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### LOI

LOI NO. 29 DE 1998 RELATIVE A LA REGIE DES AFFAIRES MARITIMES DE VANUATU.

LOI NO. 30 DE 1998 RELATIVE AU CONTROLE DU COMMERCE COTIER (MODIFICATION).

LOI NO. 31 DE 1998 RELATIVE AU CODE MARITIME (MODIFICATION).

LOI NO. 32 DE 1998 RELATIVE A LA POLICE DES PORTS (MODIFICATION).

LOI NO. 33 DE 1998 RELATIVE AU REGLEMENT MARITIME (MODIFICATION).

LOI NO. 34 DE 1998 RELATIVE A LA COMMISSION DES AFFAIRES FINANCIERES DE VANUATU (MODIFICATION).

## NOTIFICATION OF PUBLICATION

### ACTS

VANUATU MARITIME AUTHORITY ACT NO. 29 OF 1998.

COASTAL TRADING (CONTROL) (AMENDMENT) ACT NO. 30 OF 1998.

MARITIME (AMENDMENT) ACT NO. 31 OF 1998.

PORTS (AMENDMENT) ACT NO. 32 OF 1998.

SHIPPING (AMENDMENT) ACT NO. 33 OF 1998.

VANUATU FINANCIAL SERVICES COMMISSION (AMENDMENT) ACT No. 34 of 1998.

# REPUBLIC OF VANUATU

# VANUATU MARITIME AUTHORITY ACT NO. 29 OF 1998

## Arrangement of Sections


PART 1 - PRELIMINARY
1. Interpretation
2. Definition of accident

PART 2 - ESTABLISHMENT AND CONSTITUTION
3. Establishment of the Vanuatu Maritime Authority
4. Composition of the Authority

PART 3 - OBJECTIVES, FUNCTIONS AND POWERS
5. Principal objectives of the Authority
6. Functions of the Authority
7. Powers of the Authority
8. Authority to have regard to Government policy
9. Authority to consult

PART 4 - PERFORMANCE AGREEMENT
10 Performance agreement
11. Variation of performance agreements

PART 5 – COMMISSIONER OF MARITIME AFFAIRS
12. Commissioner of Maritime Affairs
13. Functions and powers of the Commissioner
14. Terms and conditions
15. Acting Commissioner

PART 6 – DELEGATIONS
16. Delegation of Minister's functions or powers to Authority
17. Delegation of Authority's functions or powers to employees of Authority
18. Delegation of Commissioner's functions or powers to employees of Authority
19. Delegation of Authority's or Commissioner's functions or powers to persons outside Authority

20 Effect of delegation

PART 7 - FINANCES
21. The revenues of the Authority
22. Borrowing of money by Authority
23. Regulations for fees and charges
24. Application of surplus
25. Authority's financial year
26. Accounts and audit

PART 8 – ADMINISTRATIVE MATTERS

DIVISION 1 - MEMBERS
27. Terms and conditions of members
28. Chairperson and Deputy Chairperson
29. Acting appointments
30. Non-permanent members
31. Powers of Authority not affected by membership vacancy

DIVISION 2 - MEETINGS
32. Meetings
33. Quorum and voting
34. Participating in meetings by telephone etc
35. Resolutions without meetings
36. Authority may regulate its procedures

DIVISION 3 - DISCLOSURE OF INTERESTS
37. Disclosure of interests

DIVISION 4 - STAFF AND CONSULTANTS
38. Appointment of staff
39. Consultants, specialists etc

DIVISION 5 - MISCELLANEOUS
40. Committees
41. Execution of documents

PART 9 - MARITIME APPEAL TRIBUNAL
42. Establishment and appointment
43. Termination and resignation
44. Costs
45. Applications
46. Evidence
47. Procedure of Tribunal
48. Decision is final
49. Remuneration

**PART 10 - MISCELLANEOUS**

50. .Powers of entry in respect of works
51. . Vesting of certain rights etc
52. Exemption from taxes
53. Use of words "Maritime Authority" or "Maritime Appeal Tribunal"
54. Power to make regulations and rules
55. General provisions relating to offences
56. Commencement

**SCHEDULE 1 – SPECIFIED ACTS**

# REPUBLIC OF VANUATU

**Assent:** 28/12/98
**Commencement:** 20/01/99

# VANUATU MARITIME AUTHORITY
# NO. 29 OF 1998

An Act to establish the Vanuatu Maritime Authority and to provide for the regulation, administration and promotion of the maritime transport industry.

