 4(1) of the Marine Spaces Act;
 - “beneficial interest” includes interests arising under contract, and equitable interests;
 - “casualty”, in relation to a vessel, means—
 - (a) the loss, presumed loss, stranding, grounding or abandonment of, or damage to, the vessel or a boat belonging to the vessel;
 - (b) damage caused by the vessel or by a boat belonging to the vessel; or
 - (c) a loss of life caused by accident or fire on board, or accident to, the vessel or a boat belonging to the vessel;
 - “certificate” means a certificate of competency or a certificate of satisfactory service issued under or recognised for the purposes of Part V;
 - “certificate of competency” means a certificate of competency issued under paragraph 99(3)(a);
 - “certificate of satisfactory service” means a certificate of satisfactory service issued under paragraph 99(3)(b);

- “charterer”, in Part VI, in relation to a vessel, means the person who by virtue of a charter party has the whole control and possession of the vessel including sole responsibility for its operation and management;**
- “classification society” means an association or a corporation prescribed for the survey of vessels;**
- “coasting-trade”, in respect of a vessel engaged in that trade, has the meaning described in section 144;**
- “coasting-trade licence” means a licence granted under section 146;**
- “coasting-trade permit” means a permit issued under subsection 153(1);**
- “Collision Convention” means—**
- (a) the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (a copy of the English text of the articles of which is set forth in Schedule 3);**
and
 - (b) the International Regulations for Preventing Collisions at Sea, 1972, constituted by the rules and other annexes attached to that Convention, as corrected by the Proces-Verbal of Rectification dated 1 December 1973, (a copy of the English text of which rules and other annexes, as so corrected is also set forth in Schedule 3)**
as affected by any amendment, other than an amendment objected to by Fiji, made under Article VI of that Convention;
- “commercial vessel” means a vessel which is not used solely for pleasure or recreation, and the use of which is made, allowed or authorised in the course of a business or in connection with a commercial transaction;**
- “compulsory pilotage area” means an area of Fiji waters declared in accordance with subsection 184(1) to be an area of water in which pilotage is compulsory;**
- “Court” means the Supreme Court;**
- “crew”, in relation to a vessel, means those persons employed on board and in the business of, the vessel but does not include a pilot or a person temporarily employed on board the vessel while the vessel is at a port;**
- “crew accomodation”, in relation to a vessel means such parts of the vessel as are set aside for the exclusive use of the crew;**
- “Crew List”, in relation to a vessel means the list required to be made and maintained in relation to the vessel under section 136;**
- “dangerous goods” means goods that are dangerous goods for the purposes of the International Maritime Dangerous Goods Code published by the Inter-governmental Maritime Consultative Organization, London, in 1965, as amended from time to time;**
- “declared port” means any place and any navigable river or channel leading into such place declared to be a port under section 3 of the Ports Authority of Fiji Act;**

“Director” means the person holding the public service office designated Director of Marine;

“disciplinary offence” means an act or omission that is declared by regulations made under paragraph 143(y) to be a disciplinary offence for the purpose of subsection 129(1);

“effects” includes documents;

“equipment”, in relation to a vessel, includes every thing or article belonging to, used in connection with or necessary for the navigation, safety and working of the vessel and, in particular, includes boats, tackle, pumps, apparel, furniture, life saving appliances, spars, masts, rigging, sails, fog signals, lights, signals of distress, signalling lamps, pilot ladders, radio equipment, medicines, medical and surgical stores and appliances, fire prevention, detecting and extinguishing appliances, inert gas systems, echo-sounding devices, mechanical pilot hoists, buckets, compasses, charts, axes, lanterns and gear and apparatus for loading or unloading, or otherwise handling cargo;

“exempt person”, in respect of a pilotage area, means the holder of a valid pilotage exemption certificate that is valid in respect of that area;

“exempt vessel”, in Part III, means—

- (a) an air-cushioned vehicle;
- (b) a vessel less than 10 metres in length;
- (c) a takia;
- (d) a pleasure craft;
- (e) a vessel employed solely in navigation on inland waters;
- (f) a government vessel—except to the extent that registration of the vessel is provided for by regulations made under paragraph 54(a);

“existing vessel” means a vessel that is not a new vessel;

“Fiji person” means—

- (a) a citizen of Fiji normally resident in Fiji;
- (b) a corporation, where the Minister is satisfied that—
 - (i) the principal place of business of the corporation is Fiji;
 - (ii) the majority of any shares in the corporation are beneficially owned, either directly or indirectly, by citizens of Fiji normally resident in Fiji; and
 - (iii) the affairs of the corporation are managed and controlled by citizens of Fiji normally resident in Fiji;

“Fiji waters” means all the waters comprising—

- (a) the territorial seas;
- (b) the archipelagic waters; and
- (c) the inland waters, of Fiji;

“fishing vessel” means a vessel that is, or is intended to be, used wholly or principally for the catching or taking of marine organisms but

does not include a vessel that is, or is intended to be, used wholly or principally—

- (a) in the harvesting or transporting of algae or aquatic plants; or
- (b) as a carrier or mother vessel;

“general coasting-trade licence” means a general coasting-trade licence referred to in paragraph 147(1)(a);

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

“Government vessel” means a vessel—

- (a) that belongs to the Government or to a Government authority;
- (b) the beneficial interest in which is vested in the Government or in a Government Authority; or
- (c) that is for the time being demised or sub-demised to, or in the exclusive possession of the Government or a Government authority,

but does not include a vessel belonging to or chartered or demised to the Royal Fiji Military Forces;

“hire and drive vessel” means a vessel which is let for hire or reward or for any other consideration and includes a vessel provided in conjunction with a holiday establishment or hotel for the use of guests or tenants where it is intended that the hirer shall use the vessel solely for pleasure purposes;

“inland waters” means waters open to, or used for, navigation on the landward side of internal waters;

“internal waters” means the internal waters of Fiji as defined in section 3 of the Marine Spaces Act;

“international voyage” means a voyage---

- (a) from a port or place in Fiji to a port or place outside Fiji;
- (b) from a port or place outside Fiji to a port or place in Fiji; or
- (c) from a port or place outside Fiji to another port or place outside Fiji;

“length”, in relation to a vessel, means the length of the vessel as determined in accordance with subsection (7);

“licensed pilot”, in respect of a pilotage area, means the holder of a valid pilotage licence that is valid in respect of that area;

“Limitation of Liability Convention” means the International Convention relating to the Limitation of Liability of Owners of Sea-going ships signed at Brussels on 10 October 1957 (a copy of the English text of which is set forth in Schedules 6 and 7) as affected by any amendment other than an amendment not accepted by Fiji;

“list of suspended persons” means a list of persons who have been declared by the Registrar to be suspended persons in the manner

- prescribed by regulations made under paragraph 143(aa);
- “load line” means a line marked on a vessel indicating the depth to which a vessel when loaded may safely be submerged;
- “Load Line Convention” means the International Convention on Load Lines, 1966 as corrected by the Proces-Verbal of Rectification dated 30 January 1969 and the Proces-Verbal of Rectification dated 5 May 1969 (a copy of the English text of the articles of which, and of the annexes to which, as so corrected is set forth in Schedule 4), as affected, by any amendment other than an amendment not accepted by Fiji, made under Article 29 of that Convention;
- “Load Line Convention ship” means a vessel to which, in accordance with Articles 4 and 5 of the Load Line Convention, that Convention applies;
- “Marine Board” means the Fiji Marine Board established by subsection 56(1);
- “marine checker” means a person holding a public service office designated marine checker;
- “marine inquiry” means an inquiry held under section 89;
- “marine navigational aid” means—
- (a) a lighthouse, lightship, beacon, marker, buoy or any structure, device or apparatus that is established or maintained to be used principally as an aid to marine navigation; and
 - (b) a vessel, stores, equipment or other property the principal use of which is the servicing of an aid to marine navigation, but, in the case of a vessel other than a lightship, does not include a light, structure, device or apparatus which is part of the vessel;
- “master”, in relation to a vessel, means the person having lawful command or charge of the vessel but does not include a pilot;
- “Merchant Shipping Act” means—
- (a) the Law comprising the imperial enactment known as the Merchant Shipping Act, 1894, as amended, or otherwise affected in its operation, by the provisions of any other imperial enactment or of any written law, insofar as the first mentioned imperial enactment, as so amended or otherwise affected, is part of the law of Fiji; and
 - (b) all instruments of a legislative character having effect as part of the law of Fiji under the law referred to in paragraph (a);
- “mortgage” means an instrument creating the security in a registered vessel in accordance with subsection 38(1);
- “National Flag” means—
- (a) in respect of a Royal Fiji Military Force vessel—the flag illustrated in Part 1 of Schedule 5,
 - (b) in respect of a Government vessel—the flag illustrated in Part 2 of Schedule 5; and
 - (c) in respect of any other Fiji vessel—the flag illustrated in Part 3 of Schedule 5,

- and in section 8 means all or any of the flags referred to in paragraphs (a), (b), and (c);
- “new vessel” means a vessel—
- (a) the keel of which was laid or which was at a similar stage of construction; or
 - (b) that has been substantially—
 - (i) altered; or
 - (ii) reconstructed,
 on or after the appointed day;
- “Official Log Book”, in relation to a vessel, means the Official Log Book required by subsection 135(1) to be kept in relation to that vessel;
- “offshore vessel” means a vessel that is—
- (a) engaged in the exploration or exploitation of either or both of the following, namely—
 - (i) the continental shelf (within the meaning of the Continental Shelf Act);
 - (ii) the seabed and subsoil of Fiji waters; and
 - (b) operating to, or from, or is based at a port or place in Fiji;
- “part of a vessel” includes the hull, machinery and equipment of a vessel;
- “passenger” means a person carried on board a vessel with the knowledge or consent of the owner or master of the vessel but does not include—
- (a) a person engaged in any capacity on board the vessel in the business of the vessel; or
 - (b) a child under the age of one year;
- “pilot”, in respect of a vessel, means a person, other than a member of the crew of the vessel, who has the lawful conduct of the vessel;
- “pilotage area” means an area of Fiji waters that is declared to be a pilotage area in accordance with section 183;
- “pilotage exemption certificate” means a pilotage exemption certificate issued under subsection 192(1);
- “pilotage licence” means a pilotage licence issued under subsection 188(2);
- “pleasure craft” means a vessel that is used exclusively for recreational or sporting activities (otherwise than by way of trade or commerce);
- “Proper Officer” means a person appointed under section 18 to be a Proper Officer;
- “proper return port”, in relation to the present or past employment of a seaman under an agreement, means the port or place specified in that agreement as the proper return port of that seaman;
- “provisional certificate of registry” means a provisional certificate of registry granted under subsection 28(1);

“qualified person” means—

- (a) a citizen of Fiji; or
- (b) a corporation established by or under a law of Fiji whose principal place of business is in Fiji; or
- (c) in the case of a vessel which is normally engaged in a qualifying shipping service—a person or corporation (other than a person or corporation referred to in paragraphs (a) and (b)) having—
 - (i) a place of business in Fiji from which the operations of the vessel are managed and controlled; or
 - (ii) an agent in Fiji who manages the vessel;

“qualified seaman” means a member of the crew of a vessel who holds a certificate appropriate to the capacity in which he is serving in the vessel;

“qualifying route” means a route designated to be a qualifying route by the Minister in accordance with subsection 15(5);

“qualifying shipping service” means a service designated to be a qualifying service by the Minister in accordance with subsection 15(5);

“radio installation” means a radiotelegraphy or radiotelephony installation but does not include a radionavigational aid;

“Register” means the register book kept in accordance with subsection 19(1);

“Register of Seamen” means the Register of Seamen kept in accordance with paragraph 134(1)(a);

“registered agent” means, in relation to a registered vessel to which subsection 15(1) applies, the person whose name and address are entered in the Register of Vessels in respect of that vessel in accordance with subsection 15(2);

“registered mortgage” means a mortgage registered under subsection 38(3);

“registered vessel” means a vessel registered under subsection 25(1);

“Registrar” means the Registrar of Vessels;

“registration certificate” means a certificate granted under subsection 27(1) and, subject to subsection 28(2) a provisional registration certificate granted under subsection 28(1);

“safety certificate” means a certificate issued by a surveyor under subsection 67(4);

“Safety Convention” means the International Convention for the Safety of Life at Sea, 1974 (a copy of the English text of the articles of which, and of the annex and appendix to which, is set forth in Schedule 1) as affected by any amendment, other than an amendment objected to by Fiji, made under Article VIII of that Convention and, after the date on which the Safety Protocol enters into force for Fiji, as also affected by that Protocol;

“Safety Convention ship” means a vessel that is of a kind to which the Safety Convention applies and that is entitled to fly the flag of a country the government of which is a party to the Safety Convention;

- “safety manning”, in relation to a vessel, means the total number of qualified and unqualified seamen required to navigate that vessel safely;
- “Safety Protocol” means the Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974 (a copy of the English text of the articles of which, and of the annex and appendix to which, is set forth in Schedule 2) as affected by any amendment, other than an amendment object to by Fiji, made under Article VIII, of the International Convention for the Safety of Life at Sea, 1974, as incorporated in that Protocol by Article II of that Protocol;
- “seaman” means a person employed or engaged in any capacity on board a vessel on the business of the vessel, other than—
- (a) the master of the vessel;
 - (b) a pilot; or
 - (c) a person temporarily employed on board the vessel in a port or place;
- “seaman’s identity card” means an identity card issued under subsection 132(1);
- “serious injury” means an injury as a result of which permanent incapacity or death may occur;
- “shipping inspector” means a person appointed under section 202;
- “shipping officer” means a person appointed under section 97;
- “shipping service” includes—
- (i) the transport by water of goods, for fee or reward or for sale, resale or exchange;
 - (ii) the transport by water of passengers for fee or reward; and
 - (iii) the conduct of commercial marine operations including salvaging, towing, barging, dredging, drilling, surveying, constructing, lifting and exploring for, or exploiting, the resources of the seabed;
- “special coasting-trade licence” means a coasting-trade licence referred to in paragraph 147(1)(b);
- “survey certificate” means a certificate granted by the Marine Board under subsection 67(3);
- “survey master sheet” means the record of surveys and inspections of a vessel required by the regulations to be kept on board the vessel;
- “surveyor” means a person appointed as a surveyor under subsection 57(1);
- “suspended person” means a person whose name is included in the list of suspended persons;
- “takia” means a canoe built of traditional materials to a traditional Fijian design;
- “territorial seas” means the territorial seas of Fiji as defined in section 5 of the Marine Spaces Act;

“the Tonnage Measurement Convention” means the International Convention on Tonnage Measurement of Ships 1969 (a copy of the English text of the articles of which, and the annexes to which, is set forth in Schedule 8) as affected by any amendment, other than an amendment not accepted by Fiji, made under article 18 of the Convention;

“tonnage certificate”, in relation to a vessel, means—

(a) where the vessel is a vessel to which the Tonnage Measurement Convention would apply if the vessel were engaged on an international voyage—an International Tonnage Certificate (1969); or

(b) such other tonnage measurement certificates as the regulations provide should be issued in respect of the vessel;

“under way”, in relation to a vessel, means the vessel—

(a) is not at anchor, made fast to the shore or moored; and

(b) is not aground;

“vessel” includes—

(a) in relation to the ownership of a vessel—a share in the vessel and an interest in the vessel or share;

(b) an air cushioned vehicle; and

(c) every description of vessel used, or capable of being used, in navigation by water.

(2) A reference in a Part to “this Part” includes a reference to a regulation made in respect of a matter contained in that Part.

(3) Subject to subsection (4), a vessel has—

(a) been taken or sent to sea;

(b) gone or proceeded to sea; or

(c) proceeded on a voyage,

if it is under way for the purposes of—

(d) going to sea;

(e) plying or running;

(f) proceeding on a voyage; or

(g) in the case of an offshore vessel—undertaking offshore operations.

(4) A vessel has not—

(a) been taken or sent to sea;

(b) gone or proceeded to sea; or

(c) proceeded on a voyage,

if it is merely moving from one berth or place in a port or place to another berth or place in that port or place.

(5) Unless the contrary intention appears, a reference in this Act, other than in Parts II and III, to the owner of a vessel includes, where the vessel is operated by a person other than the owner, that person.

(6) In this Act, a seaman, being a member of the crew of a vessel, shall be taken to have been left behind if that seaman is left behind by the vessel

at a port or place that is not the proper return port of that seaman unless the seaman, without the consent of the master, quit the vessel at that port or place with the intention of not returning to the vessel.

(7) In this Act, the length of a vessel means—

- (a) the length as ascertained by measuring the distance between—
 - (i) a vertical line passing through the foremost part of the stem; and
 - (ii) a vertical line passing through the aftermost part of the stern, of the vessel; or
- (b) where, by reason of the nature of the constructional features of a vessel, it is, in the opinion of the Director, impracticable to ascertain the length of the vessel in accordance with paragraph (a)—the length of the vessel as ascertained in such a manner as the Director determines.

(8) In this Act, unless the contrary intention appears, a reference to the owner of a vessel shall, if there is more than one owner of the vessel be read as a reference to each of the owners.

(9) A reference in this Act to failing to do an act or thing shall be read as including a reference to refusing to do that act or thing.

(10) Where under this Act the performance of a function by a person is dependent upon the opinion, belief or state of mind of that person and that function has been delegated, the function may be performed by the delegate upon the opinion, belief, or state of mind of the delegate in relation to that matter.

Penalties

6.—(1) Where in this Act, a penalty—

- (a) is specified without qualification at the foot of a section;
 - (b) is specified at the foot of a subsection, but not at the foot of the section; or
 - (c) is specified at the foot of a section and expressed to apply to a specified subsection or specified subsections of the section,
- then, unless the contrary is expressly provided, that specification indicates that a contravention of the section or subsection, or, as the case may be, any of the subsections, is an offence and that the offence is punishable on conviction by a penalty not exceeding that so specified.

(2) Subsection (1) applies to subsidiary legislation made under this Act subject to necessary modifications.

PART II—NATIONAL COLOURS AND NATIONAL CHARACTER OF FIJI

National Colours

7.—(1) The National Flag is the proper national colours for a registered vessel.

(2) A master of a registered vessel shall, except where it would be unreasonable having regard to all the circumstances to do so, cause the National Flag to be hoisted at all times on the vessel.

Penalty: A fine not exceeding \$500

(3) Subject to subsection (4), where, except with the Minister's consent, distinctive national colours other than the National Flag are hoisted on board a registered vessel—

(a) the master of the vessel;

(b) the owner if he is on board the vessel; and

(c) the person hoisting those colours,

are each guilty of an offence.

Penalty: A fine not exceeding \$500

(4) A registered vessel, while in a port of a foreign country, may, as a courtesy to that country, display the national flag of that country, but so as not to confuse that flag with the National Flag.

Wrongfully using National Flag or claiming the national character of Fiji

8.—(1) Subject to subsections (2) and (3), a person shall not, in respect of a vessel which is owned in whole or in part by a person who is not a qualified person—

(a) use the National Flag on the vessel; or

(b) in any other way make the vessel assume the national character of Fiji.

Penalty: A fine not exceeding \$500

(2) Subsection (1) shall not apply where the National Flag is displayed on a vessel within Fiji waters as a courtesy to Fiji.

(3) It is a defence to a prosecution for an offence under subsection (1) that the action was taken to prevent the vessel being captured by—

(a) an enemy; or

(b) a foreign ship of war in the exercise of a belligerent right.

(4) A vessel in respect of which an offence has been committed under subsection (1) is liable to forfeiture.

Concealment of registration or assumption of foreign registration

9.—(1) Neither the master nor the owner of a registered vessel shall—

(a) do or permit anything to be done in respect of the vessel; or

(b) carry or permit to be carried on the vessel, papers or documents, with intent—

(c) to conceal the registration of the vessel from a person entitled by the law of Fiji to inquire into its registration;

(d) to deceive a person referred to in paragraph (c); or

(e) to give the vessel the appearance of—

(i) having a foreign registration; or

(ii) not being a registered ship.

Penalty: A fine not exceeding \$5,000

(2) Where, in respect of a vessel, the master or the owner of the vessel is convicted of an offence under subsection (1), the vessel is liable to forfeiture.

Penalty for acquiring ownership if unqualified

10.—(1) Subject to subsection (2), if a person, other than a qualified person, acquires as owner an interest, either legal or beneficial, in a registered vessel, that interest is liable to forfeiture.

(2) Subsection (1) does not apply to a transmission provided for by this Act.

Liabilities of unregistered vessels

11.—(1) Where a vessel that is required to be registered under this Act is not so registered, that vessel is not entitled—

- (a) to a benefit, privilege, advantage or protection usually enjoyed by a registered vessel; or
- (b) to use the National Flag or in any other way, indicate that it is a registered vessel.

