



I assent.

[L.S.]

K. K. T. MARA  
President

[19 March 1999]

## AN ACT

### TO AMEND THE PORTS AUTHORITY OF FIJI ACT

ENACTED by the Parliament of the Fiji Islands—

*Short title*

1.—(1) This Act may be cited as the Ports Authority of Fiji (Amendment) Act 1999.

(2) In this Act, “principal Act” means the Ports Authority of Fiji Act (Cap.181).

*Commencement*

2. This Act comes into force on a date to be appointed by the Minister by notice in the *Gazette*.

*Long title*

3. The principal Act is amended by deleting the long title and substituting the following long title—

“AN ACT TO ESTABLISH THE MARITIME AND PORTS AUTHORITY OF THE FIJI ISLANDS, TO MAKE PROVISION FOR THE SAFE AND EFFICIENT MAINTENANCE AND MANAGEMENT OF MARITIME AND PORT SERVICES AND FACILITIES AND FOR COMPLIANCE WITH CERTAIN INTERNATIONAL MARITIME CONVENTIONS; AND FOR RELATED MATTERS”.

*Short title of principal Act*

4. Section 1 of the principal Act is amended by deleting "Ports Authority of Fiji" and inserting "Maritime and Ports Authority of the Fiji Islands".

*Interpretation*

5. Section 2 of the principal Act is amended—

- (a) in the definition of "Authority" by deleting "Ports Authority of Fiji" and inserting "Maritime and Ports Authority of the Fiji Islands";
- (b) in the definition of "Chairman" by adding "Board of the" before "Authority"
- (c) by inserting after the definition of "Chairman" the following definition—  
     "Chief Executive' means the Chief Executive of the Authority appointed under section 20";
- (d) by deleting the definition of "Director-General";
- (e) by inserting after the definition of "dues" the following definition—  
     "'Fiji' or 'Fiji Islands' means the Republic of the Fiji Islands";
- (f) by deleting the definition of "'financial year' and substituting the following definition—  
     "'financial year' means the period from 1st April to 31st March inclusive or any other period determined by the Minister";
- (g) in the definition of "member" by inserting "Board of the" before "Authority";
- (h) by inserting after the definition of "member" the following definition—  
     "'Minister' means the Minister responsible for maritime matters;
- (i) by inserting after the definition of "rates" the following definition—  
     "'Safety Convention' has the same meaning as in the Marine Act 1986;"

*New sections 2A and 2B*

6. The principal Act is amended by inserting after section 2 the following sections—

*"Inconsistency with Public Enterprise Act*

2A. If there is an inconsistency between this Act and the Public Enterprise Act 1996, the Public Enterprise Act prevails to the extent of the inconsistency.

*Application of Commerce Act*

2B. The Minister may delegate conditionally or unconditionally to the Commerce Commission the power to impose, modify or revoke conditions in respect of licences (within the meaning of the Fair Trading Decree) granted under this Act."

*Declaration of Ports and Approaches*

7. Section 3 of the principal Act is amended in subsection (1) by inserting “and the Marine Board” after “Authority”.

*Replacement of Part II*

8. The principal Act is amended by repealing Part II and inserting the following Part—

“Part II—ESTABLISHMENT AND MEMBERSHIP OF AUTHORITY

*Establishment of Authority*

4.—(1) This section continues an Authority known as the Maritime and Ports Authority of the Fiji Islands, which is a body corporate with perpetual succession and a common seal and, until any action is taken in respect of it under section 75 of the Public Enterprise Act 1996, remains a Commercial Statutory Authority to which that Act applies.

(2) The Authority is the same body as the Ports Authority of Fiji.

(3) The Authority may enter into contracts and sue and be sued in its corporate name and has the power to acquire, hold and dispose of land and other property, and generally to do all such acts and things as are necessary for or incidental to the performance of its functions under this Act or any other written law.

*Membership of Authority's Board*

5. The Board of the Authority consists of a Chairman and not more than 6 other members, all of whom are appointed by the Minister.

*Tenure of office*

6. Members of the Board of the Authority hold office for such period and on such terms as the Minister decides.

*Vacation of office*

7. The office of a member becomes vacant if he or she is removed from office by the Minister.

*Appointment to fill vacancy*

8. If any member of the Board of the Authority dies or resigns or if the office is vacated in any way before the expiry of the term for which the member was appointed, the Minister may appoint another person to fill the vacancy and to hold office until the date when the appointment of the person in whose place the member was appointed would have expired.

