

REPUBLIC OF SOUTH AFRICA

**SOUTH AFRICAN MARITIME
SAFETY AUTHORITY BILL**

(As amended by the Portfolio Committee on Transport (National Assembly))

(MINISTER OF TRANSPORT)

[B 116B—97]

REPUBLIEK VAN SUID-AFRIKA

**WETSONTWERP OP DIE SUID-
AFRIKAANSE MARITIEME
VEILIGHEIDSOWERHEID**

(Soos gewysig deur die Portefeuljekomitee oor Vervoer (Nasionale Vergadering))

(MINISTER VAN VERVOER)

[W 116B—97]

ISBN 0 621 27574 3

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
-
-

BILL

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

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

ARRANGEMENT OF SECTIONS

Section

1. Definitions 5

CHAPTER 1

SOUTH AFRICAN MARITIME SAFETY AUTHORITY

2. Establishment and transfer of certain functions
3. Objectives
4. Duties 10
5. How functions may be performed
6. Functions to be performed in accordance with objectives and international agreements and law
7. Directions by Minister
8. Reimbursement of cost of complying with directions 15
9. Powers
10. Prohibition on formation of companies and partnerships
11. Consultation

CHAPTER 2

BOARD OF AUTHORITY AND STAFF

Part 1

Board

12. Constitution of Board and terms and conditions of appointment	5
13. Period of office of members	
14. Remuneration and allowances of members	
15. Independence and responsibilities of members	
16. Acting appointments	
17. Resignation	10
18. Termination of appointment	
19. Meetings	
20. Conduct of meetings	
21. Resolutions without meetings	

Part 2

15

Chief Executive Officer and staff

22. Chief Executive Officer	
23. Chief Executive Officer not to engage in other work	
24. Terms and conditions of service of Chief Executive Officer	
25. Resignation	20
26. Acting Chief Executive Officer	
27. Staff	

CHAPTER 3

OPERATION OF AUTHORITY

28. Business plan	25
29. Financial targets and performance indicators	
30. Minister may direct variation of financial plan	

CHAPTER 4

FINANCE

Part 1

30

General

31. Transfer of certain State assets to Authority	
32. Transfer of land, etc., to Authority	
33. Effect of transfer from State to Authority	
34. Liabilities in respect of personnel	35
35. Money paid in advance to State	
36. Rights in respect of services and facilities formerly provided by Department	
37. Assets and liabilities	
38. Maritime Fund	
39. Grants by State	40
40. Borrowings	
41. Guarantee of borrowings	
42. Authority may give security	
43. Application of Reporting by Public Entities Act, 1992	

*Part 2**Charges*

44. Charges

CHAPTER 5**GENERAL PROVISIONS**

5

45. Power to detain	
46. Limitation of liability and indemnification of Authority	
47. Delegation by Minister	
48. Delegation by Authority	
49. Substitution of Authority for State in certain contracts, etc.	10
50. Publication of directions	
51. Marine casualties investigation commission	
52. Certain functions of Authority to be performed by Department of State	
53. Regulations	
54. Application of Act to Prince Edward Islands	15
55. Amendment of section 1 of Act 105 of 1983, as amended by section 1 of Act 87 of 1992	
56. Amendment of section 11 of Act 105 of 1983, as substituted by section 9 of Act 87 of 1992	
57. Transitional provisions	20
58. Short title and commencement	
Schedule	

Definitions

1. In this Act, unless the context indicates otherwise—	
(i) “ appoint ” includes reappoint; (i)	25
(ii) “ assets ” means property of any description, and includes both movable and immovable property; (ii)	
(iii) “ Authority ” means the South African Maritime Safety Authority established by section 2(1); (xvi)	
(iv) “ Board ” means the Board of the Authority referred to in section 12(1); (xvii)	30
(v) “ 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; (xi)	
(vi) “ Chairperson ” means the Chairperson of the Board referred to in section 12(1)(a); (xix)	35
(vii) “ 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—	40
(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); (vii).	45
(viii) “ Chief Executive Officer ” means the Chief Executive Officer appointed under section 22(1) or (5); (x)	
(ix) “ Department ” means the Department of Transport; (v)	
(x) “ Deputy Chairperson ” means the Deputy Chairperson of the Board referred to in section 12(1)(b); (xiv)	50
(xi) “ financial year ” means the period beginning on 1 April of a specific year and ending on 31 March of the following year; (iv)	
(xii) “ Fund ” means the Maritime Fund established by section 38(1); (vi)	
(xiii) “ levy ” means a levy imposed under the South African Maritime Safety Authority Levies Act, 1998; (viii)	55

- (xiv) “**member**” means a member of the Board referred to in section 12(1); (xii)
- (xv) “**Minister**” means the Minister of Transport; (xiii)
- (xvi) “**officer**” means a member of the staff of the Authority; (iii)
- (xvii) “**prescribe**” means prescribe by regulation under section 53; (xx)
- (xviii) “**regulation**” means any regulation made under section 53; (xviii) 5
- (xix) “**this Act**” includes the regulations and any direction under section 7 or 30; (ix)
- (xx) “**transfer date**” means the date determined by the Minister under section 2(2). (xv)

CHAPTER 1

10

SOUTH AFRICAN MARITIME SAFETY AUTHORITY

Establishment and transfer of certain functions

2. (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. 15

Objectives

3. The objectives of the Authority are— 20
- (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.

Duties

4. In order to achieve its objectives the Authority must— 25
- (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. 30

How functions may be performed

5. (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— 35
- (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— 40
- (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.

Functions to be performed in accordance with objectives and international agreements and law 45

6. 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). 5

Directions by Minister

7. (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. 10

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

Reimbursement of cost of complying with directions

8. (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. 15

(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 20
- (b) forgoing revenue that would otherwise have been received.

Powers

9. (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. 25

(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; 30
- (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. 35

Prohibition on formation of companies and partnerships

10. 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. 40

Consultation

11. 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***Constitution of Board and terms and conditions of appointment** 5

- 12.** (1) The Board of the Authority consists of the following members:
- (a) A Chairperson;
 - (b) a Deputy Chairperson;
 - (c) the Chief Executive Officer, by virtue of the office; and
 - (d) two to four other members. 10
- (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 15
 - (b) hold office on such terms and conditions as the Minister determines in writing.
- (4) In making appointments under subsection (3), the Minister must take into account that—
- (a) the shipping sector must be represented by not more than one member; 20
 - (b) organised labour in the shipping sector must be represented by not more than one member;
 - (c) at least one member must be a person with substantial experience of maritime law, appointed in a personal capacity;
 - (d) the remaining members (if any) must be appointed in their personal capacities 25 and on the grounds of their expertise and experience in the business sector.
- (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. 30

Period of office of members

13. Subject to this Chapter, a member holds office for a period, not exceeding five years, specified in the instrument of appointment, but is eligible for reappointment.

Remuneration and allowances of members

14. 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. 35

Independence and responsibilities of members

- 15.** (1) Subject to section 12(2) and (4), a member may not engage in any paid employment that will conflict with the proper performance of his or her functions as member. 40
- (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— 45
- (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.

Acting appointments

16. (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.

Resignation

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

Termination of appointment

18. (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.

Meetings

19. (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. 5
- (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.

Conduct of meetings 10

20. (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; 15
 (b) invite a person to attend a meeting for the purpose of advising or informing it on any matter.

Resolutions without meetings

21. (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. 20
- (2) Such a resolution is regarded to have been adopted on a day determined in accordance with the said procedure.

Part 2 25

Chief Executive Officer and staff

Chief Executive Officer

22. (1) There is a Chief Executive Officer of the Authority who, subject to subsection (5), is appointed by the Board.
- (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. 30
- (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. 35
- (5) Despite subsection (1), the Minister may, for the purposes of the setting up of the Authority, appoint a provisional Chief Executive Officer on such terms and conditions, including remuneration and allowances, as the Minister may determine in writing.
- (6) A person appointed under subsection (5) holds office for a period not exceeding three years, but is eligible for reappointment by the Board. 40

Chief Executive Officer not to engage in other work

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

Terms and conditions of service of Chief Executive Officer 45

24. The Chief Executive Officer holds office on such terms and conditions, including remuneration and allowances, as the Board determines in writing.

Resignation

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

Acting Chief Executive Officer

26. (1) (a) The Board may, subject to paragraph (b), appoint a person to act as Chief Executive Officer— 5
- (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. 10
- (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— 15
- (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 20
 - (c) if an allowance is payable to the Chief Executive Officer but is not payable to the officer, that allowance.

Staff

27. (1) The necessary staff must be employed by the Authority under a contract of employment. 25
- (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. 30
- (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. 35
- (4) Before acting under subsection (2) or (3), the Chief Executive Officer must obtain the Minister's approval.

CHAPTER 3

OPERATION OF AUTHORITY 40

Business plan

28. (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; 45
 - (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. 50

(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.

5

Financial targets and performance indicators

29. 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.