BE IT ENACTED by the President and Parliament as follows:-

## PART 1

## PRELIMINARY PROVISIONS

### INTERPRETATION

1. In this Act unless the contrary intention appears:

"accident" has the meaning given by section 2;

"Authority" means the Vanuatu Maritime Authority established under section 3;

"Commissioner" means the Commissioner of Maritime Affairs appointed under section 12;

"incident" means any occurrence, other than an accident, that is associated with the operation of a vessel and affects or could affect the safety or operation of the vessel;

"maritime document" means:

(a) any licence, permit, certificate or other document relating to maritime transport provided for under any Act or regulation; or

(b) any foreign licence, permit, certificate or other document relating to maritime transport;

"maritime product" means any thing that:

(a) comprises, or is intended to comprise, any part of a vessel; or

(b) is, or is intended to be, installed in, fitted to or supplied to a vessel; or

and includes the following:

(c) safety equipment;

(d) nautical instruments and publications, whether or not computerised or electronic, used or intended to be used in the operation of a vessel;

(e) electronic navigational aids used or intended to be used in the operation of a vessel;

(f) radio and other communication equipment;

(g) fuel and other similar consumable items necessary for the operation of a vessel;

"member" means a member of the Authority and includes the Chairperson and Deputy Chairperson;

"Minister" means the Minister responsible for the Register of Ships and Seafarers;

"mishap" means any occurrence, other than an accident, involving a vessel that causes or might cause an illness or injury to any person;

"navigational aid" includes the following:

(a) any light vessel and any floating or other light exhibited for the guidance of vessels;

(b) any type of a fog signal not carried on a vessel;

(c) all marks and signs in aid of marine navigation;

(d) any electronic, radio or other aid to marine navigation not carried on board any vessel;

"non-permanent member" means a member of the Authority appointed under subsection 4(3) or (4);

"official seal" means the seal referred to in section 3 for the authentication of documents by the Authority;

"permanent member" means a member of the Authority referred to in paragraphs 4(1) (a) to (g).

"Register of Ships and Seafarers" means:

(a) the registers referred to in section 5 of the Maritime Act [CAP 131]; or

(b) any register established and maintained under regulations made under that Act; or

(c) any register established and maintained under regulations made under the Shipping Act [CAP 53];

"safety equipment" means any equipment carried on a vessel for the health or safety of any person:

(a) during the normal operation and working of the vessel; or

(b) for fire or the abandonment of the vessel or other emergency;

and includes anchors and chain cables;

"seafarer" means any person who:

(a) is employed or engaged on any vessel in any capacity for hire or reward; or

(b) works on a vessel for gain or reward otherwise than under a contract of employment;

but does not include a pilot of a vessel or any person temporarily employed on a vessel while it is in port;

"serious harm" means

(a) death; or

(b) long-term impairment of a person's physical or mental condition;

"State" means the Republic of Vanuatu;

"STCW" means the Standards of Training, Certification and Watchkeeping for Seafarers issued by the International Maritime Organization of the United Nations, as amended from time to time;

"Tribunal" means the Maritime Appeal Tribunal established under section 42;

"vessel" means:

(a) any marine craft used in commercial trade, whether or not it has any means of propulsion; or

(b) any marine craft that is used for game fishing or transport of passengers for hire or reward outside the port areas of Port Vila or Luganville;

and includes:

(c) any fishing vessel, hovercraft, seaplane on the water, non-displacement vessel, mobile offshore drilling unit, submarine or other submersible, barge, lighter or other like vessels; and

(d) any pleasure craft of any size not engaged in any form of commercial trade whose owner voluntarily wishes to register the craft in Vanuatu;

but does not include:

(e) the life boats, rafts, work boats or launches which form part of the equipment of a larger vessel and are being used as such; or

(f) punts, barges or other boats whose sole means of propulsion is by manpower.

**DEFINITION OF ACCIDENT**

2. An accident is an occurrence that involves a vessel and in which:

(a) a person (other than a stowaway hiding outside the areas normally available to passengers or crew of the vessel) suffers serious harm as a result of :

(i) being on the vessel; or

(ii) direct contact with any part of the vessel, including any part that has become detached from the vessel; or

(iii) direct exposure to the wash of the vessel or interaction (other than direct contact) between the vessel and any other vessel; or

(iv) being involved in the salvage of another vessel;

unless the injuries are self-inflicted or inflicted by another person; or

(b) the vessel sustains damage or structural failure that:

(i) adversely affects the structural strength, performance or seaworthiness of the vessel; or

(ii) would normally require major repair or replacement of the affected component of the vessel; or

(iii) poses a threat to the safety of people on board the vessel; or

(c) there is a complete or partial failure of machinery or equipment that affects the seaworthiness of the vessel; or

(d) there is a loss of, or damage to, or movement of, or change in the state of, the cargo of the vessel which poses a risk to the safety of people on board the vessel, the vessel or any other vessel; or

(e) there is a significant loss of, or significant damage to, property on board the vessel (not being the cargo carried by the vessel), whether or not the loss or damage arises from an interaction between the vessel and any other vessel; or

(f) there is a loss or escape of any substance or thing that:

(i) may result, or has resulted, in serious harm to any person; or

(ii) may pose a risk, or has resulted in damage, to any maritime product or any other property on board the vessel or any other vessel; or

(g) a person is lost at sea (whether or not subsequently found) or is missing; or

(h) the vessel is foundering, capsizing, being abandoned, stranding, missing, or has foundered, capsized, been abandoned, stranded, been in a collision, or has had a major fire on board.

