(5) The Authority may require an applicant for a licence, at the applicant's expense, to furnish the Authority, within the period specified by it, with such further information as may be necessary in order to consider the application.

(6) Within six weeks after receiving an application in accordance with subsection (2), the Authority must—

(a) issue a licence subject to specified terms and conditions; or

(b) refuse to issue a licence and give written reasons for such refusal.

(7) *(a)* The Authority may exempt a person from having to obtain a licence in terms of this Act if—

(i) an agreement contemplated in section 11(3) has been concluded; and

(ii) the Authority is satisfied that the activities of the person concerned are, for purposes of this Act, sufficiently regulated by the other statutory body or organ of state contemplated in that section.

(b) An exemption contemplated in paragraph *(a)* may be made subject to such conditions, authorised by this Act, as the Authority may deem fit.

Conditions of licence

58. (1) A licence issued under section 57 must set out—

(a) the duration of the licence;

(b) the types of services or facilities to be provided by the licensed operator;

(c) the annual licence fee payable by the licensed operator;

(d) the duties and obligations of the licensed operator in respect of the services or facilities provided by it; and

(e) such other terms and conditions as may be necessary.

(2) The terms and conditions of a licence may—

(a) control and restrict, directly or indirectly, the creation, holding or disposal of shares in the licensed operator or its shareholders or interests in the undertaking of the licensed operator;

(b) restrict the carrying on by the licensed operator of any trade or business which is not related to the activity authorised in the licence;

(c) provide for the modification of the licence;

(d) provide for the determination of performance standards; and

(e) provide for the control and, if necessary, the reasonable fixing of prices to be charged by a licensed operator.

Restriction on transfer of licence

59. (1) A licence may not be transferred to any third party without the prior written consent of the Authority.

(2) Any transfer of a licence in contravention of subsection (1) is of no force or effect.

Suspension or cancellation of licence

60. (1) Subject to this section, the Authority may cancel or for a reasonable period suspend a licence, if—

(a) the licensed operator contravenes or breaches any condition of its licence, any provision of this Act or the regulations, or any directive issued by the Authority in terms of this Act;

(b) the licensed operator is sequestrated, liquidated or placed under judicial management;

(c) the licensed operator has made any assignment to, or composition with, its creditors; or

(d) the safety of vessels and persons within ports or the national security of the Republic so requires.

(2) The Authority may direct a licensed operator to take specified measures *to* remedy any contravention or breach contemplated in subsection (1) *(a)*.

(3) Prior to acting under subsection (1) or (2), the Authority must give written notice to the licensed operator—

(a) indicating the intention to cancel or suspend the licence or the intention to issue a direction;

(b) setting out the reasons why it is considering cancelling or suspending the licence or issuing the direction; and

(c) affording the licensed operator a reasonable opportunity to make representations as to why the licence should not be cancelled or suspended or the direction should not be issued.

(4) Where a licence is cancelled or suspended under subsection (1), the Authority may, if it considers that such cancellation or suspension would materially affect the movement of cargo or passengers in a port—

(a) provide the port service or operate the port facility;

(b) engage any employee of the licensed operator, or any third party, to carry out functions as directed by the Authority; and

(c) recover any expenses from the licensed operator concerned.

Directives affecting licensed operators and other persons

61. (1) The Authority may give directives with respect to standards of performance and procedures to be observed by licensed operators—

(a) to ensure the reliability of the supply of port services and facilities; or

(b) in the interest of public safety or the environment.

(2) Before issuing a directive under subsection (1), the Authority must give written notice to the affected licensed operator—

(a) indicating the intention to issue the directive;

(b) setting out the reasons why it is considering issuing the directive; and

(c) affording the operator a reasonable opportunity to make representations as to why the directive should not be issued.

Duties of licensed operators

62. (1) A licensed operator must—

(a) provide the port services and operate the port facilities specified in its licence;

(b) comply with this Act and any other law;

(c) meet the performance standards specified in its licence; and

(d) provide reliable, efficient and economical port services and facilities to port users in accordance with the conditions of the licence granted to it.

