

Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 526

Pretoria, 15 April 2009

No. 32103

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GENERAL NOTICE

NOTICE 358 OF 2009 DEPARTMENT OF TRANSPORT

PUBLICATION FOR PUBLIC COMMENTS: MERCHANT SHIPPING (CIVIL LIABILITY CONVENTION) BILL, 2009

The Minister of Transport is hereby publishing the abovementioned draft Bill for public comments. Interested persons are requested to submit written comments on the abovementioned draft Bill by not later than 22 May 2009.

Comments should be posted to the Director-General, Department of Transport for the attention of Adv. Adam Masombuka at:

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REPUBLIC OF SOUTH AFRICA

MERCHANT SHIPPING (CIVIL LIABILITY CONVENTION) BILL, 2009

(As introduced in the National Assembly as a section 75 Bill)

(The English text is the official text of this Bill)

(MINISTER OF TRANSPORT)

[B — 2009]

BILL

To give effect to the 1992 Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1969, and for related matters.

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

PART 1
PRELIMINARY

Definitions

1. (1) In this Act, unless the context indicates otherwise—
- (i) "applied provisions of the Convention" means the provisions of the Convention that, in terms of section 6, have the force of law as part of the law of the Republic;
 - (ii) "Authority" means the South African Maritime Safety Authority established by section 2(1) of the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998);
 - (iii) "Contracting State" means a state specified in a notice under section 5;
 - (iv) "Minister" means the Minister of Transport;

- (v) "organ of state" has the meaning it has in section 239 of the Constitution of the Republic of South Africa, 1996;
- (vi) "the Convention" has the meaning given by section 2;
- (vii) "the Republic" includes the Prince Edward Islands referred to in section 4;
- (viii) "this Act" includes the regulations made under section 19.

(2) Unless the context indicates otherwise, an expression used in this Act and in the Convention (whether or not a particular meaning is given to it by the Convention) has, in this Act, the meaning it has in the Convention.

Meaning of Convention

2. (1) *The Convention* is the International Convention on Civil Liability for Oil Pollution Damage, 1969, done at Brussels on 29 November 1969—

- (a) as modified by the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, done at London on 27 November 1992; and
- (b) as affected by any amendment made under Article 14 or 15 of that Protocol and accepted by the Republic.

(2) Before the commencement of this Act, the Minister must publish a notice in the *Gazette* setting out the English text of the provisions of the Convention as in force at the commencement.

(3) If an amendment is made under Article 14 or 15 of the Protocol and accepted by the Republic, the Minister must publish a notice in the *Gazette* setting out the English text of the amendment and specifying the day or days on which its provisions enter into force for the Republic.

(4) In interpreting this Act, the Convention is taken to be the English text of the Convention as in force for the Republic and set out in notices in terms of section.

Act binds State

3. This Act binds the State and every organ of state.

Operation of Act

4. This Act applies both within and outside the Republic and extends to the Prince Edward Islands within the meaning of section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948).

Declaration of Contracting States

5. (1) The Minister may, by notice in the *Gazette*, declare that, for the purposes of this Act, a state, other than the Republic, specified in the notice is a state party to the Convention.

(2) A notice under subsection (1) is evidence that a state specified in the notice is a state party to the Convention.

PART 2

COMPENSATION

Certain provisions of Convention have force of law

6. (1) These provisions of the Convention have the force of law as part of the law of the Republic:

Articles I to VI (inclusive); paragraphs 1, 8 and 9 of Article VII; Article VIII; paragraphs 1 and 3 of Article IX; paragraph 1 of Article XI; Article XII *bis*, other than paragraph (b).

(2) For paragraph (a)(i) of Article II of the Convention as so having the force of law, a reference to the territorial sea, in so far as it relates to the Republic, is taken to be a reference to the territorial waters of the Republic.

(3) For paragraph (a)(ii) of Article II of the Convention as so having the force of law, a reference to the exclusive economic zone, in

so far as it relates to the Republic, is taken to be a reference to the exclusive economic zone of the Republic within the meaning of section 7 of the Maritime Zones Act, 1994 (Act No. 15 of 1994).

(4) For paragraph 1 of Article VII of the Convention as so having the force of law, that paragraph is taken to require the owner of a ship referred to in that paragraph, being a ship registered in the Republic, to maintain the insurance or other financial security referred to in that paragraph.

Claims for compensation

7. The High Court of South Africa, exercising its admiralty jurisdiction, has jurisdiction (including jurisdiction for all incidental purposes) to hear and determine claims for compensation under the applied provisions of the Convention in respect of incidents—

- (a) that have caused pollution damage in a place to which the Convention applies; or
- (b) in relation to which preventive measures have been taken to prevent or minimise pollution damage in a place to which the Convention applies.

Applications to determine limit of liability

8. (1) If a claim for compensation under the applied provisions of the Convention is made in the High Court against, or is apprehended by, the owner of a ship, or the insurer or other person providing financial security for the liability of the owner of the ship for pollution damage, the owner, the insurer or that other person, as the case may be, may apply—

- (a) in the case where a claim for compensation under the applied provisions of the Convention has been made in the High Court, to the division of the High Court in which the claim for compensation has been made; or
- (b) in any other case, to any division of the High Court having jurisdiction,

to determine whether he or she may limit his or her liability under the applied provisions of the Convention and, if so, the limit of that liability.

(2) If the court determines that a person's liability may be limited under the applied provisions of the Convention, the court may make any orders it thinks fit about the apportionment and distribution, in accordance with those provisions, of a fund for the payment of claims under those provisions.

Regulations to give effect to applied provisions of Convention

9. (1) The regulations may prescribe matters necessary or convenient for carrying out or giving effect to the applied provisions of the Convention.

(2) Without limiting subsection (1), the regulations may make provision about—

- (a) the conversion of the amounts of money referred to in paragraph 1 of Article V of the Convention into amounts of money expressed in South African currency;
- (b) the kinds of guarantees that are acceptable for the purposes of paragraph 3 of Article V of the Convention;
- (c) the extent to which the right of subrogation provided for in paragraph 5 of Article V of the Convention may be exercised by a person other than a person referred to in that paragraph; and
- (d) the ascertainment of the tonnage of a ship, including the estimation of the tonnage of a ship in circumstances where it is not possible or reasonably practicable to measure its tonnage.

(3) Subsections (1) and (2) do not limit the power of any competent body to make rules of court about a matter that is not provided for in the applied provisions of the Convention or in regulations made for the purposes of those subsections.

PART 3
INSURANCE CERTIFICATES

Interpretation

10. (1) In this Part, "Government ship" means a ship (including a warship) owned by a state, and includes a ship owned by the State.

(2) In this Part—

- (a) a reference to a contract of insurance, or other financial security, in respect of a ship is to be read as a reference to a contract of insurance, or other financial security, covering the liability of the owner of the ship under the applied provisions of the Convention for pollution damage caused in a place to which the Convention applies;
- (b) a reference to the limits of the liability prescribed by paragraph 1 of Article V of the Convention, in relation to a ship, is to be read as a reference to the amount to which the owner of the ship is entitled, under that paragraph, in its application to the ship as part of the law of the Republic, to limit his or her liability under the Convention in respect of any one incident.

Application

11. (1) This Part applies to every ship that is carrying more than 2 000 tonnes of oil in bulk as cargo and so applies to a ship that is unregistered as if the ship were registered in the state whose flag the ship is flying.

(2) However, this Part does not apply to the following ships used, for the time being, only on government non-commercial service:

- (a) Government ships;
- (b) other ships operated by a state, including ships operated by the State.

Insurance certificates to be carried on certain ships

12. (1) If a ship enters or leaves, or attempts to enter or leave, a port in the Republic, or arrives at, or leaves, or attempts to arrive at or leave, a terminal in the territorial waters of the Republic, without having on board the ship a relevant insurance certificate that is in force for the ship, the master and the owner of the ship each commits an offence punishable upon conviction by a fine not exceeding R250 000.