## PART 2

## ESTABLISHMENT AND CONSTITUTION

### ESTABLISHMENT OF THE VANUATU MARITIME AUTHORITY

3. (1) The Vanuatu Maritime Authority is established.

(2) The Authority:

(a) is a body corporate with perpetual succession; and

(b) is to have an official seal; and

(c) may sue and be sued in its corporate name.

### COMPOSITION OF THE AUTHORITY

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

(a) the Attorney General;

(b) the Financial Services Commissioner;

(c) the Director General, Prime Minister's Office;

(d) the Director General responsible for maritime transport;

(e) the Director General responsible for fisheries;

(f) the Director General responsible for finance;

(g) the Commissioner of Maritime Affairs;

(h) a person appointed under subsection (3);

(i) a person appointed by the Minister under subsection (4).

(2) A member of the Authority (other than a member appointed under subsection (3) or (4)) may nominate an immediate subordinate to represent the member at meetings of the Authority.

(3) The permanent members of the Authority must, by instrument in writing, appoint a person with substantial expertise in international maritime affairs to be a non-permanent member.

(4) The Minister must, by instrument in writing, appoint a person to be a non-permanent member.

(5) A person may hold office as a member concurrently with any other office.

## PART 3

## OBJECTIVES, FUNCTIONS AND POWERS

### PRINCIPAL OBJECTIVES OF THE AUTHORITY

5. The principal objectives of the Authority are to:

(a) regulate, administer and promote the Vanuatu maritime transport industry; and

(b) promote the provision of an effective marine pollution prevention programme; and

(c) promote the provision of an effective marine pollution response system.

### FUNCTIONS OF THE AUTHORITY

6. In furtherance of its principal objectives, the Authority has the following functions:

(a) to be responsible for:

(i) the general administration of the Acts specified in Schedule 1 and any regulations and rules made under those Acts; and

(ii) the collection of fees, charges and other revenue payable under those Acts, regulations or rules;

in accordance with the provisions of those Acts, regulations and rules;

(b) to ensure compliance with the law in respect of the registration, licensing, operation and crewing of vessels;

(c) to ensure that the teaching and training of seafarers by the Vanuatu Maritime College meet the STCW requirements;

(d) to promote compliance with safety standards in the maritime transport industry;

(e) to promote regular reviews of, and improvements and developments in, the maritime transport industry;

(f) to promote compliance with marine pollution prevention standards in the maritime transport industry;

(g) to promote Vanuatu's preparedness for, and ability to respond to, occurrences resulting in the pollution of the marine environment;

(h) to ensure the provision of appropriate distress and safety radio communication systems and navigational aids for shipping;

(i) to ensure compliance with occupational health and safety standards for seafarers;

(j) to promote safety in the maritime transport industry by providing information and advice on maritime safety;

(k) to ensure the investigation of accidents, mishaps and incidents, and the reporting of those investigations as obliged under any convention, memorandum of understanding or other agreement to which Vanuatu is a party;

(l) to maintain and preserve records and documents relating to the Authority's functions;

(m) to produce, publish and distribute, whether for payment or otherwise, in paper, electronic or magnetic form such reports, papers or other information as may be conducive to the carrying out of the Authority's functions;

(n) to provide training schemes, whether by itself or with the co-operation of such other persons or bodies as the Authority thinks fit, for its employees or for other persons concerned with maritime affairs;

(o) to advise the Minister on maritime transport policy;

(p) to undertake such research as is necessary to enable the Authority to perform any of its functions;

(q) to act internationally as the national authority, or representative, of Vanuatu in respect of matters relating to the supervision and regulation of the maritime transport industry;

(r) to provide advice and assistance to the government in relation to matters affecting the maritime transport industry, including:

(i) to prepare and submit reports to the government and other persons or bodies engaged in the marine transport industry in or from within Vanuatu; and

(ii) to make recommendations on the regulation of the maritime transport industry and on legislation relating to the industry;

(s) to assist and advise the government on matters relating to any Act or regulation directly or indirectly relevant to the maritime transport industry;

(t) such other functions as are conferred on it by this Act or any other Act;

(u) such other functions as the Minister may prescribe by notice in the *Gazette*;

(v) to do anything else that is incidental or conducive to the performance of any of the preceding functions.

## POWERS OF THE AUTHORITY

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

(2) Without limiting subsection (1), the powers include the following:

(a) to enter into contracts;

(b) to acquire, hold and dispose of real and personal property;

(c) to engage persons to perform services for the Authority;

(d) to do anything incidental to any of the powers specified in this subsection or otherwise conferred on the Authority.

## AUTHORITY TO HAVE REGARD TO GOVERNMENT POLICY

8. In the performance of its functions and in the exercise of its powers, the Authority must have regard to the policy of the government in relation to maritime transport.

## AUTHORITY TO CONSULT

9. The Authority must, where appropriate, consult with government, commercial, industrial, consumer and other relevant bodies and organisations in performing its functions and exercising its powers.

## PART 4

## PERFORMANCE AGREEMENT

### PERFORMANCE AGREEMENT

10. (1) Not later than 60 days before the start of a financial year, the Authority must give to the Minister and the Minister responsible for finance a draft performance agreement for the financial year.

