

REPUBLIC OF SOUTH AFRICA

HYDROGRAPHIC BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No. 41662 of
30 May 2018)*
(The English text is the official text of the Bill)

(MINISTER OF DEFENCE AND MILITARY VETERANS)

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BILL

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 a co-operation agreement between departments in respect of the administration of matters of joint interest that may arise from the execution of the Act; 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

1. 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 navigable portion of the earth’s surface 30

- and adjoining coastal area, with special reference to their use for the purpose of navigation;
- “**Hydrographic Office**” means the office established by section 3;
- “**hydrographic surveying**” means surveying for the purpose of determining data relating to bodies of water or oceans; 5
- “**hydrographic surveyor**” means any person who studied and practises the science of hydrography, and who is registered in terms of the Professional and Technical Surveyors Act, 1984 (Act No. 40 of 1984);
- “**internal waters**” means all waters landward of the baselines, including all harbours; 10
- “**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; 15
- “**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; 20
- “**navigational warning**” means a broadcast message that conveys navigational information;
- “**prescribed**” means prescribed by regulation;
- “**this Act**” includes any regulations made thereunder;
- “**user**” means any person who buys information from or products of the Hydrographic Office or who pays for the services of the Hydrographic Office. 25

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; 30
- (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. 35

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. 40

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;
- (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; 45
- (c) provide services to users in the manner most suitable for the purpose of aiding navigation—
- (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; 50
- (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
- (iv) to update the nautical publications and nautical charts; 55

- (d) maintain uniformity of nautical publications and nautical charts, taking into account the resolutions and recommendations of the International Hydrographic Organisation;
- (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; 5
- (f) take the necessary steps to ensure that the navigational warnings relating to safe navigation in NAVAREA VII is communicated promptly to persons 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. 10

Appointments and conditions of service

5. (1) The Chief of the Navy must appoint the Hydrographer as head of the Hydrographic Office. 15
- (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 contemplated in subsection (5).
- (3) The Hydrographer must have practised for at least 10 years as a hydrographic surveyor. 20
- (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 the hydrographic surveyors referred to in subsection (5)(b) as acting Hydrographer until the Hydrographer is able to resume those duties. 25
- (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 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 30
 - (b) appoint the necessary number of persons as hydrographic surveyors in the Hydrographic Office to assist the Hydrographer to perform his or her functions. 35

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 40
 - (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. 45

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, beach, enclosed place or reserve on land or ocean within the jurisdiction of the Republic; 50
 - (b) place or erect a beacon, bench mark, reference mark, temporary flag, signal or other mark upon the land, beach, enclosed place, reserve on land or ocean 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, beach, enclosed place, reserve on land or ocean contemplated in paragraph (a). 55

- (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;
 - (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
 - (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.
- (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 who is in possession of any information that pose a navigational danger and is relevant to or has an influence on the safety of navigating the area contemplated in section 2(b) must communicate and submit such information to the Hydrographer as soon as reasonably practical to do so.
- (2) Any person who fails to communicate or submit information in accordance with subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

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.
- (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.

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;
 - (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;
 - (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;
 - (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).

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. 5

Limitation of civil liability

12. (1) Neither the Hydrographic Office nor an employee of the Hydrographic Office is liable, except in the case of gross negligence or a wilful act or omission on the part of that employee, to any person or to a dependant of such person for loss or damage resulting from bodily injury, loss of life or loss of or damage to property caused by or arising out of or connected with the use of any nautical publication or nautical chart produced and sold by the Hydrographic Office. 10

(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. 15

Hydrographic Office funding

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. 20

(2) Any income derived from—

- (a) the production and sale of nautical publications and nautical charts by the Hydrographic Office to users; 25
- (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.

Co-operation agreement

14. The Secretary for Defence and the Director-General of the Department of Transport must enter into and maintain an implementation protocol contemplated in the Intergovernmental Relations Framework Act, 2005 (Act No.13 of 2005), in respect of the administration of matters of joint interest that may arise from the execution of this Act. 35

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

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 45
- (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

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. 5

(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

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18. This Act is called the Hydrographic Act, 2018, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE HYDROGRAPHIC BILL, 2018

1. BACKGROUND

- 1.1 The Bill emanates from the need to recognise and grant legislative status to the office of the Hydrographer which has been in existence within the South African Navy since 21 July 1954.
- 1.2 The Republic of South Africa, as a member of the International Maritime Organisation and International Hydrographic Organisation, is the signatory to International Conventions relating to the monitoring of maritime safety.
- 1.3 The International Maritime Organisation and International Hydrographic Organisations are responsible for the monitoring and effective regulation of the safe navigation of the ships and other modes of transport that are moving around the oceans or waterways of the member states.

