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GENERAL NOTICE

NOTICE 786 OF 1997

DEPARTMENT OF TRANSPORT

The Chief Directorate Shipping of the Department of Transport hereby makes known its intention to submit to Parliament during the 1997 session the South African Maritime Safety Authority Bill contained in the Schedule. The purpose of the Bill is to establish a non-profit, independent, commercially driven and partially self-funding South African Maritime Safety Authority (SAMSA), similar to those established in Australia and New Zealand, to carry out, on an agency basis, the present functions of the Chief Directorate Shipping. SAMSA will be regulated by performance agreements with the Minister of Transport.

All government departments and other interested parties are invited to submit written comments on the Bill by 20 June 1997 to the Chief Director Shipping, Private Bag X193, Pretoria, 0001, for the attention of Mr E H Roodt. Comments may also be faxed to (012) 323 7009.

SCHEDULE**SOUTH AFRICAN MARITIME SAFETY AUTHORITY BILL**

To provide for the establishment of a South African Maritime Safety Authority, and for related matters.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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PART 1—DEFINITIONS

Definitions

1. In this Act, unless the context indicates otherwise—
- "appoint"** includes re-appoint;
- "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;
- "Board"** means the Board of the Authority referred to in section 10(1);
- "borrowing"** includes raising money 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;
- "Chair"** means the Chair of the Authority;
- "Department"** means the Department of Transport;
- "Deputy Chair"** means the Deputy Chair of the Authority;
- "financial year"** means a period beginning on 1 April of a specific year and ending on 31 March of the following year;
- "Fund"** means the Maritime Safety Fund established by section 46(1);
- "member"** means a member of the Board of the Authority referred to in section 10(1);
- "Minister"** means the Minister of Transport;
- "officer"** means a member of the staff of the Authority;
- "prescribed"** means prescribed by regulation under section 52;
- "this Act"** includes the regulations and any direction under section 5 or 28.

PART 2—ESTABLISHMENT, FUNCTIONS AND POWERS OF AUTHORITY

Establishment of Authority and transfer of functions

2. (1) An Authority called the South African Maritime Safety Authority is established and is a juristic person.
- (2) Without prejudice to its capacity generally to perform juristic acts as a juristic person, the Authority is, in particular, competent to institute civil proceedings in all matters relating to its functions under section 3.
- (3) (a) On or after 1 April 1998 the Minister must by agreement with the Authority transfer to the Authority such functions as are specified in the agreement.
- (b) The Minister must cause the agreement to be published in the *Gazette*.
- (c) The agreement has effect from a date determined by the Minister by notice in the *Gazette*.

Objectives and functions of Authority

3. (1) 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;
- (2) The functions of the Authority are—
- (a) to administer—
 - (i) the provisions of laws specified in the agreement referred to in section 2(3); and
 - (ii) the provisions of any regulations made under such laws which relate to the provisions to be administered in terms of subparagraph (i),
 - and to have control of all incidental matters.
 - (b) to perform such other functions as are conferred on it by or under any other Act;
 - (c) to perform any other functions directed in terms of section 5; and
 - (d) to perform functions incidental to any of the previously described functions.
- (3) The Authority may perform its functions both within and outside the Republic.
- (4) In performing functions relating to the combating of pollution, the Authority must act in accordance with the related contingency plan agreed to by the Authority and the Department of Environmental Affairs and Tourism.
- Plan.
- (5) Subject to subsection (2), functions to provide services may be performed at the discretion of the Authority.

Functions to be performed in accordance with objectives and international agreements and law

4. The Authority must perform its functions in a manner consistent with—
- (a) the objectives mentioned in section 3(1); 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 South Africa by virtue of section 232 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

Directions

5. (1) The Minister may give the Authority written directions as to the performance of its functions.
- (2) Directions as to the performance of functions that are conferred on the Authority by or under another Act may be only of a general nature.
- (3) Particulars of any directions given in a financial year must be included in the annual report of the Authority for that year.
- (4) In the event that the function of investigating casualties under the Merchant Shipping Act, 1951 (Act No. 57 of 1951), is transferred to the Authority by agreement under section 2(3), the Minister may establish an independent commission to receive and evaluate reports on such casualties prepared by the Authority.
- (5) A commission established under subsection (4) reports directly to the Minister.

Reimbursement of cost of complying with directions

6. (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 5, the Authority is entitled to be reimbursed by the State the amount that the Minister determines in writing to be 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.