(2) Every licensed operator must—

(a) within three months after the end of each financial year, submit to the Authority a report of its licensed operations during that financial year, including—

(i) the quality and level of its service in the financial year under review;

(ii) its compliance with the terms and conditions of its licence, this Act and the regulations;

(iii) steps taken to eliminate anti-competitive and discriminatory practices;

(iv) its audited annual financial statements;

(v) the quality and level of performance with regard to such environmental criteria and social responsibility requirements as may be set by the Authority or required by other national legislation; and

(b) from time to time, and where applicable, submit to the Authority—

(i) such statistical information relating to its licensed operations as may reasonably be required by the Authority;

(ii) its cargo forecast over the period and in the form determined by the Authority; and

(iii) future development plans relating to any service or facility which it is obliged to provide under the conditions of its licence.

(3) The Authority may require a licensed operator, at the operator's cost, to submit such additional information as may be necessary to explain or amplify any report or information submitted by the licensed operator in terms of subsection *(2)*.

(4) Any information required by the Authority in terms of subsection (3) must be lodged by the licensed operator within the period and in the manner determined by the Authority.

(5) A licensed operator must, within **24** hours of its occurrence or discovery, inform the Authority of—

(a) any change in the control of the licensed operator;

(b) any industrial dispute between the licensed operator and its employees;

(c) any industrial accident or disaster involving any employee or agent of the licensed operator;

(d) any occurrence of fire within its premises within the port;

(e) any theft or pilferage within its premises or any theft or pilferage involving any cargo in its possession or control;

(f) any proceedings or claim instituted or made against the licensed operator which could materially affect its ability to perform any obligation or to comply with any term or condition of its licence; and

(g) any spillage or pollution that may have an impact on the environment.

Routine inspections

63. (1) In order to determine whether licence conditions are being complied with, any person duly authorised by the Authority in writing may, during office hours, enter any premises occupied by a licensed operator to inspect any activity, process, building or facility therein.

(2) A person contemplated in subsection (1) may, when conducting an inspection, require the licensed operator to produce any book, record, statement or other document relating to matters dealt with in this Act for inspection, or for the purpose of obtaining copies thereof or extracts therefrom.

Special powers in emergency

64. (1) The Shareholding Minister may, with the concurrence of the Minister, on the occurrence of any event which gives rise to an emergency which creates a real and imminent threat to the national interest of the Republic or public safety, authorise the Authority, for as long as such threat exists, to—

(a) suspend the licence of a licensed operator, take temporary possession (either itself or through an authorised agent) of any port facility or undertaking relating to a port service of such licensed operator and operate it in such a manner as it deems fit; or

(b) withdraw either partially or totally the use of any port service or facility from any person or class of persons or from the public in general.

(2) Where the Authority takes possession of any port facility or undertaking under subsection (1) *(a)*, adequate compensation must be paid, in the amount agreed between the Authority and the affected licensed operator, and failing agreement, in the amount determined by the Shareholding Minister, whose decision is binding upon the parties.

Operations existing on commencement of Act

65. (1) Any person who provided a port service or operated a port facility immediately prior to the date on which this Chapter came into force, is deemed to hold a licence for the provision of such port service or the operation of such port facility, but such person must apply for a licence in terms of section *57* within six months of the date determined by the Shareholding Minister by notice in the *Gazette*.

(2) A person contemplated in subsection (1) is deemed to hold a licence until the Authority has decided on its licence application.

(3) A person contemplated in subsection (1) must be issued a licence in terms of section 57 to provide the port service or operate the port facility contemplated in that subsection, if the Authority is reasonably satisfied that such person is capable of complying with the terms and conditions of the licence.

(4) *(a)* Subsection (1) does not apply to a person who, immediately before the date on which this Chapter came into effect, provided a stevedoring service.

(b) Any permission or authorisation to provide a stevedoring service granted before this Chapter came into effect lapses at the end of the period for which the permission or authorisation was granted.

