



REPUBLIC OF VANUATU

**MARITIME SECTOR REGULATORY
(AMENDMENT)
ACT NO. 6 OF 2022**

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REPUBLIC OF VANUATU

Assent: 20/06/2022
Commencement: 23/06/2022

MARITIME SECTOR REGULATORY (AMENDMENT) ACT NO. 6 OF 2022

An Act to amend the Maritime Sector Regulatory Act No. 26 of 2016.

Be it enacted by the President and Parliament as follows-

1 Amendment

The Maritime Sector Regulatory Act No. 26 of 2016 is amended as set out in the Schedule.

2 Commencement

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

SCHEDULE

AMENDMENTS OF MARITIME SECTOR REGULATORY ACT NO. 26 OF 2016

1 Title of the Act

Delete “Maritime Sector Regulatory”, substitute “Vanuatu Maritime Safety Authority”

2 References to “Regulator” or “Regulator’s”

Delete all references to “Regulator” or “Regulator’s” (wherever occurring), substitute “Authority” or “Authority’s”

3 References to “Office” or “Office of the Regulator”

Delete all references to “Office” or “Office of the Regulator” (wherever occurring), substitute “Authority”

4 Section 1 (Interpretation)

Insert in their correct alphabetical positions:

“**Authority** means the Vanuatu Maritime Safety Authority established under subsection 5(1);

Commissioner means the Commissioner of Maritime Affairs appointed under section 23;

Evaluation Committee means the Evaluation Committee established under subsection 29A(1);”

5 Section 1 (Definitions of “Office” and “Regulator”)

Repeal the definitions.

6 Part 2

Repeal the Part, substitute

“PART 2 VANUATU MARITIME SAFETY AUTHORITY

Division 1 Vanuatu Maritime Safety Authority

5 Vanuatu Maritime Safety Authority

- (1) The Vanuatu Maritime Safety 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 own name.

6 Composition of the Authority

- (1) The Authority consists of the following members:
 - (a) the Director General of the Ministry responsible for maritime; and
 - (b) the Director General of the Ministry of Finance and Economic Management; and
 - (c) 1 member appointed by the Minister.
- (2) The Minister may by Order and on the recommendation of the Evaluation Committee, appoint the member referred to under paragraph (1)(c).
- (3) The person appointed as a member of the Authority under subsection (2), is to hold office for a period of 3 years and, may be reappointed for not more than 2 terms.
- (4) The Minister may, on the recommendation of the Evaluation Committee, remove the member of the Authority appointed under subsection (2).

7 Chairperson

The Director General of the Ministry responsible for maritime is the Chairperson of the Authority.

8 Meetings of the Authority

- (1) The Authority is to meet at least 3 times in a year and may hold such other meetings as are necessary for the proper performance of the functions of the Authority under this Act or any other Act.
- (2) At a meeting of the Authority, a quorum consists of 2 members present at the meeting, one of which must be the Chairperson.
- (3) The Chairperson is to preside at all meetings of the Authority.
- (4) The decisions of the Authority are to be made by a simple majority vote of members present and voting.
- (5) If there is a tie vote at a meeting of the Authority, the Chairperson has the casting vote.
- (6) The Commissioner or a staff of the Authority authorised by the Commissioner, is to provide secretariat assistance to the Authority during its meetings.
- (7) The Commissioner does not have any voting right at the meetings of the Authority.
- (8) The Authority may determine and regulate its own procedures.

9 Sitting allowances of the members of the Authority

The Minister may, by Order, prescribe the sitting allowances for the members of the Authority.

Division 2 Functions and powers of the Authority

10 Functions of the Authority

- (1) The function of the Authority is to regulate the maritime sector.
- (2) In addition to subsection (1), the Authority has the following functions:
 - (a) to advise the Minister on the following matters:

- (i) maritime policy and law including any reform 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 issued under this Act; and
 - (d) to apply and implement any international or regional maritime Convention or 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 implementing maritime policies; and
 - (g) to review maritime laws and ensure that they are kept up to date and are relevant; and
 - (h) to advise the Government on 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
 - (i) to ensure that Vanuatu meets its obligations under relevant international or regional maritime conventions, programs, projects and initiatives; and
 - (j) to ensure that the 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 to implement relevant conventions and initiatives, including:

- (i) the administration of a marine pollution fund established under Part 7; and
 - (ii) effective liaison with agencies responsible for disaster and emergency management; and
- (l) to ensure that capacity exists 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 regulate the system of aids to navigation 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 Authority under this Act or any other Act.