Powers of Authority

7. (1) In addition to any other powers conferred on it by this or any other Act, the Authority has, subject to this Act, power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

(2) Without limiting the generality of subsection (1), the powers include, subject to this Act, 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; and
- (e) to do anything incidental to any of the powers specified in this subsection or otherwise conferred on the Authority.

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

- (a) itself; or
- (b) in co-operation with another person; or
- (c) by delegating such function to another person.

(4) In subsection (3), "person" includes—

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

Prohibition on formation of companies and partnerships

8. 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.

Consultation

9. In the performance of its functions and the exercise of its powers, the Authority must consult with relevant bodies and organizations, both public and private, where appropriate.

PART 3—CONSTITUTION OF AUTHORITY

Division 1—The Authority

Constitution of Board of Authority

10. (1) The Board of the Authority consists of the following members:

- (a) a Chair;
- (b) a Deputy Chair;
- (c) *ex officio* the Chief Executive Officer; and
- (d) 2 to 4 other members.

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

(3) The members mentioned in subsection (1)(a), (b) and (d) must be appointed by the Minister, and hold office on such terms and conditions as the Minister determines in writing.

(4) In making appointments in terms of subsection (3), the Minister must take into account that the shipping sector and organized labour in the sector must each be represented by not more than one member of the Board and the remaining members of the Board must be appointed in their personal capacity and for their expertise and experience in the business sector, but one member of the board must be a person with substantial practical legal experience, appointed in his or her personal capacity.

(5) The performance of the functions 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 exercises the powers and functions of the Authority under this Act by resolution in terms of sections 17, 18 and 19.

Period of appointment of members

11. Subject to this Part, a member holds office for a period, not exceeding five years, specified in the instrument of appointment, but is eligible for re-appointment.

Remuneration and allowances of members

12. A member is entitled to such remuneration and allowances as the Minister determines.

Independence of members

13. (1) Subject to the provisions of section 10(4) on representation, a member may not engage in any paid employment that, in the opinion of the Minister, conflicts with the proper performance of the duties of the member.

(2) A member who has a direct or indirect pecuniary interest in a matter being considered by the Board must, as soon as possible 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 under subsection (2) must be recorded in the minutes of the meeting, and the member may not, unless the Minister or the Authority 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.

Acting appointments

14. (1) The Minister may appoint the Deputy Chair or another member (other than the Chief Executive Officer) to act as the Chair—

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

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

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

(4) The provisions of section 10(4) apply *mutatis mutandis* to appointments in terms of subsection

(3).

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

Resignation

15. A member (other than the members mentioned in section 10(1)(c) and (d)) may resign by notice in writing delivered to the Minister.

Termination of appointment

16. (1) The Minister may terminate the appointment of a member—
- (a) for misbehaviour or 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 13(2); or
 - (d) where the Minister is of the opinion that the performance of a member has been unsatisfactory for a significant period of time.

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

Meetings

17. (1) The Board is to hold such meetings as are necessary for the efficient performance of its functions.
- (2) The Chair—
- (a) may convene a meeting 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 at any time.
- (4) The Chair is to preside at all meetings at which he or she is present.
- (5) Where the Chair is not present at a meeting—
- (a) the Deputy Chair is to preside; or
 - (b) if the Deputy Chair is not present, the members present are to appoint one of their number to preside.
- (6) At a meeting four members constitute a *quorum*.
- (7) Questions arising at a meeting are to be 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, also has a casting vote.

Conduct of meetings

18. (1) The Board may, subject to this Part, 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, or all meetings, by telephone, closed-circuit television or any other means of communication, and a member who so participates is to be 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.

Resolutions without meetings

19. (1) Where the Board so determines, a resolution is to be taken 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 deemed to have been adopted on a day determined in accordance with the said procedure.

Division 2—Chief Executive Officer and staff

Chief Executive Officer

20. (1) There is a Chief Executive Officer of the Authority, who is appointed by the Minister after consultation with the Board.

(2) Subject to this Part, a 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 re-appointment.

(3) The Chief Executive Officer is, under the Board, to manage the Authority.

(4) Anything done in the name of, or on behalf of, the Authority by the Chief Executive Officer is to be taken to have been done by the Authority.

(5) Notwithstanding subsection (1), the Minister may appoint a provisional Chief Executive Officer on such terms and conditions (including remuneration and allowances) as he or she determines in writing.