10

15

Minister may direct variation of financial plan

20

30. (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.

25

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

CHAPTER 4

FINANCE

30

Part 1

General

Transfer of certain State assets to Authority

31. (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,

35

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.

40

Transfer of land, etc., to Authority

32. (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.

45

(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

50

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.

Effect of transfer from State to Authority

33. 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.

Liabilities in respect of personnel

34. 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.

Money paid in advance to State

35. 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.

Rights in respect of services and facilities formerly provided by Department

36. (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.

Assets and liabilities

- 37.** (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; 5
 - (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; 10
 - (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; 15
 - (c) any debts incurred by the Authority in the course of its operations;
 - (d) any loans raised by the Authority.

Maritime Fund

- 38.** (1) A fund, called the Maritime Fund, is hereby established under the control of the Minister. 20
- (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). 25
- (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. 30
- (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.

Grants by State

- 39.** 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. 35

Borrowings

- 40.** The Authority may borrow money from any source, including a foreign source.

Guarantee of borrowings 40

- 41.** (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 45
 - (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. 50

Authority may give security

- 42.** 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. 5

Application of Reporting by Public Entities Act, 1992

- 43.** (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. 10

Part 2**Charges****Charges** 15

- 44.** (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— 20
- (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. 25
- (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. 30
- (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. 35
- (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. 40
- (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. 45
- (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. 50

CHAPTER 5

GENERAL PROVISIONS

Power to detain

45. (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. 5

(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).

Limitation of liability and indemnification of Authority

46. (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. 10

(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— 15

(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 20

(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. 25

(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; 30

(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. 35

Delegation by Minister

47. 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.

Delegation by Authority 40

48. 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.

Substitution of Authority for State in certain contracts, etc.

49. 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 45

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.

5

Publication of directions

50. 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.

Marine casualties investigation commission

10

51. (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.

Certain functions of Authority to be performed by Department of State

15

52. (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.

20

Regulations

53. (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.

25

30

Application of Act to Prince Edward Islands

35

54. 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).

Amendment of section 1 of Act 105 of 1983, as amended by section 1 of Act 87 of 1992

55. Section 1 of the Admiralty Jurisdiction Regulation Act, 1983, is hereby amended by the substitution for paragraph (r) of the definition of “maritime claim” of the following paragraph:

“(r) dock, harbour or similar dues, and any charge, levy or penalty imposed under the South African Maritime Safety Authority Act, 1998, or the South African Maritime Safety Authority Levies Act, 1998;”

40

45

Amendment of section 11 of Act 105 of 1983, as substituted by section 9 of Act 87 of 1992

56. Section 11 of the Admiralty Jurisdiction Regulation Act, 1983, is hereby amended by the substitution for subparagraph (ii) of paragraph (c) of subsection (4) of the following subparagraph: 5

“(ii) in respect of port, canal, other waterways or pilotage dues, and any charge, levy or penalty imposed under the South African Maritime Safety Authority Act, 1998, or the South African Maritime Safety Authority Levies Act, 1998;”.

Transitional provisions 10

57. (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 15
- (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.

Short title and commencement 20

58. (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))

No. and year of law	Title	Extent of amendment
Act 57 of 1951	Merchant Shipping Act, 1951	<p>1. The amendment of section 2—</p> <p>(a) by the insertion in subsection (1) after the definition of “apprentice-officer” of the following definition: “ ‘Authority’ means the South African Maritime Safety Authority established by section 2 of the South African Maritime Safety Authority Act, 1998;”;</p> <p>(b) by the substitution in subsection (1) in the definition of “marine notice” for the words “Department of Transport” of the word “Authority”;</p> <p>(c) by the substitution in subsection (1) in the definition of “principal officer” for the words “Marine Division of the Department of Transport” of the word “Authority”; and</p> <p>(d) by the substitution in subsection (1) in the definition of “register tons” and “register tonnage” for the word “Director-General” of the word “Authority”.</p> <p>2. The substitution for section 5 of the following section:</p> <p style="text-align: center;">“Authority responsible for administration of Act</p> <p>5. (1) The [Director-General] Authority shall [subject to the control of the Minister] be responsible for the administration of this Act, and shall have the control of all matters incidental thereto.</p> <p>(2) The [Director-General] Authority shall, subject to the provisions of this Act or any other law, have such powers and perform such duties as are assigned to [him] it by the Minister.</p> <p>(3) All powers conferred and all duties imposed upon the [Director-General] Authority may be exercised or performed by the [Director-General personally] Authority, or by [an officer or organization or, with respect to conditions prescribed under section 68(3)(b), by] a person or organization under a delegation from or under the control or direction of the [Director-General] Authority.”.</p> <p>3. The amendment of section 12 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) If the [Minister] Authority has reason to believe that there is some doubt as to the title of any ship registered as a South African ship to be so registered, [he] it may direct the proper officer of the port of registry of the ship to require that evidence be given to [his] its satisfaction that the ship is entitled to be registered as a South African ship.”.</p>

No. and year of law	Title	Extent of amendment
		<p>4. The amendment of section 18 by the substitution for subsection (4) of the following subsection:</p> <p>“(4) If from the report of a surveyor so directed to inspect a ship it appears to the [Minister] Authority that the tonnage of that ship, as so denoted, materially differs from that which would be her tonnage if measured under this Act or that her construction and equipment as regards the said space do not, for the purpose of determining her tonnage conform to the said standards, or if for any reason it appears to the [Minister] Authority that the tonnage of any ship so registered has been erroneously computed, [he] it may order that, notwithstanding any direction for the time being in force under this section, that ship or any ship registered in the country to which the direction relates shall, for all or any of the purposes of this Act, be surveyed in accordance with this Act.”.</p> <p>5. The substitution for section 31 of the following section:</p> <p>“Temporary passes in lieu of certificates of registry</p> <p>31. Whenever by reason of special circumstances it appears desirable to the [Director-General] Authority that permission should be granted to a ship which, in terms of this Act, is entitled to be registered in the Republic, or, in terms of the laws in force in any other treaty country is entitled to be registered in that treaty country to proceed to sea without being previously registered, [he] it may authorize the granting of a pass in the prescribed form for the ship to be taken from any port in the Republic to any other port in the Republic or, as the case may be, to any port in that other treaty country, and that pass shall for the time and within the limits therein mentioned be deemed to be a certificate of registry.”.</p> <p>6. The amendment of section 43 by the substitution for subsections (3), (4) and (5) of the following subsections, respectively:</p> <p>“(3) Upon any such application being made to [him] it, the [Director-General] Authority shall direct that notice of the application be published in the <i>Gazette</i> and in such newspapers and be served upon such persons as [he] it may determine. The notice shall be in [a] the form approved by the [Director-General] Authority and shall call upon all persons who may object to the order being made to lodge their objections in writing with the [Director-General] Authority within a period determined by [him] it and mentioned in the notice.</p> <p>(4) Upon proof of the due publication and service of the notice, the [Director-General] Authority shall, if no objection in writing has been lodged with [him] it within the period mentioned in the notice, and if [he] it is satisfied of the justice of the applicant’s claim, make the order applied for.</p>

No. and year of law	Title	Extent of amendment
		<p>(5) If objection in writing is lodged with the [Director-General] Authority within the period mentioned in the notice, or if [he] it is not satisfied of the justice of the applicant's claim, [he] it shall refuse to make the order.”.</p> <p>7. The amendment of section 73 by the substitution for subsection (3) of the following subsection:</p> <p>“(3) Whenever the [Minister] Authority is satisfied from a report by a surveyor that it would be unreasonable to require the owner of a ship built before the coming into operation of this section to provide the accommodation on board that ship necessary to accommodate the numbers of officers or other persons required to be employed in terms of subsection (1), or in terms of a notice issued under subsection (2), [he] it may vary the requirements of subsection (1) or of that notice in respect of that ship as [he] it deems fit.”.</p> <p>8. The amendment of section 77 by the substitution for the proviso to subsection (2) of the following proviso:</p> <p>“: Provided that the [Minister] Authority may, in [his] its discretion and subject to any conditions which [he] it may impose, admit to such examination a person who is a citizen of any other country if he possesses either the qualifications prescribed by regulation or qualifications which are in the opinion of the [Minister] Authority of a standard not lower than those so prescribed.”.</p> <p>9. The amendment of section 79 by the substitution for subsection (2) of the following subsection:</p> <p>“(2) The [Minister] Authority may grant to the applicant an appropriate certificate of competency which, in the opinion of the [Minister] Authority, testifies to the possession by the holder thereof of qualifications and a degree of competency not higher than those to which the certificate, upon the possession of which the application is based, testifies: Provided that before the grant is made the [Minister] Authority may require the last-mentioned certificate to be surrendered to [him] it.”.</p> <p>10. The amendment of section 83 by the substitution for subsection (2) of the following subsection:</p> <p>“(2) Notwithstanding the provisions of section 73, the [Minister] Authority may, in [his] its discretion, and for such periods and under such conditions as [he] it may specify, permit the engagement on a South African ship going to sea from any port whatsoever or on a treaty ship other than a South African ship going to sea from a port in the Republic, in lieu of a person duly certificated under this Act or deemed, in terms of the other provisions of this Act, to be so certificated, of a person who is the holder of such a certificate of</p>

