

SOUTH AFRICAN MARITIME SAFETY AUTHORITY ACT NO. 5 OF 1998

[View Regulation]

[ASSENTED TO 26 MARCH, 1998]
[DATE OF COMMENCEMENT: 1 APRIL, 1998]

(English text signed by the President)

This Act has been updated to <i>Government Gazette</i> 31052 dated 13 May, 2008.
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as amended by

Transport Agencies General Laws Amendment Act, No. 42 of 2007
[with effect from 15 May, 2008]

SUBSCRIBER'S NOTE

With reference to section 2 (2) of this Act and in terms of Government Notice R.484 of 31 March 1998, 1 April 1998 has been determined as the date on which the administration of the laws mentioned in the first column of the Schedule to the said Act is transferred to the Authority, subject to the amendments (if any) contained in the third column of the Schedule.

ACT

To provide for the establishment and functions of the South African Maritime Safety Authority; and to provide for incidental matters.

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1. Definitions.—In this Act, unless the context indicates otherwise—

“**appoint**” includes reappoint;

“**assets**” means property of any description, and includes both movable and immovable property;

“**Authority**” means the South African Maritime Safety Authority established by section 2 (1);

“**Board**” means the Board of the Authority referred to in section 12 (1);

“**borrow**” includes raising loans or obtaining credit, whether by dealing in securities or otherwise, but does not include obtaining credit in a transaction forming part of the day-to-day operations of the Authority;

“**Chairperson**” means the Chairperson of the Board referred to in section 12 (1) (a);

“**charge**” means—

- (a) a charge for a service or facility provided by the Authority; or
- (b) a fee or other charge in respect of a matter in relation to which expenses are incurred by the Authority under this Act, including a fee or other charge in respect of, or for an application for—
 - (i) the grant, issue, renewal or variation of a certificate, licence approval, permission, permit, registration or exemption under a law or an instrument under a law; or
 - (ii) the grant or variation of an authorisation, or the cancellation, suspension, variation or imposition of a condition, relating to anything referred to in subparagraph (i);

“Chief Executive Officer” means the Chief Executive Officer appointed under section 22 (1) or (5);

“Department” means the Department of Transport;

“Deputy Chairperson” means the Deputy Chairperson of the Board referred to in section 12 (1) (b);

“financial year” means the period beginning on 1 April of a specific year and ending on 31 March of the following year;

“Fund” means the Maritime Fund established by section 38 (1);

“levy” means a levy imposed under the South African Maritime Safety Authority Levies Act, 1998;

“member” means a member of the Board referred to in section 12 (1);

“Minister” means the Minister of Transport;

“officer” means a member of the staff of the Authority;

“prescribe” means prescribe by regulation under section 53;

“regulation” means any regulation made under section 53;

“this Act” includes the regulations and any direction under section 7 or 30;

“transfer date” means the date determined by the Minister under section 2 (2).

CHAPTER 1 SOUTH AFRICAN MARITIME SAFETY AUTHORITY

2. Establishment and transfer of certain functions.—(1) The South African Maritime Safety Authority is hereby established as a juristic person.

(2) The administration of the laws mentioned in the first column of the Schedule is transferred to the Authority subject to the amendments (if any) contained in the third column of the Schedule, with effect from a date fixed by the Minister by notice in the Gazette which must not be a date before 1 April 1998.

3. Objectives.—The objectives of the Authority are—

- (a) to ensure safety of life and property at sea;
- (b) to prevent and combat pollution of the marine environment by ships; and
- (c) to promote the Republic’s maritime interests.

4. Duties.—In order to achieve its objectives the Authority must—

- (a) administer the laws referred to in section 2 (2) and any applicable regulations made under those laws and not already included therein by definition;
- (b) carry out such other duties as are assigned to the Authority by or under any other law; and
- (c) carry out any duty as directed under section 7.

5. How functions may be performed.—(1) The Authority may perform its functions both within and outside the Republic.

(2) Subject to section 4, functions to provide services may be performed at the discretion of the Authority.

(3) Where the Authority performs a function, it may do so—

- (a) itself;
- (b) in cooperation with another person; or
- (c) by delegating or assigning the power or duty concerned to another person.

(4) For the purposes of subsection (3), “person” includes—

- (a) the State;
- (b) a province;
- (c) the government or an agency of the government of a foreign country;
- (d) any juristic or natural person.

6. Functions to be performed in accordance with objectives and international agreements and law.—The Authority must perform its functions in accordance with—

- (a) its objectives mentioned in section 3; and
- (b) the obligations of the Republic—
 - (i) under any international agreement to which the Republic is a party; and
 - (ii) under customary international law binding on the Republic by virtue of section 232 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

6A. Performance agreement.—(1) The Minister and the Authority must enter into a written performance agreement relating to—

- (a) the State's requirements in respect of the Authority's scope of business, efficiency and financial performance, and achievement of objectives;
- (b) the principles to be followed by the Authority for the purposes of business planning;
- (c) such measures as may be necessary to protect the financial soundness of the Authority;
- (d) the principles to be followed at the end of a financial year in respect of any surplus in the accounts of the Authority; and
- (e) any other matter relating to the performance of the Authority's functions under this Act.

(2) The Minister and the Authority may in writing amend the performance agreement from time to time.

(3) The Minister must publish the performance agreement in the *Gazette* and any amendment thereto must be so published at least 30 days prior to that amendment coming into operation.

(4) A copy of the performance agreement must be open to inspection by the public at the head office of the Authority during business hours.

(5) The Minister and the Authority must, before the finalisation of the performance agreement or amendment thereof, on any matter which may affect them, consult with the relevant stakeholders in the maritime industry.