(2) For the purpose of any law providing for—

- (a) payment of dues, fees or other charges;
 - (b) liability to fines and forfeiture;
 - (c) punishment of offences committed on board vessels; and
 - (d) offences committed by persons belonging to vessels,
- a vessel to which subsection (1) applies shall be dealt with in the same manner in all respects as if the vessel were a registered vessel.

Declaration of vessel's nationality before clearance

12.—(1) A customs officer shall not grant a Certificate of Clearance in respect of a vessel about to leave a port or place in Fiji for a port or place outside Fiji until the master of the vessel has declared to that officer the nationality of the vessel.

(2) A declaration made under subsection (1) shall be recorded by the customs officer on the Certificate of Clearance.

PART III—REGISTRATION OF VESSELS

Qualifications of owners of registered vessels

13.—(1) A vessel is not capable of being registered under this Act unless it is—

- (a) owned wholly by a qualified person, or by persons each of whom is a qualified person; and
- (b) not registered in another country.

Obligation to register vessels

14.—(1) The owner or owners of a vessel (other than an exempt vessel) that is—

- (a) owned wholly by a qualified person, or by persons each of whom is a qualified person; and
- (b) not registered in another country,

shall apply for the registration of the vessel under this Act.

(2) The owner or owners of an exempt vessel that is—

- (a) owned wholly by a qualified person or by persons each of whom is a qualified person; and
- (b) not registered in another country,

may apply for the registration of the vessel under this Act.

(3) A vessel required by subsection (1) to be registered is liable to be detained at a port or place in Fiji until the master of the vessel, if requested to do so by the Director, produces to the Director the vessel's registration certificate.

Registered agents and qualifying Services and routes

15.—(1) This section applies to a registered vessel which is not wholly owned by a person who, or by persons each of whom is—

- (a) a citizen of Fiji; or
- (b) a body corporate established by or under a law of Fiji the principal place of business of which is in Fiji,

but is a vessel which—

- (c) calls at ports or places in Fiji; or
- (d) is normally engaged on a qualifying route,

and the operations of which are managed on behalf of its owner from a place of business in Fiji.

(2) There shall be entered in the Register in respect of a vessel to which this section applies the name and address of the agent in Fiji who is managing the vessel on behalf of its owner.

(3) Where a change occurs in the person or the address of the person registered in relation to a vessel in accordance with subsection (2), the owner of that vessel shall lodge with the Registrar, within the 14 days after the change, a notice specifying the change.

Penalty: A fine not exceeding \$1,000

(4) Where a person fails to comply with subsection (3) the Minister may, in addition to any other action which may be taken in respect of the failure, take action under subsection 45(3) to close the registration of the vessel.

(5) Where the Minister is satisfied—

- (a) that a vessel is owned by a person (not being a citizen of Fiji or a body corporate established by or under a Law of Fiji the principal place of business of which is in Fiji) having—
 - (i) a place of business in Fiji from which the operations of the vessel are managed and controlled; or

(ii) an agent in Fiji who manages the vessel; and
 (b) that the vessel referred to in paragraph (a) is being regularly operated by that person in respect of a shipping service; and
 (c) that it would be in the public interest to do so,
 the Minister may by notice to the Registrar designate the service referred to in paragraph (b) to be a qualifying shipping service, or a route to be a qualifying route, for the purposes of registering vessels under this Act.

The Registrar

16. The Director is the Registrar of Vessels.

Delegation by Registrar

17.—(1) The Registrar may, by writing signed by him, delegate all or any of his powers and functions under this Act (other than this power of delegation).

(2) A delegation under subsection (1) may be made subject to such conditions, exceptions or qualifications as are specified in the instrument of delegation.

(3) A delegation under subsection (1) is revocable, in writing, at will, and does not affect the exercise of a power or the performance of a function by the Registrar.

Proper Officers

18. The Minister may—

(a) appoint a person to be a Proper Officer; or
 (b) appoint the persons included in a specified class of persons to be Proper Officers,
 for the purposes of this Act.

Register of Vessels

19.—(1) The Registrar shall keep at Suva a register book known as the Register of Vessels.

(2) The Registrar shall enter in the Register—

(a) particulars of all registered vessels; and
 (b) such other entries as may be required by this Act to be entered in the Register.

(3) The Registrar shall make the Register available for public inspection during the normal working hours of the public service.

Special provisions relating to registration

20. The following provisions apply to and in relation to the registration of vessels under this Act, namely,—

(a) the property in a vessel shall be divided into 64 shares;

- (b) subject to the provisions of this Act with respect to joint owners or owners by transmission, not more than 64 persons shall be entitled to be registered at the same time as owners of any one vessel but this provision shall not affect the beneficial title of any number of persons or of a corporation represented by or claiming under or through any registered owner or joint owner;
- (c) a person shall not be entitled to be registered as owner of a fractional part of a share in a vessel but not more than 5 persons may be registered as joint owners of a vessel or of a share or shares in a vessel;
- (d) joint owners shall—
 - (i) be considered as constituting one person only as regards the persons entitled to be registered; and
 - (ii) not be entitled to dispose severally of an interest in a vessel in respect of which they are jointly registered;
- (e) a corporation shall be registered as owner by its corporate name.

Survey and measurement of a vessel

21.—(1) Before a vessel is registered under this Act a surveyor shall inspect it and ascertain its tonnage in the prescribed manner.

(2) Where a surveyor has ascertained the tonnage of a vessel under subsection (1) he shall notify the Marine Board which shall issue a tonnage certificate in respect of the vessel.

Application for registration

22.—(1) An application to the Registrar for the registration of a vessel under this Act shall be in the prescribed form and shall be made—

- (a) where the owner is a corporation—by the agent of the corporation; or
- (b) where the owner is not a corporation—by the person or persons seeking the registration of the vessel or by his or their agent.

(2) The authority of an agent referred to in paragraph (1)(a) or (b) must be in writing, and must—

- (a) in the case of an agent acting for a corporation—be under the common seal of that corporation; and
- (b) in the case of an agent acting for a person or persons other than a corporation—be signed by that person or those persons.

(3) When the Registrar receives an application under subsection (1) he shall satisfy himself as to the ownership and seaworthiness of the vessel to which the application relates before proceeding with its registration.

(4) An application for the registration of a vessel must be accompanied by such evidence in respect of that vessel as is prescribed and by such other evidence as is necessary to satisfy the Registrar under subsection (3).

Marking of a vessel

23.—(1) A vessel in respect of which an application for registration has been made under subsection 22(1) is not capable of being registered until the vessel has been marked permanently and conspicuously in the prescribed manner.

(2) The owner or the master of a registered vessel shall cause to be retained on that vessel the marks referred to in subsection (1).

Penalty: A fine not exceeding \$2,000

(3) A person shall not conceal, remove, alter, deface or obliterate a mark referred to in subsection (1), except as provided by this Act or for the purpose of escaping from any enemy.

Penalty: A fine not exceeding \$2,000

(4) The Minister may, by notice in the Gazette, exempt the owner or the master of a vessel or the owners or the masters of vessels within a specified class of vessels from complying, either in whole or in part, with the requirements of this section.

Declaration of ownership on registration

24. A person shall not be entitled to be registered as the owner of a registered vessel until he, or in the case of a corporation, a person authorised by the corporation to make declarations on its behalf, has made and signed a declaration of ownership, in the prescribed form referring to the vessel as described in the tonnage certificate.

Entries in the Register

25.—(1) When all the requirements relating to a vessel before its registration have been complied with, the Registrar shall, on payment of the prescribed fee, register the vessel in the prescribed manner.

(2) The Registrar shall not register a vessel by a name by which a vessel is already registered under this Act nor, except with and in accordance with a direction from the Minister to do so, by a name that is, in the opinion of the Registrar, undesirable.

Change in name of a vessel

26.—(1) The Minister may make regulations providing for and in relation to the change of name of a registered vessel.

(2) Neither the owner nor the master of a registered vessel shall permit the vessel to be described by a name other than that by which the vessel is registered.

Penalty: A fine not exceeding \$2,000

Registration Certificate

27.—(1) As soon as practicable after a vessel has been registered the Registrar shall grant to the owner or owners of the vessel a registration certificate in the prescribed form.

(2) The owner of a registered vessel shall keep the registration certificate of the vessel in a safe place—

(a) on board that vessel; or

(b) in the case of a vessel in respect of which a coasting-trade licence is in force—at the place of business of the holder of that licence.

Penalty: A fine not exceeding \$1,000

(3) The registration certificate of a registered vessel is not capable of being used except for the lawful navigation of that vessel and is not capable of being made subject to detention by reason of any title, lien, charge, or interest had or claimed by an owner, mortgagee, or other person, on or in the vessel.

(4) Neither the master nor the owner of a registered vessel shall use, for the navigation of the vessel, a registration certificate not legally granted in respect of that vessel.

Penalty: A fine not exceeding \$2,000

(5) A person who has in his possession or under his control the registration certificate of a registered vessel shall, unless prevented from doing so for reasonable cause, deliver the certificate on demand to—

(a) the person entitled to its custody for the purposes of the lawful navigation of that vessel;

(b) to the Registrar; or

(c) to a person entitled by law to require its delivery.

Penalty: A fine not exceeding \$1,000

(6) The Registrar may, upon payment of any prescribed fee and upon the delivery to him of a registration certificate, grant a new certificate in place of that certificate.

Provisional registration

28.—(1) Where a vessel, at a place outside Fiji, becomes wholly owned by a qualified person, or by persons each of whom is a qualified person and either—

(a) that person, or one or more of those persons, declares to the Registrar or a Proper Officer an intention to apply to have the vessel registered under this Act; or

(b) the master of the vessel makes the declaration referred to in paragraph (a) and also declares in that declaration that he is authorised by the owner or by one or more of the owners to make the declaration,

the Registrar or the Proper Officer may grant a provisional registration certificate for the vessel in the prescribed form.

(2) A provisional registration certificate granted under subsection (1) is deemed to be a registration certificate—

(a) until the expiry of 3 months after the date on which it was granted; or

(b) until the expiry of 10 days after the arrival of the vessel in Fiji, whichever is the earlier.

(3) The master of a vessel in respect of which a provisional registration certificate is granted, shall deliver the certificate to the Registrar within 10 days after the arrival of the vessel in Fiji.

Penalty: A fine not exceeding \$500

Loss of registration certificate

29. Where a registration certificate has been defaced, lost, mislaid or destroyed the Registrar shall, on application by the owner or owners of the vessel supported by a declaration made by a person having knowledge of the facts of the case, and on payment of any prescribed fee, issue a certified copy of the certificate in respect of the vessel.

Endorsement of registration certificate on change of ownership

30. Where a change occurs in the ownership of a registered vessel by reason of a transfer of the vessel to a qualified person—

- (a) that qualified person shall give notification of the change to the Registrar; and
- (b) the Registrar shall endorse the registration certificate of the vessel in the prescribed manner.

Registration of alterations to a vessel

31.—(1) Where a registered vessel is so altered as not to correspond with the particulars relating to the tonnage certificate or to the description of the vessel contained in the Register, the owner of the vessel shall, within 21 days of that alteration being made, make a written application to the Registrar to register the alteration.

Penalty: A fine not exceeding \$5,000

(2) An application under subsection (1) must be accompanied by a tonnage certificate in respect of the vessel.

(3) The Registrar shall, upon receipt of an application under subsection (1) and any prescribed fee, cause the alteration to be registered in the prescribed manner.

Check of entries in the Register

32.—(1) The Registrar may, when he has reason to believe that the Register does not contain accurate particulars in respect of a registered vessel, direct the owner of the vessel, or any other person in possession of information relating to the vessel, to furnish him with information in respect of the vessel.

(2) A person shall comply with a direction given to him under subsection (1).

Penalty: A fine not exceeding \$2,000

Transfer of ownership by bill of sale

33.—(1) Where a registered vessel is disposed of to a qualified person, or to persons each of whom is a qualified person, the vessel must be transferred by a bill of sale.

(2) A bill of sale is not effective unless it is in the prescribed form and has been executed by the transferor and the transferee in the prescribed manner.

Declaration of transfer

34. Where a registered vessel is transferred, the transferee is not entitled to be registered as owner of the vessel until he, or in the case of a corporation, a person authorised by the corporation to make declarations on its behalf, has made and signed a declaration of transfer in the prescribed form.

Registration of transfer

35.—(1) A bill of sale for the transfer of a registered vessel, when duly executed, must be produced to the Registrar together with the declaration of transfer referred to in section 34.

(2) On production of a bill of sale under subsection (1) the Registrar shall enter in the Register the name of the transferee as owner of the vessel, and shall endorse on the bill of sale the fact of that entry having been made, with the day and hour of the entry.

(3) The Registrar shall enter bills of sale produced to him under subsection (1) in the order of their production to him.

Transmission of property in vessel by operation of law

36.—(1) Where property in a registered vessel is transmitted to a qualified person, or to persons each of whom is a qualified person, by any lawful means other than by transfer made under this Act, that qualified person or each of those qualified persons, as the case may be, shall authenticate the transmission by making and signing a declaration of transmission in the prescribed form identifying the vessel.

(2) A declaration of transmission under subsection (1) must contain such statements and must be accompanied by such documents as are prescribed.

(3) The Registrar, on receipt of a declaration of transmission under subsection (1), containing the prescribed statements and accompanied by the prescribed documents, shall enter in the Register the name of the person entitled under the transmission as owner of the vessel the property in which has been transmitted, and where there is more than one such person, the Registrar shall enter the names of all such persons, but those persons, however numerous, shall, for the purposes of this Act with respect to the number of persons entitled to be registered as owners, be considered as one person.

Court may prohibit transfer

37.—(1) The Court may, if it thinks fit, and without prejudice to any other of its powers, on the application of a person claiming an interest in a registered vessel make an order prohibiting for the time specified in the order any dealing with that vessel.

(2) The Court, on application for an order to be made under subsection (1), may—

- (a) make an order under that subsection on any terms or conditions it thinks just;
 - (b) refuse to make the order; or
 - (c) discharge the order when made,
- with or without costs, and generally may act in the case as the justice of the case requires.

(3) The Registrar, after being served with a copy of an order made under subsection (1), shall not register any dealing prohibited by the order.

Mortgage of a vessel

38.—(1) A registered vessel is capable of being made a security for the discharge of an obligation by way of a mortgage under this Act.

(2) The instrument making a registered vessel a security for the discharge of an obligation by way of a mortgage under this Act must be in the prescribed form.

(3) The Registrar, upon the production to him of a mortgage, shall register the mortgage by making an entry of the mortgage in the Register.

(4) The Registrar shall—

- (a) register mortgages in the order in which they are produced to him for that purpose; and
- (b) endorse and sign a memorial on each mortgage, stating the date and time it was produced to him.

Discharge of mortgage

39. The Registrar, after production to him of a discharge of mortgage in the prescribed form, shall make an entry in the Register that the mortgage has been discharged, and on that entry being made the estate (if any) which passed to the mortgagee vests in the person in whom (having regard to any intervening acts and circumstances) it would have vested if the mortgage had not been made.

Priority of mortgages

40.—(1) Where there is more than one registered mortgage in respect of a registered vessel, the mortgagees are, notwithstanding any express, implied, or constructive notice, entitled in priority, one over the other, according to the date and time at which each mortgage was produced to the Registrar and not according to the date of each mortgage itself.

(2) A registered mortgage is not affected by any act of insolvency committed by the mortgagor after the date of registration of the mortgage, notwithstanding that the mortgagor, where he is adjudicated to be insolvent, at the commencement of his insolvency had the vessel in his possession, order or disposition, or was the reputed owner of the vessel, and the mortgage will be preferred to any right, claim, or interest in the vessel of the other creditors of the insolvent or any trustee or assignee on their behalf.

Powers of mortgagee

41.—(1) Except as may be necessary for making a registered vessel in respect of which a mortgage has been registered under this Act available as a security under that mortgage, a mortgagee is not by reason of the mortgage deemed to be the owner of the vessel nor is a mortgagor deemed to have ceased to be the owner of the vessel.

(2) Subject to this Act, a person registered under this Act as mortgagee in respect of a registered vessel has absolute power to dispose of that vessel and to give effectual receipts for the purchase money.

(3) Where more than one person is registered under this Act as mortgagees of a registered vessel, a subsequent mortgagee is not capable, except under an order of the Court, of selling the vessel except with the concurrence of every prior mortgagee.

Transfer of mortgage

42.—(1) A registered mortgage of a vessel is capable of being transferred by registration of an instrument of transfer in the prescribed form.

(2) On the production to the Registrar of an instrument of transfer of a registered mortgage and of the mortgage to which the instrument of transfer relates, the Registrar shall—

- (a) register the transfer by making an entry of the transfer in the Register; and
- (b) endorse and sign on the mortgage and on the instrument of transfer the fact of the entry having been made, stating the date and time of the making of the entry.

Transmission of mortgage by operation of law

43.—(1) Where the interest of a mortgagee in a vessel is transmitted to another person by any lawful means, other than by a transfer under this Act, the transmission must be authenticated by a declaration of the person to whom the interest is transmitted.

(2) A declaration referred to in subsection (1) must be in the prescribed form and must contain a statement of the manner in which, and the person to whom, the interest has been transmitted, and must be accompanied by such documents as are prescribed.

(3) Upon receipt of the declaration and documents referred to in subsection (2), the Registrar shall enter the name of the person entitled under the transmission in the Register as the mortgagee of the vessel.

Notification where vessel is lost or an owner ceases to be a qualified person

44.—(1) If a registered vessel—

(a) is either actually or constructively lost, taken by an enemy, burnt or broken up; or

(b) ceases to be entitled to be registered,
the owner of the vessel shall immediately after obtaining knowledge of that event, unless notice has already been given to the Registrar, give written notice of the event to the Registrar.

Penalty: A fine not exceeding \$2,000

(2) The Registrar shall, upon receipt of a notice under subsection (1), make an entry in the Register of the event to which the notice relates.

(3) Where an entry in respect of a vessel is made in the Register under subsection (2)—

(a) if the entry is in respect of a vessel which has been either actually or constructively lost, taken by an enemy, burnt or broken up—the registration of the vessel is deemed to be closed except in so far as it relates to any unsatisfied mortgage of the vessel; and

(b) if the entry is in respect of a vessel which has ceased to be entitled to be registered—the registration of the vessel is, subject to this section, deemed to be closed.

(4) Where a vessel, in respect of which the Registrar has received a notice under paragraph (1)(b), is subject to an unsatisfied mortgage or mortgages—

(a) the registration of the vessel, so far as it relates to the mortgage or mortgages, is not, subject to subsections (5) and (6), deemed to be closed; and

(b) the Registrar shall give written notice to the mortgagee, or where there is more than one, to each mortgagee that he has received a notice under paragraph (1)(b) stating that the vessel has ceased to be entitled to be registered.

(5) Subject to this section, where the Registrar gives a notice under paragraph (4)(b) the registration of the vessel, so far as it relates to the mortgage or mortgages, as the case may be, is deemed to be closed at the expiration of a period of 60 days starting on the date that that notice is given.

(6) Where a mortgagee who has received a notice under paragraph (4)(b) makes application to the Court within the period of 60 days referred to in subsection (5) or within such extended period as the Court, on application made either before or after the expiration of that period of 60 days, orders, the Court may do all or any of the following things, namely—

- (a) order that the vessel or the vessel's equipment be sold;
- (b) make such other orders for and in relation to the distribution of the proceeds of the sale as it thinks fit;
- (c) make such orders and give such directions with respect to the closure of the registration of the vessel as it thinks fit.

(7) Notice of an application under subsection (6), including an application for an extension of time, must be served on the Registrar.

(8) An order made under subsection (6) can be made on such terms and conditions as to costs or otherwise as the Court considers appropriate in the circumstances.

(9) The Registrar shall give effect to any orders and directions given by the Court under subsection (6) so far as they relate to the Register.

(10) Where the registration of a vessel is closed or deemed to be closed under this section, the Registrar shall direct the person who has in his possession the registration certificate of the vessel to deliver that certificate to the Registrar or to a Proper Officer.

(11) A person shall comply with a direction given to him under subsection (10).

Penalty: A fine not exceeding \$500

(12) This section does not prejudice any rights of a mortgagee existing apart from this section.

Power to inquire into ownership, etc. of a registered vessel

45.—(1) If the Minister suspects that a registered vessel is not entitled to be registered, he may, by written notice served on the registered owner of the vessel, require that owner to furnish to the Minister, within the period specified in the notice, being a period of not less than 30 days starting on the date of the service of the notice, information relating to, and evidence as to, whether or not the owner is a qualified person.

(2) The owner of a vessel upon whom a notice is served under subsection (1) shall furnish to the Minister, within the period specified in the notice, the information sought.