No. and year of law	Title	Extent of amendment
		<p>competency or certificate of service as is referred to in subsection (1), and who possesses a knowledge of [either] <u>one</u> of the official languages of the Republic sufficient to enable him to give the necessary orders in the performance of his duties; and while any such permission remains in force, and if the conditions under which it was granted are complied with, the person so engaged shall be deemed to be duly certificated under this Act in respect of such ship, provided his certificate is of a grade appropriate to his station in such ship, or of a higher grade.”.</p> <p>11. The substitution for section 85 of the following section:</p> <p style="text-align: center;">“Authority may vary requirements as to certificates</p> <p>85. Notwithstanding the provisions of section 73 the [Minister] <u>Authority</u> may, in [his] <u>its</u> discretion and for such periods and under such conditions as [he] <u>it</u> may specify if [he] <u>it</u> is satisfied that no suitable holder of a certificate of the required grade and granted under this Act or referred to in section 83 or 84 or recognized under section 354 is available, permit a South African ship to go to sea from any port whatsoever or a ship other than a South African ship to go to sea from a port in the Republic without the prescribed number of certificated officers or other persons, and while any such permission remains in force any person who acts in terms thereof shall not, if the conditions under which it was granted are complied with, be deemed to have contravened the provisions of section 73.”.</p> <p>12. The amendment of section 87 by the substitution for subsection (2) of the following subsection:</p> <p>“(2) If after consideration of the report on the medical examination the [Minister] <u>Authority</u> is satisfied that the person concerned is owing to continued ill-health or mental or physical defect incapable of performing satisfactorily the duties appertaining to his certificate of competency or service, [he] <u>it</u> may direct that until [he] <u>it</u> is satisfied that the holder of the certificate has again become capable of performing satisfactorily the duties appertaining to the said certificate, the holder shall not be engaged or go to sea in the capacity referred to in the certificate or in any other capacity specified by the [Minister] <u>Authority</u>.”.</p> <p>13. The amendment of section 90 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) No person shall be employed as a cadet on board any South African ship unless he is a South African citizen or a citizen of a treaty country (other than the Republic) or a citizen of any other country whom the [Minister] <u>Authority</u> has in [his] <u>its</u> discretion and subject to any conditions which</p>

No. and year of law	Title	Extent of amendment
		<p>[he] <u>it</u> may have imposed, permitted to be so employed, and has attained the age of sixteen years and the master of the ship undertakes to train him or cause him to be trained in navigation and seamanship or in engineering and in the duties of a ship's officer.”.</p> <p>14. The amendment of section 93 by the substitution for subparagraph (iii) of paragraph (a) of the following subparagraph: “(iii) is a South African citizen or citizen of a treaty country (other than the Republic) or a citizen of any other country whom the [Minister] <u>Authority</u> has in [his] <u>its</u> discretion and subject to any conditions which [he] <u>it</u> may have imposed, permitted to be indentured, and has attained the age of sixteen years;”.</p> <p>15. The amendment of section 111 by the substitution for subparagraph (i) of paragraph (a) of subsection (1) of the following subparagraph: “(i) to the employment of a young person on such work as aforesaid in a school-ship or training-ship, if the work is of a kind approved by the [Minister] <u>Authority</u> and is carried on subject to supervision by officers approved or appointed by [him] <u>it</u>; or”.</p> <p>16. The amendment of section 112 by the substitution for paragraph (a) of subsection (3) of the following paragraph: “(a) The [Director-General] <u>Authority</u> shall grant to every person who produces proof to [his] <u>its</u> satisfaction that he was serving as able seaman or in an equivalent or superior deck rating in a South African ship prior to the coming into operation of this section a certificate of qualification as able seaman.”.</p> <p>17. The amendment of section 153 by the substitution for subsection (4) of the following subsection: “(4) Any duplicate agreement with the crew delivered to a proper officer in terms of paragraph (c) of section 103 or any statement of a change of the crew transmitted to a proper officer in terms of section 104 at the time of the departure of the ship from the port last visited, and any certificate purporting to be a certificate issued in terms of section 105(1), stating that certain seamen and apprentice-officers joined the ship at the said port shall, if produced by the [Director-General or any person thereto authorized by him] <u>Authority</u>, be taken in the absence of proof to the contrary as sufficient proof that the seamen and apprentice-officers therein named as belonging to the ship were on board at the time of the loss.”.</p> <p>18. The amendment of section 158— (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: “If the [Minister] <u>Authority</u> is satisfied—”; (b) by the substitution in subsection (2) for the words following on paragraph (b) of the following words:</p>

No. and year of law	Title	Extent of amendment
		<p>“[he] <u>it</u> may direct that a refrigerator of a capacity and design approved by [him] <u>it</u> be provided instead of a refrigerating chamber.”; and</p> <p>(c) by the substitution for subsection (3) of the following subsection:</p> <p>“(3) If the [Minister] <u>Authority</u> is satisfied that because of the nature and conditions of the projected voyage of the ship the provision of a refrigerating chamber or a refrigerator would be unreasonable or unnecessary, [he] <u>it</u> may exempt the ship from the provisions of this section.”.</p> <p>19. The substitution for sections 192 and 193 of the following sections, respectively:</p> <p>“Issue of safety convention certificates in respect of passenger ships</p> <p>192. If, after consideration of the report of a surveyor, the [Minister] <u>Authority</u> is satisfied—</p> <p>(a) that a passenger ship which, in terms of this Act, is required to be registered is constructed and equipped in accordance with all the requirements of the construction regulations, the life-saving equipment regulations, the radio regulations, the collision regulations and any other regulations which may have been made, which are applicable to the ship when plying on international voyages or on short international voyages, [he] <u>it</u> shall cause to be issued in respect of the ship a passenger ship safety certificate for an international voyage or a short international voyage, as the case may be;</p> <p>(c) that a passenger ship which, in terms of this Act, is required to be registered is exempt, by virtue of the exercise by [him] <u>it</u> of a power conferred on [him] <u>it</u> by the construction regulations, the life-saving equipment regulations, the radio regulations, the collision regulations or any other regulations which may have been made, from any of the requirements of the said regulations applicable to the ship when plying on international voyages, or on short international voyages, or when engaged in any special passenger trade on such voyages, and that she is constructed and equipped in accordance with the remaining requirements, [he] <u>it</u> shall cause to be issued in respect of the ship an exemption certificate and a passenger ship safety certificate.</p> <p>Issue of safety convention certificates in respect of ships other than passenger ships</p> <p>193. If, after consideration of the report of a surveyor, the [Minister] <u>Authority</u> is satisfied—</p>

No. and year of law	Title	Extent of amendment
		<p>(1) that a ship (other than a passenger ship) to which the Safety Convention applies and which, in terms of this Act, is required to be registered is constructed and equipped in accordance with all the requirements of the construction regulations, the life-saving equipment regulations, the collision regulations and any other regulations which may have been made, which are applicable to the ship when plying on international voyages, [he] <u>it</u> shall cause to be issued in respect of that ship—</p> <p>(a) a cargo ship safety construction certificate relating to the matters applicable to the issue of such a certificate; and</p> <p>(b) a cargo ship safety equipment certificate relating to the matters applicable to the issue of such a certificate;</p> <p>(2) that a ship (other than a passenger ship) to which the Safety Convention applies and which, in terms of this Act, is required to be registered is exempt, by virtue of the exercise by [him] <u>it</u> of a power conferred on [him] <u>it</u> by the construction regulations, the life-saving equipment regulations, the collision regulations or any other regulations which may have been made, from any of the requirements of the said regulations applicable to the ship when plying on international voyages, and that she is constructed and equipped in accordance with the remaining requirements, [he] <u>it</u> shall cause to be issued in respect of the ship—</p> <p>(a) an exemption certificate and a cargo ship safety construction certificate if the matters from which the ship is exempt relate to such latter certificate; and</p> <p>(b) an exemption certificate and a cargo ship safety equipment certificate, if the matters from which the ship is exempt relate to such latter certificate;</p> <p>(3) that a ship (other than a passenger ship) to which the Safety Convention applies and which, in terms of this Act, is required to be registered, is equipped in accordance with all the requirements of the radio regulations applicable to the ship when plying on international voyages, [he] <u>it</u> shall cause to be issued in respect of the ship a cargo ship safety radio certificate;</p> <p>(4) that a ship (other than a passenger ship) to which the Safety Convention applies and which, in terms of this Act, is required to be registered is exempt, by virtue of the exercise by [him] <u>it</u> of a power conferred on [him] <u>it</u> by the radio regulations, from any or all of the requirements of the said regulations applicable to the ship when plying on international voyages, and that she is equipped in accordance with the remaining requirements (if any), [he] <u>it</u> shall cause to be issued in respect of the ship—</p> <p>(a) an exemption certificate; and</p>