[S. 6A inserted by s. 6 of Act No. 42 of 2007.]

7. Directions by Minister.—(1) The Minister may give the Authority written directions regarding the performance of its functions, but directions regarding the performance of functions that are conferred on or assigned to the Authority by or under any other law, may be only of a general nature.

(2) Particulars of any direction given during a financial year must be included in the annual report of the Authority for that year.

8. Reimbursement of cost of complying with directions.—(1) Where the Authority satisfies the Minister that it has suffered financial detriment as a result of complying with a direction given by the Minister under section 7, the Authority is entitled to be reimbursed by the State to the amount of that financial detriment.

(2) The reference in subsection (1) to suffering financial detriment includes a reference to—

- (a) incurring costs that are greater than those that would otherwise have been incurred; and
- (b) forgoing revenue that would otherwise have been received.

9. Powers.—(1) Without derogating from its power generally to perform juristic acts as a juristic person, the Authority has power, in particular, to institute and conduct civil proceedings in all matters relating to its functions.

(2) The Authority has power, subject to this Act, to do all things necessary or convenient to be done for or in connection with the performance of its functions, including the power—

- (a) to enter into contracts;
- (b) to acquire, hold and dispose of assets;
- (c) to let or hire plant, machinery, equipment or goods of the Authority not immediately required for the purposes of the Authority;
- (d) to invest money not immediately required for the purposes of the Authority in any manner that is consistent with sound commercial practice.

10. Prohibition on formation of companies and partnerships.—The Authority may not—

- (a) subscribe for or purchase a majority shareholding in a company;
- (b) join in the formation of a company; or
- (c) enter into a partnership.

11. Consultation.—In the carrying out of its duties and the exercise of its powers, the Authority must, where appropriate, consult with bodies and organisations concerned, both public and private.

CHAPTER 2
BOARD OF AUTHORITY AND STAFF

Part 1
Board

12. Constitution of Board and terms and conditions of appointment.—(1) The Board of the Authority consists of the following members:

- (a) A Chairperson;
- (b) a Deputy Chairperson;
- (bA) if the Minister specifies an office in the Department for the purposes of this subsection, the person for the time being holding that office;

[Para. (bA) inserted by s. 7 (a) of Act No. 42 of 2007.]

- (c) the Chief Executive Officer, by virtue of the office; and
- (d) two to four other members.

(1A) The members contemplated in subsection (1) (bA) and (c) do not have voting rights.

[Sub-s. (1A) inserted by s. 7 (b) of Act No. 42 of 2007.]

(2) The members, other than the Chief Executive Officer, are part-time members.

(3) The members mentioned in subsection (1) (a), (b) and (d)—

- (a) are appointed by the Minister from a list of names of persons which, at the Minister's request by notice in the media, have been submitted to him or her within the period specified in the notice by any person or body having an interest in the maritime or related industry; and
- (b) hold office on such terms and conditions as the Minister determines in writing.

(4) The Minister may appoint a person as a member only if the Minister is satisfied that the person has suitable expertise in one or more of the following:

- (a) Shipping industry;
- (b) maritime law;
- (c) organized labour in maritime;
- (d) corporate governance;
- (e) environmental management.

[Sub-s. (4) substituted by s. 7 (c) of Act No. 42 of 2007.]

(4A) The Minister must, within 30 days from the date of appointment of a member or alternate member of the Board, notify Parliament of such appointment and publish a notice in the *Gazette*.

[Sub-s. (4A) inserted by s. 7 (d) of Act No. 42 of 2007.]

(5) The carrying out of duties and the exercise of the powers of the Authority is not affected merely because of a vacancy in the membership of the Board.

(6) The Board performs the functions of the Authority in terms of this Act by resolution in terms of sections 19, 20 and 21.

13. Period of office of members.—(1) Subject to this Chapter, a member holds office for a period of three years as from the date of appointment of such member, and may be re-appointed for a further period not exceeding three years, in which case the procedure contemplated in section 12 (3) does not apply.

(2) Notwithstanding subsection (1), the Minister may extend the term of office of any member by such further period as it may take to finalise the appointment of a new Board.

[S. 13 substituted by s. 8 of Act No. 42 of 2007.]

14. Remuneration and allowances of members.—Members mentioned in section 12 (1) (a), (b) and (d) are entitled to such remuneration and allowances as the Minister may determine after consultation with the Minister of Finance.

15. Independence and responsibilities of members.—(1) A member may not engage in any paid employment that will conflict with the proper performance of his or her functions as a member.

[Sub-s. (1) substituted by s. 9 of Act No. 42 of 2007.]

(2) A member who has a direct or indirect pecuniary interest in a matter being considered by the Board must, without delay after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(3) A disclosure in terms of subsection (2) must be recorded in the minutes of the meeting, and the member may not, unless the Board otherwise determines—

- (a) be present during any deliberation of the Board with respect to that matter; or
- (b) take part in any decision of the Board with respect to that matter.

(4) For the purpose of making a determination under subsection (3), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates may not—

- (a) be present during any deliberation of the Board for the purpose of making the determination; or
- (b) take part in making the determination.

(5) Members must comply with the provisions of the Companies Act, 1973 (Act No. 61 of 1973), applicable to directors of companies.

16. Acting appointments.—(1) The Minister may appoint the Deputy Chairperson or another member, other than the Chief Executive Officer, to act as Chairperson—

- (a) during a vacancy in the office of Chairperson; or
- (b) when the Chairperson is absent from duty or from the Republic or is, for any other reason, unable to perform the functions of the office.