(6) A person appointed in terms of subsection (5) holds office for a period not exceeding three years, but is eligible for re-appointment by the Board.

Chief Executive Officer not to engage in other work

21. The Chief Executive Officer may not engage in paid employment outside the duties of his or her office without the approval of the Minister and the Board.

Terms and conditions of service of Chief Executive Officer

22. The Chief Executive Officer holds office on such terms and conditions (including remuneration and allowances) in relation to matters not provided for by this Act as the Minister in consultation with the Board determines in writing.

Resignation

23. The Chief Executive Officer may resign by notice in writing delivered to the Board.

Acting Chief Executive Officer

24. (1) The Board may in consultation with the Minister appoint a person to act as Chief Executive Officer—

- (a) during a vacancy in the office of Chief Executive Officer, whether or not an appointment has previously been made to the office; or
- (b) 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 duties of the office,

but a person appointed to act during a vacancy may not continue so to act for more than 12 months.

(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 is to continue 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; and
- (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.

Staff of Authority

25. (1) Officers are persons employed by the Authority under a contract of employment with it.

(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 other body.

(3) The provisional Chief Executive Officer referred to in section 20(5) may appoint officers.

(4) Notwithstanding any other law, 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.

(5) Before acting under subsections (2) and (4), the Chief Executive Officer must obtain the Minister's approval.

PART 4—OPERATION OF AUTHORITY**Business plan**

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

- (2) The plan developed under subsection (1) must—
- (a) include a statement of the 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, financial plan, a human resources plan and performance indicators.

(3) The Minister's approval under subsection (1) has effect from the beginning of the financial year in question.

Financial targets and performance indicators

27. 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 directions given by the Minister under section 5; and
- (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 infrastructure 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.

Minister may direct variation of financial plan

28. (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 27 (other than paragraph (c)); and
 - (b) any other considerations of a commercial nature that the Minister considers appropriate.
- (3) A direction must be in writing and set out its reasons.

PART 5—FINANCE**Division 1—General****Transfers of certain State assets to Authority**

29. (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, at any time, cause the asset to be transferred to the Authority.

(2) Subsection (1) does not prevent 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(1).

Statutory transfer of land, etc., to Authority

30. (1) Where the Minister, by notice in the *Gazette*, for the purposes of this section describes any land owned by the State, such land is transferred to the Authority on the day specified in the notice, not being earlier than the day of publication of the notice.

(2) Notwithstanding 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 to him or her of a certificate by the Minister that State land has been transferred in terms of subsection (1), make such entries and endorsements free of charge as he or she deems 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 to him or her of a certificate by the Minister that a servitude, other real right or lease has been transferred in terms of subsection (1) or that a servitude exists over State land which has been transferred in terms of that subsection, make such entries and endorsements free of charge as he or she deems 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) Notwithstanding legal provisions to the contrary, no servitude or other right of any kind in respect of State land transferred to the Authority in terms of subsection (1) may be acquired by prescription.

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

Effects of transfers from State to Authority

31. Where, immediately before a transfer in terms of sections 29 or 30—

- (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; or
 - (b) a debt, liability or obligation of the State existed in respect of the assets,
- the right, debt, liability or obligation, as the case may be, of the State is transferred to the Authority.

Liabilities in respect of personnel

32. The Minister may, with the concurrence of 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 from it.

Money paid in advance to the State

33. Where—

- (a) a function of the Authority was formerly performed by the Department; and
- (b) 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
- (c) 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.

Rights in respect of services and facilities formerly provided by Department

34. (1) Where, immediately before the commencement of this Act—

- (a) a function of the Authority was being performed by the Department; and
 - (b) 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 determined in writing by the Minister taking into account the objectives of the Authority referred to in section 3(1).

(2) Where, immediately before the commencement of this section—

- (a) proceedings by the State were pending in a court; and
- (b) the proceedings related to such a debt, liability or obligation,

then, to the extent that the proceedings so relate, they may be continued by the Authority and the Authority is to be substituted for the State.

Assets and liabilities of Authority

35. (1) The assets of the Authority include but are not limited to—

- (a) assets that have been transferred to the Authority by or under this Act;
- (b) any amounts paid to the Authority out of money appropriated by Parliament for the purpose of funding the Authority;
- (c) any amount payable to the Authority in terms of any Act or any instrument thereunder;
- (d) amounts paid to the Authority in terms of section 45;
- (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 but are not limited to—

- (a) the amount determined under section 32;
- (b) debts, liabilities and obligations of the State transferred to the Authority by section 31;
- (c) any assets repayable to the State by the Authority under subsection (3);
- (d) any debts incurred by the Authority in the course of its operations;
- (e) any loans raised by the Authority.