(5) Transnet is, in respect of port services or port facilities provided or operated by the South African Port Operations Division of Transnet or Spoornet, a division of Transnet, immediately prior to the commencement of this Chapter deemed to be the holder of a licence to provide port services or to operate port facilities, but must apply for such licence within six months of the date determined by the Shareholding Minister by notice in the ***Gazette.***

(6) The deeming contemplated in subsection ***(5)*** remains valid until the Authority has decided on the licence application or until such time as a third party is authorised to provide such services or operate such facilities in terms of an agreement or licence concluded or issued under this Chapter.

(7) Any licence issued to Transnet pursuant to an application contemplated in subsection (6) is subject to the condition that such licence will terminate in the event that a third party is authorised to provide the relevant services or operate the relevant facilities in terms of an agreement or licence concluded or issued under this Chapter.

Off-shore cargo-handling facilities

66. (1) No person may erect or operate **an** off-shore cargo-handling facility otherwise than in terms of a licence issued by the Authority under this section.

(2)*(a)* Any lease agreement covering off-shore cargo handling facilities in the Republic which existed on the date of commencement of this section is deemed to be a licence issued in terms of this Act for the duration of such lease agreement.

(b) Any such agreement remains valid for the duration of the term thereof.

(3) Sections 56 to 65 apply with the changes required by the context to the erection or operation of an off-shore cargo-handling facility.

Restructuring and reform of ports

67. (1) If, in any area within a port—

(a) it is necessary to change the use to which immovable property may be put in order to improve the safety, security, efficiency and effectiveness of the operations of the port, the Authority may in writing addressed to the lessee and every lawful occupier of such property, direct that the use be altered to a new use;

(b) the terms **of** a long-term lease which existed immediately before this section took effect are substantially prejudicial to the operation of a port, including terms providing for unreasonable low rentals or containing no restrictions on sub-letting or no provision confining the use of the property to a use relating to the relevant port, the Authority may in writing addressed to the lessee direct that the applicable terms be renegotiated in order to remove the prejudice; or

(c) persons from historically disadvantaged groups are excluded from taking part in the economic activities of the port in terms of long-term leases which existed immediately before this section took effect, the Authority may in writing addressed to the lessee direct that any such lease be renegotiated in order to ensure equitable access to the economic activities in the area in question.

(2)(a) A directive issued under subsection (1) *(a)* may stipulate that any lease that is inconsistent with the new use shall be invalid from a date stipulated in the notice.

(b) Before issuing a directive under subsection (1) *(a)*, the Authority must in writing give the lessee and every lawful occupier of the property concerned—

(i) reasonable notice of the proposed change in use;

(ii) full reasons for the proposed change in use; and

(iii) a reasonable opportunity to make representations on the proposed change in use.

(3) *(a)* In the event of a directive being issued under subsection (1) *(b)* or (c), the Authority and the lessee must endeavour to negotiate the terms of a new lease in relation to the immovable property.

(b) If the Authority and the lessee are unable to reach an agreement as to the new terms of the lease in question, the Authority may, by written notice addressed to the lessee, declare the relevant lease to be invalid as from a date specified in the notice.

(4) If the application of this section results in an expropriation of property, section 25 of the Constitution applies.

CHAPTER 7

DEVELOPMENT, ENVIRONMENT AND CLOSURE OF PORTS

Planning, construction, development and maintenance of ports

68. (1) The Authority must—

(a) facilitate the building and exploitation of the infrastructure of ports;

(b) regulate and control development within ports, in accordance with approved port development framework plans; and

(c) ensure that the infrastructure of ports is managed and maintained in a manner which ensures efficient, safe and orderly port operations.

(2) The Authority may enter into agreements for the planning, construction, development and maintenance of port infrastructure.

Protection of environment

69. (1) The Authority must in the performance of its functions ensure that a fair and reasonable balance is achieved between the protection of the environment and the establishment, development and maintenance of ports.