*Remuneration*

9. Members of the Board of the Authority are entitled to be paid out of its funds such fees, allowances and expenses as the Minister approves.”.

*Functions of Authority*

9.—(1) Section 10 of the principal Act is amended by adding at the end the following paragraphs—

“(g) to ensure compliance with conventions relating to maritime matters which apply to the State;

(h) to ensure the proper administration of this Act, the Marine Act 1986 and any other Act so far as it relates to the Authority and the Chief Executive.”

(2) Section 10 of the principal Act is amended by adding, after the paragraphs added by subsection (1), the following subsections—

“(2) The Authority is not required to perform any function which is to be performed by any Government Commercial Company to which the Public Enterprise Act 1996 applies; but the Authority has the duty to ensure that the function is being properly performed.

(3) Functions under this Act must be performed at a reasonable cost; and for that purpose a cost is a reasonable cost if the value of the cost to the State as a whole is equalled or exceeded by the value of the resulting benefit to the State as a whole.

(4) In this section and in section 11 ‘port’ is not limited to a port declared under section 3, but includes any place at which passengers or cargo may be embarked or disembarked, loaded or unloaded onto or from any vessel.”

*Powers of Authority*

10.—(1) Section 11 of the principal Act is amended—

(a) in paragraph (b) of subsection (1) by inserting, “ licence” after “bond”; and

(b) in subsection (2) by adding at the end “but must be exercised in accordance with and in furtherance of any Reorganisation Charter for the time being in force under the Public Enterprise Act 1996.”

(2) Section 11 of the principal Act is amended by adding after subsection (3) the following subsection—

“(4) The Authority must not exercise a power to provide any service or conduct any undertaking described in paragraph (d), paragraph (f), paragraph (h) or paragraph (j) of subsection (1) where that service or undertaking is being provided or conducted by any Government Commercial Company to which the Public Enterprise Act 1996 applies (or any other person) unless the Authority has, by resolution, and with the approval of the Minister, determined that it is appropriate for it to do so for the orderly or efficient conduct of business at that port or the provision of the service.”

*Replacement of section 13*

11. The principal Act is amended by repealing section 13, and substituting the following section—

*“Power of Minister to give directions*

13. The Minister may, with the approval of Cabinet, give to the Authority, the Chief Executive, or the Port Master general or special directions, not inconsistent with the provisions of this Act, as to the policy to be followed in the performance of any of their functions under this Act in relation to any matter appearing to the Minister to affect the interests of the State as a whole, and the Authority, Chief Executive or Port Master as the case may be, must give effect to any direction so given.”.

*New section 13A*

12. The principal Act is amended by inserting after section 13 the following subsection—

*“No State liability*

13A The State is not liable for the acts or omissions of the Authority.”.

*Meetings*

13. Section 14 of the principal Act is amended—

- (a) in subsection (1) by deleting “Director-General” and substituting “Chief Executive”;
- (b) in subsection (2) by deleting “Director-General” and substituting “Chief Executive” in both places where it occurs.

*Procedure at meetings*

14. Section 15 of the principal Act is amended by inserting after subsection 4 the following subsection—

“(4A) Meetings may be held by telecommunications means, and not in person, provided all members are able to participate.”.

*Execution of documents, etc.*

15. Section 16 of the principal Act is amended—

- (a) in subsection (1) by deleting “Director-General” and substituting “Chief Executive”;
- (b) in subsection (2) by deleting “Director-General” and substituting “Chief Executive”.

*Replacement of Part VI*

16. The principal Act is amended by repealing Part VI and inserting the following Part—

## “Part VI—CHIEF EXECUTIVE

*Chief Executive*

- 20.—(1) There must be a Chief Executive who is to be appointed by the Board of the Authority by notice in the *Gazette*.
- (2) The Chief Executive must obtain the permission of the Authority to hold any other office or employment, whether remunerated or not, other than an office as member of any board, committee or commission established by the Government.
- (3) The Chief Executive is entitled to such salary as is determined from time to time by the Higher Salaries Commission.
- (4) Every reference in any Act, decree, regulation or register or other public or private document to the Director of the Maritime and Ports Authority of the Fiji Islands or the Director of the Ports Authority of Fiji is to be read as a reference to the Chief Executive.

