

REPUBLIC OF SOUTH AFRICA

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# CIVIL AVIATION AMENDMENT BILL

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of  
Bill and prior notice of its introduction published in Government Gazette No. 41962  
of 8 October 2018)*  
*(The English Text is the official text of the Bill)*

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(MINISTER OF TRANSPORT)

**[B 44—2018]**

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**GENERAL EXPLANATORY NOTE:**

[                    ]     Words in bold type in square brackets indicate omissions from existing enactments.

                         Words underlined with a solid line indicate insertions in existing enactments.

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## **BILL**

To amend the Civil Aviation Act, 2009, so as to amend existing, and insert new, definitions; to rectify references to certain Ministries and Government Departments; to amend Chapter 4 of the Act so as to make provision for the operational independence of aircraft accident and incident investigation; to rectify the provision regarding the establishment of the South African Civil Aviation Authority; to give the South African Civil Aviation Authority environmental protection oversight function; to do away with the requirement for the development of a corporate governance plan; to make provision for an employee of the Department to be a member of the Civil Aviation Authority Board; to amend the provisions relating to the appointment and removal of the Commissioner for Civil Aviation and matters related to his or her functions and responsibilities; to amend the provisions relating to the performance agreement between the Minister and the Aviation Safety Investigation Board; to clarify the provisions dealing with conflict of interest; to provide for the designation of the Chairperson of the National Aviation Security Committee and matters connected with the operations of the Committee; to delete the provisions dealing with compliance notices; to amend the provisions dealing with appeals; to authorise the Minister to issue exemptions and to prescribe additional offences and additional enforcement mechanisms; to extend the powers of the Minister to make regulations; to move the procedures for the establishment of consultative structures to the regulations; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

### **Amendment of section 1 of Act 13 of 2009**

1. The Civil Aviation Act, 2009 (Act No. 13 of 2009) (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion after the definition of “aircraft incident” of the following definitions:

“**aircraft in flight**” refers to an aircraft at any time from the moment when all its external doors are closed following embarkation, until the moment when any such door is opened for disembarkation, and in the case of a forced landing, the flight shall be deemed to continue until the

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- competent authorities take over the responsibility for the aircraft and for persons and property on board the aircraft;
- ‘aircraft in service’** refers to an aircraft from the beginning of the pre-flight preparation of the aircraft by ground personnel or by the crew for a specific flight, until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight;”;
- (b) by the substitution for the definition of “airport” of the following definition:  
 “**‘airport’** means [an aerodrome as defined in section 1 of this Act] a demarcated area on land or water which is used or intended to be used, either wholly or in part, for the arrival or departure of aeroplanes, and includes any building, installation or equipment within such area which is used or intended to be used in connection with the arrival, departure or movement of an aeroplane;”;
- (c) by the substitution for the definition of “air service” of the following definition:  
 “**‘air service’** means an air service as defined in [Section] section 1 of the Air Services Licensing Act, [1999] 1990 (Act No. 115 of [1999] 1990);”;
- (d) by the insertion after the definition of “airport manager” of the following definition:  
 “**‘Annex 13’** means Annex 13 to the Convention;”;
- (e) by the insertion after the definition of “appointed member” of the following definition:  
 “**‘appropriate authority’** means a person or entity empowered by legislation to exercise certain authority;”;
- (f) by the insertion after the definition of “commander” of the following definition:  
 “**‘Commissioner’** means the Commissioner for Civil Aviation appointed in terms of section 85;”;
- (g) by the insertion after the definition of “Criminal Procedure Act” of the following definition:  
 “**‘Customs’** means the South African Revenue Service established in terms of section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);”;
- (h) by the deletion of the definition of “Director”;
- (i) by the deletion of the definition of “Director of Investigations”;
- (j) by the insertion after the definition of “Director of Investigations” of the following definition:  
 “**‘Executive responsible for Aircraft Accident and Incident investigation’** means an official appointed by the Authority as the responsible Executive for aircraft accident and incident investigation;”;
- (k) by the substitution for the definition of “helistop” of the following definition:  
 “**‘helistop’** means a heliport either at a ground level or elevated on a structure, for the landing and take-off of helicopters, including the minimum prescribed safety equipment but excluding auxiliary facilities such as a parking area, a waiting room or a hanger;”;
- (l) by the substitution for the definition of “investigator” of the following definition:  
 “**‘investigator’** means a person [appointed under section 26] designated as such under section 33;”;
- (m) by the insertion after the definition of “NASP” of the following definition:  
 “**‘nuclear material’** means nuclear material as defined in section 1 of the Nuclear Energy Act, 1999 (Act No. 46 of 1999);”;
- (n) by the insertion after the definition of “Public Finance Management Act” of the following definition:  
 “**‘radioactive material’** means radioactive material as defined in section 1 of the Nuclear Energy Act, 1999 (Act No. 46 of 1999);”;
- (o) by the insertion after the definition of “restricted area” of the following definition:  
 “**‘safety programme’** means an integrated set of regulations and activities aimed at improving safety;”;

- (p) by the insertion after the definition of “search” of the following definition:  
 “**‘source material’** means source material as defined in section 1 of the Nuclear Energy Act, 1999 (Act No. 46 of 1999)”;
- (q) by the insertion after the definition of “Transit Agreement” of the following definition: 5  
 “**‘weapon of mass destruction’** means a weapon of mass destruction as defined in the Non-proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993)”; and
- (r) by the deletion of subsections (2), (3) and (4).

#### **Amendment of section 2 of Act 13 of 2009** 10

2. Section 2 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:  
 “This Act, [**the Convention, the Transit Agreement and Protocol,**]  
 except where expressly excluded under this Act, [**apply**] applies to—”; 15
- (b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:  
 “This Act [**, the Convention and the Transit Agreement do**] does not  
 apply to—”;
- (c) by the substitution for subsection (4) of the following subsection: 20  
 “(4) Notwithstanding subsection (3), Part 1 of Chapter 11 [**and the Civil Aviation Regulations, 1997, apply**] applies to—  
 (a) an aircraft belonging to the South African National Defence Force,  
 [**and**] the South African Police Service and Customs; and  
 (b) an aircraft in use exclusively by the South African National Defence 25  
 Force, [**and**] the South African Police Service and Customs,  
 where such aircraft are in flight through controlled airspace or in use at  
 non-military aerodromes and heliports.”; and
- (d) by the addition of the following subsection: 30  
 “(5) Despite subsection (3), the Minister may, after consultation with the Cabinet members responsible for defence, police and customs, by notice in the Gazette, determine which provisions of the civil aviation regulations are applicable to the aircraft referred to in subsection (3).”.

#### **Amendment of section 3 of Act 13 of 2009**

3. Section 3 of the principal Act is hereby amended— 35
- (a) by the substitution for the heading of the following heading:  
 “**Power to carry out and apply Convention [,] and Transit Agreement [and Protocol]**”;
- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 40  
 “The Minister [**, in consultation with the Civil Aviation Authority,**]  
 may”;
- (c) by the substitution in subsection (1) for paragraph (a) of the following paragraph:  
 “(a) do all things necessary to ratify, or cause to be ratified on behalf of 45  
 the Republic, any amendments of or additions to the Convention [**,**]  
and the Transit Agreement [or Protocol] which may be made;  
 and”.

#### **Amendment of section 4 of Act 13 of 2009**

4. Section 4 of the principal Act is hereby amended— 50
- (a) by the substitution for the heading of the following heading:  
 “**Functions of Minister in connection with Act[, Convention and Transit Agreement]**”; and
- (b) by the deletion of subsection (4).

**Substitution of section 5 of Act 13 of 2009**

5. The following section is hereby substituted for section 5 of the principal Act:

**“Enactment of Convention [,] and Transit Agreement [and Protocol]**

5. (1) The Convention [,] and the Transit Agreement [**and Protocol**] referred to in Schedules 3 and 4, respectively, have, subject to this Act, the force of law in the Republic. 5

(2) The Minister may by notice in the *Gazette* amend Schedules 3 and 4 to reflect any changes made to the Convention [,] and the Transit Agreement [**and Protocol**] if those changes are binding on the Republic in terms of section 231 of the Constitution.”. 10

**Amendment of section 7 of Act 13 of 2009**

6. Section 7 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) Subject to the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), the National Environmental Management Act, 1998 (Act No. 107 of 1998), the National Water Act, 1998 (Act No. 36 of 1998), and the Constitution, the Minister [**of Minerals and Energy**] responsible for mineral resources may permit the use of land held under any reconnaissance permission, exploration, prospecting or mining authorisation or permission, for the establishment of [**airports or heliports**] an aerodrome. 15 20

(2) Before granting any permission in terms of subsection (1) for the use of land held under any reconnaissance permission, exploration, prospecting or mining authorisation or permission for the establishment of [**airports or for landing places for aircraft**] an aerodrome, the Minister [**of Minerals and Energy**] responsible for mineral resources must consult with the Minister and all interested parties.”. 25

**Amendment of section 8 of Act 13 of 2009**

7. Section 8 of the principal Act is hereby amended—

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

“(1) No action lies in respect of trespass or in respect of nuisance, by reason only of the flight of aircraft over any property at a height, which, having regard to wind, weather and other circumstances of the case, is reasonable, or the ordinary incidents of such flight, so long as this Act[, **the Convention and the Transit Agreement are**] is duly complied with.”; and 30 35

(b) by the substitution for subsection (5) of the following subsection:

“(5) A registered owner or operator of an aircraft must have insurance as prescribed for any damage or loss that [**is**] may be caused by [**an**] his or her aircraft to any person or property on land or water.”.

**Substitution of Chapter 4 of Act 13 of 2009**

8. The following Chapter is hereby substituted for Chapter 4 of the principal Act:

**“CHAPTER 4**

*Part 1*

**AIRCRAFT ACCIDENTS AND INCIDENTS INVESTIGATION  
AND ESTABLISHMENT OF AVIATION SAFETY  
INVESTIGATION BOARD** 45

**Application of Chapter**

9. (1) This Chapter applies in respect of aircraft accidents and incidents in or over—

(a) the Republic; 50

- (b) any place that is under the Republic's air traffic service and management; and
- (c) any other place, if—
- (i) the Republic is requested to investigate by an appropriate authority in terms of the Convention; or
  - (ii) the aircraft accident or incident involves an aircraft in respect of which, or that is operated by a person to whom, a South African aviation authorisation, aviation certificate or any aviation approval document has been issued.
- (2) The application of this Chapter in respect of aircraft accidents and incidents referred to in section 12(4) is subject to such restrictions in the interests of national security as are provided for in the Defence Act, 2002 (Act No. 42 of 2002), or as prescribed by the Minister by notice in the *Gazette*.
- (3) In this Chapter "department" means any department in the national sphere of Government.

### **Establishment of Aviation Safety Investigation Board**

10. The Aviation Safety Investigation Board, which is a juristic person, is hereby established.

### **Objects of Aviation Safety Investigation Board**

11. (1) The objects of the Aviation Safety Investigation Board are to advance aviation transportation safety by—
- (a) conducting independent investigations, including, when necessary, public inquiries into selected aircraft accidents and incidents in order to make findings as to their causes and contributing factors;
  - (b) identifying safety deficiencies as evidenced by aircraft accidents and incidents;
  - (c) making recommendations designed to eliminate or reduce any such safety deficiencies;
  - (d) reporting publicly on its investigations and on the findings in relation thereto;
  - (e) promoting compliance with the provisions and procedures of Annex 13;
  - (f) investigating aircraft accidents and incidents in compliance with the provisions and procedures of Annex 13; and
  - (g) discharging all other findings and obligations in compliance with the provisions and procedures of Annex 13.
- (2) The Aviation Safety Investigation Board must not apportion blame or liability in any report following the investigation of any aircraft accident or incident, and the sole objective of the investigation is accident prevention.
- (3) In making its findings as to the causes and contributing factors of an aircraft accident and incident, it is not the function of the Aviation Safety Investigation Board to assign fault or determine civil or criminal liability, but the Aviation Safety Investigation Board must not refrain from fully reporting on the causes and contributing factors merely because fault or liability might be inferred from the Aviation Safety Investigation Board's findings.
- (4) No finding of the Aviation Safety Investigation Board must be construed as apportioning blame or determining civil or criminal liability.
- (5) The findings of, or the evidence before, the Aviation Safety Investigation Board are not binding on the parties to any legal, disciplinary or any other proceedings and may not be used in any civil, criminal or disciplinary proceedings against persons giving such evidence.
- (6) Where the causes and contributing factors of any aircraft accident or incident is known to the Aviation Safety Investigation Board it may decide not to investigate such aircraft accident or incident.
- (7) Subject to the provisions of the South African Maritime and Aeronautical Search and Rescue Act, 2002 (Act No. 44 of 2002), and the Convention, the South African Police Service, shall have rights of prior access to any scene of aircraft accident or incident.

### **Jurisdiction of Aviation Safety Investigation Board**

- 12.** (1) Notwithstanding any other legislation, the Aviation Safety Investigation Board must, in compliance with Annex 13, investigate any aircraft accident and incident for the purpose of carrying out its objects. 5
- (2) Notwithstanding any other legislation—
- (a) no department, other than the Department of Defence, may commence an investigation into an aircraft accident or incident for the purpose of making findings as to its causes and contributing factors, if—
- (i) that aircraft accident or incident is being or has been investigated by the Aviation Safety Investigation Board under this Act; or 10
- (ii) the Department has been informed that that aircraft accident or incident is proposed to be investigated by the Aviation Safety Investigation Board under this Act; and
- (b) where an investigation into an aircraft accident or incident is commenced by the Aviation Safety Investigation Board under this Act after an investigation into that aircraft accident or incident has been commenced by a department other than the Department of Defence, that department must forthwith discontinue its investigation, to the extent that it is an investigation for the purpose of making findings as to the causes and contributing factors of the aircraft accident or incident. 15
- (3) Subsection (2) does not prevent—
- (a) a department from commencing an investigation into or continuing to investigate an aircraft accident or incident for any purpose other than that of making findings as to its causes and contributing factors, or from investigating any matter that is related to the aircraft accident or incident and that is not being investigated by the Aviation Safety Investigation Board; or 20
- (b) the South African Police Service from investigating the aircraft accident or incident for any purpose for which it is empowered to conduct investigations. 25
- (4) The Aviation Safety Investigation Board may investigate an aircraft accident and incident that involves—
- (a) a military conveyance and an aircraft which is not a military conveyance; 30
- (b) a military conveyance and a civil aviation facility; or
- (c) a military aviation facility and an aircraft which is not a military conveyance. 35
- (5) Where the Aviation Safety Investigation Board does not investigate an aircraft accident or incident, no department is prevented from investigating any aspect of the aircraft accident or incident that it is empowered to investigate. 40
- (6) The Aviation Safety Investigation Board must not inquire into any aircraft accident or incident in respect of which a prosecution, an inquest or an inquiry by a commission has been established by the Minister which was instituted or completed before the commencement of this Act. 45

### **Coordination of investigations and remedial actions**

- 13.** (1) Where, at any time during an investigation into an aircraft accident or incident under this Act, a department other than the Department of Defence investigates that aircraft accident or incident, or undertakes remedial measures with respect to that aircraft accident or incident, the Aviation Safety Investigation Board and such department must take all reasonable measures to ensure that their activities with respect to that aircraft accident or incident are coordinated. 50
- (2) Where conflicting interests arise between the Aviation Safety Investigation Board and a department in coordinating their activities pursuant to subsection (1), the requirements and interests of the Aviation Safety Investigation Board, subject to subsection (3) and any agreement 55

entered into under section 27, take precedence and are paramount to the extent of the conflict.

(3) No item in subsection (2) gives the requirements and interests of the Aviation Safety Investigation Board precedence over those of the South African Police Service, or prevents a department from taking emergency remedial measures under any other legislation.

(4) Where an aircraft accident or incident referred to in subsection (1) is being investigated by the Aviation Safety Investigation Board, the Department of Defence, the South African Police Service or a visiting force, the Aviation Safety Investigation Board and the Minister of Defence must take all reasonable measures to ensure that the investigations are coordinated.

### **Compatible procedures and practices**

**14.** (1) The Aviation Safety Investigation Board must take all reasonable measures to ensure that the investigation procedures and practices that it follows in relation to aircraft accidents and incidents are compatible with—

- (a) any international agreements or Conventions to which the Republic is a party; and
- (b) investigation procedures and practices followed by the judicial inquests in terms of the Inquests Act, 1959 (Act No. 58 of 1959).

(2) The Aviation Safety Investigation Board must make all reasonable efforts to enter into agreements in order to ensure that the procedures and practices followed by the Aviation Safety Investigation Board are compatible, as far as possible, with those followed by the judicial inquests in terms of the Inquests Act, 1959.

## ***Part 2***

### **APPOINTMENT OF MEMBERS OF AVIATION SAFETY INVESTIGATION BOARD**

#### **Procedure in appointing members of Aviation Safety Investigation Board**

**15.** (1) The Aviation Safety Investigation Board consists of a Chairperson and at least four other members appointed in accordance with the following principles, namely—

- (a) participation by the public in the nomination process; and
- (b) transparency and openness taking into account the objects and principles of this Act.