(2) A draft performance agreement must set out the following:

(a) the Authority's budget for the financial year;

(b) the Authority's statement of objectives for that year;

(c) the methods, including financial and non-financial performance measures, by which the Authority intends to assess the extent to which it meets those objectives during that year;

(d) how the Authority intends to report on the extent to which it has met or is meeting those objectives for that year, and the dates by which interim reports, if any, will be given to the Minister;

(e) any new borrowings that the Authority intends to incur during that year.

(3) Within 30 days after receiving a draft performance agreement from the Authority under subsection (1), or an amended version of it under subsection (4), (whether or not for the first time) the Minister, after consultation with the Minister responsible for finance, must:

(a) approve it; or

(b) reject it and return it to the Authority with directions that it be amended.

(4) If a draft performance agreement is returned to the Authority by the Minister, the Authority must amend the draft agreement in accordance with the Minister's directions and return it to the Minister for approval.

(5) Subject to subsections (6), (7) and (8), a draft performance agreement approved for a financial year by the Minister constitutes the performance agreement between the Minister and the Authority for that year.

(6) If the Authority fails to comply with subsection (1), the Minister must cause to be prepared a performance agreement.

(7) If the Minister fails to comply with subsection (3) within the required time, the draft performance agreement given to the Minister is taken to have been approved by the Minister as the performance agreement.

(8) If the Authority fails within 30 days to amend a draft performance agreement in accordance with the Minister's directions under paragraph (3)(b), the Minister must amend the draft agreement and the agreement as so amended constitutes the performance agreement.

## VARIATION OF PERFORMANCE AGREEMENTS

11. (1) At any time during a financial year, the Minister and the Authority may in writing agree to amend the performance agreement for that year.

(2) At any time during a financial year, the Minister may direct the Authority to amend any provision of the performance agreement for that year, and the Authority must amend the performance agreement accordingly.

## PART 5

## COMMISSIONER OF MARITIME AFFAIRS

### COMMISSIONER OF MARITIME AFFAIRS

12. (1) Subject to the written consent of the Minister, whose consent must not be unreasonably withheld, the Authority must appoint a person as the Commissioner of Maritime Affairs.

(2) The person appointed as the Commissioner of Maritime Affairs must be able to demonstrate experience and competence in maritime affairs and:

(a) must hold a qualification in engineering, law, accounting, management or maritime studies at undergraduate or postgraduate level from a recognised university; or

(b) have at least 15 years management experience in maritime transport operations.

(3) The Commissioner must be appointed for a period of at least 2 years but not more than 4 years, and may be reappointed.

(4) The Commissioner is responsible to the Authority and is the Secretary to the Authority.

(5) The Authority must cause to be published in the *Gazette* details of the appointment of a person as the Commissioner of Maritime Affairs.

### FUNCTIONS AND POWERS OF THE COMMISSIONER

13. (1) The Commissioner must perform the following functions and exercise the following powers:

(a) such functions and powers as may be conferred on the Commissioner by this Act or any other Act;

(b) such functions and powers as may be delegated to the Commissioner by the Authority under this Act.

(2) Without limiting subsection (1), the Commissioner must:

(a) ensure the proper operation of the maritime transport system by issuing, granting, recognising or accepting maritime documents; and

(b) take such action as may be appropriate in the public interest, including the carrying out or requiring of inspections and audits, to enforce the provisions of this Act, the Acts specified in Schedule 1 and any other Act, and the regulations and rules made under any of those Acts.

(3) The Commissioner is not subject to the direction or control of any person or body in performing any functions, or exercising any powers, in relation to:

(a) the issuing, granting, suspension, revocation, recognition or acceptance of maritime documents; or

(b) the granting of exemptions in relation to maritime documents; or

(c) the enforcement of the provisions of this Act, the Acts specified in Schedule 1 and any other Act, and the regulations and rules made under any of those Acts.

(4) The Commissioner may, by instrument in writing, make rules to deal with emergencies involving the safety of vessels or the health or safety of crew members of vessels.

(5) A rule made under subsection (4) expires after 7 days.

**TERMS AND CONDITIONS**

14. The Authority must determine the terms and conditions of employment of the Commissioner not provided for by this Act.

**ACTING COMMISSIONER**

15. (1) The Authority may, after consultation with the Minister, appoint a person to act as the Commissioner:

(a) during a vacancy in the office of the Commissioner whether or not an appointment has previously been made to that office; or

(b) during any period, or during all periods, when the Commissioner is absent from duty or from Vanuatu or is, for any reason, unable to perform the duties of that office.

(2) Anything done by or in relation to a person purporting to act pursuant to an appointment made under this section is not invalid merely because there was a defect or irregularity in connection with the appointment.

## PART 6

## DELEGATIONS

### DELEGATION OF MINISTER'S FUNCTIONS OR POWERS TO AUTHORITY

16. (1) Subject to subsection (2), the Minister may delegate to the Authority all or any of the Minister's functions or powers under this Act.