11 Functions of the Authority in relation to maritime safety

- (1) The Authority has the following functions in relation to maritime safety:
 - (a) to implement and enforce the Shipping Act [CAP 53] and any other Act for which the Authority 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 of aids to navigation and the operation of aids to navigation in an area that is not within a port; and
 - (ix) the inspection and regulation of other port or port facility; and
 - (x) the imposition of requirements related to maritime safety; and
 - (xi) authority over wrecks and salvage in an area that is not within a port; and
 - (xii) the regulation of wrecks and salvage; and
 - (xiii) other functions relating to the regulation, management, application and enforcement of requirements set out under international maritime conventions, agreements and arrangements relating to the maritime sector; 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 be the Maritime Rescue Coordinator for all search and rescue operations in Vanuatu and to provide support for search and rescue services, operations and capacities; and
- (e) to perform such functions in relation to the protection of shipping and safety of life at sea under 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 in an area that is not within a port, including:
 - (i) controls over hydrographic surveys; and
 - (ii) the dissemination of survey data; and
 - (iii) the preparation and approval of charts and surveys for maritime purposes; and
 - (iv) 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 license and regulate shipping agents according to Regulations made under this Act; and
- (l) to carry out any other functions under this Act or any other Act relating to maritime safety.

- (2) To avoid doubt, the certification of a pilot by the Authority 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.

12 Powers of the Authority

- (1) The Authority 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 Authority 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 the 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 of the Authority; and
 - (h) to accept, in its sole discretion, the secondment of public servants to the Authority; 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 functions and exercise their powers under this Act or any other Act; and
- (k) to monitor vessels and their 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 designate and control channels, approaches and anchorages in an area that is not within a port; and
- (p) to do the following in relation to an area that is not within a port:
 - (i) to provide aids to navigation; or
 - (ii) to issue directions to the Department of Ports and Harbour to install and maintain aids to navigation; and
- (q) such other powers as are conferred on the Authority by this Act or any other Act.

13 Powers relating to safety enforcement

The Authority may do any of the following as a result of a breach of a provision of this Act relating to maritime safety:

- (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.

14 Contracts subject to Government Contracts and Tenders Act

- (1) In addition to and without limiting the generality of paragraph 12(2)(f), the Authority 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 inspect ports or port facilities; or
 - (d) to carry out any obligation applying under a maritime convention;
or
 - (e) to manage, operate and maintain the assets of the Authority.
- (2) In addition to subsection (1), the Authority may enter into contract with a person to install aids to navigation in an area that is not within a port if:
 - (a) the Authority is of the opinion that both the Authority and the Department of Ports and Harbour are unable install aids to navigation in that area; and
 - (b) it is in the interest of maritime safety for this installation to occur.
- (3) Any aids to navigation installed under subsection (2) must be maintained and operated by the Department of Ports and Harbour.
- (4) 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].

15 Signed documents issued by the Authority

- (1) Any license, certificate or document that is issued by the Authority must be signed by:
- (a) the members of the Authority; or
 - (b) the Commissioner or any staff of the Authority delegated by the Authority to act on its behalf.
- (2) The Authority may delegate to the Commissioner or to any officer of the Authority the power to issue a certificate or grant a license or approval on its behalf.
- (3) Any license, certificate or document that is not signed by the Authority or a person authorised to do so by the Authority under subsection (1) has no legal effect.

16 Application of the Leadership Code Act

The members of the Authority and the Commissioner are leaders under the Leadership Code Act [CAP 240].

17 Determinations by the Authority

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

18 Independence of the Authority

- (1) The Authority is to act independently and impartially in performing its functions and powers under this Act.
- (2) Despite subsection (1), the Authority 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.

19 Requirement for documents 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 Authority under the provisions of this Act, must be given or entered into in writing.

20 Delegation of functions and powers

- (1) The Authority may, in writing, delegate to the Commissioner any of its functions or powers under this Act or any other 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 Authority may at any time revoke or vary a delegation.
- (4) A delegation does not prevent the Authority from performing the function or exercising the power that it has delegated.

21 Keeping of records

- (1) The Authority is to keep and maintain a register of all licences, exceptions, certificates, and determinations made under this Act.
- (2) Subject to subsection (3), the Authority must make the records under subsection (1) available for public inspection upon reasonable notice.
- (3) A document must not be made available for public inspection if it contains confidential information.

22 Annual report

- (1) The Authority must provide to the Minister an annual report consisting of, but not limited to:
 - (a) a summary of the activities undertaken by the Authority; 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 Authority; 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 Authority.
- (3) Despite subsection (1), the Authority may prepare and publish such other interim or periodic reports, or any publication of disciplinary or enforcement proceedings made under this Act.

