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Marine and Safety Authority Act 1997

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Marine and Safety Authority Act 1997

An Act to establish the Marine and Safety Authority and for related matters

[Royal Assent 27 June 1997]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - Preliminary

1. Short title

This Act may be cited as the Marine and Safety Authority Act 1997 .

2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

In this Act –

air cushion vehicle means a vehicle that is designed to be supported when in motion wholly or partly by air expelled from the vehicle to form a cushion of which the boundaries include the water or other surface beneath the vehicle;

asset includes any business or property;

Australian Accounting Standards means Statements of Accounting Standards issued jointly by the National Councils of the Australian Society of Certified Practising Accountants and The Institute of Chartered Accountants in Australia or their successors;

Authority means the Marine and Safety Authority established under section 4 ;

Board means the Board of Directors of the Authority;

certificate of survey means a certificate of survey issued by the National Regulator that warrants that a vessel complies with the vessel survey requirements of the National Law;

chairperson means the chairperson of the Board appointed under section 8(1)(a) ;

chief executive officer means the chief executive officer of the Authority appointed under section 16 ;

coastal waters means –

(a) any part of the territorial sea of Australia adjacent to the State within 3 nautical miles of the baseline by reference to which the territorial limits of Australia are defined for the purposes of international law; and

(b) the marine or tidal waters on the landward side of any territorial sea of Australia adjacent to the State;

commencement day means the day proclaimed under section 2 ;

commercial purpose means a purpose for which a vessel is to be used which results in the vessel being a commercial vessel;

commercial vessel has the same meaning as domestic commercial vessel in the National Law;

corporation means a corporation as defined in the Corporations Act;

director means a person referred to in section 8(1) or 9(1) ;

domestic commercial vessel has the same meaning as in the National Law;

employee means a person referred to in section 19 who is not a contractor or a consultant;

financial statements means the financial statements prepared under section 25 ;

former Act means the Marine Act 1976 ;

former Authority means the Navigation and Survey Authority of Tasmania constituted under the former Act;

former board means a board within the meaning of the former Act;

marine facility means any facility, structure or equipment used in relation to the navigation and operation of vessels;

master has the same meaning as in the National Law;

National Law means –

- (a) the Commonwealth domestic commercial vessel national law within the meaning of the Marine Safety (Domestic Commercial Vessel National Law Application) Act 2013 ; and
- (b) the applied provisions within the meaning of the Marine Safety (Domestic Commercial Vessel National Law Application) Act 2013 ;

National Regulator has the same meaning as in the National Law;

owner of a vessel has the same meaning as in the National Law;

port company means a company formed under the Port Companies Act 1997 ;

port operator means –

- (a) a company formed under the Port Companies Act 1997 ; or
- (b) a person who operates a port or marine facility;

trading vessel means a vessel, other than a fishing vessel, that is used or is intended to be used –

- (a) in connection with any business or commercial activity; or
- (b) wholly or principally for –
 - (i) the carriage of passengers or cargo for hire or reward; or
 - (ii) the provision of services to ships or shipping, whether for reward or otherwise;

transfer day means the day on which a transfer under section 31 takes effect;

unseaworthy means unseaworthy within the meaning of section 38B(1) ;

vessel has the same meaning as in the National Law and includes any other prescribed craft, or any other craft of a prescribed class, used for recreational purposes;

wharf includes –

- (a) any landing place, marshalling yard, pier, jetty or dock used for the landing or shipping of cargo; and
- (b) any approaches to, and spaces under, a wharf; and
- (c) any shed or other structure on a wharf.

PART 2 - Marine and Safety Authority

4. Marine and Safety Authority

- (1) The Marine and Safety Authority is established.
- (2) The Authority –
 - (a) is a body corporate with perpetual succession; and
 - (b) has a seal; and
 - (c) may sue and be sued in its corporate name.

