

DEPARTMENT OF TRANSPORT
GENERAL NOTICE 2010 OF 2023

Another CMTP Inspired Legislative Reform initiative: Maritime Stakeholder's Consultation

The National Ports Act 2005 (Act No. 12 of 2005) is almost 20 years since it was enacted into law in 2005. The Department of Transport is releasing this initial draft of the National Ports Amendment Bill, 2023 for purposes of maritime stakeholder's consultation before the Bill is processed for Cabinet's consideration. This consultation is compulsory prior the further processing of the Bill to next stages.

In drafting these proposed amendments, we have taken into consideration among others; the implementation lessons learnt since enactment; the international and domestic policy developments and performance trends impacting on South African ports; the relevant provisions of the Comprehensive Maritime Transport Policy (CMTP) in particular the CMTP vision 2030 which envisages South Africa to grow into an International Maritime Centre.

The other proposed changes were necessary in the aftermath of the caving-out of Ports Regulator provisions to the Single Transport Economic Regulator Bill. We have had to realign the stakeholder consultation provisions acknowledging the unavoidable change in status of the Authority into being a Comprehensive Port Authority.

Some of the proposed amendments address areas that have been problematic in implementing e.g. corporatisation, etc. Lastly the Bill incorporates some of the recent pronouncements relating to the future reporting and governance arrangements of transport state-owned entities and upgrades the Ports Authority into being a Comprehensive Ports Authority of South Africa.

Maritime stakeholders are therefore invited to consider the proposed draft amendments and submit their comments and inputs to reach the Department of Transport by no later than the 5th of October 2023. The Department is planning a hybrid consultation meeting to be held by October 2023.

Written submissions must be directed as follows:

Director General

Department of Transport

For the attention of: Mr Dumisani Theophilus Ntuli: Chief Director: Maritime Policy and Legislation

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1. Section 1 of the National Ports Act, 12 of 2005 (hereinafter referred to as the principal Act), is hereby amended by-
 - (a) to replace the definition of Authority to mean, [**“subject to section 3, National] Port Authority of South Africa** as contemplated in section 3
 - (b) the insertion after the definition of “board” of the following definition:

“coastal shipping services” means a type of cabotage, where goods are transported from port to port along the South African coast by small vessels;
 - (c) the insertion after the definition of “family” of the following definition:

“Harbour” means any harbour handling commercial activities of export nature in port;
 - (d) the substitution for the definition of “port” of the following definition:

“port” means any of the ports of Richards Bay, Durban, East London, Ngqura, Port Elizabeth, Mossel Bay, Cape Town, Saldanha Bay, Port Nolloth or any harbour handling commercial transaction of export nature or a port which has been determined as such in terms of section 10(2);
 - (e) the substitution for the definition of “port services” of the following definition:

“port services” means stevedoring, cargo handling, terminal operations, storage of cargo [within a port], tug services, floating crane services, berthing services, firefighting, security, radio and radar services, waste disposal, vessel repairs and any other services provided [within a port] which are designated as such by the Authority by notice in the Gazette;
 - (f) the deletion after the definition of the “Regulator” of the following definition:

[“Shareholding Minister” means the Minister of Public Enterprises or a duly appointed representative];
 - (f) the insertion after the definition of “South African Maritime Safety Authority” of the following definitions:

“strategic infrastructure” means infrastructure that connects and interconnects the port to national production and distribution centres.

“Systems” means digital or any other appropriate form for commercial performance or for the effective management performance and operations in ports

- (g) the substitution for the definition of “terminal infrastructure” of the following definition:

“terminal infrastructure” means terminal buildings, workshops, systems, substations, surfacing, rail infrastructure**[sidings]** and terminal operations and infrastructure for the provision of water, lights, power, sewerage and similar services within terminal boundaries;

- (h) the substitution for the definition of “terminal operations” of the following definition:

“terminal operations” means services provided at a port terminal, consisting of handling cargo, storing cargo, transshipment of cargo and delivering cargo to vessels and services related thereto coastal shipping services;

Amendment of section 2 of the principal Act

2. Section 2 of the principal Act is hereby substituted for the following section:

“Objects of the Act

2. The objects of this Act are to-

- (a) promote the development of **[an effective and]** productive and competitive South African ports **[industry that is capable of contributing to the economic growth and development of our country]**;
- (b) establish and maintain port governance structure **[appropriate institutional arrangements to support the governance of ports]**;
- (c) promote and ensure **[improve]** efficiency and performance in the management and operation of ports and ports terminals;

(d) **[enhance]** ensure transparency in the management of ports;

[(e) strengthen the State's capacity to-

(i) separate operations from the landlord function within ports;]

[(ii)] (e) promote **[encourage]** employee participation, in order to motivate management and workers;

[(iii)] (f) facilitate the development of technology, information systems and managerial expertise; **[through private sector involvement and participation; and]**

[(f)] (g) promote **[the development of]** and maintain an integrated regional production and distribution system in support of government's policies[.]; and

(h) promote utilisation of clean green sources and develop incentive programmes."

