

(English text signed by the President)
(Assented to 26 May 2020)

ACT

To provide for the establishment of the Hydrographic Office; to provide for its objects, functions and the manner in which it is to be managed; to provide for the appointment and powers of the Hydrographer and the staff in the Hydrographic Office; to regulate the submission of hydrographic data; to regulate the manner in which hydrographic survey marks and copyrights may be protected; to provide for the limitation of civil liability; to provide for the manner in which the income of the Hydrographic Office must be dealt with; to provide for co-operation agreements and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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Definitions

- In this Act, unless the context otherwise indicates—
 - “**Chief of the Navy**” means the officer in command of the South African Navy;
 - “**Department**” means the Department responsible for defence; 25
 - “**exclusive economic zone**” means the sea beyond the territorial waters of the Republic, but within a distance of two hundred nautical miles from the baselines;
 - “**Hydrographer**” means the person appointed as such in terms of section 5;
 - “**hydrographic data**” means all data obtained from the measurement and description of the physical features of the exclusive economic zone, all internal 30
- waters and adjacent terrain, including the depth of the water, configuration and the nature of the topography beneath, the direction and force of currents, heights and

times of tides and water stages, location of topographic features and fixed objects for survey and navigation;

“Hydrographic Office” means the office established by section 3;

“hydrographic surveying” means surveying for the purpose of determining hydrographic data;

“hydrographic surveyor” means any person who studied and practises the science of hydrography, and who is registered in terms of the Geomatics Profession Act, 2013 (Act No. 19 of 2013);

“internal waters” means all waters landward of the baselines, including all harbours;

“Minister” means the Cabinet member responsible for defence;

“nautical publication and nautical chart” means a special purpose map or book, or a specially compiled database from which such a map or book is derived which is authorised by the Hydrographic Office, designed to meet the requirements of marine navigation or other relevant government institutions;

“NAVAREA-VII” means that particular area of the world ocean in respect of which the Republic, as a member of the International Maritime Organisation and the International Hydrographic Organisation, has been assigned by those organisations to assume the responsibility of coordinating, compiling and disseminating navigational warnings;

“navigational warning” means a broadcast message that conveys navigational information;

“prescribed” means prescribed by regulation;

“this Act” includes any regulations made thereunder; and

“user” means any person who obtains through purchase, or otherwise, information from or products of the Hydrographic Office, or who pays for the services of the Hydrographic Office.

Objects of Act

2. The objects of this Act are to—

- (a) provide for the establishment of the Hydrographic Office;
- (b) provide for the safety of navigation in the exclusive economic zone and the internal waters of the Republic;
- (c) ensure that hydrographic surveying is done in accordance with the requirements of internationally accepted specifications and standards;
- (d) provide for the appointment of the Hydrographer; and
- (e) provide for the powers and duties of the Hydrographer.

Establishment of Hydrographic Office

3. (1) The Hydrographic Office is hereby established as a unit within the South African Navy.

(2) The seat of the Hydrographic Office is determined by the Chief of the Navy in consultation with the Hydrographer.

Functions of Hydrographic Office

4. To achieve the objects of this Act, the Hydrographic Office must—

- (a) direct the collection and compilation of hydrographic data;

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- (b) sell to users the nautical publications and nautical charts necessary for the safety of navigation within the exclusive economic zone and the internal waters of the Republic;
- (c) provide services to users in the manner most suitable for the purpose of aiding navigation— 5
 - (i) by consulting with all the relevant maritime safety users in order to ensure that hydrographic surveying is carried out in accordance with the requirements of internationally accepted specifications and standards;
 - (ii) to prepare and issue nautical publications and nautical charts;
 - (iii) to issue sailing directions, lists of lights, notices to mariners and tide tables where applicable, satisfying the needs of safe navigation; and 10
 - (iv) to update the nautical publications and nautical charts;
- (d) maintain uniformity of nautical publications and nautical charts, taking into account the resolutions and recommendations of the International Hydrographic Organisation; 15
- (e) coordinate hydrographic activities in order to ensure that hydrographic data, nautical publications and nautical charts are made available on a world-wide scale as timely, reliably and unambiguously as possible;
- (f) take the necessary steps to ensure that the navigational warnings relating to safe navigation in NAVAREA VII is communicated promptly to persons 20 navigating in NAVAREA VII; and
- (g) represent the Republic at the International Hydrographic Organisation and at the International Maritime Organisation on hydrographic matters and participate in regional and international forums.