Penalty: A fine not exceeding \$2,000

(3) Where the owner of a vessel served with a notice under subsection (1) is unable to produce evidence that satisfies the Minister that the vessel is entitled to remain registered the Minister may, by written notice given to the Registrar, direct that the registration of the vessel be closed.

(4) Upon the receipt by the Registrar of a notice referred to in subsection (3), section 44 shall apply as if—

- (a) the vessel had ceased to be entitled to be registered; and
- (b) the notice where a notice given under paragraph 44(1)(b) stating that fact.

Transfer of vessel or sale of vessel by order of the Court

46. Where the Court orders the sale of a registered vessel, the Court shall include in the order a declaration vesting in a person specified in the order the right to transfer the vessel, and that person is entitled to transfer the vessel in the manner, and to the same extent as if he were the registered owner of the vessel.

Trusts not recognisable, etc.

47. Notice of a trust in respect of a registered vessel, whether the trust is express, implied or constructive, is not capable of being—

- (a) received by the Registrar; or
- (b) entered in the Register.

Powers of disposal by owner

48. Subject to this Act, and subject to any rights and powers appearing on the face of the Register to be vested in any other person, the person registered as owner of a registered vessel has absolute power to dispose of the vessel and to give effectual receipts in respect of the disposal.

Equities not excluded by the Act

49. Subject to subsection 41(2) and to sections 47 and 48, beneficial interests can be enforced by or against the owner or mortgagee of a registered vessel in respect of his interest in that vessel in the same manner as beneficial interests can be enforced in respect of any other personal property.

Liability of owners of vessels

50.—(1) Subject to subsection (2), where a person has a beneficial interest in a registered vessel and that vessel is registered in the name of some other person as owner, the person having that beneficial interest is, as well as the person registered as the owner, capable of being made subject to all pecuniary penalties imposed by this Act on the owners of vessels, and proceedings can be taken for the enforcement of those penalties against both or either of those persons, with or without joining the other of them.

(2) Subsection (1) does not apply to a person having a beneficial interest in a registered vessel by way of mortgage, except a mortgagee in possession of the vessel.

(3) The registered agent of a registered vessel is capable of being made subject to all pecuniary penalties imposed by this Act as if he were the owner of the vessel and proceedings can be taken for the enforcement of any such penalties against that person.

Proceedings on forfeiture of a vessel

51.—(1) Where a vessel is liable to be forfeited under this Act an officer may seize and detain the vessel and the Minister may apply to the Court for an order under subsection (2).

(2) Upon application being made under subsection (1) in relation to a vessel the Court may order the vessel and its equipment to be forfeited.

(3) In subsection (1) 'officer' means any of the following, namely—

- (a) a person authorised in writing by the Minister for the purposes of that subsection;
- (b) a police officer;
- (c) a commissioned officer of the Royal Fiji Military Forces.

Proportion of crew to be citizens

52. Neither the owner nor the master of a registered vessel shall permit the vessel to go to sea knowing the vessel to have a crew containing less citizens than prescribed.

Penalty: A fine not exceeding \$1,000

Annual registration fees

53.—(1) The owner of a registered vessel shall, on each anniversary of the date of registration of the vessel, pay the prescribed annual registration fee.

(2) Where an annual registration fee is not paid within 30 days after the date on which it became due a court of competent jurisdiction may, upon application by the Registrar, direct the amount unpaid to be levied by distress or by sale of the vessel or the equipment of the vessel.

(3) Notwithstanding subsection (2), an annual registration fee payable under subsection (1) shall be deemed to be a debt due to the Government from the owner of the vessel and may be recovered in a court of competent jurisdiction.

(4) Where, in respect of a registered vessel, a person is liable to pay an annual registration fee under subsection (1) and during the whole of the period of 12 months prior to the date that fee became due a prescribed proportion of the crew has consisted of citizens, that person shall be entitled to a rebate of such part of the fee as may be prescribed.

Registration Regulations

54. The Minister may make regulations not inconsistent with this Part in relation to—

- (a) the registration under this Part of Government vessels;
- (b) the ascertainment under section 21 of the tonnage of vessels and the issue and use of tonnage certificates;
- (c) the manner of making application under subsection 22(1) for the registration of a vessel under this Act;
- (d) the marking of a vessel for the purposes of subsection 23(1);
- (e) the manner in which the Registrar shall register a vessel;
- (f) the manner in which a change in ownership of a vessel is to be recorded;

- (g) the manner in which an alteration to a vessel is to be recorded;
- (h) the documents required—
 - (i) by subsection 36(2) to accompany a declaration of transmission; or
 - (ii) by subsection 43(2) to accompany a declaration of transmission of a mortgage;
- (i) the approval by the Registrar of the name in which a vessel is to be registered and the change of the name of a registered vessel;
- (j) the proportions of the crew which are required to be citizens for the purposes of section 52 and subsection 53(4); and
- (k) the fees payable on the first registration of a vessel, the annual registration fees of a vessel and the proportion of those fees which may be refunded under subsection 53(4).

PART IV—SAFETY

Application of Part

55.—(1) Subject to subsection (2), unless the contrary intention appears, this Part applies to and in relation to, a vessel that is—

- (a) a registered vessel; or
- (b) not a registered vessel, but is registered in another country and—
 - (i) is an offshore vessel; or
 - (ii) is at a port or place in Fiji.

(2) This Part does not apply to, or in relation to the following vessels, namely—

- (a) a vessel that—
 - (i) in the ordinary course of its voyage would not have been required to comply with this Part; and
 - (ii) is compelled by stress of weather or force majeure to take refuge in a port or place in Fiji;
- (b) a takia;
- (c) a fishing vessel;
- (d) a pleasure craft;
- (e) a vessel that is less than 10 metres in length;
- (f) an air-cushioned vehicle.

Establishment of the Marine Board and Committees and directions by Minister

56.—(1) There is established a board, by the name of the Fiji Marine Board, which shall consist of—

- (a) the Director; and
- (b) not less than 2 nor more than 5 other persons appointed by the Minister.

(2) The persons appointed under paragraph (1)(b) shall be persons who, in the opinion of the Minister, have wide knowledge and experience in the marine industry.

(3) The Director and the Marine Board, in carrying out their respective powers and duties under this Act, shall act in accordance with any directions given to him or to the Board, as the case may be, by the Minister under subsection (4).

(4) The Minister may give the Director and the Marine Board general or special directions in respect of the administration of this Act, not inconsistent with this Act.

(5) The Minister may establish and determine the membership and terms of reference of an advisory committee for any of the purposes of this Act.

Surveyors of vessels

57.—(1) The Minister may appoint a person (including a classification society), with such qualifications as he considers appropriate, to be a surveyor of vessels.

(2) Where a classification society is appointed under subsection (1) to be a surveyor it shall, if the Minister so directs, nominate persons to carry out surveys or issue certificates or do all other things necessary on its behalf.

(3) A surveyor shall not demand or receive, directly or indirectly, a fee or remuneration for or in respect of the survey by him of a vessel, otherwise than under the authority of this Act.

Penalty: A fine not exceeding \$1,000

International Maritime Conventions

58.—(1) Subject to this Act—

- (a) the Collisions Convention;
- (b) the Load Line Convention;
- (c) the Safety Convention; and
- (d) the Tonnage Measurement Convention,

have the force of law as part of the law of Fiji.

(2) The owner and the master of a vessel that is—

- (a) a registered vessel; and
- (b) a Load Line Convention ship,

shall each ensure that that vessel complies with the Load Line Convention.

Penalty: A fine not exceeding \$2,000

(3) The owner and the master of a vessel that is—

- (a) a registered vessel; and
- (b) a Safety Convention ship,

shall each ensure that that vessel complies with the Safety Convention.

Penalty: A fine not exceeding \$2,000

(4) Where the Collisions Convention places an obligation on the master, the owner or any other person to comply with a requirement of that Convention in respect of a vessel that is—

- (a) registered vessel; or
- (b) within the territorial seas of Fiji,

that requirement shall be complied with by the master, the owner or other person.

Penalty: A fine not exceeding \$2,000

(5) Regulations may make provision for, or in relation to, the implementation of, or giving effect to the Conventions referred to in subsection (1).

(6) Where, under—

(a) the Load Line Convention; or

(b) the Safety Convention,

the several countries which are parties to those Conventions, as the case may be, have a discretion as to whether any, and if so, what action should be taken under them, that discretion is exercisable by the Minister.

(7) Notwithstanding any requirement under this Act for the purpose of giving effect to, or implementing a requirement of—

(a) the Load Line Convention; or

(b) the Safety Convention,

which requires a particular fitting, material, appliance or apparatus to be fitted or carried in a vessel or a particular provision to be made in a vessel, the Director may allow another fitting, material, appliance or apparatus or type of fitting, material, appliance or apparatus to be fitted or carried, or another provision to be made, if he is satisfied that that other fitting, material, appliance or apparatus, or type of fitting, material, appliance or apparatus or provision, is at least as effective as that required by the Load Line Convention or by the Safety Convention, as the case may be.

(8) Where, under—

(a) the Load Line Convention;

(b) the Safety Convention; or

(c) the Tonnage Measurement Convention,

the several countries which are parties to those Conventions are under a duty to do any act or thing, that act or thing is to be done by the Minister.

(9) Where a vessel is—

(a) a Load Line Convention ship;

(b) a Safety Convention ship; or

(c) a Tonnage Measurement Convention ship,

this Part does not apply except in so far as it is applicable to and relevant to such a vessel.

(10) A person shall not exhibit on a vessel a signal prescribed in the Collision Convention as a signal indicating that a vessel is in distress and needs assistance unless the vessel on which the signal is exhibited is in distress and needs assistance.

Penalty: A fine not exceeding \$1,000

Vessels not to go to sea without certificate

59. Subject to section 60, neither the owner nor the master of a vessel shall allow the vessel to go to sea unless there is in force in respect of the vessel such certificates as are required under this Part.

Penalty: A fine not exceeding \$2,000

Vessel may go to sea without certificate in certain circumstances

60.—(1) This section applies where the Director is satisfied that a vessel that is not—

- (a) a registered vessel;
- (b) a Load Line Convention ship; or
- (c) a Safety Convention ship,

can proceed to sea without danger to the vessel, to passengers on the vessel or to the crew of the vessel.

(2) Where this section applies, the Director may, notwithstanding any other requirement of this Part, and subject to such conditions as he thinks fit, allow a vessel to go to sea without a survey certificate.

(3) Where, under subsection (2), the Director allows a vessel to go to sea without a survey certificate, he shall give to the master of the vessel a written statement setting out—

- (a) the circumstances of the case; and
- (b) the conditions, if any, under which the vessel is allowed to go to sea.

(4) Where this section applies in respect of a vessel, the master and the owner of the vessel shall each take such action as may be necessary to ensure that any conditions imposed under subsection (2) are observed.

Penalty: A fine not exceeding \$2,000

Certificates to be produced before vessel goes to sea

61.—(1) The Director may, before a vessel goes to sea, direct the master of the vessel to produce to him—

- (a) such certificates as are required under this Part to be in force in respect of the vessel; or
- (b) the written statement referred to in subsection 60(3).

(2) The master of a vessel shall not fail, without reasonable cause, to comply with a direction given to him under subsection (1).

Penalty: A fine not exceeding \$2,000

Vessel to be surveyed

62. A vessel must undergo the surveys and inspections prescribed by or by virtue of this Act.

Powers of a surveyor

63.—(1) Subject to subsections (2) and (3), a surveyor may—

- (a) go on board a vessel, including a vessel under construction, and survey or inspect, as the case may be—
 - (i) the vessel and its equipment;
 - (ii) any part of the vessel or its equipment;
 - (iii) any cargo or articles on board the vessel; and
 - (iv) any document carried in the vessel pursuant to this Act;
- (b) upon giving reasonable notice to the owner or agent of the vessel concerned, enter premises and make such examination and investigation and require the production of such books, papers and documents relating to that vessel as he considers necessary for the performance of his duty; and
- (c) require the master or the owner of a vessel to give an explanation to him of any matter concerning the vessel or the documents produced or required to be produced under paragraph (b).

(2) A surveyor shall not exercise his powers under subsection (1) except—

- (a) in the course of a survey—and then only at reasonable times; or
- (b) in a situation which, in his opinion, is or may be or may become dangerous.

(3) A surveyor shall not exercise a power under subsection (1) so that a vessel is unreasonably detained or delayed.

(4) A person shall not hinder a surveyor in the exercise of his powers under subsection (1).

Penalty: A fine not exceeding \$1,000

(5) A person shall not fail to comply with a request made to him by a surveyor under paragraph (1)(b) or (c).

Penalty: A fine not exceeding \$1,000

Special examination of vessels

64.—(1) For the purposes of a survey or an inspection of a vessel, the Director may, if he thinks it necessary to do so, direct the owner or the master of a vessel to have the vessel slipped, taken into dock or otherwise dealt with.

(2) A person shall not fail to comply with a direction given to him under subsection (1).

Penalty: A fine not exceeding \$1,000

Requirement to notify the Director of change in the condition of a vessel

65.—(1) This section applies to a vessel—

- (a) that is a registered vessel (other than a registered vessel that is also a vessel referred to in subsection 55(2)); or
- (b) that is not a registered vessel but is a vessel in respect of which a safety certificate has been granted under subsection 67(4).

(2) Where the operation or safety of a vessel to which this section applies is impaired because of—

- (a) replacement of, or damage or alteration to, a part of the vessel; or
- (b) any other circumstances,

the owner or master of the vessel shall, within 7 days of that impairment (unless prevented from doing so for reasonable cause) notify the Director of the fact or those circumstances.

Penalty: A fine not exceeding \$5,000

Application for survey

66.—(1) Where an owner or the master of a vessel (not being a Load Line Convention ship, or a Safety Convention ship) seeks the issue of a survey certificate he may apply in the prescribed manner to the Director for the vessel to be surveyed.

(2) Where an owner or the master of a Load Line Convention ship or a Safety Convention ship seeks the issue of a safety certificate he may apply to a classification society appointed under subsection 57(2) for the vessel to be surveyed.

(3) On receipt of an application under subsection (1) the Director shall nominate a surveyor and shall cause the vessel to be surveyed.

Issue of survey or safety certificate

67.—(1) A surveyor nominated by the Director under subsection 66(3) shall, on completion of a survey under that subsection, deliver a written report of the survey to the Director.

(2) Where the surveyor nominated under subsection 66(3) is satisfied that the vessel complies with the requirements of this Part he shall complete a declaration to that effect in the prescribed form and shall deliver it to the Director.

(3) When, in respect of a vessel, the Director has received a report referred to in subsection (1) and a declaration referred to in subsection (2) he shall deliver those documents to the Marine Board and if the Board is satisfied that the vessel complies with the requirements of this Part, it shall, subject to any conditions it thinks fit, grant a survey certificate in respect of the vessel.

(4) Where, in respect of a vessel, a surveyor acting on behalf of a classification society appointed in accordance with subsection 66(2) is satisfied that he may do so, he shall issue a safety certificate in respect of the vessel.

Cancellation or suspension of survey or safety certificate

68.—(1) Where, in the opinion of the Director—

- (a) a report delivered to him under subsection 67(1) or a declaration, delivered to him under subsection 67(2) has, in any particular, been made fraudulently or erroneously;

- (b) a survey or a safety certificate has been issued upon false or erroneous information; or
- (c) since the making of the last declaration in respect of a survey, a vessel has been altered, replaced or damaged to such an extent or in such a manner as to affect adversely the seaworthiness of the vessel,

the Director shall refer the matter to the Marine Board and if, after it has investigated the matter, the Board is satisfied that the opinion of the Director is correct it shall cancel or suspend the survey or safety certificate of the vessel.

(2) Where the Marine Board suspends or cancels a survey or a safety certificate under subsection (1) the Director shall, as soon as practicable after the suspension or cancellation, serve a written notice on the owner or the master of the vessel which shall specify—

- (a) the relevant survey or safety certificate; and
- (b) if the certificate has been suspended—set out the period for which it has been suspended,

and require the surrender of the certificate to the Director or a shipping officer.

(3) A person served with a notice under subsection (2) shall surrender to the Director the certificate specified in the notice.

Penalty: A fine not exceeding \$500

(4) Where a survey or safety certificate is cancelled or suspended under subsection (1) the Director may require the owner of the vessel to which the certificate relates to have the vessel resurveyed before the issue of a new certificate in respect of the vessel or the removal of the suspension.

Alteration of a vessel

69. The owner or master of a vessel in respect of which a survey or a safety certificate has been issued shall notify the Director of any alterations to the vessel that make that certificate inapplicable to the altered state of the vessel.

Penalty: A fine not exceeding \$2,000

Certificate to be displayed

70. The master of a vessel, other than an unmanned barge, in respect of which a survey or a safety certificate has been granted shall cause the certificate or a certified copy of the certificate to be continuously displayed in some prominent and accessible place on the vessel.

Penalty: A fine not exceeding \$500

Requirement to carry certain equipment

71. The owner and the master of a vessel that is required by virtue of this Part to carry or be fitted with certain equipment shall each ensure that that equipment—

- (a) is carried or fitted in the vessel; and
- (b) is in good order and ready for use, before the vessel goes to sea.

Penalty: A fine not exceeding \$2,000

Vessel to carry qualified radio operators

72. The owner and the master of a vessel which is required by this Part to carry a radio installation shall each ensure that before the vessel goes to sea it carries as part of the crew of the vessel such a person or persons qualified to operate that radio installation on the vessel as are prescribed.

Penalty: A fine not exceeding \$500

Radio reports to be made of danger to navigation

73.—(1) The master of a registered vessel shall (unless prevented from doing so for reasonable cause) make by radio a report, in the prescribed manner, of any serious danger to navigation which comes to his notice while the vessel is at sea.

Penalty: A fine not exceeding \$1,000

(2) The master of a registered vessel shall (unless prevented from doing so for reasonable cause), when the vessel is at sea within the prescribed area, make by radio—

- (a) in the prescribed manner;
 - (b) at the prescribed times; and
 - (c) to the prescribed officer,
- reports of the position of the vessel and of the movements of the vessel.

Penalty: A fine not exceeding \$500

Assistance to persons in danger at sea

74.—(1) The master of a registered vessel shall, as far as he can do so without serious danger to his vessel, her crew, and passengers, render assistance to any person who is found at sea in danger of being lost.

Penalty: A fine not exceeding \$5,000 or imprisonment for a term not exceeding 2 years or both

(2) Compliance by the master of a vessel with subsection (1) does not affect his right or the right of any other persons to salvage.

Duty of vessel to assist in case of collision

75. Where vessels collide the person in charge of each vessel, if and so far as he can do so without danger to his own vessel, crew and any passengers, shall—

- (a) render to the other vessel, the vessel's master, crew and any passengers such assistance as is practicable and necessary in order to save them from danger caused by the collision;
- (b) stay by the other vessel until he has ascertained that the vessel has no need of further assistance; and

- (c) give to the person in charge of the other vessel—
 - (i) the name of his own vessel and of the port to which the vessel belongs; and
 - (ii) the names of the ports from which the vessel comes and to which the vessel is bound.
- Penalty: A fine not exceeding \$5,000 or imprisonment for a term not exceeding 2 years or both

Hazardous cargo

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

- (2) The Director may, by direction to the master of a vessel—
 - (a) prohibit the loading into the vessel;
 - (b) prohibit the carriage in the vessel;
 - (c) order the removal from the vessel; or
 - (d) direct the manner of the stowage or carriage in the vessel, of cargo or goods to which this section applies.
- (3) The master of a vessel shall comply with a direction given to him by the Director under subsection (2).
 Penalty: A fine not exceeding \$2,000
- (4) Where the master of a vessel has been given a direction under subsection (2) the vessel can be detained until such time as the master has complied with that direction.

Powers of the master in relation to dangerous goods

- 77.—(1) The master or the owner of a vessel may—
- (a) refuse to take on board a package which he suspects contains dangerous goods;
 - (b) open and inspect a package which he suspects contains dangerous goods; and
 - (c) discharge, destroy, render innocuous or otherwise deal with goods which—
 - (i) in his opinion are dangerous goods; and
 - (ii) have been shipped on board the vessel without his knowledge and consent.
- (2) The master or the owner of a vessel shall not be subject to any liability of any kind for taking any action specified in subsection (1).

Powers of the Director in relation to dangerous goods

78.—(1) The Director may, where he is satisfied that dangerous goods are being loaded into, unloaded from, or stowed, carried or used in a vessel otherwise than in accordance with this Act or with the Safety Convention,

direct the owner or the master of the vessel to take such action in relation to the vessel or to the whole or to a part of the cargo of the vessel as he thinks fit.

