

REPUBLIC OF VANUATU

BILL FOR THE MARITIME SECTOR REGULATORY ACT NO. OF 2016

Explanatory Note

This Act will be the foundation for major and on-going reforms relating to all aspects of the regulation of the maritime sector within Vanuatu. The reforms will cover all regulatory matters related to shipping and crews, and the regulation of ports and port facilities. An independent sector-wide Regulator will be established and this will be known as the Office of the Maritime Regulator. The establishment and administration of the Office of the Maritime Regulator, and the appointment and empowerment of the Maritime Regulator, are based upon the successful reforms which have been applied in the telecommunications sector, and in relation to the regulation of public utilities. The Office of the Maritime Regulator will be an independent regulatory agency. The new Act will become the basis for the promotion of safer shipping and for ensuring that Vanuatu achieves compliance with the many international maritime convention obligations. The focus of these reforms is on promoting safety and security within Vanuatu waters, and on ensuring fair and equitable access to Vanuatu's port infrastructure and services.

PART 1 PRELIMINARY MATTERS

Clause 1 provides for the definitions for the words and phrases used in the Act.

Clause 2 provides for objects of the Act which relate mainly to maritime safety and compliance and to the regulation of ports.

Clause 3 provides that this Act will apply to all Vanuatu vessels and foreign vessels in Vanuatu waters and ports.

Clause 4 provides that seafarers on Vanuatu vessels must comply with the requirements under the Act.

PART 2 MARITIME REGULATOR

Division 1 Appointment, suspension and termination of the Regulator

Clause 5 provides for the appointment of the Regulator. This clause states that the Regulator is to be appointed by the Minister on the recommendation of the Evaluation Committee. The Evaluation Committee is to consist of the Chairperson of the Vanuatu Financial Services Commission, a representative of the Judicial Services Commission and a senior maritime officer appointed by the Director General.

Clause 6 provides for term of appointment of the Regulator. Under this clause the Regulator may be appointed for a period not exceeding 3 years and may be reappointed for only 1 further term.

Clause 7 provides that a temporary appointment can be made to fill a vacancy in the office of the Regulator.

Clause 8 provides for the grounds for the disqualification of an appointment of a person as the Regulator. In this clause a person cannot be appointed as the Regulator if he or she owns or has any interest in a vessel or business operations that are being covered under this Act.

Clause 9 provides for the grounds for suspending and terminating the appointment of the Regulator.

Clause 10 provides that the Regulator may resign at any time by providing a 28 days notice to the Minister.

Clause 11 provides for the appointment of the independent inquiry. This provision is made pursuant to paragraphs 9(1)(b), (c) and (d) which requires an independent inquiry to determine whether the actions or inaction of the Regulator has resulted in the serious breach or persistent breach of the terms and conditions of the Regulator's appointment.

Clause 12 provides that any independent inquiry must be terminated if legal proceedings relating to the subject of the inquiry, is being instituted.

Clause 13 provides that the Minister may appoint a person to be the Secretary of the independent inquiry.

Clause 14 provides that the Office of the Regulator is to reimburse any person summoned to appear before the inquiry, for travelling or accommodation expenses.

Clause 15 provides for the immunity of the members of the independent inquiry.

Division 2 Establishment of the Office of the Regulator and the Functions and powers of the Regulator

Clause 16 provides for the legal status of the Regulator. The Office of the Maritime Regulator is an independent government agency which is outside of the Public Service.

Clause 17 provides for the general functions of the Regulator in relation to the maritime sector, in particular to advise the Minister on maritime policy and law, issue certificates and licenses, and enforce the provisions of this Act.

Clause 18 provides for the specific functions of the Regulator in relation to maritime safety issues, including exercising the powers under the Shipping Act [CAP 53], registering vessels, carrying out surveys and inspections of vessels and general welfare and certification of seafarers.

Clause 19 provides for the general powers of the Regulator which includes the power to make rules, standards, guidelines and enforce orders.

Clause 20 provides for the specific powers of the Regulator to enforce safety requirements. These specific powers relate to disciplinary actions against seafarers and enforcement action against non-compliant vessels.

Clause 21 provides that the Regulator must comply with government procurement and contracting procedures as set out in the Government Contracts and Tenders Act [CAP 245].

Clause 22 provides that all official documents issued under the authority of this Act are to be signed by the Regulator, or a person authorised by the Regulator. A license or certificate that is not signed according to this clause is deemed to be void and of no legal effect.

Division 3 Miscellaneous matters involving the functions and powers of the Regulator

Clause 23 provides that the Regulator is subject to the requirements of the Leadership Code Act [CAP 240].

Clause 24 provides for a general power for the Regulator to make determinations in relation to any matter under the Act.

Clause 25 provides that the Regulator must act independently when performing his or her functions and exercising his or her powers under the Act.

Clause 26 provides that all licences and approvals given by the Regulator under the Act must be made in writing.

Clause 27 provides the Regulator the power to delegate to an officer of the Office, his or her functions and powers.

Clause 28 provides that the Regulator is obliged to maintain records of all licences granted and decisions made under the authority of the Act.

Clause 29 provides that an Annual Report must be prepared by the Regulator and this clause also requires the making of interim or periodic reports about disciplinary proceedings.

PART 3 INTERNATIONAL MARITIME CONVENTIONS OR AGREEMENTS

Clause 30 provides that the Regulator is generally empowered to implement and enforce a full range of maritime conventions and agreements.

Clause 31 provides for the specific principles of international law and regulatory practice and these include the obligation of persons who pollute the marine environment to be responsible for meeting the cost of responding to such pollution.

Clause 32 provides for the principle of international law known as the “precautionary principle” which authorises the Regulator to make decisions to prevent the risk of damage and harm even if there is not scientific certainty that such damage or harm will in fact arise.

PART 4 REGULATION OF PORTS

Clause 33 provides for the objectives of the provisions of this Part concerning the regulation of ports, port facilities and services. They include the promotion of safety and security, and ensuring rights of fair and equitable access to such important maritime facilities and services.

Clause 34 provides for the specific functions of the Regulator in relation to ports regulation. These cover a full range of functions including the provision of advice to government, the monitoring of port operations, and the enforcement of safety requirements and rights of fair and equitable access.

Clause 35 provides for the specific powers of the Regulator in relation to ports, and these include the power to prescribe rules, standards and codes of practice, to apply pricing orders and to set targets and productivity levels.

Clause 36 provides for the granting of concession rights to businesses to undertake port operations and to provide port related services.

Clause 37 provides that all rules and standards prescribed by the Regulator under the Act are deemed to be conditions applying to any rights given to businesses to undertake port operations and to provide port services.

Clause 38 provides that the Regulator may make Rules relating to the management of a port or port facility. These Rules may impose conditions or set deadlines for which certain things must be completed. The Rules may set fines of not exceeding VT250,000.

Clause 39 provides for the procedures for making Rules. This clause states that after making a Rule, the Regulator must within 14 days publish a notice of his or her intention to make a Rule, and invite persons to make representations on any matter contained in the Rule.

PART 5 FINANCIAL MATTERS

Clause 40 provides that the maritime revenues which will be collected by the Office of the Regulator will consist of monies appropriated by Parliament, initial funds given by the Ministry of Finance, fees, levies and charges, donations or grants by donor organisations and fines and penalties.

Clause 41 provides that the Regulator may assess fees on the holders of a license, Concession or operating right. This clause provides that the fees assessed must not exceed 2% of the annual revenue of the licensee, Concessionaire or holder of the operating right.

Clause 42 provides that the Regulator must keep full and proper books of accounts. This clause also requires the regulator to submit a report to the Minister within 3 months after the end of a financial year.

Clause 43 provides that the Office may open and operate its bank accounts, subject to the written authorisation of the Director General of the Ministry of Finance and Economic Management.