(2) If a ship that is registered in the Republic enters or leaves, or attempts to enter or leave, a port in a foreign state, or arrives at, or leaves, or attempts to arrive at or leave, a terminal in the territorial sea

of a foreign state, without having on board the ship a relevant insurance certificate that is in force for the ship, the master and the owner of the ship each commits an offence punishable upon conviction by a fine not exceeding R250 000.

(3) If, otherwise than in circumstances to which subsection (1) applies or, in the case of a ship registered in the Republic, to which subsection (2) applies, at any time a relevant insurance certificate is in force for a ship to which this Part applies and is not on board the ship, the master and the owner of the ship each commits an offence punishable upon conviction by a fine not exceeding R20 000.

(4) An officer may require the master or other person in charge of a ship to produce a relevant insurance certificate that is in force for the ship and, if the master or other person refuses or fails to produce the certificate to the officer, he or she commits an offence punishable upon conviction by a fine not exceeding R20 000.

(5) If the Authority has reasonable grounds to believe that the master or other person in charge of a ship is attempting to take the ship out of a port in the Republic at a time when the ship does not have on board a relevant insurance certificate that is in force for the ship, the Authority may detain the ship until such a certificate is obtained or produced to the Authority, as the case requires.

(6) If a ship detained at a port under subsection (5) leaves the port before it has been released from detention, the master and the owner of the ship each commits an offence punishable upon conviction

by a fine not exceeding R500 000 or by imprisonment for a period not exceeding five years, or both.

(7) For this section, a relevant insurance certificate is—

- (a) if the ship is registered in the Republic and is not a Government ship, a certificate issued under section 13 for the ship;
- (b) if the ship is registered in a Contracting State and is not a Government ship, a certificate issued, for the purposes of Article VII of the Convention, under the authority of the government of that state;
- (c) if the ship is registered in a foreign state that is not a Contracting State and is not a Government ship, a certificate issued under section 13 or a certificate that, under the regulations, is taken to be a relevant insurance certificate for the ship for the purposes of this paragraph;
- (d) if the ship is owned by the State, a certificate issued under section 13 or 15 for the ship;
- (e) if the ship is owned by the government of a Contracting State, a certificate issued, for the purposes of Article VII of the Convention, under the authority of the government of that state or a certificate of the kind referred to in section 15(1) issued by the government of that state; or
- (f) if the ship is owned by the government of a foreign state that is not a Contracting State, a certificate of the kind referred to in section 15(1) issued by the government of that state or a certificate that,

under the regulations, is taken to be a relevant insurance certificate for the ship for the purposes of this paragraph.

- (8) In this section, "officer" means a person who—
- (a) is an officer of customs within the meaning of the Customs and Excise Act, 1964 (Act No. 91 of 1964);
 - (b) is a surveyor for the purposes of the Merchant Shipping Act, 1951 (Act No. 57 of 1951); or
 - (c) is appointed by the Authority, in writing, to be an officer for the purposes of this section.

Issue of insurance certificates

13. (1) The owner, master or agent of a ship that is registered in the Republic or in a state that is not a Contracting State may apply to the Authority for the issue of an insurance certificate for the ship.

(2) The application must be made in the form and manner, include the information and be accompanied by the documents specified by the Authority.

- (3) In relation to each application, the Authority must—
- (a) if it is satisfied that the owner of the ship is maintaining insurance or other financial security for the ship in an amount that will cover the limits of liability prescribed by paragraph 1 of Article V of the Convention in relation to the ship, issue to the applicant an insurance certificate for the ship; or

(b) if it is not so satisfied, refuse to issue an insurance certificate for the ship.

(4) An insurance certificate issued under this section—

(a) must be in accordance with the form prescribed by regulation, being a form that contains, but is not limited to containing, the particulars given in paragraph 2 of Article VII of the Convention;

(b) comes into force on the day stated in the certificate; and

(c) remains in force, subject to this Part, until the expiration of the day stated in the certificate, being the earlier of the following days:

(i) the day that is the last day in the period of 12 months beginning on the day on which the certificate comes into force;

(ii) the day that the Authority is satisfied is the last day in the balance of the period during which the insurance or other financial security for the ship is to remain in force.

Extension, cancellation and lapsing of insurance certificates

14. (1) If—

(a) a ship for which an insurance certificate has been issued under section 13 is not at a port in the Republic at the time when the certificate expires or is about to expire; and

(b) the Authority is satisfied that, after the day stated in the certificate as the day until which it is to remain in force, there will be in force a

contract of insurance or other financial security for the ship in an amount that will cover the limits of liability prescribed by paragraph 1 of Article V of the Convention in relation to the ship,

the Authority may extend the certificate for a period that expires on or before the day that the Authority is satisfied is the last day in the balance of the period during which that contract of insurance or other financial security is to remain in force, being a period that does not exceed one month from the day referred to in paragraph (b).

(2) An extension of an insurance certificate under subsection (1) expires upon the ship's arrival at a port in the Republic.

(3) The Authority may cancel an insurance certificate issued under section 13 if it is satisfied that, because of any modification or variation of, or to, the contract of insurance or other financial security for the ship, the owner of the ship will not be covered for an amount that is not less than the limits of liability prescribed by paragraph 1 of Article V of the Convention in relation to the ship.

(4) If, while an insurance certificate issued under section 13 for a ship registered in the Republic or in a state that is not a Contracting State is in force, the ship ceases to be registered in the Republic or in that state, as the case may be, the certificate so issued thereupon ceases to be in force.

(5) (a) If an insurance certificate issued under section 13 is cancelled under subsection (3) or ceases to be in force in terms of

subsection (4), the master must without delay cause the certificate to be lodged with the Authority.

(b) A master who fails to comply with paragraph (a) commits an offence punishable upon conviction by a fine not exceeding R20 000.

Government ships

15. (1) For a ship that is owned by the State, the Minister may, if the Minister of Finance consents, issue a certificate certifying that the ship is owned by the State and that any liability for pollution damage up to the limits of liability applicable in relation to the ship under Article V of the Convention will be met by the State.

(2) Subject to subsection (3), a certificate issued under subsection (1) remains in force for the period stated in the certificate.

(3) If, while a certificate issued under subsection (1) for a ship owned by the State is in force, the ship ceases to be owned by the State, the certificate so issued thereupon ceases to be in force.

(4) In any proceedings brought in a court in the Republic to enforce a claim in respect of a liability incurred under the applied provisions of the Convention, every Contracting State is taken to have submitted to the jurisdiction of that court and to have waived any defence based on its status as a sovereign state, but nothing in this subsection is to be taken to allow the levy of execution against the property of any state.

PART 4**EXPENSES OF STATE UNDER MARINE POLLUTION (CONTROL AND CIVIL LIABILITY) ACT, 1981****Expenses etc incurred by State charge on ship**

16. (1) The amount that the owner of a ship is liable, or the owners of two or more ships are jointly and severally liable, under the applied provisions of the Convention, to pay to the State by way of compensation for any expense or other liabilities incurred by the State in, or because of, the exercise of the State's powers under the Marine Pollution (Control and Civil Liability) Act, 1981 (Act No. 6 of 1981), is a charge on the ship, or on each of the ships, as the case may be.

(2) In subsection (1), "the State" includes an organ of state.

Detention of ships

17. (1) If an amount is, in terms of section 16, a charge on a ship, the ship may be detained by the Authority until the amount is paid or security for payment is given to the satisfaction of the Authority.

(2) Subsection (1) does not apply in relation to a foreign ship unless the ship is in South African waters or in the exclusive economic zone.

(3) If a ship is detained under subsection (1), the Authority may—

- (a) direct the master of the ship to move the ship to a reasonable stated place; or
- (b) acting with any necessary help or force, escort the ship to the place.

(4) The master of a ship commits an offence if—

- (a) the master is given a direction under subsection (3)(a) by the Authority; and
- (b) the master, without reasonable excuse, fails or refuses to comply with the direction.

(5) The master and the owner of a ship each commits an offence if—

- (a) the ship is detained under this section; and
- (b) the ship goes to sea before it is released from detention.