(2) The master or the owner of a vessel, as the case may be, shall comply with a direction given to him under subsection (1).

Penalty: A fine not exceeding \$5,000

Requirements in relation to dangerous goods

79.—(1) A person shall not—

- (a) send by;
- (b) send on to;
- (c) bring on to; or
- (d) carry or use in,

a vessel dangerous goods otherwise than as required or permitted by this Act or by the Safety Convention.

Penalty: A fine not exceeding \$5,000

(2) A person shall not, with intent to conceal the character of dangerous goods—

- (a) send by;
- (b) send on to; or
- (c) carry or use in,

a vessel dangerous goods under a false description.

Penalty: A fine not exceeding \$5,000

Forfeiture of dangerous goods

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

(2) Where an order is made under subsection (1) the dangerous goods shall be forfeited, notwithstanding—

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

Number of persons that may be carried in a vessel

81.—(1) Neither the master nor the owner of a vessel shall permit to be carried in the vessel more persons than the permitted number of passengers.

Penalty: A fine not exceeding \$1,000, and in addition a fine not exceeding \$100 for each person carried on board the vessel in excess of the permitted number of passengers.

(2) In subsection (1) “the permitted number of passengers”, in respect of a vessel, means the number of passengers stated in the survey or safety certificate issued in respect of the vessel as being the maximum number of passengers that may be carried in the vessel.

Compliance with Load Line requirements

82. Subject to any exemption conferred or granted under this Act, the owner of a vessel shall not allow the vessel to proceed or attempt to proceed to sea, and the master of a vessel shall not take or attempt to take a vessel to sea unless the vessel—

- (a) has been surveyed and marked in the prescribed manner;
- (b) is marked with a deck line and load line in accordance with the Load Line Convention or the regulations;
- (c) complies with the conditions of assignment; and
- (d) has on board the prescribed information for the guidance of the master.

Penalty: A fine not exceeding \$2,000

Submerged load line

83.—(1) In this section a passenger vessel means a vessel that is engaged in an international voyage and is carrying more than 12 passengers.

(2) A vessel (other than a passenger vessel) must not be so loaded that—

- (a) if the vessel is in still salt water of specific gravity of 1.025 and has no list the appropriate load line on each side of the vessel is submerged; or
- (b) the appropriate load line on each side of the vessel would be submerged if the vessel were in still salt water of specific gravity of 1.025 and had no list.

(3) A passenger vessel must not be so loaded that—

- (a) if the vessel is in still salt water of specific gravity of 1.025 and has no list the appropriated subdivision load line on each side of the vessel is submerged; or
- (b) the appropriate subdivision load line on each side of the vessel would be submerged if the vessel were in still salt water of specific gravity of 1.025 and had no list.

(4) Neither the owner nor the master of a vessel shall permit the vessel to be loaded in contravention of subsection (2) or (3).

Penalty: A fine not exceeding \$2,000, and in addition a fine not exceeding \$1,000 for every complete centimetre and for every part of a centimetre over one or more complete centimetres by which the appropriate load line or subdivision load line was, or would have been, submerged.

(5) Where a vessel is loaded in contravention of this section, the vessel may be detained until it ceases to be so loaded.

(6) Where a vessel is not a registered vessel—

- (a) the master or owner of the vessel can not be prosecuted under subsection (4); and
- (b) the vessel can not be detained under subsection (5),

unless the vessel has been inspected by a surveyor.

- (7) It is a defence to a prosecution for an offence under subsection (2) or (3) to prove that the vessel was overloaded as a result—
- (a) of an alteration in the route of the vessel; or
 - (b) of delay to the vessel caused by stress of weather, force majeure or other circumstances,
- which the master or the owner of the vessel could not have prevented or forestalled.

Unsafe vessels

84.—(1) For the purpose of this section and section 85 a vessel is an unsafe vessel if because of—

- (a) the defective condition of its hull, machinery or equipment;
- (b) undermanning;
- (c) improper loading; or
- (d) any other reason,

it is unfit to go to sea without danger to human life having regard to the voyage which is proposed.

(2) A person shall not knowingly send, and a master shall not knowingly take, an unsafe vessel to sea.

Penalty: A fine not exceeding \$2,000

(3) It is a defence to a prosecution for an offence under subsection (2) if the person charged with the offence proves that—

- (a) he used all reasonable care to ensure that he sent or took the vessel to sea in a safe state; or
- (b) having regard to the circumstances, the sending or taking of the vessel to sea was reasonable and justifiable.

Detention of unsafe vessels

85.—(1) An unsafe vessel can be detained until, in the opinion of—

- (a) the Director; and
- (b) at least one other person who is a surveyor,

it ceases to be an unsafe vessel.

(2) Where an unsafe vessel is detained under subsection (1), the Director shall within 24 hours of the detention give written notice to the owner or to the master of the vessel setting out the reasons for the detention.

(3) Where a vessel that is registered in a country other than Fiji is detained under subsection (1) the Director shall, as soon as practicable, cause—

- (a) the Consul; or
- (b) other diplomatic representative,

of the country in which the vessel is registered, to be informed of the detention and of the reasons for the detention.

Reporting of casualties and incidents

86.—(1) In subsection (2) “vessel to which this section applies” means a vessel that is—

- (a) a registered vessel;
 - (b) not a registered vessel, but is—
 - (i) in Fiji waters; or
 - (ii) on a voyage where the next port of call of the vessel is a port or place in Fiji; or
 - (c) an offshore vessel.
- (2) Where a vessel to which this section applies—
- (a) causes or is involved in an accident;
 - (b) receives damage which renders, or is likely to render the vessel unsafe;
 - (c) has been in a position of great peril from—
 - (i) the act of some other vessel; or
 - (ii) danger of wreck or collision;
 - (d) fouls, or does damage to—
 - (i) a pipe line;
 - (ii) a submarine cable; or
 - (iii) a marine navigational aid; or
 - (e) having left a port or place in Fiji to proceed on a voyage puts back to that port or place in difficulties,
- the master of the vessel shall, as soon as practicable—
- (f) report the event to the Director; and
 - (g) if so requested by the Director, provide a written report of the event to the Director.
- Penalty: A fine not exceeding \$2,000

Inquiry into certain casualties

87. Where, at any time, a casualty occurs in relation to a vessel that, at that time is—
- (a) a registered vessel; or
 - (b) not a registered vessel but is—
 - (i) in Fiji waters; or
 - (ii) on a voyage from a port or place in Fiji to another port or place in Fiji,
- the Marine Board may—
- (c) cause a preliminary investigation to be held in relation to the casualty in accordance with section 88; or
 - (d) request the Minister to cause a marine inquiry to be held in relation to the casualty in accordance with section 89.

Preliminary investigation

- 88.—(1) For the purposes of a preliminary investigation of a casualty, the Marine Board shall appoint a person as the investigator in respect of the casualty.
- (2) An investigator may, for the purpose of conducting an investigation into a casualty—

- (a) go on board any vessel involved in the casualty;
- (b) require any person to answer questions relating to the casualty; and
- (c) require production of documents or certificates relating to a vessel involved in the casualty.

(3) A person shall not—

- (a) hinder or obstruct an inspector carrying out a preliminary investigation under this section;
- (b) fail to answer a question put to him by an investigator under paragraph (2)(b); or
- (c) fail to produce a document or certificate he has in his possession or under his control when requested to do so by an inspector under paragraph (2)(c).

Penalty: A fine not exceeding \$2,000

(4) An investigator carrying out an investigation under this section shall, upon the conclusion of his investigation send to the **Marine Board** a written report containing a full statement of his conclusions in respect of the casualty accompanied by such report on, or extracts from, the evidence and such observations as he thinks fit.

(5) Upon receipt of a report under subsection (4), the **Marine Board** may—

- (a) request the Minister to cause a marine inquiry to be held in relation to the casualty in accordance with section 89; and
- (b) if the Board considers it is necessary or desirable to do so, suspend any certificate of competency or certificate of satisfactory service issued to a qualified seaman pending the outcome of that marine inquiry.

Marine inquiries

89.—(1) Where the Minister agrees to a request made to him under paragraph 88(5)(a) the Chief Justice shall, on the request of the Minister, appoint a person appearing to the Chief Justice to be suitably qualified—

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

to hold an inquiry into a casualty.

(2) A person appointed under subsection (1) shall conduct the inquiry with the assistance of at least 2 assessors who possess such qualifications as are prescribed, appointed conjointly by the Director and the person appointed under subsection (1).

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

(4) Where it is likely that during the course of a marine inquiry the conduct of a person will be called into question or it is likely that a person

will be affected by a decision of the inquiry the person appointed under subsection (1) to hold the inquiry shall—

- (a) give to that first mentioned person at least 72 hours' notice of the place, day and hour for the holding of the inquiry; and
- (b) furnish to that person—
 - (i) where a preliminary investigation has been held in accordance with section 88—a copy of the report and any other documents sent to the Marine Board in accordance with subsection 88(4); or
 - (ii) in any other case—a statement of the case on which the inquiry was ordered.

(5) A person—

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

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

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

(7) A person shall not—

- (a) hinder or obstruct a person carrying out a marine inquiry or an assessor appointed under subsection (2);
- (b) fail to answer fully and truthfully a question put to him by a person acting in accordance with paragraph (6)(b); or
- (c) fail to produce a document or certificate he has in his possession or under his control when requested to do so by a person acting in accordance with paragraph (6)(c).

Penalty: A fine not exceeding \$2,000

(8) The person conducting a marine inquiry, shall, after the conclusion of the inquiry—

- (a) give his decision; and
- (b) make a full report to the Minister together with such report of or extracts from the evidence and such observations as he thinks fit, and each assessor shall either sign the report referred to in paragraph (b) or state in writing to the Minister his dissent from the report and his reasons for his dissent.

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

Powers of marine inquiry as to Certificates of Competency

90.—(1) Where as a result of a marine inquiry the person conducting the inquiry is satisfied that a qualified seaman—

- (a) is unfit to discharge his duties because of incompetence or misconduct or for any other reason;
- (b) has been seriously negligent in the discharge of his duty; or
- (c) has failed to give any assistance or information required by section 75,

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

- (d) order the Marine Board to cancel or suspend for such period as shall be specified any certificate of competency or certificate of satisfactory service issued to the qualified seaman concerned; or
- (e) censure the seaman concerned.

(2) The Marine Board shall comply with an order given to it under paragraph (1)(d).

(3) Where a cancellation or suspension of—

- (a) a certificate of competency; or
- (b) a certificate of satisfactory service,

is ordered under paragraph (1)(d) the seaman concerned shall forthwith deliver that certificate to the Director.

Penalty: A fine not exceeding \$200

(4) A person conducting a marine inquiry shall not order the cancellation or suspension of a certificate under paragraph (1)(d) unless—

- (a) at least half of the number of assessors appointed to assist at the inquiry concur with the cancellation or suspension; and
- (b) the provisions of subsection 89(5) were complied with in respect of the seamen to whom the certificate was issued.

Re-hearings and the power of the Minister to restore certificates

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

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

(2) Where a certificate has been cancelled or suspended under paragraph 90(1)(d) the Minister may, on the recommendation of the person who conducted the marine inquiry, order the issue by the Marine Board of a new certificate of a lower grade in place of the cancelled or suspended certificate.

(3) The Marine Board shall comply with an order given to it by the Minister under subsection (2).

Appeals

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

- (a) the certificate of a seaman is cancelled or suspended under paragraph 90(1)(d);
- (b) a seaman is censured under paragraph 90(1)(e);
- (c) the costs or a part of the costs of any inquiry are awarded against any person under subsection 89(9); or
- (d) the person conducting a marine inquiry finds that the casualty has been caused or contributed to by the wrongful act of any person, the seaman, in the case of paragraph (a) or (b), or, in the case of paragraph (c) or (d), any person who appeared at the hearing and is affected by the decision, may appeal to the Court and the Court may make such order as the justice of the case requires.

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

- (a) the period of 30 days starting—
 - (i) on the date the person conducting the marine inquiry gives his decision under paragraph 89(8)(a); or
 - (ii) where a re-hearing has been ordered under subsection 91(1)—on the date the decision in respect of that re-hearing is given; or
- (b) such extended period as the Court, on application made either before or after the relevant period of 30 days referred to in paragraph (a), orders.

(3) Where a re-hearing has been ordered under subsection 91(1) no appeal may be made under subsection (1) until the decision in respect of the re-hearing under subsection 91(1) has been given.

Safety and wellbeing of passengers

93.—(1) This section does not apply to a vessel which—

- (a) is a Safety Convention ship; and
- (b) is not a registered vessel.

(2) Where, in the opinion of the Director, there would be a danger to the safety, comfort, health or wellbeing of any passenger on a vessel by reason of the manner in which the vessel—

- (a) is equipped or manned or is carrying cargo, livestock or ballast; or
- (b) is provided with passenger accommodation or sanitary, health and medical services or provisions, water or stores,

the Director may notify the master of the vessel of his opinion.

(3) Where a notification is given under subsection (2) the carriage of passengers in the vessel in respect of which the notification has been given is prohibited until such time as the Director is satisfied that passengers may be carried without danger to their safety, comfort, health or wellbeing.

(4) The master of a vessel carrying passengers shall not take the vessel to sea while the carriage of passengers is prohibited under subsection (3).

Penalty: A fine not exceeding \$1,000, and in addition a fine not exceeding \$100 for each passenger carried in the vessel.

Safety Regulations

94.—(1) The Minister may make regulations providing for and in relation to the safety and survey of vessels and the conduct of investigations and marine inquiries under this Part.

(2) Without prejudice to the generality of subsection (1) the regulations may provide for—

- (a) the safety certificates which are required to be in force in respect of a vessel;
- (b) the manner of survey or inspection of vessels;
- (c) periods within which vessels are required to be inspected;
- (d) the circumstances in which, at the request of the owner of a vessel, a survey or inspection of the vessel can be carried out;
- (e) the manner in which a surveyor shall report to the Director on completion of a survey or of an inspection of a vessel;
- (f) the exemptions from survey which can be granted in respect of a particular vessel or a particular class or description of vessels;
- (g) the type and form of survey certificates;
- (h) the duration of, or extension to the duration of the validity of survey certificates;
- (i) the circumstances in which survey certificates can be cancelled or suspended;
- (j) the manner in which survey and safety certificates can be endorsed;
- (k) the requirements with which the hull, machinery and equipment of vessels must comply;
- (l) the appliances to be carried, and the measures to be observed, on vessels for the saving of life at sea and for the prevention, detection and extinction of fires on vessels;

- (m) the requirements for the holding and recording of musters and drills for crews and passengers;
- (n) the number of berthed and unberthed passengers to be carried in a vessel;
- (o) the requirements with respect to the equipping of vessels with radio-telephones and radio navigational aids, the operation, maintenance and use of radio-telephones and radio-navigational aids in vessels and the number and qualifications of the radio-telephone operators to be carried on vessels;
- (p) the measures and procedures to be followed and the equipment to be carried on vessels to ensure safety of navigation;
- (q) the requirements which must be complied with in respect of the stowage and carriage of livestock, deck cargo, grain, dangerous goods and hazardous cargoes in vessels;
- (r) the observance of safety standards and procedures on board vessels;
- (s) safety and safe working practices on board vessels;
- (t) the measures to be observed for the prevention of collisions at sea;
- (u) requirements related to the provision and use on vessels of lights and signals;
- (v) the manner of determining freeboards to be assigned to vessels;
- (w) the manner of determining, in relation to a vessel, the deck which is to be the freeboard deck and for requiring the position of that deck to be indicated on each side of the vessel by marks;
- (x) the manner of determining, by reference to a mark, the freeboards assigned and the position in which each side of a vessel is to be marked with a line indicating the maximum depth to which the vessel may be loaded;
- (y) the requirements in respect of hull, superstructure, fittings and appliances which are relevant to the assignment of freeboards to vessels;
- (z) the manner of recording particulars of the requirements under paragraph (y) and the method of determining and extent of compliance with the conditions of assignment;
- (aa) the information relating to the stability of a vessel required to be provided by the owner of the vessel to the Director and to the master of the vessel;
- (ab) the manner in which investigations and marine inquiries are to be conducted;
- (ac) the selection of assessors for appointment by the Minister;
- (ad) the qualifications of assessors;
- (ae) the circumstances in which assessors shall assist in the conduct of a marine inquiry;
- (af) the manner in which any facts may be proved at a marine inquiry;
- (ag) the persons who can be allowed or required to appear before a person conducting a marine inquiry;

- (ah) the notices to be given to persons affected by a marine inquiry;
- (ai) in relation to a vessel carrying passengers, to make provisions for—
 - (i) the accommodation of passengers;
 - (ii) provisions, waters, medical stores and medical inspection;
 - (iii) the carriage of medical staff and the provision of hospital accommodation;
 - (iv) sanitary facilities;
 - (v) the sale and consumption of alcohol;
 - (vi) passenger lists;
 - (vii) the cargo which can be carried in the vessel and the method of stowing cargo;
 - (viii) the maintenance of good order in respect of the passengers;
 - (ix) the prevention of wilful damage or injury to the machinery or equipment of a vessel by a passenger;
 - (x) the prevention of any obstruction to any seaman in the execution of his duty;
 - (xi) the prevention of the molesting of or interference with any person on board the vessel; and
- (aj) the regulation and control of marine aquatic sports and the specification of areas in which such sports can or cannot be carried on.

PART V—SEAMEN

Application of Part

95.—(1) Unless the contrary intention appears, this Part applies to and in relation to the following vessels, namely—

- (a) a registered vessel that is 10 metres or more in length;
- (b) a vessel licensed under this Act to engage in the coasting-trade and which is, in the opinion of the Director, engaged in that trade, that is 10 metres or more in length;
- (c) a Government vessel that is 10 metres or more in length.

(2) The provisions of this Part do not apply to or in relation to the following vessels, namely—

- (a) an air-cushioned vehicle;
- (b) a pleasure craft;
- (c) a takia;
- (d) a fishing vessel;
- (e) a vessel used solely in navigation on inland waters.

Exemption of particular vessels

96.—(1) The Minister may, by notice in the Gazette, and subject to any conditions he thinks fit, exempt a particular vessel or a particular class or description of vessel from all or any of the requirements of this Part.

(2) An exemption under subsection (1) can be in respect of—

- (a) a specified period; or
- (b) one or more specified voyages.

(3) Any conditions subject to which an exemption is given under subsection (1) must be set out in the notice published under that subsection.

(4) Where this section applies in respect of a vessel, the master and the owner of the vessel shall each take such action as may be necessary to ensure that any conditions imposed under subsection (1) are observed.

Penalty: A fine not exceeding \$1,000

Appointment of shipping officers

97. The Minister may appoint a public officer to be a shipping officer.

Vessels to be properly manned

98.—(1) Subject to subsection (2), neither the owner nor the master of a vessel shall take or send the vessel to sea or permit the vessel to remain at sea with fewer qualified seamen on board than the complement prescribed in respect of that vessel.

Penalty: A fine not exceeding \$1,000

(2) Where a vessel is at a port or place and does not have on board the prescribed number of seamen of a particular grade the Director may, where he is satisfied that—

- (a) a qualified seaman of that grade is not available for employment at that port or place;
 - (b) it would be unreasonable to require the owner or master to obtain a qualified seaman of that grade from another port or place; and
 - (c) the safety of the vessel would not be endangered,
- allow the vessel, subject to any conditions he thinks fit, to go to sea without carrying the prescribed complement of qualified seamen of that grade.

(3) Where this section applies in respect of a vessel, the master and the owner of the vessel shall each take such action as may be necessary to ensure that any conditions imposed under subsection (2) are observed.

Penalty: A fine not exceeding \$1,000

Certificates

99.—(1) A person may apply to the Director for the issue to that person of—

- (a) a certificate of competency; or
- (b) a certificate of satisfactory service.

(2) An application under subsection (1) must be in the prescribed form and must be accompanied by the prescribed fee.

(3) The Director shall refer any application received by him under subsection (1) to the Marine Board which shall, if it is satisfied of the prescribed matters in relation to the applicant, issue—

- (a) a certificate of competency; or
 - (b) a certificate of satisfactory service,
- to the applicant.

(4) A Certificate of competency and a certificate of satisfactory service must be in the prescribed form and must set out the grade or designation in respect of which it is issued.

(5) The holder of a valid certificate of competency is a qualified seaman of the grade and designation specified in the certificate.

(6) Subject to the regulations and any conditions specified in a valid certificate of satisfactory service the holder of the certificate is a qualified seaman of the grade and designation specified in the certificate.

Suspension or cancellation of certificate by the Director

100.—(1) Where it appears to the Director that the holder of a certificate issued under section 99 is unfit to be the holder of that certificate whether by reason of medical unfitness, incompetency, misconduct, dereliction of duty or for any other reason the Director may give the holder written notice that he is considering referring the suspension or cancellation of the certificate to the Marine Board.