(2) The Minister may appoint a member, other than the Chief Executive Officer, to act as Deputy Chairperson

- (a) during a vacancy in the office of Deputy Chairperson; or
- (b) when the Deputy Chairperson is absent from duty or from the Republic or is, for any other reason, unable to perform the functions of the office.

(3) The Minister may appoint a person to act as a member—

- (a) during a vacancy in the office of a member; or
- (b) when a member is absent from duty or from the Republic or is, for any other reason, unable to perform the functions of the office.

(4) Section 12 (4) applies with the necessary changes to appointments under subsection (3).

(5) A person appointed to act during a vacancy may not continue so to act for more than 12 months at a time.

17. Resignation.—A member, other than the Chief Executive Officer, may resign from the Board by notice in writing to the Minister.

18. Termination of appointment.—(1) The Minister may terminate the appointment of a member—

- (a) for misbehaviour or for physical or mental incapacity;
- (b) who becomes insolvent, applies to take the benefit of any law for the relief of insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;
- (c) who, without reasonable excuse, fails to comply with section 15 (1), (2) or (5);
- (d) where the performance of a member as member has been unsatisfactory or ineffective for a significant period of time; or
- (e) who has been convicted of an offence, of which dishonesty is an element, and sentenced to imprisonment without the option of a fine.

(2) If the performance of the Board has been unsatisfactory or ineffective for a significant period of time, the Minister may terminate the appointment of all members or specified members.

19. Meetings.—(1) The Board must hold such meetings as are necessary for the effective and efficient performance of its functions.

- (2) The Chairperson—
 - (a) may convene a meeting of the Board at any time; and
 - (b) must convene a meeting on receipt of a written request signed by not less than two other members.
- (3) The Minister may convene a meeting of the Board at any time.
- (4) Subject to section 15, the Chairperson presides at all meetings at which he or she is present.
- (5) Where the Chairperson is not present at a meeting—
 - (a) the Deputy Chairperson presides; or
 - (b) if the Deputy Chairperson is not present, the members present must appoint one of their number to preside.
- (6) At a meeting four members constitute a quorum.
- (7) Questions arising at a meeting are determined by a majority of the votes of the members present and voting.
- (8) The person presiding at a meeting has a deliberative vote and, if necessary, a casting vote.

20. Conduct of meetings.—(1) The Board may, subject to this Chapter, regulate proceedings at its meetings as it considers appropriate.

- (2) Without limiting the generality of subsection (1), the Board may—
 - (a) permit members to participate in a particular meeting by telephone, closed-circuit television or any other means of communication, and a member who so participates is regarded as being present at the meeting;
 - (b) invite a person to attend a meeting for the purpose of advising or informing it on any matter.

21. Resolutions without meetings.—(1) Where the Board so determines, a resolution is regarded to have been passed at a meeting of the Board if, without meeting, four or more members indicate agreement with the resolution in accordance with a procedure previously determined by the Board.

(2) Such a resolution is regarded to have been adopted on a day determined in accordance with the said procedure.

Part 2
Chief Executive Officer and Staff

22. Chief Executive Officer.—(1) (a) The Minister must, after consideration of the recommendation of the Board, appoint a Chief Executive Officer.

(b) The Chief Executive Officer holds office on such terms and conditions including those relating to remuneration and allowances as the Minister, after considering the recommendations of the Board and in consultation with the Minister of Finance, may determine in writing.

[Sub-s. (1) substituted by s. 10 (a) of Act No. 42 of 2007.]

(2) Subject to this Chapter, the person appointed as Chief Executive Officer holds office for a period, not exceeding five years, specified in the instrument of appointment, but is eligible for reappointment.

(3) The Chief Executive Officer manages the Authority subject to the control and directions of the Board.

(4) Anything done in the name of, or on behalf of, the Authority by the Chief Executive Officer is regarded as having been done by the Authority.

(5)

[Sub-s. (5) deleted by s. 10 (b) of Act No. 42 of 2007.]

(6)

[Sub-s. (6) deleted by s. 10 (b) of Act No. 42 of 2007.]

(6) A person appointed under subsection (5) holds office for a period not exceeding three years, but is eligible for reappointment by the Board.

(Editorial Note: Sub-s. (6) to be deleted by s. 10 (b) of Act No. 42 of 2007 with effect from a date to be fixed by the President by proclamation in the *Gazette* – date not fixed.)

23. Chief Executive Officer not to engage in other work.—The Chief Executive Officer may not engage in any paid employment outside the functions of the office without the prior approval of the Board.

24.

[S. 24 repealed by s. 11 of Act No. 42 of 2007.]

25. Resignation.—The Chief Executive Officer may resign by notice in writing to the Board and the Minister.
[S. 25 substituted by s. 12 of Act No. 42 of 2007.]

26. Acting Chief Executive Officer.—(1) (a) The Board may, subject to paragraph (b), appoint a person to act as Chief Executive Officer—

- (i) during a vacancy in the office of Chief Executive Officer, whether or not an appointment has previously been made to the office; or
- (ii) during any period, or during all periods, when the Chief Executive Officer is absent from duty or from the Republic or is, for any other reason, unable to perform the functions of the office.

(b) A person appointed to act as Chief Executive Officer may not continue so to act for more than 12 months at a time.

(2) A person, other than an officer, who is acting as Chief Executive Officer is entitled to the same remuneration and allowances as are payable to the Chief Executive Officer.

(3) An officer who is acting as Chief Executive Officer must be continued to be paid the remuneration and allowances payable to the officer, but is also to be paid—

- (a) so much of the remuneration payable to the Chief Executive Officer as exceeds the officer's usual remuneration;
- (b) so much of any allowance payable to the Chief Executive Officer as exceeds the corresponding allowance payable to the officer; and
- (c) if an allowance is payable to the Chief Executive Officer but is not payable to the officer, that allowance.