PART 6 ENFORCEMENT AND OFFENCES

Clause 44 provides that the Minister may appoint public servants or any other class of persons as authorised officers for the purposes of enforcing the regulatory arrangements under the Act. Any person already employed by the Office as an inspector or boarding officer is by way of his or her employment, deemed to be an authorised officer. The Regulator may also appoint the staff of the Office as authorised officers.

Clause 45 provides for the enforcement powers of the authorised officers. These powers include the power to board vessels, enter premises, take samples and photographs, and require persons to answer questions and to provide records and information.

Clause 46 provides for general offences against any provision of this Act, Rule, Guideline or code of practice if there is no other penalty imposed.

Clause 47 provides that a breach of any regulatory requirement under this Act can give rise to civil liability in favour of any person who is affected by the breach, and this clause enables any such affected person to take legal proceedings in relation to the damage suffered.

Clause 48 provides that the Regulator may issue a penalty notice for any offence committed under this Act. If a person issued with a penalty notice fails to pay the fine within the time stated in the notice, the Regulator may proceed to take the matter to Court. If the fine is paid within the time, the Regulator is not to commence any legal proceeding and the payment of the fine is not to be taken as evidence that the person has committed an offence against this Act.

PART 7 MARITIME APPEALS TRIBUNAL

Clause 49 provides for the establishment and composition of the Maritime Appeals Tribunal. The Tribunal consists of 3 members appointed by the Chief Justice. The members include a judicial officer who is to be the Chairperson, a member with experience in maritime affairs and a third member with experience in commercial matters.

Clause 50 provides for the suspension or removal of a member of the Tribunal.

Clause 51 provides that the Tribunal may award costs against any party.

Clause 52 provides for the matters by which the Tribunal may be convened to determine.

Clause 53 provides that the Tribunal may receive evidence in the form of information, statements and documents, that would assist the Tribunal in making a decision.

Clause 54 provides that subject to the rules of natural justice, the Tribunal may determine its own procedures.

Clause 55 provides that the Minister may determine the allowances of the members of the Tribunal and reimburse any expense a member of the Tribunal has made in relation to attending to the matters of the Tribunal.

Clause 56 provides for the immunity of the members of the Tribunal from any proceedings in respect to the performance of any functions or exercise of any powers under this Act in good faith.

PART 8 REGULATIONS, RULES AND STANDARDS

Division 1 - Regulations

Clause 57 provides for the Regulation making powers of the Minister in relation to any matter stated in the Act. In particular the Minister may make Regulations in relation to safety of shipping operations, prescribing standards for the construction of vessels, prescribing the procedure to approve tariffs and charges for port services, and prescribe fees, levies and charges.

Clause 58 provides that the Minister may make Regulations to impose liabilities on company directors and managers for offences which are committed by their employees.

Clause 59 provides that the Minister may make Regulations for any purpose related to the application and enforcement of any international maritime convention or agreement.

Clause 60 provides that the Regulator must display at the Office any fee, levy, charge or due prescribed by the Minister.

Division 2 – Approved rules, standard, guidelines, approved forms etc

Clause 61 provides that the Regulator may make, apply and enforce standards, guidelines, operating procedures, codes of conduct, directions and performance targets for the purposes of implementing the provisions of this Act.

Clause 62 provides that the Regulator may prescribe approved forms for the purposes of this Act.

Clause 63 provides that the Minister may instruct the Regulator to notify certain persons of any approved rules, approved forms, standards, guidelines, operating procedures, codes of practice, directions, performance targets or productivity levels.

PART 9 MISCELLANEOUS

Clause 64 provides for how this Act is to be applied in relation to relevant provisions of other maritime laws, including the Shipping Act [CAP 53], the Ports Act [CAP 26]

and the Maritime Zones Act No. 6 of 2010. This clause states that this Act will apply in addition to the other Acts, however if there is any inconsistency between this Act and any other Acts, then the provisions of this Act will prevail.

Clause 65 provides that the Regulator, an authorised officer or an employee of the Office is not to be liable for any action or omission done in good faith and in the course of exercising a power or performing a function under this Act.

Clause 66 provides that any certificate, license, authorisation or permit issued by an authority under the Shipping Act [CAP 53] is to remain in force as if they were issued under this Act. The Regulator may issue replacement certificates, licenses, authorisations or permits where necessary. The Regulator may also cancel or amend the conditions of any certificate, license, authorisation or permit, if the conditions are inconsistent with this Act.

Clause 67 provides for the temporary appointment of the Regulator and staff of the Office of the Regulator. Under this clause, the Minister may appoint a public servant to act as the Regulator for the purposes of establishing the Office of the Regulator and to carry out such other functions of the Regulator until such time that the Regulator is appointed. This clause also requires the Minister to appoint a Regulator within 6 months after the commencement of this Act.

Minister of Infrastructure and Public Utilities



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REPUBLIC OF VANUATU

BILL FOR THE MARITIME SECTOR REGULATORY ACT NO. OF 2016

An Act to regulate the maritime sector and for related matters.

Be it enacted by the President and Parliament as follows-

PART 1 PRELIMINARY MATTERS

1 Interpretation

(1) In this Act, unless a contrary intention appears:

Director General means the Director General of the Ministry responsible for the maritime sector;

maritime sector includes vessels, ports and port facilities which are regulated in accordance with law and as required by international maritime conventions, and includes persons engaged in relation to the operation of such vessels, ports and port facilities who are required to be certified or licensed in accordance with such laws and conventions;

Minister means the Minister responsible for the administration of this Act;

Ministry means the Ministry responsible for administering this Act;

Office means the office of the Maritime Regulator established under section 16;

port means any sea port declared by any Act, or any port or place that provides berthing and other port services to vessels and includes any port facility in Vanuatu;

port facility includes any of the following whether privately or publically owned or operated:

- (a) any terminal, service station, warehouse or other facility within a port;

- (b) a crane, derrick, winch or other equipment at a port;
- (c) a wharf, pier, jetty, mooring dolphin or buoy, or any facility where vessels are able to berth, load or discharge cargos and passengers;
- (d) a slipway or any other facility in which vessels are berthed or accommodated for repair or maintenance;

Regulator means the person appointed under section 5 and includes any person appointed as acting in that position;

rules means any rules made by the Regulator according to this Act and includes any guidelines, standards, codes of practice, operating procedures, performance targets or productivity levels made by the Regulator;

seafarer means any person who is required by the Shipping Act [CAP 53] to be appropriately certified under the STCW Convention as a master or a crew member of a vessel;

small craft means any vessel that is less than 10 meters in length;

STCW Convention means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers;

Vanuatu waters means any area under the jurisdiction of Vanuatu as provided for under the Maritime Zones Act No. 6 of 2010;

vessel means any type of craft that is used or capable of being used for the purposes of maritime transportation and includes but not limited to any fishing vessel, hovercraft, non-displacement vessel, mobile off-shore unit, but does not include seaplanes or helicopters.

- (2) A reference in this Act to certificates, licences, permits and approvals means any certificate, licence, permit or approval that the Regulator is authorised to grant or issue under any law.

2 Objects of the Act

The objects of the Act are to:

- (a) impose a maritime safety regime throughout Vanuatu which ensures the safety of vessels and their crews and passengers, and which complies with all applicable international Conventions and obligations; and
- (b) ensure the effective regulation of ports and port facilities through the promotion of efficient and safe port operations and the protection of the rights of port users to access ports and port facilities on fair and equitable terms; and
- (c) enshrine the principles of independence and best practice in relation to the regulation of the maritime sector; and
- (d) promote the security of shipping and port operations, and to facilitate compliance with all security related aspects of applicable international maritime conventions.

3 Application of Act to vessels

- (1) This Act applies to:
 - (a) any vessel registered or required to be registered or licensed under the Shipping Act [CAP 53] on any voyage in and beyond Vanuatu waters; and
 - (b) any vessel in Vanuatu waters or in a port or harbour in Vanuatu; and
 - (c) any vessel on which Vanuatu seafarers are employed; and
 - (d) any other vessel, or class or type of vessel, which is prescribed by law as being under the regulatory authority of the Regulator.
- (2) This Act does not apply to a vessel belonging to the defence force of any country, including but not limited to any warship, naval auxiliary or patrol vessel.