(2) The notice referred to in subsection (1) must—

- (a) state the reasons why it appears to the Director that the holder is unfit to be the holder of the certificate; and
- (b) state that within a period specified in the notice, being not less than 14 days, the holder may make written or oral representations to the Director.

(3) After considering any representations made in accordance with paragraph (2)(b) the Director shall decide whether or not to refer the question of the suspension or cancellation of the certificate to the Marine Board and shall give the holder written notice of his decision.

(4) Where, in accordance with subsection (3), the Director decides to refer the question of the suspension or cancellation of a certificate to the Marine Board the written notice given by the Director under that subsection must—

- (a) state the reasons why it appears to the Director that the holder is unfit to be the holder of the certificate; and
- (b) state that—
 - (i) within a period specified in the notice, being not less than 14 days, the holder may make written representation to the Marine Board; or
 - (ii) the holder may appear before the Marine Board, either in person or by another person, when it considers the reference.

(5) The Marine Board shall consider any reference made to it by the Director under this section and after considering any written or oral

representations made to it by or on behalf of the holder of the relevant certificate shall—

- (a) decide whether or not to suspend or cancel the certificate; and
- (b) give the holder written notice of its decision.

(6) Where in accordance with subsection (5) the Marine Board decides to suspend or cancel a certificate the notice given under paragraph (5)(b) must—

- (a) in the case of a decision to suspend the certificate—state the date from which and the period for which the suspension is to take effect;
- (b) in the case of a decision to cancel the certificate—state the date from which the cancellation is to take effect; and
- (c) require the holder to deliver the certificate to the Director or a shipping officer not later than the date specified in the notice in accordance with paragraph (a) or (b).

(7) A person who is required to deliver a certificate in accordance with paragraph (6)(c) shall not fail to deliver that certificate.

Penalty: A fine not exceeding \$200

Appeals

101.—(1) Where under subsection 100(5) the Marine Board decides that a certificate of competency or a certificate of satisfactory service should be—

- (a) suspended for a period exceeding 6 months; or
- (b) cancelled,

the holder of the certificate may appeal to the Court against the decision within—

- (c) 30 days of the date on which notice of the Director's decision is given to him in accordance with paragraph 100(5)(b); or
- (d) such extended period as the Court, on application made either before or after the period of 30 days referred to in paragraph (c), orders.

(2) On an appeal under subsection (1) the Court may—

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

(3) A decision of the Court under subsection (2) shall be deemed to be a decision of the Marine Board and shall have effect accordingly.

Production of certificate

102. A person who holds a certificate of competency or a certificate of satisfactory service shall, upon being requested to do so, produce the certificate to—

- (a) the Director;
 - (b) a shipping officer; or
 - (c) a marine checker,
- acting in the course of his duties, or to the owner or the master of a vessel on which he is employed.
- Penalty: A fine not exceeding \$100

Offences related to qualifications of seamen

103.—(1) A person shall not go to sea purporting to be a qualified seaman of a particular grade or designation if he is not a qualified seaman of that grade or designation.

Penalty: A fine not exceeding \$500

(2) Neither the master nor the owner of a vessel shall knowingly permit a person who is not a qualified seaman of a particular grade or designation to go to sea on the vessel as a seaman of that grade or designation.

Penalty: A fine not exceeding \$1,000

Supply and engagement of seamen

104.—(1) A person shall not engage or supply a person for employment as a seaman on board a vessel, unless he is—

- (a) the owner of the vessel or his agent;
- (b) an officer of a trade union or trade association to which the seaman belongs;
- (c) a shipping officer; or
- (d) a seaman's employment agency approved by the Minister by notice in the Gazette.

Penalty: A fine not exceeding \$500 in respect of each person engaged or supplied in contravention of this subsection

(2) Approval given for the purposes of paragraph (1)(d) can be given subject to such conditions as the Minister thinks fit.

(3) A person shall not receive or accept a person for employment as a seaman on board a vessel unless he is satisfied that the person is not being supplied or engaged in contravention of subsection (1).

Penalty: A fine not exceeding \$500 in respect of each person received or accepted in contravention of this subsection

(4) A person to whom approval is given for the purposes of paragraph (1)(d) shall observe any conditions subject to which that approval is given.

Penalty: A fine not exceeding \$1,000

Prohibition of providing employment for reward

105.—(1) A person shall not, for reward, make arrangements for—

- (a) finding seamen for a person seeking to employ seamen; or
- (b) finding employment for a person as a seaman.

Penalty: A fine not exceeding \$1,000

(2) A person shall not demand or directly or indirectly receive any remuneration or reward for providing a person with employment as a seaman.

Penalty: A fine not exceeding \$1,000

Agreements

106.—(1) A person shall not be employed on a vessel as a seaman unless there is in force a written agreement between the owner of the vessel, or a person acting on his behalf, and the seaman in respect of the seaman's services on the vessel.

(2) The master of a vessel shall not take a vessel to sea unless there is in respect of each seaman employed in the vessel an agreement made in accordance with this section.

Penalty: A fine not exceeding \$2,000

(3) Subject to subsection (4), an agreement referred to in subsection (1) can be—

- (a) with respect to employment in one or more vessels; or
- (b) for one or more specified voyages.

(4) An agreement referred to in subsection (1) is not capable of being made in respect of a period exceeding 2 years.

Vessel to be seaworthy

107.—(1) An agreement shall be deemed to contain a condition that the owner of the vessel in which the person is or is to be employed as a seaman shall use all reasonable means to ensure that the vessel is seaworthy for and during the voyage on which that person is so employed.

(2) A purported waiver of the condition referred to in subsection (1) is void.

Seaman to understand agreement

108. An owner of a vessel shall not enter into an agreement with a seaman relating to that seaman's employment in the vessel unless he is satisfied that the seaman—

- (a) has read the proposed agreement or, if the seaman is illiterate, has had the proposed agreement read to him; and
- (b) as far as practicable, understands the nature and content of the proposed agreement.

Penalty: A fine not exceeding \$500

Agreements to be approved

109.—(1) The owner of a vessel in which a seaman is or is to be employed, shall, before that vessel goes to sea—

- (a) lodge a copy of the agreement or the proposed agreement in respect of that seaman with a shipping officer; and

- (b) await the approval of the shipping officer to the agreement or proposed agreement.

Penalty: A fine not exceeding \$1,000

- (2) A shipping officer shall, if satisfied that an agreement or a copy of a proposed agreement lodged with him under subsection (1) adequately protects the interests of the seamen and complies with requirements of this Part, approve the agreement or proposed agreement.

Certain persons not to be engaged

110.—(1) A person shall not knowingly employ in a vessel or enter into an agreement for employment as a seaman in a vessel—

- (a) a person under the age of 16 years;
- (b) except in accordance with the regulations, a person under the age of 18 years; or
- (c) a suspended person.

Penalty: A fine not exceeding \$500

- (2) An agreement entered into in contravention of subsection (1) is void and of no effect.

- (3) A suspended person shall not—

- (a) offer himself for employment as a seaman in a vessel; or
- (b) enter into an agreement for employment as a seaman in a vessel.

Penalty: A fine not exceeding \$500

Termination of agreement

111.—(1) Subject to this section, an agreement can be terminated by mutual consent of the parties to it.

- (2) Subject to subsections (3) and (4) an agreement is terminated—

- (a) by the death of the seaman;
- (b) where the agreement relates to employment for a particular period—at the expiry of that period, except that if that period expires during a voyage, it expires on the arrival of the vessel at the next port of call after the expiry of that particular period;
- (c) where the agreement relates to employment in a particular vessel—
 - (i) by the wreck, loss or total inability of the vessel to go to sea or to proceed on a voyage; or
 - (ii) where the vessel is a registered vessel, by the vessel ceasing to be a registered vessel;
- (d) by the lawful dismissal of the seaman; or
- (e) by the seaman becoming a suspended person.

- (3) Where, but for this subsection, an agreement would have been terminated under subsection 2(c)(ii) the seaman may, with the written approval of a shipping officer or a Proper Officer, consent to continue employment in the vessel and in that case the agreement is deemed not to have been terminated.

(4) An agreement is not capable of being terminated under subsection (1) or under paragraph (2)(b) or (d) at a place away from the proper return port of the seaman without the consent of a shipping officer or a Proper Officer.

Seaman cannot waive protection of the Act

112. A provision in an agreement, whether express or implied, which purports to modify, vary or negative a right given to a seaman under this Part is void and of no effect.

Approval of employment of citizens on foreign vessels

113.—(1) A person, at a place in Fiji, shall not, unless he has first obtained the written approval of the Director or a shipping officer, employ a citizen as a seaman in a vessel to which this Part does not apply that is proceeding on a voyage to a place in another country.

Penalty: A fine not exceeding \$5,000

(2) The Director or a shipping officer shall not give his approval under subsection (1) unless he is satisfied that the seaman is being employed in the vessel on conditions no less satisfactory than those he would have been employed on if this Part had applied to the vessel.

(3) Neither the owner, the master nor an agent of a vessel shall permit to be carried to sea in that vessel a citizen employed in contravention of subsection (1).

Penalty: A fine not exceeding \$5,000

Wages

114.—(1) Subject to this Act, a seaman shall be paid wages in accordance with the terms of his agreement.

(2) Subject to this Act, the wages due to a seaman under an agreement shall be paid in full on the termination of the agreement.

(3) Subject to subsection (4), where an owner fails, without reasonable cause, to make payment in full to a seaman as provided in subsection (2) he shall, in respect of each day for which payment is delayed, pay to the seaman a sum equal to double the daily rate fixed under the agreement.

(4) Where the amount required to make payment in full, as provided in subsection (2), is less than \$20 the number of days in respect of which payment is to be made under subsection (3) is limited to 7.

(5) A sum payable under subsections (3) and (4) is deemed to be wages due to the seaman.

Allotments

115.—(1) A seaman may allot any part of his wages, not exceeding 75 per cent of the whole.

(2) An allotment under subsection (1) must be made by means of an allotment note in the prescribed form.

(3) A person to whom any part of the wages of a seaman is allotted under subsection (1) has the right to receive that part in his own name and, for that purpose, has the same remedies as the seaman for recovery of wages.

(4) In proceedings brought by a person named in an allotment note as the person to whom part of the seaman's wages has been allotted under subsection (1), it shall be presumed, unless the contrary is shown, that—

- (a) the seaman is entitled to the wages specified in the allotment note; and
- (b) the allotment note is valid and has not been varied or cancelled.

Account of wages

116. The owner of a vessel shall not refuse or fail, without reasonable cause, to deliver to a seaman on the vessel, at the appropriate time and in the manner prescribed, an exact account of—

- (a) the wages due to that seaman under his agreement; and
- (b) any deductions made from those wages.

Penalty: A fine not exceeding \$500

Entitlement to wages after wreck, loss or deregistration of vessel

117.—(1) Where a vessel is wrecked, lost or unable to proceed on a voyage, a seaman whose employment in the vessel is terminated by that event before the date contemplated in the agreement is entitled to—

- (a) conveyance by or at the cost of the owner of the vessel to his proper return port; and
- (b) subject to subsections (3) and (4), wages at the rate payable to him on the day of the termination of his services in respect of the period commencing on the date of termination of his services and ending—
 - (i) 30th days after he reaches his proper return port; or
 - (ii) if he is unemployed after reaching his proper return port—60 days after that date.

(2) Where a registered vessel ceases to be so registered and a seaman's employment in the vessel is thereby terminated before the date contemplated in the agreement under which he is so employed, then, unless it is otherwise provided in the agreement, he shall, subject to subsection (4), be entitled to wages at the rate payable under the agreement at the date on which his employment is terminated for every day on which he is unemployed in the 60 days following that date.

(3) A seaman is not entitled to wages under subsection (1) in respect of any day on which his conveyance under that section is delayed by his own act, default or neglect.

- (4) A seaman is not entitled to wages by virtue of subsection (1) or subsection (2) for a day on which he was unemployed, if it is shown—
- (a) that the unemployment was not due to any cause specified in subsection (1) or subsection (2); or
 - (b) that the seaman was able to obtain suitable employment for that day but unreasonably refused or failed to take it.

Wages for sick or injured seaman

118.—(1) This section applies to and in relation to a seaman belonging to a vessel who become ill, is hurt or is injured where the illness, hurt or injury—

- (a) was not due to the wilful act, default, or misbehaviour of the seaman; and
- (b) is such as to incapacitate him wholly from the performance of his duty,

and who, by reason of that illness, hurt or injury, is left behind at a port or place other than his proper return port.

(2) Where this section applies to and in relation to a seaman, the seaman is entitled to wages at the rate payable to him under his agreement on the day on which he was left behind in respect of the period commencing on that day and ending—

- (a) on the day of his return to his proper return port;
- (b) at the expiration of 2 months; or
- (c) on the date of his death,

whichever first occurs.

Seaman's rights in regard to wages, etc.

119.—(1) Subject to subsection (2), a seaman's lien for his wages and any right he may obtain or have in the nature of salvage is not be capable of being renounced by any agreement.

(2) Subsection (1) does not affect those terms of an agreement made with the seamen of a vessel employed on salvage services, which provide for the remuneration to be paid to the seamen for salvage services rendered by that vessel.

(3) The master of a vessel has the same lien for all disbursements or liabilities properly made or incurred by him on account of the vessel as a seaman has for his wages.

(4) The right of a seaman to wages does not depend on the earning of freight.

Crew accommodation

120.—(1) The owner of a vessel shall ensure that the vessel has accommodation exclusively reserved for the use of its crew.

Penalty: A fine not exceeding \$1,000

(2) An owner of a vessel shall not permit the vessel to go to sea, and the master of a vessel shall not take a vessel to sea without crew accommodation of the prescribed standard.

Penalty: A fine not exceeding \$1,000

Provisions and water

121.—(1) The owner and the master of a vessel shall each ensure that the provisions and water supplied for the use of seamen on the vessel are as prescribed.

Penalty: A fine not exceeding \$500

(2) Where, in any case, the Director is of the opinion that the provisions or water on a vessel are not as prescribed he may direct the owner or the master of the vessel to replace them.

(3) The owner or the master of a vessel, as the case may be, to whom a direction under subsection (2) is given shall not fail to comply with that direction.

Penalty: A fine not exceeding \$500

Vessel to carry medical stores, etc.

122. Neither the owner nor the master of a vessel shall permit the vessel to go to sea without carrying the prescribed number of qualified first aid attendants, medicines and medical and surgical stores.

Penalty: A fine not exceeding \$500

Return of a distressed seaman

123.—(1) In this section 'distressed seaman' means a person who—

- (a) is, or has been, a seaman on a vessel; and
- (b) is at a place away from his proper return port by reason of having been—
 - (i) left behind from a vessel; or
 - (ii) shipwrecked in a vessel.

(2) A person shall not wrongfully force on shore and leave behind at a place in Fiji a seaman belonging to a vessel (whether or not it is a vessel to which this Part applies) or otherwise cause such a seaman to be wrongfully left behind at a place in Fiji, either on shore or at sea.

Penalty: A fine not exceeding \$5,000

(3) A person shall not wrongfully force on shore and leave behind at a place outside Fiji a seaman belonging to a vessel, or otherwise cause such a seaman to be wrongfully left behind at a place outside Fiji, either on shore or at sea.

Penalty: A fine not exceeding \$5,000

(4) Subject to this section, where a person is a distressed seaman the person who last employed him as a seaman shall make such provision as is prescribed for his—

- (a) return to his proper return port; and
- (b) relief and maintenance until his return to that port.

Penalty: A fine not exceeding \$2,000

(5) Where a distressed seaman elects, after a period of 90 days starting on the date of his becoming a distressed seaman, to remain at a place away

from his proper return port, he is deemed not to be a distressed seaman as from the date upon which he so elects, and the person who last employed him as a seaman is not liable to make provision for his return to his proper return port or for any matter after the date on which the seaman so elected.

(6) Where, in the opinion of the Director, a person has failed to make proper provision for the relief, maintenance and return to his proper return port of a distressed seaman the Director may make such provision.

(7) Where expense is incurred in respect of a matter for which a person is required to make provision under this section then, unless it can be proved that the distressed seaman would not have been left behind but for his own wilful act or neglect—

(a) if the expense is incurred by or on behalf of the Government—the Government; or

(b) if the expense is incurred by the distressed seaman—the distressed seaman,

may recover the expenses so incurred as a debt due to the Government or to him, as the case may be, from the person who is required by this section to make that provision.

(8) Where a seaman or a distressed seaman dies and his body—

(a) is conveyed to his proper return port; or

(b) is buried or cremated at a place away from his proper return port, any expenses incurred in conveying, burying or cremating his body by any person other than the person who last employed him as a seaman, may be recovered from the person who last employed him as a seaman as a debt due to the person who incurred those expenses.

Effects of deceased seaman

124.—(1) The master of a vessel in which there are any effects of a deceased seaman who died while or after being employed in the vessel shall not fail, without reasonable cause, to deliver up those effects in the prescribed manner to a shipping officer.

Penalty: A fine not exceeding \$500

(2) Effects of a deceased seaman that have come into the possession of a shipping officer by virtue of subsection (1) shall be dealt with in the prescribed manner.

Misconduct endangering a vessel or persons on board

125.—(1) Subsection (2) applies where a seaman—

(a) does an act which causes or likely to cause—

(i) the loss or destruction of or serious damage to a vessel; or

(ii) the death of, or serious injury to, a person on board a vessel; or

(b) fails to do anything required by him to preserve—

(i) a vessel from loss, destruction, or serious damage; or

(ii) a person on board the vessel from death or serious injury.

(2) A seaman shall not perform an act referred to in paragraph (1)(a) or fail to do anything referred to in paragraph (1)(b)—

- (a) in a manner which amounts to a breach or neglect of duty or disobedience to a lawful command; or
- (b) when he is under the influence of alcohol or a drug.

Penalty: A fine not exceeding \$1,000 or imprisonment for a term not exceeding 1 year, or both

Continual or concerted disobedience

126. A seaman shall not, while a vessel is on an international voyage—

- (a) wilfully and persistently—
 - (i) neglect his duty; or
 - (ii) disobey lawful commands; or
- (b) combine with other seamen to—
 - (i) disobey a lawful command;
 - (ii) neglect his duty; or
 - (iii) impede the navigation of the vessel.

Penalty: A fine not exceeding \$2,000 or imprisonment for a term not exceeding 2 years, or both

Absence without leave

127. A seaman shall not, while a vessel is on an international voyage, absent himself from a vessel without reasonable cause so that the vessel is delayed or goes to sea without him.

Penalty: A fine not exceeding \$500

Persons deemed to be seamen

128. Notwithstanding any other provision of this Act, where—

- (a) a person is carried to sea without the consent of the master or of any other person authorised to give consent to his being so carried; or
 - (b) a person having been a seaman is carried on a vessel for the purpose of being returned to his proper return port,
- he is, for the purposes of sections 125, 126 and 127 deemed to be a seaman on the vessel.

Disciplinary offences

129.—(1) The master of a vessel who finds that a seaman has committed a disciplinary offence shall make a report of his findings in the prescribed manner to a shipping officer.

Penalty: A fine not exceeding \$500

(2) Where—

- (a) 2 or more reports under subsection (1) have been made within the prescribed time in respect of a seaman; or
 - (b) a seaman has committed an offence under sections 125, 126 or 127,
- the Director may declare the seaman to be a suspended person.

Appeal against suspension

130.—(1) Where—

- (a) the Director has declared a seaman to be a suspended person; and
 - (b) the period of suspension exceeds 6 months,
- the seaman may, within the 30 days after receiving the prescribed notification of his suspension, appeal to a Resident Magistrate.

(2) Where an appeal is made under subsection (1) a Resident Magistrate shall make such order as the justice of the case requires.

Stowaways

131. A person shall not go to sea in a vessel without the consent of—

- (a) the master of the vessel; or
- (b) a person authorised by the master of the vessel to give that consent.

Penalty: A fine not exceeding \$2,000 or imprisonment for a term not exceeding 1 year, or both

Seaman's Identity Card

132.—(1) The Registrar may issue to a person who is a Fiji citizen and is a seaman, or is, in the Registrar's opinion, about to become a seaman a card to be known as a 'Seaman's Identity Card'.

(2) A person to whom a Seaman's Identity Card has been issued shall not fail, without reasonable cause—

- (a) to keep the card securely;
- (b) to produce it when required to prescribed persons and in prescribed circumstances.

Penalty: A fine not exceeding \$100

Employment Record Book

133.—(1) The Registrar may issue to a seaman a book to be known as an Employment Record Book.