PART 2A COMMISSIONER OF MARITIME AFFAIRS AND OTHER STAFF OF THE AUTHORITY

Division 1 Commissioner of Maritime Affairs

23 Appointment of the Commissioner

The Minister may on the recommendation of the Evaluation Committee appoint the Commissioner of Maritime Affairs.

24 Term of appointment of Commissioner

- (1) The Commissioner is to be appointed for a term not exceeding 5 years and with such terms and conditions as may be determined by the Authority.
- (2) A person may be reappointed as the Commissioner only once.

25 Vacancy

- (1) The Minister may, on the recommendation of the Evaluation Committee, appoint a senior staff of the Authority to act in the position of the Commissioner if:
 - (a) the office of the Commissioner is vacant; or
 - (b) the Commissioner is unable to perform the functions of the office for any reason at any time.
- (2) An appointment under subsection (1) is valid until:
 - (a) in the case of paragraph (1)(a) – the Commissioner is appointed; or
 - (b) in the case of paragraph (1)(b) - the Commissioner resumes duty.

26 Suspension or termination of appointment of Commissioner

The Minister may, on the recommendation of the Evaluation Committee, by written notice, suspend or terminate the appointment of the Commissioner.

27 Resignation by the Commissioner

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

28 Functions of the Commissioner

- (1) The Commissioner has the following functions:
- (a) to be responsible for the day to day administration of the Authority; and
 - (b) to convene meetings of the Authority at the request of the Authority; and
 - (c) to prepare and circulate agendas and issue papers for meetings of the Authority; and
 - (d) to coordinate, facilitate and implement the decisions of the Authority; and
 - (e) to attend, take, keep and maintain a proper record of the minutes of all meetings of the Authority and circulate them within 3 weeks after each meeting; and
 - (f) to act on any matters that the Authority directs him or her to do in relation to matters of the administration of the Authority; and
 - (g) to mobilise appropriate resources for the efficient implementation of all decisions of the Authority; and
 - (h) to ensure that meetings are held according to the approved schedule of the meetings; and
 - (i) such other functions that may be conferred on the Commissioner by this Act or any other Act.
- (2) The Commissioner may, in writing, delegate to any staff of the Authority:
- (a) any of his or her functions or powers under this Act, which must not include the power of delegation; or

- (b) any function or powers of the Authority delegated to the Commissioner under paragraph (1)(i).
- (3) The delegation may be made generally or in respect of a particular matter or class of matters.
- (4) The Commissioner may at any time revoke or vary a delegation.
- (5) A delegation does not prevent the Commissioner from performing any of his or her functions or exercising any of his or her powers including a function or power that has been delegated to the Commissioner by the Authority.

Division 2 Other staff of the Authority

29 Other staff of the Authority

- (1) The Authority may employ such other staff of the Authority as it considers necessary for the proper and efficient performance of the functions of the Authority.
- (2) The Authority is to determine the terms and conditions of employment of the persons referred to in subsection (1).
- (3) The appointment of other staff of the Authority under subsection (1), must be based on merit and must follow a fair and transparent selection process.

PART 2B EVALUATION COMMITTEE

29A Evaluation Committee

- (1) The Evaluation Committee is established.
- (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 person nominated by the Judicial Services Commission, who is not actively involved in politics; and

- (c) the Chief Executive Officer of the Vanuatu Maritime College.

29B Recommendation by the Evaluation Committee for appointment

- (1) If there is a vacancy in the office of the member of the Authority under paragraph 6(1)(c) or the Commissioner, the Evaluation Committee must:
 - (a) advertise the vacancy in any platform available to the general public; and
 - (b) screen and evaluate on merit, all applications for the position; and
 - (c) recommend the name of the candidate that is to be appointed.
- (2) The Evaluation Committee must not recommend a person who does not meet the criteria under section 29C to be a member of the Authority or the Commissioner.
- (3) An appointment for the member of the Authority under subsection 6(2) or the Commissioner that is made without a recommendation of the Evaluation Committee is invalid.

29C Requirements for appointment

- (1) A person is not eligible to be appointed as a member of the Authority under subsection 6(2) or as the Commissioner if that person:
 - (a) directly or indirectly has any pecuniary or proprietary interest in a vessel to which this Act, the Maritime [CAP 131] or the Shipping Act [CAP 53] applies; or
 - (b) has been convicted of any offence, in Vanuatu or outside of Vanuatu:
 - (i) involving dishonesty or corruption; or
 - (ii) where the applicable penalty includes imprisonment for 12 months or more; or
 - (c) is bankrupt; or