4 Application of Act to seafarers

This Act applies to the any seafarer who:

- (a) is required by any written law in Vanuatu to be certified; and

- (b) is employed as a seafarer of any category or class on a vessel which is, or is required to be, registered or licensed under the laws for which the Regulator is responsible.

PART 2 MARITIME REGULATOR

Division 1 Appointment, suspension and termination of the Regulator

5 Appointment of Regulator

- (1) The Regulator is to be appointed by the Minister on the recommendation of the Evaluation Committee.
- (2) The Evaluation Committee consists of:
 - (a) the Chairperson of the Vanuatu Financial Services Commission, who is to be the chairperson of the Evaluation Committee; and
 - (b) a representative of the Judicial Services Commission, who is not actively involved in politics; and
 - (c) a senior maritime officer of the Ministry, appointed by the Director General.
- (3) The Evaluation Committee may meet to carry out the responsibilities as set out in subsection (4), wherever there is a vacancy in the office of the Regulator.
- (4) The Evaluation Committee is to:
 - (a) evaluate on merit, all candidates for the position of Regulator; and
 - (b) recommend to the Minister the names of 1 or 2 of the candidates. If 2 candidates are recommended, the recommended candidate and the eligible candidate.
- (5) The Evaluation Committee must not recommend a candidate who does not primarily reside in Vanuatu or who does not intend primarily to reside in Vanuatu during the term of appointment.
- (6) The Evaluation Committee may obtain advice from the Director General when evaluating candidates.
- (7) The Minister must not appoint a person who is not recommended by the Evaluation Committee.

6 Term of appointment of Regulator

- (1) Subject to section 9, a person may be appointed as the Regulator for a term not exceeding 3 years on such terms and conditions as determined by the Minister.
- (2) The Minister may extend at the end of the period referred to in subsection (1), the term of appointment of the Regulator for a further 6 months.
- (3) The Minister may, on the recommendation of the Evaluation Committee, renew the appointment of a person as Regulator.
- (4) A person appointed as the Regulator may hold office for not more than 2 terms.

7 Vacancy

If the office of the Regulator is vacant or if the Regulator is unable to perform the functions of the office for any reason at any time, the Minister may, on the recommendation of the Evaluation Committee, appoint a suitably qualified officer of the Office to act in the position of Regulator until a permanent appointment is made or until the Regulator resumes duty.

8 Disqualification

- (1) A person is not eligible to be appointed as the Regulator if that person directly or indirectly has any pecuniary or proprietary interest in a vessel to which this Act applies.
- (2) A pecuniary or proprietary interest in subsection (1) includes but is not limited to an interest:
 - (a) as an owner, shareholder, director, officer, partner or otherwise; or
 - (b) in any business which has any operations which are subject to this Act or its Regulations, or any other Act or Regulation that is relevant to the maritime sector.
- (3) A person is not eligible to be appointed as the Regulator if that person:
 - (a) has been convicted of any offence, in Vanuatu or elsewhere:

- (i) involving dishonesty or corruption; or
- (ii) where the applicable penalty includes imprisonment for 12 months or more (irrespective of whether the penalty has been imposed); or
- (b) is bankrupt or has made an arrangement in the nature of composition or assignment with his or her creditors; or
- (c) has been terminated from a previous employment for serious misconduct; or
- (d) is unable to perform the Regulator's responsibilities, functions, duties and powers due to any physical or mental incapacity; or
- (e) is a member of Parliament; or
- (f) is a member of a Municipal Council or Provincial Government Council; or
- (g) is an officer or staff of a Municipal Council or Provincial Government Council; or
- (h) exercises a position of responsibility within a political party.

9 Suspension or termination of appointment of Regulator

- (1) The Minister may, on the recommendation of the evaluation committee, by written notice, suspend or terminate the appointment of the Regulator if the Regulator:
- (a) is or becomes ineligible for appointment under section 8; or
 - (b) is determined by an independent inquiry to have committed a serious breach of the terms and conditions of his or her appointment; or
 - (c) is determined by an independent inquiry to have persistently breached one of the terms and conditions of his or her appointment; or

- (d) is determined by an independent inquiry to have failed to fulfil the responsibilities, functions, duties and powers of the Regulator under this Act; or
 - (e) after being medically assessed by a medical practitioner the medical practitioner certifies that he or she is mentally or physically unfit to discharge all of his or her duties, for a period exceeding 28 days.
- (2) The Minister may suspend the Regulator for the duration of the period on which an independent inquiry is being carried out.

10 Resignation by the Regulator

The Regulator may resign at any time by giving 28 days notice to the Minister.

11 Independent inquiry into suspension or termination of Regulator

- (1) For the purposes of paragraph 9(1)(b), (c), or (d), the Minister may, acting on the advice of the Director General, by Order appoint not more than 3 persons to inquire into:
- (a) whether the action or inaction of the Regulator has resulted in a serious breach by the Regulator, of his or her terms and conditions of appointment; or
 - (b) whether the Regulator has persistently breached one or more of his or her terms and conditions of appointment; or
 - (c) whether the Regulator has failed to fulfil any of the responsibilities, functions, duties and powers of the Regulator under this Act.
- (2) An Order made under subsection (1) must also specify:
- (a) the subject of the inquiry; and
 - (b) the Chairperson of the inquiry; and
 - (c) where and when the inquiry is to be made; and
 - (d) the date for providing the report of the outcome of the inquiry to the evaluation committee; and

- (e) the allowances; and
 - (f) such other matters as the Minister considers necessary.
- (3) An independent inquiry has the following powers:
- (a) summon witnesses; and
 - (b) call for the production of books and documents; and
 - (c) examine on oath witnesses and parties concerned.
- (4) The members of the independent inquiry are to submit a report of the proceedings and of the result of their inquiry to the evaluation committee and must report the reasons for their decision.
- (5) If a member of the independent inquiry does not agree with the final decision of the independent inquiry, he or she must provide the reasons for his or her dissent.
- (6) Any person who upon being summoned to attend or produce documents before an independent inquiry:
- (a) refuses to attend or produce the documents; or
 - (b) refuses to answer any question put to him or her; or
 - (c) produces a false document or information; or
 - (d) provides a false information,
- commits an offence punishable on conviction by a fine of not more than VT500,000, or imprisonment for a term of not more than 3 months, or both.

12 Termination of inquiry due to legal proceedings

An independent inquiry is to be immediately terminated if legal proceedings relating to the facts of the inquiry or matter being inquired have commenced.

13 Secretary to an inquiry

- (1) The Minister may appoint a person to be the secretary to an independent inquiry.
- (2) A secretary has the following functions:
 - (a) to record the proceedings of the inquiry; and
 - (b) to take minutes of the testimony of a witness; and
 - (c) perform such other functions in connection with the inquiry as the Minister may prescribe.

14 Expenses of witnesses

A person who has been requested to provide books or documents or summoned as a witness, is entitled to be reimbursed by the Office, for any travelling or accommodation expense incurred as a result of attending the inquiry.

15 Inquirer not personally liable

A person or persons appointed under subsection 11(1) to carry out an independent inquiry is not liable to an action or other proceeding for damages for or in respect to an act done or omitted to be done in good faith in the exercise or performance, or purported exercise or performance, of a power or function conferred on him or her by this Act.

Division 2 Establishment of the Office of the Regulator and the Functions and powers of the Regulator

16 Office of the Regulator

- (1) The Office of the Maritime Regulator is established.
- (2) The Office is:
 - (a) a body corporate with perpetual succession; and
 - (b) to have a common seal; and
 - (c) capable of suing and being sued.