27. Staff.—(1) The necessary staff must be employed by the Authority under a contract of employment.

(2) The Chief Executive Officer may, on behalf of the Authority, arrange with a State authority or another body—

- (a) for the services of officers or employees of the State or other body to be made available for the purposes of the Authority; or
- (b) for the services of an officer to be made available for the purposes of the State or any other body.

(3) Despite anything to the contrary in any law contained, the Chief Executive Officer may, in accordance with an agreement between the Department and the Authority, transfer permanently to the Authority any person who is an officer or employee of the Department in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994), with the concurrence of such person.

(4) Before acting under subsection (2) or (3), the Chief Executive Officer must obtain the Minister's approval.

CHAPTER 3 OPERATION OF AUTHORITY

28. Business plan.—(1) The Authority must prepare a business plan at least 90 days before the beginning of each financial year to be approved by the Minister.

(2) The business plan must—

- (a) include a statement of the short and medium term operational and business objectives of the Authority for at least five years;
- (b) outline the strategies and policies that the Authority intends to adopt in order to achieve its objectives; and
- (c) include, *inter alia*, an operational plan, a financial plan, a human resources plan and performance indicators.

(3) The financial plan must include estimates of expenditure and revenue for the following financial year.

(4) The Authority may amend the business plan with the Minister's approval.

(5) The Minister's approval under subsection (1) or (4) has effect from the beginning of the financial year concerned.

29. Financial targets and performance indicators.—When preparing the financial plan, the Authority must consider—

- (a) the need for high standards of maritime safety;
- (b) the need for a high standard of protection for the marine environment;
- (c) objectives in legislation and government policies;

- (d) any direction given by the Minister under section 7;
- (e) any payments by the State to the Authority to fund functions referred to in paragraph (g);
- (f) the need to maintain a reasonable level of reserves, having regard to estimated future infrastructural requirements;
- (g) the need to earn a reasonable rate of return on the Authority's assets, including assets wholly or principally used in the performance of functions that are directly funded by the State; and
- (h) any other commercial consideration the Authority considers appropriate.

30. Minister may direct variation of financial plan.—(1) The Minister may direct the Authority to vary the financial plan in respect of financial targets, and performance indicators, relating to the provision of services and facilities.

(2) When doing so, the Minister must consider—

- (a) the matters referred to in section 29, other than paragraph (c); and
- (b) any other consideration of a commercial nature that the Minister considers appropriate.

(3) A direction must be in writing and set out its reasons.

CHAPTER 4 FINANCE

Part 1 *General*

31. Transfer of certain State assets to Authority.—(1) Where, immediately before the commencement of this section—

- (a) a function of the Authority was being performed by the Department; and
- (b) an asset was held or used by the Department in connection with the performance of that function,

the Minister may cause the asset to be transferred to the Authority.

(2) Subsection (1) is not construed as preventing the State from transferring any asset to the Authority otherwise than under that subsection, provided the asset is transferred in order to further the objectives of the Authority referred to in section 3.

32. Transfer of land, etc., to Authority.—(1) Where the Minister for the purposes of this section determines and describes any land owned by the State by notice in the *Gazette*, such land is transferred to the Authority on the date specified in the notice, not being earlier than the date of publication of the notice.

(2) Despite section 5 of the State Land Disposal Act, 1961 (Act No. 48 of 1961), and section 18 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), a registrar must, on submission of a certificate by the Minister that State land has been transferred under subsection (1), make such entries and endorsements free of charge as the registrar considers necessary in or on any appropriate register, title deed or other document in his or her office or laid before him or her, in order to register the transfer of such land in the name of the Authority.

(3) A registrar must, on submission of a certificate by the Minister that a servitude, other real right or lease has been transferred under subsection (1) or that a servitude exists over State land that has been transferred under that subsection, make such entries and endorsements free of charge as the registrar considers necessary in or on any appropriate register, title deed or other document in his or her office or laid before him or her, in order to —

- (a) register the transfer of such servitude, other real right or lease in the name of the Authority; or
- (b) confirm the existence of the servitude over the State land so transferred in favour of any other person.

(4) Despite anything to the contrary in any law contained, a servitude or other real right in respect of State land transferred to the Authority under subsection (1) may not be acquired by prescription.

(5) In this section "registrar" means a registrar as defined in section 102 of the Deeds Registries Act, 1937.

33. Effect of transfer from State to Authority.—Where, immediately before a transfer under section 31 or 32 —

- (a) a right of the State arising out of a debt, liability or obligation of any other person in favour of the State existed in respect of the assets so transferred; or
- (b) a debt, liability or obligation of the State existed in respect of the assets so transferred,

the right, debt, liability or obligation, as the case may be, is transferred from the State to the Authority on such transfer.

34. Liabilities in respect of personnel.—The Minister may, in consultation with the Authority, determine in writing the amount (if any) of the provisions to be made by the Authority on account of liabilities transferred from the State in respect of personnel.

35. Money paid in advance to State.—Where, in respect of a function of the Authority which was formerly performed by the Department, an amount received by the State is or includes an amount paid in advance on account of anything to be done by the State in performing that function, and that thing was not done by the State before the commencement of this Act, there is payable to the Authority by the State an amount that the Minister, having regard to all matters that he or she considers relevant, determines in writing as being payable because of the receipt of the first-mentioned amount.