No. and year of law	Title	Extent of amendment
		<p>(b) in the case of a ship which is not exempt from all the said requirements, a cargo ship safety radio certificate.”.</p> <p>20. The amendment of section 194 by the substitution in subsection (1) for the words preceding subparagraph (i) of paragraph (b) of the following words:</p> <p>“If, after consideration of the report of a surveyor, the [Director-General] Authority is satisfied that a vessel referred to in subsection (2)—</p> <p>(a) is constructed and equipped in accordance with all the requirements of the construction regulations, the life-saving equipment regulations, the radio regulations, the collision regulations and any other regulations which may have been made, which are applicable to the vessel when engaged in the voyages or the operations in which it is intended that she shall be engaged, [he] it shall cause to be issued in respect of the vessel a local general safety certificate stating that she is so constructed and equipped, and specifying the voyages or the operations in which the vessel is by the certificate authorized to be engaged;</p> <p>(b) is exempt, by virtue of the exercise by [him] it of a power conferred on [him] it by the regulations referred to in paragraph (a), from any of the requirements of the said regulations and is constructed and equipped in accordance with the remaining requirements, [he] it shall cause to be issued in respect of the vessel—”.</p> <p>21. The amendment of section 196 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) If, on any international voyage, a passenger ship registered in the Republic, in respect of which a safety convention certificate is in force, has on board a total number of persons less than the number stated in that certificate to be the number for which the life-saving appliances on the ship provides, the [Director-General or any other person authorized by him for the purpose] Authority may, at the request of the master of the ship, issue a memorandum stating the total number of persons carried on the ship on that voyage, and the consequent modification which may be made for the purpose of that voyage in the particulars with respect to life-saving appliances stated in the certificate, and that memorandum shall be annexed to the certificate.”.</p> <p>22. The amendment of section 197 by the substitution for paragraphs (a) and (b) of subsection (3) of the following paragraphs, respectively:</p> <p>“(a) <u>The Authority may grant an extension of—</u></p> <p>(i) <u>any safety convention certificate, except a cargo ship safety construction certificate; or</u></p>

No. and year of law	Title	Extent of amendment
		<p>(ii) <u>any local safety certificate, issued in respect of any vessel registered or licensed under this Act, for a period not exceeding one month from the date when the certificate would, but for the extension, have expired, or, if the vessel is absent from the Republic on that date, for a period not exceeding five months from that date.</u></p> <p>(b) If any safety convention certificate, except a cargo ship safety construction certificate, issued in respect of a ship not registered in the Republic, expires while such ship is in any port in the Republic, the [Minister or any person authorized thereto by him] Authority may, for sound reasons, extend such certificate for any period not exceeding five months, which extension shall be granted only for the purpose of allowing such ship to complete its voyage to the country in which it is registered or is to be inspected.”.</p> <p>23. The amendment of section 198 by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: <u>“The Authority may direct that a safety convention certificate or a local safety certificate be cancelled, if, by reason of the contents of a report by a surveyor, or for any other reason, it is satisfied that—”.</u></p> <p>24. The substitution for section 199 of the following section: “Surrender of expired or cancelled safety convention certificate or local safety certificate</p> <p>199. (1) A safety convention certificate or a local safety certificate which has expired or has been cancelled shall on demand be surrendered by the owner or master of the ship to the [Director-General or a person nominated by him] Authority.</p> <p>(2) If any certificate required to be surrendered under subsection (1) is not surrendered, the [Director-General or his nominee who has demanded its surrender] Authority may cause the ship to be detained until the certificate is surrendered.”.</p> <p>25. The amendment of section 202 by the substitution in subsection (2) for the first sentence of the following sentence: <u>“The [Minister] Authority may, at the request of the Government of a country to which the Safety Convention applies, cause an appropriate safety convention certificate to be issued in respect of a ship registered in that country, if [he] it is satisfied in like manner as in the case of a ship registered in the Republic, that the certificate can properly be issued: Provided that [he] it may cause the certificate to be issued if</u></p>

No. and year of law	Title	Extent of amendment
		<p>[he] it is satisfied that the ship is constructed and equipped in accordance with all the requirements of the construction regulations, the life-saving equipment regulations, the radio regulations and any other regulations which may have been made <u>and</u> which are applicable to the ship and to the voyages on which she is to be engaged, in so far as those requirements are requirements of the Safety Convention applicable as aforesaid, notwithstanding the fact (if it be so) that she is not constructed or equipped in accordance with any requirements of the said regulations that are not applicable requirements of the Safety Convention, and that she is equipped in accordance with the requirements of the collision regulations.”.</p> <p>26. The amendment of section 203—</p> <p>(a) by the substitution for subsections (5) and (6) of the following subsections, respectively:</p> <p>“(5) Notwithstanding the provisions of [paragraph (a) of] subsection (3)(a), if the non-South African safety convention certificate produced in respect of any such ship states the maximum number of persons that the ship is fit to carry, or if in addition to the non-South African safety convention certificate there is produced a certificate issued by or under the authority of the Government of the country in which the ship is registered stating the maximum number of persons that the ship is fit to carry, and the [Minister] Authority is satisfied that that number has been determined substantially in the same manner as it would have been determined in the case of a ship registered in the Republic, [he] it may, if [he] it thinks fit, dispense with any inspection of the ship for the purpose of determining the maximum number of persons that she is fit to carry.</p> <p>(6) If after consideration of the report of a surveyor of an inspection made under [paragraph (b) of] subsection (3)(b), the [Minister] Authority is satisfied that a ship in respect of which a non-South African safety convention certificate has been produced is unseaworthy, [he] it may direct that the said certificate be not recognized in the Republic, and thereafter the said certificate shall have no effect in the Republic.”; and</p> <p>(b) by the substitution in subsection (7) for the proviso of the following proviso:</p> <p>“Provided that, if, after consideration of the report of a surveyor on an inspection of such ship, the [Director-General] Authority is satisfied that she is not in the condition of seaworthiness indicated in such certificate, [he] it may direct that the certificate be not recognized in the Republic, and thereafter the said certificate shall have no effect in the Republic.”.</p>

No. and year of law	Title	Extent of amendment
		<p>27. The amendment of section 204 by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:</p> <p>“If, after consideration of the report of a surveyor of his inspection of a load line ship registered in the Republic, the [Minister (in the case of an international load line ship), or the Director-General (in the case of a local load line ship)] Authority is satisfied that the ship is exempt by virtue of the exercise by [him] it of a power conferred on [him] it by the load line regulations, from any or all of the requirements of the said regulations and that the ship complies with the remaining requirements (if any), the [Minister or the Director-General, as the case may be] Authority shall cause to be issued in respect of that ship—”.</p> <p>28. The amendment of section 207—</p> <p>(a) by the substitution for the words preceding paragraph (a) of the following words:</p> <p>“If, after consideration of the report of a surveyor of his inspection of a load line ship registered in the Republic, the [Minister (in the case of an international load line ship), or the Director-General (in the case of a local load line ship)] Authority is satisfied that—”; and</p> <p>(b) by the substitution for the words following on paragraph (c) and preceding subparagraph (i) of the following words:</p> <p>“the [Minister or the Director-General, as the case may be] Authority shall cause to be issued in respect of that ship—”.</p> <p>29. The amendment of section 209 by the substitution for subsection (2) of the following subsection:</p> <p>“(2) <u>The Authority may grant an extension of any international load line certificate or of any local load line certificate, issued in respect of any ship registered under this Act, for a period not exceeding one month from the date when the certificate would, but for the extension, have expired, or, if the ship is absent from the Republic on that date, for a period not exceeding five months from that date.</u>”.</p> <p>30. The amendment of section 210 by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:</p> <p>“<u>The Authority may direct that an international load line certificate or a local load line certificate be cancelled, if it is satisfied that—</u>”.</p> <p>31. The substitution for section 211 of the following section:</p> <p>“Surrender of expired or cancelled load line certificate</p> <p>211. (1) A load line certificate which has expired or has</p>