(2) An Employment Record Book shall—

- (a) be in the prescribed form; and
- (b) be applied for, issued and dealt with in the manner prescribed.

Register of Seamen

134.—(1) The Registrar shall—

- (a) keep at Suva a book to be known as the Register of Seamen; and
- (b) enter into the Register of Seamen the prescribed particulars.

(2) Any person may inspect the Register of Seamen during the normal working hours of the public service.

Official Log Book

135.—(1) The master of a vessel shall keep in respect of the vessel a book to be known as the Official Log Book and such other Log Books as may be prescribed.

Penalty: A fine not exceeding \$1,000

(2) Subject to this Act, the master of a vessel shall not fail, without reasonable cause—

- (a) to keep the Official Log Book and any other prescribed Log Books of the vessel in the prescribed manner; and
- (b) to carry the Official Log Book and any other Log Books in that vessel.

Penalty: A fine not exceeding \$1,000

Crew Lists

136. The owner or the master of a vessel shall—

- (a) make; and
 - (b) in the prescribed manner, maintain,
- a list of the crew of the vessel to be known as a Crew List.

Penalty: A fine not exceeding \$1,000

Returns of births and deaths

137. The master of a vessel which is—

- (a) a registered vessel; or
 - (b) not being a registered vessel, is on a voyage to a port or place in Fiji,
- shall not fail, without reasonable cause, to make, in the prescribed manner, a return to the Registrar of any—

- (c) birth occurring in; or
 - (d) death occurring or presumed to have occurred in or from,
- the vessel.

Penalty: A fine not exceeding \$1,000

Reports of accidents

138. The master of a vessel shall not, without reasonable cause, fail to notify a shipping officer of any serious injury caused to a person on board the vessel.

Penalty: A fine not exceeding \$1,000

Inquires into accidents on board vessels

139.—(1) Subject to subsection (2) where—

- (a) a person dies or suffers serious injury on board a vessel; or
 - (b) a seaman belonging to a vessel dies or suffers serious injury whilst away from the vessel,
- the Director may authorise a shipping officer to hold an inquiry into the matter and the cause of the death or injury.

(2) An inquiry under subsection (1) must not be held in the case of the death of a person if there is a requirement under the Inquests Act to hold an inquest into the manner and cause of the death of that person.

(3) The person holding an inquiry under this section shall, if not a surveyor or a shipping inspector, have for the purpose of holding the inquiry the powers of a shipping inspector set out in subsection 203(2), and subsection 203(6) shall apply accordingly.

Reports of inquiries

140.—(1) The person conducting an inquiry under section 139 shall immediately upon completing the inquiry forward a written report of his findings to the Director.

(2) The Director shall make a copy of the report referred to in subsection (1) available upon request to—

- (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 Director to have a 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 the authority of that person; and
 - (ii) any other person who appears to the Director to have a sufficient interest in the contents of the report.

Absence of seaman from vessel

141.—(1) Where a seaman, who is absent from a vessel at a time when under an agreement he is required to be on board that vessel, proves that—

- (a) his absence from the vessel was due to accident or mistake or some other cause beyond his control; and
 - (b) he took all reasonable precautions to avoid being absent,
- his absence is not a breach of contract.

(2) Where, in an action for breach of contract arising from the absence of a seaman from a vessel, a seaman fails to prove the matters referred to in subsection (1)—

- (a) if special damages are not claimed by his employer—the seaman's civil liability is limited to \$500; and
- (b) if special damages are claimed by his employer—the seaman's civil liability is limited to \$1,000.

Failure by seaman to join foreign vessel

142.—(1) This section applies to a vessel which is registered in a country other than Fiji.

(2) Where—

- (a) a seaman of a vessel to which this section applies fails to join the vessel;

- (b) the seaman is not a citizen; and
 - (c) the vessel is at a port or place in Fiji,
- a Magistrate may, on complaint being made by—
- (d) the Consul or other diplomatic representative of the country in which the vessel is registered; or
 - (e) if there is no such Consul or diplomatic representative in Fiji—the owner of the vessel or his agent,
- issue a warrant for the apprehension of the seaman.

(3) Where a seaman has been apprehended by virtue of a warrant issued under subsection (2) a Magistrate may place the seaman at the disposal of—

- (a) the Consul or other diplomatic representative of the country in which the vessel is registered; or
 - (b) if there is no such Consul or diplomatic representative in Fiji—the owner of the vessel or his agent,
- so that the seaman may be put back on board his vessel either in Fiji or in some other country.

- (4) Any costs incurred by the Government—
- (a) in apprehending a seaman under this section; or
 - (b) in returning the seaman to his vessel,
- may be recovered as a debt due to the Government from—
- (c) the owner of the vessel or his representative; or
 - (d) the Consul or diplomatic representative,
- on the complaint of whom the seaman was apprehended.

Seamen Regulations

143. The Minister may make regulations providing for or in relation to—

- (a) the grades and designations of certificates;
- (b) the syllabus and general requirements for entry to examination;
- (c) the conditions and particulars to be included in an agreement;
- (d) the form of an agreement and the manner in which an agreement is made;
- (e) the manner in which an agreement is added to or amended or lodged with a shipping officer;
- (f) the circumstances in which an agreement or a copy of an agreement is carried in a vessel;
- (g) the requirements for an agreement, or a copy of an agreement to be delivered to or made available to a shipping officer;
- (h) the conditions under which a person 16 years of age or more but less than 18 years of age may enter into an agreement;
- (i) the notice required to be given to a shipping officer before an agreement is entered into or terminated;
- (j) procedures and practices to be followed on the termination of an agreement;
- (k) the circumstances under which, other than by reason of termination of an agreement, a seaman may be left behind from a vessel outside Fiji;

- (l) the crew accommodation requirements for new and existing vessels;
- (m) the standards to be observed in the construction, equipment, ventilation, lighting, heating, furnishing and maintenance of crew accommodation;
- (n) the deductions which can be made from the wages due to a seaman;
- (o) the manner in which wages are to be paid;
- (p) the manner in which wages are to be accounted for where a seaman leaves a vessel otherwise than on termination of an agreement;
- (q) the form and manner in which accounts of wages are to be prepared by the owner and delivered to a seaman;
- (r) the form of allotment notes;
- (s) the circumstances and the manner in which allotment notes are to be made;
- (t) the quality and quantity of the provisions and water to be supplied for the use of seamen;
- (u) the conduct of medical examinations of seamen and persons seeking employment as seamen;
- (v) the medicines and medical and surgical stores to be carried in a vessel and the manner in which those medicines and stores are to be carried, stored and used in a vessel;
- (w) the appointment and certification of first-aid attendants and the circumstances in which first-aid attendants are to be carried on a vessel;
- (x) the manner in which effects of a deceased seaman are to be dealt with;
- (y) the misconduct on board a vessel which is to be a disciplinary offence by a seaman;
- (z) procedures under which a master may find that a seaman has committed a disciplinary offence;
- (aa) the manner in which a declaration of suspension is to be made and the manner in which that declaration is to be notified to—
 - (i) a suspended person; and
 - (ii) the person who last employed him as a seaman;
- (ab) the manner in which the name of a suspended person is included in the list of suspended persons;
- (ac) the manner in which the list of suspended persons is to be kept and made available for inspection;
- (ad) the circumstances, manner and form in which Seaman's Identity Cards and Seamen's Employment Record Books are to be issued, recorded and dealt with;
- (ae) the Log Books, in addition to the official Log Book, to be kept in respect of vessels or any class of vessels;
- (af) the manner in which and the persons by whom entries in an Official Log Book or any other prescribed Log Books are to be made, signed and witnessed;

- (ag) the production, or delivery of an Official Log Book or any other prescribed Log Books to such person in which circumstances and within such times as may be specified;
- (ah) the particulars to be entered into and the place and manner in which a Crew List or a copy of that List is to be maintained;
- (ai) the manner in which a Crew List or a copy of that List is to be made available on demand to specified persons;
- (aj) the reporting of births and deaths occurring in or from a vessel; and
- (ak) the hours of work of seamen.

PART VI—COASTING-TRADE

Coasting-trade defined

144. For the purposes of this Part a vessel is engaged in the coasting-trade in the following instances, namely, where the vessel—

- (a) takes on board passengers or goods at a port or place in Fiji to be carried to or landed at another port or place in Fiji or the same port or place in Fiji;
- (b) leaves a port or place in Fiji to undertake a shipping service within the territorial sea.

Application

145. Unless the context otherwise requires, this Part does not apply to or in relation to the following vessels, namely—

- (a) a fishing vessel;
- (b) a takia;
- (c) a pleasure craft; or
- (d) a prescribed vessel or a vessel of a prescribed class of vessels.

Coasting-trade licences

146. Subject to this Act, the Minister may, in respect of a vessel and subject to any conditions he thinks fit to impose, grant to a person a licence to engage that vessel in the coasting-trade.

Categories of coasting-trade licences

147.—(1) A licence granted under section 146 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 vessel 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 vessel in respect of which the licence is granted in the particular shipping service specified in the licence.

Requirement to hold coasting-trade licence

148.—(1) In this section 'owner', in relation to a vessel, includes, where the vessel is operated by a person other than a owner, that person.

(2) Subject to section 152, neither the master nor the owner of a vessel shall engage the vessel in the coasting-trade unless an appropriate coasting-trade licence is held in respect of the vessel.

Penalty: A fine not exceeding \$10,000

Limitation on grant of licences

149.—(1) A coasting-trade licence in respect of a registered vessel can be granted to—

- (a) the owner of the vessel if he is a Fiji person; or
- (b) a Fiji person who is, either by himself or with other persons each of whom is a Fiji person, the charterer of the vessel.

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

(3) Where, in respect of a particular shipping service, the Minister is satisfied that no Fiji person is able to offer an efficient and adequate service in respect of a registered vessel he may, in respect of a vessel which is not a registered vessel, grant a coasting-trade licence to a Fiji person, either by himself or with other persons each of whom is a Fiji person who is the charterer of the vessel, to operate that service.

Duration of coasting-trade licences

150.—(1) Subject to subsection (3), the Minister shall determine the period for which a coasting-trade licence is granted in respect of a vessel.

(2) In making a determination under subsection (1) the Minister shall have regard to—

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

(3) A coasting-trade licence must not be granted for a period exceeding 12 months.

Powers of the Minister in relation to coasting-trade licences

151.—(1) Where, in the opinion of the Minister, it is necessary or desirable in the public interest to do so, the Minister may—

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

(2) Where a coasting-trade licence—

- (a) expires;
- (b) is cancelled or suspended;
- (c) is granted to a Fiji person and that person ceases to be a Fiji person; or
- (d) is granted in respect of a registered vessel and the vessel ceases to be a registered vessel,

the Director may require the holder of the licence to deliver the licence to him.

(3) A person shall not, without reasonable cause, fail to deliver a coasting-trade licence to the Director within 7 days of being required to do so under subsection (2).

Penalty: A fine not exceeding \$500

Exemption from requirement to hold coasting-trade licence

152. The Minister may, by notice in the Gazette, declare that section 148 shall not apply—

- (a) in relation to a specified shipping service; or
- (b) for a period specified in the notice in relation to—
 - (i) a specified vessel or vessels of a specified class of vessel; or
 - (ii) vessels trading or going between a specified port or place and another specified port or place,

and that declaration shall have effect accordingly.

Coasting-trade permits

153.—(1) Where in the opinion of the Minister—

- (a) no vessel 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 vessel in respect of which a coasting-trade licence has been granted is inadequate, inefficient or unreasonably costly,

and where, also in the opinion of the Minister, it is desirable in the public interest to do so, the Minister may, subject to any conditions he thinks fit to impose, issue a coasting-trade permit to the owner or master of any vessel, to operate that service.

(2) The Minister should not issue a permit under subsection (1) except in respect of a single voyage by a specified vessel.

Effect of the issue of a coasting-trade permit

154. A vessel in respect of which a permit is issued under section 153 shall not, for the purposes of this Part, be deemed to be engaged in the coasting-trade solely by reason of the fact that the vessel is engaged in the shipping service specified in the permit.

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

155.—(1) The holder of a coasting-trade licence or a coasting-trade permit that was granted or issued subject to conditions shall not fail to comply with those conditions.

Penalty: A fine not exceeding \$2,000

(2) Where, in the case of a vessel in respect of which a coasting-trade licence or a coasting-trade permit has been granted or issued to a person, an offence is committed under subsection (1) or under subsection 148(2) the Minister may cancel the coasting-trade licence or the coasting-trade permit.

Requirement to furnish information

156.—(1) The Minister 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 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 Minister has reasonable cause to believe that a person has in respect of a vessel failed to comply with a requirement of this Part, a public officer authorised by the Minister to do so may, for the purposes of this Part—

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

(3) A person shall not fail, without reasonable cause—

- (a) to comply with a requirement made under subsection (1); or
- (b) to permit an officer authorised by the Minister to do so to do any of the acts referred to in subsection (2).

Penalty: A fine not exceeding \$1,000

(4) A public officer shall not, otherwise than in the performance of his official duties—

- (a) make available any record; or
- (b) divulge or communicate to any person any information, acquired by him or furnished to the Minister under subsection (1) or (2).

Penalty: A fine not exceeding \$2,000 or imprisonment for a term not exceeding 12 months, or both

Licence and permit fees

157.—(1) The holder of a coasting-trade licence shall pay the prescribed fee on the grant of the licence.

(2) The holder of a coasting-trade permit shall pay the prescribed fee on the issue of the permit.

Coasting-trade Regulations

158.—(1) 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 vessels in respect of which coasting-trade licences or coasting-trade permits have been granted or issued.

(2) The Minister may make regulations to promote and provide for the efficient and orderly conduct of shipping services in Fiji.

(3) Regulations made for the purposes of subsection (2) may provide for the introduction of a scheme for the establishment and licensing of trade routes.

PART VII—NAVIGATIONAL AIDS

Interpretation (Navigational Aids)

159.—(1) In this Part, unless the context otherwise requires—

- “aid” means a marine navigational aid;
- “light” includes a fire, lamp, streetlight or other illuminating device;
- “owner” in relation to an aid or light, includes a person in possession or control of that aid or light.

Establishment of aids

160.—(1) The Minister may establish, maintain, operate, alter or remove an aid.

(2) A person shall not, without the Minister's written approval, establish, operate, alter or remove an aid.

Penalty: A fine not exceeding \$2,000

(3) A person desiring to establish, operate, alter or remove an aid, must make written application to the Minister for his approval to do so.

Control of private aids

161.—(1) The owner of an aid shall not maintain, add to, alter or remove or vary the character of, or the mode of operating, or the position of the aid without the Minister's written approval.

Penalty: A fine not exceeding \$1,000

(2) The Minister may, if in his opinion it is desirable for the safety or convenience of marine navigation to do so, by notice in writing served on the owner of an aid or a light, require the owner of the aid or the light to—

- (a) remove it entirely or to remove it to some other position, within the time specified in the notice;
- (b) modify it or alter its character or mode of exhibition to the extent and in the manner specified in the notice, within the time specified in the notice;

- (c) cease using it; or
- (d) not to use it except at the times and in the manner specified in the notice.

(3) A person, served with a notice under subsection (2) shall not fail, without reasonable cause, to comply with the requirements specified in the notice.

Penalty: A fine not exceeding \$2,000

(4) Where—

- (a) an owner of an aid or light fails, without reasonable cause, to comply with a requirement specified in a notice served on him under subsection (2); or
- (b) for any reason a notice under subsection (2) cannot be served on the owner of an aid or light,

the Minister may—

- (c) take possession or control of the aid or light; and
- (d) do anything—
 - (i) which the owner of the aid or light, was required to do under any notice served on him under subsection (2); or
 - (ii) which, in the opinion of the Minister, must be done for the safety of marine navigation.

(5) Costs incurred by the Government in doing anything in relation to an aid or light under subsection (4) are a debt due to the Government from the owner of the aid or light and may be sued for in a court of competent jurisdiction.

Inspection of aids and lights

162.—(1) A person authorised by the Minister to do so may, at any time, inspect an aid or light which, in the Minister's opinion, may affect the safety or convenience of marine navigation.

(2) Where, for the purpose of inspecting or maintaining an aid or light, it is necessary for a person authorised under subsection (1) to do so he may enter property and transport goods through or over property.

(3) A person shall not obstruct or hinder a person authorised under subsection (1) in the exercise of his powers or in the performance of his duties under subsection (1) or (2).

Penalty: A fine not exceeding \$1,000

Offences in relation to aids

163.—(1) A person shall not without lawful authority—

- (a) make fast to, damage, destroy or allow a vessel to foul an aid;
- (b) do anything which causes the view of an aid to be obstructed so as to lessen its efficiency;
- (c) remove or do anything which interferes with an aid so as to hinder the effective use of the aid; or

(d) go on—

(i) an aid; or

(ii) land on which an aid is situated.

Penalty: A fine not exceeding \$1,000

(2) The master of a vessel which damages, destroys or interferes with an aid shall give the Director notice, as soon as practicable, of the damage, destruction or fouling.

Penalty: A fine not exceeding \$1,000

Detention of a vessel which damages an aid

164. Where a vessel damages, destroys or fouls an aid, that vessel may be detained until the cost of repairing or replacing the aid or of rendering the aid effective has been paid.

Navigational aid contributions

165.—(1) The owner or the master of a vessel that enters or leaves a port or place in Fiji shall pay any prescribed navigational aid contributions in respect of the vessel.

(2) The owner or the master of a vessel shall not, without reasonable cause, fail to pay any prescribed navigational aid contributions in respect of the vessel within the prescribed time.

Penalty: A fine not exceeding \$1,000

(3) Where navigational aid contributions are payable in respect of a vessel, the vessel may be detained until the contributions are paid.

Navigational aids Regulations

166. The Minister may make regulations for or in relation to—

- (a) the rates of navigational aid contributions payable in respect of vessels and the manner in which contributions are paid;
- (b) the exemption of particular vessels or of vessels of a particular class of vessels from the requirements relating to the payment of navigational aid contributions;
- (c) the returns to be made and the information to be supplied to the Director by the owner of an aid.

PART VIII—FISHING VESSELS, SMALL CRAFT AND AIR CUSHIONED VEHICLES

Extension of provisions of Parts IV and V to fishing vessels

167. The Minister may, by order, provide that any provision of Parts IV and V shall apply to fishing vessels with such modifications as are specified in the order.

Exemption of fishing vessels

168. The Minister may, by order, exempt a fishing vessel or fishing vessels within a class of fishing vessel from all or any of the provisions of—

- (a) this Part; or
- (b) Parts IV and V, as applied by virtue of an order made under section 167.

Fishing vessel Regulations

169. The Minister may make regulations providing for and in relation to—

- (a) the requirements for the design, construction and machinery of fishing vessel;
- (b) the survey and periodical inspection of fishing vessels;
- (c) the requirements for life saving and fire fighting appliances and radio installations in fishing vessels;
- (d) the issue, duration, extension, suspension or cancellation of survey certificates for fishing vessels; and
- (e) the manning of fishing vessels.

Small craft Regulations

170. The Minister may, in relation to—

- (a) commercial vessels less than 10 metres in length; and
- (b) hire and drive vessels,

make regulations providing for and in relation to the—

- (c) recording of information;
- (d) identification and marking;
- (e) licensing of persons to operate or use;
- (f) operation and navigation;
- (g) construction and equipment; and
- (h) survey and inspection.

Extension and modification of provisions of Parts II, III, IV and V to air cushioned vehicles

171. The Minister may, by order, provide that any provision of Parts II, III, IV and V shall apply to air cushioned vehicles, with such modifications as are specified in the order.

Air cushioned vehicle Regulations

172. The Minister may make regulations providing for or in relation to the regulation, control and prohibition of the use of air cushioned vehicles.

PART IX—MARINE RIGHTS AND LIABILITIES

Division 1—Shipowner's liability

Shipowners' liability in collisions for loss and damage to goods, etc.

173.—(1) Subject to this section, where, by the fault of 2 or more vessels, damage or loss is caused—

- (a) to one or more of them;
- (b) to their cargoes or freight; or
- (c) to property on board one of either of them,

the liability to make good the damage or loss is in proportion to the degree to which each vessel was at fault.

(2) Where in respect of an incident referred to in subsection (1), after having regard to all the circumstances, it is not possible to establish different degrees of fault, the liability is to be apportioned equally.

(3) Subsection (1) does not render a vessel liable for loss or damage to which her fault has not contributed.

(4) Subsection (1) does not affect the liability of a person under a contract of carriage, or any other contract.

(5) Subsection (1) does not—

- (a) impose any liability on a person from which he is exempted by a contract or by a written law; or
- (b) affect the right of a person to limit his liability.

(6) Damage or loss referred to in subsection (1) and caused by the fault of a vessel includes any salvage or other expenses consequent on that fault recoverable at law by way of damages.