(6) An offence in terms of subsection (4) or (5) is punishable upon conviction by a fine not exceeding R500 000 or by imprisonment for a period not exceeding five year, or both.

(7) In this section—

"exclusive economic zone" means the exclusive economic zone of the Republic within the meaning of section 7 of the Maritime Zones Act, 1994 (Act No. 15 of 1994);

"foreign ship" means a ship—

- (a) that is not registered in the Republic; and
- (b) that does not have South African nationality;

"South African waters" means the internal and territorial waters of the Republic.

PART 5

MISCELLANEOUS

Regulations to give effect to Article X of Convention

18. (1) The regulations may make provision about giving effect to Article X of the Convention, including provision fixing fees to be paid in respect of any matters under regulations made for the purposes of this section.

(2) Subsection (1) does not limit the power of any competent body to make rules of court about a matter that is not provided for in regulations made for the purposes of that subsection.

Regulations

19. (1) The Minister may make regulations prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) However, regulations fixing fees must be made with the consent of the Minister of Finance.

Jurisdiction (offences)

20. (1) An offence in terms of this Act is taken, for purposes in relation to jurisdiction of a court to try the offence, to have been committed within the area of jurisdiction of the court in which the offence is prosecuted.

(2) Despite anything to the contrary in any law, a magistrates' court has jurisdiction to impose any penalty prescribed by this Act.

Amendment of laws

21. Each law that is specified in the Schedule is amended as set out in the applicable items in the third column of the Schedule.

Short title and commencement

22. (1) This Act is called the Merchant Shipping (Civil Liability Convention) Act, 2009.

(2) This Act commences on the day fixed by the President by proclamation in the *Gazette*, being a day not before the day on which the Convention enters into force for the Republic.

Schedule
AMENDMENT OF LAWS
(Section 21)

No. and year of law	Short title	Extent of amendment
Act No. 6 of 1981	Marine Pollution (Control and Civil Liability) Act, 1981	<p>1. The amendment of section 1—</p> <p>(a) by the substitution in subsection (1) for the definition of "area of the Republic" of the following definition:</p> <p style="padding-left: 40px;">" 'area of the Republic' includes [the internal waters and] the territorial waters and the exclusive economic zone;"</p> <p>(b) by the substitution in subsection (1) for the definition of "certificate" of the following definition:</p> <p style="padding-left: 40px;">" 'certificate' means a relevant <u>insurance certificate within the meaning of Part 3 of the Merchant Shipping (Civil Liability Convention) Act, 2009</u>;"</p> <p>(c) by the deletion in subsection (1) of the definitions of "Convention", "Convention State" and "Director-General";</p> <p>(d) by the substitution in subsection (1) for the definition of "discharge" of the following definition:</p> <p style="padding-left: 40px;">" 'discharge', in relation to a harmful substance, means any release, howsoever caused, [from a ship, a tanker or an offshore installation] into [a part of] the sea [which is a prohibited area], and includes any escaping, disposal, spilling, leaking, pumping, emitting or emptying <u>but does not include—</u></p> <p style="padding-left: 40px;">(a) <u>dumping in accordance with a permit issued under section 3 of the Dumping at Sea Control Act, 1980 (Act No. 73 of 1980); or</u></p> <p style="padding-left: 40px;">(b) <u>any release for training purposes approved by the</u></p>

No. and year of law	Short title	Extent of amendment
		<p style="text-align: right;"><u>Authority or by another person prescribed for the purposes of this paragraph;</u></p> <p>and 'discharge', when used as a verb, has a corresponding meaning;"</p> <p>(e) by the insertion in subsection (1) after the definition of "exclusive economic zone" of the following definition:</p> <p style="padding-left: 40px;"><u>" 'foreign ship' means a ship that is not a South African ship;"</u></p> <p>(f) by the substitution in subsection (1) for the definition of "harmful substance" of the following definition:</p> <p style="padding-left: 40px;"><u>" 'harmful substance' means—</u></p> <p style="padding-left: 80px;">(a) <u>oil;</u></p> <p style="padding-left: 80px;">(b) <u>a substance that is specified or referred to in appendix 1, 2, 3, 4 or 5 of the Annex to the Protocol set out in Schedule 2 to the Marine Pollution (Intervention) Act, 1987 (Act No. 64 of 1987);</u> <u>or</u></p> <p style="padding-left: 80px;">(c) <u>a substance that is prescribed to be a harmful substance for the purposes of this definition, or that is included in a class of substances that is prescribed to be a harmful substance for the purposes of this definition, and includes a mixture containing such a substance in a concentration exceeding the concentration prescribed in relation to that substance or a class of substances in which that substance is included;"</u></p> <p>(g) by the substitution in subsection (1) for the definition of "incident" of the following definition:</p> <p style="padding-left: 40px;"><u>" 'incident' means any occurrence,</u></p>

No. and year of law	Short title	Extent of amendment
		<p>or series of occurrences having the same origin, [which] that causes a discharge of [oil] a harmful substance from any ship [tanker] or offshore installation or [which] that creates the likelihood of such a discharge;"</p> <p>(h) by the deletion in subsection (1) of the definitions of "Marine Pollution Acts" and "MARPOL 1973/78";</p> <p>(i) by the substitution in subsection (1) for the definition of "master" of the following definition:</p> <p style="padding-left: 40px;">" 'master', in relation to a ship [or a tanker], means any person (other than a pilot) having charge or command of such ship [or tanker] and, in relation to an offshore installation, means the person in charge thereof;"</p> <p>(j) by the substitution in subsection (1) for the definition of "offshore installation" of the following definition:</p> <p style="padding-left: 40px;">" 'offshore installation' means a facility situated wholly or partly within the prohibited area and [which] that is used [for the transfer of harmful substances from a ship or a tanker to a point on land or from a point on land to a ship or tanker or from a bunkering vessel to a ship or a tanker] in or in connection with any <u>transfer operation</u>, and includes any <u>fixed or floating exploration</u>, [or] production or storage platform situated [within the prohibited area] on or above the <u>continental shelf</u> and used in [prospecting for or the mining of natural oil] or in <u>connection with the exploration or exploitation of the natural resources of the continental shelf</u>;"</p> <p>(k) by the substitution in subsection (1) for the definition of "oil" of the following definition:</p> <p style="padding-left: 40px;">" 'oil' means crude oil, fuel oil, diesel oil and lubricating oil;"</p>

No. and year of law	Short title	Extent of amendment
		<p>(l) by the insertion in subsection (1) after the definition of "oil" of the following definition:</p> <p style="padding-left: 40px;">" 'organ of state' has the meaning it has in section 239 of the <u>Constitution of the Republic of South Africa, 1996</u>;"</p> <p>(m) by the substitution in subsection (1) for the definition of "owner" of the following definition:</p> <p style="padding-left: 40px;">" 'owner', in relation to a ship [or a tanker], means the person or persons registered as the owner of such ship [or tanker] or, in the absence of registration, the person or persons to whom such ship [or tanker] belongs, but, in relation to a ship [or tanker] belonging to a state which is operated by a person registered as the ship's [or tanker's] operator, 'owner' means the person so registered;"</p> <p>(n) by the insertion in subsection (1) after the definition of "prohibited area" of the following definition:</p> <p style="padding-left: 40px;">" '<u>Republic</u>' includes the <u>Prince Edward Islands referred to in section 1B(1)</u>;"</p> <p>(o) by the substitution in subsection (1) for the definition of "sea" of the following definition:</p> <p style="padding-left: 40px;">" 'sea' means the water and bed of the sea and includes—</p> <p style="padding-left: 80px;">(a) the land between the high- and low-water marks [as well as];</p> <p style="padding-left: 80px;">(b) any tidal lagoon or river as defined in section 1 of the Sea-shore Act, 1935 (Act No. 21 of 1935); <u>and</u></p> <p style="padding-left: 80px;">(c) <u>the superjacent airspace</u>;"</p> <p>(p) by the substitution in subsection (1) for the definition of "ship" of the following definition:</p> <p style="padding-left: 40px;">" 'ship' means any kind of vessel or other sea-borne object, [from which oil can be discharged,</p>