(2) (a) Before the members of the Aviation Safety Investigation Board are appointed, the Minister must, through the media, invite members of the public to apply or nominate persons for appointment to the Aviation Safety Investigation Board and who comply with the criteria contemplated in paragraph (e).

(b) The Minister must, after receipt of the nominations and applications contemplated in paragraph (a), invite at least four aviation experts and the Commissioner to assist in the selection and evaluation of persons eligible for appointment to the Aviation Safety Investigation Board.

(c) The aviation experts referred to in paragraph (b) must compile a shortlist consisting of not more than 10 persons.

(d) The Minister must, within 30 days from the date of appointment of the members of the Aviation Safety Investigation Board, notify Parliament of such appointment.

(e) The aviation experts contemplated in paragraph (b) must include—

- (i) a person with technical knowledge and experience in the aviation field;
- (ii) a person with a legal background; and
- (iii) a person with knowledge of, and experience in, aviation accident and incident investigations.



### **Requirements for appointment as members of Aviation Safety Investigation Board**

- 16.** Members appointed to the Aviation Safety Investigation Board must be persons who—
- (a) are committed to fairness, freedom of expression, openness and accountability on the part of those entrusted with the governance of a public service; and 5
  - (b) when viewed collectively be knowledgeable of aviation transportation having regard to the following factors: 10
    - (i) technical knowledge in matters relating to civil aviation;
    - (ii) special skills, professional standing, expertise or experience in matters concerning civil aviation; and
    - (iii) possess suitable qualifications, expertise and experience in the field of aviation accident and incident investigation or any other relevant expertise or qualifications. 15

### **Filling of vacancies and term of office of Aviation Safety Investigation Board**

- 17.** (1) In fixing a term of appointment or reappointment, the Minister must endeavour to ensure, to the extent that it is practical to do so, that, despite periodic changes in the membership of the Aviation Safety Investigation Board, it remains constituted of persons who have had previous experience as members of the Aviation Safety Investigation Board. 20
- (2) Any vacancy on the Aviation Safety Investigation Board must be filled by the appointment by the Minister in terms of section 15(2), of another person for the unexpired portion of the period for which the vacating member was appointed. 25
- (3) The Minister may appoint from the list contemplated in section 15(2)(c) any eligible person to act— 30
- (a) in any member's stead; or
  - (b) in a temporary capacity in any vacancy in the Aviation Safety Investigation Board, for such period as the Minister may determine.
- (4) A member of the Aviation Safety Investigation Board is a part-time member and must hold office for a term not exceeding five years and is on expiration of such member's term of office, eligible for reappointment for not more than one additional term. 35

### **Disqualification and removal of members of Aviation Safety Investigation Board**

- 18.** (1) A person may not be appointed as a member of the Aviation Safety Investigation Board if he or she— 40
- (a) is not a South African citizen or a permanent resident in the Republic;
  - (b) is a member of Parliament, any provincial legislature or any municipal council;
  - (c) is an office-bearer or employee of any party, movement or organisation of a party-political nature; 45
  - (d) is an unrehabilitated insolvent;
  - (e) has been declared by a court to be mentally ill or incapacitated;
  - (f) has at any time been convicted, whether in the Republic or elsewhere, of— 50
    - (i) theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any other offence involving dishonesty; or 55
    - (ii) an offence under this Act;

- (g) has been sentenced, after the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), to a period of imprisonment without the option of a fine; or
- (h) has at any time been removed from an office of trust on account of misconduct. 5
- (2) A member of the Aviation Safety Investigation Board may be removed from office by the Minister—
- (a) for absence from three consecutive meetings of the Aviation Safety Investigation Board without the permission of the Chairperson of the Aviation Safety Investigation Board and without a good cause; 10
- (b) if such a member becomes disqualified as contemplated in subsection (1);
- (c) if such a member repeatedly fails to perform the duties of office efficiently;
- (d) if, due to any physical or mental illness or any other cause, such member becomes incapable of performing the functions of that office or performs them inefficiently; or 15
- (e) for misconduct.
- (3) A member must vacate his or her office immediately if he or she—
- (a) is convicted— 20
- (i) whether in the Republic or elsewhere of murder, robbery, theft, fraud, forgery or uttering a forged document, perjury or any offence involving dishonesty; or
- (ii) of any offence in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), the Companies Act, 2008 (Act No. 71 of 2008), the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), the Public Finance Management Act or of contravening this Act; 25
- (b) is convicted of an offence during his or her term of office and sentenced to a period of imprisonment without the option of a fine; or 30
- (c) becomes a political office bearer.

#### **Performance agreement between Minister and Aviation Safety Investigation Board**

- 19.** (1) The Minister and the Aviation Safety Investigation Board must enter into an agreement about the performance of the Aviation Safety Investigation Board's functions in terms of this Act. 35
- (2) The agreement contemplated in subsection (1) must be in writing and relate to—
- (a) the Minister's requirements in respect of the Aviation Safety Investigation Board's scope of business, efficiency and achievement of objectives; and 40
- (b) any other matter relating to the performance of the Aviation Safety Investigation Board's functions under this Act.
- (3) The Minister and the Aviation Safety Investigation Board may, in writing, amend the performance agreement when necessary. 45

#### **Remuneration, fees and expenses of members of Aviation Safety Investigation Board**

- 20.** (1) Subject to subsection (3), the members of the Aviation Safety Investigation Board must be paid the remuneration and other allowances that are determined by the Minister in consultation with the Minister of Finance. 50
- (2) The members of the Aviation Safety Investigation Board are entitled to be paid reasonable travel and living expenses incurred by them in the course of their duties as may be prescribed from time to time.
- (3) An appointed member who is in the full-time service of the State or any State-owned institution is not, in respect of the duties performed by him or her as a member of the Aviation Safety Investigation Board, paid any— 55
- (a) remuneration in addition to his or her remuneration; or

- (b) allowance in respect of subsistence and travel at a rate higher than that applicable to him or her as an employee of the State or such State-owned institution.

### **Meetings of Aviation Safety Investigation Board**

21. (1) The Aviation Safety Investigation Board must meet at such times and place as may be determined by the Chairperson from time to time for the purpose of managing aircraft accident and incident investigation matters. 5

(2) The Chairperson convenes meetings of the Aviation Safety Investigation Board whenever the work of the Aviation Safety Investigation Board so requires or whenever the Chairperson is requested in writing to do so by two or more other members of the Aviation Safety Investigation Board. 10

(3) In the event of the absence or incapacity of the Chairperson, the members present must elect one member to preside at the relevant meeting.

(4) At any given time, the majority of members of the Aviation Safety Investigation Board form a quorum. 15

### **Administration**

22. All administrative work as well as secretarial functions in connection with the meetings of the Aviation Safety Investigation Board shall be carried out by employees designated by the Director-General for such purpose. 20

### **Public Finance Management Act binds Aviation Safety Investigation Board**

23. The activities of the Aviation Safety Investigation Board must be performed in compliance with the provisions of the Public Finance Management Act. 25

### **Expenditure in connection with execution of functions and objects of Aviation Safety Investigation Board**

24. The expenditure in connection with the execution of the functions of the Aviation Safety Investigation Board must be paid out of— 30

- (a) money appropriated by Parliament for such purpose;  
 (b) levies imposed by, or under, a separate legislation; or  
 (c) charges for any service rendered.

### **Conflict of interest**

25. (1) A member of the Aviation Safety Investigation Board must recuse himself or herself from discussions relating to a matter in which he or she or his or her spouse, immediate family member, life partner or business associate, has a financial interest or an interest which might preclude him or her from exercising or performing his or her power, duties or functions in an objective manner. 35  
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(2) A member of the Aviation Safety Investigation Board may not hold any direct or indirect financial interest in any civil aviation activity or the civil aviation industry without prior approval of the Minister.

(3) During the term of office of a member, in addition to the prohibitions described in this section, a member of the Aviation Safety Investigation Board must not carry on any activity inconsistent with the performance of the member's duties under this Act. 45

### **Agreements between Aviation Safety Investigation Board and Commissioner**

**26.** (1) The Aviation Safety Investigation Board and the Commissioner must enter into agreements with regard to—

- (a) the designation and reporting lines of an Executive responsible for Aircraft Accident and Incident investigation; 5
- (b) the provision of investigators to the Aviation Safety Investigation Board for purposes of investigation of any aircraft accidents or incidents; and
- (c) any other matter relating or incidental to the investigation of aircraft accidents and incidents by the Aviation Safety Investigation Board. 10

(2) When entering into such agreements the parties must avoid any conflict of interest.

(3) A copy of such agreement and any amendment thereto, must be filed with the Director-General within 30 days of conclusion. 15

### **Agreements between Aviation Safety Investigation Board and other departments or entities**

**27.** (1) The Aviation Safety Investigation Board must make all efforts to enter into agreements with departments or entities—

- (a) providing for the coordination of activities between the Aviation Safety Investigation Board and departments with respect to aircraft accidents and incidents, including investigation procedures and practices and requirements for reporting aircraft accidents and incidents; and 20
- (b) providing for procedures to be followed in the event that conflicting interests arise between the Aviation Safety Investigation Board and a department during their activities with regard to aircraft accidents and incidents. 25

(2) The Aviation Safety Investigation Board must ensure that a copy of such agreements and any amendment thereto is provided to the Director-General within 30 days of conclusion. 30

### **Independence and impartiality of Aviation Safety Investigation Board and Investigators**

**28.** (1) A member of the Aviation Safety Investigation Board, investigator and accredited representative, expert and adviser must serve impartially and independently and exercise, carry out and perform his or her powers, duties and functions in good faith and without fear, favour, bias or prejudice, subject only to this Act and the Convention. 35

(2) The Aviation Safety Investigation Board must function without any political or commercial interference. 40

(3) A member of the Aviation Safety Investigation Board, investigator, accredited representative, expert or adviser may not conduct an investigation in terms of this Act or render assistance with regard to a matter in which he or she has pecuniary or other interest which might preclude him or her from exercising his or her powers or from carrying out or performing duties and functions in a fair, unbiased and proper manner. 45

(4) If any member of the Aviation Safety Investigation Board, investigator accredited representative, expert or adviser of the Aviation Safety Investigation Board fails to disclose an interest contemplated in subsection (3), the Aviation Safety Investigation Board may take such steps as it considers necessary to ensure a fair, unbiased and proper investigation. 50

(5) A person designated by the Aviation Safety Investigation Board to investigate aircraft accidents and incidents in terms of this Act shall, for that purpose, report exclusively to the Aviation Safety Investigation Board through an Executive designated for that purpose. 55

*Part 3***FUNCTIONS AND POWERS OF AVIATION SAFETY  
INVESTIGATION BOARD****Functions of Aviation Safety Investigation Board**

- 29.** (1) The functions of the Aviation Safety Investigation Board are to— 5
- (a) take steps to achieve the objects contemplated in section 11 of this Act;
  - (b) oversee the investigation of aircraft accidents and incidents in compliance with Annex 13;
  - (c) advise any authority or Contracting State, State of Registry, State of the Operator, State of Design and State of Manufacture with regard to any safety recommendation or safety matter emanating from any investigation; 10
  - (d) oversee the performance of the functions, and of the activities, of the persons appointed or designated by it to perform the work of the Aviation Safety Investigation Board; 15
  - (e) submit a final report to all recipient States in compliance with Chapter 6 of Annex 13 concerning any aircraft accident or incident investigated by the Aviation Safety Investigation Board; and
  - (f) monitor the implementation of safety recommendations issued by a Contracting State. 20

**Powers of Aviation Safety Investigation Board**

- 30.** (1) The Aviation Safety Investigation Board may do all that is necessary or expedient to perform its functions effectively, which includes the power to—
- (a) obtain, by agreement, the services of any person, including any organ of State, for the performance of any specific act or function; 25
  - (b) investigate aircraft accidents and incidents;
  - (c) determine categories of aircraft accidents and incidents that shall be investigated by the Aviation Safety Investigation Board;
  - (d) delegate the investigation of any aircraft accident or incident to any other Contracting State, in accordance with Annex 13;
  - (e) collect and disseminate relevant information;
  - (f) reopen any investigation in compliance with Annex 13;
  - (g) establish an aircraft accident and incident reporting system in compliance with Annex 13 to facilitate the collection of information on actual or potential safety deficiencies; 35
  - (h) upon request, conduct investigations on behalf of other Contracting States;
  - (i) perform legal acts, including acts in association with, or on behalf of, any other person or organ of State; 40
  - (j) institute or defend any legal action; and
  - (k) do anything that is incidental to the exercise of any of its powers.
- (2) If the accident occurred within the Republic, the Aviation Safety Investigation Board has the power to—
- (a) summon and examine witnesses under oath or affirmation and to call for the production and inspection of books, logs, certificates, licences, medical records and other documents, and may grant inspection thereof; and 45
  - (b) summon any person to give evidence before it, or to produce any official document or such other information or object as may be necessary for the performance of the Aviation Safety Investigation Board's functions. 50
- (3) The Aviation Safety Investigation Board must determine the procedures in relation to the conduct of its meetings.
- (4) The Aviation Safety Investigation Board may determine procedures in relation to the reporting and investigation of aircraft accidents and incidents, including the participation of accredited representatives, advisers, experts and observers, in compliance with Annex 13. 55

(5) The Aviation Safety Investigation Board may authorise any of its members or investigators to act as the Aviation Safety Investigation Board's accredited representative where the Republic is not the State of Occurrence, and such accredited representative may be accompanied by advisers and experts as the Aviation Safety Investigation Board may consider necessary. 5

(6) The Aviation Safety Investigation Board may authorise any of its members to act on its behalf in any matter.

### Annual report

**31.** (1) The Aviation Safety Investigation Board must, as soon as practicable after 31 March of each year, but not later than 31 December of that year, submit to the Minister a report giving particulars regarding the activities of the Aviation Safety Investigation Board during the year which ended on the first mentioned date. 10

(2) The Minister must cause copies of the report submitted under subsection (1) to be tabled in Parliament within 30 days of receipt of that report, if Parliament is not in session, within 30 days of the ensuing session. 15

### Delegation of powers

**32.** (1) The Aviation Safety Investigation Board may delegate to any competent person, subject to any limitations specified in the instrument of delegation, any of the powers conferred or duties imposed on the Aviation Safety Investigation Board under this Act, other than the power— 20

- (a) of delegation under this subsection;
- (b) to make rules and determine procedures; and
- (c) to make recommendations.

(2) The Aviation Safety Investigation Board may revoke a delegation made under this section in writing at any time, subject to any rights that may have accrued to any person. 25

### Designation and powers of investigators

**33.** (1) The Aviation Safety Investigation Board may designate an investigator in charge and any number of investigators to investigate any aircraft accident or aircraft incident in the Republic. 30

(2) An investigator designated in terms of subsection (1) has authority to—

- (a) have unrestricted access to, and control over, an aircraft which has been involved in an accident or incident, the wreck or wreckage, the place where the aircraft, the wreck or wreckage is located and the places where marks resulting from the aircraft accident or incident which may be of assistance in an investigation, are located; 35
- (b) preserve an aircraft which has been involved in an accident or incident or the wreck or wreckage, any remains and any marks resulting from the aircraft accident or incident which may be of assistance in the investigation, by any means available, including photographic means; 40
- (c) examine an aircraft involved in an accident or incident, the wreck or wreckage, any part or component thereof or any item transported therein or any marks resulting from the aircraft accident or incident which may be of assistance in the investigation, and to remove any such aircraft, wreck or wreckage, or any part or component thereof or any item transported therein for the purpose of the investigation or for an inquiry in terms of section 69 or 70; 45
- (d) compile reports in connection with the investigation; 50
- (e) have unrestricted access to all documents, including relevant medical records, books, notes, photographs, recordings and transcripts which the investigator-in-charge may consider necessary for the investigation and which must be produced without delay by the possessor thereof when so requested; 55
- (f) obtain information and take statements from any person, which statement may be necessary for the investigation;

- (g) have unrestricted access to, and control over, all relevant evidence, including flight recorders and air traffic service recordings;
- (h) summon and examine witnesses under oath and call for the production, and grant inspection, of books, logs, certificates, licences and other documents, including medical information and records, and summon any person to give evidence before it or to produce any official document or such other information or object as may be necessary for the performance of the Aviation Safety Investigation Board's functions; and
- (i) regulate, prohibit and control any access to the scene of any aircraft accident or incident.
- (3) An investigator who is investigating an aircraft accident or incident may—
- (a) where the investigator believes on reasonable grounds that a person is in possession of information relevant to that investigation—
- (i) by notice in writing signed by the investigator, require the person to produce the information to the investigator or to appear before the investigator and give a statement referred to in subsection (2)(f) under oath or solemn affirmation if required by the investigator; and
  - (ii) make such copies of, or take such extracts from, the information as the investigator considers necessary for the purposes of the investigation;
- (b) where the investigator believes on reasonable grounds that the medical examination of a person who is directly or indirectly involved in the operation of an aircraft, or may be relevant to the investigation, by notice in writing signed by the investigator, require the person to submit to a medical examination;
- (c) where the investigator believes on reasonable grounds that a physician or other health practitioner has information concerning a patient that is relevant to that investigation, by notice in writing signed by the investigator, require the physician or practitioner, if so authorised by the patient or such physician or practitioner, to provide that information to the investigator; or
- (d) where the investigator believes on reasonable grounds that the performance of an autopsy on the body of a deceased person, or the carrying out of other medical examinations of human remains, is or may be relevant to the conduct of the investigation, cause such an autopsy or medical examination to be performed and, for that purpose, by notice in writing signed by the investigator, require the person having custody of the body of the deceased person or other human remains, to permit the performance of that autopsy or that medical examination.
- (4) The requirement under subsection (3) that a person submit to a medical examination shall not be construed as a requirement that the person submit to any procedure involving surgery, perforation of the skin or any external tissue or the entry into the body of any drug or foreign substance.
- (5) Where an investigator has required a person to do something under subsection (3)(a), (b), (c) or (d) and the person has refused to do as required, the investigator may make an application to a court of competent jurisdiction, setting out the facts, and the court may inquire into the matter and, after giving the person an opportunity to comply with the requirement, take steps for the punishment of the person as if the person had been guilty of contempt of the court, or may make such other order as it finds appropriate.

