



I assent.

[L.S.]

G. K. CAKOBANU,

Governor-General.

7th March, 1974.

AN ACT

TO AMEND THE HARBOUR ORDINANCE

[8th March, 1974]

ENACTED by the Parliament of Fiji—

1. This Act may be cited as the Harbour Ordinance (Amendment) Act, 1974. Short title.
2. The Harbour Ordinance, hereinafter referred to as the Ordinance, is amended by inserting the following Part immediately before Part IX:— Insertion of Part VIII A in Chapter 160.

" PART VIII A—DISCHARGE OR SPILLAGE OF PETROLEUM PRODUCTS

Offence of
discharging or
spilling
petroleum
products.

33A.—If any petroleum product is discharged or deposited as mentioned in paragraphs (a), (b), (c), (d) and (e) of this section into the sea within the seaward limits of the territorial waters of Fiji, or either into any other water (including inland waters) or onto land anywhere in Fiji in a manner which makes it likely that some of it will be carried or washed or in any other manner be discharged into the sea within the seaward limits of the territorial waters of Fiji, then, subject to the provisions of the next succeeding section, the following shall be guilty of an offence under this section, that is to say:—

- (a) if the discharge or deposit is from a vessel, the owner and/or the master of the vessel, unless either of them shows that the discharge or deposit took place and was caused as mentioned in paragraph (b) of this section;
- (b) if the discharge or deposit is from a vessel but takes place in the course of a transfer of any petroleum product to or from another vessel or a place on land and is caused by the act or omission of a person in charge of any apparatus in that other vessel or that place, the owner and/or master of that other vessel or, as the case may be, the occupier of that place;
- (c) if the discharge is from a place on land, the occupier of that place unless he proves that the discharge was caused as mentioned in paragraph (d) of this subsection;
- (d) if the discharge is from a place on land and is caused by the act of a person who is in that place without the permission (express or implied) of the occupier, that person;
- (e) if the discharge takes place otherwise than as mentioned in the preceding paragraphs of this subsection and is the result of any operations for the exploration of the sea-bed and sub-soil or the exploitation of their natural resources, the person carrying on the operations.

Special defences against charges under section 38a.

38B.—(1) Where a person is charged with an offence under the last preceding section, it shall be a defence to prove—

- (a) that the petroleum product in question was discharged for the purpose of saving life;
- (b) that the petroleum product escaped in consequence of damage to a vessel not due to the wilful default or neglect of the master or other the person in charge of the vessel, and that as soon as practicable after the damage occurred all reasonable steps were taken for preventing, or (if it could not be prevented) for stopping or reducing, the escape of the petroleum product; or

- (c) that the petroleum product escaped by reason of leakage, that neither the leakage nor any delay in discovering it was due to any want of reasonable care, and that as soon as practicable after the escape was discovered all reasonable steps were taken for stopping or reducing it.

(2) Where a person is charged with an offence under the last preceding section as the occupier of a place on land from which any petroleum product is alleged to have escaped, it shall be a defence to prove that neither the escape of the petroleum product nor any delay in discovering it was due to any want of reasonable care, and that as soon as practicable after the escape was discovered all reasonable steps were taken for stopping or reducing it.

(3) Where any petroleum product is alleged to have escaped and a person is charged with an offence under the last preceding section as a person carrying on operations for the exploration of the sea-bed or sub-soil or the exploitation of their natural resources, it shall be a defence to prove that neither the escape nor any delay in discovering it was due to any want of reasonable care and that as soon as practicable after it was discovered all reasonable steps were taken for stopping or reducing it.

Safety measures to be taken by vessels in connection with petroleum products.

38c. The owner and/or master of any vessel engaged in loading or discharging any petroleum product or of any vessel engaged in repairing, refitting or fitting out operations shall at all times—

- (a) have at hand or cause to be available and ready for immediate use such sufficient equipment, materials and labour as is necessary, or as the Director of Marine shall direct, to facilitate the rapid containment and dispersal of any spillage of any petroleum product occurring from any such vessel; and
- (b) take and carry out all such other precautions as the Director of Marine shall direct for the prevention of and for the containment of spillage of any petroleum product from such vessel:

Provided that the Director of Marine may in his absolute discretion exempt in writing the owner and/or master of any vessel from having to comply with any or all of the provisions of this section.