36. Rights in respect of services and facilities formerly provided by Department.—(1) Where, immediately before the commencement of this Act, in respect of a function of the Authority which was formerly performed by the Department, a right of the State existed, arising out of a debt, liability or obligation of any other person in favour of the State in respect of a service or facility provided by the Department in the performance of that function, the right of the State is transferred to the Authority to the extent that the Minister determines in writing having regard to the objectives of the Authority referred to in section 3.

(2) Where, immediately before the commencement of this section, proceedings relating to such a debt, liability or obligation were pending in a court, the proceedings, to the extent that they so relate, may be continued by the Authority and, if the Authority does so, the Authority must replace the State in those proceedings.

37. Assets and liabilities.—(1) The assets of the Authority include—

- (a) assets transferred to the Authority by or under this Act;
- (b) any amount paid to the Authority out of money appropriated by Parliament for the purpose of funding the Authority;
- (c) any amount payable to the Authority under any law or any instrument thereunder;
- (d) amounts paid to the Authority in terms of section 44 of this Act and section 2 of the South African Maritime Safety Authority Levies Act, 1998;
- (e) any reserves resulting from the operations of the Authority;
- (f) any assets acquired by the Authority in the course of its operations.

(2) The liabilities of the Authority include—

- (a) the amount determined under section 34;
- (b) debts, liabilities and obligations of the State transferred to the Authority in terms of section 33;
- (c) any debts incurred by the Authority in the course of its operations;
- (d) any loans raised by the Authority.

38. Maritime Fund.—(1) A fund, called the Maritime Fund, is hereby established under the control of the Minister.

(2) The Authority must administer the Fund in the prescribed manner and the accounts relating to the Fund must be audited annually by the Auditor-General.

(3) There is to be paid to the Fund amounts equal to amounts received by way of penalty, fine or forfeiture by the State for contraventions in terms of the laws referred to in section 2 (2).

(4) Money in the Fund may be applied only for the purpose of furthering the objectives of the Authority referred to in section 3.

(5) Money in the Fund that is not required for immediate use must be invested with a bank registered under the Banks Act, 1990 (Act No. 94 of 1990).

(6) Money in the Fund at the end of any financial year must be carried forward as a credit to the Fund to the ensuing financial year.

(7) The Chief Executive Officer is the accounting officer of the Fund charged with the responsibility of accounting for money received and expenditure incurred by the Fund.

39. Grants by State.—The Minister of Finance may, out of money appropriated by Parliament for the purpose, grant money to the Authority on such terms and conditions as that Minister may determine in writing.

40. Borrowings.—The Authority may borrow money from any source, including a foreign source.

41. Guarantee of borrowings.—(1) The Minister of Finance may guarantee the compliance by the Authority with obligations incurred by it under section 40.

(2) A contract under subsection (1) may include a provision—

(a) agreeing that legal proceedings under the contract may be instituted in the courts of a foreign country; or

(b) waiving the immunity of the State from suit in the courts of a foreign country.

(3) Where the Minister of Finance guarantees such a borrowing, that Minister must cause to be tabled in Parliament within 15 sitting days after the contract is entered into, notice specifying the amount and term of the borrowing and such other information relating to the borrowing or the guarantee as that Minister considers appropriate.

42. Authority may give security.—The Authority may give security over the whole or part of its assets for—

(a) the compliance by the Authority with any obligation incurred under section 39 or 40; or

(b) the payment to the State of amounts equal to amounts paid by the State under a guarantee under section 41.

43. Application of Reporting by Public Entities Act, 1992.—(1) The Authority must comply with the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992), as applicable to listed entities.

(2) When reporting in terms of section 2 of the said Act, the Authority must include an evaluation of its overall performance compared with the financial targets and performance indicators for the year concerned.

Part 2 Charges

44. Charges.—(1) Subject to this section, the Authority may make determinations—

(a) imposing charges and specifying the persons by whom, and the times when, such charges are payable; and

(b) imposing the penalties for the purposes of subsection (8).

(2) Before making a determination under subsection (1), the Authority must give the Minister notice in writing of the proposed determination—

(a) specifying the day from which the determination is intended to operate;

(b) if it imposes a charge or penalty, specifying the basis of such charge or penalty; and

(c) if it varies a charge or penalty, specifying the reason for the variation.

(3) The Minister may within 60 days after receiving a notice of the proposed determination, give the Authority notice in writing approving or disapproving the proposed determination, but when the Minister does so, the Minister must have regard to the objectives and functions of the Authority.

(4) A notice under subsection (3) disapproving a proposed determination may recommend an alternative determination.

(5) The Authority may make a determination under subsection (1) only if—

(a) the Minister approves it; or

(b) the period within which the Minister may give notice to the Authority under subsection (3) has expired without the Minister having given such notice.

(6) The amount or rate of a charge imposed under subsection (1) must be reasonably related to the expenses incurred or to be incurred by the Authority in relation to the matter to which the charge relates and may not be such as to amount to taxation.

(7) A determination made under subsection (1) must be published in the *Gazette*.

(8) Subject to subsection (9), where a charge imposed under subsection (1) is not paid within the period determined by the Authority, being a period beginning on the day on which the charge becomes due, the person liable for the payment of the charge is liable to pay to the Authority, in addition to the charge, a penalty calculated upon the unpaid amount of the charge from the date on which the charge became due, and compounded.

(9) The penalties determined under subsection (1) may not exceed an amount equivalent to the prescribed percentage of the unpaid amount of the charge for each day during which it remains unpaid, calculated from the date on which the charge became due, and compounded.

(10) Unpaid charges and penalties may be recovered as debts due to the Authority.

(11) Any reference to a fee, however expressed, in the laws referred to in section 2 (2) must be construed as a reference to the corresponding charge determined under this section.