### **Search and seizure by appointed investigators**

**34.** (1) In the execution of the authority contemplated in section 33, an investigator may search and seize any property or item, including medical records, recorders and air traffic service recordings of an aircraft accident or aircraft incident without a warrant.

(2) An investigator in respect of this Act is considered to have been appointed as a peace officer by the Minister responsible for justice in terms of section 334 of the Criminal Procedure Act for the Republic, and for the purpose of exercising the powers contemplated in sections 40, 41, 44, 45, 46, 47, 48, 49 and 56 of the Criminal Procedure Act.

(3) In the execution of the authority contemplated in section 33, an investigator may without a warrant, search and seize any property or item including medical records, recorders and air traffic service recordings of an aircraft accident or aircraft incident—

- (a) if the person concerned consents to the search for, and the seizure of, the property or item, including medical records, recorders and air traffic service recordings of an aircraft accident or aircraft incident in question, or if the person who may consent to the search of the premises consents to such search and the seizure of the property or item, including medical records, recorders and air traffic service recordings of an aircraft accident articles in question; or
- (b) if he or she on reasonable grounds believes—
  - (i) that a search warrant shall be issued to him or her if he or she applies for such warrant; and
  - (ii) that the delay in obtaining such warrant would defeat the object of the search without a warrant.

(4) An investigator may use the powers in terms of this section only to serve the purposes of this Act and matters incidental thereto, and must take the necessary steps to secure the safekeeping of the property or items seized.

(5) Before acting under this section, an investigator must, on request, produce the investigator's certificate of appointment issued by the Aviation Safety Investigation Board.

#### **Power to test items seized**

**35.** (1) Where any item is seized by an investigator under section 34, the investigator—

- (a) may, subject to paragraph (b), cause such tests, including tests to destroy, to be conducted on the item as are necessary for the purposes of the investigation in respect of which the item was seized;
- (b) must, to the extent that it is practical and safe to do so and does not unreasonably impede the progress of the investigation, take all reasonable measures to invite the owner of the item, and any person who appears on reasonable grounds to be entitled to it, to be present at any tests referred to in paragraph (a); and
- (c) subject to the need to conduct such tests, shall cause the item to be preserved pending its return in accordance with section 36.

(2) Nothing in this section must be taken—

- (a) to imply that an item seized pursuant to subsection (1) may not be an aircraft or any part thereof; or
- (b) to authorise the exercise of a power by an investigator in circumstances where the exercise of that power would be inconsistent with the objective of the investigation.

#### **Return of seized property**

**36.** (1) Any item seized pursuant to section 34, except on-board recordings as defined in section 47, must, unless—

- (a) the owner thereof or a person who appears on reasonable grounds to be entitled to it consents in writing; or
  - (b) a court of competent jurisdiction orders otherwise,
- be returned to that owner, person, or the person from whom it was seized, as soon as possible after it has served the purpose for which it was seized.

(2) A person from whom any item was seized pursuant to section 34, except on-board recordings as defined in section 47, or the owner or any other person who appears on reasonable grounds to be entitled thereto, may



apply to a court of competent jurisdiction for an order that the seized item be returned to the person making the application.

(3) Where, on an application under subsection (2), the court is satisfied that the seized item has served the purpose for which it was seized or should, in the interests of justice, be returned to the applicant, the court may grant the application and order the seized item to be returned to the applicant, subject to any terms or conditions that appear necessary or desirable to ensure that the item is safeguarded and preserved for any purpose for which it may subsequently be required by the Aviation Safety Investigation Board under this Act.

(4) This section does not apply in respect of any item seized and tested for destruction in accordance with section 35.

### **Public inquiry**

**37.** (1) Where, in the course of an investigation of an aircraft accident or incident, the Aviation Safety Investigation Board considers it necessary that a public inquiry be conducted into the aircraft accident or incident, the Chairperson may designate a person or persons, who may be, or may include, the Chairperson, to conduct a public inquiry into that aircraft accident or incident in accordance with any rules made under section 63 and to report to the Aviation Safety Investigation Board thereon.

(2) Any person designated to conduct a public inquiry under this section has, and may exercise, the powers of a person appointed as an investigator, subject to any restrictions specified in the designation.

### **Notification to department of aircraft accident or aircraft incident and investigation by department**

**38.** (1) Where a department is notified of an aircraft accident or incident in which such department has a direct interest and which the Aviation Safety Investigation Board has the power to investigate under this Act, that department must—

- (a) forthwith provide the Aviation Safety Investigation Board with particulars of the aircraft accident or aircraft incident; and
- (b) forthwith, after complying with paragraph (a), advise the Aviation Safety Investigation Board of any investigation that the department plans to conduct and of any remedial measures that the department plans to take.

(2) An investigator authorised by the Aviation Safety Investigation Board may attend as an observer at an investigation conducted by the department referred to in subsection (1) or during the taking of remedial measures by that department following an aircraft accident or incident.

(3) Subject to any other Act of Parliament, the Aviation Safety Investigation Board must, on request, be provided with, and may review and comment on any, interim or final report prepared in respect of an investigation conducted by the department referred to in subsection (1)(b).

### **Notification to Minister of department having direct interest in aircraft accident or aircraft incident by Aviation Safety Investigation Board**

**39.** Where the Aviation Safety Investigation Board is notified of an aircraft accident or incident it must—

- (a) forthwith provide particulars of the aircraft accident or incident to any Minister responsible for a department having a direct interest in the aircraft accident or incident; and
- (b) forthwith, after complying with paragraph (a), advise the Minister referred to in paragraph (a) of any investigation that it plans to conduct and the scope of the investigation.

### **Attendance and removal of observers at aircraft accident or aircraft incident investigations**

- 40.** (1) Subject to any conditions that the Aviation Safety Investigation Board may impose, a person may attend as an observer at an investigation of an aircraft accident or incident conducted by the Aviation Safety Investigation Board if the person—
- (a) is designated as an observer by the Minister responsible for a department having a direct interest in the subject matter of the investigation;
  - (b) has observer status or is an accredited representative or an adviser to an accredited representative, pursuant to an international agreement or convention relating to transportation to which the Republic is a party; or
  - (c) is invited by the Aviation Safety Investigation Board to attend as an observer because, in the opinion of the Aviation Safety Investigation Board, the person has a direct interest in the subject matter of the investigation and shall contribute to achieving the Aviation Safety Investigation Board's objects.
- (2) The Aviation Safety Investigation Board may remove an observer from an investigation if the observer contravenes any condition imposed by the Aviation Safety Investigation Board on the observer's presence or if, in the Aviation Safety Investigation Board's opinion, the observer has a conflict of interest that impedes the conduct of the investigation.

#### ***Part 4***

### **REPORTING ON COMPLETION OF AIRCRAFT ACCIDENT OR AIRCRAFT INCIDENT INVESTIGATION**

#### **Aircraft accident or incident investigation report**

- 41.** (1) On completion of any investigation, the Aviation Safety Investigation Board must prepare and make available to the Minister and the public, a report on its findings, including any safety deficiencies that it has identified and any recommendations that it considers appropriate in the interests of aviation safety.
- (2) Before making public a report under subsection (1), the Aviation Safety Investigation Board must—
- (a) send a copy of the draft report on its findings and any safety deficiencies that it has identified, to each department and any other person who, in the opinion of the Aviation Safety Investigation Board, has a direct interest in the findings of the Aviation Safety Investigation Board;
  - (b) give that department or interested person a reasonable opportunity to make representations to the Aviation Safety Investigation Board with regard to the draft report, before the final report is prepared;
  - (c) comply with the provisions of Annex 13; and
  - (d) take into account the protection of information provided for in this Act or any other Act of Parliament.
- (3) The period for submission of any representations must be within 60 days of receipt of the report.
- (4) No person may communicate or use the draft report or permit its communication or use for any purpose, other than the taking of remedial measures, not strictly necessary to the study of, and preparation of representations concerning, the draft report.
- (5) The Aviation Safety Investigation Board must provide an interim statement on the progress and findings of an investigation—
- (a) on written request made in respect of that investigation, to any Minister responsible for a department having a direct interest in the subject matter of the investigation; and
  - (b) to any coroner investigating the aircraft accident or incident, where the aircraft accident or incident involved a fatality and significant progress has been made in the Aviation Safety Investigation Board's investigation.

(6) A person, other than a Minister of a department, who is provided with an interim statement under subsection (5) must not use the statement or permit its use for any purpose not strictly necessary to the examination of the statement.

(7) The Aviation Safety Investigation Board must reconsider its findings and recommendations pursuant to an investigation that it has conducted under this Act where, in its opinion, new material facts appear.

### **Manner of dealing with representations**

**42.** (1) Representations made pursuant to section 41(2)(b) may be submitted in any manner the Aviation Safety Investigation Board considers appropriate.

(2) The Aviation Safety Investigation Board must—

- (a) keep a record of those representations;
- (b) consider those representations before preparing its final report; and
- (c) notify, in writing, each of the persons who made those representations, how the Aviation Safety Investigation Board has disposed of that person's representations.

(3) A representation is privileged, except if it is a representation made by a Minister responsible for a department having a direct interest in the findings of the Aviation Safety Investigation Board subject to this Act or to a written authorisation from the author of a representation, and no person may knowingly communicate any representation or permit it to be communicated to any other person.

(4) The Aviation Safety Investigation Board may use representations it considers necessary in the interests of aviation safety.

(5) If requested to do so by a judicial inquest, instituted in terms of the Inquests Act, that is conducting an inquest into any circumstances in respect of which representations were made to the Aviation Safety Investigation Board, it must make such representations available to such inquest.

(6) Except for use for the purpose of an investigation by a judicial inquest in terms of the Inquests Act, no person may use any representations made to the Aviation Safety Investigation Board under this section in any criminal, civil, disciplinary or other proceedings.

### **Notification of findings and recommendations**

**43.** (1) At any time during its investigation of an aircraft accident or incident, the Aviation Safety Investigation Board must notify forthwith in writing, the Minister or any person who, in its opinion, has a direct interest in its findings and recommendations, whether interim or final, that in its opinion the matter requires urgent action

(2) On completion of its investigation of an aircraft accident or incident, the Aviation Safety Investigation Board must—

- (a) notify forthwith in writing, any Minister or person who, in its opinion, has a direct interest in its findings, as to the causes and contributing factors of the aircraft accident or incident, any safety deficiencies it has identified and any recommendations resulting from its findings; and
- (b) comply with the provisions of Annex 13 and furnish the Civil Aviation Authority with such findings as to the causes and contributing factors of the aircraft accident or incident, and safety deficiencies it has identified and any recommendations resulting from its findings.

### **Response by Minister**

**44.** (1) A Minister of a department who is notified of the findings and recommendations of the Aviation Safety Investigation Board under section 43(2)(a) must, within 90 days after being so notified—

- (a) advise the Aviation Safety Investigation Board in writing, of any action taken or proposed to be taken in response to those findings and recommendations; or

(b) provide written reasons to the Aviation Safety Investigation Board if no action shall be taken or if the action to be taken differs from the action that was recommended.

(2) Where the Aviation Safety Investigation Board is satisfied that a Minister is unable to respond to the Aviation Safety Investigation Board within the period referred to in subsection (1), the period may be extended as the Aviation Safety Investigation Board considers necessary.

### *Part 5*

## **APPEALS AGAINST FINDINGS OF AVIATION SAFETY INVESTIGATION BOARD AND REOPENING OF AIRCRAFT ACCIDENT OR AIRCRAFT INCIDENT INVESTIGATION**

### **Appeal against findings on aircraft accident or aircraft incident investigation**

**45.** (1) Any affected person who feels aggrieved by the findings on an investigation, may appeal against such findings to an appeal committee established in terms of section 122, within 60 days after the publication of such findings.

(2) An appeal must be lodged in writing, stating the reasons why the findings should be varied or set aside.

(3) A person lodging an appeal must submit a copy of the appeal and any documents or records supporting such appeal, to the Aviation Safety Investigation Board and must furnish proof of such submission to the appeal committee.

(4) The Aviation Safety Investigation Board must, within 60 days of receipt of the copy of the appeal referred to in subsection (3), deliver a written reply to such appeal to the appeal committee.

(5) The appeal committee must adjudicate the appeal in accordance with Appeal Committee Rules as approved by the Minister.

(6) The appeal committee may confirm, vary or set aside the findings referred to in subsection (1).

(7) The appeal committee may keep in abeyance an appeal lodged in terms of this section if the provisions of section 69 are invoked before the finalisation of the appeal.

### **Reopening of aircraft accident or incident investigation**

**46.** (1) The Minister may, upon request, decide to reopen an investigation of an aircraft accident or incident if—

(a) new and significant evidence, which was not considered by the Aviation Safety Investigation Board exist, and such evidence is likely to influence the findings of the Aviation Safety Investigation Board and the reopening of the investigation is in the interest of aviation safety; and

(b) the findings of the Aviation Safety Investigation Board have been set aside in terms of section 45(6).

(2) In making a decision in terms of subsection (1), the Minister may prescribe the conditions subject to which the reopened aircraft accident or incident shall be conducted provided that such conditions are not in conflict with the provisions of Annex 13.

### *Part 6*

## **PRIVILEGED AND PROTECTED INFORMATION**

### **Definition of ‘on-board recording’**

**47.** In this Part, ‘**on-board recording**’ means the whole or any part of—

(a) a recording of voice communications originating from, or received on or in, the flight deck of an aircraft; or

- (b) a video recording of the activities of the personnel of an aircraft, that is made using recording equipment that is intended not to be controlled by the personnel, on the flight deck of the aircraft, and includes a transcript or substantial summary of such a recording.

#### **Privilege for on-board recordings**

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48. Every on-board recording is privileged and, except as otherwise provided by this Chapter, no person, including any person to whom access is provided under this Chapter, may—

- (a) knowingly communicate an on-board recording or permit it to be communicated to any other person; or  
 (b) be required to produce an on-board recording or give evidence relating to it in any legal, disciplinary or other proceedings.

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#### **Access by investigator**

49. Despite section 48, any on-board recording that relates to an aircraft accident or incident being investigated under this Act, must be released to an investigator who requests it for the purposes of the investigation.

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#### **Use of on-board recording**

50. The Aviation Safety Investigation Board may make such use of an on-board recording obtained under this Act as it considers necessary in the interests of aviation safety but, subject to section 51, must not knowingly communicate or permit to be communicated to anyone any portion thereof that is unrelated to the causes or contributing factors of the aircraft accident or incident under investigation or unrelated to the identification of safety deficiencies.

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#### **Access to on-board recording by other investigators**

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51. The Aviation Safety Investigation Board must make available any on-board recording obtained under this Act to any person carrying out a coordinated investigation under section 13.

#### **Power of court or inquest**

52. Despite any provisions in this Chapter, where, in any proceedings before a court or a judicial inquest in terms of the Inquests Act or a person or persons appointed or designated to conduct a public inquiry into an aircraft accident or incident pursuant to this Act, a request for the production and discovery of an on-board recording is made, the court or a judicial inquest in terms of the Inquests Act, or a person or persons appointed or designated to conduct a public inquiry into an aircraft accident or incident pursuant to this Act, must—

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- (a) cause a notice of the request to be given to the Aviation Safety Investigation Board, if the Aviation Safety Investigation Board is not a party to the proceedings;  
 (b) in camera, examine the on-board recording and give the Aviation Safety Investigation Board a reasonable opportunity to make representations with regard thereto; and  
 (c) if the court or a judicial inquest in terms of the Inquests Act concludes in the circumstances of the case that the public interest in the proper administration of justice outweighs the privilege attached to the on-board recording by virtue of this section, order the production and discovery of the on-board recording, subject to such restrictions or conditions as the court or a judicial inquest in terms of the Inquests Act considers appropriate, and may require any person to give evidence that relates to the on-board recording.