Penalties and general provisions relating to discharging and spilling of petroleum products.

38D.—(1) A person guilty of an offence under section 38A of this Ordinance shall be liable to a fine not exceeding \$20,000.

(2) A person guilty of an offence under section 38c of this Ordinance shall be liable to a fine not exceeding \$200.

(3) In the event of any spillage of any petroleum product occurring the Director of Marine may take all such actions and steps he considers to be necessary to clear the spillage and to prevent it from spreading into or in the sea within the seaward limits of the territorial waters of Fiji and the cost of all such actions and steps shall be recoverable from every person responsible for the spillage whether or not any prosecution is brought against any person under the provisions of this Part of this Ordinance.

(4) Notwithstanding anything contained in any other written law, magistrates' courts presided over by first class magistrates shall have jurisdiction to impose any fine, without limit, that may be imposed on any person convicted of an offence under this Part of this Ordinance.

(5) Subject to the last preceding subsection, for the avoidance of doubt, all the provisions of the Criminal Procedure Code relating to proceedings in any court and in particular the power of magistrates' courts before which charges are brought under this Part of this Ordinance to award compensation, without limit of amount, shall where appropriate apply *mutatis mutandis* to proceedings brought under this Part of this Ordinance.

(6) Where a fine imposed or compensation awarded by any court in proceedings against the owner or master of a vessel for an offence under this Part of this Ordinance is not paid at the time ordered by the court, that court shall, in addition to any other powers for enforcing payment it may otherwise have, also have power to direct that the amount remaining unpaid shall be levied by distress or pouding and sale of the vessel, her tackle, furniture and apparel, and of any other vessel or property of the owner of the vessel.

Special definitions relating to Part VIII.

38E. For the purposes of this Part of this Ordinance, unless the context otherwise requires—

“petroleum product” means any type or kind of petroleum and includes any oil (including lubricating oil), spirit or matter derived wholly or in part from petroleum, shale, coal, peat, bitumen or any similar substance, and any matter which contains any particle of any such oil, spirit or matter;

“place on land” includes anything resting on the bed or shore of the sea, or of any other waters, and also includes anything afloat (other than a vessel) if it is anchored or attached to the bed or shore of the sea or of any such waters;

“occupier”, in relation to any place on land, if it has no occupier, means the owner thereof, and, in relation to a railway wagon or road vehicle standing on any such place, means the person in charge of or the owner of the wagon or vehicle and not the occupier of the place on which the wagon or vehicle stands.”.

3. Section 39 of the Ordinance is amended by—

- (a) inserting the figure in brackets “(1)” at the commencement;
- (b) deleting the words and commas “ballast, rock, stone, slate, shingle, gravel, sand, earth, cinders, sawdust, mill-refuse, dead animal or other” in the second, third and fourth lines of paragraph (a) of subsection (1);
- (c) deleting the word “such” in the first line of paragraph (b) of subsection (1); and
- (d) inserting the following subsection immediately after subsection (1):—

“(2) Whenever any person, other than the master and/or owner of the vessel, commits an offence under the provisions of paragraph (a) of the last preceding subsection from on board a vessel, the master and/or the owner of that vessel shall, whether or not such other person is charged with or found guilty of an offence, also be liable for the same offence and shall on conviction be liable to a fine not exceeding one hundred dollars, in addition to the expenses referred to in the last preceding subsection if such expenses have not already been recovered.”.

Amendment of section 39.

Harbour (Amendment)—3 of 1974

Passed by the House of Representatives this thirteenth day of February in the year of our Lord one thousand, nine hundred and seventy-four.

Passed by the Senate this twenty-sixth day of February, in the year of our Lord one thousand, nine hundred and seventy-four.