Appointments and conditions of service

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5. (1) The Chief of the Navy must appoint the Hydrographer as head of the Hydrographic Office.

(2) The provisions of the Defence Act, 2002 (Act No. 42 of 2002), regarding the appointment, remuneration, terms and conditions of employment and termination of service apply to the Hydrographer and all staff appointed in the Hydrographic Office as 30 contemplated in subsection (5).

(3) The Hydrographer must have practised for at least 10 years as a hydrographic surveyor.

(4) (a) Whenever for any reason the Hydrographer is unable to perform his or her duties for a period of more than one month, the Chief of the Navy must appoint one of 35 the hydrographic surveyors referred to in subsection (5)(b) as acting Hydrographer until the Hydrographer is able to resume those duties.

(b) An acting Hydrographer may exercise all the powers and must perform all the duties of the Hydrographer.

(5) The Hydrographer may, subject to subsection (2) and in consultation with the 40 Chief of the Navy—

- (a) appoint the necessary number of persons who have the required qualifications and experience to work as administrative support staff in the Hydrographic Office; and
- (b) appoint the necessary number of persons as hydrographic surveyors in the 45 Hydrographic Office to assist the Hydrographer to perform his or her functions.

Control and management of Hydrographic Office

6. (1) The Hydrographer must govern and control the Hydrographic Office in accordance with and subject to this Act and the Defence Act.

(2) The Hydrographer must—

- (a) ensure that the functions of the Hydrographic Office determined in section 4 are carried out efficiently and effectively; and 5
- (b) exercise general control over the performance of the Hydrographic Office's functions.

(3) The Hydrographer represents the Hydrographic Office and all acts performed by the Hydrographer or on his or her authority in terms of this Act are the acts of the Hydrographic Office. 10

Powers and duties of Hydrographer

7. (1) For the purposes of exercising any power and performing any duty imposed or conferred on him or her by this Act, the Hydrographer may, subject to subsection (2)—

- (a) enter at reasonable hours upon any land, seashore, enclosed place or reserve on land or ocean and internal waters within the jurisdiction of the Republic; 15
- (b) place or erect a beacon, bench mark, reference mark, temporary flag, signal or other mark upon the land, seashore, enclosed place, reserve on land or ocean and internal waters contemplated in paragraph (a); and
- (c) maintain the vicinity of any beacon, bench mark, reference mark, temporary flag, signal or other mark upon the land, seashore, enclosed place, reserve on land or ocean and internal waters contemplated in paragraph (a). 20

(2) The Hydrographer must, before exercising any power or performing any duty contemplated in this section—

- (a) give reasonable notice of the intention to exercise the power or perform the duty to the owner or occupier of the land, enclosed place or reserve on land; 25
- (b) obtain the necessary consent from the owner or occupier of the land, enclosed place or reserve on land;
- (c) identify himself or herself to the owner or occupier of the land, enclosed place or reserve on land; and 30
- (d) inform the owner or occupier about the purpose of his or her visit.

(3) When exercising any power or performing any duty conferred or imposed on him or her in terms of this section, the Hydrographer must minimise the damage or inconvenience caused by the exercise of that power or performance of that duty.

(4) The Hydrographer may delegate his or her powers under this section to a hydrographic surveyor employed in the Hydrographic Office. 35

(5) A delegation under subsection (4) does not prevent the exercise of the delegated powers by the Hydrographer.

Submission of hydrographic data

8. (1) Any person identified by the Hydrographer from time to time by notice in the *Gazette* must communicate and submit any information in his or her possession regarding anything that poses a navigational danger and is relevant to or has an influence on the safety of navigating the area contemplated in section 2(b). 40

(2) Any person contemplated in subsection (1) who fails to communicate or submit information is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months. 45

Survey marks

9. (1) Any flag, peg, signal hydrographic beacon, survey reference mark or hydrographic instrument erected in terms of this Act must be constructed or erected under the supervision of the Hydrographer and in the prescribed manner.