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**Use of on-board recording prohibited**

**53.** An on-board recording may not be used against any of the following persons in disciplinary proceedings, proceedings relating to the capacity or competence of an officer or employee to perform the officer's or employee's functions:

- (a) Air crew members;
- (b) aerodrome vehicle operators;
- (c) flight service station specialists; and
- (d) persons who relay messages in respect of air traffic control, or related matters.

**Communication record**

**54.** (1) In this section, "communication record" means the whole or any part of any record, recording, copy, transcript or substantial summary of any type of communications in respect of air traffic control or related matters that take place between any of the following persons, namely air traffic controllers, aircraft crew members, aerodrome vehicle operators, flight service station specialists and persons who relay messages in respect of air traffic control or related matters.

(2) A communication record obtained under this Act must not be used against any person referred to in section 53 in any legal or disciplinary proceedings.

**Statement privileged**

**55.** (1) For the purposes of this Part and section 33(2)(f)—

(a) 'statement' means—

- (i) the whole or any part of an oral, written or recorded statement relating to an aircraft accident or incident and given by the author of the statement to the Aviation Safety Investigation Board, to an investigator or to any person acting for the Aviation Safety Investigation Board or for an investigator;
- (ii) a transcription or substantial summary of a statement referred to in subparagraph (i); or
- (iii) conduct that could reasonably be taken to be intended as such a statement; and

(b) where a statement is privileged, the identity of its author is privileged to the same extent.

(2) A statement is privileged, and no person, including any person to whom access is provided under this section, must knowingly communicate it or permit it to be communicated to any person except as provided by this Act or as authorised in writing by the person who made the statement.

**Access by judicial inquest and other investigators**

**56.** The Aviation Safety Investigation Board must make statements available to any person carrying out a coordinated investigation under section 13.

**Power of court or inquest with regard to statements**

**57.** Despite any item in this section, where, in any proceedings before a court or an inquest or a person or persons appointed or designated to conduct a public inquiry into an aircraft accident or incident pursuant to this Act, a request for the production and discovery of a statement is contested on the ground that it is privileged, the court or coroner must—

- (a) in camera, examine the statement; and
- (b) if the court or a judicial inquest concludes in the circumstances of the case that the public interest in the proper administration of justice outweighs the privilege attached to the statement by virtue of this section, order the production and discovery of the statement, subject to

such restrictions or conditions as the court or coroner considers appropriate, and may require any person to give evidence that relates to the statement.

#### **Use of statement prohibited**

58. A statement referred to in section 55 must not be used against the person who made it in any legal, disciplinary or other proceedings except in a prosecution for perjury or for giving contradictory evidence. 5

#### **Certain information privileged**

59. (1) Where the identity of a person who has made a report to the Aviation Safety Investigation Board pursuant to rules made under section 63 is protected, information that could reasonably be expected to reveal that identity is privileged, and no person may— 10

- (a) knowingly communicate it or permit it to be communicated to any person; or
- (b) be required to produce it or give evidence relating to it in disciplinary or other proceedings. 15

(2) Information obtained pursuant to medical examination done in accordance with section 33(3)(b) is privileged and may only be used in the process of investigation of aircraft accidents or aircraft incidents in the interests of aviation safety. 20

- (3) No person may—
- (a) knowingly communicate any medical information referred to in subsection (2);
- (b) permit the said medical information to be communicated to any person; 25
- (c) be required to produce the medical information; or
- (d) give evidence relating to the medical information in any legal, disciplinary or other proceedings.

#### **Use of report made to Aviation Safety Investigation Board under reporting system established by rules prohibited** 30

60. (1) A report made to the Aviation Safety Investigation Board under a voluntary reporting system established by rules made under section 63, must not be used against the person who made the report in any legal, disciplinary or other proceedings, if the person's identity is protected by the rules referred to in section 63. 35

(2) The Aviation Safety Investigation Board may, subject to this Act, make such use of any report made to it pursuant to rules made under section 63 as it considers necessary in respect of the interests of aviation safety.

#### **Appearance of investigator** 40

61. Except for proceedings before a judicial inquest, an investigator is not competent or compellable to appear as a witness in any proceedings, unless the court or other person or body before whom the proceedings are conducted, so orders, for a special cause.

#### **Opinions inadmissible** 45

62. An opinion of a member of the Aviation Safety Investigation Board, an investigator or accredited representative is not admissible as evidence in any legal, disciplinary or other proceedings.

**Part 7****RULES****Rules**

**63.** (1) The Aviation Safety Investigation Board may make rules for the establishment and administration of systems for the mandatory or voluntary reporting to the Aviation Safety Investigation Board of aircraft accidents or aircraft incidents. 5

- (2) The Aviation Safety Investigation Board may make rules—
- (a) prescribing the manner in how to exercise or carry out any of its powers, duties and functions under this Act and, generally, for its efficient operation; 10
  - (b) regulating the keeping and preservation of records, documents and other evidence relating to aircraft accidents and aircraft incidents; 15
  - (c) regulating the attendance of interested persons at tests to destruction conducted under section 35; 15
  - (d) defining, for the purposes of an investigation, the site or sites of an aircraft accident or incident and for the protection of those sites; 20
  - (e) defining the rights or privileges of persons attending investigations as accredited representatives, advisers, experts, and observers or with observer status; 20
  - (f) regarding the tariff of fees and expenses to be paid to any witness attending an investigation or a public inquiry conducted under section 37 and the conditions under which a fee or expenses may be paid to any such witness; 25
  - (g) regarding the procedures and rules to be followed in conducting public inquiries under section 37; and 25
  - (h) generally for carrying out the purposes and provisions of this Act. 25

(3) Rules made under subsection (1) may include rules for the protection of the identity of persons who report aircraft accidents or aircraft incidents.

**Procedure for making rules** 30

**64.** (1) A copy of each rule that the Aviation Safety Investigation Board proposes to make under section 63 must be published in the *Gazette*, calling on interested persons to make representations to the Aviation Safety Investigation Board. 35

(2) The Aviation Safety Investigation Board must consider all representations made before issuing the rules. 35

(3) The rules shall come into operation on a date determined by the Aviation Safety Investigation Board by notice in the *Government Gazette*.

**Part 8****OFFENCES** 40**Offences**

**65.** (1) Any person who—

- (a) without lawful excuse, wilfully resists or otherwise obstructs a member of the Aviation Safety Investigation Board or an investigator in the execution of powers or duties under this Act; 45
- (b) knowingly gives false or misleading information at any investigation or public inquiry under this Chapter; or
- (c) makes a report pursuant to section 60 that the person knows to be false or misleading, 50

is guilty of an offence and liable, on conviction, to a fine or term of imprisonment not exceeding two years.

(2) A person who refuses or fails to produce information to an investigator, or to appear before an investigator and give a statement, in accordance with section 33(3)(a), or to provide information in accordance



with section 33(3)(c) or to make the body of a deceased person or other human remains available for the performance of an autopsy or medical examination in accordance with a requirement imposed under section 33(3)(d), is guilty of an offence.

- (3) A person commits an offence if that person—
- (a) refuses or fails to submit to a medical examination in accordance with section 33(3)(b); or
  - (b) knowingly communicates medical information obtained in accordance with section 33(3)(b) or permit such medical information to be communicated to any other person without authorisation.
- (4) Any person who contravenes subsection (2) or (3) is guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding two years.

### **Evidence**

- 66.** (1) Subject to section 65(1)—
- (a) a report purporting to have been signed by an investigator stating that the investigator has exercised any power pursuant to section 33 and stating the results of the exercise of the power; or
  - (b) a document purporting to have been certified by an investigator as a true copy of, or an extract from, a document produced to the investigator pursuant to section 33,
- is admissible in evidence in any prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the report or certified the document and is, in the absence of evidence to the contrary, proof of the statements contained in the report or proof of the contents of the document.
- (2) No report or document must be received in evidence under this section unless the party intending to produce it has, at least seven days before producing it, served a notice of that intention on the party against whom it is intended to be produced, together with a copy of the report or document.
- (3) The party against whom a report or document is produced under this section may require the attendance, for the purposes of cross-examination, of the person who appears to have signed the report or certified the document as a true copy or extract.

### **Part 9**

#### **TRANSITIONAL ARRANGEMENTS AND LIABILITY OF MEMBERS, STAFF AND ACCREDITED REPRESENTATIVES, EXPERTS AND ADVISERS OF AVIATION SAFETY INVESTIGATION BOARD**

### **Investigations**

**67.** Any matter that is in the course of being investigated, or that has been investigated by the Civil Aviation Authority, but on which a report has not been made by the Civil Aviation Authority when this Act comes into force shall, on the coming into force of this Act, be taken up and continued by the Aviation Safety Investigation Board, as if it were, or had been, an investigation under this Act.

### **Liability of members, accredited representatives, experts and advisers of Aviation Safety Investigation Board**

**68.** (1) A member of the Aviation Safety Investigation Board, accredited representatives, experts and advisers are not personally liable by virtue of any report or finding made or expressed in good faith or made known in terms of this Act.

(2) The internal proceedings and the investigation of aircraft accidents and incidents of the Aviation Safety Investigation Board are not open to the public.”.

#### **Amendment of section 69 of Act 13 of 2009**

9. Section 69 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: 5

“(2) Nothing contained in subsection (1) must be construed as affecting the powers [of] and duties conferred or [impose] imposed upon judicial officers by the Inquests Act.”.

#### **Amendment of section 71 of Act 13 of 2009** 10

10. Section 71 of the principal Act is hereby substituted for the following section:

##### **“Establishment of Civil Aviation Authority**

71. A juristic person [to be] known as the South African Civil Aviation Authority, established by section 2 of the South African Civil Aviation Authority Act, 1998 (Act No. 40 of 1998) [comprising of the Civil Aviation Authority Board, the Director and staff of the Civil Aviation Authority, is hereby established] shall be deemed to have been established by this Act.”. 15

#### **Amendment of section 72 of Act 13 of 2009**

11. Section 72 of the principal Act is hereby amended— 20

(a) by the substitution for paragraphs (a) and (b) of the following paragraphs, respectively:

“(a) control and regulate civil aviation safety [and], security and environmental protection;

(b) oversee the implementation [and compliance with] of the National Aviation Security Program;”;

(b) by the deletion of the word “and” at the end of paragraph (e);

(d) by the substitution for paragraph (f) of the following paragraph:

“(f) monitor and ensure compliance with this Act [and the Convention.]; and”;

(e) by the addition of the following paragraph: 30

“(g) exercise any power or perform any duty conferred or imposed on it under any law.”.

#### **Amendment of section 73 of Act 13 of 2009**

12. Section 73 of the principal Act is hereby amended— 35

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The Civil Aviation Authority has the function of conducting the safety [and], security and environmental protection oversight of civil aviation in the Republic by—”;

(b) by the substitution in subsection (1) for paragraphs (a), (b), (c) and (d) of the following paragraphs: 40

“(a) developing and promoting appropriate, clear and concise regulatory requirements, and technical aviation safety, [and] security and environmental protection standards; 45

(b) developing effective enforcement strategies to ensure compliance with aviation safety [and], security and environmental protection standards;

(c) issuing approvals, certificates, licences, registrations and permits;

(d) conducting comprehensive aviation industry surveillance, including assessment of safety [and], security and environmental protection related decisions taken by industry management at all 50

- levels for their impact on aviation safety **[and]**, security and environmental protection;”;
- (c) by the substitution in subsection (1)(f) for the words preceding paragraphs (f) of the following words:  
 “conducting regular reviews of the system of civil aviation safety, **[and]** security and environmental protection in order to—”;
- (d) by the substitution in subsection (1)(f) for subparagraphs (i) and (ii) of the following paragraphs:  
 “(i) monitor the safety, security and environmental protection performance of the aviation industry;  
 (ii) identify safety, security and environmental protection related trends and risk factors; and”;
- (e) by the substitution in subsection (1) for paragraphs (g) and (h) of the following paragraphs:  
 “(g) **[conducting regular and timely assessment of international safety and security developments;]** conducting flight inspection services;  
 (h) formulating **[and approving]** supporting regulations and approving technical standards through a consultative process with the aviation industry **[in terms of section 156 of this Act]** as prescribed;”;
- (f) by the substitution in subsection (1) for paragraphs (j), (k), (l), (m), and (n) of the following paragraphs:  
 “(j) **[the review and ensurance of]** ensuring the adequacy of security programs and associated documentation produced by **[airports, air service operators and cargo operations,]** aviation participants and monitoring their implementation to ensure continuing effectiveness **[and incorporation of amendments as required]**;  
 (k) the enhancement of aviation security by the development and dissemination of progressive administrative and technical practices, promoting their use by **[security services, airport administrations and air service operators]** aviation participants;  
 (l) ensuring the **[formulating]** formulation of **[a national]** aviation [disaster plan] emergency plans;  
 (m) encouraging a greater acceptance by the aviation industry of its obligation to maintain high standards of aviation safety **[and]**, security and environmental protection, through—  
 (i) comprehensive safety **[and]**, security and environmental protection education and training programs;  
 (ii) accurate and timely aviation safety **[and]**, security, environmental protection advice; and  
 (iii) fostering an awareness in industry management, and within the community generally, of the importance of aviation safety **[and]**, security, environmental protection and compliance with relevant legislation; and  
 (n) promoting communication with all interested parties on aviation safety **[and]**, security and environmental protection issues.”;
- (g) by the substitution in subsection (2) for paragraph (d) of the following paragraph:  
 “(d) to recommend to the Minister the introduction or amendment of civil aviation safety **[and]**, security and environmental protection legislation;”;
- (h) by the substitution in subsection (2) for paragraph (j) of the following paragraph:  
 “(j) to promote the development of South Africa’s civil aviation safety **[and]**, security and environmental protection capabilities, skills and services for the benefit of the South African community;”;
- (i) by the substitution for subsection (4) of the following subsection:  
 “(4) The functions of the Civil Aviation Authority as contemplated in **[subsection]** subsections (1) and (2) must be performed by the **[Director]** Commissioner and staff **[appointed by the Director]**.”.

**Amendment of section 74 of Act 13 2009**

13. Section 74 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
    - “(b) levies or charges on aircraft passengers and participants in civil aviation as prescribed **[by national legislation]**.”; 5
  - (b) by the substitution in subsection (1) for paragraph (f) of the following paragraph:
    - “(f) any other money received in terms of the South African Civil Aviation Authority Levies Act, 1998 (Act No. 41 of 1998), or any other **[civil aviation]** legislation, including the income derived from the fees and fines contemplated in this Act.”; and 10
  - (c) by the substitution for subsection (3) of the following subsection:
    - “(3) The Civil Aviation Authority shall endeavour to consult with the relevant stakeholders as part of the process to determine the charges, fees and levies contemplated in subsection (1)..”; and 15
  - (d) by the addition of the following subsection:
    - “(4) The charges, fees and levies contemplated in subsection (1) or any amendment thereto must be published in the *Gazette* at least four months prior to their coming into operation..”. 20

**Amendment of section 76 of Act 13 2009**

14. Section 76 of the principal Act is hereby amended—
- (a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
    - “(a) to determine, oversee and **[revise]** review the corporate governance structures within the Civil Aviation Authority.”; 25
  - (b) by the substitution in subsection (2) for paragraph (d) of the following paragraph:
    - “(d) to determine the policy for conditions of employment and remuneration, allowances, subsidies and other service benefits of employees of the Civil Aviation Authority, **other than the Director**”; and 30
  - (c) by the substitution for subsection (4) of the following subsection:
    - “(4) In the execution of the responsibilities as contemplated in **[subsection] subsections** (2) and (3), the Civil Aviation Authority Board may not compromise or obstruct the execution of the safety **[and]** security and environmental protection oversight functions of the **[Director] Commissioner** as contemplated in this Act.”. 35

**Amendment of section 77 of Act 13 of 2009**

15. Section 77 of the principal Act is hereby amended— 40
- (a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively:
    - “(a) one must be the non-executive chairperson who is appointed for a term **[of] not exceeding** three years and shall on the expiration of such term be eligible for reappointment for one further term only; 45
    - (b) one must be, an employee of the Department, and if the Minister specifies an office in the department for the purpose of this subsection, the person for the time-being holding that office.”; and
  - (b) by the substitution in subsection (1) for paragraph (f) of the following paragraph: 50
    - “(f) one must be a person with civil aviation **[acknowledged]** technical competencies **[involved in organised labour from the aviation industry]**.”.

**Amendment of section 82 of Act 13 of 2009**

16. Section 82 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: 55

“(2) An appointed member who holds any post or office in or under any government entity, administration or department, or in or under any institution or body that is wholly or partially funded by the State, is not, in respect of the duties performed by him or her as a member, entitled to any payment.”.

#### Repeal of section 83 of Act 13 of 2009

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17. Section 83 of the principal Act is hereby repealed.