17 General functions of the Regulator

- (1) The general function of the Regulator is to regulate the maritime sector according to this Act and any other Act under which the Regulator is responsible.
- (2) Without limiting the generality of subsection (1), the Regulator has the following general functions:
 - (a) to advise, on the request of the Minister on:
 - (i) matters of maritime policy and law including any reforms on maritime policy and maritime law; and
 - (ii) the making of Regulations under this Act; and
 - (iii) such other matters as the Minister may request an advice on; and
 - (b) to implement and enforce the provisions of this Act; and
 - (c) to issue, suspend vary or cancel any certificate, licence or operating right; and
 - (d) to apply, implement any maritime Convention or International or Regional program relevant to the maritime sector; and
 - (e) to promote safe shipping and efficient port operations; and
 - (f) to assist the Government in developing and apply maritime policies; and
 - (g) to review maritime laws and ensure that they are kept up to date and relevant; and
 - (h) to determine whether Vanuatu's interests are advanced by becoming a party to, or participant in, any international or regional maritime convention, program, project or initiative, and advising the Government in that regard; and
 - (i) to ensure that Vanuatu meets its obligations under relevant international or regional maritime conventions, programs, projects

and initiatives, and doing any act or thing necessary for Vanuatu's effective participation under such arrangements; and

- (j) to ensure that relevant institutions and programs provide adequate training to seafarers which meet international standards and benchmarks; and
- (k) to promote preparedness for, and effective response to, marine pollution incidents, and the implementation of relevant conventions and initiatives, including the administration of a Polfund in accordance with law, and effective liaison with agencies responsible for disaster and emergency management; and
- (l) to ensure that capacities exist for effective maritime communication relevant to all aspects of maritime safety and security; and
- (m) to oversee arrangements for the provision of proper pilotage requirements and services; and
- (n) to oversee the system of navigation aids and the designation of channels and approaches; and
- (o) to promote effective hydrography services and compliance with international hydrographic obligations and procedures; and
- (p) to promote maritime safety and enhancing port operations and services; and
- (q) to monitor and regulate stevedoring activities that are under a Concession; and
- (r) to carry out any other functions as are conferred on the Regulator under this Act or any other Act.

18 Functions of the Regulator in relation to maritime safety

- (1) The Regulator has the following functions in relation to maritime safety:
 - (a) to implement and enforce the Shipping Act [CAP 53] and other Acts for which the Regulator is responsible; and

- (b) to enforce such regulatory functions in relation to any vessel or person to which this Act applies, including:
 - (i) the registration and provisional registration of vessels and the maintenance of one or more register of vessels; and
 - (ii) the registration of bills of sale, conveyances, mortgages, charges and liens as appropriate to the circumstances of Vanuatu; and
 - (iii) the inspection and survey of vessels, and all matters relevant to safety certification; and
 - (iv) the regulation of small craft; and
 - (v) the certification of seafarers; and
 - (vi) the employment and welfare of seafarers; and
 - (vii) the certification of marine pilots; and
 - (viii) the regulation and operation of marine navigation aids; and
 - (ix) the inspection and regulation of other port or port facility; and
 - (x) the imposition of requirements related to maritime safety; and
 - (xi) the imposition of requirements related to maritime security; and
 - (xii) authority over wrecks and salvage within Vanuatu; and
 - (xiii) other responsibilities involving the regulation, management, application and enforcement of requirements applying to the maritime sector to achieve compliance with applicable international maritime conventions, agreements and arrangements; and

- (c) to implement and enforce all aspects of port state control and flag state control, including the inspection of vessels to ensure that foreign vessels entering Vanuatu must comply with applicable safety requirements; and
- (d) to provide support for search and rescue services, operations and capacities, and the exercise of any function, responsibility or power related to marine search and rescue under any Act; and
- (e) to perform such functions in relation to the protection of shipping and safety of life at sea pursuant to any Act or regulation relating to emergency and disaster management; and
- (f) to implement obligations relevant to marine pollution prevention and response, including controls over wastes from vessels, management of ballast waters, regulation of anti-fouling and related matters; and
- (g) to settle and enforce standards of the construction of vessels, and standards applying to the repair or salvage of vessels; and
- (h) to carry out functions involving hydrography, including controls over hydrographic surveys and the dissemination of survey data, the preparation and approval of charts and surveys for maritime purposes, and the issue of notices to mariners; and
- (i) to regulate vessels undertaking any research in Vanuatu waters; and
- (j) to implement and enforce international maritime conventions and agreements; and
- (k) to conduct marine inquiries and investigations pursuant to Part 4A of the Shipping Act [CAP 53] and section 98 of the Maritime Act [CAP 131] and clause 35 of the Maritime Regulations Order 25 of 1990; and
- (l) to license and regulate shipping agents according to Regulations made under this Act; and
- (m) to carry out any other maritime functions under this Act or any other Act including but not limited to maritime safety.

- (2) To avoid doubt, the certification of a pilot by the Regulator under subparagraph (1)(b)(vii) does not affect the powers of the manager or operator of any port to licence, regulate and manage pilots, and to provide pilotage services in accordance with the relevant law.

19 General powers of the Regulator

- (1) The Regulator has the power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Without limiting the generality of subsection (1), the Regulator has the following powers:
- (a) to make such Rules as are necessary or convenient to give effect to the provisions of this Act and the Regulations; and
 - (b) to prescribe any standards, guidelines, operating procedures or codes of practice as may be necessary to ensure safety and effective regulation of the maritime sector; and
 - (c) to make Rules to promote and enforce safety at ports and in relation to port facilities; and
 - (d) to apply and enforce orders related to port tariffs and charges; and
 - (e) to apply and enforce performance targets and productivity levels related to port operations and services; and
 - (f) subject to the Government Contract and Tenders Act [CAP 245], to enter into contractual arrangements; and
 - (g) to employ staff and officers of the Office; and
 - (h) to accept, in his or her sole discretion, the secondment of public servants to his or her staff to act under his or her direction; and
 - (i) to ensure that all obligations under relevant international or regional maritime conventions relating to port operations, safety and security are implemented; and

- (j) to ensure that boarding and enforcement officers have access to ports and port facilities, and other relevant resources, to perform their lawful duties; and
- (k) to monitor vessels and crews; and
- (l) to ensure that qualified personnel and adequate equipment are present and maintained within relevant ports to facilitate effective responses to marine pollution incidents; and
- (m) to maintain adequate communication capacities; and
- (n) to promote and facilitate necessary maritime services at ports, including lines to berthing and berthed vessels, provision of utilities including water and power, bunkering, management and disposal of wastes, launch and other transport services, towage of vessels and oversight of stevedoring services; and
- (o) to provide aids to navigation and designating and controlling channels and approaches and anchorages; and
- (p) such other powers as are conferred on the Regulator by this Act or any other Act.

20 Powers relating to safety enforcement

- (1) In addition to any criminal action taken for a breach of a provision of this Act relating to maritime safety, the Regulator may:
 - (a) take a disciplinary action against a certified seafarer; or
 - (b) suspend a certificate during the investigation of an alleged breach; or
 - (c) cancel a certificate if the breach warrants such action; or
 - (d) suspend the registration of a vessel, or remove a vessel from a register; or
 - (e) detain a vessel; or

- (f) carry out any other action as set out in this Act, any other Act or Regulations.
- (2) A person not satisfied with a decision of the Regulator under subsection (1) may appeal to the Appeals Tribunal pursuant to Part 7.

21 Contracts subject to Government Contracts and Tenders Act

- (1) In addition to and without limiting the generality of paragraph 19(2)(f), the Regulator may, subject to the Government Contracts and Tenders Act [CAP 245], enter into a contract with a person to undertake the following:
- (a) to survey, inspect or certify a vessel; or
 - (b) to examine or test seafarers; or
 - (c) to install and maintain marine navigation aids; or
 - (d) to inspect ports or port facilities; or
 - (e) to carry out any obligation applying under a maritime convention; or
 - (f) to manage, operate and maintain the assets of the Office.
- (2) A contract is void and of no legal effect if it is in breach of the provisions of the Government Contracts and Tenders Act [CAP 245].
- (3) If the Regulator enters into a contract that is in breach of the provisions of the Government Contracts and Tenders Act [CAP 245], it is deemed to be a serious misconduct.