(3) The assets of the Authority are repayable to the State at such times, and in such amounts, as the Minister determines in writing.

(4) In making such a determination, the Minister must have regard to any advice that the Authority has given to the Minister in relation to its financial affairs and to the objectives of the Authority referred to in section 3(1).

Exemption from tax

36. (1) The Authority is not liable to pay tax whether under the law of the State or under that of a Province.

(2) Subsection (1) does not apply to customs duties or value-added tax.

Borrowings from the State

37. The Minister of Finance may, out of money appropriated by Parliament for the purpose, lend money to the Authority on such terms and conditions as he or she determines in writing.

Borrowings otherwise than from the State

38. (1) The Authority may borrow money otherwise than from the State.

(2) Money may be borrowed under subsection (1) wholly or partly in foreign currency.

Guarantee of borrowings by Authority

39. (1) The Minister for Finance may guarantee the performance by the Authority of obligations incurred by it under section 38.

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

- (a) a provision agreeing that proceedings under the contract may be taken in the courts of a foreign country; or
- (b) a provision 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, he or she must cause to be laid before 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 he or she considers appropriate.

Authority may give security

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

- (a) the performance by the Authority of any obligation incurred under sections 37 or 38; or
- (b) the payment to the State of amounts equal to amounts paid by the State under a guarantee under section 39.

Delegation by Minister of Finance

41. The Minister of Finance may delegate to a person holding an office in the Department of Finance all or any of the powers under section 39.

Application of Reporting by Public Entities Act

42. (1) The Authority is a listed entity in terms of section 3 of the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992).

(2) In reporting under 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 in question.

Accounting and auditing

43. (1) The Authority must, in accordance with generally accepted accounting practice, keep such accounting and related records as are necessary to represent fairly the state of affairs and business of the Authority, and to explain its transaction and financial position.

(2) The accounting and related records of the Authority must be audited annually by an auditor registered under section 15 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991).

Division 2—Charges and Levies**Definitions**

44. In this Division—

"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, but not limited to, 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 an Act or instrument under an Act; or
 - (ii) the grant or variation of an authorization, or the cancellation, suspension, variation or imposition of a condition, relating to anything referred to in subparagraph (i).

"levy" means an amount payable at intervals or at stipulated times by specified persons and based on one or more or all of the following criteria:

- (a) gross tonnage;
- (b) ship category;
- (c) cargo category;
- (d) age of ship;
- (e) nationality of ship,

and also based on the presence of ships in the internal waters or territorial waters of the Republic otherwise than in innocent passage.

Charges and levies

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

- (a) fixing charges and levies and specifying the persons by whom, and the times when, such charges and levies are payable; and
- (b) fixing the penalty 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; and
- (b) if it fixes a charge, levy or penalty, specifying the basis of such charge, levy or penalty; and
- (c) if it varies a charge, levy or penalty, specifying the reason for the variation.

(3) The Minister may within 60 days after he or she has received a notice of the proposed determination, give the Authority notice in writing approving or disapproving the proposed determination, but in doing so, the Minister must have regard to the objectives and functions of the Authority in terms of section 3.

(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 a notice to the Authority under subsection (3) has expired without the Minister having given such a notice.

(6) The amount or rate of a charge fixed 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 under subsection (1) must be published in the *Gazette*.

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

(9) The penalty fixed under subsection (1) may not exceed an amount equivalent to the prescribed percentage of the unpaid amount of the charge or levy for each day during which it is unpaid, calculated from the day on which the charge or levy became due and payable, and compounded.

(10) Charges, levies and penalties may be recovered as debts due to the Authority.

Maritime Safety Fund

46. (1) There is a fund, called the Maritime Safety Fund, which is to be administered by the Minister.

(2) The Minister may pay amounts out of the Fund to the Authority for the purpose of furthering the objectives of the Authority referred to in section 3(1) in accordance with prescribed rules.

Fines and penalties

47. (1) There is to be paid to the Fund amounts equal to amounts received by way of penalty or fine by the State for contraventions under the laws specified in the agreement in terms of section 2(3).

(2) Amounts payable under subsection (1) are to be paid out of the National Revenue Fund established by section 213 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), which is appropriated accordingly.