(2) *(a)* The Authority must ensure that sustainable and transparent port planning processes are undertaken when formulating any port development framework.

(b) When undertaking any port planning process, the Authority must ensure that stakeholders are consulted and that all relevant biophysical and economic aspects are taken into account.

Closure of port

70. (1) Subject to subsection (2), the Authority may only close a port which is non-viable and after Cabinet has issued a written directive authorising the closure of such port.

(2) The Cabinet directive contemplated in subsection (1) may only be issued following Cabinet's consideration of a report compiled by a committee appointed by the Minister to conduct an inquiry into the impact of the contemplated port closure.

(3) The Cabinet may, based on the findings of the enquiry contemplated in subsection (2), direct the Authority—

(a) to refrain from closing the port;

(b) to delay the closure of the port for a specific period; or

(c) to amend its proposed course of action in a specified manner.

CHAPTER 8

COMMERCIAL ASPECTS

Commercial functions of Authority

71. Notwithstanding any provisions of this Act, from the date that the Authority becomes the successor to the National Ports Authority (Pty) Ltd as contemplated in section 4(1), the funds and assets of the Authority may only be used for the performance of the Authority's functions and activities relating thereto, including the maintenance of port infrastructure and the management and development of ports.

Authority's tariff book

72. (1) *(a)* The Authority must, with the approval of the Ports Regulator, determine tariffs for services and facilities offered by the Authority and annually publish a tariff book containing those tariffs.

(b) The Authority may, with the approval of the Ports Regulator, amend the tariff book whenever it is necessary to do so.

(2) The Authority must, prior to any substantial alteration of a tariff, consult with the National Port Consultative Committee.

(3) Subject to section 9 of the Competition Act, 1998 (Act No. 89 of 1998), the tariffs contemplated in subsection (1) may vary between ports.

(4) Notwithstanding the provisions of this section, the Authority may enter into an agreement with a licensed operator or a party to an agreement or a port user for the variation of any tariff contemplated in subsection (1).

Fees payable to Authority

73. (1) The Authority may charge fees, in accordance with a tariff determined in terms of section **72,** for—

(a) the provision of port and other services, including—

(i) vessel traffic service charges;

(ii) pilotage dues for the provision of pilotage;

(iii) light dues for the provision of navigational aids along the coast of the Republic and within ports;

(iv) towage dues for the provision of tug services;

(v) berthing charges for the use of berthing facilities and services; and

(vi) port and ship security;

(b) the provision and maintenance of port infrastructure, port terminals and port facilities, including—

(i) land rentals;

(ii) port dues for the provision and maintenance of entrance channels, breakwaters, basins, navigational aids and maintenance dredging inside port limits;

(iii) cargo dues for the provision and maintenance of port infrastructure; and

(iv) berth dues for vessels occupying quays or repair quays while not engaging in the loading or unloading of cargo;

(c) granting concessions and licences; and

(d) any other services provided by the Authority in the performance of its functions.

(2) The Authority may also, in relation to off-shore cargo-handling facilities, charge fees as contemplated in subsection (1).

(3) The Authority may on good cause shown, remit or waive the whole or any part of any fee payable to the Authority.

(4) The Authority may require any person to furnish such security as it deems fit for the payment of any fee payable to the Authority.

(5) The fees contemplated in subsection (1) *(a)* and *(b)* become due to the Authority and payable without demand when the services have been rendered and facilities have been provided,

(6) If any request for the rendering of services or the provision of facilities is withdrawn or cancelled, without prior notice of withdrawal or cancellation having been given timeously to the Authority, the fees contemplated in subsection (1) *(a)* and *(b)* remain due and payable as if the services or facilities had been rendered or provided.

(7) The fees and charges levied by National Ports Authority of South Africa immediately before the commencement of this section continue to be valid as if determined by the Authority under this section until rescinded, varied or withdrawn by the Authority in terms of this Act.