22 Documents issued by the Regulator to be signed

- (1) Any license, certificate or document that is issued by the Regulator evidencing the exercise of the authority of the Regulator must be signed by the Regulator or any staff of the Office delegated by the Regulator to act on his or her behalf.
- (2) The Regulator may delegate to any officer of the Office the power to issue a certificate or grant a license or approval on his or her behalf.

- (3) Any license, certificate or document that is not signed by the Regulator or a person authorised to do so by the Regulator under subsection (1) has no legal effect.

Division 3 Miscellaneous matters involving the functions and powers of the Regulator

23 Application of the Leadership Code Act

The Regulator is a leader under the Leadership Code Act [CAP 240].

24 Determinations by the Regulator

The Regulator may determine, with or without any kind of hearing, any questions of fact which may, in the Regulator's opinion, be necessary or incidental to the performance of the Regulator's functions and powers under this Act.

25 Independence of the Regulator

- (1) The Regulator is to act independently and impartially in performing his or her functions and powers under this Act.
- (2) Despite subsection (1), the Regulator may:
- (a) have regard to such policies as may be developed by the Minister or the Government; or
 - (b) consult with or take advice from, any person on any matter; or
 - (c) act in co-ordination with other countries, international agencies or international standards.

26 Licences, approval etc to be in writing

A licence, certificate, permit, exception, approval, determination, contract, appointment, acceptance or notice which is to be given by, or entered into, by the Regulator under the provisions of this Act, must be given or entered into in writing.

27 Delegation of functions and powers

- (1) The Regulator may, in writing, delegate to an officer of the Office any of his or her functions or powers under this Act, other than the power of delegation.
- (2) The delegation may be made generally, or in respect of a particular matter or class of matters.
- (3) The Regulator may at any time revoke or vary a delegation.
- (4) A delegation does not prevent the Regulator from performing the function or exercising the power that he or she has delegated.

28 Keeping of records

- (1) The Regulator is to keep and maintain a register of all licences, exceptions, certificates, and determinations made under this Act and must, subject to subsection (2), make the same available for public inspection upon reasonable notice.
- (2) A document is not to be made available for public inspection if it contains confidential information.

29 Annual report

- (1) The Regulator must provide to the Minister an annual report including, but not limited to:
 - (a) a summary of the activities undertaken by the Regulator and the Office; and
 - (b) such matters indicating improvements in maritime regulation; and
 - (c) such matters indicating deficiencies in maritime regulation, and the action required to remedy the deficiencies; and
 - (d) all matters relevant to Vanuatu's compliance with international maritime obligations, including the results of compliance audits and any matters which affect Vanuatu's standing as a maritime nation; and

- (e) details of maritime incidents and accidents, and the results of inquiries undertaken in relation to these; and
 - (f) a summary of disciplinary actions taken against any Vanuatu seafarer; and
 - (g) a summary of enforcement actions taken against vessels and seafarers, and details of litigation matters involving the Regulator; and
 - (h) details of all Orders made in relation to the regulation of ports and other actions taken to promote and protect the rights of port users to fair and equitable access to port facilities.
- (2) A contravention of subsection (1) is deemed to be a serious breach of duty by the Regulator.
- (3) The annual report provided to the Minister under to subsection (1) is to be published in the Gazette.
- (4) Despite subsection (1), the Regulator may prepare and publish such other interim or periodic reports, or any publication of disciplinary or enforcement proceedings made under this Act.

PART 3 INTERNATIONAL MARITIME CONVENTIONS OR AGREEMENTS

30 Maritime Conventions or Agreements

- (1) The Regulator has the following functions and powers in relation to any maritime Convention or Agreement:
- (a) to implement and enforce a maritime Convention or Agreement; and
 - (b) to take any action that can be taken by State Parties under a maritime Convention or Agreement; and
 - (c) to do all things that are necessary to ensure that Vanuatu effectively participates in any maritime Convention or Agreement which relates to any aspect of maritime safety.
- (2) In this Part **maritime Convention or Agreement** means any international maritime Convention, Protocol, Agreement, Memorandum of Understanding, program or initiative:
- (a) to which Vanuatu is a party or member; or
 - (b) that is adopted as domestic law in Vanuatu; or
 - (c) adopted, applied, implemented or enforced by Regulations made under this Act.

31 Principles and objectives to be applied to maritime Convention or Agreement

The Regulator is to be guided by and is to apply the following principles and objectives when implementing and enforcing a maritime Convention or Agreement:

- (a) the “polluter pays” principle; and
- (b) the precautionary principle of international law; and

- (c) the harmonisation of laws and processes with those of other State Parties and Governments of the Pacific region; and
- (d) the promotion of international and regional cooperation in the enforcement of maritime laws and the implementation of maritime Conventions and Agreements.

32 Application of the precautionary principle

- (1) Despite the provisions of any other Act, the Regulator or any person or agency having responsibilities under this Act, or whose functions and powers may relate to any matter or thing involving the maritime sector, is to apply the precautionary principle when discharging his or her functions, or exercising his or her powers.
- (2) For the purposes of this section, the precautionary principle is applied if, in the event of:
 - (a) a threat or damage to the marine environment; or
 - (b) a risk to safety or health in the maritime sector,

a lack of full scientific certainty regarding the extent of adverse effects of the threat or damage is not to be used to prevent or avoid a decision being made to minimise the potential adverse effects or risks of marine damage or degradation.

PART 4 REGULATION OF PORTS

33 Objectives of this Part

The objectives of this Part are to:

- (a) promote a safe, secure, effective and productive ports sector; and
- (b) promote and improve the efficiency of port operations and port services; and
- (c) promote investment in the development of ports and port services; and
- (d) ensure fair and equitable access to ports, port facilities and port services; and
- (e) promote efficient logistics and the port related supply chain; and
- (f) protect the rights of consumers and port users, and to minimise adverse effects of monopolistic practices, and other possible abuses; and
- (g) promote competition in the delivery of port services; and
- (h) prevent discriminatory practices relating to pricing or access to port services; and
- (i) protect the interests of investors in the port sector by recognising their right to earn a reasonable return on their investments.

34 Functions of the Regulator in relation to Ports

The Regulator has the following functions in relation to ports:

- (a) to provide regulatory advice to the Minister and the Ministry in relation to all aspects of port operations and regulation; and
- (b) to monitor ports and port services, including matters related to service availability, market failures, service quality, competition issues relevant to port services, the implementation of contractual obligations under Concession Agreements and operating licences, and other matters relevant to performance under Concession Agreements and licences; and

- (c) to ensure the safe and secure operation of ports, and the safety of any activities undertaken within port areas; and
- (d) to ensure accessibility to ports and port facilities, and promoting competition in relation to port operations and services; and
- (e) to ensure that international safety and security obligations applicable to ports are complied with; and
- (f) to monitor and regulate tariffs, prices and charges imposed at ports and on port users; and
- (g) to regulate the safety aspects in relation to the design, construction, development, use and inspection of ports and port facilities to promote safety and efficiency; and
- (h) to deal with complaints by service providers and users of port services concerning port operations and services, including the application of dispute resolution procedures; and
- (i) to ensure that regulatory processes and requirements promote proper and beneficial investment, environmental, safety and health related practices and outcomes; and
- (j) to provide reports and other information to the Government relating to the ports sector; and
- (k) to carry out any other function as are conferred on the Regulator in relation to ports under this Act or any other Act.