(2) The Minister must not delegate his or her power to make regulations or rules.

(3) The Authority must not delegate any function or power that has been delegated to the Authority by the Minister without first obtaining the written consent of the Minister.

### DELEGATION OF AUTHORITY'S FUNCTIONS OR POWERS TO EMPLOYEES OF AUTHORITY

17. (1) The Authority may delegate to the Commissioner or any employee of the Authority all or any of its functions or powers under this Act.

(2) The Commissioner or an employee of the Authority to whom a function or power has been delegated must not delegate the function or power to another person without first obtaining the written consent of the Authority.

(3) A delegation may be made to:

(a) a specified employee of the Authority; or

(b) employees of a specified class; or

(c) to the holder or holders for the time being of a specified office or specified class of offices of the Authority.

(4) The Commissioner or an employee of the Authority purporting to act under a delegation must, when reasonably requested to do so, produce evidence of his or her authority to act.

## DELEGATION OF COMMISSIONER'S FUNCTIONS OR POWERS TO EMPLOYEES OF AUTHORITY

18. (1) The Commissioner may, with the written consent of the Authority, delegate to an employee of the Authority any or all of the Commissioner's functions or powers under this Act.

(2) A delegation must not include the power to delegate.

(3) A delegation may be made to:

(a) a specified employee of the Authority; or

(b) employees of a specified class; or

(c) to the holder or holders for the time being of a specified office or specified class of offices of the Authority.

(4) An employee of the Authority purporting to act under a delegation must, when reasonably requested to do so, produce evidence of his or her authority to act.

## DELEGATION OF AUTHORITY'S OR COMMISSIONER'S FUNCTIONS OR POWERS TO PERSONS OUTSIDE AUTHORITY

19. (1) The Authority may delegate to any person who is not an employee of the Authority any or all of the Authority's functions or powers under this Act, other than the power to borrow money under section 22.

(2) Subject to subsection (3), the Commissioner may delegate to any person who is not an employee of the Authority any or all of the Commissioner's functions or powers under this Act.

(3) The Commissioner must not delegate a function or power without first obtaining the written consent of the Authority to the delegation.

(4) A person to whom a function or power has been delegated must not delegate the function or power to another person without first obtaining the written consent of the Authority.

(5) A delegation may be made to a specified person or persons of a specified class, or to the holder or holders for the time being of a specified office or specified class of office.

(6) A person purporting to act under a delegation must, when reasonably requested to do so, produce evidence of his or her authority to act.

(7) Any person who exercises any function or power under a delegation under this section may charge the person for whom the function or power is exercised a reasonable fee for the exercise of that function or power.

## EFFECT OF DELEGATION

20. Where a section of this Act confers power on a person or the Authority (in this section called the "delegator") to delegate a function or power:

(a) the delegation must be made by instrument in writing; and

(b) the delegation may be made either generally or as otherwise provided by the instrument of delegation; and

(c) a function or power so delegated, when performed or exercised by the delegate, is for the purposes of this Act, taken to have been performed or exercised by the delegator; and

(d) a delegation of a function or power by the delegator does not prevent the performance or exercise of the function or power by the delegator; and

(e) subject to any general or special directions given or conditions imposed by the delegator, the delegate may exercise a function or power so delegated in the same manner and with the same effect as if it had been conferred on the delegate by this Act and not by delegation; and

(f) in the absence of proof to the contrary, the delegate is presumed to be acting in accordance with the terms of the delegation when the delegate purportedly acts pursuant to the delegation; and

(g) the delegation may be given for a specified period, but is revocable at will by the delegator.

## PART 7

## FINANCES

### THE REVENUES OF THE AUTHORITY

21. (1) The revenues of the Authority consist of the following:

(a) such fees and charges payable under:

(i) this Act or the regulations or rules made under this Act; and

(iii) the Acts listed in Schedule 1 or the regulations or rules made under those Acts;

for the performance and discharge of the Authority's functions in connection with the administration of those Acts, regulations and rules;

(b) such grants as may be provided to the Authority by the government;

(c) such other funds as may properly accrue to the Authority from any other source.

(2) The Authority may invest any of its monies that are not immediately required for the discharge of its functions.

(3) The Authority may charge a fee:

(a) in respect of costs reasonably incurred in the performance of its functions or duties under this or any other Act; and

(b) for any services provided by it otherwise than in pursuance of an obligation imposed under this or any other Act.

### BORROWING OF MONEY BY THE AUTHORITY

22. The Authority may borrow money subject to the written approval of the Minister responsible for finance.

## REGULATIONS FOR FEES AND CHARGES

23. (1) On the advice of the Authority, the Minister may by Order make regulations prescribing or providing for the fixing of fees or charges, or both, for the following purposes:

(a) to provide funds for the establishment, maintenance and operation of facilities, services and works under this Act;

(b) to meet, or assist in meeting, the costs and expenses incurred by the Authority, the Maritime Appeal Tribunal or the State in the exercise of functions or powers, the performance of duties or the provision of services under this Act;

(c) to meet, or assist in meeting, the costs and expenses incurred by the Authority, the Commissioner or the State in providing facilities, services and works for maritime transport purposes.