No. and year of law	Title	Extent of amendment
		<p>been cancelled, shall on demand be surrendered by the owner or master of the ship to the [Director-General or a person nominated by him] Authority.</p> <p>(2) If any certificate required to be surrendered under subsection (1) is not surrendered, the [Director-General or his nominee who has demanded its surrender] Authority may cause the ship to be detained until the certificate is surrendered.”.</p> <p>32. The amendment of section 215 by the substitution in subsection (2) for the first sentence of the following sentence: “The [Minister] Authority may, at the request of the Government of a country to which the Load Line Convention applies, cause an international load line convention certificate to be issued in respect of a load line ship registered in that country, if [he] <u>it</u> is satisfied, in like manner as in the case of a ship registered in the Republic, that the certificate can properly be issued: Provided that [he] <u>it</u> may cause the certificate to be issued if [he] <u>it</u> is satisfied that the ship is marked with deck lines and load lines in accordance with the requirements of the load line regulations in so far as those requirements are requirements of the Load Line Convention, notwithstanding the fact (if it be so) that she is not marked with deck lines and load lines in accordance with any requirements of the said regulations that are not requirements of the Load Line Convention.”.</p> <p>33. The amendment of section 217 by the substitution for paragraph (a) of subsection (2) of the following paragraph: “(a) if a special load line certificate is issued in respect of a load line ship registered in a country to which the Load Line Convention does not apply, it shall be available in respect of international voyages as well as other voyages, but if issued in respect of a load line ship registered in a country to which the Load Line Convention applies, shall only be valid so long as the ship is not plying on international voyages, and shall be endorsed with a statement to that effect, and may be cancelled by the [Minister] Authority if [he] <u>it</u> is satisfied that the ship is so plying; and”.</p> <p>34. The amendment of section 231 by the substitution for subsections (2) and (3) of the following subsections, respectively: “(2) The [Director-General] Authority may refuse to register any signals which, in [his] <u>its</u> opinion, cannot easily be distinguished from signals generally used as signals of distress, signals for pilots, signals of urgency, signals prescribed for indicating that a message is about to be sent relating to a danger, or from signals registered in the name of any other person. (3) The [Director-General] Authority may, if [he] <u>it</u> thinks fit, cancel the registration of any signal at any time.”.</p>

No. and year of law	Title	Extent of amendment
		<p>35. The amendment of section 239—</p> <p>(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:</p> <p>“If, by reason of the contents of a report made in terms of subsection (1), or for any other reason, the [Director-General] Authority is of the opinion or suspects—”; and</p> <p>(b) by the substitution in subsection (2) for the words following on paragraph (c) of the following words:</p> <p>“[he] <u>it</u> may give special directions for the inspection of the ship by a surveyor, notwithstanding the fact that a safety convention certificate, a local safety certificate or a load line certificate is still in force in respect of that ship.”.</p> <p>36. The amendment of section 247 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) If, on inspection, it is determined that any ship detained under the provisions of section 243 was not an unseaworthy ship, the expenses incurred in connection with the inspection shall be paid to the [Director-General] Authority by the person making the complaint, and if it be proved that there was not reasonable cause, by reason of the condition of the ship or the act or default of the owner or master, for the detention of the ship, the [Minister] Authority shall [out of moneys made available by Parliament for the purpose] pay to the owner compensation for any damage suffered by him by reason of the detention [or survey].”.</p> <p>37. The amendment of section 262 by the substitution for subsection (4) of the following subsection:</p> <p>“(4) In the case of any foreign ship, which is incapable of being measured under the law of the Republic, the [Minister] Authority shall, after consideration of the available evidence concerning the dimensions of the ship, give a certificate [under his hand] stating what would, in [his] <u>its</u> opinion, have been the tonnage of the ship if she had been duly measured according to the law of the Republic; and the tonnage so stated in such certificate shall, for the purpose of section 261, be deemed to be the tonnage of the ship.”.</p> <p>38. The amendment of section 264—</p> <p>(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:</p> <p>“The [Director-General] Authority may in [his] <u>its</u> discretion appoint any competent person to hold a preliminary enquiry—”; and</p> <p>(b) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) The [Director-General] Authority may request the Director-General of Labour to assign a person designated as an inspector under section 28 of the Occupa-</p>

No. and year of law	Title	Extent of amendment
		<p>tional Health and Safety Act, 1993 (Act No. 85 of 1993), to assist a person appointed under subsection (1) to hold a preliminary enquiry.”.</p> <p>39. The amendment of section 282 by the substitution for subsection (1) of the following subsection:</p> <p>“ (1) If the [Director-General] Authority is of opinion that an appeal to a court of survey involves a question of construction or design or of scientific difficulty or an important principle, [he] it may refer the appeal to one or more experts approved by the Minister and selected by agreement between the [Director-General] Authority and the appellant, or, in default of any such agreement, by the Minister, and thereupon the appeal shall be determined by such experts instead of by the court.”.</p> <p>40. The substitution for section 288 of the following section:</p> <p>“Delivery of Republic certificate which has been cancelled or suspended</p> <p>288. A master or member of the crew who is the holder of a certificate issued in the Republic shall, if such certificate has been cancelled or suspended by the [Minister] Authority or a court of marine enquiry or suspended by a maritime court, deliver his certificate to the [Minister or] court on demand, or if it is not demanded by the [Minister or] court, to the [Director-General] Authority.”.</p> <p>41. The amendment of section 323 by the substitution for subsection (3) of the following subsection:</p> <p>“(3) The [Director-General] Authority, if [he] it is satisfied that any such act of misconduct was committed and that the deduction of a fine was properly made, shall cause the amount of the fine to be paid into the [Consolidated Revenue] Maritime Fund established by section 38 of the South African Maritime Safety Authority Act, 1998; and if the [Director-General] Authority is not so satisfied, [he] it shall cause the amount deducted to be refunded to the seaman.”.</p> <p>42. The amendment of section 324 by the substitution for subsections (1) and (2) of the following subsections, respectively:</p> <p>“(1) If any person—</p> <p>(a) admits to the [Director-General] Authority that he has contravened any provision of this Act, or that he has failed to comply with any such provision with which it was his duty to comply; and</p> <p>(b) agrees to abide by the decision of the [Director-General] Authority; and</p>

No. and year of law	Title	Extent of amendment
		<p>(c) deposits with the [Director-General] Authority such sum as [that officer] may [require] <u>be required</u> of him, but not exceeding the maximum fine which may be imposed upon a conviction for the contravention or failure in question,</p> <p>the [Director-General] Authority may, after such enquiry as [he] <u>it</u> deems necessary, determine the matter summarily and may, [as penalty] without legal proceedings, order [forfeiture of] <u>by way of penalty</u> the whole or any part of the said deposit <u>to be forfeited</u>.</p> <p>(2) There shall be a right of appeal to the Minister from a determination or order by the Authority under subsection (1) whereby a penalty exceeding R2 000 is imposed, <u>provided such right is exercised within a period of three months from the date of such determination or order.</u>”.</p> <p>43. The amendment of section 325—</p> <p>(a) by the substitution for the words preceding paragraph (a) of the following words:</p> <p style="padding-left: 40px;">“The [Minister, or the Director-General in cases where the power of release or mitigation of penalties has been delegated to him by the Minister,] <u>Authority</u> may—”; and</p> <p>(b) by the substitution for the words following on paragraph (b) and preceding the proviso of the following words:</p> <p style="padding-left: 40px;">“on such conditions as to [him] <u>it</u> appear proper.”.</p> <p>44. The amendment of section 336 by the substitution for subsection (4) of the following subsection:</p> <p style="padding-left: 40px;">“(4) If notice is not given by the owner or interested person in terms of subsection (3), no legal proceedings shall thereafter be instituted by him against the State, the Minister, <u>the Authority</u>, the Director-General or any other officer for the release of the ship, share or goods or based merely upon the detention, seizure or forfeiture thereof.”.</p> <p>45. The amendment of section 337 by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">“(1) The [Director-General] Authority or proper officer may, if <u>it or he</u> deems it expedient to do so, in order that any ship, share in a ship or goods in respect of which a notice of detention or of forfeiture has been served in terms of section 335 or 336, or in respect of which it is intended to cause such a notice to be so served, may be secured against damage, destruction, concealment, removal or rescue, cause that ship or share or those goods, as the case may be, to be seized by a person thereto authorized [by him in writing under his hand] <u>for the purpose.</u>”.</p>

No. and year of law	Title	Extent of amendment
		<p>46. The substitution for sections 343 and 343<i>bis</i> of the following sections, respectively:</p> <p>“Notice of action against Government or Authority to be given</p> <p>343. (1) No legal proceedings shall be instituted against the State, the Minister, <u>the Authority</u>, the Director-General or any officer of the State <u>or of the Authority</u> in his capacity as such, for anything done in pursuance of any provision of this Act until one month after delivery of notice in writing.</p> <p>(2) In the notice shall be clearly and explicitly stated the cause of action, the name and address of the person who is to institute proceedings, and the name and address of his attorney or agent, if any.</p> <p>Indemnification of State and Authority and certain persons in employ of State and Authority</p> <p>343<i>bis</i>. Notwithstanding anything to the contrary in any law contained, the State <u>and the Authority</u> and <u>[its] their</u> officers and employees acting in the performance of their <u>[duty] duties</u> shall not be liable for—</p> <p>(a) any loss or damage caused by the death of, or injury to, any person while conveyed in any vessel owned, operated or chartered by the State through its Department of Transport <u>or by the Authority</u>, or while entering or embarking upon or being in such vessel for the purpose of being conveyed in it, or while being in or alighting from such vessel after having been conveyed in it, if that person was so conveyed or to be so conveyed otherwise than in the performance of his <u>[duty] duties</u> as an officer or employee of the State <u>or the Authority</u> and otherwise than for reward; or</p> <p>(b) any loss of or damage to any goods conveyed in such a vessel otherwise than in the interests of the State <u>or the Authority</u> and otherwise than for reward.”.</p> <p>47. The amendment of section 344 by the substitution for subsection (4) of the following subsection:</p> <p>“(4) The period of extinctive prescription in respect of legal proceedings against the State, the Minister, <u>the Authority</u>, the Director-General, or any officer of the State <u>or of the Authority</u> in his capacity as such, on a cause of action arising out of the provisions of this Act, other than a cause of action referred <u>to</u> in subsection (1) or (2), shall be one year, and shall begin to run on the date when the right of action first arose.”.</p> <p>48. The substitution—</p> <p>(a) for the word “Director-General” wherever it occurs of the word “Authority”, except in the definition of “Director-</p>