5. Jurisdiction of Authority

The Authority has jurisdiction in and over –

- (a) the waters of all inland lakes, rivers and streams; and
- (b) coastal waters; and
- (c) any vessel, other than a vessel within the meaning of the National Law; and
- (ca) domestic commercial vessels in relation to any of the matters specified in section 6(2) of the National Law; and
- (cb) any matters delegated to it by the National Regulator; and
- (d) any marine facility under the control of the Authority.

6. General functions and powers

- (1) The functions of the Authority are as follows:
 - (a) to ensure the safe operation of vessels;
 - (ab) to perform the functions delegated to it by the National Regulator;
 - (b) to provide and manage marine facilities;
 - (c) to manage environmental issues relating to vessels.
- (2) The Authority has power to do anything necessary or convenient to be done in connection with the performance of its functions.

7. Delegation

The Authority, by instrument in writing, may delegate any of its functions or powers, other than this power of delegation, to any person or body.

PART 3 - Board of Directors

Division 1 - Directors

8. Board

- (1) The Authority has a Board of Directors consisting of the following persons:
 - (a) a chairperson;
 - (b) at least 3 and not more than 5 persons who have skills and experience relevant to the functions of the Authority;
 - (c) the chief executive officer.
- (2) The persons referred to in paragraphs (a) and (b) are appointed by the Minister.
- (3) Schedule 1 has effect with respect to directors.
- (4) Schedule 2 has effect with respect to the meetings of the Board.

9. Acting director

- (1) The Minister may appoint a person to act as a director for any period during which the chairperson or another director is –
 - (a) absent from duty; or
 - (b) absent from Australia; or
 - (c) otherwise unable to perform the functions of the office of director.
- (2) The appointment of a person to act as a director in the absence of the chairperson is not an appointment as chairperson.
- (3) This Act applies to the appointment as if it were the appointment of a director.
- (4) A person who is acting as a director is taken to be a director.

10. Duties of director

- (1) A director must act honestly in the performance and the exercise of the functions and powers of a director.
Penalty: Fine not exceeding 50 penalty units.
- (2) In performing and exercising the functions and powers of a director, a director must exercise the same degree of care and diligence that a person in a similar position in a corporation is required to exercise.
Penalty: Fine not exceeding 50 penalty units.

11. Improper advantage as director

A director or former director must not use improperly, whether within Tasmania or elsewhere, information acquired as a director or the fact that he or she is or was a director –

- (a) to gain, directly or indirectly, a personal advantage or an advantage for another person; or
- (b) to cause damage to the Authority.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 5 years, or both.

12. Repayment of improper profit

If a director or former director is found guilty of an offence under section 11, the Authority may recover in a court of competent jurisdiction as a debt due to it –

- (a) any profit made by the director or another person as a result of the commission of the offence; and
- (b) an amount equal to any loss and damage the Authority suffered as a result of the commission of the offence.

13. Role of Board

The Board is responsible to the Minister for –

- (a) the performance by the Authority of its functions; and
- (b) ensuring that the business and affairs of the Authority are managed and conducted in a manner that is in accordance with sound commercial practice.

14. Delegation

The Board, by instrument in writing, may delegate any of its functions or powers, other than this power of delegation, to a director or an employee.

15. Powers of Board

The Board has power to do anything necessary or convenient to be done in connection with the performance and exercise of its functions and powers under this or any other Act.

Division 2 - Chief executive officer and employees

16. Chief executive officer

- (1) The Board may appoint a person as chief executive officer of the Authority on any terms and conditions it considers appropriate.
- (2) The chief executive officer is responsible to the Board for the general administration and management of the Authority.

17. Duties of chief executive officer

The chief executive officer –

- (a) must perform any functions –
 - (i) delegated to the chief executive officer by the Board; or
 - (ii) imposed on the chief executive officer under this or any other Act; and
- (b) may exercise any powers –
 - (i) delegated to the chief executive officer by the Board; or
 - (ii) granted to the chief executive officer under this or any other Act.

18. Disclosure of interest

The chief executive officer must inform the Board, in writing, of any direct or indirect pecuniary interest that he or she has in any business or body corporate as soon as practicable after he or she acquires, or becomes aware of, that interest.