(2) Different rates of fees or charges, or both, may be prescribed or fixed in respect of different classes of persons, vessels, offshore installations, pipelines, maritime products or any other thing.

(3) The regulations may:

(a) specify the persons by whom, and to whom, any fees or charges, or both, are payable; or

(b) prescribe, or provide for the fixing of, additional fees or charges, or both, for services or work carried out outside normal working hours, at weekends or on statutory holidays; or

(c) prescribe, or provide for the fixing of, charges for reimbursement of travel, accommodation and other expenses; or

(d) provide for the refund, waiver or rebate, or enabling the refund, waiver or rebate, of any fee or charge, or both; or

(e) prescribe, or provide for the fixing of, a date by which any fee or charge is to be paid; or

(f) prescribe, or provide for the fixing of, a discount for early payment of any fee or charge, or a penalty for late payment, or both; or

(g) prescribe any returns, and the conditions relating to such returns, to be made by persons by whom any fees or charges are payable.

## APPLICATION OF SURPLUS

24. (1) Subjection to subsection (2), all revenue of the Authority not applied for the purpose of the operation of the Authority, or the administration of the Acts listed in Schedule 1 and the regulations and rules made under those Acts, must be transferred to government general revenue at least once during a year.

(2) The Authority is to retain 10 percent of its revenue for the promotion and development of the maritime transport system, the Register of Ships and Seafarers and the marine environment.

## AUTHORITY'S FINANCIAL YEAR

25. The financial year of the Authority begins on the 1st day of January of each year and ends on the 31st day of December of that year. However, the first financial year of the Authority begins on the date of commencement of this Act and ends on the 31st day of December in that year.

## ACCOUNTS AND AUDIT

26. (1) The Authority must keep proper books of account of its income and expenditure and of all funds collected and disbursed.

(2) The Authority must cause a statement of its accounts for each financial year to be prepared within 3 months after the end of that year.

(3) An independent auditor holding the requisite licence and qualified as an auditor under section 166 of the Companies Act [Cap.191] must audit and certify the accounts of the Authority each financial year.

(4) The auditor must in his or her report state:

(a) whether he or she has obtained all the information and explanations which to the best of his or her knowledge and belief were necessary for the purposes of that audit; and

(b) whether in his or her opinion the Authority has kept proper books of account, including records of all its assets;

(c) whether in his or her opinion the Authority's balance sheet and profit and loss account have been properly prepared and whether in his or her opinion a true and fair view is given:

(i) in the case of the balance sheet - of the state of the Authority's affairs as at the end of its financial year; and

(ii) in the case of the profit and loss account - of the Authority's profit or loss for the financial year.

(5) Within 3 months after the completion of the audit of its accounts for any financial year, the Authority must prepare and submit to the Minister a written report of its operations for that year together with a copy of the audited accounts for that year.

(6) The Minister must lay a copy of such report and audited accounts before Parliament at the earliest possible opportunity.

## PART 8

## ADMINISTRATIVE MATTERS

### DIVISON 1 - MEMBERS

### TERMS AND CONDITIONS OF MEMBERS

27. The members are not to be paid any fees, salaries or allowances. If it is necessary for a member to travel on business for the Authority, any expenses incurred will be reimbursed at a rate agreed to in advance between the Authority and the member.

### CHAIRPERSON AND DEPUTY CHAIRPERSON

28. (1) The Authority must nominate for the Minister's approval one of its permanent members to be the Chairperson and another member to be the Deputy Chairperson.

(2) If a nomination is not approved by the Minister, the Authority must make another nomination.

(3) The Chairperson and Deputy Chairperson each hold office until removed by the Minister.

### ACTING APPOINTMENTS

29. (1) The Deputy Chairperson must act as the Chairperson:

(a) during a vacancy in the office of Chairperson whether or not an appointment has previously been made to that office; or

(b) during any period, or during all periods, when the Chairperson is absent from duty or from Vanuatu or is, for any reason, unable to perform the duties of that office.

(2) The Minister may appoint a member to act as the Deputy Chairperson:

(a) during a vacancy in the office of Deputy Chairperson whether or not an appointment has previously been made to that office; or

(b) during any period, or during all periods, when the Deputy Chairperson is absent from duty or from Vanuatu or is, for any reason, unable to perform the duties of that office.

(3) A person appointed to act under this section must not continue to act for more than 6 months.

(4) Anything done by or in relation to a person purporting to act pursuant to an appointment made under this section is not invalid merely because there was a defect or irregularity in connection with the appointment.

## NON-PERMANENT MEMBERS

30. (1) A non-permanent member holds office for the period, not exceeding 3 years, specified in the instrument of appointment.

(2) A non-permanent member is eligible for reappointment.

(3) A non-permanent member continues in office until his or her successor comes into office, notwithstanding that his or her term of office may have expired.

(4) The non-permanent member appointed under subsection 4(3) may resign from office by written notice to the Authority and the non-permanent member appointed under subsection 4(4) may resign from office by written notice to the Minister.