CHAPTER 9

SAFETY ASPECTS

Safety of navigation and shipping in ports

74. (1) Subject to the provisions of this Act, the Authority must, for the purpose of ensuring safety of navigation and shipping in ports—

(a) control marine and other traffic in each port;

(b) control the entry, stay, movement and operations of vessels in ports, and the departures of vessels from ports;

(c) regulate the loading, unloading and storage of cargo and the embarkation and disembarkation of passengers in ports;

(d) provide or procure pilotage services, license pilots and regulate the safe provision of pilotage services by licensed pilots;

(e) provide or procure tug services, license tug service providers and regulate the safe provision of tug services by licensed tug service providers;

(f) provide, operate and maintain adequate and efficient lighthouses and other navigational aids within the port limits and at such other places as the Authority may determine;

(g) undertake dredging and maintain channels at the depths published by the Authority; and

(h) remove or cause to be removed any obstruction or object from the waters of the ports that may pose a danger to shipping or navigation.

(2) The Authority may—

(a) order that a vessel which has been arrested or attached by order of court or another relevant authority be moved to another place within the port and, if necessary, move such vessel to that place;

(b) search for, raise, remove or destroy any sunken, stranded or abandoned vessel or wreck within the port limits, and recover the costs incurred in connection with such searching, raising, removal or destruction from the owner of the vessel or any other person who had the beneficial use of the vessel at the time it sank, became stranded or was abandoned;

(c) search for and remove any wreck or obstruction which may endanger the safety of any vessel entering or leaving the port, and recover the costs of such search and removal from the owner of the wreck or obstruction, or from any person responsible for the presence of such wreck or obstruction;

(d) give notice to the owner or other person legally responsible for the upkeep of any vessel within port limits, calling upon such owner or person to remove or otherwise dispose of such vessel, or part thereof, which is not seaworthy, or is likely to become an obstruction, wreck or derelict or a threat to the environment or public safety, and recover from that owner or person all costs incurred for the removal or disposal should the owner or person fail to comply with such notice within the time specified therein; and

(e) after written demand for any costs contemplated in this subsection, and on non-payment thereof, institute an admiralty action in terms of section 3 of the Admiralty Jurisdiction Regulation Act, **1983** (Act No. 105 of 1983), to recover the costs.

(3) *(a)* The Harbour Master is, in respect of the port for which he or she is appointed, the final authority in respect of all matters relating to pilotage, navigation, navigational aids, dredging and all other matters relating to the movement of vessels within port limits.

(b) For purposes of paragraph *(a)*, the Harbour Master may give such written or verbal instructions as may reasonably be necessary for—

(i) promoting or securing conditions conducive to the ease, convenience or safety of navigation in the port;

(ii) regulating the movement or mooring and unmooring of a vessel in the port;

(iii) controlling the manner in which cargo, fuel, water or ship's stores are taken on, discharged or handled;

(iv) regulating the removal or disposal of any residues and mixtures containing oil or noxious liquid substances, sewage and garbage from vessels in a port and requiring any such matter to be deposited in reception facilities in the port;

(v) the detention of a vessel reasonably suspected of causing oil pollution and ensuring that the total cost of the pollution clean-up operation is recovered, or acceptable guarantees are provided, prior to the vessel being given permission to leave the port;

(vi) carrying into effect the provisions of this Act.

(4) The Harbour Master must take such steps as may reasonably be necessary to bring an instruction issued under subsection **(3)** to the notice of any person likely to be affected by it.

Pilotage

75. (1) Subject to subsection (2), a pilot must navigate every vessel entering, leaving or moving in a port.

(2) Pilotage is not compulsory in respect of any vessel or class of vessels that have been exempted from pilotage by the Authority in writing.

(3) The pilot's function is to navigate a vessel in the port, to direct its movements and to determine and control the movements of the tugs assisting the vessel under pilotage.

(4) The pilot must determine the number of tugs required for pilotage with the concurrence of the master of the vessel.

(5) In the event of a disagreement between the pilot and the master of the vessel regarding the number of tugs to be used as contemplated in subsection (4), the Harbour Master takes the final decision.