No. and year of law	Short title	Extent of amendment
		<p>excluding a tanker] whether or not such vessel or object has been lost or abandoned, has stranded, is in distress, disabled or damaged, has been wrecked, has broken up or has sunk;"</p> <p>(q) by the insertion in subsection (1) after the definition of ship of the following definition:</p> <p style="padding-left: 40px;">" <u>'South African ship' means—</u></p> <p style="padding-left: 80px;">(a) a ship registered in the Republic; or</p> <p style="padding-left: 80px;">(b) <u>an unregistered ship having South African nationality;</u>"</p> <p>(r) by the deletion in subsection (1) of the definition of "tanker";</p> <p>(s) by the addition to subsection (1) of the following definition:</p> <p style="padding-left: 40px;">" <u>'transfer operation' means any operation involved in preparing for, or starting, carrying on or finishing, a transfer in bulk of oil or any other harmful substance prescribed for the purposes of this definition between a ship and another ship or place;</u>"</p> <p>(t) by the substitution in subsection (2) for the word "oil" of the words "a harmful substance"; and</p> <p>(u) by the addition of the following subsection:</p> <p style="padding-left: 40px;">"<u>(3) (a) The discharge of a harmful substance from a ship that occurs outside the prohibited area shall be deemed to be a discharge within the prohibited area if the discharged harmful substance enters the prohibited area.</u></p> <p style="padding-left: 80px;">(b) <u>For the purposes of paragraph (a), a discharge shall be taken to occur when the discharged harmful substance enters the prohibited area.</u>"</p> <p>2. The insertion after section 1 of the</p>

No. and year of law	Short title	Extent of amendment
		<p>following section:</p> <p>"Operation of Act</p> <p>1B. (1) <u>This Act applies both within and outside the Republic and extends to the Prince Edward Islands within the meaning of section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948).</u></p> <p>(2) <u>This Act shall not be construed as limiting or otherwise affecting any right or power that the State may have apart from this Act—</u></p> <p>(a) <u>under any other enactment; or</u></p> <p>(b) <u>under international law, both customary and conventional.</u></p> <p>(3) <u>Subject to subsection (2)(b), nothing in this Act shall be construed as authorising, in relation to a foreign ship in the exclusive economic zone or on the high seas, the exercise of any powers in conflict with the Marine Pollution (Intervention) Act, 1987 (Act No. 64 of 1987).</u></p> <p>(4) <u>Nothing in the National Heritage Resources Act, 1999 (Act No. 25 of 1999), affects the operation of this Act."</u></p> <p>3. The substitution for section 2 of the following section:</p> <p>"Prohibition of discharge of harmful substance during transfer operation</p> <p>2. (1) <u>This section applies to the discharge within the prohibited area of a harmful substance—</u></p> <p>(a) <u>from a ship in or in connection with a transfer operation; or</u></p> <p>(b) <u>from an offshore installation used in or in connection with a transfer operation (whether or not it is being so used),</u></p> <p><u>but does not apply to a discharge that occurs on the landward side of the first isolating valve on land of any offshore</u></p>

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		<p><u>installation used in or in connection with a transfer operation (whether or not it is being so used), or at any other place prescribed for the purposes of this subsection</u></p> <p style="text-align: center;"><u>(2) (a) If a</u></p> <p><u>discharge occurs, each relevant person in relation to the discharge shall be guilty of an offence unless the person shows—</u></p> <p><u>(i) that the discharge was made for the purpose of securing the safety of the ship or offshore installation or saving life at sea; or</u></p> <p><u>(ii) that the discharge resulted from relevant damage to the ship or offshore installation, or its equipment, and all reasonable precautions were taken after the damage occurred or the discharge was discovered to prevent or minimise the discharge.</u></p> <p style="text-align: center;"><u>(b) For the</u></p> <p><u>purposes of paragraph (a)(ii), damage to a ship or offshore installation, or its equipment, is not relevant damage if the damage—</u></p> <p><u>(i) arose in circumstances where a relevant person in relation to the discharge—</u></p> <p style="padding-left: 40px;"><u>(aa) acted within intent to cause damage; or</u></p> <p style="padding-left: 40px;"><u>(bb) acted recklessly and with knowledge that damage would probably result; or</u></p> <p><u>(ii) arose as a result of the negligence of that person.</u></p> <p style="text-align: center;"><u>(c) For the</u></p> <p><u>purposes of paragraphs (a)(ii) and (b), damage to a ship or offshore installation, or its equipment, does not include—</u></p> <p><u>(i) deterioration resulting from failure to maintain the ship, offshore installation or equipment; or</u></p> <p><u>(ii) defects that develop during the normal operation of the ship, offshore installation or equipment.</u></p>

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		<p style="text-align: center;">(3) If—</p> <p>(a) <u>a discharge to which this section applies occurs from two or more ships or offshore installations or from one or more ships and one or more offshore installations; and</u></p> <p>(b) <u>it is not reasonably practicable to identify the harmful substance that has been discharged from a particular ship or offshore installation,</u></p> <p><u>all of the discharged harmful substance shall be deemed, for the purposes of this section, to have been discharged from each of those ships or offshore installations, as the case may be.</u></p> <p style="text-align: center;">(4) In this section, 'relevant person', in relation to—</p> <p>(a) <u>a discharge from a ship, means the owner and the master of the ship; or</u></p> <p>(b) <u>a discharge from an offshore installation, means the owner and the master of the offshore installation."</u></p> <p>4. The amendment of section 3—</p> <p>(a) by the substitution for subsections (1), (2) and (3) of the following subsections, respectively:</p> <p style="padding-left: 40px;">"(1) [When] If any harmful substance [has been] <u>is discharged from a ship [tanker] within the prohibited area or from an offshore installation, the master of such ship [tanker] or offshore installation, or any member of the crew of such ship [or tanker] or of the staff employed in connection with such offshore installation designated by such master, shall forthwith, by the quickest means of communication available, report the fact that such a discharge has taken place to the principal officer at the port in the Republic nearest to where such ship [tanker] or offshore installation is.</u></p>

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		<p>(2) If, while it is within the prohibited area, a ship [or a tanker] sustains any damage, whether to its hull, equipment or machinery, which causes, or creates the likelihood of, a discharge of any harmful substance from such ship [or tanker], or having sustained such damage, enters the prohibited area in such damaged condition, the master of such ship [or tanker], or any member of its crew designated by the master, shall forthwith by the quickest means of communication available report to the principal officer at the port in the Republic nearest to where such ship [or tanker] then is the fact that such damage was sustained, the nature and location on the ship [or tanker] of the damage, the position at sea where the damage was sustained, the name of the ship [or tanker], its port of registry, its official number, its position, its course and, if in the Republic, its destination, the quantity and type of harmful substances on board and, in the case of a [tanker] ship to which [the provisions of section 13 apply] <u>Part 3 of the Merchant Shipping (Civil Liability Convention) Act, 2009, applies</u>, the particulars of the certificate.</p> <p>(3) For the purposes of subsection (2), damage to a ship [or a tanker] shall be deemed to have created the likelihood of a discharge of a harmful substance from such ship [or tanker] if it is of such a nature as to detrimentally affect, in any degree, the ship's [or tanker's] seaworthiness or efficient working"; and</p> <p>(b) by the deletion in subsection (4) of the words "or a tanker".</p> <p>5. The amendment of section 4—</p> <p>(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the</p>