PART 6—GENERAL PROVISIONS

Delegation By Minister

48. The Minister may delegate all or any of the powers under sections 29, 30, 33 and 50 to an officer of the Department.

Delegation by Authority

49. (1) Subject to subsection (2), the Authority may, by written instrument, delegate all or any of its powers under this or any other Act.

(2) The powers of the Authority under sections 38(1), 40 and 45(1) may be delegated only to an officer.

Substitution of Authority for State in contracts, etc.

50. If the Minister so declares in writing, a specified contract or other instrument—

- (a) to which the State or the Government is a party; and
- (b) that related to an asset immediately before the transfer of that asset under this Act;

has effect after the transfer as if, to the extent to which the contract or instrument so relates—

- (i) the Authority were substituted for the State or the Government as a party; and
- (ii) any reference to the State or the Government were, in relation to matters occurring after the transfer, a reference to the Authority.

Publication of directions

51. Where the Minister gives a direction under section 5 or 28, the Minister must cause a copy of the direction to be published in the *Gazette* within 21 days after it is given.

Regulations

52. The Minister may make regulations, not inconsistent with this Act—

- (a) prescribing matters required or permitted by this Act to be prescribed;
- (b) prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to this Act;
- (c) prescribing the manner in which and the persons or bodies by whom charges and levies are to be collected, and the manner in which security may be furnished for the payment of such charges and levies.

Application of Act to Prince Edward Islands

53. This Act extends to the Prince Edward Islands referred to in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948); and any reference in this Act to the Republic includes a reference to the those Islands.

Amendment of laws

54. The Minister may, by notice in the *Gazette*—

- (a) amend the laws mentioned in the Schedule to the extent mentioned in the third column of that Schedule as a consequence of the agreement in terms of section 2(3); and
- (b) amend such other laws as may be necessary in consequence of such agreement.

Transitional provisions

55. (1) Notwithstanding any provision to the contrary in any other law, the Minister may during the period from the date on which this section comes into operation to the transfer date take such steps or authorize such things to be done as may be necessary to promote—

- (a) the transfer of functions performed by the Department to the Authority as envisaged in section 2(3); and
- (b) the management of the Authority.

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

(3) In this section, "transfer date" means the date referred to in section 2(3)(c).

Short title and commencement

56. This Act is called the South African Maritime Safety Authority Act, 1997, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

Schedule

No. and year of Act	Title	Amendments which may be effected by the Minister under section 54 as a consequence of the agreement contemplated in section 2(3)
Act 57 of 1951	Merchant Shipping Act, 1951	<ol style="list-style-type: none"> 1. In section 2— <ol style="list-style-type: none"> (a) insert the following definition after the definition of "apprentice-officer": <u>" 'Authority' means the South African Maritime Safety Authority established by section 2 of the South African Maritime Safety Authority Act, 1997 (Act No. of 1997);"; and</u> (b) insert in the definition of "proper officer" in the words preceding paragraph (a) the words "or the Authority" after the words "Director-General". 2. In section 4(b) substitute the word "Authority" for the word "Minister" and delete the words "subject to the laws governing the public service". 3. In section 5(1) insert the words "and subject to the provisions of the South African Maritime Safety Authority Act, 1997 (Act No. of 1997" after the word "Minister". 4. In sections 9(1)(d), 18(3), 27(2), 30, 31, 43, 44, 46, 57, 81, 82, 96, 99, 100, 104, 112, 119, 121, 150, 153, 162, 178, 194, 196, 197, 198, 199, 203, 204, 207, 209, 210, 211, 224, 226, 239, 244, 247 and 264 substitute the word "Authority" for the words "Director-General" wherever the latter occur. 5. In sections 12, 18(4), 192, 193, 198, 200, 201, 203, 204, 207, 209, 210, 239 and 304A substitute the word "Authority" for the word "Minister" wherever the latter occurs. 6. In section 343(1) insert the words "the Authority" after the words "Director-General". 7. In section 343bis— <ol style="list-style-type: none"> (a) in paragraph (a) insert the words "the Authority," after the words "Department of Transport,"; and (b) in paragraph (b) insert the words "or of the Authority" after the word "State". 8. In section 344(4) insert the words "the Authority" after the words "Director-General". 9. In section 356ter (2) insert the words "with the Authority and" after the word "consultation".
Act 73 of 1980	Dumping at Sea Control Act, 1980	<ol style="list-style-type: none"> 10. In section 1— <ol style="list-style-type: none"> (a) in subsection (1) insert the following definition after the definition of "aircraft": <u>" 'Authority' means the South African Maritime Safety Authority established by section 2 of the South African Maritime Safety Authority Act, 1997 (Act No. of 1997);"; and</u> (b) in subsection (2) substitute the word "Authority" for the words "Minister of Transport".