(5) The Authority may remove the non-permanent member appointed under subsection 4(3) from office and the Minister may remove the non-permanent member appointed under subsection 4(4) from office:

(a) for incompetence or neglect of duty; or

(b) for misconduct or physical or mental incapacity; or

(c) if the member becomes bankrupt; or

(d) if the member has been absent from three consecutive meetings of the Authority without the leave of the Authority.

(6) If a non-permanent member dies or resigns or is removed from office, the vacancy must be filled by another suitably qualified person as soon as practicable.

(7) A non-permanent member may appoint a person to act in the place of the non-permanent member during any period, or during all periods, when the non-permanent member is absent from duty or from Vanuatu or is, for any reason, unable to perform the duties of that office.

(8) An acting appointment made by:

(a) the non-permanent member appointed under subsection 4(3) is subject to confirmation by the Authority; and

(b) the non-permanent member appointed under subsection 4(4) is subject to confirmation by the Minister.

**POWERS OF AUTHORITY NOT AFFECTED BY MEMBERSHIP VACANCY**

31. The powers of the Authority are not affected by any vacancy in its membership.

## DIVISION 2

## MEETINGS

**MEETINGS**

32. (1) The Authority must hold such meetings as are necessary for the efficient performance of its functions.

(2) The Chairperson or the Deputy Chairperson:

(a) may convene a meeting at any time; and

(b) must convene a meeting if he or she receives a written request signed by at least 2 permanent members.

(3) The Chairperson, if present, must preside at each meeting of the Authority. However, if the Chairperson is absent from any meeting, the Deputy Chairperson must preside at the meeting. If the Deputy Chairperson is also absent, the members present must appoint a member to preside at the meeting.

**QUORUM AND VOTING**

33. (1) At a meeting, a quorum consists of four permanent members.

(2) Questions arising at a meeting are to be determined by a majority of the votes of the members present and voting.

(3) If the voting at a meeting is equal, the person presiding at the meeting has a casting vote.

(4) The Commissioner of Maritime Affairs and the non-permanent members can not vote at a meeting.

## PARTICIPATING IN MEETINGS BY TELEPHONE ETC

34. (1) The contemporaneous linking together by telephone or any other means of communication of a number of members, whether or not one or more of the members is out of Vanuatu, is taken to constitute a meeting of the Authority if:

(a) notice , in writing or by electronic means, of 72 hours, or such shorter period as 4 permanent members determine, has been given of the proposed meeting; and

(b) the number of members taking part in the meeting by telephone or other means of communication is not less than the quorum: and

(c) each of the members taking part:

(i) is linked by telephone or such other means for the purposes of the meeting; and

(ii) at the start of the meeting, acknowledge the presence of each of the other members for the purpose of the meeting; and

(iii) is able throughout the meeting to hear each of the other members taking part; and

(iv) on any vote, individually express his or her vote to the meeting.

(2) A member is taken to be present, and to have formed part of the quorum, at all times during the meeting unless the member can not hear or be heard by the other members.

## RESOLUTIONS WITHOUT MEETINGS

35. (1) A resolution in writing signed, or assented to in writing, by not less than 4 permanent members, is valid and effective as if it had been passed at a meeting of the Authority duly called and constituted.

(2) Any such resolution may consist of several documents in like form each signed, or purported to have been signed, by one or more members.

### AUTHORITY MAY REGULATE ITS PROCEDURES

36. Subject to this Act, the Authority may regulate its procedures in such manner as it thinks fit.

## DIVISION 3

## DISCLOSURE OF INTERESTS

### DISCLOSURE OF INTERESTS

37. (1) A member who has direct or indirect pecuniary interest in:

(a) the Authority's performance of any function or exercise of any power; or

(b) any arrangement, agreement or contract, made or entered into, or proposed to be made or entered into, by the Authority;

must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest in accordance with this section.

(2) A member must disclose the nature of his or her direct or indirect pecuniary interest in a matter to the Minister if the person is the Chairperson or the Deputy Chairperson. In any other case, the member must disclose the nature of his or her interest to the Chairperson or Deputy Chairperson.

(3) A member of the Authority who has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, at a meeting of the Authority must disclose the nature of the interest at the meeting.

(4) A disclosure under subsection (3) is to be recorded in the minutes of the meeting of the Authority and the member concerned must not:

(a) be present during any deliberation of the Authority in relation to that matter; or

(b) take part in any decision of the Authority in relation to that matter.

(5) A member must be disregarded in determining whether or not there is a quorum present for any part of a meeting of the Authority during which a deliberation or decision of the Authority relating to the matter in which the member has an interest takes place or is made.

## DIVISION 4

## STAFF AND CONSULTANTS

### APPOINTMENT OF STAFF

38. (1) The Commissioner may appoint such employees, including employees on secondment from other organisations, as he or she thinks necessary for the efficient performance of the Authority's functions.

(2) The Commissioner may terminate or suspend the employment of any of the Authority's employees.