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		<p>following words:</p> <p>"If any harmful substance is being discharged or is, in the opinion of the Authority, likely to be discharged from a ship, [or a tanker] the Authority may, with a view to preventing the pollution or further pollution of the sea by such substance, require the master or the owner of such ship [or tanker] or both such master and owner—";</p> <p>(b) by the deletion in paragraphs (a)(i) and (ii), (b), (c), (d), (e), (f), (g) and (h) of subsection (1) of the words "or tanker" wherever they occur;</p> <p>(c) by the deletion in paragraphs (a) and (c) of subsection (2) of the words "or tanker" wherever they occur;</p> <p>(d) by the substitution for subsection (3) of the following subsection:</p> <p style="text-align: center;">"(3) <u>Despite anything to the contrary in any other law</u>, if the owner of a ship [or a tanker], in complying with a requirement of the Authority in terms of subsection (1), incurs any expenses and—</p> <p>(a) the discharge or likelihood of a discharge of the harmful substance in question was due wholly to the fault of the State <u>or an organ of state</u>; or</p> <p>(b) the discharge or likelihood of a discharge of the harmful substance in question was due partly to the fault of the State <u>or an organ of state</u>,</p> <p>the amount of such expenses, in the event contemplated in paragraph (a), or the applicable proportion of the amount of such expenses determined in accordance with the provisions of the Apportionment of Damages Act, 1956 (Act No. 34 of 1956), in the event contemplated in</p>

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		<p>paragraph (b), shall become payable to the owner by the State <u>or the organ of state, as the case may be.</u>"; and</p> <p>(e) by the substitution for subsection (4) of the following subsection:</p> <p style="padding-left: 40px;">"(4) The provisions of subsections (1)(a), (d), (g) and (h), (2) [(a) and (b)] and 3 shall <i>mutatis mutandis</i> apply in respect of <u>a harmful [substances]</u> substance discharged or, in the opinion of the Authority, likely to be discharged from an offshore installation."</p> <p>6. The amendment of section 5—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">"(1) If, in the opinion of the Authority, a harmful substance is likely to be discharged from a ship, [or an tanker] it may take such measures, including the destruction, burning, or disposal in any other manner of the harmful substance in such ship, [or tanker] as it may deem fit to guard against or to prevent pollution of the sea by such harmful substance."</p> <p>(b) by the deletion in subsection (2) of the words "or a tanker"; and</p> <p>(c) by the substitution for subsection (9) of the following subsection:</p> <p style="padding-left: 40px;">"(9) If the discharge or likely discharge in question [relates to oil and] was due—</p> <p style="padding-left: 80px;">(a) wholly to the fault of the State <u>or an organ of state</u>, the owner of the ship [or tanker] in question shall not be liable in terms of [the provisions of] section 9(1)(b) for any expenditure incurred [by the Authority] by virtue of the provisions of</p>

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		<p>this section;</p> <p>(b) partly to the fault of the State <u>or an organ of state</u>, the amount of any expenditure so incurred [by the Authority] and recoverable from the owner concerned in terms of [the provisions of] section 9(1)(b) shall be reduced to such extent as is just and equitable regard being had to the degree in which the State <u>or the organ of state</u>, <u>as the case may be</u>, was at fault in relation to the discharge or likely discharge."</p> <p>7. The substitution for sections 6 and 7 of the following sections, respectively:</p> <p>"Moving of ship from certain area</p> <p>6. The Authority may order the master of any ship [or tanker] to move, subject to such instructions as the Authority may issue, [his] <u>the ship</u> [or tanker] and any object it may have in tow from an area in which removal of pollution of the sea by a harmful substance is in progress or about to be undertaken.</p> <p>Powers of inspection</p> <p>7. (1) Any person authorized thereto by the Authority and any member of the South African Police Service [or of the South African National Defence Force] may go on board any ship [or tanker] in any part of the prohibited area to ascertain whether any document required by [the Marine Pollution Acts] <u>this Act</u> to be carried on board such ship [or tanker] is so carried on board or, if he has reasonable grounds for believing that any provision of [those Acts] <u>this Act</u> has been or is being contravened in connection with such ship [or tanker], may so go on board and inspect such ship [or tanker] or any part or cargo thereof, inspect and make copies of any documents or records kept in respect of such ship [or tanker] or in respect of its cargo or the harmful substances on board</p>

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		<p>thereof, take samples of any harmful substances on board such ship [or tanker], take soundings of tanks, spaces and bilges and test any equipment on board such ship [or tanker] which is intended for use in preventing a discharge of harmful substances from such ship [or tanker].</p> <p>(2) Subsection (1) shall <u><i>mutatis mutandis</i> apply in respect of any offshore installation.</u>"</p> <p>8. The amendment of section 8 by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:</p> <p>"Any person or member referred to in section 7 and any other person authorized thereto by the Authority may enter upon any land with such workmen, machinery, vehicles, equipment, appliances, instruments and other articles, and may perform all such acts thereon, as may be necessary for the purpose of complying with any provision of this Act, or for the purpose of making any enquiries or undertaking any investigations with a view to determining whether any pollution of the sea by a harmful substance has occurred and whether the removal of such pollution is feasible, or for the purpose of erecting camps or other temporary works which may be considered necessary in connection with the removal of such pollution, or for the purpose of ascertaining whether or not any provision of [the Marine Pollution Acts] <u>this Act</u> or condition imposed thereunder is being complied with, and may, for the purpose of gaining access to such land, enter upon and cross any other land with the said workmen, machinery, vehicles, equipment, appliances, instruments and other articles: Provided that—".</p> <p>9. The substitution for section 9 of the following section:</p> <p>"Liability for loss, damage or costs caused by discharge of harmful substance</p> <p>9. (1) Subject to [the provisions of] this Act, the owner of any ship [tanker] or offshore installation at the time of [the] <u>an</u> incident, or, where the</p>

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		<p>incident consists of a series of occurrences, at the time of the first such occurrence, shall be liable for—</p> <p>(a) any loss or damage caused, elsewhere than on such ship [tanker] or offshore installation, in the area of the Republic by pollution resulting from the discharge of [oil] <u>a harmful substance</u> from such ship [tanker] or offshore installation;</p> <p>(b) the costs of any measures taken or caused to be taken by the Authority in terms of this Act after an incident has occurred in respect of such ship [tanker] or offshore installation, for the purposes of reducing loss or damage caused as contemplated in paragraph (a) through the discharge of [any oil] <u>a harmful substance</u>, or for the purposes of preventing such loss or damage being caused, whether or not a discharge as contemplated in paragraph (a) has occurred and whether or not such a discharge in fact subsequently occurs; and</p> <p>(c) any loss or damage caused in the area of the Republic by any measures so taken or caused to be taken after a discharge as contemplated in paragraph (a) has occurred.</p> <p>(2) For the purposes of subsection (1)(b)—</p> <p>(a) any measures taken or caused to be taken by the Authority in terms of this Act to remove or prevent pollution of the sea by [oil] <u>a harmful substance</u> discharged or likely to be discharged from any ship [tanker] or offshore installation, shall be deemed to be measures taken or caused to be taken by the Authority for the purposes contemplated in that subsection;</p> <p>(b) the costs referred to in that subsection shall include—</p> <p>(i) expenses reasonably</p>

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		<p>incurred in connection with the taking of measures referred to in that subsection; <u>and</u></p> <p>(ii) [an amount deemed by the Director-General to be sufficient to compensate] <u>expenses reasonably incurred by the [South] Southern African [National] Foundation for the Conservation of Coastal Birds, an organization registered in terms of the National Welfare Act, 1978 (Act No. 100 of 1978), as a welfare organization, or any similar organization [approved by the Minister, for expenses incurred]</u> <u>prescribed for the purposes of this subparagraph, in rescuing, conveying, treating, feeding, cleaning and rehabilitating coastal birds or other animals polluted by [oil] a harmful substance discharged from the ship [tanker] or offshore installation in question.</u></p> <p>(3) The owner of any ship [tanker] or offshore installation shall not be liable for any loss, damage or costs as set out in subsection (1) if he proves that the discharge or, as the case may be, the anticipated discharge in question—</p> <p>(a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon; or</p> <p>(b) was wholly caused by an act or omission on the part of [any] another person, not being [the owner or] a servant or agent of the owner, with intent to do damage; or</p> <p>(c) was wholly caused by the negligence or other wrongful act of any government or other authority responsible for the maintenance of</p>