19. Employment and engagement of persons

- (1) The Authority may employ or engage any other persons it considers necessary for the performance of its functions on any terms and conditions it considers appropriate.
 - (1A) The Authority may engage a port company to perform any of the functions of the Authority on any terms and conditions the Authority considers appropriate.
- (2) The Authority may arrange with the Head of a State Service Agency for State Service officers and State Service employees employed in that Agency to be made available for the purposes of the Authority.

PART 4 - Financial provisions

Division 1 - Accounts and borrowing

20. Funds of Authority

- (1) The funds of the Authority consist of –
 - (a) any money received by it in the course of performing its functions or exercising its powers; and
 - (b) any money provided by Parliament for the purpose of this Act; and
 - (c) any other money received by it from any other source.
- (2) The funds of the Authority are to be applied –
 - (a) in the payment or discharge of the expenses, charges and obligations incurred or undertaken by the Authority in the performance of its functions and the exercise of its powers; and
 - (b) in payment of the remuneration of directors and employees.

21. Authorised deposit-taking institution accounts

The Authority may open and maintain such authorised deposit-taking institution accounts as it considers necessary.

22. Investment

Subject to section 16 of the Tasmanian Public Finance Corporation Act 1985 , the Authority may invest any funds held by it and any interest accumulated in respect of those funds in any manner which is consistent with sound commercial practice.

23. Authority exempt from State charges

The Authority is exempt from the payment of any tax or duty imposed under any law of the State.

Division 2 - Records, statements and reports

24. Accounting records

- (1) The Authority is to keep accounting records that correctly record and explain its transactions and financial position.
- (2) The records are to be kept in a manner that –
 - (a) allows true and fair accounts of the Authority to be prepared; and
 - (b) allows its accounts to be conveniently and properly audited or reviewed; and
 - (c) subject to any contrary direction of the Treasurer, complies with Australian Accounting Standards; and
 - (d) complies with any direction of the Treasurer.

25. Financial statements

- (1) The Board is to prepare and forward to the Auditor-General a copy of its financial statements for each financial year in accordance with the Audit Act 2008 .
- (2) Financial statements in respect of a financial year are to include the following:
 - (a)
 - (b)
 - (c)

(d) any financial information required to be included by a direction given under subsection (4) ;

(e)

(3) The financial statements are to –

(a) comply with any direction given under subsection (4) ; and

(b) subject to any direction under subsection (4) , comply with Australian Accounting Standards; and

(c) be signed or certified as specified in any direction under subsection (4) .

(4) The Treasurer may give any written directions to the Board in respect to the form and contents of the financial statements the Treasurer considers appropriate.

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28. Annual report

(1) The Board is to prepare for the Authority an annual report for each financial year.

(2) The annual report is to include the following information and documents:

(a) the financial statements of the Authority for the financial year to which the annual report relates;

(b) a copy of the opinion of the Auditor-General received under section 19 of the Audit Act 2008 ;

(c) a report on the operations of the Authority during that financial year;

(d)

(e) any information the Minister may require relating to the directors, chief executive officer and employees;

(f) any other information the Minister may require;

(g) any other information the Board considers is appropriate or necessary to properly inform the Minister and Parliament as to the performance and progress of the Authority during that financial year.

(3) The Board is to provide the annual report to the Minister, the Treasurer and the Auditor-General.

(4) section 36 of the State Service Act 2000 does not apply in respect of the Authority.

29. Tabling of annual report

(1) The Minister is to lay a copy of the annual report before each House of Parliament within 4 months after the end of the financial year to which the annual report relates.

(2) If the Minister is unable to comply with subsection (1) for any reason other than that a House of Parliament is not sitting at the expiration of the period specified in that subsection, the Minister, before the expiration of that period, is to lay before each House of Parliament a statement specifying –

(a) the reasons for the failure to comply with that subsection; and

(b) an estimate of the day by which a copy of the annual report will be ready to lay before each House of Parliament.