#### Substitution of section 85 of Act 13 of 2009

18. The following section is hereby substituted for section 85 of the principal Act:

##### “Appointment and removal of Commissioner

85. (1) The Minister must appoint a Commissioner from a list of no more than three names recommended by the Civil Aviation Authority Board, in accordance with a prescribed procedure. 10

(2) When appointing the Commissioner in terms of subsection (1), the Minister must take into account such person’s management and aviation technical knowledge and experience. 15

(3) The Commissioner holds his or her office for a period not exceeding five years.

(4) The Commissioner is appointed on such conditions as may be determined by the Minister.

(5) The Commissioner may be reappointed at the expiry of his or her term of office for a further period not exceeding five years. 20

(6) The Commissioner holds office on a full-time basis.

(7) The Commissioner must be a South African citizen who is a fit and proper person to hold such office and must obtain a top secret security clearance. 25

(8) The Commissioner may not engage in any other paid employment and may not participate in any activity in respect of which he or she is in any way remunerated or receives any benefits or allowances without prior written approval of the Civil Aviation Authority Board and the Minister.

(9) The Minister may, at any time, discharge the Commissioner from office— 30

(a) if the Commissioner repeatedly fails to perform the duties of office efficiently;

(b) if he or she materially fails to comply with the conditions of the performance agreement entered into as contemplated in section 94; 35

(c) if he or she, due to any physical illness or any other cause becomes incapable of performing the functions of office of the Commissioner or performs them inefficiently; or

(d) for misconduct.

(10) The Commissioner must vacate office immediately if he or she— 40

(a) is convicted—

(i) whether in the Republic or elsewhere of murder, robbery, theft, fraud, forgery or uttering a forged document, perjury or any offence involving dishonesty; or

(ii) of any offence in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), the Companies Act, 2008 (Act No. 71 of 2008), Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), the Public Finance Management Act or of contravening this Act; 45

(b) is convicted of an offence during his or her term of office and sentenced to a period of imprisonment without the option of a fine; or 50

(c) becomes a political office bearer.

(11) The Civil Aviation Authority Board may suspend the Commissioner, pending the outcome of an investigation.”.

**Substitution of section 86 of Act 13 of 2009**

19. The following section is hereby substituted for section 86 of the principal Act:

**“Duties of [Director] Commissioner**

86. (1) The [Director] Commissioner is the head of the Civil Aviation Authority’s administration and manages the Civil Aviation Authority. 5

(2) The [Director] Commissioner has the powers and must perform the duties conferred or imposed upon him or her by this Act and such powers and duties that may be assigned to him or her by the Minister.

(3) In the exercise of the powers and performance of duties referred to in this Act, the [Director] Commissioner is accountable— 10

(a) to the Minister in respect of issues relating to civil aviation safety, security and environmental protection oversight; and

(b) to the Civil Aviation Authority Board in respect of the implementation of governance policies [as] that are directed by the Civil Aviation Authority Board. 15

(4) The Commissioner must submit a quarterly report to the Minister on the execution of his or her functions.”.

**Substitution of section 90 of Act 13 of 2009**

20. The following section is hereby substituted for section 90 of the principal Act:

**“Appointment of acting Commissioner** 20

90. (1) When the Commissioner is absent from the Republic or is otherwise unable to fulfil the duties of the Commissioner, the Commissioner must, having regard to section 85(2), appoint a member of the staff of the Civil Aviation Authority to act as Commissioner.

(2) The period of appointment of an acting Commissioner in subsection (1) may not exceed 30 days. 25

(3) The Minister must appoint an acting Commissioner in the case of—

(a) a vacancy in the office of the Commissioner; or

(b) any period of absence exceeding 30 days.”.

**Amendment of section 94 of Act 13 of 2009** 30

21. Section 94 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

**“Performance agreement between Minister, Civil Aviation Authority Board and [Director] Commissioner”;**

(b) by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs, respectively: 35

“(a) the Minister’s requirements in respect of [the Civil Aviation Authority Board and] the Civil Aviation Authority’s scope of business, efficiency [and], financial performance[,] and [achievements] achievement of objectives; 40

(b) the principles to be followed by [the Civil Aviation Authority Board and] the Civil Aviation Authority for the purposes of business planning;”;

(c) by the substitution for subsection (3) of the following subsection: 45

“(3) The Minister, the Civil Aviation Authority Board and the [Director] Commissioner may in writing, amend the performance agreement [from time to time] when necessary; and

(d) by the deletion of subsections (4), (5) and (6).

**Amendment of section 95 of Act 13 of 2009**

22. Section 95 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 50

“(1) The Public Finance Management Act applies to the Civil Aviation Authority [Board].”.

**Substitution of section 98 of Act 13 of 2009**

23. The following section is hereby substituted for section 98 of the principal Act:

**“Conflict of interest**

98. (1) No employee of the Civil Aviation Authority may engage in any paid employment or participate in any aviation activity without prior written approval of the Commissioner. 5

(2) The Commissioner shall develop a framework to deal with procedures, terms and conditions of the approval referred to in subsection (1).

(3) The approval referred to in subsection (1) is valid for a period of not more than 12 months and may be renewed on such terms and conditions as the Commissioner may determine. 10

(4) Any person appointed to perform any function in terms of this Act or the regulations must, in writing, prior to such appointment, or as and when such conflict may occur, and thereafter annually, disclose details of all employment, positions, offices, allegiances, interests or any activities, which are likely to compromise his or her independence in carrying out his or her duties and functions in terms of this Act. 15

(5) A person may not be assigned and a person may not accept an assignment in terms of this Act where there exists reason to believe that such function could constitute a conflict of interest, unless such assignment has been approved and carried out in accordance with such conditions as may be specified by the person authorised to give such assignment, pursuant to full disclosure of the circumstances of the possible conflict of interest. 20 25

(6) Any person who fails to comply with the provisions of subsections (1), (4) and (5) shall be subjected to disciplinary steps and may be relieved of his or her appointment to perform any function in terms of this Act.

(7) If at any time the activities of a person as disclosed in accordance with subsection (4) are found, on reasonable grounds, to be compromising his or her independence in carrying out his or her duties and functions in terms of this Act, such person shall be required to cease such activities or have his or her appointment in terms of this Act terminated. 30

(8) Any approval in terms of this section is open to inspection by the public at the head office of the Civil Aviation Authority during business hours.”. 35

**Substitution of section 99 of Act 13 of 2009**

24. The following section is hereby substituted for section 99 of the principal Act:

**“Limitation of liability**

99. No person, including the State, [employee of the Civil Aviation Authority] is liable in respect of anything done or omitted in good faith in the exercise of a power or the performance of a duty in terms of or by virtue of this Act, or in respect of anything that may result therefrom.”. 40

**Amendment of section 103 of Act 13 of 2009**

25. Section 103 of the principal Act is hereby amended by the deletion of paragraphs (m), (n) and (o). 45

**Amendment of section 104 of Act 13 of 2009**

26. Section 104 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively: 50

“(a) the Director-General of the Department, or any person designated by him or her, who shall also be the chairperson of the Committee,

- and in whose absence a member of the National Aviation Security Committee, appointed by the National Aviation Security Committee, is to act as chairperson;
- (b) an official responsible for national air transport facilitation designated by the **[Minister] Director-General of the Department**”; 5
- (b) by the substitution in subsection (1) for paragraphs (g) and (h) of the following paragraphs, respectively:
- “(g) a person designated by the **[Director] Commissioner** after consultation with the **[Minister] Department**;
- (h) an official designated by the Director-General **[:National Intelligence] from an organisation responsible for State Security**”; 10
- (c) by the substitution in subsection (1) for paragraphs (n) of the following paragraph:
- “(n) an official designated by the Director-General **[: Foreign Affairs] of the Department responsible for international relations**”; 15
- (d) by the deletion in subsection (1) of paragraph (j);
- (e) by the substitution for subsection (4) of the following subsection:
- “(4) In the process of the establishment and development of the policies as contemplated in section 103, the National Aviation Security Committee must, where any matter which may affect any stakeholder, 20 consult with the relevant stakeholder or stakeholders in the aviation industry.”; and
- (f) by the addition of the following subsection:
- “(5) A person designated by the Director-General in terms of subsection (1)(a) must be an employee of the Department and must possess the necessary expertise to chair the National Aviation Security Committee.” 25

#### **Substitution of section 108 of Act 13 of 2009**

27. The following section is hereby substituted for section 108 of the principal Act:

#### **“Designation of [staff] secretariat of National Aviation Security Committee [by Director]** 30

**108.** The **[Director] Commissioner** shall designate personnel in the Civil Aviation Authority to assist the National Aviation Security Committee in its work.”.

#### **Amendment of section 110 of Act 13 of 2009** 35

28. Section 110 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:
- “**Appointment of person for execution of aerodrome security programme**”; and
- (b) by the substitution for subsection (1) of the following subsection: 40
- “(1) The **[Minister] Commissioner** must, in consultation with the **[Civil Aviation Authority and with the concurrence of the]** person in charge of a designated **[airport] aerodrome**, approve the appointment of the person responsible for the execution of the security program of such designated **[airport] aerodrome**.”. 45

#### **Amendment of section 111 of Act 13 of 2009**

29. Section 111 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:
- “**Aviation participants required to have [national] aviation security program**”; 50
- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “The following aviation participants are required to [have a national] develop and implement an aviation security program [—]”; and



(c) by the substitution for subsection (2) of the following subsection:

“(2) Any aviation participant who fails to comply with subsection (1) or fails to comply with the **[national]** aviation security program instituted in terms of subsection (1) is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding **[ten]** 10 years or to both such fine **[or]** and imprisonment.”. 5

#### **Amendment of section 112 of Act 13 of 2009**

30. Section 112 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) contravenes or fails to comply with any provision of **[a safety plan]** the National Aviation Security Program approved by the Minister and whereof the contents have been brought to his or her notice, is guilty of an offence and shall be liable on conviction to a fine **[not exceeding R50 000.00]** or imprisonment for a period not exceeding 10 years or both such fine and imprisonment.”. 15

#### **Amendment of heading of Chapter 7 of Act 13 of 2009**

31. The following heading is hereby substituted for the heading to Chapter 7 of the principal Act:

“**MONITORING AND ENFORCEMENT OF REGULATORY COMPLIANCE BY CIVIL AVIATION AUTHORITY [AND ISSUING OF COMPLIANCE NOTICES]**”. 20

#### **Amendment of section 113 of Act 13 of 2009**

32. Section 113 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“In order to monitor and enforce compliance with this Act and, subject to the conditions of his or her appointment, a person referred to in section 88(1) may at any **[reasonable]** time and without prior notice without a warrant—”. 25

#### **Repeal of section 114 of Act 13 of 2009**

33. Section 114 of the principal Act is hereby repealed.

#### **Amendment of section 116 of Act 13 of 2009**

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34. Section 116 of the principal Act is hereby amended—

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

“such officer or inspector may prohibit the aircraft from being flown or prohibit the holder of an aviation certificate, a permit **[,]** or an authorisation **[to exercise]**, from exercising the privileges of such aviation certificate, permit or authorisation.”; and 35

(b) by the deletion of subsection (3).

#### **Amendment of section 118 of Act 13 of 2009**

35. Section 118 of the principal Act is hereby amended— 40

(a) by the substitution for the heading of the following heading:

“**Appeal against decisions of authorised officers, authorised persons [and] or inspectors**”;

(b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 45

“Any aggrieved person or entity whose rights have been detrimentally affected as contemplated in section 117(2) may appeal against a decision of an inspector, authorised officer or authorised person to, inter alia—”;

(c) by the deletion in subsection (1) of paragraphs (a) and (b);

- (d) by the substitution in subsection (1) for paragraph (c) of the following paragraph:  
 “(c) suspend, **[cancel,]** or endorse **[or vary]** such person’s or entity’s registration, licence, certificate, approval or authorisation in terms of this Act;”;
- (e) by the deletion in subsection (1) of paragraph (d);
- (f) by the substitution for subsections (2), (3), (4) and (5) of the following subsections, respectively:  
 “(2) An appeal in terms of subsection (1) must be lodged with the **[Director] Commissioner** within 30 days after the furnishing of reasons for the decision.  
 (3) The **[Director] Commissioner** must within **[three]** 14 days of receiving such appeal in writing confirm, **[amend or withdraw the decision and make a new decision]** vary or set aside the decision of the authorised officer, authorised person or inspector.  
 (4) The **[Director] Commissioner** must within 14 days furnish written reasons to the appellant for any decision taken in terms of subsection (3).  
 (5) Any person aggrieved by a decision taken in terms of subsection (3) may appeal against such decision within **[five]** 30 days of receipt of the reasons referred to in subsection **[(3)] (4)** to an appeal committee contemplated under section 122.”;
- (g) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:  
 “In adjudicating the appeal contemplated in subsection (3) the **[Director] Commissioner** may afford the appellant—”;
- (h) by the substitution for subsections (7) and (8) of the following subsections, respectively:  
 “(7) The **[Director] Commissioner** may on good cause shown condone any non-compliance with the time period contemplated in subsection **[(1)] (2)**.  
 (8) (a) If the **[Director] Commissioner** sets aside any decision of an authorised officer, authorised person or inspector, the fees referred to in section 121 must be refunded to the appellant.  
 (b) If the **[Director] Commissioner** varies any such decision, he or she may direct that the whole or any part of such fees be refunded to the appellant.”; and
- (i) by the deletion of subsection (9).

#### **Amendment of section 119 of Act 13 of 2009**

- 36.** Section 119 of the principal Act is hereby amended—
- (a) by the deletion in subsection (1)(a) of the word “or” at the end of subparagraph (iii);
- (b) by the substitution in subsection (1)(a) for the comma at the end of subparagraph (iv) of the expression “; or”;
- (c) by the addition in subsection (1)(a) of the following subparagraph:  
 “(v) a decision by a designated medical officer to suspend or endorse his or her medical certificate;” and
- (d) by the substitution in subsection (1)(a) for the words following subparagraph (v) of the following words:  
 “may appeal against such decision or endorsement to the **[Director] Commissioner** in the prescribed manner and on the payment of the fees prescribed **[by the Minister]**.”;
- (e) by the substitution for subsections (4) and (5) of the following subsections, respectively:  
 “(4) After considering an appeal the **[Director] Commissioner** may, **in agreement with the medical practitioners,** confirm or set aside the decision in respect of which the appeal was lodged or give such other decision as the **[Director and the medical practitioners] Commissioner** may consider equitable.  
 (5) Any person affected by a decision referred to in subsection (4) may appeal **[to any provincial or local division of the High Court having**

- jurisdiction against a decision]** against the decision to the appeal committee.”; and  
 (f) by the deletion of subsections (7) and (10).

#### **Amendment of section 120 of Act 13 of 2009**

- 37.** Section 120 of the principal Act is hereby amended— 5
- (a) by the substitution for the heading of the following heading:  
 “**Appeal against decisions of [Director] Commissioner**”;
- (b) by the substitution for subsection (1) of the following subsection:  
 “(1) Any person or entity aggrieved by a decision referred to in subsection (2)(a) to (e), taken by the [Director] Commissioner [referred to in subsection (2)(a) to (e)] may file a written appeal with the appeal committee against such decision within 30 days after receipt of the reasons for the decision.”; 10
- (c) by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs, respectively: 15
- “(a) a decision [or decisions] taken in terms of [sections 98(5) and] section 118(3);  
 (b) a decision by the [Director] Commissioner to—
- (i) refuse such person’s or entity’s application for [exemption,] registration, licence, certificate, approval or authorisation[, or to designate one or more persons as inspectors, authorised officers, or persons in terms of this Act]; 20
- (ii) issue, subject to any condition or restriction, such person’s or entity’s [exemption,] registration, licence, certificate, approval or authorisation in terms of this Act; or 25
- (iii) suspend, cancel, endorse or vary such person’s [or entity’s exemption,] registration, licence, certificate, approval or authorisation in terms of this Act;”;
- (d) by the deletion in subsection (2) of paragraphs (c) and (f); and
- (e) by the substitution for subsection (3) of the following subsection: 30
- “(3) The [Director] Commissioner must within 14 days furnish written reasons to the appellant for any decision taken in terms of subsection (2) (a) to [(f)](e)”.

#### **Insertion of section 120A in Act 13 of 2009**

- 38.** The following section is hereby inserted in the principal Act after section 120: 35

##### **“Effect of appeal on decisions**

**120A.** In order not to jeopardise aviation safety and security, an appeal lodged as contemplated in sections 118, 119 or 120, does not suspend such decision.”.

#### **Substitution of section 121 of Act 13 of 2009** 40

- 39.** The following section is hereby substituted for section 121 of the principal Act:

##### **“Submission of appeal [to appeal committee]**

**121.** (1) Any person or entity who submits an appeal [provided for in this Chapter] to the appeal committee must submit such appeal in accordance with the requirements prescribed and payment of the fees prescribed. 45

(2) The appeal may be brought by the person or entity concerned or a duly authorised employee or legal representative of [such] the said person or entity.”