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		<p>lights or other navigational aids, in the exercise of that function.</p> <p>(4) Where a ship [or a tanker] is together with another ship [or tanker] or with an offshore installation involved in an incident and a liability is incurred by virtue of [the provisions of] subsection (1) by each of the owners concerned, but the loss, damage or costs for which each of the owners would be liable cannot reasonably be separated from that or those for which the other owner or owners would be liable, the owners concerned shall be jointly and severally liable for all such loss, damage or costs.</p> <p>(5) If the owner of any ship [tanker] or offshore installation incurs a liability in terms of [the provisions of] subsection (1) for any loss or damage suffered or costs incurred as a result of an incident [which occurred without such owner's actual fault or privity]—</p> <p>(a) [the provisions of] section 261 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), shall not apply in respect of such liability; and</p> <p>(b) <u>subject to subsection (6), the aggregate of all amounts payable by such owner in respect of such liability, in so far as it relates to a particular incident, shall not exceed—</u></p> <p>(i) in the case of a ship, [or a tanker, one hundred and thirty-three units of account for each ton of the ship's or tanker's tonnage, or fourteen million units of account, whichever is the lesser] <u>an amount determined from time to time by the Minister by notice in the Gazette and, until the time that the amount is so determined, shall not exceed—</u></p> <p><u>(aa) if the ship does not exceed 5 000 tons, 4,51 million special</u></p>

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		<p style="text-align: right;"><u>drawing rights; or</u></p> <p style="text-align: right;"><i>(bb)</i> <u>if the ship exceeds 5 000 tons, 4,51 million special drawing rights together with an additional 631 special drawing rights for each ton of its tonnage in excess of 5 000 tons up to a maximum amount of 89,77 million special drawing rights; and</u></p> <p style="text-align: right;">(ii) <u>in the case of an offshore installation, [a sum] an amount determined from time to time by the Minister [but not exceeding] by notice in the Gazette and, until the time that the amount is so determined, shall not exceed fourteen million [units of account] special drawing rights.</u></p> <p style="text-align: right;">(6) <u>The owner of a ship or an offshore installation shall not be entitled to limit liability in accordance with subsection (5)(b) if it is proved that the loss, damage or costs in question resulted from the owner's personal act or omission, committed either with intent to cause any such loss, damage or costs or recklessly and with knowledge that such loss, damage or costs would probably result.</u></p> <p style="text-align: right;">(7) <u>No legal proceedings to enforce a claim in respect of a liability incurred in terms of subsection (1) shall be entertained by any court unless such proceedings are commenced with not later than three years after the date on which such claim arose: Provided that no such proceedings shall be so entertained after the expiration of a period of six years after the date on which the incident by reason of which the said liability was incurred, took place, or in the case where the incident consists of a series of</u></p>

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		<p>occurrences having the same origin, six years after the date on which the first of those occurrences took place.</p> <p>(7A) <u>This section does not apply in relation to pollution damage within the meaning of the Merchant Shipping (Civil Liability Convention) Act, 2009.</u></p> <p>(8) For the purposes of this section—</p> <p>(a) <u>the liability of the owner of a ship or offshore installation for any impairment of the environment shall be taken to be a liability only in respect of—</u></p> <p>(i) <u>any resulting loss of profits; and</u></p> <p>(ii) <u>the cost of any reasonable measures of reinstatement actually taken or to be taken;</u></p> <p>(b) <u>the tonnage of a ship [or a tanker] shall be its [net] gross tonnage [with the addition of any engine room space deducted for the purpose of ascertaining its net tonnage] calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969. However, if the tonnage of the ship cannot be calculated in accordance those regulations, the Authority shall, if so directed by a court, certify the tonnage that, in its opinion and having regard to the evidence specified in the direction, would be the tonnage of the ship if such tonnage were calculated in accordance with those regulations, and the tonnage so certified shall be deemed to be the tonnage of that ship."</u></p> <p>10. The amendment of section 10—</p> <p>(a) by the substitution for subsections (1), (2), (3), (4) and (5) of the following subsections, respectively:</p>

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		<p>"(1) When an incident has occurred in respect of a ship [tanker] or offshore installation, the owner of such ship [tanker] or offshore installation shall not be liable otherwise than under [the provisions of] this Act for any—</p> <p>(a) loss or damage referred to in section 9(1)(a) or (c); or</p> <p>(b) costs referred to in section 9(1)(b),</p> <p>suffered or incurred as a result of that incident.</p> <p>(2) <u>Subject to subsection (7)</u>, no servant or agent of the owner of the ship [tanker] or offshore installation shall be liable to any person for any loss, damage or costs referred to in subsection (1).</p> <p>(3) Any person performing salvage operations in connection with a ship [tanker] or offshore installation with the [agreement] <u>consent</u> of the owner or master thereof shall, for the purposes of subsection (2), be regarded as the agent of such owner.</p> <p>(4) Any person in the service or acting on the authority of the State or [the Authority] <u>an organ of state</u> or any person engaged in terms of section 27(1) read with section 4(2)(a) or section 22(1), as the case may be, to perform any act required to be performed in terms of section 4(1) shall not be liable (except in the case of any wilful act or omission on the part of any such person) to any person for any loss of or damage to any ship [tanker] or offshore installation or, in the case of such ship [or tanker], its cargo or harmful substances, caused by or arising out of or in any manner connected with the performance of such act.</p> <p>(5) If, by virtue</p>

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		<p>of [the provisions of] section 5, measures are being taken to guard against, prevent or remove pollution of the sea by a harmful substance [in the prohibited area], any person in the service or acting on the authority of the State or [the Authority] <u>an organ of state</u>, any officer of or member of the crew of any vessel employed in the taking of such measures, the employer of such officer or member, or the owner of such vessel, shall not be liable (except in the case of any wilful act or omission on the part of any such person, officer, member, employer or owner) to any person for any loss of or damage to any ship [tanker] or offshore installation in the said area, or, in the case of such ship [or tanker], its cargo or harmful substances, caused by or arising out of or in any manner connected with the taking of such measures."; and</p> <p>(b) by the addition of the following subsection:</p> <p style="padding-left: 40px;"><u>"(7) Subject to subsections (4), (5) and (6), nothing in this Act shall prejudice any claim, or the enforcement of any claim, a person incurring a liability in terms of section 9(1) may have against another person in respect of that liability."</u></p> <p>11. The substitution for section 11 of the following section:</p> <p style="padding-left: 40px;">"Exemption in respect of warships</p> <p style="padding-left: 80px;">11. <u>Section 9(1) shall not apply in respect of any warship."</u></p> <p>12. The substitution for section 12 of the following section:</p> <p style="padding-left: 40px;">"Applications to court</p> <p style="padding-left: 80px;">12. (1) If the owner of a ship [tanker] or offshore installation has or is alleged to have incurred a liability in terms of [the provisions of] subsection (1) of section 9 in the circumstances contemplated</p>

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		<p>in subsection (5) of that section, he may [in the prescribed manner] apply to the court for the determination, in accordance with [the provisions of the said] <u>that subsection [(5)],</u> of the aggregate amount payable by him in respect of such liability.</p> <p>(2) If on an application referred to in subsection (1) the court finds that the applicant has incurred the liability in question and is, by virtue [of the provisions] of section 9(5), entitled to pay in respect of such liability an aggregate amount not exceeding an amount calculated in accordance with [the provisions of] <u>that section [9(5)],</u> the court shall, after determining such aggregate amount [in accordance with the provisions of section 9(5), direct the applicant to deposit such amount with the Master of the said court or to furnish the said Master with a written guarantee, acceptable to the court, for the payment of such amount, and any amount so deposited or guarantee so furnished shall, for the purposes of this section, be deemed to constitute a fund] <u>and directing the payment into court of that amount—</u></p> <p><u>(a) determine the amounts (if any) that would, apart from the amount paid into court, be due in respect of the liability to the several persons making claims in the proceedings; and</u></p> <p><u>(b) direct that the amount paid into court be distributed among those persons in proportion to their claims, subject to the following provisions of this section.</u></p> <p><u>(3) A payment into court of an amount determined in terms of subsection (2) shall be made in South African currency, and—</u></p> <p><u>(a) for the purpose of converting such an amount from special drawing rights into South African currency, one special drawing right shall be taken as equal to such a sum in South African currency as the International Monetary Fund have</u></p>