CHAPTER 5 GENERAL PROVISIONS

45. Power to detain.—(1) The Authority may detain a ship in the prescribed manner in respect of which a due

levy, charge or related penalty has not been paid.

(2) A customs officer may not grant a certificate of clearance or transire under the Customs and Excise Act, 1964 (Act No. 91 of 1964), in respect of a ship liable to detention under subsection (1).

46. Limitation of liability and indemnification of Authority.—(1) The Authority, its officers and any person or body acting on its authority are not liable for any loss or damage suffered by any person by reason of anything done or not done in good faith in the carrying out of the Authority's duties referred to in section 4.

(2) (a) The State indemnifies the Authority, its officers and any person or body acting on its authority in respect of any civil liability they may incur for loss or damage suffered by any person by reason of anything done or not done in the carrying out of the Authority's duties referred to in section 4, in an amount equal to the amount by which that liability and any related reasonable costs and expenses exceeds—

- (i) the amount payable in respect of that liability or those costs and expenses in terms of any policy of insurance or other form of financial security maintained by the Authority in accordance with paragraph (b); and
- (ii) any other amount recoverable by the Authority in respect of that liability or those costs and expenses, whether by way of right of recourse or otherwise.

(b) The Authority must maintain insurance or other financial security contemplated in paragraph (a) (i) in the amount determined in consultation with the Minister.

(3) (a) The State is liable for all unrecoverable reasonable costs and expenses incurred or to be incurred by the Authority in the carrying out of any duty referred to in section 4 to prevent or combat pollution of the marine environment by ships.

(b) For the purposes of paragraph (a), costs and expenses are regarded to be unrecoverable if, and to the extent that—

- (i) no liability for the costs and expenses arises under any law;
- (ii) the person liable for the costs and expenses under any law is financially incapable of meeting his, her or its obligations in full and any financial security that may be provided does not cover or is insufficient to satisfy the claim for costs and expenses; or
- (iii) the costs and expenses exceed any statutory liability limit, and are not otherwise recoverable in terms of any law.

47. Delegation by Minister.—The Minister may delegate all or any of the powers contemplated in sections 31, 32, 35, 36 and 49 to an officer of the Department.

48. Delegation by Authority.—The Authority may, by written instrument, delegate all or any of its powers under this Act or any other law, but the powers under sections 40, 42 and 44 (1) may be delegated to an officer only.

49. Substitution of Authority for State in certain contracts, etc.—If the Minister so declares in writing, a specified contract or other instrument to which the State or the Government is bound as a party, and that relates to an asset immediately before the transfer of that asset to the Authority under this Act, is regarded after the transfer, to the extent to which the contract or instrument so relates, as if—

- (a) the State or the Government was replaced as a party by the Authority; and
- (b) any reference to the State or the Government were, in relation to matters occurring after the transfer, a reference to the Authority.

50. Publication of directions.—Where the Minister gives a direction under section 7 or 30, the Minister must cause a copy of the direction to be published in the *Gazette* within 21 days after it is given.

51. Marine casualties investigation commission.—(1) The Minister may establish an independent commission to receive and evaluate reports on casualties prepared by the Authority in terms of any law referred to in section 2 (2).

(2) A commission established under subsection (1) reports directly to the Minister.

52. Certain functions of Authority to be performed by Department of State.—(1) The responsibility for matters relating to the combating of pollution mentioned in Marine Notice No. 2 of 1996 issued by the Department on 24 January 1996 as amended from time to time is, for all purposes, regarded as having been assigned to the Department of Environmental Affairs and Tourism by this Act.

(2) The Minister may, with the concurrence of the Minister of Environmental Affairs and Tourism, by notice in the *Gazette*, amend or repeal this section in accordance with the further development of rationalisation policy.

53. Regulations.—(1) The Minister may make regulations, not inconsistent with this Act—

- (a) prescribing all matters required or permitted by this Act to be prescribed;

- (b) prescribing the manner in which and the persons or bodies by whom charges, levies and related penalties are to be collected, and the manner in which security may be furnished for the payment of such charges, levies and related penalties;
- (c) regulating the detaining of ships for the purposes of section 45; and
- (d) prescribing all matters necessary or expedient to be prescribed for the better achievement of the objects of this Act.

(2) Regulations under subsection (1) may include such incidental, supplementary or transitional provisions as may be reasonably necessary or expedient.

54. Application of Act to Prince Edward Islands.—This Act also applies to the Prince Edward Islands referred to in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948).

55. *Amends section 1 of the Admiralty Jurisdiction Regulation Act, Act 105 of 1983, by substituting paragraph (r) of the definition of "maritime claim".*

56. *Amends section 11 (4) (c) of the Admiralty Jurisdiction Regulation Act, Act 105 of 1983, by substituting subparagraph (ii).*

57. Transitional provisions.—(1) Despite anything to the contrary in any law contained, the Minister may, during the period from the date on which this section comes into operation to the transfer date, take such steps or authorise such things to be done as may be reasonably necessary to promote—

- (a) the transfer of functions performed by the Department to the Authority; and
- (b) the management of the Authority.

(2) Despite anything to the contrary in this Act contained, during the period mentioned in subsection (1), the Minister must approve the business plan that will come into operation on the transfer date.

58. Short title and commencement.—(1) This Act is called the South African Maritime Safety Authority Act, 1998, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) The amendments contained in the third column of the Schedule take effect on the transfer date.