Amendment of section 3 of the principal Act

3. Section 3 of the principal Act is hereby substituted for the following section:

“[Process before] Establishment of Authority

3. (1) The Ports Authority of South Africa is hereby established with memorandum and articles drafted according to the provisions of the Companies Act.
(2) From the date this Act comes into effect the Transnet National Ports Authority of South Africa-

(i) is for all purposes deemed to be the Authority; and

(ii) must perform the functions of the Authority as if it were the Authority.

(b) For the purposes of paragraph (a) any reference in this Act to the Authority, the Board of the Authority and any functionary of the Authority must be construed as a reference to Ports Authority of South Africa.

“[and the divisional board and any functionary thereof, respectively, unless it is clearly inappropriate.

(c) Any appointment to the divisional board or of any functionary of National Ports Authority of South Africa made after the commencement of this Act, must be made in terms of this Act.

(2) As soon as this Act takes effect the Shareholding Minister must ensure that the necessary steps are taken for the incorporation of the National Ports Authority of South Africa as a company contemplated in subsection (3).]

(3) The Registrar of Companies must-

(a) register the memorandum and articles of association and incorporate **[National]** Ports Authority of South Africa under the name **[“National]** Ports Authority of South Africa (Pty) Ltd” with **[Transnet]** the Department of Transport as the sole member and shareholder;

(b) issue to that entity the necessary documents to enable it to conduct business as a corporate entity.

(4) (a) On the date determined by the **[Shareholding]** Minister in terms of section 27 (i), all assets, liabilities, rights and obligations of Transnet in respect of National Ports Authority of South Africa vest in **[National]** Ports Authority of South Africa (Pty) Ltd.

[(b) From the date contemplated in paragraph (a) until the date on which the Authority becomes the successor to National Ports Authority (Pty) Ltd as contemplated in section 4, National Ports Authority (Pty) Ltd

(i) is for all purposes deemed to be the Authority; and

(ii) must perform the functions of the Authority as if it were the Authority.

(c) For the purposes of paragraph (b) any reference in this Act to the Authority, the Board of the Authority and any functionary of the Authority must be construed as a reference to National Ports Authority of South Africa (Pty) Ltd and the board and any functionary of that company, respectively, unless it is clearly inappropriate.

(d) Any appointment to the board or of any functionary of National Ports Authority (Pty) Ltd must be made in terms of this Act.]”

Repealing of section 4 of the principal Act

4. Section 4 of the principal Act is hereby repealed.

Amendment of section 7(1) of the principal Act

5. Section 7(1) of the principal Act is hereby amended by-

(a) substitution for paragraph (a) of the following paragraph:

“(a) The **[Shareholding]** Minister may request the Minister of Trade and Industry to declare any provision of the Companies Act to be inapplicable to the Authority.”

Amendment of section 10 of the principal Act

6. Section 10 of the principal Act is hereby substituted for the following section:

“Ports under jurisdiction of Authority

10. (1) All ports fall under the jurisdiction of the Authority.

[(2) The Minister may by notice in the Gazette determine ports in addition to the ports as contemplated in subsection (1) which fall under the jurisdiction of the Authority.]

(3) The Authority **[Minister]** may, after consultation with the Minister **[Authority]**, review, vary or extend the boundaries of ports **[and must consult with the municipality concerned if such review, variation or extension affects the municipal boundaries]**.

(4) When exercising the functions **[powers]** referred to in subsection **[s (2) and]** (3), the **[Minister]** Authority must-

- (a) follow an open and transparent process, which must include a viability study, and a strategic environmental impact assessment, **[: and]**
[(b) obtain Cabinet approval.]”.