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		<p>fixed as being the equivalent of one special drawing right for—</p> <p>(i) the day on which the determination is made; or</p> <p>(ii) if no sum has been fixed for that day, the last day before that day for which a sum has been so fixed;</p> <p>(b) a certificate given by or on behalf of the National Treasury stating—</p> <p>(i) that a particular sum in South African currency has been so fixed for the day on which the determination was made; or</p> <p>(ii) that no sum has been so fixed for that day and a particular sum in South African currency has been so fixed for a day that is the last day for which a sum had been so fixed before the day on which the determination was made.</p> <p>shall be <i>prima facie</i> evidence of those matters for the purposes of this Act; and</p> <p>(c) a document purporting to be such a certificate shall, in any proceedings, be admissible in evidence and, in the absence of evidence to the contrary, be deemed to be such a certificate.</p> <p>(4) No claim for the distribution of any money in terms of this section shall be admitted by a court unless it is made within such time as the court may direct or such further time as the court may allow.</p> <p>(5) Where any amount has already been paid in or towards satisfaction of any claim in respect of the loss, damage or costs to which the liability relates, by the owner of the ship [tanker] or offshore installation in question [or by the person referred to in section 15 as the</p>

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		<p>insurer], the person who paid such amount shall, to the extent of that amount, be in the same position with respect to any distribution made by the [trustees] court in terms of subsection [(4)] (2) as the person to whom such amount was paid would have been.</p> <p>(6) If the owner concerned has made any reasonable sacrifice or taken any other reasonable measures to prevent or reduce loss or damage to which the liability relates, he shall be in the same position with respect to any distribution made by the [trustees] court in terms of subsection [(4)] (2) as if he had a claim in respect of the liability equal to the cost of the sacrifice or other measures.</p> <p>(7) <u>The court may, if it thinks fit, postpone the distribution of such part of the money to be distributed by it in terms of subsection (2) as it considers appropriate to meet any claim by the owner that he might, at some later date, be compelled to pay an amount in or towards satisfaction of any claim as contemplated in subsection (5) which, if he had paid it before the court made a distribution in terms of subsection (2), would have entitled him to claim relief in terms of subsection (5).</u></p> <p>(7A) <u>No lien or other right in respect of any ship or offshore installation or other property shall affect the proportions in which any amount is distributed in accordance with subsection (2)(b).</u></p> <p>(8) For the purposes of this section—</p> <p>(a) 'court' means [any division of] the [Supreme] High Court of South Africa;</p> <p>(b) <u>a reference to payment into court of any amount shall be construed to include reference to furnishing the court with a guarantee, acceptable to the court, for the payment of a sum not less than that amount."</u></p> <p>13. The repeal of sections 13, 14 and</p> <p>15.</p>

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		<p>14. The substitution for section 16 of the following section:</p> <p>"Depositing of amount or furnishing of guarantee by owner of ship or offshore installation in respect of certain costs</p> <p>16. If an amount has in terms of [the provisions of] section 9(1)(b) become payable by the owner of a ship [a tanker to which the provisions of section 13(1) do not apply] or [an] offshore installation in respect of costs referred to in <u>that</u> section [9(1)(b)], or if the Authority believes on reasonable grounds that an amount may become so payable, such owner shall either deposit with the Authority an amount, or furnish the Authority with a written guarantee, acceptable to it, for the payment of an amount, deemed by the Authority to be sufficient to satisfy the amount [which] that has or may become so payable by the [said] owner."</p> <p>15. The amendment of section 17—</p> <p>(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:</p> <p>"If the Authority is satisfied that no amount in respect of costs referred to in section 9(1)(b) is, or will become, payable in terms of [the provisions of] that section by an owner referred to in section 16 and that no pollution or further pollution of the sea by [oil] a harmful substance will be caused by the ship [tanker] or offshore installation in question, it shall—"; and</p> <p>(b) by the substitution for subsection (3) of the following subsection:</p> <p>"(3) In the event of an application having been made to the court in terms of section 12 in respect of the incident in question, the Authority shall refund to the owner concerned so much of any amount deposited in terms of section 16, or, as the case may be, agree to a reduction of any amount guaranteed in terms of the said</p>

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		<p>section by so much, as exceeds the amount to which the State <u>and any organ of state</u> is entitled in terms of a distribution made in terms of section 12[(4)] (2)."</p> <p>16. The substitution for section 18 of the following section:</p> <p>"Ratification by Minister of certain expenses</p> <p>18. The Minister may ratify the <u>reasonable</u> incurring of any expenses by the State [(otherwise than in pursuance of section 5(1) or (2))] or by any [local authority or other public body] <u>organ of state (other than the Authority)</u> or any other person in removing pollution of the sea by [oil] <u>a harmful substance</u> discharged from any ship [tanker] or offshore installation, to the extent to which such expenses could have been incurred by the Authority in terms of section 5(1) or (2), and any expenses the incurring of which has been so ratified shall be deemed, <u>for the purposes of section 9</u>, to be costs [referred to] <u>contemplated in [section 9] subsection (1)(b) of that section.</u>"</p> <p>17. The amendment of section 19—</p> <p>(a) by the substitution in subparagraph (i) of subsection (1)(a) for the words "division of the Supreme Court of South Africa having jurisdiction" of the words "High Court of South Africa";</p> <p>(b) by the substitution in subparagraph (ii) of subsection (1)(a) for the words "said division of the Supreme Court of South Africa" of the words "High Court of South Africa";</p> <p>(c) by the substitution in paragraph (b) of subsection (1) for the words "said division of the Supreme Court of South Africa" of the words "High Court of South Africa";</p> <p>(d) by the substitution for subsection (2) of the following subsection:</p> <p style="text-align: right;">"(2) The Authority shall cause any ship or goods detained or seized in terms of subsection (1) to be released</p>

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		<p>forthwith from detention or seizure if the owner concerned pays the costs, makes the deposit or furnishes the guarantee referred to in that subsection or by virtue of a direction contemplated in section 12(2) [deposits] pays an amount [with the Master concerned or furnishes the said Master with a guarantee] into court as contemplated in that section, before the realization, in terms of [the said] subsection (1), of the ship or goods in question."; and</p> <p>(e) by the deletion of subsection (4).</p> <p>18. The amendment of section 20—</p> <p>(a) by the substitution for subsections (1) and (2) of the following subsections, respectively:</p> <p style="padding-left: 40px;">"(1) [Any division of the Supreme] The High Court of South Africa, and, within the limits of its jurisdiction as determined in section 29 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), but subject to the provisions of section 12(8), any magistrate's court, shall have jurisdiction in respect of all causes of action arising out [of the provisions] of this Act.</p> <p style="padding-left: 40px;">(2) <u>Despite anything to the contrary in any law, a magistrates' court shall have jurisdiction to impose any penalty prescribed by this Act.</u>"; and</p> <p>(b) by the deletion of subsection (3).</p> <p>19. The substitution for section 21 of the following section:</p> <p style="padding-left: 40px;">"Authority's permission required for transfer of certain harmful substances or for certain other acts in respect of ships</p> <p style="padding-left: 80px;">21. (1) No person shall—</p> <p>(a) outside a harbour of which Transnet Limited has become the owner in</p>