(2) Any person who without the authority of the Hydrographer, alters, moves, disturbs or wilfully damages or destroys a flag, peg, signal hydrographic beacon, survey reference mark or hydrographic instrument is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months. 5

(3) The owner of any property damaged by the placing of a flag, peg, signal hydrographic beacon, survey reference mark or hydrographic instrument is entitled to compensation by the Department for such damages. 10

Archiving

10. (1) The Chief of the Navy may determine minimum standards in respect of—

(a) the general management of the information of the Hydrographic Office relating to source documents, original surveys, nautical publications and nautical charts; 15

(b) access to and transfer and control of the nautical publications and nautical charts and any other information relevant to the functioning of the Hydrographic Office;

(c) infrastructural or procedural rules and requirements for securing the integrity and authenticity of the nautical publications and nautical charts and any other information relevant to the functioning of the Hydrographic Office; 20

(d) procedures and technological methods to be used in the storage or archiving of nautical publications and nautical charts and any other information relevant to the functioning of the Hydrographic Office; 25

(e) plans in the event of loss of nautical publications and nautical charts and any other information relevant to the functioning of the Hydrographic Office; and

(f) any other matter required for the adequate protection, management and control of such information.

(2) The Hydrographer is responsible for the proper management, control and care of the information referred to in subsection (1). 30

Copyright

11. (1) The copyright of all nautical publications and nautical charts and any other information produced by the Hydrographic Office vests in the State.

(2) Notwithstanding subsection (1), the President may, by notice in the *Gazette*, in accordance with section 5(6) of the Copyright Act, 1978 (Act No. 98 of 1978), designate the Hydrographer to be responsible for the administration and management of such copyright. 35

Limitation of civil liability

12. (1) In the event of gross negligence or a willful act or omission relating to the use of any nautical publication or nautical charts produced and sold by the Hydrographic Office, the Hydrographic Office or an employee of the Hydrographic Office is liable for— 40

(a) loss or damages resulting from bodily injury;

(b) loss of life; or 45

(c) damage to property,

to any person or to a dependent of such person.

(2) No civil action may be instituted against the Hydrographic Office in respect of any cause of action arising out of or in connection with the content of any nautical publication and nautical chart, if such nautical publication and nautical chart has not been produced and sold by the Hydrographic Office.

Hydrographic Office funding 5

13. (1) The costs and expenses connected with the administration of the affairs and the execution of the functions of the Hydrographic Office must be defrayed from monies appropriated by Parliament to the Department for that purpose.

(2) Any income derived from—

- (a) the production and sale of nautical publications and nautical charts by the Hydrographic Office to users; 10
- (b) the hydrographic services rendered by the Hydrographic Office to users; and
- (c) any other money to which the Hydrographic Office Fund may lawfully become entitled to,

must be paid into the National Revenue Fund. 15

Co-operation agreement

14. The Secretary of Defence must enter into co-operation agreements with the Director-General of the Department of Transport and may enter into such agreements with other interested parties in respect of matters of joint interest that may arise from the execution of this Act. 20

Annual report

15. The Hydrographer must annually, within 90 days after the end of the financial year, submit a report in respect of the execution of the functions of the Hydrographic Office to the Chief of the Navy.

Regulations 25

16. The Minister may make regulations regarding—

- (a) the manner in which a notice contemplated in section 7(2)(a) must be served or published;
- (b) the general management of the hydrographic data of the Hydrographic Office relating to source documents, original surveys, nautical publications and nautical charts; and 30
- (c) any matter that may or must be prescribed in terms of this Act or any incidental matter of a procedural or administrative nature that the Minister considers necessary to prescribe in order to achieve the objects of this Act.

Transitional arrangements 35

17. (1) The person who immediately before the commencement of this Act performed the functions of the Hydrographer continues to do so and is deemed to have been appointed in terms of section 5.

(2) Every person who immediately before the commencement of this Act performed any functions of a member of the staff of the office of the Hydrographer that existed before such commencement, is deemed to have been appointed in terms of section 5. 40

(3) Any action taken by the Hydrographer before the commencement of this Act is regarded to have been taken in terms of this Act.

Short title and commencement

18. This Act is called the Hydrographic Act, 2019, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 45