(6) The master of the vessel must at all times remain in command of the vessel and neither the master nor any person under the master's command may, while the vessel is under pilotage, in any way interfere with the navigation or movement of the vessel or prevent the pilot from carrying out his or her duties, except in an emergency, where the master may intervene to preserve the safety of the vessel, cargo or crew and take whatever action he or she considers reasonably necessary to avert the danger.

(7) Where the master of the vessel intervenes as contemplated in subsection (6), he or she must immediately inform the pilot of the vessel and, after having restored the situation, must permit the pilot to proceed with the execution of his or her duties.

(8) The master of the vessel must ensure that the officers and crew are at their posts, that a proper lookout is kept and that the pilot is given all assistance necessary in the execution of his or her duties.

Liability of pilot

76. (1) Neither the Authority nor the pilot is liable for loss or damage caused by anything done or omitted by the pilot in good faith whilst performing his or her functions in terms of this Act.

(2) Notwithstanding any other provision of this Act, the pilot is deemed to be the servant of the owner or master of the vessel under pilotage and such owner or master is liable for the acts or omissions of the pilot.

Certification and licensing of pilot

77. (1) No person may perform the functions of a pilot in a port without having been duly certificated by the South African Maritime Safety Authority and licensed by the Authority to do so.

(2) The Minister may prescribe requirements for the licensing of pilots.

(3) The South African Maritime Safety Authority may recommend to the Minister the minimum qualifications required for any person to be licensed as a pilot, including the content and nature of examinations, if any, to be undertaken.

(4) The South African Maritime Safety Authority must consult with the Authority regarding the content of the minimum qualifications referred to in subsection (2), before any recommendation is made.

Lighthouses and other navigational aids

78. (1) The Authority must operate and maintain lighthouses and other navigational aids under its control in terms of standards determined by the South African Maritime Safety Authority in order to assist the navigation of vessels within port limits and along the coast of the Republic.

(2) The Authority may not cease operating any lighthouse or navigational aid under its control, irrespective of whether such lighthouse or aid is replaced by a new lighthouse or aid on the same or adjacent location, or reduce the service provided by any lighthouse or aid in any manner, without the consent of the South African Maritime Safety Authority and having consulted the Port Consultative Committee of the port closest to the lighthouse or aid.

(3) Subject to subsection (2), the Authority may erect new lighthouses or install other navigational aids on locations and in the manner which the Authority may think fit, or improve or extend the service provided by existing lighthouses and other navigational aids.

(4) The Port Consultative Committee of the port closest to a lighthouse or navigational aid may make recommendations to the Authority with regard to the improvement or extension of the service provided by such lighthouse or aid.

(5) The Authority may remove any light or device which may confuse a vessel if the owner of the property on which the light or device is used or the person having charge of such light or device fails to extinguish or effectively screen the light or remove the device within seven days of notice to do so having been served on him or her, and may recover the expenses for the removal from that owner or person.

CHAPTER 10

MINISTERIAL DIRECTIONS AND PORT REGULATIONS

Ministerial direction

79. (1) The Minister may, in writing, direct the Authority to perform a specified act within the Authority's power or not to perform a specified act, if such direction is necessary—

(a) to safeguard the national security of the Republic;

(b) to promote the national, strategic or economic interests of the Republic; or

(c) to discharge an international obligation of the Republic.

(2) The Minister must consult with the Authority and the Shareholding Minister prior to giving a direction under subsection (1).

(3) The Authority must take all necessary steps to give effect *to* a direction issued under subsection (1).

(4) *(a)* The Minister may, out of monies appropriated by Parliament for that purpose, compensate the Authority for any loss suffered by the Authority as a result of the obligation to perform or not perform an act contemplated in subsection (1).

(b) In addition, should the performance of such an act not be in the commercial interests of the Authority, the financing of such activity is the responsibility of the State.