Amendment of section 11 of the principal Act

7. Section 11 of the principal Act is hereby substituted for the following section:

“Functions of Authority

11. (1) The main function of the Authority is to own, manage, control and administer ports to ensure their efficient and **[economic]** competitive functioning, and in doing so the Authority must-

- (a) plan, provide, maintain and **[improve]** regulate port infrastructure including strategic infrastructure;
- (b) prepare and periodically update a port development framework plan for each port, which must reflect the Authority’s policy for port development and land use within such port;
- (c) control and regulate land use within ports, and has the power to lease land under such conditions as the Authority may determine;

- (d) provide or regulate **[arrange]** for road and rail infrastructure **[access]** within and leading to the ports;
- (e) **[arrange]** provide for services such as water, light, power and sewerage and telecommunications within ports **[;]** reception facilities as appropriate;
- (f) maintain the sustainability of the ports and their surroundings;
- (g) regulate and control -
 - (i) navigation within port limits and the approaches to ports;
 - (ii) the entry of vessels into ports, and their stay, movements or operations in and departures from ports;
 - (iii) the loading, unloading and storage of cargo and the embarkation and disembarkation of passengers;**[(iv) the development of ports];**
 - (v) off-shore cargo-handling facilities, including navigation in the vicinity of such facilities;
 - (vi) pollution and the protection of the environment within the port limits;
 - (vii) the enhancement of safety and security of port and strategic infrastructure **[within the port limits];**
- (h) ensure that **[adequate, affordable and efficient]** competitive port services and facilities are provided;
- (i) exercise licensing and controlling functions in respect of port services and port facilities;
- (j) ensure that any person who is required to render any port services and port facilities is able to provide those services and facilities efficiently;
- (k) promote efficiency, reliability and economy on the part of the licensed operators in accordance with recognised international standards and public demand;
- (l) promote the achievement of equality by measures designed to advance persons or categories of persons historically disadvantaged by unfair discrimination in the operation of facilities in the ports environment;
- (m) prescribe the limits within which and the levels to which dredging may be carried out in the ports and the approaches thereto;

- (n) provide or arrange for tugs, pilot boats and other facilities and services for the navigation and berthing of vessels in the ports;
- (o) provide, control and maintain vessel traffic services;
- (p) promote the use, improvement and development of ports;
- (q) advise on all matters relating to the port sector, port services and port facilities;
- (r) promote greater representativity, in particular to increase the participation in terminal port operations of historically disadvantaged persons;
- (s) exercise the licensing of the erection and operation of off-shore cargo-handling facilities and services relating thereto;
- (t) discharge or facilitate the discharge of international obligations relevant to ports;
- (u) facilitate the performance of any function of any organ of state in a port;
- (v) promote research and development in the spheres of port services and facilities;
- (w) develop incentive programmes to support the utilisation of clean alternative sources of energy for ports;
- (x) exercise economic regulation of the ports in line with government's strategic objectives;
- (y) promote equity of access to ports and to facilities and services provided in ports; and
- (z) monitor the activities of the port operators to ensure that it performs its functions in accordance with this Act."

(2) The Authority may-

- (a) undertake any other activities within a port that encourage and facilitate the development of trade and commerce for the economic benefit and interest of the national economy;
- (b) collaborate with educational institutions for the promotion of technical education regarding port services and facilities;
- (c) provide any service, including a port service or the operation of a port facility, which is required for the safe, efficient and orderly operation or management of a port;

- (d) perform such other functions as may be necessary in order to achieve the objects of this Act;
 - (e) encourage and facilitate private and public sector investments and participation in the provision of port services and facilities;
 - (f) enter into agreements in terms of this Act[.];
 - (g) hear and investigate complaints of port customers and in the event of failure to resolve the dispute, it may be referred to the Transport Economic Regulator;
 - (h) negotiate and conclude an agreement with the Transport Economic Regulator established by xxxx of the Transport Economic Regulator Bill/Act;
 - (i) advise and receive advice from any other regulatory authority;
 - (i) regulate the provision of adequate, affordable and efficient port services and facilities.
- (3) The Authority may enter into any agreement with any other statutory body or organ of state in order to co-ordinate and harmonise the performance of functions similar or related to those of the Authority.
- (4) The Authority as an operator of last resort must do everything reasonably necessary for the effective and **[economic]** competitive management, planning, control and operation of ports.
- (5) The Authority must-
- (a) annually report to the Minister, and for that purpose section 44 applies with the necessary changes. **[; and]**
 - [(b) submit a copy of that report to the Shareholding Minister.]
- (6) The Authority may, with the concurrence of the Minister, and by notice in the Gazette, issue directives not in conflict with this Act for matters relating to the proper performance of the functions of the Authority, including-
- (a) forms to be used when complaints or appeals are submitted to the Authority;
 - (b) time periods within which complaints or appeals must be submitted;
 - (c) information to be supplied when a complaint or appeal is submitted;
- (7) The Authority may enter into an agreement with any other statutory body in order to co-ordinate and harmonise the performance of functions similar or related to those of the Authority under this section.”