35 Regulators powers in relation to ports

The Regulator has the following powers in relation to ports:

- (a) to monitor the compliance with prescribed rules, standards, guidelines, operating procedures or codes of practice relevant to any aspect of ports and port facilities; and
- (b) to determine, apply and enforce the Regulations in accordance with the Act; and
- (c) to monitor and enforce price orders and other means of tariff control; and

- (d) to monitor and enforce performance targets and productivity levels; and
- (e) to require that information, records or statistics be provided by any port operator, Concessionaire or business operating within a port which is relevant to the port related functions of the Regulator, and to further require that verification of such information be provided; and
- (f) to inspect the books of account and other records kept by a port operator, Concessionaire or business operating within a port if they are relevant to the port related functions of the Regulator; and
- (g) to exercise the enforcement powers under the Act; and
- (h) to request assistance from any other regulatory agency of the State to ensure that the port related functions of the Regulator are effectively carried out; and
- (i) to do any other act, exercise any other power or apply and enforce any other process as are conferred on the Regulator by this Act or any other Act or Regulations.

36 Concession relating to port operations or services

- (1) The Minister may on behalf of the State and subject to the Government Contracts and Tenders Act [CAP 245], enter into a Concession Agreement with a private entity to operate and maintain port operations or services.
- (2) The Regulator in exercising any of his or her functions or powers under this Act or any other Act, must not unreasonably disrupt the operation of a port or port facility and must not expose the State to the breach of any Concession relating to port operations or services.
- (3) Despite the provisions of any Concession relating to port operations or services, the Regulator may do all or any of the following:
 - (a) for the purposes of public or national interest - take any action necessary to ensure that a vessel is granted access to a port or port facility, whether public or privately owned and operated, on terms which are just and equitable, and applied in a non-discriminatory manner;

- (b) for purposes of ensuring that public or private port facilities are accessible to all commercial operators and stakeholders - take any action necessary to ensure that:
 - (i) any customs agent, shipping agent; or
 - (ii) any person or business involved in the clearance or movement of cargo; or
 - (iii) any person having legitimate business in the port area,

be given access on appropriate terms to the ports and port facilities.

37 Conditions applicable to a licence, Concession or operating right

In addition to the conditions of a licence, Concession or operating right that is issued to a port operator or a provider of port services, any:

- (a) rules; or
- (b) standards; or
- (c) guidelines; or
- (d) operating procedures; or
- (e) codes of practice; or
- (f) price orders; or
- (g) performance targets; or
- (h) productivity level,

which is enforced and applied by the Regulator is deemed to be a condition of a licence, Concession or operating right.

38 Rules for ports and port facilities

- (1) Subject to the Ports Act [CAP 26], the Regulator may, in consultation with the Ministry, by Order make Rules relating to the management and operation of a port or port facility.
- (2) Without limiting the generality of subsection (1), a Rule made under this section may provide for any or all of the following matters:
 - (a) to require certain acts or things to be performed or done to the satisfaction of the Regulator; and
 - (b) to empower the Regulator to:
 - (i) issue orders to any person requiring acts or things to be performed or done, or requiring that acts or things are not to be performed or done; and
 - (ii) impose conditions to be fulfilled when any required act or thing is performed or done; and
 - (iii) set periods or dates within or before the required acts or things must be performed or done.
- (3) Any Rule made by the Regulator may apply generally to all ports or port facilities or be limited to a specific port or port facility.
- (4) For the purposes of implementing, enforcing and ensuring compliance with a Rule made under this section, the Regulator may:
 - (a) at any time carry out inspections and inquire into matters in relation to the enforcement or application of a Rule; and
 - (b) carry out any works as may be necessary for the proper enforcement or application of a Rule.
- (5) A Rule made under this section may set out offences and prescribe penalties being:
 - (a) fines not exceeding VT250,000; or
 - (b) fines of VT2,500 for each day of which an offence continues; or

- (c) imprisonment for a term not exceeding 3 months in default of the payment of a fine.
- (6) In addition to imposing a penalty for a breach of a Rule made under this section, the Court may order a person to pay any costs incurred by the Regulator arising out of the breach.

39 Procedure relating to Rules

- (1) In making a Rule under this Part, the Regulator must within 30 days after the making of the Rule, publish a notice of the intention to make a Rule at the office of the Regulator and by such notice invite representations in writing from any person.
- (2) The Regulator is to sign the Rule at the end of 14 days from the date on which the notice of the proposed Rule is published under subsection (1).
- (3) A Rule comes into effect on the date on which it is signed by the Regulator and a copies of the Rule must be kept at the office of the Regulator and be made available for inspection to the public.
- (4) The Regulator may from time to time set the fee for purchasing a copy of a Rule made under this Part.

PART 5 FINANCIAL MATTERS

40 Revenue of the Office

- (1) The revenue of the Office consists of:
 - (a) monies appropriated by Parliament; and
 - (b) funds assigned to it by the Minister responsible for Finance and Economic Management by way of initial capital and budget allocation; and
 - (c) fees charged by the Regulator according to section 41; and
 - (d) fees, levies, dues and costs charged or collected by the Regulator under this Act and any other Act; and
 - (e) any grant or donation from any organisation or body within or outside of Vanuatu; and
 - (f) fines recovered under this Act or any other Act.
- (2) The Minister may by Order make Regulations to provide for the imposition, collection or recovery of any fee, levy or dues by the Regulator in relation to the functions or powers of the Regulator as set out under this Act.
- (3) Without limiting the generality of subsection (2), fees, levies or dues may be imposed in relation to any of the following: or
 - (a) a general maritime safety levy; or
 - (b) other levies imposed in accordance with international maritime Convention arrangements and obligations; or
 - (c) any other maritime due or levy of a kind imposed in other Pacific Island maritime jurisdictions.

41 Fees

- (1) The Regulator may assess fees on the holder of a licence, Concession or operating right in accordance with this section and may prescribe the rules to assess these fees.
- (2) The prescribed rules are to be approved by the Minister.
- (3) The fees assessed on the holder of a licence, Concession or operating right by the Regulator under subsection (1) must not exceed 2% of the annual revenue for the previous calendar year collected by the regulated service of the holder of a licence, Concession or operating right.
- (4) The Regulator may prescribe such other reasonable fees, expenses or costs to relevant parties when performing its functions or providing any service under this Act or any other Act.

42 Accounts and Audit

- (1) The Regulator must keep and maintain proper financial accounts and records of all transactions of the Office.
- (2) The Regulator is to prepare and submit to the Minister a financial audit in respect of each financial year within 3 months after the end of that financial year.
- (3) A financial audit produced under subsection (2) must be in accordance with international accounting standards which are to be audited annually by an independent qualified auditor and a copy of the auditor's report and financial statements are to be provided to the Minister.
- (4) The financial audit must be certified by the Auditor General in accordance with the Expenditure Review and Audit Act [CAP 241].
- (5) A contravention of this section is deemed to be a serious breach of duty by the Regulator.

43 Bank accounts

The Office may open and operate one or more bank accounts subject to the express written authorisation of the Director General of the Ministry of Finance and Economic Management pursuant to subsection 43(4) of the Public Finance and Economic Management Act [CAP 244].

PART 6 ENFORCEMENT AND OFFENCES

44 Appointment of authorised officers

- (1) The Minister may on the advice of the Regulator, by notice published in the Gazette, appoint a public servant or any other person or category of persons who are not employees of the Office, as an authorised officer or authorised officers for the purposes of this Act.
- (2) A person employed by the Office as an inspector, boarding officer or enforcement officer is deemed to be an authorised officer for the purposes of this Act.
- (3) The Regulator may by instrument in writing appoint one or more employees of the Office as authorised officers for the purposes of this Act.
- (4) To avoid doubt, a person appointed under subsection (1) is not to be regarded as an employee of the Office and is not entitled to any remuneration as a result of his or her appointment.
- (5) The Regulator may determine the allowance to be issued to an authorised officer appointed under subsection (1).
- (6) The Regulator is deemed to be an authorised officer for the purposes of this Act.