*Powers of the Chief Executive*

- 21.—(1) The Chief Executive is—

- (a) responsible to the Board of the Authority for the execution of its policies;
- (b) subject to the provisions of this Act and to any resolution passed at a meeting of the Board of the Authority, authorised to do all things necessary or convenient to be done in connection with, or incidental to, the performance of his duties under this Act or any other written law and, in particular, and without limiting the generality of the foregoing, he has—
- (i) the power to enter into contracts on behalf of the Authority;
- (ii) in any case of emergency, the power to direct the execution of any work or the doing of any act which the Authority is empowered to execute and do and which the Chief Executive is not by the provisions of this Act expressly empowered to execute or do and the immediate execution or doing of which is, in his or her opinion, necessary for the operation of port services or the safety of persons on vessels, and the Chief Executive may direct that the expense of executing that work or doing that act is to be paid from the funds of the Authority;
- (c) authorised to exercise all the functions, duties and powers conferred upon the Chief Executive by any other Act or any decree or regulation.

- (2) The Chief Executive must report anything done under paragraph (b) to the next following meeting of the Board of the Authority.
- (3) Whenever the Chief Executive is prevented by illness, absence or other like cause from performing the duties of the office or when the office of the Chief Executive is vacant, the Board of the Authority may appoint one of its officers to perform those duties during such period as the Chief Executive is so prevented from doing or the office is vacant.

*Delegation by Chief Executive or Authority*

- 21A.—(1) The Chief Executive and the Authority may, in writing in the case of the Chief Executive signed by him, and in the case of the Authority under seal, delegate all or any of the powers and functions of the Chief Executive or the Authority respectively under this Act (except this power of delegation).
- (2) A delegation under subsection (1) may be made subject to any conditions, exceptions or qualifications as are specified in the instrument of delegation.
  - (3) A delegation under subsection (1) may be made to any public officer or employee of the Authority.
  - (4) 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 Chief Executive or the Authority.”.

*Replacement of section 22*

17. The principal Act is amended by repealing section 22 and substituting the following section—

*“Borrowing powers*

- 22.—(1) The Authority may, with the consent of the Minister and the Minister responsible for finance and upon such terms and conditions as those Ministers may approve, raise loans, either by charge or mortgage or by the creation and issue of debentures, debenture stock, bonds or otherwise, for the purpose of carrying out its functions under the provisions of this Act or of any other written law or providing necessary working capital.
- (2) The consents referred to in subsection (1) are not required in respect of any loan not exceeding \$500,000 obtained from a bank.
  - (3) The repayment of moneys borrowed or loans raised under the provisions of this section and the payment of interest on them may be guaranteed by the Government.”.

*Replacement of sections 24 to 27*

18. The principal Act is amended by repealing sections 24, 25, 26 and 27 and substituting the following section—

*"Authority as a Commercial Statutory Authority*

24.—(1) For long as the Authority remains a Commercial Statutory Authority, it must comply in all respects with the relevant provisions of the Public Enterprise Act 1996 and, in particular—

- (a) Division 6 of Part 4 — relating to dividends;
- (b) Division 2 of Part 5 — relating to corporate plans;
- (c) Division 3 of Part 5 — relating to Statements of Corporate Intent;
- (d) Division 4 of Part 5 — relating to audits and reports.

(2) If the Authority is not a Commercial Statutory Authority during any period it must maintain records and be audited in accordance with good business practice.”.

*Dockage Dues*

19. Section 28 of the principal Act is amended in subsection (1) by adding “(including a wharf not belonging to the Authority or under its control)” at the end.

*Replacement of section 39*

20.—The principal Act is amended by repealing section 39 and substituting—

*"Port Master and Deputy Port Master*

39.—(1) The Authority shall appoint a Port Master for the purposes of this Act, and may also appoint such number of Deputy Port Masters, Port State Control officers and shipping inspectors as it considers necessary for all or any of the purposes of this Act and for performing the duties imposed on the Port Master, Port State Control officers and shipping inspectors by any other Act.

(2) If the Authority or the Chief Executive has any commercial or landlord function or the control or management of any property, powers in relation to the function or property must not be delegated to the Port Master, nor to any Port State Control officer or shipping inspector.”.

*Power of Port Master in relation to vessels*

21.—(1) Section 40 of the principal Act is amended in subsection (1) by inserting after paragraph (c) the following paragraph—

“(d) manage port state control responsibilities.”