Amendment of section 12 of the principal Act

8. Section 12 of the principal Act is hereby amended by the addition after paragraph (i) of the following paragraph:

“(i) provide infrastructure for the digitisation of port activities within ports.”

Amendment of section 13 of the principal Act

9. Section 13 of the principal Act is hereby amended by the substitution for paragraph (a) in subsection 1 of the following paragraph:

“(a) ensure the effective management and regulation of all ports;”

Amendment of section 14 of the principal Act

10. Section 14 of the principal Act is hereby amended by-

(a) the substitution for subsection (1) of the following subsection:

“(1) Subject to subsection (7), the Board consists of a minimum of seven and a maximum of 13 members, appointed by the **[Shareholding]** Minister after consultation with the Authority **[Minister]**.”

(b) the substitution for subsection (3) of the following subsection:

“(3) The **[Shareholding]** Minister must appoint one member of the Board as the chairperson.”

Amendment of section 15 of the principal Act

11. Section 15 of the principal Act is hereby substituted for the following section:

“Nomination and appointment of members of Board

15. (1) (a) The **[Shareholding]** Minister must call for nominations through the national media.

- (b) Subject to sections 14 and 17, the **[Shareholding]** Minister must appoint a member of the Board from among the persons nominated.
- (2) (a) Whenever a position on the Board becomes vacant, the **[Shareholding]** Minister may appoint any person to serve for the unexpired period of the term of office of the previous member irrespective of when the vacancy occurs.
- (b) The person contemplated in paragraph (a) must preferably have special knowledge and experience, contemplated in section 14(2)."

Amendment of section 18 of the principal Act

12. Section 18 of the principal Act is hereby substituted for the following section:

"Terms of office of members of Board

18. (1) The chairperson and the other members of the Board hold office for a period determined by the **[Shareholding]** Minister, but not exceeding three years.
- (2) (a) The chairperson may be reappointed for further periods not exceeding three years each.
- (b) The other members of the Board may be reappointed to ensure continuity, but may not serve for more than six consecutive years.
- (3) The **[Shareholding]** Minister must remove a member of the Board from office -
- (a) for failing to perform his or her functions diligently;
- (b) for failing to comply with section 19 (1), (2) or (3);
- (c) for being absent without good reason from three consecutive meetings of the Board without the permission of the chairperson; or
- (d) for misconduct.
- (4) A member of the Board may resign by giving one month's written notice to the **[Shareholding]** Minister.
- (5) A member of the Board is appointed on such terms and conditions and is entitled to such remuneration as the **[Shareholding]** Minister may, with the concurrence of the Minister of Finance, stipulate in that member's letter of appointment.
- (6) The **[Shareholding]** Minister may extend the terms of office of members of the Board upon the expiry of their terms of office for such period as may

be necessary, not exceeding three months, to finalise the appointment of a new board.”.

Amendment of section 19 of the principal Act

13. Section 19 of the principal Act is hereby substituted for the following section:

“Disclosure of interest by members of Board

19. (1) A member of the Board must, upon appointment, submit to the **[Shareholding]** Minister and the Board a written statement in which it is declared whether or not that member has any direct or indirect financial interest which could reasonably be expected to compromise the Board in the performance of its functions.

(2) A member of the Board may not be present at, or take part in, the discussion of or the taking of a decision on any matter before the Board in which that member or his or her family member, business partner or associate has a direct or indirect financial interest.

(3) If any member of the Board acquires an interest that could reasonably be expected to be an interest contemplated in this section, he or she must immediately in writing declare that fact to the **[Shareholding]** Minister and the Board.

(4) If an organisation or enterprise in which a member of the Board has an interest contemplated in section (2) is requested to offer its services to the Authority, the organisation or enterprise must immediately, in writing, declare the member's interest to the **[Shareholding]** Minister and the Board.”.

Amendment of section 20 of the principal Act

14. Section 20 of the principal Act is hereby amended by the substitution of paragraph (a) in subsection 1 of the following paragraph:

“(a) The first meeting of the Board must be held at a time and place determined by the **[Shareholding]** Minister and thereafter Board meetings must be held at such times and places as the Board may determine.”.

Amendment of section 22 of the principal Act

15. Section 22 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Board must, with the approval of the **[Shareholding]** Minister, appoint a chief executive officer within three months of the incorporation date, or such longer period as the **[Shareholding]** Minister may determine.”.