Port regulations

80. (1) The Minister may, by notice in the ***Gazette,*** make regulations in respect of—

(a) a framework for the economic participation and empowerment of historically disadvantaged groups in port operations;

(b) fitness standards for the safe use of the infrastructure and equipment in the provision of any port facility or port service;

(c) rules of procedure for Port Consultative Committees;

(d) port limits;

(e) transitional matters in order to ensure a smooth transition from National Ports Authority of South Africa to National Ports Authority (Pty) Ltd, and from that company to the Authority;

(f) a framework for economic participation in port operations and services by public entities, private entities and public-private partnerships;

(g) any other matter which it is necessary or expedient to prescribe for the proper implementation or administration of this Act.

(2) The Authority may, with the approval of the Minister, by notice in the ***Gazette,*** make rules for the control and management of ports and the approaches thereto and for the maintenance of safety, security and good order in ports, in particular regarding—

(a) the manner in which control of a port must be exercised and the grounds on which access to a port may be refused;

(b) orderly vessel traffic, including the prevention and removal of any obstruction or impediment to navigation within the port limits;

(c) the use of navigational aids, lights and signals to be used in ports and steps to be taken to avoid collision by vessels navigating in the ports;

(d) the supervision, regulation and control of all activities conducted in or on the waters of the ports;

(e) the licensing of activities carried out in the ports and at off-shore cargo-handling facilities;

(f) the declaration and definition of wharves on which cargo will be landed and from which cargo will be shipped in vessels;

(g) the protection of the environment within ports, the cleaning of land and waters of the ports and the prevention of oil, filth, rubbish or any other matter from being thrown into the sea, including the discharge of ballast water;

(h) the maintenance by the Authority of security within ports;

(i) places of refuge for vessels;

(j) the information which has to be supplied by the masters, owners, agents and other persons in respect of vessels arriving and departing and the time and manner in which this information is to be supplied;

(k) the information which has to be supplied by the masters, owners, agents and other persons in respect of cargo loaded or discharged in the ports, and the time and manner in which such information is to be supplied;

(l) the prohibition of embarkation and disembarkation of persons at places other than those determined by the Authority for this purpose;

(m) the prohibition of the loading, handling or discharging of dangerous cargoes at wharves where such loading, handling or discharging appears especially dangerous to the public;

(n) the limits within which, and the levels to which, dredging may be carried out in ports and approaches thereto;

(o) the information which has to be furnished to the Authority by port users in relation to their activities within ports;

(p) the establishment, construction, maintenance and operation of off-shore cargo handling facilities;

(q) road and rail traffic within ports subject to the Railway Safety Regulator Act, 2002 (Act No. 16 of 2002);

(r) any other matter for which it is necessary or expedient to make rules so that the Authority is able to perform its functions effectively and efficiently.

(3) The Authority may prescribe rules in respect of each port, setting out the hours of the port's operation and the relationship between concessionaires or contractors contemplated in section *56*, on the one hand, and licensees on the other.

(4) The regulations and rules contemplated in this section may create offences and the Minister may stipulate a penalty of a fine or **of** imprisonment for a period not exceeding six months or both a fine and such imprisonment.

CHAPTER 11

GENERAL

Port Consultative Committee

81. (1) The Minister must appoint a Port Consultative Committee for each port, consisting of the Harbour Master of the relevant port and—

(a) two persons representing the Authority;

(b) three persons representing the local port users;

(c) two persons representing the local and provincial governments, respectively, of the area in which the port is situated;

(d) two persons representing organised labour;

(e) one person representing the South African Maritime Safety Authority.

(2) The function of the Port Consultative Committee is, with regard to any matter concerning a port—

(a) to provide a forum for the exchange of views between the Authority and other interested parties; and

(b) to advise the Minister.

(3) The Authority must consult the Port Consultative Committee regarding—

(a) any major scheme relating to the expansion or development of a particular port;

(b) any other matter on which the Minister or the Shareholding Minister may require the Authority to consult the Committee.