(3) If the Minister is unable to lay a copy of the annual report before a House of Parliament within the period specified in subsection (1) or by the day specified in subsection (2) because either House of Parliament is not sitting at the expiration of that period or on that day, the Minister is to –

(a) forward a copy of the annual report to the Clerk of that House of Parliament immediately after the expiration of that period or that day; and

(b) lay a copy of the annual report before that House within the next 7 sitting days of that House.

30. Minister may require information

- (1) The Minister, by notice in writing, may require the Authority to provide to the Minister specified in the notice information relating to the affairs, or the performance and exercise of the functions and powers, of the Authority.
- (2) The Authority is to comply with any requirement made under subsection (1) .

PART 5 - Miscellaneous

Division 1 - Transfer of assets

31. Transfer of assets to Authority

(1) The Minister, with the agreement of the Minister administering the Government Business Enterprises Act 1995 and after consultation with the Minister administering the Crown Lands Act 1976, may determine which assets, rights or liabilities of a former board are to be transferred to the Authority.

(2) A determination under subsection (1) –

- (a) has the effect of transferring any asset, right or liability specified in that determination; and
- (b) takes effect on the day on which it is made.

32. Vesting of assets, rights and liabilities

On the transfer day –

- (a) any asset or right transferred to the Authority vests in the Authority; and
- (b) any liability transferred to the Authority vests in the Authority.

33. Tax not payable

Any tax, duty, fee or charge under any law of Tasmania is not payable in respect of –

- (a) the transfer of any asset, right or liability to the Authority; or
- (b) anything the Minister certifies as having been done as a consequence of that transfer.

Division 2 - Status of Authority

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35. Immunity from liability

(1) The chief executive officer does not incur any personal liability in respect of any act done, or omitted to be done, in good faith in the performance or exercise, or the purported performance or exercise, of any function or power under this or any other Act.

(2) An employee does not incur any personal liability in respect of any act done, or omitted to be done, in good faith in the course of his or her employment.

(2A) A port company that is engaged by the Authority under section 19 to perform any function of the Authority or to which the Authority has delegated any of its functions or powers or that is engaged by another port company to perform any function or exercise any power of the Authority does not incur any liability in respect of any act done, or omitted to be done, in good faith in the performance or exercise or the purported performance or exercise of any of those functions or powers, whether statutory or otherwise.

(2B) A member of the Board of a port company that is engaged by the Authority under section 19 to perform any function of the Authority or to which the Authority has delegated any of its functions or powers or that is engaged by another port company to perform any function or exercise any power of the Authority does not incur any personal liability in respect of any act done, or omitted to be done, in good faith in the performance or exercise or the purported performance or exercise, on behalf of the port company, of any of those functions or powers, whether statutory or otherwise.

(2C) An employee, who is not a contractor or a consultant, of a port company that is engaged by the Authority under section 19 to perform any function of the Authority, whether statutory or otherwise, or to which the Authority has delegated any of its functions or powers, whether statutory or otherwise, does not incur any

personal liability in respect of any act done, or omitted to be done, in good faith in the course of his or her employment.

(2D) Any person or any person in a class of person appointed as an authorised person under section 44 does not incur any personal liability in respect of any act done, or omitted to be done, in good faith in the performance or exercise or the purported performance or exercise of any function or power under this Act.

(2E) A person who holds a pilot's licence under the Marine and Safety (Pilotage and Navigation) Regulations 1997 does not incur any personal liability for any damage or loss caused by his or her neglect or lack of skill in providing advice with respect to the navigation of vessels.

(3) A liability that would, but for this section, attach to the chief executive officer, an employee, a port company, a member of the Board of a port company or an employee of a port company attaches to the Authority.

(4) An action does not lie against the Authority for any act done or omitted to be done in relation to any defect in any equipment or facility provided for the operation or safety of vessels.

(5) An action does not lie against the Authority for any act done or omitted to be done in relation to any service provided for the operation or safety of vessels.

36. Seal of Authority

(1) The seal of the Authority is to be kept and used as the Board authorises.