**Substitution of heading of Part 2 of Chapter 8 of Act 13 of 2009**

40. The following heading is hereby substituted for the heading of Part 2 of Chapter 8 of the principal Act:

“**APPEAL [COMMITTEES] COMMITTEE**”.

**Amendment of section 122 of Act 13 of 2009**

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41. Section 122 of the principal Act is hereby amended—

(a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) The Minister must establish an appeal committee composed of members appointed on a part-time basis to consider and decide appeals. 10

(2) An appeal committee consists of—

(a) a Chairperson, who shall be a person with no less than 10 years experience as an attorney or advocate; and

(b) not less than five other members.”;

(b) by the substitution for subsections (5) and (6) of the following subsections, respectively: 15

“(5) **[An appellant, a person employed by the appellant, the Director,]** The Commissioner, an employee of the Civil Aviation Authority, a member of the Civil Aviation Authority Board[, or a member of any committee of the Civil Aviation Authority Board **[or a 20**

**civil servant]** may not be appointed as a member of **[an] the** appeal committee.

(6) A person appointed under subsection (1) may **[be disqualified as a member of an appeal committee] not participate in the consideration of 25**

**an appeal** if he or she has any direct or indirect personal interest in the outcome of that appeal, or if he or she, his or her partner or immediate family has business or personal relationship with the appellant, or the appellant’s partner or the appellant’s immediate family member.”; and

(c) by the deletion of subsections (9), (11) and (12).

**Amendment of section 123 of Act 13 of 2009**

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42. Section 123 of the principal Act is hereby amended by the addition of the following subsection:

“(3) Any appointed member who holds any post or office in or under any government entity, administration or department, or in or under any institution or body that is wholly or partially funded by the State, is not, in respect of the duties performed by him or her as a member of the appeal committee, entitled to any payment.”. 35

**Amendment of section 124 of Act 13 of 2009**

43. Section 124 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 40

“(1) (a) An appeal shall be considered by at least three but not more than five members selected from the list of appointed members.

(b) The chairperson of the appeal committee shall preside over the meetings of the appeal committee and if the chairperson is unable to attend a meeting, he or she shall designate a member who has legal qualifications and experience as a chairperson of that meeting.”; 45

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

(3) The rules and procedures for the appeal committee [procedure at the appeal is] are determined by the **[chairperson of the appeal committee] Minister.**”; and 50

(c) by the addition in subsection (4) of the following paragraph:

“(d) call an employee of the Department to clarify policy and legislative provisions.”.

**Substitution of section 125 of Act 13 of 2009**

44. The following section is hereby substituted for section 125 of the principal Act:

**“Decisions of appeal [committees] committee**

125. (1) [An] The appeal committee may confirm, vary or set aside any decision against which an appeal has been lodged in terms of section 121. 5

(2) A decision of the majority of the members hearing an appeal is the decision of the appeal committee.

(3) The Chairperson of the appeal committee shall have, in the event of an equality of votes, a casting vote in addition to a deliberative vote.”.

**Amendment of section 126 of Act 13 of 2009**

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45. Section 126 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) A decision of [an] the appeal committee contemplated in section 125 must be [made] furnished to the Commissioner and the appellant in writing within 21 days of the hearing of the appeal [and a copy must be furnished to the Director and the appellant].”; and 15

(b) by the substitution for subsection (9) of the following subsection:

“(9) The appellant is entitled to [**be represented**] legal representation at an appeal before [an] the appeal committee [by an advocate or attorney].”. 20

**Substitution of section 128 of Act 13 of 2009**

46. The following section is hereby substituted for section 128 of the principal Act:

**“Administrative work of appeal [committees] committee**

128. The administrative work of the appeal [committees] committee must be performed by employees of the [Civil Aviation Authority] Department.”. 25

**Substitution of heading of Chapter 9 of Act 13 of 2009**

47. The following heading is hereby substituted for the heading of Chapter 9 of the principal Act:

“PROCEDURES FOR IDENTIFYING AND NOTIFYING OF DIFFERENCES, ISSUANCE OF EXEMPTIONS [BY DIRECTOR] AND INTERCEPTION ORDERS” 30

**Amendment of section 130 of Act 13 of 2009**

48. Section 130 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading: 35

“**Issuance of exemptions by [Director] Minister**”;

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

“(1) The [**Director**] Minister may on good cause shown exempt partially or entirely any person or body from compliance with this Act on the conditions as the [Director] Minister may direct [in any exemption certificate].”; 40

(c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“In exempting a person or body contemplated in subsection (1) the [**Director**] Minister must have regard to—” 45

(d) by the substitution in subsection (2) for the paragraphs (b) and (c) of the following paragraphs:

“(b) any serious and imminent risk to [**air**] aviation safety [or]; security or environment;

- (c) the existence of an **[equivalent level of safety]** alternative means of compliance”; and
- (e) by the substitution for subsections (3) and (4) of the following subsections, respectively:
- “(3) The **[Director]** Minister may not grant any exemption under subsection (1) for a period longer than 180 days, which period the **[Director]** Minister may on application in writing extend for a further period not exceeding 180 days. 5
- (4) The procedure for the application for the issuance of exemption **[certificates or any extension by the Director]** is as prescribed.”. 10

#### **Amendment of section 131 of Act 13 of 2009**

49. Section 131 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) Any aircraft, when in South African airspace, must comply with any marshalling signal, interception order or manoeuvres issued by **[any South African aircraft]** an appropriate authority of the Republic in compliance with Annex 2 of the Convention.”. 15

#### **Amendment of section 132 of Act 13 of 2009**

50. Section 132 of the principal Act is hereby amended by the substitution for subsection (3) for the following subsection: 20

- “(3) The transfer contemplated in subsection (1) shall not have effect in respect of other Contracting States before **[either]** the agreement between States in which it is embodied has been registered with **[the Council of]** the International Civil Aviation Organisation (ICAO) **[and made public pursuant to Article 83bis of the Convention or the existence and scope of the agreement have been directly communicated to the authorities of the other Contracting State or States concerned by a State party to the agreement]**.”. 25

#### **Amendment of section 133 of Act 13 of 2009**

51. Section 133 of the principal Act is hereby amended—

- (a) by the substitution for paragraphs (f), (g), (h) and (i) of the following paragraphs, respectively: 30
- “(f) places at or in any **[airport, heliport]** aerodrome or air navigation facility any device or substance which is calculated to endanger, injure or kill any person, or to endanger, damage, destroy, disrupt, render useless or unserviceable or put out of action any property, vehicle, aircraft, building, equipment or air navigation facility or part thereof, thereby endangering safety at such **[airport, heliport]** aerodrome or aviation navigation facility; 35
- (g) with the intention to jeopardise the operation of an air carrier, the safety or security of an **[airport, heliport]** aerodrome, aircraft in service, persons or property, contaminates any aviation fuel; 40
- (h) commits an act at an **[airport]** aerodrome, which causes or is likely to cause serious injury or death;
- (i) wilfully destroys or seriously damages the facilities of **[a designated or licensed airport]** an aerodrome or aircraft **[not in service]** located thereon or disrupts the services of the **[airport]** aerodrome through the use of any device, substance or weapon which endangers or is likely to endanger security at that **[airport]** aerodrome; or”;
- (b) by the substitution in paragraph (j) for subparagraph (ii) of the following paragraph: 50
- “(ii) the safety of an **[airport, heliport]** aerodrome, aircraft in service or of persons or property at such **[airport, heliport]** aerodrome or of such aircraft,”; and
- (c) by the addition of the following subsections, the existing section becoming subsection (1): 55
- “(2) A person commits an offence if that person—
-

- (a) uses an aircraft in service for the purposes of causing death, serious bodily injury or serious damage to property or the environment;
- (b) releases or discharges from an aircraft in service—
- (i) any weapon of mass destruction as defined in section 1 of the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993);
  - (ii) explosives as defined in the Explosives Act, 1956 (Act No. 26 of 1956); or
  - (iii) radioactive material as defined in section 1 of the Nuclear Energy Act, 1999 (Act No. 46 of 1999), or similar substances in a manner that causes or is likely to cause death, serious bodily injury or serious damage to property or the environment; or
- (c) uses against, or on board, an aircraft in service any weapon of mass destruction, explosive, radioactive material or similar substances in a manner that causes or is likely to cause death, serious bodily injury or serious damage to property or the environment.
- (3) Any person commits an offence if that person unlawfully and intentionally transports, causes to be transported or facilitates the transportation on board an aircraft, of—
- (a) any explosive, radioactive or nuclear material knowing that it is intended to be used to cause, or in a threat to cause death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organisation to do or to abstain from doing any act;
  - (b) any biological weapon or weapon of mass destruction, knowing it to be a biological weapon or a weapon of mass destruction;
  - (c) any source material, special fissionable material or equipment or material especially designed or prepared for processing, use or production special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under any safeguards pursuant to a safeguard agreement with the International Atomic Energy Agency; or
  - (d) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a weapon of mass destruction without lawful authorisation and with the knowledge that it shall be used for such purposes.
- (4) Any person who commits any of the offences in subsections (2) and (3) is, on conviction, liable to an imprisonment for a minimum period of 20 years without the option of a fine.”.

#### **Amendment of section 140 of Act 13 of 2009**

**52.** Section 140 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
- “(a) an authorised person, officer or inspector.”;
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
- “(2) An authorised person, authorised officer or inspector may refuse entry into any restricted area to any person, or of any baggage, personal effects, mail, cargo, vehicle or other goods, if in his or her opinion—”;
- and
- (c) by the substitution for subsection (3) of the following subsection:
- “(3) A person to whom, and a person who has a legal interest in any baggage, personal effects, mail, cargo, vehicle or goods in respect of which, entry into a restricted area has been refused in terms of subsection (2), may forthwith request any person in authority over the authorised person, authorised officer or inspector concerned, or the **[airport]** aerodrome manager, to review the refusal of the authorised person, authorised officer or inspector, and such person in authority or the **[airport]** aerodrome manager may confirm the refusal or grant the

permission required on such conditions as he or she may consider necessary.”.

### Amendment of section 142 of Act 13 of 2009

53. Section 142 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading: 5  
**“Prohibition of conveyance of conventional arms, drugs, explosives, radioactive or nuclear materials, biological weapons, weapons of mass destruction or animal products in aircraft and interference with aircraft in flight in order to exercise criminal jurisdiction”**;
- (b) by the substitution for subsection (2) of the following subsection: 10  
**“(2) Except with the written permission of the Minister or a person [in the service of the State] authorised by the Minister and subject to such conditions as the Minister or such a person may determine, no person shall convey any conventional arms, drugs, explosives, radioactive or nuclear material or animal product in an aircraft.”**; 15
- (c) by the insertion after subsection (2) of the following subsection: 15  
**“(2A) No person shall convey any biological weapon or weapons of mass destruction in an aircraft.”**;
- (d) by the substitution for subsection (3) of the following subsection: 20  
**“(3) An aircraft which upon reasonable grounds is believed to be engaged in conveying any conventional arms, drugs, explosives, radioactive or nuclear material, biological weapons, weapons of mass destruction or animal product contrary to subsection [(1) (2) or (2A)], is subject to the provisions of the regulations with regard to the identification and interception of aircraft: Provided that any identifica- 25  
tion and interception of an aircraft shall take place with due regard to the provisions of Annex 2 [of] to the Convention in respect of Marshalling Signals, Interception Manoeuvres and Orders of the Convention on Offences and certain other Acts committed on board Aircraft, 1963, entered into on 14 September 1963 in Tokyo.”**; 30
- (e) by the substitution in subsection (5) for paragraph (a) of the following paragraph: 30  
**“(a) search any aircraft which he or she reasonably believes is used or [have] has been used to convey any conventional arms, drugs explosives, radioactive or nuclear material, biological weapons, weapons of mass destruction or animal product contrary to subsection [(1) (2) or (2A)], and any cargo or goods on board such an aircraft;”**; 35
- (f) by the substitution in subsection (5) for subparagraph (i) and (ii) of paragraph (b) of the following subparagraphs, respectively: 40  
**“(i) any conventional arms, drugs, explosives, radioactive or nuclear material, biological weapons, weapons of mass destruction or animal product found during a search carried out in terms of paragraph (a);**  
**(ii) any aircraft on which such conventional arms, drugs, explosives, radioactive or nuclear material, biological weapons, weapons of mass destruction or animal product are found;”**; 45
- (g) by the substitution in subsection (7) for the words preceding subparagraph (i) of paragraph (a) of the following words: 50  
**“Any conventional arms, drugs, explosive, radioactive or nuclear material, biological weapons, weapons of mass destruction, animal product, aircraft or other thing seized under subsection (5)(b) must be forfeited to the State unless the court finds—”**; and
- (h) by the substitution in subsection (7) for subparagraph (i) of paragraph (a) of the following subparagraph: 55  
**“(i) in the case of such conventional arms, drugs, explosive, radioactive or nuclear material, or animal product, that they were not conveyed contrary to [subsection (5)(b)] any provision of the Act and were not intended to be used for any unlawful purpose; or”**. 60



**Amendment of section 143 of Act 13 of 2009**

54. Section 143 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) If the **[Minister]** Commissioner, after consultation with the **[Director]** Minister is of the opinion that any action by any person or any group of persons is of such a nature that the safety or security of any person, aircraft, **[airport, heliport]** aerodrome or aviation facility is being seriously and immediately threatened, he or she or any person designated by him or her for this purpose, may issue such orders as may be considered necessary to any person or group of persons to counter such action.

(2) An authorised person, authorised officer or inspector may take such steps as he or she considers necessary to ensure that an order referred to in subsection (1) is complied with.”.

**Amendment of section 144 of Act 13 of 2009**

55. Section 144 of the principal Act is hereby amended by the substitution for subsection (8) of the following subsection:

“(8) If a person fails to pay an administrative penalty imposed in terms of the Act within the specified period, the Commissioner, in addition to recovering such amount of the administrative penalty from such person by way of civil action in a competent court, may refuse to issue or renew a licence, a certificate, an approval, a registration or a rating for such a person: Provided that the administrative penalty is not subject to appeal in terms of this Act.”.

**Amendment of section 145 of Act 13 of 2009**

56. Section 145 of the principal Act is hereby amended—

(a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) An authorised person, authorised officer or inspector may, in the interests of aviation security, without a warrant, search any person, baggage, vehicles, personal effects, cargo or goods, before or after boarding, disembarking, loading or off-loading the aircraft, as the case may be.

(2) The Minister may direct the manager of any **[airport or heliport]** aerodrome, or air carrier in respect of any particular **[airport or heliport]** aerodrome, to ensure the search of all persons, baggage, vehicles, personal effects, cargo or goods before loading or after offloading.”;

(b) by the substitution for subsections (5) and (6) of the following subsections, respectively:

“(5) If an **[airport]** aerodrome manager believes on reasonable grounds that it is necessary for the security of the **[airport]** aerodrome that a person or vehicle, or the baggage or personal effects of a person or any vehicle, cargo or goods which are to enter a restricted area be searched, he or she may direct any authorised person, authorised officer or inspector to conduct such a search without a warrant.

(6) The Minister may direct the manager of any **[airport]** aerodrome, or the manager of any organisation conducting any business at any particular **[airport]** aerodrome, that any person or vehicle or the baggage or personal effects of any person entering any restricted area at the designated **[airport]** aerodrome, or that any vehicle or cargo which is, or any goods which are, to enter a restricted area at the designated **[airport]** aerodrome, be searched by an authorised person, authorised officer or inspector without a warrant.”;

(c) by the substitution for subsections (8), (9) (10) and (11) of the following subsections, respectively:

“(8) Any authorised person, authorised officer or inspector may, if on reasonable grounds **[believe]** believes that the search is necessary for the security of any **[airport]** aerodrome, aircraft passengers or any aviation facility, or to avoid interference with the operation of an air carrier,

**[airport]** aerodrome or an air navigation facility, search, without a warrant, any building, structure, equipment, vehicle, cargo, goods or aircraft.