National Port Consultative Committee

82. (1) The Minister must appoint a National Port Consultative Committee consisting of at least—

(a) one representative from each Port Consultative Committee;

(b) four representatives of national government departments;

(c) a representative of the National Port Users Forum;

(d) a representative of organised labour; and

(e) a representative of the Authority.

(2) The functions of the National Consultative Committee are—

(a) to advise the Minister on national commercial ports policy matters;

(b) to advise the Minister on measures that need to be taken to improve the regulatory framework governing management and operations of ports;

(c) to consider any proposed substantial alteration to the Authority's tariffs; and

(d) to consider any other matter that the Minister or the Shareholding Minister may require the Committee to consider.

(3) The Minister must appoint an official of the Department of Transport as chairperson of the National Port Consultative Committee.

Port access

83. Subject to this Act, a port must be freely accessible to any person who conducts lawful business in it.

Co-operation with authorities

84. The Authority must co-operate with immigration, customs, law enforcement and any other authority required to perform any function within a port, and must afford such authority every facility reasonably necessary, subject to such compensation as may be agreed between the Authority and the other authority or, failing an agreement, such compensation as the Minister may determine.

Liability of Authority

85. Neither the Authority nor an employee or a representative of the Authority is liable for loss or damage caused by anything done or omitted by the Authority, the employee or the representative in good faith whilst performing any function in terms of this Act.

Confidential information

86. (1) No person may disclose any confidential information concerning the affairs of the Authority or any other person obtained—

(a) in carrying out any function in terms of this Act; or

(b) as a result of initiating a complaint or participating in any proceedings in terms of this Act.

(2) Subsection (1) does not apply to information disclosed for the purposes of—

(a) the proper administration or enforcement of this Act; or

(b) the administration of justice.

Offences

87. (1) A person is guilty of an offence if he or she—

(a) wilfully or negligently endangers the safety of navigation, persons or property in a port;

(b) having been directed or summonsed under section 51 to appear before the Regulator, without sufficient cause—

(i) refuses so to appear;

(ii) refuses to be sworn in or to make an affirmation after being directed to do so;

(iii) refuses to answer, or fails to answer to the best of his or her knowledge, any. question put; or

(iv) refuses to comply with a requirement to produce a book, document or item specified in the directive summons;

(c) without lawful authority, interferes with a pilot while a vessel is under pilotage;

(d) contravenes section 59(1), 66(1) or 86(1);

(e) hinders or obstructs a person acting under section 48 or 63(1);

(f) fails to comply with a requirement contemplated in section 63(2); or

(g) fails to comply with an instruction of the Harbour Master given under section 74(3).

(2) Any person convicted of an offence in terms of subsection (1) is liable on conviction to a fine or to imprisonment for a period not exceeding five years, or both.

Amendment of law

88. (1) Section 1 of the Institution of Legal Proceedings against certain Organs of State Act, 2002 (Act No. 40 of 2002), is hereby amended by the deletion in subsection (1) of the word "and" at the end of paragraph *(e)* of the definition of "organ of state" and by the substitution for paragraph *(f)* of that definition, of the following paragraphs:

"*(f)* National Ports Authority Limited, contemplated in section **4** of the National Ports Act, 2005, and any entity deemed to be the National Ports Authority in terms of section 3 of that Act;

(g) any person for whose debt an organ of state contemplated in paragraphs *(a)* to [*(e)*](f) is liable;".

Repeal of law, and saving

89. (1) The Legal Succession Act is hereby repealed in so far as it relates to any provision for the management and operation of the ports referred to in this Act.

(2) *(a)* Despite subsection (1), the port regulations made under section 21 of the Legal Succession Act and which were in force immediately prior to the commencement of this Act remain in force in so far as they are not inconsistent with this Act, until amended or repealed under this Act.

(b) Any reference in such regulations to "harbour" must be interpreted to mean "port".

Short title and commencement

90. This Act is called the National Ports Act, 2005, and comes into effect on a date determined by the President by proclamation in the *Gazette.*