(2) All courts and persons acting judicially must take judicial notice of the imprint of the seal on a document and presume that it was duly sealed by the Authority.

37. Judicial notice of certain signatures

All courts and persons acting judicially must take judicial notice of –

(a) the official signature of a person who is or has been the chairperson, a director or the chief executive officer; and

(b) the fact that the person holds or has held the office concerned.

38. Presumptions

In any proceedings by or against the Authority, unless evidence is given to the contrary, proof is not required of –

(a) the constitution of the Board; or

(b) the appointment of any director; or

(c) any resolution of the Board; or

(d) the presence of a quorum at any meeting of the Board.

Division 2A - Abandoned, unseaworthy and sunken vessels

38A. Interpretation of Division

In this Division –

Court means the Supreme Court of Tasmania.

38B. Abandoned, unseaworthy and sunken vessels

(1) A vessel is unseaworthy if –

(a) it is not properly manned or supplied with provisions; or

(b) it is overloaded or improperly loaded; or

(c) in the case of a commercial vessel, it does not have a current certificate of survey; or

(d) in the case of a vessel other than a commercial vessel, it is certified to be unseaworthy by a marine surveyor or naval architect.

(2) If a vessel is unseaworthy or, in the opinion of the Authority, abandoned or sunken, the Authority may serve a notice on the owner of the vessel requiring him or her to –

(a) put the vessel into seaworthy condition within such reasonable period as may be specified in the notice; or

(b) relocate the vessel within such a period.

(3) If, after making reasonable inquiries, the Authority is unable to locate the owner of a vessel, a notice under subsection (2) may be served by publishing it in a newspaper circulating in the area in which the vessel is located.

(4) An owner of a vessel must comply with a notice issued under subsection (2) within the period specified in the notice.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further penalty of 5 penalty units for each day during which the offence continues.

38C. Commercial vessels

A vessel longer than 15 metres that is being, or has been, used for recreational purposes or commercial purposes before the commencement of this section may not be used for recreational purposes on or after that commencement unless –

(a) the Authority otherwise determines; or

(b) the Authority has otherwise determined before the commencement of this section.

38D. Order for seizure and disposal of vessel

(1) If an owner fails to comply with a notice under section 38B, the Authority may apply to the Court for an order authorising the Authority to seize and dispose of the vessel to which the notice relates.

(2) The Court may make an order for the seizure and disposal of a vessel if satisfied that –

(a) the vessel has been abandoned; or

(b) the vessel is sunken or unseaworthy; or

(c) the owner of the vessel has failed to comply with the notice.

(3) An order under subsection (2) may be made subject to any conditions the Court considers appropriate.

(4) Any proceeds of sale, less any costs incurred by the Authority in seizing and disposing of the vessel, are to be paid to the owner of the vessel and, if not claimed within one month of the sale, are to be dealt with in accordance with the Unclaimed Money Act 2015.

(5) If there are no proceeds of sale, or the proceeds of sale are not sufficient to cover the costs incurred by the Authority in seizing and disposing of vessel, the Authority may recover those costs from the owner of the vessel.

38E. Authority may require vessel to be moved from wharf or mooring

(1) The Authority may serve a notice on the owner of a vessel that is secured to a wharf or mooring, requiring the vessel to be moved to a place nominated by the Authority within such reasonable period as may be specified in the notice, if the Authority is of the opinion that the vessel is causing, or is likely to cause –

(a) an obstruction of navigation in the area; or

(b) a danger to any other vessel, person or property; or

(c) pollution; or

(d) any other hazard.

(2) A person must comply with a notice under subsection (1) within the period specified in the notice.

Penalty: Fine not exceeding 50 penalty units and, in the case of continuing offence, a further penalty of 5 penalty units for each day during which the offence continues.

Division 3 - Regulations and by-laws

39. Regulations generally

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) The regulations may –
 - (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues; and
 - (c) provide for fees and charges payable in respect of any matter under this Act.
- (4) The regulations may authorise any matter to be determined, applied or regulated by the Authority or chief executive officer.
- (5) The regulations may adopt or incorporate the whole or any part of any document, standard, rule, code, specification or method, with or without modification, issued, prescribed or published by any person or body before or after the regulations take effect.
- (6) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (7) A provision referred to in subsection (6) may take effect on and from the day on which this Act commences or a later day.