(9) Any authorised person, authorised officer or inspector may, without a warrant search any aviation facility or its contents, or any person, vehicle or article found in it, if he or she has reasonable grounds to believe that the search is necessary in the interest of aviation security, or to avoid interference with the operation of such facility. 5

(10) An authorised person, authorised officer or inspector may, in writing, order a person who refuses to be searched, or to have his or her baggage, vehicle or personal effects searched, to immediately leave the **[airport or heliport]** aerodrome, as the case may be, and not to return for a specified period, which period may not exceed 24 hours. 10

(11) An authorised person, authorised officer or inspector may, in writing, order a person who refuses to have his or her cargo, goods, vehicle or article searched, to immediately remove such cargo, goods, vehicle or article from the **[airport or heliport, as the case may be]** aerodrome.”; and 15

(d) by the substitution for subsection (15) of the following subsection:

“(15) During any search under this section, only a female authorised person, authorised officer or inspector may search a female person, and only a male authorised person, authorised officer, or inspector may search a male person.”. 20

#### **Amendment of section 146 of Act 13 of 2009**

57. Section 146 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 25

“(1) An authorised person, authorised officer or inspector may seize any harmful article found during a search carried out under section 145 or retain such article for safe custody while the person in whose possession or custody or under whose control the article was found, remains on the aircraft or in the restricted area or at or in the aviation facility, as the case may be.”. 30

#### **Substitution of section 147 of Act 13 of 2009**

58. The following section is hereby substituted for section 147 of the principal Act:

##### **“Powers of arrest of authorised person, authorised officer or inspector**

147. (1) An authorised person, authorised officer or inspector may, under circumstances where there are no other means of ensuring the presence of a person in court, without a warrant, arrest any person who has committed or is reasonably suspected to have committed any offence referred to in this Act. 35

(2) The authorised person, authorised officer or inspector may, in order to effect the arrest, use such force as may in the circumstances be reasonably necessary to overcome resistance or to prevent the person concerned from fleeing, and may call on any person to assist him or her to effect the arrest.”. 40

#### **Amendment of section 148 of Act 13 of 2009**

59. Section 148 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 45

“(1) An authorised person, authorised officer or inspector or an employee with the written authorisation of the **[airport or heliport]** aerodrome manager or the person in control of the aviation facility, as the case may be, may, if he or she considers it necessary in the interests of security, call upon any person at, in or upon any **[airport, heliport]** aerodrome or air navigation facility to furnish him or her full names and address.”. 50

**Amendment of section 155 of Act 13 of 2009**

**60.** Section 155 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:  
 “(a) the carrying out of, or the giving effect to this Act[, **the Convention and Transit Agreement**];”;
- (b) by the substitution in subsection (1) for paragraph (h) of the following paragraph:  
 “(h) the designation of one or more bodies or institutions [**for the purpose of this Act**]—  
 (i) to promote aviation safety or to reduce the risk of aircraft accidents [**or aircraft**] and incidents; [**and**]  
 (ii) to advise the [**Director**] Commissioner on any matter connected with the promotion of aviation safety or the reduction of the risk of aircraft accidents [**or aircraft**] and incidents; and  
 (iii) to implement and manage a State safety programme in order to achieve an acceptable level of safety in civil aviation;”;
- (c) by the substitution in subsection (1) for the words preceding subparagraph (i) of paragraph (n) of the following words:  
 “the use, the registration, the licensing, the certification, the inspection or the management of aerodromes, including—”;
- (d) by the substitution in subsection (1) for the words preceding subparagraph (i) of paragraph (q) of the following words:  
 “the manner in which, or the conditions under which, any licence or certificate required by or under this Act[, **the Convention or Transit Agreement**] must be issued, renewed or confirmed, including—”;
- (e) by the substitution in subsection (1) for paragraph (s) of the following paragraph:  
 “(s) the manuals, the registers, the records or the other documents to be kept for the purpose of this Act[, **the Convention and the Transit Agreement**] and the manner in which they must be kept;”;
- (f) by the substitution in subsection (1) for paragraph (u) of the following paragraph:  
 “(u) the exemption from any of the provisions of this Act[, **the Convention and the Transit Agreement**] of any aircraft operated for experimental purposes, of any other aircraft or of any person in the circumstances or under the conditions specified in the regulations;”;
- (g) by the substitution in subsection (1) for paragraph (v) of the following paragraph:  
 “(v) national aviation [**disaster**] emergency plans and next-of-kin plans in the event of an aircraft accident;”;
- (h) by the substitution in subsection (1) for paragraphs (nn) and (oo) of the following paragraphs, respectively:  
 “(nn) the fees payable [**to the Civil Aviation Authority**] for the lodging of appeals in terms of Chapter 8; [**and**]  
 “(oo) generally, any matter which the Minister may consider necessary or expedient to prescribe in order that the objects of this Act [**or the Convention**] may be achieved and the generality of this paragraph must not be limited by the preceding and forthcoming paragraphs[.]; and;”;
- (i) by the addition in subsection (1) of the following paragraphs:  
 “(pp) the establishment of any advisory committee;  
 (qq) the establishment, implementation and management of State safety programmes in order to achieve acceptable levels of safety;  
 (rr) the establishment, implementation and management of the National Air Transport Facilitation Programme and the establishment of the National Air Transport Facilitation Committee;  
 (ss) the establishment of the Civil Aviation Regulations Committee, which serves as a consultative structure for making regulations and technical standards;

- (tt) the establishment of the Fees Committee, which shall serve as a consultative structure for determination of charges, fees, levies that may be charged by the Civil Aviation Authority;
  - (uu) the establishment of the National Air Space Committee;
  - (vv) the requirement for participants in the civil aviation industry to comply with other applicable legislation;
  - (ww) requiring any person who collects any money, fees, charges or levies on behalf of the Civil Aviation Authority to establish a trust account where such money, fees, charges or levies may be kept for onward transmittal to the Civil Aviation Authority;
  - (xx) making it a criminal offence for persons required to collect charges, fees or levies on behalf of the Civil Aviation Authority but fails to collect such charges, fees or levies, or fails to transmit such charges, fees or levies to the Civil Aviation Authority within the prescribed period; and
  - (yy) the establishment of a structure that brings together aviation roleplayers to pursue transformation of the aviation industry.”; and
- (j) by the substitution for subsection (5) of the following subsection:  
 “(5) A regulation relating to a financial matter, except the amendment of user fees, may only be made [**after**] in consultation with the Minister of Finance.”.

#### **Repeal of sections 156, 157, 158, 159, 160, 161 and 162 of Act 13 of 2009**

**61.** Sections 156, 157, 158, 159, 160, 161 and 162 of the principal Act are hereby repealed. 25

#### **Amendment of section 163 of Act 13 of 2009**

- 62.** Section 163 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:  
 “The [**Director**] Commissioner may issue technical standards for civil aviation on such matters as may be prescribed by regulation.”; 30
  - (b) by the substitution for subsection (2) of the following subsection:  
 “(2) The Commissioner must, before issuing any technical standard for civil aviation, consult with the civil aviation industry in the manner prescribed.”; and 35
  - (c) by the deletion of subsection (3).

#### **Substitution of certain words and expressions**

- 63.** The principal Act is hereby amended—
- (a) by the substitution for the expression “Director” of the expression “Commissioner” wherever it occurs in the Act; and 40
  - (b) by the substitution for the expression “appeal committees” of the expression “appeal committee” wherever it occurs in the Act.

#### **Amendment of laws**

**64.** The laws mentioned in Schedule 1 are hereby amended to the extent set out in the third column of that Schedule. 45

#### **Short title and commencement**

**65.** This Act is called the Civil Aviation Amendment Act, 2018, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

## SCHEDULE 1

## LAWS AMENDED

No. and year of Act	Short title	Extent of amendment
Act 115 of 1990	Air Services Licensing Act, 1990	<p><b>1.</b> Amendment of section 1—</p> <p>(a) by the substitution for the word ‘Civil Aviation Act, 2008’ of the word ‘Civil Aviation Act, 2009’ wherever it occurs;</p> <p>(b) by the deletion of the definition of ‘Director of Civil Aviation’; and</p> <p>(c) by the insertion after the definition of ‘authorised person’ of the following definition:</p> <p>“ ‘<b>Commissioner</b>’ means the <u>Commissioner as defined in section 1 of the Civil Aviation Act, 2009;</u>”;</p> <p><b>2.</b> The substitution for the word ‘Director’ of the words ‘Commissioner’ wherever it occurs in the Act.</p>
Act 59 of 1993	Convention on the International Recognition of Rights in Aircraft Act, 1993	<p><b>1.</b> Amendment of section 1—</p> <p>(a) by the deletion of the definition of “Director”; and</p> <p>(b) by the insertion before the definition of ‘Commissioner for Civil Aviation’ of the following definition:</p> <p>“ ‘<b>Commissioner</b>’ means the <u>Commissioner as defined in section 1 of the Civil Aviation Act, 2009;</u>”.</p> <p><b>2.</b> The substitution for the word “Director” of the word “Commissioner” wherever it occurs in the Act.</p>
Act 60 of 1993	International Air Services Act, 1993	<p><b>1.</b> Amendment of section 1—</p> <p>(a) by the deletion of the definition of ‘Director’; and</p> <p>(b) by the insertion after the definition of ‘chairperson of the council’ of the following definition:</p> <p>“ ‘<b>Commissioner</b>’ means the <u>Commissioner as defined in section 1 of the Civil Aviation Act, 2009;</u>”.</p> <p><b>2.</b> The substitution for the word “Director” of the word “Commissioner” wherever it occurs in the Act.</p>

No. and year of Act	Short title	Extent of amendment
Act 41 of 1998	South African Civil Aviation Authority Levies Act, 1998	<p>Amendment of section 1 by the substitution in the definition of “levy” for the words preceding paragraph (a) of the following words:</p> <p>“ ‘levy’ means an amount payable at intervals or at specified times by participants in civil aviation, as defined in section 1 of the Civil Aviation Act, [2008] 2009, on one or more or all of the following criteria, namely—”.</p>
Act 4 of 2007	Convention on International Interests in Mobile Equipment Act, 2007	<p><b>1.</b> The substitution for section 3 of the following section:</p> <p><b>“Designation of entity</b></p> <p><b>3.</b> In the [South African] <u>Civil Aviation Authority</u>, as defined in section 1 of the [South African Civil Aviation Authority Act, 1988 (Act No. 40 of 1988),] <u>Civil Aviation Authority Act, 2009</u>, is hereby designated in accordance with Article 18 (5) of the Convention as the entry point through which the information required for registration may be transmitted to the International Registry.”.</p>

## **MEMORANDUM ON THE OBJECTS OF THE CIVIL AVIATION AMENDMENT BILL, 2018**

### **1. BACKGROUND AND PURPOSE**

- 1.1 The Civil Aviation Act, 2009 (Act No. 13 of 2009) (“the Act”), provides for the establishment of the Aviation Safety Investigation Board, a juristic body vested with the powers to investigate aircraft accidents and incidents in South Africa. The Act also establishes the South African Civil Aviation Authority, an authority vested with the powers to promote civil aviation safety and security. The Act was enacted in 2009 to consolidate the various pieces of legislation dealing with the regulation of civil aviation which existed at the time. Following the implementation of the Act it became evident that certain provisions thereof were hampering the full operation of the Act.
- 1.2 Most provisions of Chapter 4 of the Act were never promulgated due to various reasons, one of which was the practical difficulties in the establishment of the entity, the Aviation Safety Investigation Board, which is established by the Chapter. As a result of this, the full establishment of the Aviation Safety Investigation Board was never achieved.

### **2. OBJECTS OF THE BILL**

The Civil Aviation Amendment Bill, 2018 (“the Bill”) seeks to amend the Act in order to ensure the proper implementation of the legislation in respect of safety, security and the investigation of aircraft incidents and aircraft accidents, in civil aviation.

#### **2.1 Clause 1**

Clause 1 of the Bill seeks to amend and insert various definitions in order to assist in the interpretation of the Act. Definitions of “aircraft in flight” and “aircraft in service” are inserted as the terms are used in the Act and have technical meanings. The definition of “Director” is being deleted and a new definition of “Commissioner” is inserted. The title “Director” is a phenomenon in the Public Service where there are Directors operating at a managerial level within the Government structural establishments. This title is also not consistent with the titles of other agencies of the Department of Transport (“the Department”), where they are referred to as Chief Executive Officer. The definition of “helistop” is amended in order to differentiate a helistop from a heliport. A new definition of “safety programme” is inserted as the Bill extends the powers of the Minister to issue regulations relating to the implementation of a safety programme. The other inserted definitions are intended to clarify terms inserted by the Bill.

#### **2.2 Clause 2**

Clause 2 amends section 2 of the Act to remove incorrect references. Furthermore, State aircraft (aircraft belonging to the SANDF, SAPS and customs) are precluded from legislation regulating civil aviation. However, such aircraft may be subject to certain civil aviation regulations under certain circumstances. The Act was not very clear with regards to those circumstances and this clause amends such provisions.

#### **2.3 Clause 3**

Clause 3 amends section 3 to remove the obligation imposed on the Minister of Transport (“the Minister”) to agree with the Civil Aviation Authority in the process of ratification of amendments to the Convention of International Civil Aviation, 1944 (“the Convention”). This is intended to align the Act with section 231 of the Constitution of the Republic of South Africa, 1996.

**2.4 Clause 4**

Clause 4 amends section 4 of the Act to delete the provision which requires the designation of the Civil Aviation Authority. This provision is unnecessary as the Civil Aviation Authority derives its powers and functions directly from the Act.

**2.5 Clause 5**

Clause 5 amends section 5 of the Act to remove the reference to a Protocol that does not exist.

**2.6 Clause 6**

Clause 6 amends section 7 of the Act to remove obsolete references.

**2.7 Clause 7**

Clause 7 amends section 8 of the Act to effect textual improvements.

**2.8 Clause 8**

2.8.1 Clause 8 substitutes Chapter 4 of the Act so as to redefine the establishment of an aircraft accident and incident investigation authority in compliance with the international obligation that South Africa has as a Contracting State to the Convention, whilst taking into account the national legislative framework. Following the enactment of Chapter 4 of the Act which establishes Aviation Safety Investigation Board, it transpired that certain provisions thereof, namely, the provisions dealing with the structure of Aviation Safety Investigation Board as well as the conflict of interest of members, posed a hindrance to the appointment of members of the Aviation Safety Investigation Board. The amendment is intended to remove these hindrances.

2.8.2 The provisions which gave the Chairperson of the Aviation Safety Investigation Board the powers to appoint and manage staff are deleted in the attached draft. Another notable amendment in this Part is with regards to the provision dealing with conflict of interests. The existing legislation prohibits the appointment of a person as a member of the Aviation Safety Investigation Board if they or their families are involved in any way in the aviation business. The Amendment on the other hand requires a member of Aviation Safety Investigation Board to recuse themselves when there is a potential conflict of interest. Furthermore, all the provisions dealing with the appointment of staff of the entity are deleted.

2.8.3 The provisions of the existing legislation dealing with the Director of Investigation are deleted and the power to designate accident investigators is vested with the Aviation Safety Investigation Board.

2.8.4 The Bill also provides for the insertion of a provision dealing with appeals against findings of the Aviation Safety Investigation Board in relation to an accident.

**2.9 Clause 9**

Clause 9 amends section 69 of the Act to rectify grammatical errors.

**2.10 Clause 10**

Clause 10 amends section 71 of the Act in order to clarify the fact that the Civil Aviation Authority was already in existence when the Act was promulgated in 2009.



**2.11 Clause 11**

Clause 11 amends section 72 of the Act to extend the objects of the Civil Aviation Authority to include the environmental protection regulation, amongst others. The importance of the protection of the environment is increasing and International Civil Aviation Organization has adopted an amendment to one of its Annex to put emphasis on this.

**2.12 Clause 12**

Clause 12 amends section 73 of the Act to clarify the functions of the Civil Aviation Authority. The amendment includes the environmental protection as one of the functions of the Civil Aviation Authority. The amendment further effects certain textual amendments to clarify the role of the Civil Aviation Authority.

**2.13 Clause 13**

Clause 13 amends section 74 of the Act to remove incorrect references and to stress the requirement for consultation by the Civil Aviation Authority with stakeholders in respect of determination of charges, fees and levies.

**2.14 Clause 14**

Clause 14 amends section 76 of the Act to effect some textual changes.

**2.15 Clause 15**

Clause 15 amends section 77 of the Act to remove an unnecessary qualification for one of the Civil Aviation Authority Board members and to provide for an employee of the Department to sit on this board.

**2.16 Clause 16**

Clause 16 amends section 82 of the Act to extend the restriction relating to the remuneration of Civil Aviation Authority Board members to persons not only employed by the State, but by other State institutions that are wholly or partially funded by the State.

**2.17 Clause 17**

Clause 17 repeals section 83 of the Act. This is intended to bring the Act in line with the Public Finance Management Act, 1999 (Act No. 1 of 1999) (“the PFMA”). The Civil Aviation Authority does not fall under the list of public entities that are required by the PFMA to submit a corporate governance plan.

**2.18 Clause 18**

Clause 18 substitutes section 85 of the Act so as to amend the process of the appointment of the Commissioner (formerly the Director of Civil Aviation) to include the role of the Civil Aviation Authority Board. The Bill further bestows on this Board the power to suspend the Commissioner.

**2.19 Clause 19**

Clause 19 effects an amendment to section 86 of the Act in respect of the duties of the Commissioner which are primarily to administer and manage the Civil Aviation Authority.

**2.20 Clause 20**

Clause 20 amends section 90 of the Act to afford the Civil Aviation Authority Board the power to appoint an acting Commissioner. The amendment is also

intended to remove the provision which limits the acting period of the Commissioner to 12 months.

#### **2.21 Clause 21**

Clause 21 amends section 94 of the Act to effect textual amendments and to remove redundant references. The amendment is also intended to remove provisions which have been found unnecessary to implement.