No. and year of law	Title	Extent of amendment
		<p>General” in section 2(1), and in sections 343 and 344; and</p> <p>(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.</p>
Act 2 of 1981	Marine Traffic Act, 1981	<p>49. The amendment of section 1—</p> <p>(a) by the insertion before the definition of “authorized person” of the following definition:</p> <p>“ ‘Authority’ means the South African Maritime Safety Authority established by section 2 of the South African Maritime Safety Authority Act, 1998;” and</p> <p>(b) by the substitution for the definition of “authorized person” of the following definition:</p> <p>“ ‘authorized person’ means—</p> <p>(a) any officer as defined in section 1(1) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), designated by the Minister;</p> <p>(b) any officer of the South African Navy;</p> <p>(c) any member of the South African Police Service above the rank of sergeant;</p> <p>(d) any officer of the Authority;</p> <p>(e) any member of the South African National Defence Force above the rank of sergeant employed on police duties in terms of section 3(2)(b) of the Defence Act, 1957 (Act No. 44 of 1957);</p> <p>(f) any person accompanying any person referred to in paragraph (a), (b), (c), (d) or (e) and acting under his instructions;”.</p> <p>50. The amendment of section 5 by the substitution for subsection (2) of the following subsection:</p> <p>“(2) The [Minister] Authority may require the master or owner of a ship immobilized or laid-up or to be immobilized or laid-up to find security to the satisfaction of the [Director-General] Authority in an amount determined by [the Director-General] it for the recovery of any costs incurred by the [Minister] Authority in enforcing any condition applicable to the immobilizing or laying-up of the ship, or in the exercise of [his] its powers under this Act.”.</p> <p>51. The amendment of section 9—</p> <p>(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:</p> <p>“The [Minister] Authority may require the master of a ship of which the passage is in terms of section 8</p>

No. and year of law	Title	Extent of amendment
		<p>deemed to be not innocent or is believed by [him] the <u>Authority</u> to be not innocent—”; and</p> <p>(b) by the substitution for subsections (3), (4) and (5) of the following subsections, respectively:</p> <p>“(3) If the [Minister] <u>Authority</u> is satisfied that the passage of the ship is not innocent, [he] <u>it</u> may cause the ship and its cargo or part thereof, or the ship or its cargo or part thereof, to be detained on such conditions as may be prescribed by regulation, for a period not exceeding seven days or such further period as an order of a division of the Supreme Court of South Africa may authorize.</p> <p>(4) The [Minister] <u>Authority</u> may, in respect of the ship and its cargo or part thereof detained in terms of subsection (3)—</p> <p>(a) cause the ship and cargo or part thereof to be released from such detention;</p> <p>(b) subject to any order referred to in subsection (3), cause the ship and cargo or part thereof, or the ship or cargo or part thereof to be seized and dealt with in such manner as may be directed by [him] <u>it</u>.</p> <p>(5) If the ship and cargo or part thereof, or the ship or cargo or part thereof, is sold by virtue of the provisions of subsection (4)(b), the proceeds of such sale shall be paid into the [National Revenue] <u>Maritime Fund established by section 38 of the South African Maritime Safety Authority Act, 1998.</u>”.</p> <p>52. The amendment of section 11 by the substitution for subsections (2) and (3) of the following subsections, respectively:</p> <p>“(2) If any person—</p> <p>(a) admits to the [Director-General] <u>Authority</u> that he has contravened or failed to comply with any provision of this Act, which contravention or failure constitutes an offence;</p> <p>(b) agrees to abide by the decision of the [Director-General] <u>Authority</u>; and</p> <p>(c) deposits with the [Director-General] <u>Authority</u> such sum as [that officer] may [require] <u>be required</u> of him, but not exceeding the maximum fine which may be imposed upon a conviction for the contravention or failure in question,</p> <p>the [Director-General] <u>Authority</u> may, after such enquiry as [he] <u>it</u> deems necessary, determine the matter summarily and may, without legal proceedings, order <u>by way of penalty</u> the whole or any part of the said deposit to be forfeited [by way of a fine].</p> <p>(3) There shall be a right of appeal to the Minister from a determination or order by the [Director-General] <u>Authority</u> under subsection (2) whereby a [fine] <u>penalty</u> exceeding R2 000 is imposed, provided such right is exercised within a period of three months from the date of such determination or order.”.</p>

No. and year of law	Title	Extent of amendment
		<p>53. The substitution for section 13 of the following section:</p> <p>“Limitation of liability</p> <p>13. Any person in the service <u>or acting on the authority</u> of the State <u>or the Authority</u> or any other person exercising any power under this Act shall not be liable in respect of any loss or damage resulting from anything done <u>or not done</u> in good faith in terms of the provisions of this Act.”.</p> <p>54. 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.</p>
Act 6 of 1981	Marine Pollution (Control and Civil Liability) Act, 1981	<p>55. The amendment of section 1 by the insertion in subsection (1) after the definition of “area of the Republic” of the following definition:</p> <p>“ ‘<u>Authority</u>’ means the <u>South African Maritime Safety Authority established by section 2 of the South African Maritime Safety Authority Act, 1998</u>;”.</p> <p>56. The amendment of section 4—</p> <p>(a) by the substitution in paragraph (a) of subsection (1) for the words following on subparagraph (iii) and preceding paragraph (b) of the following words:</p> <p>“in such manner and within such period as the [Minister] <u>Authority</u> may direct [if he deems fit to do so];”; and</p> <p>(b) by the substitution for paragraph (a) of subsection (2) of the following paragraph:</p> <p>“(a) If, in the opinion of the [Minister] <u>Authority</u>, the master and the owner of the ship or tanker in question are or would be incapable of complying with a requirement made or contemplated in terms of subsection (1) or could not reasonably be expected to comply with such requirement, or the powers conferred upon the [Minister] <u>Authority</u> by subsection (1) are inadequate for the purpose contemplated in that subsection, the [Minister] <u>Authority</u> may cause any such steps to be taken as [he] <u>it</u> has power to require to be taken in terms of the said subsection.”.</p> <p>57. The amendment of section 5—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) If in the opinion of the [Minister] <u>Authority</u> a harmful substance is likely to be discharged from a ship or a tanker [he] <u>it</u> may take such measures, including the destruction, burning or disposal in any other manner of the harmful substance in such ship or tanker, as [he] <u>it</u> may deem fit to guard against or to prevent pollution of the sea by such harmful substance.”;</p>

No. and year of law	Title	Extent of amendment
		<p>(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:</p> <p style="padding-left: 40px;">“If the [Minister] <u>Authority</u> takes measures under subsection (1) or causes any pollution to be removed under subsection (2), [he] <u>it</u> may order any person who—”; and</p> <p>(c) by the substitution for subsection (6) of the following subsection:</p> <p style="padding-left: 40px;">“(6) The [Minister] <u>Authority</u> may institute, through an independent chartered accountant designated by [him] <u>it</u> for that purpose, a cost investigation in connection with any goods or service in respect of which an order has been issued by [him] <u>it</u> under subsection (3).”.</p> <p>58. The amendment of section 10 by the substitution for subsections (4), (5) and (6) of the following subsections, respectively:</p> <p style="padding-left: 40px;">“(4) Any person in the service <u>or acting on the authority</u> of the State <u>or the Authority</u> or any person engaged in terms of section 27(1) read with section 4(2)(a) or section 22(1), as the case may be, to perform any act required to be performed in terms of section 4(1), shall not be liable (except in the case of any wilful act or omission on the part of any such person) to any person for any loss of or damage to any ship, tanker or offshore installation or, in the case of such ship or tanker, its cargo or [oil] <u>harmful substances</u>, caused by or arising out of or in any manner connected with the performance of such act.</p> <p style="padding-left: 40px;">(5) If by virtue of the provisions of section 5 measures are being taken to guard against, prevent or remove pollution of the sea by a harmful substance in the prohibited area, any person in the service <u>or acting on the authority</u> of the State <u>or the Authority</u>, any officer of or member of the crew of any vessel employed in the taking of such measures, the employer of such officer or member, or the owner of such vessel, shall not be liable (except in the case of any wilful act or omission on the part of any such person, officer, member, employer or owner) to any person for any loss of or damage to any ship, tanker or offshore installation in the said area, or, in the case of such ship or tanker, its cargo or harmful substances, caused by or arising out of or in any manner connected with the taking of such measures.</p> <p style="padding-left: 40px;">(6) Any person in the service <u>or acting on the authority</u> of the State <u>or the Authority</u> or any person engaged in terms of section 27(1) read with section 4(2)(a) or section 22(1), as the case may be, to perform any act required to be performed in terms of section 4(1), shall not be liable (except in the case of any wilful act or omission on the part of any such person) for any loss or damage suffered or costs incurred by any person as a result of any measures taken, or as a result of</p>