40. Regulations relating to safety

The Governor may make regulations in relation to any of the following matters:

- (a) emergency procedures;
- (b) lifesaving and fire appliances and other safety equipment;
- (c) unseaworthy vessels;
- (d) pilots, pilotage and exemptions;
- (e) navigational procedures;
- (f)
- (g) collisions and casualties;
- (h) signs, lights and fires hazardous to navigation;
- (i) courts of inquiry;
- (j) fees and charges relating to any matter referred to in this section.

41. Regulations relating to environmental issues in relation to vessels

The Governor may make regulations in relation to –

- (a) environmental issues relating to vessels; and
- (b) fees and charges in relation to those environmental issues.

42. By-laws

(1) The Authority may make by-laws in relation to any of the following matters:

- (a) anchors and anchor cables;
- (b) construction and maintenance of vessels and equipment;
- (c)
- (d)
- (e)
- (f) motor boats and licences;
- (g) appeals;
- (h) sailing vessels;
- (i) limits of operational areas of vessels;
- (j)
- (k) construction and use of radio equipment;
- (l)
- (m) movement and mooring of vessels and associated matters;
- (n) cargo, fuel, water or ballast taken to or from vessels;
- (o) marine facilities;
- (p) wrecked, sunken or stranded vessels;
- (q) detention of vessels;
- (r) collection of statistics;
- (s) fees and charges relating to any matter referred to in this section.

(2) The Authority may make by-laws providing for the recovery by the Authority of any costs incurred by it in performing any duties in relation to the development or amendment of a marine farming development plan under the Marine Farming Planning Act 1995 .

(3) By-laws may adopt or incorporate the whole or any part of any document, standard, rule, code, specification or method, with or without modification, issued, prescribed or published by any person or body before or after the regulations take effect.

(4) By-laws made under this section –

- (a) are not statutory rules for the purpose of the Rules Publication Act 1953 ; and
- (b) are taken to be subordinate legislation for the purpose of the Subordinate Legislation Act 1992 .

43. Remission of fees and charges

The Authority may remit or waive wholly or partly any fee or charge imposed under any by-laws or regulations.

44. Authorised persons

The Authority may appoint any person or class of person as an authorised person for the purposes of any regulations and by-laws made by the Authority.

Division 4 - Infringement notices

45. Infringement notices

(1) A person authorised by the Authority may serve an infringement notice on a person other than a person under the age of 16 years, if of the opinion that the person has committed a prescribed offence under any

regulations or by-laws made under this Act.

(2) An infringement notice is not to relate to 4 or more offences.

(3) An infringement notice is to be in accordance with section 14 of the Monetary Penalties Enforcement Act 2005 .

46. Payments into Consolidated Fund

Any payments in respect of an infringement notice are payable into the Consolidated Fund.

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Division 5 - Other matters

53. Agreements and contracts

The Authority may enter into an agreement or a contract with any person in respect of –

- (a) any of the functions of the Authority; or
- (b) enforcement of any regulations or by-laws made under this Act.

54. Divesting of assets and rights

The Authority may –

- (a) divest itself of any asset or right vested in it and vest it in any other person; and
- (b) divest itself of the management and control of any marine facility and vest it in any other person.

55. Savings and transitional provisions

The savings and transitional provisions set out in Schedule 3 have effect.

56. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the Administrative Arrangements Act 1990 –

- (a) the administration of this Act is assigned to the Minister for Transport; and
- (b) the Department responsible to the Minister for Transport in relation to the administration of this Act is the Department of Transport.

SCHEDULE 1 - Directors

Section 8(3)

1. Interpretation

In this Schedule, "director" –

- (a) includes an acting director; but
- (b) does not include the chief executive officer.

2. Term of office

A director holds office for a term, not exceeding 3 years, specified in the instrument of appointment.