Amendment of section 23 of the principal Act

16. Section 23 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The chief executive officer is responsible for the management of efficient and competitive ports including-”

Amendment of section 27 of the principal Act

17. Section 27 of the principal Act is hereby amended by-

(a) the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) On a date after the commencement of this Act, determined by the **[Shareholding]** Minister by notice in the Gazette, National Ports Authority (Pty) Ltd becomes the successor to National Ports Authority of South Africa.

(b) the substitution for paragraph (b) of subsection 2 of the following paragraph:

“(b) all movable property and all liabilities, rights and obligations of Transnet relating to the National Ports Authority of South Africa as determined by the **[Shareholding]** Minister will vest in National Ports Authority (Pty) Ltd.”.

(c) the substitution for subsection 6 of the following subsection:

“(6) Despite section 5 of the State Land Disposal Act, 1961 (Act No. 48 of 1961), and the provisions of the Deeds Registries Act, 1937 (Act No. 47 of 1937), a registrar of deeds referred to in section 102 of the latter Act must, on submission of a certificate by the **[Shareholding]** Minister that land has vested under this section, make such entries and endorsements free of charge as the registrar considers necessary in any appropriate register in order to register the transfer of such land in the name of the Authority.”.

(d) the substitution for subsection 7 of the following subsection:

“(7) A registrar of deeds must, on submission of a certificate by the **[Shareholding]** Minister that a servitude, other real right or lease has vested

under this section, make such entries and endorsements as the registrar considers necessary in or on any appropriate register in order to register such vesting in the name of the Authority.

Repeal of Chapter 5 of the principal Act

18. Chapter 5 of the principal Act is hereby repealed.

Amendment of section 56 of the principal Act

19. Section 56 of the principal Act is hereby amended by-

(a) the substitution for subsection (1) of the following subsection:

“(1) The Authority [**may**] must enter into an agreement with any person in terms of which that person, for the period and in accordance with the terms and conditions of the agreement, is authorised to-”

(b) the deletion of subsection 4.

(c) the substitution for subsection (5) of the following subsection:

“(5) An agreement contemplated in subsection (1) [**or (4)**] may only be entered into by the Authority in accordance with a procedure that is fair, equitable, transparent, competitive and cost-effective.

Amendment of section 57 of the principal Act

“20. Section 57 of the principal Act is hereby amended by the deletion of subsection 7 paragraph (a)(i)(ii) and (b).”.

Amendment of section 64 of the principal Act

21. Section 64 of the principal Act is hereby amended by-

(a) the substitution for subsection 1 of the following subsection:

(1) The [**shareholding**] minister may, with the concurrence of the [**Minister**] Authority, 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-

(b) the substitution for subsection 2 of the following subsection:

(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.

Amendment of section 65 of the principal Act

22. Section 65 of the principal Act is hereby amended by the deletion in subsection 5 of the word “Shareholding”.

Amendment of section 79 of the principal Act

23. Section 79 of the principal Act is hereby substituted for the following section:

“Ministerial direction

79. (1) The Minister may, in **[writing]** the prescribed manner, 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.]”.

Amendment of section 80 of the principal Act

24. Section 80 of the principal Act is hereby amended by the substitution for paragraph (e) of subsection (1) of the following paragraph:

“(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] standard, norms and efficiency levels for the performance of strategic infrastructure for service providers;

Amendment of section 81 of the principal Act

25. Section 81 of the principal Act is hereby amended by-

(a) the substitution for subsection (1) of the following subsection:

“(1) The [Minister] Authority must [appoint] establish a Port Consultative Committee for each port, [consisting] to be chaired [of the] by the Port Manager of the relevant port and consisting of-”

(b) the substitution for paragraph (a) in subsection (1) of the following paragraph:

“(a) [two persons representing the Authority] historically disadvantaged persons representation.”

(c) the substitution for paragraph (b) of subsection 3 of the following paragraph:

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

Amendment of section 82 of the principal Act

26. Section 82 of the principal Act is hereby amended by-

(a) by the substitution for subsection (1) of the following subsection:

“(1) The Minister must appoint a National Port Consultative Committee to be chaired by the Chief Executive officer of the Authority consisting of at least-”

(b) by the substitution for paragraph (d) of subsection 2 of the following paragraph:

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

(c) by the addition after paragraph (d) of subsection (2) of the following paragraph:

“(e) representation by historically disadvantaged persons.”.

Short title and commencement

27. This Act is called the Draft National Ports Amendment Bill, 2023.