Schedule ADMINISTRATION OF LAWS TRANSFERRED

(Section 2 (2))

MERCHANT SHIPPING ACT, NO. 57 OF 1951:—

Amends section 2 of the Merchant Shipping Act, No. 57 of 1951, as follows:—paragraph (a) inserts the definition of "Authority"; paragraph (b) substitutes the definition of "marine notice"; paragraph (c) substitutes the definition of "principal officer"; and paragraph (d) substitutes the definitions of "register tons" and "register tonnage".

Substitutes section 5 of the Merchant Shipping Act, No. 57 of 1951.

Amends section 12 of the Merchant Shipping Act, No. 57 of 1951, by substituting subsection (1).

Amends section 18 of the Merchant Shipping Act, No. 57 of 1951, by substituting subsection (4).

Substitutes section 31 of the Merchant Shipping Act, No. 57 of 1951.

Amends section 43 of the Merchant Shipping Act, No. 57 of 1951 by substituting subsections (3), (4) and (5).

Amends section 73 of the Merchant Shipping Act, No. 57 of 1951, by substituting subsection (3).

Amends section 77 (2) of the Merchant Shipping Act, No. 57 of 1951, by substituting the proviso.

Amends section 79 of the Merchant Shipping Act, No. 57 of 1951, by substituting subsection (2).

Amends section 83 of the Merchant Shipping Act, No. 57 of 1951, by substituting subsection (2).

Substitutes section 85 of the Merchant Shipping Act, No. 57 of 1951.

Amends section 87 of the Merchant Shipping Act, No. 57 of 1951, by substituting subsection (2).

Amends section 90 of the Merchant Shipping Act, No. 57 of 1951, by substituting subsection (1).

Amends section 93 (a) of the Merchant Shipping Act, No. 57 of 1951, by substituting sub-paragraph (iii).

Amends section 111 (1) (a) of the Merchant Shipping Act, No. 57 of 1951, by substituting subparagraph (i).

Amends section 112 (3) of the Merchant Shipping Act, No. 57 of 1951, by substituting paragraph (a).

Amends section 153 of the Merchant Shipping Act, No. 57 of 1951, by substituting subsection (4).

Amends section 158 of the Merchant Shipping Act, No. 57 of 1951, as follows:—paragraph (a) substitutes the words preceding subsection (2) (a); paragraph (b) substitutes the words following subsection (2) (b); and paragraph (c) substitutes subsection (3).

Substitutes sections 192 and 193 of the Merchant Shipping Act, No. 57 of 1951.

Amends section 194 (1) (b) of the Merchant Shipping Act, No. 57 of 1951, by substituting the words preceding subparagraph (i).

Amends section 196 of the Merchant Shipping Act, No. 57 of 1951, by substituting subsection (1).

Amends section 197 (3) of the Merchant Shipping Act, No. 57 of 1951, by substituting paragraphs (a) and (b).

Amends section 198 (1) of the Merchant Shipping Act, No. 57 of 1951, by substituting the words preceding paragraph (a).

Substitutes section 199 of the Merchant Shipping Act, No. 57 of 1951.

Amends section 202 of the Merchant Shipping Act, No. 57 of 1951, by substituting the first sentence in subsection (2).

Amends section 203 of the Merchant Shipping Act, No. 57 of 1951, as follows:—paragraph (a) substitutes subsections (5) and (6); and paragraph (b) substitutes the proviso of subsection (7).

Amends section 204 (1) of the Merchant Shipping Act, No. 57 of 1951, by substituting the words preceding paragraph (a).

Amends section 207 of the Merchant Shipping Act, No. 57 of 1951, as follows:—paragraph (a) substitutes the words preceding paragraph (a); and paragraph (b) substitutes the words preceding paragraph (c) (i).

Amends section 209 of the Merchant Shipping Act, No. 57 of 1951, by substituting subsection (2).

Amends section 210 (1) of the Merchant Shipping Act, No. 57 of 1951, by substituting the words preceding paragraph (a).

Substitutes section 211 of the Merchant Shipping Act, No. 57 of 1951.

Amends section 215 of the Merchant Shipping Act, No. 57 of 1951, by substituting the first sentence in subsection (2).

Amends section 217 (2) of the Merchant Shipping Act, No. 57 of 1951, by substituting paragraph (a).

Amends section 231 of the Merchant Shipping Act, No. 57 of 1951, by substituting subsections (2) and (3).

Amends section 239 (2) of the Merchant Shipping Act, No. 57 of 1951, as follows:—paragraph (a) substitutes the words preceding paragraph (a); and paragraph (b) substitutes the words following on paragraph (c).

Amends section 247 of the Merchant Shipping Act, No. 57 of 1951, by substituting subsection (1).

Amends section 262 of the Merchant Shipping Act, No. 57 of 1951, by substituting subsection (4).

Amends section 264 of the Merchant Shipping Act, No. 57 of 1951, as follows:—paragraph (a) substitutes the words preceding subsection (1) (a); and paragraph (b) substitutes subsection (2).

Amends section 282 of the Merchant Shipping Act, No. 57 of 1951, by substituting subsection (1).

Substitutes section 288 of the Merchant Shipping Act, No. 57 of 1951.

Amends section 323 of the Merchant Shipping Act, No. 57 of 1951, by substituting subsection (3).

Amends section 324 of the Merchant Shipping Act, No. 57 of 1951, by substituting subsections (1) and (2).

Amends section 325 of the Merchant Shipping Act, No. 57 of 1951, as follows:—paragraph (a) substitutes the words preceding paragraph (a); and paragraph (b) substitutes the words preceding the proviso of paragraph (b).

Amends section 336 of the Merchant Shipping Act, No. 57 of 1951, by substituting subsection (4).

Amends section 337 of the Merchant Shipping Act, No. 57 of 1951, by substituting subsection (1).