No. and year of law	Title	Extent of amendment
		<p>any measures not having been taken, in terms of this Act, to prevent or remove pollution of the sea by a harmful substance.”.</p> <p>59. The amendment of section 14—</p> <p>(a) by the substitution for subsections (2) and (3) of the following subsections, respectively:</p> <p>“(2) If, on an application referred to in subsection (1), the [Director-General] Authority is satisfied that there will be in force in respect of the tanker in question, throughout the period for which the certificate is to be issued, a contract of insurance or other financial security for an amount contemplated in section 13(1), [he] it shall issue to the applicant such certificate in the prescribed form.</p> <p>(3) If, on such an application, the [Director-General] Authority is of the opinion that a doubt exists as to whether the person providing the insurance or other financial security will be able to meet his obligations under the relevant contract, or as to whether the insurance or other financial security in question will in all circumstances cover the owner’s liability for any loss, damage or costs which may become payable by him in terms of the provisions of section 9(1), [he] it may refuse to issue a certificate.”;</p> <p>(b) by the substitution for paragraph (a) of subsection (4) of the following paragraph:</p> <p>“(a) If at any time after the issue of a certificate in terms of this section the [Director-General] Authority is of the opinion that due to a change in the circumstances a doubt of the nature contemplated in subsection (3) has arisen, [he] it may cancel such certificate and shall upon such cancellation immediately notify the owner of the tanker in question and the person providing the insurance or other financial security thereof.”; and</p> <p>(c) by the substitution for subsections (5) and (6) of the following subsections, respectively:</p> <p>“(5) The [Director-General] Authority shall send a copy of every certificate issued by [him] it and a copy of every notice of cancellation in terms of subsection (4) to every principal officer, who shall hold such copies available for public inspection.</p> <p>(6) Whenever a certificate is cancelled in terms of subsection (4) the person to whom the certificate was issued shall at the request of the [Director-General] Authority return such certificate to [him] it within a period of thirty days as from the date of such request.”.</p> <p>60. The substitution for section 16 of the following section:</p>

No. and year of law	Title	Extent of amendment
		<p data-bbox="756 286 1264 371">“Depositing of amount or furnishing of guarantee by owner of ship, tanker or offshore installation in respect of certain costs</p> <p data-bbox="778 412 1270 846">16. If an amount has in terms of the provisions of section 9(1)(b) become payable by the owner of a ship, a tanker to which the provisions of section 13(1) do not apply or an offshore installation in respect of costs referred to in section 9(1)(b), or if the [Director-General] Authority believes, on reasonable grounds, that an amount may become so payable, such owner shall either deposit with the [Director-General] Authority an amount, or furnish the [Director-General] Authority with a written guarantee, acceptable to [him] it, for the payment of an amount deemed by the [Director-General] Authority to be sufficient to satisfy the amount which has or may become so payable by the said owner.”.</p> <p data-bbox="715 891 1031 913">61. The amendment of section 17—</p> <p data-bbox="715 922 1251 981">(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: “If the [Director-General] Authority is satisfied that no amount in respect of costs referred to in section 9(1)(b) is, or will become, payable in terms of the provisions of that section by an owner referred to in section 16 and that no pollution or further pollution of the sea by oil will be caused by the ship, tanker or offshore installation in question, [he] it shall—”; and</p> <p data-bbox="715 1209 1257 1267">(b) by the substitution for subsection (2) of the following subsection: “(2) The [Director-General] Authority may at any time refund so much of any amount deposited in terms of section 16, or, as the case may be, agree to a reduction of any amount guaranteed in terms of the said section by so much, as, in [his] its opinion, is not required to satisfy any costs referred to in section 9(1)(b).”.</p> <p data-bbox="715 1500 1260 1559">62. The amendment of section 18 by the substitution for the word “Minister” where it last occurs of the word “Authority”.</p> <p data-bbox="715 1603 1248 1662">63. The amendment of section 21 by the substitution for subsection (2) of the following subsection: “(2) In giving [his] its permission for the performance of any act referred to in subsection (1), the [Minister] Authority may impose any conditions subject to which such act shall be performed, and such conditions may include the obligation to obtain the services of one or more tugs, spray boats or other vessels to stand by during a period determined by the [Minister] Authority.”.</p>

No. and year of law	Title	Extent of amendment
		<p>64. The substitution for sections 26 and 27 of the following sections, respectively:</p> <p>“Income and expenditure</p> <p>26. (1) There shall be paid into the National Revenue Fund—</p> <p>(a) any amount deposited in terms of section 16 representing a sum deemed to be sufficient in terms of section 9(2)(b)(ii); and</p> <p>(b) any other money which may become payable to the State by virtue of the provisions of this Act.</p> <p>(2) Expenses incurred—</p> <p>(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;</p> <p>(b) when the Minister 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;</p> <p>(c) for the payment of remuneration and allowances of persons engaged in terms of section 27(1) and persons referred to in section 27(3)(b);</p> <p>(d) 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);</p> <p>(e) 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 Minister to be necessary for or conducive to the achievement of the objects of this Act;</p> <p>(f) for the defraying of expenses incurred in the instruction of officers of the State 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;</p> <p>(g) for any purpose connected with the performance by the Authority of its functions in terms of the provisions of this Act,</p> <p>shall be defrayed out of money appropriated by Parliament for such purpose: Provided that, for the purposes of paragraph (b), 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.</p>

No. and year of law	Title	Extent of amendment
		<p>(3) <u>There shall be paid to the Authority—</u></p> <p>(a) <u>any amount deposited in terms of section 16 other than a sum deemed to be sufficient in terms of section 9(2)(b)(ii);</u></p> <p>(b) <u>the proceeds of the realisation of any goods, property or assets in terms of section 19;</u></p> <p>(c) <u>all money paid to or recovered by the Authority in consequence of a removal in terms of section 27(6); and</u></p> <p>(d) <u>any other money which may become payable to the Authority by virtue of the provisions of this Act.</u></p> <p>Sundry powers</p> <p>27. (1) The Minister may, subject to the laws governing the public service, engage as many persons as he may deem necessary to perform such functions as may be required to be performed in order to carry out the provisions of this Act.</p> <p>(2) If a person who is or was employed by virtue of the provisions of subsection (1) caused the State any loss or damage because he—</p> <p>(a) is or was responsible for a deficiency in money in the National Revenue Fund, or for the destruction of, or damage to, any property acquired with money from the National Revenue Fund or any other State property;</p> <p>(b) due to any wilful act or omission on his part, is or was responsible for any claim necessitating any payment from the National Revenue Fund,</p> <p>such loss or damage may be recovered from such person in the prescribed manner.</p> <p>(3) (a) The Minister may establish such bodies as he may deem necessary to assist him in carrying out the provisions of this Act.</p> <p>(b) The remuneration and other conditions of service of persons serving on any body contemplated in paragraph (a) shall from time to time be determined by the Minister with the concurrence of the Minister of Finance.</p> <p>(4) The Minister may establish and maintain a patrol service by means of boats, ships and aircraft to patrol the prohibited area with a view to combating pollution of the sea by harmful substances.</p> <p>(5) The Minister <u>and the Authority</u> may do all such other things as are incidental or conducive to the performance of his <u>or its</u> functions in terms of this Act.</p> <p>(6) The Minister <u>and the Authority</u> may cause steps not in conflict with the Marine Pollution (Intervention) Act, 1987 (Act No. 64 of 1987), to be taken to remove or prevent pollution of the sea by harmful substances outside the prohibited area in such circumstances and on such conditions as he <u>or it</u> may deem fit.”</p>