Shipowner's liability in collisions for death and personal injury

174.—(1) Where a person on board a vessel—

- (a) is killed; or
- (b) suffers personal injury,

due to the fault of that vessel and another vessel or vessels, the liability of the owners of those vessels is joint and several.

(2) Subsection (1) does not—

- (a) deprive a person of a defence on which, independently of this subsection, he might have relied in an action brought against him by a person entitled to sue in respect of the deceased person or by the injured person; or
- (b) affect the right of a person to limit his liability in cases to which that subsection relates.

(3) Where, in the circumstances referred to in subsection (1), damages are awarded and a proportion of the damages is recovered against the owner of one of the vessels which exceeds the proportion in which that vessel was at fault, the owner of that vessel may recover by way of contribution the amount of the excess from the owner of the other vessel to the extent to which that other vessel was at fault.

(4) An amount is not recoverable under subsection (3) if it could not, by reason of a statutory or contractual limitation of or exemption from liability, or for any other reason, have been recovered in the first instance as damages by the persons entitled to sue for those damages.

(5) In addition to any other remedy a person might have, a person entitled to recover contribution under subsection (3) has, for that purpose, the same rights and powers as the persons entitled to sue for damages in the first case.

Application of the Collisions Convention

175. In the case of a collision a vessel shall not, for the purposes of sections 173 and 174, be deemed to be in fault solely by reason of the fact that the vessel has infringed a provision of the Collisions Convention.

Division 2—Limitation of liability

Interpretation
(Limitation of Liability Convention)

176.—(1) In this Division, unless the contrary intention appears—
“applied provisions of the Convention” means the provision of the Convention that, by virtue of subsection 177(1), have the force of law as part of the law of Fiji;
“Convention” means the Limitation of Liability Convention.

(2) In this Part, except in so far as the contrary intention appears, a word or expression used in this Part and defined in the Convention has the same meaning as in the Convention.

Limitation of shipowners' liability

177.—(1) Subject to this Act and to any other law, the provisions of the Limitation of Liability Convention (other than sub-paragraph 1(c) of Article 1 of the Convention) have the force of law as part of the law of Fiji.

(2) For the purposes of this Part and the applied provisions of the Convention a vessel, not being a seagoing vessel that—

(a) is engaged in trade or commerce within Fiji or with any other country or, being a vessel in the course of construction, is intended for use in trade or commerce within Fiji or with any other country;
or

(b) belongs to or is under the control of the Government (including a vessel belonging to the Royal Military Forces of Fiji) or being a vessel in the course of construction that does not belong to the Government is being built by or on behalf of or to the order of the Government,

shall be treated as if it were a seagoing vessel.

(3) In subsection (2) a vessel in the course of construction includes a vessel that has been launched but not completed and delivered under the building contract.

Application to determine shipowners' liability

178.—(1) Where a claim is made against or apprehended by a person in respect of liability of that person which that person may limit in accordance with the applied provisions of the Convention he may apply to the Court to determine the limit of his liability in accordance with those provisions.

- (2) Where an application is made under subsection (1) the Court may—
- (a) determine the limit of the applicant's liability; and
 - (b) make such order or orders as it thinks fit in respect to the constitution, administration and distribution in accordance with the applied provisions of the Convention, of a limitation fund for the payment of claims in respect of which the applicant is so entitled to limit his liability.

Evidence of certain matters related to the Limitation of Liability Convention

179.—(1) The Minister may, by notice in the Gazette, declare—

- (a) that a country specified in the notice has—
 - (i) ratified or acceded to the Convention; or
 - (ii) ratified or acceded to the Convention subject to reservations specified in the notice,
 as the case may be, and that the Convention has or will come into force or has or will come into force subject to those reservations, as the case may be, in respect of that country on a date specified in the notice;
- (b) that a country specified in the notice has, at the time of deposit of its instrument of ratification or accession to the Convention or at any later time, declared that the Convention extends to a territory or territories specified in the notice and that extension of the Convention has, or will, come into force on a date specified in the notice;
- (c) that a country specified in the notice has denounced the Convention and that that denunciation has taken or will take effect on a date specified in the notice; or
- (d) that a country specified in the notice has declared that the Convention shall cease to extend to a territory or territories specified in the notice and that that denunciation has taken, or will take effect on a date specified in the notice.

(2) A notice under subsection (1) is, for all purposes, *prima facie* evidence of the matter declared in the notice.

Limitation of Liability Regulations

180. The Minister may make regulations to prescribed matters that are necessary or convenient to be prescribed for the purpose of carrying out or giving effect to the applied provisions of the Convention and for or in connection with that purpose may make provision for and in relation to—

- (a) the ascertainment of the tonnage of vessels including the estimation of the tonnage of vessels in circumstances where it is not possible or reasonably practicable to measure their tonnage;
- (b) the conversion of amounts of money expressed in the terms of the units of account mentioned in Article 3 of the Convention into amounts of money expressed in the currency of Fiji; and
- (c) such matters as under the Convention are to be governed by the national law of a country that is a party to the Convention.

Division 3—Exclusion of liability

Shipowners not to be liable in certain cases of loss of, or damage to goods

181.—(1) The owner of a vessel, other than a foreign vessel, shall not be liable to make good, to any extent whatever, loss or damage happening without his actual fault or privity where—

- (a) goods, merchandise or other things taken in or put on board the vessel are lost or damaged by reason of fire on board the vessel; or
- (b) specified goods taken in or put on board the vessel are lost or damaged by reason of any robbery, embezzlement, making away with or secreting of those goods.

(2) In subsection (1)—

“foreign vessel” means a vessel that is not registered or is not capable of being registered;

“specified goods” means gold, silver, diamonds, jewels or precious stones where the true nature and value of those goods have not, at the time of shipment, been declared by the owner or shipper of those goods in the bills of lading or otherwise in writing.

PART X—PILOTAGE

Vessels to which this Part does not apply

182. In this Part, a reference to a vessel does not include a vessel which

- (a) a Government vessel; or
- (b) a vessel, or a vessel included in a class of vessels, specified in regulations made under paragraph 201(g).

Pilotage areas

183. The Minister may, after consulting the Marine Board, by order declare an area of Fiji waters, specified in the order, to be a pilotage area.

Compulsory pilotage areas

184.—(1) The Minister may, in respect of a pilotage area and after consulting the Marine Board, by order, declare that pilotage is compulsory in the whole or the part of that area specified in the order.

(2) The Minister shall specify in an order made by him under subsection (1) an area of water adjacent to the compulsory pilotage area to which the order relates to be the boarding ground in respect of that compulsory pilotage area.

Vessels required to take licensed pilots on board

185.—(1) Subject to subsection (2), before a vessel enters a compulsory pilotage area, the master of the vessel shall—

- (a) present the vessel at the boarding ground specified in respect of that compulsory pilotage area; and
- (b) give the vessel in pilotage charge to a licensed pilot.

Penalty: A fine not exceeding \$2,000

(2) Subsection (1) does not apply where the master of the vessel is an exempt person.

Circumstances in which vessels required to be under pilotage charge

186.—(1) Subject to subsection (2) and section 187, neither the owner nor the master of a vessel shall permit the vessel to ply in, move in (other than by warping) or leave a compulsory pilotage area unless a licensed pilot is in pilotage charge of the vessel.

Penalty: A fine not exceeding \$5,000

(2) Subsection (1) does not apply where the master of the vessel is an exempt person.

Licensed pilot not required in certain circumstances

187. Where—

(a) a vessel is in grave and imminent danger; or

(b) the life of a person on board a vessel is in danger,

and it is necessary in those circumstances that the vessel be immediately brought into, moved within or taken out of a compulsory pilotage area, that action may be taken without a licensed pilot being in pilotage charge of the vessel.

Pilotage licences

188.—(1) The Minister may, in respect of a pilotage area, by notice in the Gazette, determine the maximum number of pilotage licences that may be issued in respect of that area.

(2) Subject to subsection (1), the Marine Board may in respect of a pilotage area, issue a pilotage licence to a person who satisfies the Board that he is qualified to be in pilotage charge of a vessel in that area.

(3) The Marine Board shall specify in a pilotage licence the pilotage area in respect of which it is issued.

(4) A pilotage licence is not valid except in respect of the pilotage area in respect of which it is issued.

(5) A pilotage licence can be issued subject to any conditions the Marine Board thinks fit.

(6) The Marine Board shall endorse on a pilotage licence a note of any conditions subject to which it is issued.

(7) Where a pilotage licence is issued subject to conditions the person to whom the licence is issued shall not fail to comply with those conditions.

Penalty: A fine not exceeding \$2,000

Suspension of a pilotage licence

189.—(1) Where the Marine Board is of the opinion that a licensed pilot—

- (a) is unfit to discharge his duties as a licensed pilot because of incompetence, incapacity, or misconduct or for any other reason; or
- (b) has been seriously negligent in the discharge of his duties as a licensed pilot,

it may request the Minister to cause an inquiry to be held into the matter.

(2) Where the Minister agrees to a request made to him under subsection (1) the Marine Board may, if it thinks fit, suspend the pilotage licence of the licensed pilot in relation to whom the inquiry is to be held pending the outcome of the inquiry.

Inquiry into incompetence, etc. of a licensed pilot

190.—(1) Where the Minister agrees to a request made to him under subsection 189(1), the Chief Justice shall, on the request of the Minister, appoint a person appearing to the Chief Justice to be suitably qualified—

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

(2) A person appointed under subsection (1) shall conduct the inquiry with the assistance of one or more assessors of nautical and pilotage experience appointed conjointly by the Director and the person appointed under subsection (1).

(3) Subject to subsection (4), an inquiry under this section is to be conducted in the prescribed manner.

(4) A pilot in respect of whom an inquiry under this section is to be held must be given, by the person appointed under subsection (1) to hold the inquiry, at least 72 hours notice of the place, day and hour for the holding of the inquiry, and is entitled—

- (a) to attend the inquiry personally and also to be represented at the inquiry by a barrister and solicitor;
- (b) to be sworn and give evidence before the inquiry;
- (c) to subpoena and call witnesses;
- (d) to examine, cross examine and re-examine in accordance with the customary rules of courts of law all witnesses giving evidence before the inquiry;
- (e) to take all proper exceptions to the admissibility of evidence; and
- (f) at the conclusion of the inquiry or other proper time, to address the inquiry.

(5) The person holding an inquiry under this section and assessors appointed under subsection (2) may, for the purpose of the inquiry—

- (a) go on board any vessel where it is relevant to the inquiry to do so;
- (b) enter upon any wharf or installation within a pilotage area where it is relevant to the inquiry to do so;

- (c) require any person to answer questions relating to the subject matter of the inquiry; and
- (d) require the production of any document or certificate relevant to the inquiry.

(6) A person shall not—

- (a) hinder or obstruct a person carrying out an inquiry under subsection (1) or an assessor appointed under subsection (2);
- (b) fail to answer fully and truthfully a question put to him by a person acting in accordance with paragraph (5)(c); or
- (c) fail to produce a document or certificate he has in his possession or under his control when required to do so by a person acting in accordance with paragraph (5)(d).

Penalty: A fine not exceeding \$2,000

(7) A person holding an inquiry under this section shall, on the conclusion of his inquiry, make a written report on the inquiry to—

- (a) the Minister; and
- (b) the Marine Board.

(8) Where, after receiving a report under subsection (7), the Marine Board is satisfied as to any of the matters referred to in paragraph 189(1)(a) or (b), it may—

- (a) cancel the pilotage licence of the licensed pilot in respect of whom the inquiry was held; or
- (b) suspend that licence for such period as it considers appropriate, and shall inform the licensed pilot accordingly.

(9) Where, under subsection (8), a pilotage licence is—

- (a) cancelled; or
 - (b) suspended for a period exceeding 6 months,
- the holder of the licence may appeal to the Court against the decision within—

- (c) the period of 30 days starting on the date the Marine Board informs the licensed pilot of its decision in accordance with subsection (8); or
- (d) such extended period as the Court, on application made either before or after the period of 30 days referred to in paragraph (c), orders.

(10) On an appeal under subsection (9) the Court may—

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

(11) A decision of the Court under subsection (10) is deemed to be a decision of the Marine Board and has effect accordingly.

Production of pilotage licence

191. A licensed pilot who goes on board a vessel for the purpose of acting as pilot of the vessel shall produce his pilotage licence to the master of the vessel if requested to do so by that master.

Penalty: A fine not exceeding \$500

Pilotage Exemption Certificates

192.—(1) The Marine Board may, in respect of a pilotage area, issue a pilotage exemption certificate to a person who satisfies the Board that he is qualified to be in pilotage charge of a vessel in that area.

(2) The Marine Board shall specify in a pilotage exemption certificate the pilotage area in respect of which it is issued.

(3) A pilotage exemption certificate is not valid except in respect of the pilotage area in respect of which it is issued.

(4) A pilotage exemption certificate can be issued subject to any conditions the Marine Board thinks fit.

(5) The Marine Board shall endorse on a pilotage exemption certificate a note of any conditions subject to which it is issued.

(6) Where a pilotage exemption certificate is issued subject to conditions the person to whom the certificate is issued shall not fail to comply with those conditions.

Penalty: A fine not exceeding \$2,000

(7) The Marine Board may cancel a pilotage exemption certificate at any time.

Unqualified persons not to act as licensed pilot or exempt person

193.—(1) A person, not being a licensed pilot, shall not—

(a) hold himself out to be a licensed pilot; or

(b) be in pilotage charge of a vessel in respect of which a licensed pilot is required to be on board.

Penalty: A fine not exceeding \$2,000

(2) A person, not being an exempt person, shall not hold himself out as an exempt person.

Penalty: A fine not exceeding \$2,000

Misconduct by a licensed pilot

194.—(1) Subsection (2) applies where a licensed pilot or an exempt person—

(a) does an act which causes, or is likely to cause—

(i) the loss or destruction of or serious damage to a vessel; or

(ii) the death of or serious injury to a person on board a vessel; or

(b) fails to do anything required to be done by him to preserve—

(i) a vessel from loss, destruction or serious damage; or

(ii) any person on board a vessel from death or serious injury.

(2) A licensed pilot or an exempt person shall not perform an act referred to in paragraph (1)(a) or fail to do anything referred to in paragraph (1)(b)—

- (a) in a manner which amounts to a wilful breach or neglect of duty; or
- (b) when he is under the influence of alcohol or drugs.

Penalty: A fine not exceeding \$5,000

(3) A licensed pilot shall not, either within or outside the pilotage area for which he is licensed—

- (a) be concerned in any corrupt practice relating to a vessel, its tackle, furniture, cargo, crew, or passengers, or to persons in distress at sea or by shipwreck, or to their moneys, goods, or chattles;
- (b) lend his licence;
- (c) act as pilot when he knows his pilotage licence is suspended;
- (d) act as a pilot when in a state of intoxication;
- (e) employ on board a vessel he is piloting a boat, anchor, cable, or other store, matter, or thing beyond what is necessary for the service of that vessel, with intent to enhance the expenses of pilotage for his own gain or for the gain for any other person;
- (f) refuse, or wilfully delay, without reasonable cause, to pilot a vessel upon being required to do so by the master, the owner or agent of the vessel;
- (g) unnecessarily cut a cable belonging to a vessel;
- (h) refuse, otherwise than on reasonable ground of danger to the vessel, when requested by the master of the vessel, to conduct a vessel he is piloting into a port or place within the pilotage area in respect of which he is licensed; or
- (i) quit a vessel he is piloting before the service for which he was engaged has been performed and without the consent of the master of the vessel.

Penalty: A fine not exceeding \$2,000

Licensed pilot not civilly liable

195. A licensed pilot is not personally liable in civil proceedings—

- (a) for damage done by him; or
- (b) for loss suffered by a person as a result of an act done by him or of a failure to do anything required to be done by him,

while acting as a licensed pilot.

Presence of licensed pilot not to diminish responsibility of master

196.—(1) The duty of a licensed pilot is to pilot a vessel subject to the authority of the master of the vessel.

(2) The master of a vessel is not relieved of his responsibility for the conduct and navigation of the vessel by reason of the vessel being in pilotage charge of a licensed pilot.

Owner liable for damage

197. The owner of a vessel is liable for loss or damage caused by the vessel, as a result of a fault in the navigation of the vessel, notwithstanding that a licensed pilot was in pilotage charge of the vessel at the time the loss or damage was caused.

Civil liability for loss or damage

198. Neither the Government, nor the Marine Board is liable in civil proceedings for—

- (a) damage done by; or
 - (b) a loss suffered as a result of—
 - (i) an act done by; or
 - (ii) a failure to do anything required to be done by,
- a licensed pilot while acting as a licensed pilot.

Pilotage dues and charges for pilotage services

199.—(1) Pilotage dues and charges for pilotage services in respect of a vessel are payable in the prescribed manner.

(2) Pilotage dues and charges payable under subsection (1) are a debt due to the person to whom they are payable and may be sued for in a court of competent jurisdiction by that person.

Licensed pilot not to be taken to sea

200.—(1) Except in circumstances of unavoidable necessity, neither the owner nor the master of a vessel shall take a licensed pilot acting in the course of his duties to sea in the vessel beyond the limits of the area for which he is a licensed pilot.

Penalty: A fine not exceeding \$2,000

(2) If a licensed pilot is taken to sea—

- (a) in circumstances unavoidable necessity; or
- (b) without his consent,

the Marine Board shall assess the damages suffered by the licensed pilot as a result of that action and the amount so assessed shall be deemed to be a debt due to that pilot from both the owner and operator of the vessel and may be sued for in a court of competent jurisdiction by the pilot.

Pilotage Regulations

201. The Minister may make regulations not inconsistent with this Part prescribing all matters that are required or permitted by this Part to be prescribed, for the carrying out or giving effect to this Part, and in particular for prescribing—

- (a) the measures necessary to facilitate the boarding of vessels by pilots;
- (b) the manner of application for the issue of a pilotage licence or a pilotage exemption certificates;

- (c) the qualifications required by an applicant for the issue of a pilotage licence or a pilotage exemption certificate;
- (d) the issue of pilotage licences or pilotage exemption certificates;
- (e) the maintenance of the efficiency of licensed pilots or exempt persons;
- (f) health standards of licensed pilots and medical examination to be undergone by licensed pilots;
- (g) the vessels or classes of vessels that are exempt from the requirement to have licensed pilots on board; and
- (h) the procedure for and conduct of inquiries held under section 190.

PART XI—GENERAL

Appointment of shipping inspectors

202. The Director may appoint a person to be a shipping inspector.

Functions and powers of a shipping inspector

203.—(1) The Director may, by writing signed by him, authorise a shipping inspector to report to him—

- (a) upon the nature or cause of an accident or damage to a vessel;
- (b) as to whether or not this Act has been complied with; or
- (c) as to whether or not a vessel is fit to proceed to sea without serious danger to human life.

(2) Where a shipping inspector—

- (a) is required to report under subsection (1); or
- (b) has reasonable cause to believe that a vessel is being used in the commission of an offence against this Act,

he may do all or any of the following things, namely—

- (c) go on board a vessel, including a vessel under construction, and inspect the vessel or its equipment or any part of the vessel and its equipment, any cargo or articles on board the vessel and any document carried in or on the vessel pursuant to this Act;
- (d) enter premises and make such examination and investigation and require the production of such books and documents as he considers necessary for the performance of his duty;
- (e) require the owner or master of a vessel or a seaman on a vessel to produce any document in his possession or under his control relating to the crew of the vessel;
- (f) require the master of a vessel to produce a list of all persons on board the vessel;
- (g) require the master of a vessel to muster the crew of the vessel;
- (h) require the master of a vessel to give an explanation of any matter concerning the vessel or her crew.

(3) A shipping inspector shall not exercise any of his powers under subsection (2) so that the vessel is unreasonably detained or delayed.

(4) The Director shall issue to each shipping inspector an identification card containing—

- (a) a photograph of the inspector and the signature of the inspector, verified by the signature of the Director; and
- (b) a note of any limitations in the instrument of appointment of the inspector.

(5) Before a shipping inspector enters premises, boards a vessel or makes a requirement of a person under subsection (2), he shall, if requested to do so, produce his written authorisation from the Director and the identification card issued to him under subsection (4).

(6) A person shall not—

- (a) obstruct or hinder a shipping inspector in the exercise of his powers under subsection (2);
- (b) fail to produce books or documents in his possession or under his control when required to do so by a shipping inspector; or
- (c) fail to comply with a request made by a shipping inspector under paragraph (2)(f), (g) or (h).

Penalty: A fine not exceeding \$1,000

Persons deemed to be marine checkers

204. A person who is both a public officer and a surveyor shall, for the purposes of section 205, be deemed to be a marine checker.