3. Holding other office

The holder of an office who is required under any Act to devote the whole of his or her time to the duties of that office is not disqualified from –

- (a) holding that office in conjunction with the office of director; or
- (b) accepting any remuneration payable to a director.

4. Remuneration

A director is entitled to be paid any remuneration and allowances the Minister determines.

5. Leave of absence

The Board may grant leave of absence to a director on any conditions the Board considers appropriate.

6. Resignation

A director may resign by signed notice given to the Minister.

7. Removal of director

The Minister may remove a director from office –

- (a) if the director has benefited from, or claimed to be entitled to benefit from, a contract made by or on behalf of the Authority, other than a contract for any goods or services supplied by the Authority if the goods or services are ordinarily supplied by the Authority and are supplied on the same terms as are ordinarily supplied to other persons in the same situation; or
- (b) if the director fails to disclose a pecuniary interest as required under clause 6 of Schedule 2 ; or
- (c) if the director has been convicted of an offence under this Act; or
- (d) if the director has been convicted of an indictable offence or an offence which, if committed in Tasmania, would be an indictable offence; or
- (e) if the Minister considers that the director is physically or mentally incapable of continuing as a director; or
- (f) if the Minister considers that the director is unable to perform adequately or competently the functions of the director's office; or
- (g) if the director has been absent from 4 consecutive meetings of the Board without the permission of the Board; or
- (h) for any other just cause or excuse.

8. Filling of vacancy

- (1) A director, other than an acting director, vacates office if he or she –

- (a) dies; or
- (b) resigns; or
- (c) is removed from office under clause 7 .

(2) The Minister may appoint a person to the vacant office of director for the remainder of the predecessor's term of office if satisfied that the person has the skills and experience necessary to enable the Authority to achieve its objective.

9. Defect not invalidate appointment

An appointment of a person as a director is not invalid merely because of a defect or irregularity in relation to the appointment.

SCHEDULE 2 - Meetings Of Board

Section 8(4)

1. Convening of meetings

- (1) Subject to subclause (2) , meetings of the Board are to be held at the times and places the Board determines.
- (2) The chairperson, after giving each director reasonable notice –
 - (a) may convene a meeting at any time; and
 - (b) must convene a meeting if requested to do so by 2 or more other directors.
- (3) If the chairperson is absent from duty or otherwise unable to perform the duties of the office, a meeting may be convened, after reasonable notice has been given, by –
 - (a) 2 or more other directors; or
 - (b) a person authorised by the Board to do so.
- (4) What constitutes reasonable notice is to be determined by the Board.

2. Presiding at meetings

- (1) The chairperson is to preside at all meetings of the Board at which he or she is present.
- (2) If the chairperson is not present at a meeting of the Board, a director chosen by the directors present at the meeting is to preside.

3. Quorum and voting at meetings

- (1) A quorum at any duly convened meeting of the Board is half the number of directors of the Board.
- (2) At a meeting of the Board –
 - (a) the person presiding has a deliberative vote only; and
 - (b) a question is decided –
 - (i) by a majority of votes of the directors present and voting; or
 - (ii) in the negative if there is an equality of votes.

4. Conduct of meetings

- (1) Subject to this Act, the Board may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.
- (2) The Board may permit directors to participate in a meeting by –
 - (a) telephone; or
 - (b) television conference; or
 - (c) any other means of communication the Board approves.
- (3) A director who participates in a meeting under a permission granted under subclause (2) is taken to be present at the meeting.
- (4) The Board may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

5. Minutes

The Board must keep minutes of its proceedings.

6. Disclosure of interests

- (1) A director must disclose to the Board any direct or indirect pecuniary interest in a matter that –
- (a) is being considered, or is about to be considered, by the Board; and
 - (b) may conflict with the proper performance of the director's duties in relation to consideration of the matter.

Penalty: Fine not exceeding 10 penalty units or a term of imprisonment not exceeding 3 months, or both.