#### **2.22 Clause 22**

Clause 22 amends section 95 of the Act to remove an incorrect reference.

#### **2.23 Clause 23**

Clause 23 amends section 98 of the Act to enhance provisions regarding conflict of interest. The amendment also requires the Commissioner to develop procedures to deal with approval of engagement in other paid work by the employees of the Civil Aviation Authority.

#### **2.24 Clause 24**

Clause 24 amends section 99 of the Act to extend the limitation of liability to the Civil Aviation Authority, rather than limit it to only the employees of the Authority. In contradistinction to section 19 of the repealed South African Civil Aviation Authority Act, the current provision does not protect the interest of the Civil Aviation Authority, in instances where the Civil Aviation Authority does something in good faith. This proposed provision is standard and is similar to the one that is contained in other legislation.

#### **2.25 Clause 25**

Clause 25 amends section 103 of the Act to remove the provision conferring certain powers relating to aviation security which have already been bestowed to the Civil Aviation Authority by virtue of section 73 of the Act. The segregation of powers relating to aviation security was highlighted during the International Civil Authority Organization security audit conducted to verify the aviation security functions of the Republic.

#### **2.26 Clause 26**

Clause 26 amends section 104 of the Act to amend obsolete references and to remove the representative of the South African Intelligence Service from the composition of the National Aviation Security Committee.

#### **2.27 Clause 27**

Clause 27 amends section 108 of the Act to effect a textual improvement.

#### **2.28 Clause 28**

Clause 28 amends section 110 of the Act to designate the Commissioner as the authority to approve the appointment of a person responsible for the execution of security programmes of an aerodrome. Certain consequential amendment is effected as a result of this designation.

#### **2.29 Clause 29**

Clause 29 amends section 111 of the Act to effect textual amendments and to remove incorrect references.

**2.30 Clause 30**

Clause 30 amends section 112 of the Act to remove an incorrect reference and to remove the reference to the amount of the fine. This will allow the amount of the fine to be determined in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).

**2.31 Clause 31**

Clause 31 amends the heading to Chapter 7 of the Act so as to remove unnecessary reference to compliance notices.

**2.32 Clause 32**

Clause 32 amends section 113 of the Act to delete an unnecessary word “reasonable”.

**2.33 Clause 33**

Clause 33 repeals section 114 of the Act. The provisions of this section were never implemented in practice and when considered in light of the existing practice, they are impractical in some respects, especially when they indicate that non-compliances constitute an offence, implying that the criminal process must be invoked.

**2.34 Clause 34**

Clause 34 amends section 116 of the Act to clarify the powers of inspectors with regards to prohibition of certain activities. The restriction relating to the time period within which a prohibition may be issued is impractical because a prohibition may be as long as the event which caused it exists.

**2.35 Clause 35**

Clause 35 amends section 118 of the Act to clarify the powers of authorised officers, inspectors or authorised persons. Most of the powers which are listed in the existing provision as appealable against are not bestowed to the authorised officers, authorised persons or inspectors and these powers are conferred on the Director of Civil Aviation. The amendment further extends the time periods within which an appeal is lodged or adjudicated. The existing timeframes in the Act are unrealistic in practice.

**2.36 Clause 36**

Clause 36 amends section 119 of the Act in order to effect clarity to the process of medical appeals. In the absence of a designated body or institution, certain powers, e.g. the power to suspend a medical certificate due to non-compliance with certain regulations, vest in the Commissioner and by extension, to the Civil Aviation Authority medical officers designated by the Commissioner. The appealable decisions that are currently mentioned in section 119 do not include these medical officers, and the amendment is intended to close the loophole. Furthermore, section 119(7) is deleted as it sounds rather odd that an appellant in the medical case is entitled to legal representation when there are no similar provisions for other appellants. The issue of legal representation in administrative matters is dealt with in the Promotion of Administrative Justice Act, and it should be left that way.

**2.37 Clause 37**

Clause 37 amends section 120 of the Act to remove from appealable decisions, those decisions which relate to privileges granted at the discretion of the Commissioner.

**2.38 Clause 38**

Clause 38 inserts section 120A to the Act to clarify the situation regarding the decision being appealed against i.e. an appeal does not suspend a decision. This is to ensure aviation safety and security.

**2.39 Clause 39**

Clause 39 amends section 121 of the Act to remove unnecessary text.

**2.40 Clause 40**

Clause 40 substitutes the heading of Part 2 of Chapter 8 of the Act.

**2.41 Clause 41**

Clause 41 amends section 122 of the Act to provide for more effective composition of the appeal committee and avoid conflicts of interest.

**2.42 Clause 42**

Clause 42 amends section 123 of the Act to insert a provision prohibiting any member of the appeal committee who is employed by the State or State owned institution from receiving remuneration for serving in the appeal committee.

**2.43 Clause 43**

Clause 43 amends section 124 of the Act to provide for the composition of the appeal committee, the chairperson, the acting chairperson of an appeal committee and the rules and procedures for the appeal committee.

**2.44 Clause 44**

Clause 44 amends section 125 of the Act to provide for the decision process of the appeal committee.

**2.45 Clause 45**

Clause 45 amends section 126 of the Act and provides for the furnishing of a decision of the appeal committee to the Commissioner and also provides for the legal representation of an appellant.

**2.46 Clause 46**

Clause 46 amends section 128 of the Act to move the administrative work of the appeal committee from the Civil Aviation Authority to the Department.

**2.47 Clause 47**

Clause 47 amends the heading to Chapter 9 of the Act so as to remove unnecessary reference to the "Director".

**2.48 Clause 48**

Clause 48 amends section 130 of the Act to rectify the assignment of the power to issue exemptions from compliance with the Act. This amendment is intended to remove an inadvertent implication in which the Director may exempt himself or herself from complying with certain requirements prescribed in the Act. The reference is now to the Minister.

**2.49 Clause 49**

Clause 49 amends section 131 of the Act to rectify the provision regarding interception of aircraft and clarify that this must be done by an appropriate authority.

**2.50 Clause 50**

Clause 50 amends section 132 of the Act to remove an unnecessary provision. Article 83*bis* of the Convention already prescribes the process followed once an agreement is signed.

**2.51 Clause 51**

Clause 51 amends section 133 of the Act to insert new offences relating to the use of aircraft in service as a weapon or a mechanism for discharging weapons or explosives. The Bill also criminalises transportation of prohibited biological weapons, weapons of mass destruction, explosives and nuclear material, on board an aircraft.

**2.52 Clause 52**

Clause 52 amends section 140 of the Act to include an “officer and inspector” in the list of persons who may enter a restricted area in an airport.

**2.53 Clause 53**

Clause 53 amends section 142 of the Act to add explosives, radioactive material and weapons of mass destruction on the list of items whose conveyance by civilian aircraft is limited or prohibited.

**2.54 Clause 54**

Clause 54 amends section 143 of the Act to assign the power to avert threat to safety and security, to the Commissioner, instead of the Minister. The Commissioner is considered as appropriately well vested with the opportunity to assess whether any action is likely to jeopardise aviation safety or security.

**2.55 Clause 55**

Clause 55 amends section 144 of the Act to extend the powers of the Commissioner in relation to administrative fines, and provides that he or she may recover an administrative penalty and also refuse to renew a licence, certificate, approval, registration or rating.

**2.56 Clauses 56; 57; 58 and 59**

Clauses 56, 57, 58 and 59 amends sections 145, 146, 147 and 148 in order to include an authorised officer and inspector in respect of the power to search, seize and arrest.

**2.57 Clause 60**

2.57.1 Clause 60 amends section 155 of the Act to extend the regulation making powers of the Minister. This amendment was necessitated by the International Civil Aviation Organization requirements for the introduction of State safety programme as well as requirements relating to facilitation as prescribed in Annexure 9.

2.57.2 The clause also seeks to include the power to make regulations on the establishment of various advisory committees such as the National Air Transport Facilitation Committee and the Civil Aviation Regulations Committee.

2.57.2 The expression “aviation disaster plans” as proposed in the amendment is of a wider ambit than the existing words as it is not limited to disasters, hence the new proposal for “aviation emergency plans”.

#### **2.61 Clause 61**

Clause 61 repeals the procedures regarding consultative structures from the Act so as to deal with them in the Civil Aviation Regulations. The inclusion of the provisions relating to procedures regarding consultative structures in the Act created some anomalies in relation to provisions which are difficult to implement.

#### **2.62 Clause 62**

Clause 62 amends section 163 of the Act to remove an incorrect reference. The power to issue technical standards for civil aviation is vested with the Commissioner and it is considered prudent that the Commissioner must consult the civil aviation industry before issuing a technical standard.

#### **2.63 Clause 63**

Clause 63 seeks to replace the expression “Director” with “Commissioner” throughout the Act.

#### **2.64 Clause 64**

Clause 64 and the associated schedule amend various laws to align them with the new provisions of the Act.

#### **2.65 Clause 65**

Clause 65 provides for the short title and commencement.

### **3. DEPARTMENTS/ BODIES/ PERSONS CONSULTED**

- 3.1 Department of Planning, Monitoring and Evaluation;
- 3.2 South African Civil Aviation Authority;
- 3.3 Airports Company South Africa;
- 3.4 Air Traffic and Navigation Services;
- 3.5 Airlines Association of Southern Africa;
- 3.6 Board of Airlines Representative of South Africa;
- 3.7 Civil Aviation Regulations Committee;
- 3.8 National Air Transport Facilitation Committee;
- 3.9 National Economic Development and Labour Council; and
- 3.10 Economic Sector, Employment & Infrastructure Development Cluster.

### **4. FINANCIAL IMPLICATIONS FOR STATE**

The Act will be implemented within the budget allocation of the Department of Transport.

### **5. CONSTITUTIONAL IMPLICATIONS**

None.

## 6. COMMUNICATION IMPLICATIONS

If approved, the Act will be published in the Government *Gazette* for public information.

## 7. PARLIAMENTARY PROCEDURE

- 7.1 The Constitution prescribes the procedure for the classification of Bills. A Bill must be correctly classified so that it does not become inconsistent with the Constitution.
- 7.2 The Bill has been considered against the provisions of the Constitution relating to the tagging of Bills and against the functional areas listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) and Schedule 5 (functional areas of exclusive provincial legislative competence) to the Constitution.
- 7.3 The established test for classification of a Bill is that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4 to the Constitution must be classified in terms of that Schedule. The process is concerned with the question of how the Bill should be considered by the provinces and in the National Council of Provinces. Furthermore, how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more the Bill affects the interests, concerns and capacities of the provinces, the more say the provinces should have on the contents of the Bill.
- 7.4 Therefore the issue to be determined is whether the proposed amendments to the Act, as contained in the Bill, in substantial measure, fall within a functional area listed in Schedule 4 to the Constitution.
- 7.5 The Bill seeks to provide for the investigation of aircraft accidents and aircraft incidents and the establishment of the Aviation Safety Investigation Board and its objects, which among others, are to advance aviation transportation safety by conducting independent investigations, including, when necessary, public inquiries into selected aircraft accidents and incidents in order to make findings as to their causes and contributing factors, identifying safety deficiencies as evidenced by aircraft accidents and incidents, making recommendations designed to eliminate or reduce any such safety deficiencies and reporting publicly on its investigations and the findings in relation to the investigations.
- 7.6 The Bill provides for the environmental protection oversight function of the Civil Aviation Authority and also adds, as part of its objects, the exercise any power or perform any duty conferred or imposed on it under any law. In respect of the funding of the Civil Aviation Authority, the Bill provides that the Civil Aviation Authority must endeavour to consult with the relevant stakeholders as part of the process to determine the civil aviation regulatory charges, fees and levies. The Bill makes provision to rectify the establishment of the Civil Aviation Authority and also provides for an employee of the Department to be a member of the Civil Aviation Authority Board and abolishes the requirement for the development of a corporate governance plan by the Civil Aviation Authority Board. The Bill amends the provisions relating to the appointment and removal of the Commissioner of the Civil Aviation Authority, who is the head of the Civil Aviation Authority's administration and manages the Civil Aviation Authority. The Commissioner is appointed by, and is accountable to, the Minister.
- 7.7 In terms of clause 20, substituting section 90 of the Act, as part of his or her duties, the Commissioner if he or she is absent from the Republic or is otherwise unable to fulfil the duties of the Commissioner he or she must appoint a member of the staff of the Civil Aviation Authority to act as Commissioner. In the same vein the new section 90(3) provides that the

Minister must appoint an acting Commissioner for any other reason when the Commissioner is unable to perform the functions of his or her office. It appears that in terms of these provisions the Commissioner and the Civil Aviation Authority Board may be authorised to exercise the same power at the same time. The Bill clarifies the provisions dealing with conflict of interest and prohibits any employee of the Civil Aviation Authority from engaging in any paid employment or participate in any aviation activity without prior written approval of the Commissioner, and that such employee must, in writing, prior to his or her appointment, or as and when such conflict may occur, and thereafter annually, disclose details of all employment, positions, offices, allegiances, interests or any activities, which are likely to compromise his or her independence in carrying out his or her duties and functions in terms of the Act.

- 7.8 The Bill amends the composition of the National Aviation Security Committee and provides that the National Aviation Security Committee composes of a person designated by the Director-General of the Department who will be the Chairperson of the National Aviation Security Committee. The National Aviation Security Committee also composes of an official responsible for national air transport facilitation, an official from an organisation responsible for State Security, both designated by the Director-General, and an official designated by the Director-General of the Department responsible for international relations. The person designated by the Director-General as the Chairperson must be an employee of the Department and must possess the necessary expertise to chair the National Aviation Security Committee.
- 7.9 Section 114 of the Act deal with compliance notices and provides that a person conducting an inspection in order to ensure regulatory compliance may issue a compliance notice in the prescribed manner to the person in charge of the premises or to the person determined to be responsible to take appropriate corrective action in order to remove or rectify such condition if any provision of this Act has not been complied with. The Bill deletes the provisions dealing with compliance notices.
- 7.10 The Bill makes provision for appeals to the Commissioner and clarifies that Commissioner must with 14 days of receiving an appeal in writing confirm, vary or set aside the decision of the authorised officer, authorised person or inspector. The Bill provides that an aggrieved person may, in the prescribed manner and on the payment of a prescribed fee, appeal to the Commissioner against a decision by a designated medical officer to suspend or endorse his or her medical certificate. In addition, a person or entity aggrieved by a decision taken by the Commissioner may file a written appeal with the appeal committee against such decision within 30 days after receipt of the reasons for the decision. In terms of the Bill, in order not to jeopardise aviation safety and security, an appeal lodged against a decision made in terms of the Act does not suspend such decision.
- 7.11 The Bill provides for the issuance of exemptions by the Minister, instead of the “Director”, and in the respect the Minister may, on good cause shown exempt partially or entirely any person or body from compliance with the Act on the conditions as the Minister may direct in any exemption certificate.
- 7.12 The Bill provides for new offences. For instance any person commits an offence if that person uses an aircraft in service for the purposes of causing death, serious bodily injury or serious damage to property or the environment or releases or discharges from an aircraft in service any weapon of mass destruction as defined in section 1 of the Non-proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993), explosives as defined in Explosives Act, 1956 (Act No. 26 of 1956), or radioactive material as defined in section 1 of the Nuclear Energy Act, 1999 (Act No. 46 of 1999). A person who commits such offences is on conviction liable to an imprisonment for a minimum period of twenty years without the option of a fine.



- 7.13 The Bill adds a new prohibition and provides that no person may convey explosives, radioactive or nuclear material except with the written permission of the Minister or a person authorised by the Minister and subject to such conditions as the Minister or such a person may determine. Furthermore no person may convey any biological weapon or weapons of mass destructions in an aircraft. It must be noted that the new prohibition in the new section 142(2A) is not linked to an offence an penalty as contemplated in section 142(6) for instance. It is hereby advised that this be considered and rectified.
- 7.14 The Bill provides that if a person fails to pay an administrative penalty imposed in terms of then Act within the specified period, the Commissioner, in addition to recovering such amount of the administrative penalty from such person by way of civil action in a competent court, may refuse to issue or renew a licence, certificate, approval, registration or rating for such a person.
- 7.15 The Bill extends the powers of the Minister to make regulations and further provides that the Minister may make regulations regarding the designation of one or more bodies or institutions to implement and manage a State safety programme in order to achieve an acceptable level of safety in civil aviation, and the Minister may also make regulations for the establishment of consultative structures.
- 7.16 The proposed amendments reflected in the Bill have been carefully examined to establish whether, in substantial measure, they fall within any of the functional areas listed in Schedule 4 to the Constitution.
- 7.17 The subject matter of the proposed amendments does not fall within any of the functional areas listed in Schedule 4 to the Constitution and it does not affect provinces whereby the procedure set out in section 76 of the Constitution would be applicable.
- 7.18 Since the Bill does not deal with any of the matters listed in Schedule 4 of the Constitution, it must be dealt with in accordance with the procedure set out in section 75 of the Constitution.
- 7.19 It is not necessary to refer this Bill to the National House of Traditional Leaders in terms 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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