2. OBJECTS OF BILL

- 2.1 The main object of the Bill is to establish the Hydrographic Office of the Republic which is currently within the South African National Defence Force so that it can continue to exist as a unit within the South African Navy.
- 2.2 The Bill further seeks to provide for the appointment, duties and powers of the Hydrographer.
- 2.3 The Bill also seeks to provide for the effective monitoring of safe navigation by the Hydrographic Office within NAVAREA VII as the Republic is signatory to the International Maritime Organisation Convention, 1948.

3. SUMMARY OF BILL

- 3.1 **Clause 1** of the Bill seeks to provide for the definition of words or expressions used in the Bill.
- 3.2 **Clause 2** of the Bill seeks to provide for the objects of the Bill.
- 3.3 **Clause 3** of the Bill seeks to provide for the establishment of the Hydrographic Office.
- 3.4 **Clause 4** of the Bill seeks to provide for the functions of the Hydrographic Office.
- 3.5 **Clause 5** of the Bill provides for the appointments and conditions of service of the Hydrographic Office.
- 3.6 **Clause 6** of the Bill seeks to provide for the control and management of the Hydrographic Office.
- 3.7 **Clause 7** of the Bill seeks to provide for the powers and duties of the Hydrographer.
- 3.8 **Clause 8** of the Bill seeks to provide for the submission of hydrographic data.
- 3.9 **Clause 9** of the Bill seeks to provide for survey marks.
- 3.10 **Clause 10** of the Bill seeks to provide for archiving.
- 3.11 **Clause 11** of the Bill seeks to provide for copyright.

- 3.12 **Clause 12** of the Bill seeks to provide for the limitation of civil liability.
- 3.13 **Clause 13** of the Bill seeks to provide for the funding of the Hydrographic Office.
- 3.14 **Clause 14** of the Bill seeks to provide for a Co-operation agreement.
- 3.15 **Clause 15** seeks to provide for the submission of the annual report.
- 3.16 **Clause 16** of the Bill seeks to provide for the making of regulations.
- 3.17 **Clause 17** of the Bill seeks to provide for transitional arrangements.
- 3.18 **Clause 18** of the Bill seeks to provide for the short title and commencement of the Act.

4. PARTIES CONSULTED

- 4.1 The Bill has been finalised in consultation with relevant stakeholders such as the South African Maritime Safety Authority and Department of Transport. The Bill served at the Economic Sectors, Employment and Infrastructure Development (ESEID) Cluster and the Justice Crime Prevention and Security (JCPS) Director-Generals' Cluster.
- 4.2 The Department further consulted with the Department of Agriculture Fisheries and Forestry, Department of Environmental Affairs, Department of International Relations and Cooperation, Department of Public Enterprises, Department of Rural Development and Land Reform, National Treasury, Department of Trade and Industry, Department of Small Business Development, the South African Police Services and the Department of Tourism.

5. FINANCIAL IMPLICATIONS

None.

6. PARLIAMENTARY PROCEDURE

- 6.1 The Department of Defence and the State Law Advisers are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it does not deal with any of the matters to which the provisions of section 76 or 74 of the Constitution applies.
- 6.2 We have considered the tagging of the Bill in light of Chapter 4 of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), which provides for procedures that Bills must follow in Parliament. Section 75 deals with ordinary Bills not affecting provinces.
- 6.3 The Constitutional Court judgement in the case of Stephen Segopotso Tongoane and Others v Minister for Agriculture and Land Affairs and Others CCT 100/9 2010J ZACC 10 at paragraphs 70 and 72, stated that— "the test for determining how a Bill is to be tagged must be broader than that for determining legislative competence. Whether a Bill is a section 76 Bill is determined in two ways. First by the explicit list of legislative matters in section 76(3), and second by whether the provisions of a Bill in substantial measure fall within a concurrent legislative competence."
- 6.4 This test compels us to consider the substance, purpose and effect of the subject matter of the proposed Bill. This Bill seeks to provide for the establishment, management, administration and functioning of the Hydrographic Office of the Republic of South Africa. These matters do not fall within any of the matters listed in section 76(3) of, or Schedule to, the Constitution. In our view this Bill is therefore an ordinary Bill not affecting the provinces as envisaged in section 75 of the Constitution.

- 6.5 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of the provisions of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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