(3) No member or employee of the Authority is personally liable for:

(a) any liability of the Authority; or

(b) any act done or omitted to be done in good faith by the Authority, the Commissioner or any employee of the Authority in the exercise or purported exercise of a function or power of the Authority or the Commissioner.

(4) The Authority must operate a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring:

(a) good and safe working conditions; and

(b) the impartial selection of suitably qualified people for appointment; and

(c) recognition of the aims and aspirations of Ni-Vanuatu; and

(d) opportunities for the enhancement of the abilities of individual employees; and

(e) recognition of the aims and aspirations, and the cultural differences, of ethnic and minority groups; and

(f) no discrimination on the basis of sex or religion; and

(g) no discrimination against people with disabilities.

## CONSULTANTS, SPECIALISTS, ETC

39. (1) The Authority or the Commissioner may appoint consultants, specialists or advisory committees to advise on the exercise of functions or powers of the Authority.

(2) The Authority or the Commissioner may:

(a) pay to any such persons or members of committees such remuneration by way of fees, salary or allowances, and such travelling allowances and expenses, as the Authority or the Commissioner thinks fit; and

(b) contribute towards the remuneration, travelling allowances and expenses of any such persons or members of committees, whose employers provide services for the Authority or the Commissioner.

# DIVISION 5

# MISCELLANEOUS

## COMMITTEES

40. (1) The Authority may constitute, reconstitute and dissolve standing or special committees.

(2) The Authority may refer to a committee any matters for consideration, inquiry or action.

(3) The Authority must establish rules of procedure for committees.

(4) A committee may include among its membership persons who are not members of the Authority.

(5) In this section, "committee" includes a sub-committee.

## EXECUTION OF DOCUMENTS

41. (1) The Authority may, in writing, authorise any one or more members, or employees, of the Authority to execute any deeds, instruments, contracts or other documents on behalf of the Authority, and may in the same manner revoke such authority.

(2) Without limiting subsection (1), an authority may be given to:

(a) the Commissioner; or

(b) any specified employee; or

(c) any employee of a specified class; or

(d) the holder for the time being of any specified office or of any office of a specified class.

(3) A person purporting to execute any document on behalf of the Authority under an authority is taken to be acting in accordance with the authority in the absence of proof to the contrary.

## PART 9

## MARITIME APPEAL TRIBUNAL

### ESTABLISHMENT AND APPOINTMENT

42. (1) The Maritime Appeal Tribunal is established.

(2) The Tribunal consists of three members who are to be appointed by the Chief Justice of the Supreme Court of Vanuatu.

(3) One member must be a judicial officer and, if possible, must have a knowledge of maritime affairs. One of the other members must have relevant experience in maritime affairs, and the other member must have relevant experience in commercial matters.

(4) The Chief Justice must appoint the member who is a judicial officer to be the Chairperson of the Tribunal.

(5) Each member must be appointed for a term of not less than 2 years and not more than 4 years, and is eligible for reappointment.

### TERMINATION AND RESIGNATION

43. (1) A member of the Tribunal ceases to hold office if he or she:

(a) becomes bankrupt; or

(b) is convicted of any offence punishable by imprisonment or a fine in excess of VT300,000.

(2) The Chief Justice may remove a member of the Tribunal from office if the person because of physical or mental incapacity becomes incapable of performing the functions of the office.

(3) A member of the Tribunal may at any time resign by notice in writing to the Chief Justice.

### COSTS

44. The Tribunal may in its discretion award costs against any party.

## APPLICATIONS

45. (1) An application to the Tribunal:

(a) to determine an appeal from a decision of a licensing officer under the Shipping Act [Cap 53]; or

(b) to determine a matter under section 15 or 150 of the Maritime Act [CAP 131]; or

(c) to determine a matter under section 5 of the Maritime Regulations No. 25 of 1990; or

(d) to determine any other matter which the Tribunal is authorised to determine by or under this or any other Act;

must be in writing and it must specify the grounds for the application. The application must be lodged with the Commissioner who must send it to the Tribunal.

(2) An application to the Tribunal must be considered at such place and at such time as the Tribunal considers convenient having regard to the nature of the matter to be decided, and may be adjourned from time to time and place to place.

(3) The applicant is entitled to appear before the Tribunal in support of the application or be represented by counsel, a solicitor or nominee.

## EVIDENCE

46. The Tribunal may receive as evidence any statement, document, information or matter that may, in the opinion of the Tribunal, assist the Tribunal to deal effectively with the application being considered, whether or not the evidence would be admissible in a court of law.

## PROCEDURE OF TRIBUNAL

47. Except as otherwise provided by this Part, the Tribunal may determine its own procedure, however, it must follow the rules of natural justice.

## DECISION IS FINAL

48. An application heard by the Tribunal is to be determined by the decision in writing of the Tribunal. The decision of the Tribunal is final and conclusive and must not be questioned in any court or other proceedings.

## REMUNERATION

49. (1) The Authority must fix and pay the remuneration of the members of the Tribunal.

(2) The Authority must pay reimbursement of expenses of members upon submission of claims which are supported by receipts.