No. and year of law	Title	Extent of amendment
Act 1 of 1986	Carriage of Goods by Sea Act, 1986	<p>65. The amendment of section 29 by the substitution for the words “as well as the Director-General” of the words “, the Director-General and the Authority”.</p> <p>66. The amendment of section 30 by the substitution for subsection (3) of the following subsection: “(3) If any person— (a) admits to the [Director-General] Authority that he has contravened any provision of this Act, or that he has failed to comply with any such provision with which it was his duty to comply; (b) agrees to abide by the decision of the [Director-General] Authority; and (c) deposits with the [Director-General] Authority such sum as [that officer] may [require] <u>be required</u> of him, but not exceeding the maximum fine which may be imposed upon a conviction for the contravention or failure in question, the [Director-General] Authority may, after such enquiry as [he] <u>it</u> deems necessary, determine the matter summarily and may, without legal proceedings, order by way of penalty the whole or any part of the said deposit to be forfeited.”.</p> <p>67. 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). None.</p>
Act 2 of 1986	Marine Pollution (Prevention of Pollution from Ships) Act, 1986	<p>68. The amendment of section 1 by the insertion before the definition of “Convention” of the following definition: “ ‘<u>Authority</u>’ means the <u>South African Maritime Safety Authority established by section 2 of the South African Maritime Safety Authority Act, 1998;</u>”.</p> <p>69. The amendment of section 2 by the substitution for paragraph (b) of subsection (2) of the following paragraph: “(b) to the Administration or Government shall, in relation to a South African ship or the Republic, be construed as, or as including, a reference to the [Minister] Authority or any person acting on [his or her] <u>its</u> authority.”.</p>

No. and year of law	Title	Extent of amendment
		<p>70. The amendment of section 3A by the substitution for subsections (5) and (6) of the following subsections, respectively:</p> <p>“(5) If any person—</p> <p>(a) admits to the [Director-General] Authority that he or she has contravened or failed to comply with any provision of this Act or the Convention, which contravention or failure constitutes an offence under this Act;</p> <p>(b) agrees to abide by the decision of the [Director-General] Authority; and</p> <p>(c) deposits with the [Director-General] Authority such sum as [that officer] may [require] be required of him or her, but not exceeding the maximum fine which may be imposed for a conviction for the contravention or failure in question,</p> <p>the [Director-General] Authority may, after such enquiry as [he or she] it deems necessary, determine the matter summarily and may, without legal proceedings, order by way of penalty the whole or any part of the said deposit to be forfeited [to the State by way of a penalty].</p> <p>(6) There shall be a right of appeal to the Minister from a determination or order by the [Director-General] Authority under subsection (5) whereby a penalty exceeding R10 000 is imposed [under subsection (5)], provided such right is exercised within a period of three months from the date of such determination or order.”.</p>
Act 64 of 1987	Marine Pollution (Intervention) Act, 1987	<p>71. The amendment of section 1 by the insertion before the definition of “Convention” of the following definition:</p> <p>“ ‘<u>Authority</u>’ means the South African Maritime Safety Authority established by section 2 of the South African Maritime Safety Authority Act, 1998;”.</p> <p>72. The amendment of section 2 by the substitution in subsection (3) for the words “Minister of Transport or any officer of the Department of Transport acting on the authority of that Minister” of the word “Authority”.</p>
Act 15 of 1994	Maritime Zones Act, 1994	None.
Act 94 of 1996	Wreck and Salvage Act, 1996	<p>73. The amendment of section 1 by the insertion before the definition of “Convention” of the following definition:</p> <p>“ ‘<u>Authority</u>’ means the South African Maritime Safety Authority established by section 2 of the South African Maritime Safety Authority Act, 1998;”.</p> <p>74. The substitution for section 18 of the following section:</p>

No. and year of law	Title	Extent of amendment
		<p>“Powers of Authority in respect of certain wrecks and ships</p> <p>18. (1) (a) When a ship is wrecked, stranded or in distress, the [Minister] Authority may direct the master or owner of such ship, or both such master and such owner, either orally or in writing to move such ship to a place specified by the [Minister] Authority or to perform such acts in respect of such ship as may be specified by the [Minister] Authority.</p> <p>(b) If the master or owner of a ship referred to in paragraph (a) fails to perform within the time specified by the [Minister] Authority any act which he or she has in terms of that paragraph been required to perform, the [Minister] Authority may cause such act to be performed.</p> <p>(2) The [Minister] Authority may, notwithstanding the provisions of subsection (1), cause any wreck or any wrecked, stranded or abandoned ship or any part thereof to be raised, removed or destroyed or dealt with in such a manner as [he or she] it may deem fit, if [he or she] it has not been able to contact the master or the owner of the said wreck, ship or part thereof.</p> <p>(3) If the [Minister] Authority incurs any expenses in connection with the exercise of any power in terms of subsection (1)(b) or (2), [he or she] it may recover such expenses from the owner of the wreck or ship in question or, in the case of an abandoned wreck or ship, from the person who was the owner thereof at the time of the abandonment.</p> <p>(4) If the [Minister] Authority incurred or will incur any expenses in connection with the exercise of any power in terms of subsection (1)(b) or (2) in respect of any wreck or ship, [he or she] it may cause any goods to be removed from such wreck or ship.</p> <p>(5) The [Minister] Authority may—</p> <p>(a) sell any wreck or ship in respect of which any power has been exercised in terms of subsection (1)(b) or (2), any part of such wreck or ship and any goods removed therefrom in terms of subsection (4) and apply the proceeds of the sale towards the defrayal of any expenses incurred in connection with the exercise of such power; or</p> <p>(b) cause any such wreck, ship or goods to be detained until security to the satisfaction of the [Minister] Authority has been given for the payment of such expenses.</p> <p>(6) If any wreck, ship or goods are sold in terms of subsection (5) and the proceeds of the sale exceed the amount of the expenses referred to in that subsection, the surplus shall be paid to the owner of the wreck, ship or goods in question after deducting therefrom the amount of any duty payable in respect of such wreck, ship or goods in terms of the Customs and Excise Act, 1964.</p> <p>(7) The [Minister] Authority, or any person acting under the authority of the [Minister] Authority, shall not be liable in respect of anything done in good faith in terms of the provisions of this section.”</p>

**MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN
MARITIME SAFETY AUTHORITY BILL**

1. The Bill proposes to establish a statutory body as a juristic person under the control of the Minister of Transport, called the South African Maritime Safety Authority (SAMSA), with the objectives to ensure the safety of life and property at sea and to prevent and combat pollution of the marine environment by ships. The functions of the Chief Directorate Shipping of the Department of Transport are proposed to be transferred to SAMSA.

2. SAMSA is to be constituted by a Board, the Chief Executive Officer (CEO) and its staff. Board members are to be appointed by the Minister of Transport, and provision is to be made for the representation on the Board of *inter alia* the shipping industry and organised labour in that industry. Board members will be required to comply with the provisions of the Companies Act, 1973, as applicable to directors of companies. The CEO (other than the provisional CEO) is to be appointed by the Board and is to manage SAMSA under the control and directions of the Board. Control over SAMSA is to vest in the Minister of Transport, who may exercise that control by—

- (a) appointing members to the Board;
- (b) giving SAMSA directions as to the performance of its functions; and
- (c) approving and varying SAMSA's business plans.

SAMSA's staff will be employed under a contract with it, and provision is being made for the transfer of Departmental personnel to SAMSA by mutual agreement.

3. SAMSA will be required to operate in terms of a business plan in which detailed provision must be made in respect of strategic objectives, policies and procedures, including provision for an operational plan, financial plan, a human resources plan and performance indicators. SAMSA's business plans will be reviewed annually and must be approved by the Minister of Transport.

4. Provision is made for the transfer of certain State assets and liabilities to SAMSA, and for financial matters generally. SAMSA will be subject to the reporting requirements and other controls of the Reporting by Public Entities Act, 1992.

5. SAMSA will be expected to operate as a non-profit-making, partially self-funding statutory body. Through introduction of the "user pay" principle, its income is to be derived from the following principal sources:

- (a) charges for services and facilities it provides (e.g. survey and certification services);
- (b) levies on ships calling at ports, etc., in the Republic; and
- (c) supplementary grants by the State, including grants in respect of services, etc., provided by SAMSA on Government's behalf.

Provision for the imposition of levies is being made in a separate money Bill which should be read together with this Bill. The Admiralty Jurisdiction Regulation Act, 1983, is amended to include claims in respect of charges and levies in the definition of "maritime claim" and to provide for the ranking of such claims.

6. A Maritime Fund will be established under the control of the Minister of Transport, and SAMSA is to administer it in accordance with prescribed regulations. The Fund's primary purpose is to ensure that amounts received by the State by way of fines or penalties for contraventions in terms of the laws to be administered by SAMSA are channelled to maritime administration and are applied for that purpose. Payments out of the Fund must be applied in furthering SAMSA's objectives. SAMSA will be required to keep proper record of the Fund's transactions, and the Fund's accounts will be audited by the Auditor-General.

7. The Bill also makes provision for general matters such as the delegation of powers by the Minister of Transport and the Authority, the application of the Bill to the Prince Edward Islands, the making of regulations by the said Minister, and for transitional matters.

8. The Bill is the product of consensus reached within the SAMSA development process, which involved stakeholders in all relevant sectors. The general public were given an opportunity to comment on the Bill when it was published in the Gazette in May 1997. All contributions and comments received were considered and, where appropriate, incorporated in the Bill.

9. The Department and the State Law Advisers are of the opinion that the procedure set out in section 75 of the Constitution should be followed with regard to this Bill.