45 Powers of authorised officers

- (1) For the purposes of implementing and enforcing this Act including, monitoring and responding to any matter that could affect any aspect of maritime safety or the marine environment, an authorised officer has the following powers:
 - (a) to board any vessel or enter any premises associated with the ownership or operation of a vessel; and
 - (b) to take samples for testing and analysis of any matter, substance or thing which may have adverse implications for safety on vessels, or harmful impacts upon the marine environment; and

- (c) to take photographs and measurements, and to otherwise collect any necessary evidence relating to the exercise of any lawful function or power; and
 - (d) to require any person apparently doing any act or controlling any thing which appears to constitute a risk to human safety or to the marine environment, to answer any questions; and
 - (e) to require the production of records and information held by any person relating to any of the following:
 - (i) any matter, substance or thing which may have adverse impacts on safety or be harmful to the marine environment; and
 - (ii) any licence, permit or authorisation relating to any activity which may have adverse impacts on safety or be harmful to the marine environment; and
 - (iii) any licence, permit or registration held by the person or relating to a vessel or port facility.
 - (f) to seize any item or thing which is in breach of any maritime law, and to deal with such items or things in accordance with the applicable maritime law; and
 - (g) to order that any matter, substance or thing that could be adversely impacting upon or endangering safety or the marine environment, be contained, removed or otherwise dealt with so as to prevent or minimise its harmful or adverse effects; and
 - (h) to order that certain items, substances or things be treated as being adverse to safety or harmful to the marine environment, and be appropriately dealt with; and
 - (i) to require that anything be done in relation to a vessel or port facility so as to remove or minimise any danger to safety or adverse impact upon the marine environment.
- (2) A person who refuses or fails to comply with an order of an authorised officer given under paragraph (1)(g) or (h), commits an offence punishable on conviction by:

- (a) in the case of an individual - a fine not exceeding VT500,000, or imprisonment for a term of not more than 3 months, or both; or
- (b) in the case of a body corporate - a fine not exceeding VT6,000,000.

46 General offences

- (1) Unless provided for in this Act, a person who breaches
 - (a) a provision of this Act; or
 - (b) any requirement, obligation or any provision of a Rule, approved rule, standard, operating procedure or code of practice,commits an offence.
- (2) A person who commits an offence under subsection (1), is liable on conviction to:
 - (a) if the offence is committed by an individual – a fine not exceeding VT6,000,000, or a term of imprisonment of not more than 12 months, or both;
 - (b) if the offence is committed by a body corporate – a fine not exceeding VT50,000,000;
 - (c) if death or injury of any nature is caused to human life or to the maritime environment as a result of the offence – an additional fine not exceeding VT10,000,000, or a term of imprisonment of not more than 12 months, or both.

47 Civil Liability

- (1) A person who suffers loss or damage by conduct of another person that was done in contravention of a provision of this Act may recover the amount of the loss or damage (and interest thereon) by action against:
 - (a) that other person; or
 - (b) any person knowingly involved in the contravention.

- (2) An action under subsection (1), may be commenced at any time within 2 years after the date on which the contravention occurred.
- (3) Subsection (1) does not limit, restrict or otherwise affect any right or remedy that a person would have if that subsection were not acted upon, provided that there is no double recovery of damages.
- (4) Proceedings under this section may be commenced by the Regulator, as representative of a class of persons suffering loss or damage.
- (5) The Regulator may, subject to any conditions imposed by the Court, intervene in any proceeding instituted under subsection (1).

48 Penalty notice

- (1) The Regulator is to serve a penalty notice to a person if it appears to the Regulator that a person has committed an offence under this Act.
- (2) A penalty notice has the effect of when a person served with a penalty notice does not want to have a matter determined by a Court, the person must pay to the Office, the amount of a penalty within a time as specified in the penalty notice.
- (3) The amount of a penalty imposed under this section must not exceed the maximum amount of the penalty imposed under the Act.
- (4) If the amount of a penalty imposed under this section for an alleged offence is paid, a person is not liable to any further proceedings for the alleged offence.
- (5) A penalty notice may be served personally, by post or electronically.
- (6) This section does not limit the operation of any other provision of this Act or any other Act relating to proceedings that may be taken in respect of offences.
- (7) For the purposes of this section, the Regulator may, in his or her discretion:
 - (a) revoke an penalty notice and issue a new penalty notice in lieu of one which is revoked; and

- (b) extend the time for payment of the fine specified in an penalty notice.

PART 7 MARITIME APPEALS TRIBUNAL

49 Establishment and appointment

- (1) The Maritime Appeal Tribunal is established.
- (2) The Tribunal consists of:
 - (a) a Chairperson who is to be a judicial officer; and
 - (b) a member being a person with relevant experience in maritime affairs; and
 - (c) a member being a person with relevant experience in commercial matters.
- (3) A member of the Tribunal is to be appointed by the Chief Justice for a term of not more than 3 years, and is eligible for reappointment.
- (4) A person is not eligible to be appointed as a member of the Tribunal if he or she:
 - (a) has been convicted of any offence, in Vanuatu or elsewhere:
 - (i) involving dishonesty or corruption; or
 - (ii) where the applicable penalty includes a fine of more than VT500,000 or imprisonment for 12 months or more (irrespective of whether such penalty has been imposed); or
 - (b) is an undischarged bankrupt.

50 Termination and resignation

- (1) A member may at any time be suspended or removed from the Tribunal by the Chief Justice on any of the following grounds:
 - (a) inability to perform the functions of the office;
 - (b) bankruptcy;

- (c) neglect of duty;
 - (d) misconduct;
 - (e) physical or mental incapacity.
- (2) A member of the Tribunal may at any time resign by giving 21 days notice in writing to the Chief Justice.

51 Costs

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

52 Applications

- (1) An application to the Tribunal:
- (a) to determine any matter under this Act; or
 - (b) to determine an appeal from a decision of the Regulator under the Shipping Act [CAP 53]; or
 - (c) to determine a matter under section 15 or 150 of the Maritime Act [CAP 131]; or
 - (d) to determine a matter under clause 5 of the Maritime Regulations Order No. 25 of 1990; or
 - (e) to determine any other matter which the Tribunal is authorised to determine by or under this or any other Act or Regulations,
- must be in writing and it must specify the grounds for the application.
- (2) An application must be made to the Regulator who must send it to the Tribunal.
- (3) An application made to the Tribunal is to 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.

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

53 Evidence

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.

54 Procedure of Tribunal

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

55 Allowances

- (1) The Minister may by Order determine the sitting allowance of the Chairperson and members of the Tribunal.
- (2) The Office is to pay the allowances of the members of the Tribunal and is to reimburse any expenses of members upon submission of claims which are supported by receipts.

56 Members of Tribunal not personally liable

The Chairperson or member of the Tribunal is not liable to an action or other proceeding for damages for or in respect to an act done or omitted to be done in good faith in the exercise or performance, or purported exercise or performance, of a power or function conferred on him or her by this Act.

PART 8 REGULATIONS, RULES AND STANDARDS

Division 1 - Regulations

57 Regulations

- (1) The Minister may by Order make such Regulations as may be necessary or convenient to give effect to the provisions of this Act.
- (2) Without limiting the generality of subsection (1), Regulations may be made for and in relation to the following matters:
 - (a) to facilitate the proper and effective discharge of the functions and powers of the Regulator;
 - (b) to prescribe powers of enforcement or enforcement procedures, including the issuing of penalty notices and the application of penalties for non-compliance;
 - (c) to promote the safety of shipping operations and port management, including the regulation, seizure, forfeiture or removal of vessels, structures or things which may pose a threat to the environment, safety or security of vessels or maritime infrastructure;
 - (d) to prescribe standards for the construction of vessels and for the repair or salvage of vessels, and procedures for the certification of compliance with such standards;
 - (e) to prescribe requirements and processes relating to the setting and approval of tariffs and charges for port services, including tariff setting processes, requirements for the publication of tariffs, setting tariffs for services to other providers of port services, and methods to be applied to cost studies and for the regulation of prices by any other means;
 - (f) to protect the rights of port users and customers of port services, and to prevent discriminatory practices relating to access to services or to charges and tariffs by any means, including requirements that terms of service be prepared and approved;
 - (h) to facilitate an effective and orderly transition following the establishment of the Office of the Maritime Regulator;

- (i) to require that records be kept or information be provided to the Regulator in relation to any aspect of maritime safety or port regulation, or relating to any international maritime Convention, protocol, Agreement, program or initiative;
- (j) to impose obligations for a polluter to pay or reimburse the full cost of response or rehabilitation in cases where pollution is caused or released to the marine environment;
- (k) to prescribe fees, levies, charges or dues;
- (l) to provide for the collection and recovery of any fees, levies, charges or dues by the Regulator.