- (d) has been terminated from a previous employment for serious misconduct; or
 - (e) is unable to perform the functions and powers due to any physical or mental incapacity; or
 - (f) is a member of Parliament; or
 - (g) is a member of a Municipal Council or Provincial Government Council; or
 - (h) is an officer or staff of a Municipal Council or Provincial Government Council; or
 - (i) exercises a position of responsibility within a political party; or
 - (j) does not primarily reside in Vanuatu or does not intend to primarily reside in Vanuatu during the term of his or her appointment; or
 - (k) fails to meet any additional criteria under subsection (2).
- (2) The Evaluation Committee may determine other criteria for the appointment of the member of the Authority under subsection 6(2) and the Commissioner.
- (3) For the purpose of paragraph (1)(a), **pecuniary or proprietary interest** includes but is not limited to an interest as an owner, shareholder, director, officer, partner or otherwise in any business which has any operations which are subject this Act, the Maritime Act [CAP 131] or the Shipping Act [CAP 53].

29D Recommendation by the Evaluation Committee for suspension or termination of appointment

The Evaluation Committee must not recommend the suspension or termination of the member of the Authority under paragraph 6(1)(c) or the Commissioner unless it is satisfied that the person:

- (a) is or becomes ineligible for appointment under section 29C; or

- (b) has committed a serious breach of the terms and conditions of his or her appointment; or
- (c) persistently breaches any of the terms and conditions of his or her appointment; or
- (d) is, due to health-related reasons, unable to perform any of his or her functions and to exercise any of his or her powers, for a period exceeding 28 days.”

7 Subsection 32(1)

Delete “discharging his or her functions, or exercising his or her power”, substitute “performing any functions or exercising any powers under this Act”

8 Subsection 36(2) and subsection 47(7)

Delete “his or her”, substitute “its”

9 Paragraph 37(h)

Delete “,”, substitute “; or

- (i) regulatory fees,”

10 Part 7

Repeal the Part, substitute

“PART 7 THE MARINE POLLUTION FUND

48 Establishment of the Marine Pollution Fund

- (1) For the purposes of this section, **Fund** means the Marine Pollution Fund.
- (2) The Marine Pollution Fund is established.
- (3) The Fund consists of the following:
 - (a) fees prescribed by the Minister for international vessels and domestic vessels navigating in Vanuatu waters; and
 - (b) monies that may be appropriated by Parliament to fund marine pollution initiatives; and

- (c) monies that are donated by donor partners or non-government organisations to fund marine pollution initiatives.
- (4) The Authority is to administer and manage the Fund for the following purposes:
- (a) to develop a marine pollution and management plan; and
 - (b) to develop a marine pollution response plan; and
 - (c) to fund marine pollution projects; and
 - (d) to finance marine pollution equipment; and
 - (e) to finance investigations relating to marine pollution.”

11 Section 64

Repeal the section, substitute

“64 Immunity

- (1) A civil or criminal proceeding must not be brought against the Minister, a member of the Authority, the Commissioner, an enforcement officer or a staff of the Authority, for anything done or omitted to be done in good faith by him or her in carrying out his or her functions or in exercising his or her powers under this Act.
- (2) Subsection (1) does not apply if the Minister, a member of the Authority, the Commissioner, an enforcement officer or a staff of the Authority acted in bad faith when carrying out his or her functions or in exercising his or her powers under this Act.”

12 Section 66

Repeal the section, substitute

“66 Savings – Certificates, licences, authorisations, permits and registrations

- (1) Any certificate issued or licence, authorisation, permit granted or registration done by the Regulator immediately prior to the

commencement of this Act, remains in force for the remainder of their term as if they were issued, granted or registered by the Authority.

- (2) Any order, document or action taken or made by the Regulator continues in force as if it was taken or made by the Authority.”

13 Transitional – Commissioner of Maritime Affairs

A person employed as the Commissioner of Maritime Affairs under the Maritime Act [CAP 131] immediately before the commencement of this Act, is taken to be employed as the Commissioner of Maritime Affairs under this Act with the same accrued or accruing entitlements.

14 Transitional – Staff and authorised officers of the Authority

A person employed as a staff or appointed as an authorised officer of the Office of the Maritime Regulator immediately before the commencement of this Act, is taken to be employed as a staff or appointed as an authorised officer under this Act on the same terms and conditions with the same accrued or accruing entitlements.

15 Transitional – Maritime Regulator

A person employed as the Regulator immediately before the commencement of this Act, ceases to hold office upon the commencement of this Act.

16 Transitional - Transfer of funds, assets, liabilities and contractual obligations

The funds, assets, liabilities and contractual obligations of the Office of the Maritime Regulator and the Office of the Commissioner of Maritime Affairs immediately before the commencement of this Act, are transferred on the commencement of this Act, to the Vanuatu Maritime Safety Authority.