Substitutes sections 343 and 343bis of the Merchant Shipping Act, No. 57 of 1951.

Amends section 344 of the Merchant Shipping Act, No. 57 of 1951, by substituting subsection (4).

The substitution—

- (a) for the word "Director-General" wherever it occurs of the word "Authority", except in the definition of "Director-General" in section 2 (1), and in sections 343 and 344; and
- (b) for the word "Minister" wherever it occurs of the word "Authority", except in the definitions of

"Minister" and "safety standard" in section 2 (1), and in sections 3, 4, 5, 6, 13, 18 (1) and (2), 72A, 73 (2), 74 (1), 84 (1), 102, 180 (1), 218, 264 (2), 266, 267, 268, 275, 276, 277, 282, 290, 291, 324, 325, 327, 336, 343, 344, 353, 354, 356, 356bis, 356ter and 356quat.

MARINE TRAFFIC ACT, NO. 2 OF 1981:—

Amends section 1 of the Marine Traffic Act, No. 2 of 1981, as follows:—paragraph (a) inserts the definition of "Authority"; paragraph (b) substitutes the definition of "authorized person".

Amends section 5 of the Marine Traffic Act, No. 2 of 1981, by substituting subsection (2).

Amends section 9 of the Marine Traffic Act, No. 2 of 1981, as follows:—paragraph (a) substitutes the words preceding subsection (1) (a); and paragraph (b) substitutes subsections (3), (4) and (5).

Amends section 11 of the Marine Traffic Act, No. 2 of 1981, by substituting subsections (2) and (3).

Substitutes section 13 of the Marine Traffic Act, No. 2 of 1981.

The substitution for the word "Minister" wherever it occurs of the word "Authority", except in the definitions of "Minister" and "safety zone" in section 1, and in sections 7, 8C, 11 (3), 12, 14, 15 and 16.

MARINE POLLUTION (CONTROL AND CIVIL LIABILITY) ACT, NO. 6 OF 1981:—

Amends section 1 (1) of the Marine Pollution (Control and Civil Liability) Act, No. 6 of 1981, by inserting the definition of "Authority".

Amends section 4 of the Marine Pollution (Control and Civil Liability) Act, No. 6 of 1981, as follows:—paragraph (a) substitutes the words preceding subsection (1) (b); and paragraph (b) substitutes subsection (2) (a).

Amends section 5 of the Marine Pollution (Control and Civil Liability) Act, No. 6 of 1981, as follows:—paragraph (a) substitutes subsection (1); paragraph (b) substitutes the words preceding subsection (3) (a); and paragraph (c) substitutes subsection (6).

Amends section 10 of the Marine Pollution (Control and Civil Liability) Act, No. 6 of 1981, by substituting subsections (4), (5) and (6).

Amends section 14 of the Marine Pollution (Control and Civil Liability) Act, No. 6 of 1981, as follows:—paragraph (a) substitutes subsections (2) and (3); paragraph (b) substitutes subsection (4) (a); and paragraph substitutes subsections (5) and (6).

Substitutes section 16 of the Marine Pollution (Control and Civil Liability) Act, No. 6 of 1981.

Amends section 17 of the Marine Pollution (Control and Civil Liability) Act, No. 6 of 1981, as follows:—paragraph (a) substitutes the words preceding subsection (1) (a); paragraph (b) substitutes subsection (2).

Amends section 18 of the Marine Pollution (Control and Civil Liability) Act, No. 6 of 1981, by substituting the word "Minister" where it last occurs.

Amends section 21 of the Marine Pollution (Control and Civil Liability) Act, No. 6 of 1981, by substituting subsection (2).

Substitutes sections 26 and 27 of the Marine Pollution (Control and Civil Liability) Act, No. 6 of 1981.

Amends section 29 of the Marine Pollution (Control and Civil Liability) Act, No. 6 of 1981, by substituting the words "as well as the Director-General".

Amends section 30 of the Marine Pollution (Control and Civil Liability) Act, No. 6 of 1981, by substituting subsection (3).

The substitution—

- (a) for the word "Director-General" wherever it occurs of the word "Authority", except in sections 1, 9 and 29;
- (b) for the words "Marine Division of the Department of Transport" wherever they occur of the word "Authority"; and
- (c) for the word "Minister" wherever it occurs of the word "Authority", except in sections 1, 9 (2) (b) and (5) (b), 18, 24, 25, 26, 27, 28, 29 and 30 (4).

MARINE POLLUTION (PREVENTION OF POLLUTION FROM SHIPS) ACT, NO. 2 OF 1986:—

Amends section 1 of the Marine Pollution (Prevention of Pollution from Ships) Act, No. 2 of 1986, by inserting the definition of "Authority".

Amends section 2 (2) of the Marine Pollution (Prevention of Pollution from Ships) Act, No. 2 of 1986, by substituting paragraph (b).

Amends section 3A of the Marine Pollution (Prevention of Pollution from Ships) Act, No. 2 of 1986, by substituting subsections (5) and (6).

MARINE POLLUTION (INTERVENTION) ACT, NO. 64 OF 1987

Amends section 1 of the Marine Pollution (Intervention) Act No. 64 of 1987, by inserting the definition of "Authority".

Amends section 2 (3) of the Marine Pollution (Intervention) Act No. 64 of 1987, by substituting the words "Minister of Transport or any officer of the Department of Transport acting on the authority of that Minister".

WRECK AND SALVAGE ACT, NO. 94 OF 1996

Amends section 1 of the Wreck and Salvage Act, No. 94 of 1996, by inserting the definition of "Authority".

Substitutes section 18 of the Wreck and Salvage Act, No. 94 of 1996.