(2) Section 40 of the principal Act is amended by inserting after subsection (1)—



“(1A) The Port Master must not exercise his powers under subsection (1) so as to vary or interfere with berthing priority assigned by any person having authority to do so in the port unless the Port Master is satisfied for reasons of safety that it is appropriate to do so.”.

*New sections 44A to E and repeal*

22.—(1) The principal Act is amended by inserting after section 44 the following sections—

*“Powers of the master in relation to dangerous goods*

44A.—(1) The master or 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 owner of a vessel is not subject to any liability of any kind for taking in good faith any action specified in subsection (1).

*Powers of the Port Master in relation to dangerous goods*

44B.—(1) The Port Master may, if satisfied that dangerous goods are being loaded into, unloaded from, or stowed, carried or used in a vessel otherwise than in accordance with this Act 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 the Port Master thinks fit.

(2) The master or owner of a vessel, who fails to comply with a direction given under subsection (1) commits an offence and is liable on conviction to a fine of \$10,000.

*Requirements in relation to dangerous goods*

44C.—(1) A person who—

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

a vessel dangerous goods otherwise than as required or permitted by this Act or by the Safety Convention, commits an offence and is liable on conviction to a fine of \$10,000.

(2) A person who, with intent to conceal the character of dangerous goods—

- (a) sends by;
- (b) sends on to; or
- (c) carries or uses in,

a vessel dangerous goods under a false description, commits an offence and is liable on conviction of a fine of \$5,000.

*Forfeiture of dangerous goods*

44D.—(1) A court may order that dangerous goods carried, shipped or used in a vessel in contravention of this Act or the Safety Convention be forfeited.

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

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

*Hazardous cargo*

44E.—(1) This section applies to cargo or goods (other than dangerous goods) where the cargo or goods, if carried in a particular vessel would, in the opinion of the Port Master, endanger that vessel or constitute a danger to human life.

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

- (a) prohibit the loading into the vessel;
- (b) prohibit the carriage in the vessel;
- (c) order the removal from the vessel; or
- (d) direct the manner of the stowage or carriage in the vessel,

of cargo or goods to which this section applies.

(3) A master of a vessel who fails to comply with a direction given by the Port Master under subsection (2) commits an offence and is liable on conviction to a fine of \$4,000.

Master under subsection (2) commits an offence and is liable on conviction to a fine of \$4,000.

- (4) If the master of a vessel has been given a direction under subsection (2) the Port Master may detain the vessel until such time as the master has complied with the direction.”

- (2) Sections 76 to 80 of the Marine Act 1986 are repealed.

*Powers of Arrest*

23. Section 58 of the principal Act is amended in subsection (1) by deleting “Director-General” and substituting “Chief Executive”.

*Repeal of section 64*

24. The principal Act is amended by repealing section 64.

*Schedules*

25. The principal Act is amended—

- (a) in the First Schedule by deleting “Director-General” and substituting “Chief Executive” in Part II;
- (b) in the Second Schedule by deleting “Director-General” and substituting “Chief Executive” in Part II;
- (c) in the Third Schedule by deleting “Director-General” and substituting “Chief Executive” in Part II.

*New section 65A*

26. The principal Act is amended by inserting, after section 65, the following section—

*“Consequential provisions on change of name to Maritime and  
Ports Authority of the Fiji Islands*

65A.—(1) A reference (express or implied) to the Ports Authority of Fiji in any written law, in any contract, instrument or register, in any other public or private document, or in any court proceedings is, unless the context otherwise requires, to be read and construed as a reference to the Maritime and Ports Authority of the Fiji Islands.

- (2) No registrar or other person charged with the keeping of any books or registers is obliged solely by reason of the change of the name of the Authority to change the name of, or reference to, the Authority in those books or registers or in any document.
- (3) The presentation to any registrar or other person of any instrument by the Authority—

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- (a) executed or purporting to be executed by the Authority;
- (b) relating to any property held immediately before the appointed day by the Authority; and
- (c) containing a recital that the name of the Authority has been changed to the Maritime and Ports Authority of the Fiji Islands in accordance with the laws of the State,

is, in the absence of evidence to the contrary, sufficient to empower and require the Registrar or other person to change the name of the Authority in any book, register or document to which the instrument refers.”

Passed by the House of Representatives this 24th day of February 1999.

Passed by the Senate this 8th day of March 1999.