Act 6 of 1981

Marine Pollution (Control
and Civil Liability) Act, 1981

11. In section 1(1)—

- (a) insert the following definition after the definition of "area of the Republic":

"'Authority' means the South African Maritime Safety Authority established by section 2 of the South African Maritime Safety Authority Act, 1997 (Act No. of 1997);"; and

- (b) in the definition of "principal officer" substitute the word "Authority" for the words "Marine Division of the Department of Transport".

12. In sections 4(3), 5(9), 10, 18, 27 substitute the word "Authority" for the word "State" wherever the latter occurs.

13. In sections 4, 5, 6, 7, 8, 9(1) and (2)(a), 13, 19, 21, 22, 27(1), (4), (5) and (6) substitute the word "Authority" for the word "Minister" wherever the latter occurs.

14. In sections 12(3), 13(2), 14, 16, 17, 18 and 24 substitute the word "Authority" for the words "Director-General".

15. In section 18 substitute the word "Authority" for the word "Minister" where the latter last occurs.

16. Substitute the following section for section 26:

"Income and expenditure

26. (1) There shall be paid into the National Revenue Fund—

- (a) any amount deposited in terms of section 16 representing a sum deemed in terms of section 9(2)(b)(ii);
 (b) any other money which may become payable to the State by virtue of the provisions of this Act;
 (c) any fines paid or recovered in consequence of the conviction of any person under section 30.

(2) Expenses incurred—

- (a) to undertake or promote the research determined by the Minister, on any matter which, in the opinion of the Minister, is connected with the pollution of the sea by harmful substances;
 (b) for the defraying of expenses incurred by the Minister and Director-General which are incidental or conducive to the performance of their respective functions in terms of the provisions of this Act,
shall be defrayed out of money appropriated by Parliament for such purposes.

(3) There shall be paid to the Authority—

- (a) any amount deposited in terms of section 16 other than a sum deemed in terms of section 9(2)(b)(ii);
 (b) the proceeds of the realisation of any goods, property or assets in terms of section 19;
 (c) all money paid to or recovered by the Authority in consequence of a removal in terms of section 27(6); and
 (d) any other money which may become payable to the Authority by virtue of the provisions of this Act.

(4) Expenses incurred—

- (a) when the Authority deems it necessary or expedient in the public interest, for defraying expenditure incurred in preventing or removing the pollution of the sea by harmful substances in or discharged from ships, tankers or offshore installations and in connection with matters incidental thereto;
- (b) for the payment of remuneration and allowances of persons engaged in terms of section 27(1);
- (c) for the defraying of expenses incurred in removing, or in taking steps to prevent, pollution of the sea by harmful substances, in terms of section 27(6);
- (d) for the hire or purchase of equipment, buildings, machinery and accessories, apparatus, seagoing vessels, vehicles, aircraft and any other movable or immovable property deemed by the Authority to be necessary for or conducive to the performance of its functions in terms of the provisions of this Act;
- (e) for the defraying of expenses incurred in the instruction of officers of the Authority and other persons in connection with pollution of the sea by harmful substances and in the training of such officers and persons in the prevention and removal of such pollution and in activities incidental thereto;
- (f) for any purpose connected with the performance by the Authority of its functions in terms of the provisions of this Act, shall be defrayed out of the moneys of the Authority; provided that for the purposes of paragraph (a) the defraying of expenditure incurred in preventing or removing pollution of the sea by harmful substances in or discharged from any ship, tanker or offshore installation shall not exempt the owner of such ship, tanker or offshore installation from liability under this Act for payment of such expenditure."

17. In section 27—

- (a) in subsection (1) delete the words "subject to the laws governing the public service";
- (b) in subsection (2) substitute the word "Authority" for the word "State";
- (c) in subsection (2)(a) substitute the words "owned by the Authority" for each of the expressions "in the National Revenue Fund" and "from the National Revenue Fund"; and
- (d) in subsection (2)(b) substitute the words "by the Authority" for the words "from the National Revenue Fund".

18. In section 29 substitute the words ", Director-General and the Authority" for the words "as well as the Director-General".

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