Clearance of vessels by marine checkers, etc.

205.—(1) This section applies to a vessel—

- (a) which is a registered vessel; or
 - (b) in respect of which a licence is held to engage the vessel in the coasting-trade and the vessel is so engaged,
- and which is at a prescribed port or place in Fiji.

(2) A vessel to which this section applies shall not go to sea unless a marine checker at the prescribed port or place has issued in respect of the vessel a Marine Clearance in the prescribed form.

(3) Neither the owner nor the master of a vessel to which this section applies shall allow the vessel to go to sea from a prescribed port or place without the clearance required by subsection (2).

Penalty: A fine not exceeding \$1,000

(4) Where a marine checker has reasonable cause to believe that a vessel is being used in the commission of an offence against this Act (whether or not the vessel is at a prescribed port or place) he shall have and may exercise the powers of a shipping inspector under paragraphs 203(2)(e), (f), (g) and (h), and subsection 203(6), with appropriate modifications, shall apply accordingly.

Detention of a vessel

206.—(1) Where, under this Act, a vessel is liable to be detained the Director may, without warrant and with such assistance as he considers necessary, take or cause to be taken such action as he thinks necessary to detain that vessel.

(2) For the purpose of detaining a vessel under subsection (1) the Director may require any person to do or refrain from doing any specified act.

(3) A person shall not fail to comply with a requirement made of him under subsection (2).

Penalty: A fine not exceeding \$5,000

(4) A seaman who does or refrains from doing an act in pursuance of a requirement made of him under subsection (2) is not by virtue of his compliance with that requirement in breach of his agreement.

Special exemptions

207.—(1) Where this Act requires a vessel or person to take a specified action or to comply with a specified requirement and—

- (a) the action actually taken or the provision actually made as regards the subject matter of the requirement is at least as effective as actual compliance with the requirement;
- (b) compliance with the requirement would cause undue hardship; or
- (c) compliance with the requirement would not be in the public interest,

the Minister may, by notice in the Gazette, direct that the vessel or person shall not be required to take the specified action or to comply with the specified requirement.

(2) The Minister shall lay before Parliament, at least once in each year, a report stating the cases and circumstances in which he has exercised his power under subsection (1) during the preceding year.

Break or injury to submarine cable or pipeline

208.—(1) Subject to subsection (2), a person shall not wilfully, or through negligence—

- (a) break or injure, or cause a vessel to break or injure, a submarine telegraph or telephone cable in such manner as might interrupt or obstruct telegraphic or telephonic communications; or
- (b) break or injure, or cause a vessel to break or injure, a submarine pipeline or a submarine high-voltage power cable.

Penalty: A fine not exceeding \$1,000 or imprisonment for a term not exceeding 6 months or both

(2) It is not an offence under subsection (1) if—

- (a) the breakage of, or injury to, the cable or pipeline was caused by

- persons acting with the sole object of saving their lives or their vessels; and
- (b) those persons took all necessary precautions to avoid breaking or injuring the cable or pipeline.

Vessels wrecked

209.—(1) In this section and section 211, unless the contrary intention appears—

“owner” in relation to a vessel wrecked, means a person to whom the vessel wrecked—

- (a) belongs;
- (b) belonged at the time at which it became a vessel wrecked; or
- (c) has belonged at any time after the time at which it became a vessel wrecked;

“vessel” includes part of a vessel and any item of tackle, equipment, cargo, stores or ballast of, or belonging to, a vessel;

“vessel wrecked” means a vessel that—

- (a) is wrecked, stranded, sunk or abandoned; or
- (b) is lying on the sea-bed within the territorial seas of Fiji, and includes a wreck.

(2) Where, in respect of a vessel wrecked, the Minister is of the opinion that—

- (a) it is, or is likely to be or become, an obstruction or danger to navigation; or
 - (b) it is in the public interest to do so,
- he may do all or any of the following things, namely—
- (c) serve a notice on the owner of the vessel wrecked requiring him to raise, remove or destroy the vessel within the time specified in the notice, or to light or buoy the vessel until it is raised, removed or destroyed;
 - (d) where the owner of a vessel wrecked fails to comply with the requirements of a notice served on him under paragraph (2)(c)—
 - (i) remove, destroy or deal with the vessel wrecked in such manner as he thinks fit; or
 - (ii) sell, in such manner as he thinks fit—
 - (A) the vessel or any part of it so raised or removed; and
 - (B) any other property recovered in the raising or removal, and, out of the proceeds of sale, pay, after deduction of any expenses incurred by him, the net proceeds of the sale to the persons entitled to them;
 - (e) recover from the owner, as a debt due to the Government, any and all expenses incurred by him in the lighting, buoying, raising, removal or destruction of the vessel wrecked and not recovered from the proceeds of any sale under paragraph (d).

(3) Subject to subsection (4), where, after reasonable enquiry, the Minister is unable to ascertain the identity or place of abode of the owner of

a vessel wrecked, notice for the purposes of paragraph (2) (c) and (d) shall be deemed to have been served on the owner of the vessel wrecked if the Minister publishes the notice in the Gazette.

(4) Notice served in accordance with subsection (4) must state—

- (a) any action the Minister intends to take under paragraph (2)(d); and
- (b) the period (not being less than 14 days after the date of the publication of the notice) after which he intends to take that action.

(5) The powers given to the Minister under this section for the removal of vessels wrecked are in addition to and not in derogation of any other powers given in respect of vessels wrecked under this or any other law.

Sinking of hulks

210.—(1) In this section “hulk” includes any vessel, lighter or wreck

(2) A person shall not, without the permission of the Director deliberately sink or cause to be sunk a hulk within Fiji waters.

Penalty: A fine not exceeding \$5,000

(3) A person who wishes to sink a hulk within Fiji waters must make written application for permission to do so to the Director.

(4) The Director in granting permission to sink a hulk within Fiji water may direct or specify—

- (a) a place or places at which the hulk may not be sunk;
- (b) a place at which alone the hulk may be sunk;
- (c) the minimum depth of water in which the hulk may be sunk
- (d) the method of sinking the hulk;
- (e) the time at which the hulk is to be sunk;
- (f) that the hulk be not sunk except in the presence of the Director or person appointed by the Director to witness the sinking of the hulk

(5) A person given permission to sink a hulk by the Director shall comply with or observe any directions or specifications imposed by the Director under subsection (4).

Penalty: A fine not exceeding \$5,000

Prohibition on approaching dangerous wrecks

211.—(1) Where the Director is satisfied that—

- (a) because of any thing contained within a vessel wrecked, the vessel wrecked is in a condition which makes it a potential danger to life or to property; and
- (b) the vessel wrecked ought to be protected from unauthorised interference.

he may, by notice in the Gazette, declare an area around the vessel to be prohibited area.

- (2) A notice under subsection (1) must contain a description of—
- (a) the vessel wrecked;
 - (b) the place where that vessel is; and
 - (c) the extent of the area declared to be a prohibited area.

(3) Subject to subsection (4) a person shall not, without the written authority of the Director, enter an area declared to be a prohibited area in accordance with subsection (1).

Penalty: A fine not exceeding \$1,000

(4) It is not an offence under subsection (3) if the person entered the prohibited area—

- (a) in pursuance of some duty or function imposed on him by law; or
- (b) out of necessity due to stress of weather or navigational hazard.

Regulations

212.—(1) The Minister may make regulations not inconsistent with this Act prescribing all matters that are required or permitted by this Act to be prescribed or that are necessary or convenient to be prescribed, for the carrying out or giving effect to this Act, and in particular for—

- (a) regulating or prohibiting the discharge of polluting matter from vessels including prescribing areas of Fiji waters where such matters may or may not be discharged;
- (b) prescribing the manner of doing, and the fees payable in respect of, any matter or thing that is required or permitted to be done under this Act;
- (c) prescribing forms to be used for or in connection with this Act;
- (d) prescribing the means by which, and the conditions subject to which, a vessel or a class of vessel may be exempted from compliance with the regulations or any provision of the regulations;
- (e) specifying penalties not exceeding—
 - (i) where the offender is a natural person—a fine not exceeding \$5,000 or imprisonment for a term not exceeding 2 years or both; or
 - (ii) where the offender is a body corporate—a fine not exceeding \$20,000,
 for a contravention of, or a failure to comply with the regulations.

(2) The Minister may make regulations for or in respect of any savings or transitional matter connected with the coming into force of this Act.

Regulations, etc. in respect of nuclear vessels

213.—(1) The Minister may make regulations for ensuring that nuclear vessels do not cause unreasonable radiation or other nuclear hazards to the crews or passengers of those vessels, or to other persons, or to any waterways or food or water resources.

(2) Without limiting the generality of subsection (1), the regulations that may be made by virtue of that subsection include regulations—

- (a) making provision for or in relation to the preparation and the maintaining, in respect of nuclear vessels registered in Fiji, of a Safety Assessment, that is to say, a document setting out prescribed information with respect to the vessel and its power plant to enable an assessment to be made from time to time of the safety of the vessel and of its power plant for the purpose of ensuring that there is no unreasonable radiation or other hazard to the crew or passengers of the vessel or to other persons, or to waterways or food or water resources;
- (b) making provision for or in relation to the preparation and the maintaining, in respect of a nuclear vessel registered in Fiji, of an Operating Manual, that is to say, a document setting out prescribed information with respect to the operation of the power plant of the vessel;
- (c) specifying requirements to be complied with in relation to a nuclear vessel before it enters a port in Fiji, including the giving of notice that the vessel proposes to enter the port, the furnishing of prescribed information and the production of the Safety Assessment of the vessel, or of a document that is issued by the government of another country in respect of the vessel and corresponds with a Safety Assessment; and
- (d) requiring the giving of notice by the master of a nuclear vessel of any accident causing, or likely to cause, the existence of a hazard on, or in vicinity of, the vessel.

(3) The owner or the master of a nuclear vessel shall not permit the vessel to enter Fiji unless a person authorized by the Minister for the purposes of this subsection has informed the owner or master of the vessel that he is satisfied as to the safety of the vessel with respect to radiation and other nuclear hazards.

Penalty—(a) where the offender is a natural person—a fine not exceeding \$5,000 or imprisonment for a term not exceeding 2 years or both; or

(b) where the offender is a body corporate—a fine not exceeding \$50,000.

(4) In this section “nuclear vessel” means a vessel provided with a nuclear power plant.

Delegation by the Director

214.—(1) The Director may, by writing signed by him, delegate all or any of his powers and functions under this Act (except this power of delegation).

(2) A delegation under subsection (1) may be made subject to such conditions, exceptions or qualifications as are specified in the instrument of delegation.

(3) A delegation under subsection (1) is revocable, in writing, at will, and does not affect the exercise of a power or the performance of a function by the Director.

Minister, etc. to have seal

215.—(1) For the purposes of this Act—

- (a) the Minister;
- (b) the Director;
- (c) the Registrar; and
- (d) the Marine Board,

are each to have a seal, the design of which is to be approved by the Minister in writing.

(2) All courts or other persons acting judicially shall take judicial note of a seal referred to in subsection (1).

PART XII—LEGAL PROCEEDINGS

Government vessels not subject to certain proceedings

216.—(1) This Act does not—

- (a) authorise proceedings *in rem* in respect of a claim against the Crown for the arrest, detention or sale of a Government vessel; or
- (b) give a person a right to take a lien on a Government vessel or on cargo or other property belonging to the Crown.

(2) Where proceedings *in rem* have been instituted in a court against a Government vessel or cargo or other property belonging to the Crown, the court may, if satisfied that the proceedings were instituted in the reasonable belief that the vessel was not a Government vessel or the cargo or other property did not belong to the Crown, order, upon such terms as it thinks fit, that the proceedings shall be treated as if they were *in personam* duly instituted against the Government or against such person as the court regards as the proper person to be sued in the circumstances.

False declaration as to ownership, etc.

217.—(1) A person shall not, in a declaration made under or for the purposes of this Act, or in a document required to be produced for the purposes of this Act—

- (a) wilfully make or assist in making, or procure to be made a false statement concerning the title to, ownership of, or the interest existing in, a vessel; or
- (b) utter, produce or make use of a declaration or document containing a false statement, knowing the statement to be false.

Penalty: A fine not exceeding \$5,000 or imprisonment for a term not exceeding 2 years or both

(2) A person shall not in a declaration made under or for the purposes of this Act, wilfully make a false statement in relation either to his being a

qualified person or a Fiji person or to another person being a qualified person or a Fiji person.

Penalty: A fine not exceeding \$5,000 or imprisonment for a term not exceeding 2 years or both

False declarations and statements

218. A person shall not knowingly—

- (a) make a false declaration, statement or representation;
- (b) give false evidence on oath; or
- (c) alter, produce or make use of a false declaration, statement or representation,

in connection with an application, report, record or proceeding under this Act.

Penalty: A fine not exceeding \$2,000 or imprisonment for a term not exceeding 12 months or both

Mode of making declaration

219.—(1) A declaration required by this Act may be made before the Director, a delegate of the Director, the Registrar, a delegate of the Registrar, a Justice of the Peace, a Commissioner for Affidavits or a Proper Officer.

(2) A declaration required by this Act may be made on behalf of a corporation by any person so authorised under the common seal of that corporation.

Service of notices and documents

220. Where a notice or other document authorised or required by this Act is to be served upon or given or delivered to the master of a vessel, it can be served upon, given or delivered to him—

- (a) by leaving it for him on board the vessel with a person being or appearing to be in command or charge of the vessel; and
- (b) by explaining to that person the purport of the notice or document.

Declaration as to application of treaties

221.—(1) In this section—

“country” includes Fiji;

“treaty” means—

- (a) a convention or other treaty;
- (b) a protocol, proces-verbal or other document relating to such a convention or treaty; or
- (c) a rule, regulation or other instrument under, or annex to, such a convention, treaty, protocol, proces-verbal or other document.

(2) The Minister may, by order, declare—

- (a) that a country specified in the order has—

- (i) ratified, accepted, approved or acceded to a treaty; or
- (ii) ratified, accepted, approved or acceded to a treaty subject to reservations specified in the order,
as the case may be, and that the treaty has, or will, come into force or has, or will, come into force subject to those reservations, as the case may be, in respect of that country on a date specified in the order; or
- (b) that a country specified in the order has denounced a treaty and that that denunciation has taken, or will take, effect on a date specified in the order.

Proof of documents

222.—(1) All certificates or other documents (including endorsements on certificates or other documents) to which this section applies are admissible in evidence in the manner provided by section 223.

- (2) This section applies to the following documents, namely—
 - (a) a certificate or other document issued, granted, given or made under this Act or purporting to be issued, granted, given or made under this Act and signed, or purporting to be signed, by a person required or authorised by this Act to issue, grant, give or make such a certificate or document;
 - (b) an endorsement made, or purporting to be made, under this Act and signed, or purporting to be signed, by a person required or authorised by this Act to make such an endorsement;
 - (c) a certificate given or made by the Registrar asserting the negative of any circumstance, fact or thing;
 - (d) a certificate signed by the Minister as to the authenticity of a document purporting to set out the text of a treaty (as defined by subsection 221(1)); and
 - (e) an order under subsection 221(2).

Admissibility of documents in evidence

223.—(1) Where a certificate or other document is by this Act declared to be admissible in evidence it is, on its production from proper custody, admissible in evidence in any court, and, subject to all just exceptions, is conclusive evidence of the matters stated in it.

(2) A copy of a certificate or other document referred to in subsection (1) or an extract from such a certificate or document is also admissible in evidence—

- (a) if proved to be an examined copy or extract; or
- (b) if it purports to be signed and certified as a true copy or extract by the officer or person to whom custody of the certificate or other document is entrusted.

(3) A person who is required or authorised by this Act to issue, grant, give or make a certificate or other document, shall furnish a certified copy

of the certificate or document to any person applying at a reasonable time for a certified copy or certified extract.

Averment

224. In proceedings for an offence against this Act an averment by the prosecutor contained in the information or complaint that at a specified time—

- (a) a specified person was a delegate of the Minister or the Registrar or the Director;
- (b) a specified person was a shipping officer, a surveyor, a shipping inspector or a marine checker;
- (c) a specified person was or was not the holder of a specified licence or certificate;
- (d) a specified safety, load line or survey certificate was or was not in force in respect of a specified vessel.

is *prima facie* evidence of the matter averred.

Recovery of fines by distress

225. Where—

- (a) a court adjudges a person convicted of an offence against this Act to pay a fine or any other money, and that person is the master of a vessel or the owner of a vessel; and
- (b) the fine or other money is not paid within the time and in the manner limited by the conviction or specified in the order of the court,

the court may, 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 vessel or the equipment of the vessel, as the case requires.

Limitation of actions

226.—(1) An action is not maintainable—

- (a) to enforce a claim or lien against a vessel or its owners in respect of any damage or loss to another vessel, its cargo or freight, or any property on board the vessel, or damage for loss of life or personal injuries suffered by any person on board the vessel, caused by the default of the former vessel, whether that vessel was wholly or partly in fault; or
- (b) in respect of any salvage services,

unless proceedings in that matter are commenced within 2 years from the date when the damage or loss or injury was caused or the salvage services were rendered.

(2) An action is not maintainable under this Act to enforce any contribution in respect of an over-paid proportion of any damages for loss of life or personal injuries unless proceedings in that matter are commenced within one year from the date of payment.

(3) A court having jurisdiction to deal with an action to which this section relates may, in accordance with the rules of court, extend any period mentioned in this section to such an extent and on such conditions as it thinks fit, and shall, if satisfied that there has not during such period been any reasonable opportunity of arresting the defendant ship (not being a Government ship) within Fiji waters, or within the territorial waters of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his principal place of business, extend any such period to an extent sufficient to give such reasonable opportunity.

(4) For the purposes of this section, the expression "freight" includes passage money and hire, and reference to damage or loss caused by the fault of a vessel shall be construed as including references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

PART XIII—REPEAL AND TRANSITIONAL

Repeals and transitional provisions

227.—(1) Subject to subsection 228(2), the following Acts are repealed—

- (a) the Merchant Shipping Act;
- (b) the Harbour Act;
- (c) the Marine Board Act;
- (d) the Coasting Act;
- (e) the Pilotage Act;
- (f) the Sinking of Hulks Act;

together with all subsidiary legislation made under those Acts.

(2) A certificate, licence, instrument or document having a like or a similar effect to a—

- (a) registration certificate;
- (b) certificate of competency;
- (c) certificate of satisfactory service;
- (d) safety certificate;
- (e) survey certificate;
- (f) coasting-trade licence or permit; or
- (g) a pilot licence,

in force immediately prior to the appointed day remains in force—

- (h) for a period of 1 year from the appointed day; or
- (i) until the date of the expiration of that certificate, licence, instrument or document,

whichever is the earlier.

Automatic registration of certain vessels, etc.

228.—(1) A vessel that—

- (a) was, immediately before the appointed day, registered at a port in Fiji in accordance with the Merchant Shipping Act; and

(b) is wholly owned by a qualified person or by persons each of whom is a qualified person,
shall immediately on receipt by the Registrar of an application by its owner or owners, as the case may be, be deemed to be a registered vessel, and the Registrar shall in that case issue a registration certificate in respect of the vessel and cause the name of the vessel to be entered in the Register.

(2) Notwithstanding subsection 227(1), the Merchant Shipping Act shall continue to apply to and in respect of a vessel referred to in subsection (1) until—

- (a) the vessel is registered under this Act; or
- (b) the expiration of a period of 1 year after the appointed day, whichever first occurs.

Transitional provision in respect of tonnage certificates

229. Until regulations are made prescribing the manner in which the tonnage of a vessel is to be ascertained for the purpose of section 21, the tonnage of a vessel may, if the Registrar so approves in a particular case, be taken to be the tonnage of the vessel as ascertained in, and evidenced in writing in a form generally recognised in, another country, unless, in the opinion of the Registrar, the vessel has been altered since the tonnage of the vessel was so ascertained.

Transitional provisions in respect of the former Fiji Marine Board

230.—(1) In this section—

- “the former Marine Board” means the Fiji Marine Board established by section 3 of the repealed Act;
- “the repealed Act” means the Marine Board Act.

(2) All real and personal property vested in the former Marine Board immediately before the appointed day is, by this Act, vested in the Crown and all rights, obligations and liabilities of the former Marine Board subsisting immediately before the appointed day are, by this Act, made rights, obligations and liabilities of the Crown.

(3) The persons who comprised the former Marine Board immediately before the appointed day are deemed to have been appointed members of the Marine Board established by this Act in accordance with paragraph 56(1)(b) of this Act.

(4) The person holding office as the secretary to the former Marine Board immediately before the appointed day is the secretary to the Marine Board established by this Act as if he had been appointed to that office on the appointed day in accordance with section 42 of the Interpretation Act.