58 Regulation for liability of directors

The Minister may by Order make Regulations to provide for the liability of any director or manager of a company who commits an offence against the Regulations, if:

- (a) the director or manager knew of the circumstances amounting to the offence or breach; or
- (b) the director or manager ought to have known of the circumstances amounting to the offence or breach; or
- (c) the director or manager was responsible for any matter within the company or corporate body, which if done properly, would have prevented or avoided the offence or breach, or would have minimised the consequences of it; or
- (d) the director or manager acted in any way so as to cover up the circumstances which amounted to the offence or breach.

59 Regulations to implement maritime conventions or agreements

- (1) The Minister may by Order make Regulations for the purposes of applying, implementing and enforcing any maritime Convention or Agreement for which the Regulator is responsible.
- (2) Without limiting subsection (1), Regulations may be made for and in relation to the following matters:

- (a) the safety or security on vessels and in ports; or
- (b) the certification of seafarers in accordance with international standards and processes; or
- (c) the employment and welfare of seafarers; or
- (d) the prevention of or response to marine pollution; or
- (e) the management of ballast waters; or
- (f) the dumping or incineration of wastes at sea by vessels; or
- (g) the management of anti-fouling practices and matters related to the anti-fouling of vessels; or
- (h) the carriage of dangerous goods; or
- (i) the implementation of regional conventions and agreements relating to protection of the maritime environment and the regulation of shipping in the Pacific region.

60 Notice of fees and charges

Any fee, levy, charge or due prescribed by the Minister under paragraph 57(2)(k), is to be displayed by the Regulator at the Office of the Regulator.

Division 2 – Approved rules, standards, guidelines, approved forms etc

61 Approved rules and standards etc

- (1) For the purposes of implementing the provisions of this Act, the Regulator may make approved rules, standards, guidelines, operating procedures, codes of practice, directions, performance targets or productivity levels.
- (2) An approved rule, standard, guideline, operating procedure, codes of practice, direction, performance target or productivity level made by the Regulator under subsection (1) takes effect when it is approved by the Regulator.
- (3) The Regulator must take all necessary steps in notifying vessel and port operators of any matter made under subsection (1).

- (4) Failure to notify a vessel and port operators under subsection (3) does not affect the validity of an approved rule, standard, guideline, operating procedure, code of practice, direction, performance target or productivity level.

62 Approved forms

- (1) The Regulator may prescribe approved forms for any purpose associated with the Regulator's functions and powers under this Act or any other Act.
- (2) The Regulator is to take all necessary steps in notifying vessel and port operators of any approved forms made under subsection (1).

63 Notification

The Minister may direct the Regulator to notify certain persons of the approved rules, approved forms, standards, guidelines, operating procedures, codes of practice, directions, performance targets or productivity levels.

PART 9 MISCELLANEOUS

64 Application of the Act in relation to other Acts

- (1) The provisions of this Act apply in addition to and not in derogation of any other requirement or process relevant to maritime regulation under any other Act.
- (2) If there is any inconsistency between this Act and any other Act, the provisions of this Act prevail.
- (3) Without limiting the generality of subsection (2), the regulatory functions and powers of the Regulator under this Act are not affected by any of the following:
 - (a) any requirement relating to dangerous goods on vessels under the Ports Act [CAP 26] or the Shipping Act [CAP 53]; or
 - (b) any powers under the Ports Act [CAP 26] in relation to wrecks; or
 - (c) any powers to control research or to publish charts under the Maritime Zones Act No. 6 of 2010; or
 - (d) any provisions of the Shipping Act [CAP 53] dealing with the STCW Convention and crewing requirements of vessels.

65 Protection from liability

- (1) The Regulator, an authorised officer or an employee of the Office is not liable to an action or other proceeding for damages for or in respect to an act done or omitted to be done in good faith in the exercise or performance, or purported exercise or performance, of a power, function or duty conferred on him or her by this Act.
- (2) The Regulator, an authorised officer or an employee of the Office is not exempted from liability under subsection (1) for any act or omission that constitutes bad faith or gross negligence on his or her part.

66 Transitional and savings

- (1) Subject to this section, any certificate issued or licence, authorisation, permit or registration granted by the Minister or the Principal Licensing

Office under Shipping Act [CAP 53], immediately prior to the commencement of this Act, remain in force for the remainder of their term as if they were issued, granted or registered under this Act.

- (2) Any certificate issued or licence, authorisation, permit or registration granted under the Shipping Act [CAP 53] may be varied, suspended or cancelled in accordance with this Act.
- (3) Despite subsection (1), if the Regulator is of the opinion that any certificate, licence, authorisation, permit or registration issued under the Shipping Act [CAP 53] is inconsistent with this Act or should be made subject to amended or additional conditions, the Regulator may:
 - (a) notify the holder of the certificate, licence, authorisation, permit or registration, of any amended or additional conditions and those conditions apply from the date of notification; or
 - (b) notify the holder of the certificate, licence, authorisation, permit or registration, of his or her intention to cancel the certificate, licence, authorisation, permit or registration, and require the holder to apply for the appropriate licence, authorisation or permit under this Act.
- (4) If the Regulator gives a notice under paragraph (3)(b), any certificate issued or, licence, authorisation, permit or registration granted under the Shipping Act [CAP 53] ceases to be valid:
 - (a) if no application is made under paragraph (3)(b) - at the expiration of 30 days from the date of notification; or
 - (b) if an application is made under paragraph (3)(b) and the application is rejected in accordance with this Act - on notification of that rejection.
- (5) Any document or action made under the Shipping Act [CAP 53] or any other Act by which the Regulator is responsible, continues in force as if it were made under this Act.
- (6) Any criminal or civil suit instituted by or against the State of any decision or action made under the Shipping Act [CAP 53] remains valid.

67 Temporary appointment of the Regulator and staff of the Office

- (1) Despite sections 5 and 6, for the purposes of initially establishing the Office of the Regulator, the Minister may by instrument in writing appoint a suitably qualified senior public servant to act as the temporary Regulator to carry out the following:
- (a) to establish the office premises for the Office of Regulator; and
 - (b) to perform the functions and powers of the Regulator under this Act until such time a formal appointment is made under section 5; and
 - (c) to arrange with the Public Service Commission for the transfer of public servants to act as temporary staff of the Office of the Maritime Regulator until such time permanent appointments are made by the duly appointed Regulator; and
 - (d) to carry out such other acts as are necessary for the establishment and operation of the Office of the Maritime Regulator immediately after the commencement of this Act.
- (2) A temporary appointment made under subsection (1) ceases to have effect:
- (a) after 12 months from the date on which this Act comes into force and may not be extended or renewed; or
 - (b) on the formal appointment of the Regulator under section 5.
- (3) The Minister must appoint a Regulator according to section 5 within 12 months after the commencement of this Act.
- (4) A temporary appointment made under subsection (1) may be revoked by the Minister by written notice.
- (5) A temporary staff of the Office transferred under paragraph (1)(c) is to be subject to the authority of the Regulator or any person appointed as the temporary Regulator.

68 Commencement

This Act commences on the day on which it is published in the Gazette.