(2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

(3) Unless the Board otherwise determines, a director must not –

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

(4) In making a determination under subclause (3), the director to whom the determination relates must 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) Subclause (1) does not apply –

- (a) in respect of a contract for any goods or services supplied by the Authority if the goods or services are ordinarily supplied by the Authority on the same terms as to other persons in the same situation; or
- (b) in respect of an interest that arises only because the director also is a State Service officer or State Service employee.

SCHEDULE 3 - Transitional and savings provisions

Section 55

1. Accounts

(1) Any account maintained in the name of the former Authority immediately before the commencement day is, on that day, taken to be an account maintained in the name of the Marine and Safety Authority.

(2) Any funds in an account referred to in subclause (1) are, on the commencement day, taken to be funds of the Marine and Safety Authority.

2. Money claims

(1) Any money, debt or claim payable by, due from or recoverable against the former Authority immediately before the commencement day is, on that day, payable by, due from or recoverable against the Marine and Safety Authority.

(2) Any money, debt or claim payable to, due to or recoverable by the former Authority immediately before the commencement day is, on that day, payable to, due to or recoverable by the Marine and Safety Authority.

3. Proceedings

A judgment by order of a court obtained by or against the former Authority before the commencement day is, on or after that day, enforceable by or against the Marine and Safety Authority.

4. Documents

A document addressed to the former Authority before the commencement day may, on or after that day, be served on the Marine and Safety Authority.

5. Contracts

Any contract made by the former Authority before the transfer day and not performed or discharged before that day is, on that day, taken to have been made by the Marine and Safety Authority.

6. Actions

Any act done or omitted to be done before the commencement day by, to or in respect of the former Authority is taken to have been done or omitted to be done by, to or in respect of the Marine and Safety Authority.

7. References to former Authority

A reference in any Act or other document to the former Authority is taken to be a reference to the Marine and Safety Authority.

8. Regulations and by-laws

(1) Any regulations in force under the former Act immediately before the commencement day are, on that day, taken to be by-laws made by the Marine and Safety Authority under this Act until whichever of the following occurs first:

(a) they are rescinded under this Act;

(b) 31 December 2000.

(2) Any by-laws made by the former Authority and in force immediately before the commencement day are, on that day, taken to be by-laws made by the Marine and Safety Authority under this Act until whichever of the following occurs first:

(a) they are rescinded under this Act;

(b) 31 December 2000.

9. Certificates

(1) A certificate of competency in force under the former Act immediately before the commencement day continues, on that day, to be in force until it expires.

(2) A certificate of survey in force under the former Act immediately before the commencement day continues, on that day, to be in force until it expires.

(3) An exemption certificate in force under the former Act immediately before the commencement day continues, on that day, to be in force until whichever of the following occurs first:

(a) it expires;

(b) the end of a period of 2 years after that day.

10. Licences and permits

Any licence or permit in force under the former Act immediately before the commencement day continues, on that day, to be in force for a period of 12 months after that day.

11. Pilots

A person appointed or licensed as a pilot by a former board immediately before the commencement day continues, on that day, to be a pilot for the purposes of this Act for a period of 6 months.

12. Staff of former Authority

(1) Any person employed by the former Authority immediately before the commencement day is, on that day, transferred as an employee of the Marine and Safety Authority.

(2) The period of employment of a person referred to in subclause (1) is not broken because of being transferred as an employee of the Marine and Safety Authority.

(3) A person referred to in subclause (1) –

(a) retains all rights and entitlements on being transferred to the Marine and Safety Authority;
and

(b) is not entitled to any compensation in respect of that transfer.

13. Detention of vessel

(1) A vessel detained under the former Act for non-payment of fees, dues or charges continues, on that day, to be detained until the unpaid fees, dues or charges are paid.

(2) A vessel detained under Division 4 of Part XIII of the former Act continues, on the commencement day, to be detained until the matter is dealt with under that Act.

14. Appeals

Any appeal instituted under the former Act and not determined before the commencement day may, on or after that day, be determined under that Act as if any reference to the former Authority were a reference to the Marine and Safety Authority.