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		<p>terms of section 3 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989), or a fishing harbour as defined in section 1 of the [Sea Fishery Act, 1988 (Act No. 12 of 1988)] <u>Marine Living Resources Act, 1998 (Act No. 18 of 1998)</u>, and within the prohibited area, render any ship having [oil or any other prescribed harmful substance] on board (whether as cargo or otherwise) [or any tanker] <u>oil or any other harmful substance prescribed for the purposes of this paragraph</u> incapable of sailing or manoeuvring under its own power; <u>or</u></p> <p>(b) <u>outside a harbour or fishing harbour referred to in paragraph (a) and within the prohibited area, carry out a transfer operation,</u></p> <p>except with the permission of the Authority and in accordance with [the provisions of] this Act.</p> <p>(2) In giving its permission for the performance of any act referred to in subsection (1), the Authority may impose any conditions subject to which such act shall be performed, and such conditions may include the obligation to obtain the services of one or more tugs, spray boats or other vessels to stand by during a period determined by the Authority."</p> <p>20. The amendment of section 22—</p> <p>(a) by deletion in paragraph (a) of subsection (1) of the words "or a tanker";</p> <p>(b) by the substitution in subsection (1) for the words following paragraph (c) of the following words:</p> <p>"the Authority may cause such act to be performed or such condition to be complied with, and for that purpose may cause steps to be taken which may include the taking over of control of such ship [tanker] or offshore installation."; and</p>

No. and year of law	Short title	Extent of amendment
		<p>(c) by the substitution for subsection (2) of the following subsection:</p> <p style="padding-left: 40px;">"(2) All expenses reasonably incurred by the Authority by virtue of [the provisions of] subsection (1) shall be deemed, <u>for the purposes of section 9</u>, to be costs [referred to] <u>contemplated in [section 9] subsection (1)(b) of that section.</u></p> <p>21. The amendment of section 23 by the substitution for the words "the provisions of section 19(3)" of the words "section 19(3)".</p> <p>22. The amendment of section 24—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">"(1) Subject to [the provisions of] subsection (2), no person shall operate an offshore installation unless a pollution safety certificate issued in terms of [the provisions of] this section is in force in respect thereof."; and</p> <p>(b) by the substitution in paragraph (a) of subsection (5) for the words "the provisions of subsection (1) or (2)" of the words "subsection (1) or (2)".</p> <p>23. The amendment of section 25—</p> <p>(a) by the deletion in subsection (1) of the words "or any tanker or any class of tankers"; and</p> <p>(b) by the substitution for subsection (2) of the following subsection:</p> <p style="padding-left: 40px;">"(2) The Minister may exempt any person performing salvage operations in connection with a ship or [a tanker] <u>an offshore installation</u> from which a harmful substance is being discharged or, in the opinion of the Minister, is likely to be discharged, from any liability in respect of any consequences of the discharge of the harmful substance in question."</p> <p>24. The amendment of section 26—</p>

No. and year of law	Short title	Extent of amendment
		<p>(a) by the deletion of subsection (1);</p> <p>(b) by the substitution for paragraph (b) of subsection (2) of the following paragraph:</p> <p style="padding-left: 40px;">"(b) when the Minister deems it necessary or expedient in the public interest, for defraying expenditure incurred in preventing or removing the pollution of the sea by harmful substances in or discharged from ships [tankers] or offshore installations and in connection with matters incidental thereto;"</p> <p>(c) by the substitution for paragraph (g) of subsection (2) of the following paragraph:</p> <p style="padding-left: 40px;">"(g) for any purpose connected with the performance <u>by the Minister, and, when the Minister deems it necessary or expedient in the public interest,</u> by the Authority, of [its] functions in terms of [the provisions of] <u>this Act</u>,";</p> <p>(d) by the substitution for the proviso in subsection (2) of the following proviso:</p> <p style="padding-left: 40px;">"Provided that, for the purposes of paragraph (b), the defraying of expenditure incurred in preventing or removing pollution of the sea by harmful substances discharged from any ship [tanker] or offshore installation shall not exempt the owner of such ship [tanker] or offshore installation from liability under this Act <u>or any other law</u> for payment of such expenditure."; and</p> <p>(e) by the deletion of subsection (3).</p> <p style="padding-left: 40px;">25. The amendment of section 27 by the deletion of subsection (6).</p> <p style="padding-left: 40px;">26. The amendment of section 28—</p> <p>(a) by the substitution for paragraphs (a), (b) and (c) of subsection (1) of the following paragraphs, respectively:</p>

No. and year of law	Short title	Extent of amendment
		<p>"(a) prescribing measures to be taken on board or in respect of a ship [or a tanker] when such ship [or tanker] is rendered incapable of sailing or manoeuvring under its own power as contemplated in section 21;</p> <p>(b) prescribing the machinery and equipment to be installed and maintained on or in connection with a ship [tanker] or offshore installation for the purposes of the removal or prevention of pollution of the sea by harmful substances discharged or likely to be discharged from such ship [tanker] or offshore installation during a transfer [of any such substance] operation as contemplated in section 21(1)(b) or, in the case of such ship [or tanker], during the period when such ship [or tanker] has been rendered incapable of sailing or manoeuvring under its own power as contemplated in section 21(1)(a);</p> <p>(c) prescribing, in respect of ships [or tankers] registered or licensed in the Republic [under the Merchant Shipping Act, 1951 (Act No. 57 of 1951)] and in respect of ships [or tankers] not so registered or licensed but [which] that ply between a port in the Republic or an offshore installation and any other port or installation similar to an offshore installation, the equipment to be carried on board such ships [or tankers] for use in preventing a discharge of harmful substances, and</p>

No. and year of law	Short title	Extent of amendment
		<p>standards for the maintenance of such equipment;"</p> <p>(b) by the insertion in subsection (1) after paragraph (c) of the following paragraphs:</p> <p style="padding-left: 40px;">"(cA) <u>as to the keeping of records in relation to transfer operations;</u>" and</p> <p>(c) by the deletion of paragraph (d) of subsection (1).</p> <p>27. The substitution for section 29 of the following section:</p> <p style="padding-left: 40px;">"Delegation by Minister</p> <p style="padding-left: 80px;">29. The Minister [the Director-General and the Authority] may delegate to any person [or to two or more persons] any of the powers conferred upon [them respectively] <u>the Minister</u> in terms of the provisions of this Act other than [in the case of the Minister] the provisions of section 28."</p> <p>28. The amendment of section 30—</p> <p>(a) by the deletion in subsection (1)(a) of subparagraph (i);</p> <p>(b) by the substitution for subsection (2) of the following subsection:</p> <p style="padding-left: 80px;">"(2) Any person convicted of an offence referred to in—</p> <p style="padding-left: 40px;">(a) section 3(4), 8(2) [13(7)] <u>or 24(5)</u> [or subsection (1)(a)(i)] shall be liable to a fine not exceeding [R25 000] <u>R50 000</u> or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment;</p> <p style="padding-left: 40px;">(b) subsection (1)(b)(iii), (b)(iv), (c)(i), (c)(ii), (c)(iii) or (c)(iv) shall be liable to a fine not exceeding [R50 000] <u>R100 000</u> or to imprisonment for a period not exceeding one</p>

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		<p>year or to both such fine and such imprisonment;</p> <p>(c) subsection (1)(a)(ii) shall be liable to a fine not exceeding [R90 000] <u>R200 000</u> or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;</p> <p>(d) section 2[(1)] <u>(2)</u> [or 13(6)] or subsection (1)(b)(i) or (b)(ii) shall be liable to a fine not exceeding [R200 000] <u>R500 000</u> or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.";</p> <p>(c) by the substitution for subsection (4) of the following subsection:</p> <p style="padding-left: 40px;">"(4) There shall be a right of appeal to the Minister from a determination or order of the Authority under subsection (3) whereby a penalty exceeding [R2 000] <u>R10 000</u> is imposed, provided such right is exercised within a period of three months from the date of such determination or order."; and</p> <p>(d) by the addition of the following subsection:</p> <p style="padding-left: 40px;"><u>"(6) If an act or omission constitutes an offence in terms of this Act and in terms of any other Act, the offender may be prosecuted and punished either in terms of this Act or in terms of that other Act."</u></p> <p>29. The substitution for section 30A of the following section:</p> <p>"Service on master or owner of ship</p> <p>30A. (1) <u>A document to be served on the master or owner of a ship in respect of an offence in terms of this Act may be served on the agent of the ship instead.</u></p> <p>(2) <u>A document served</u></p>

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		<p><u>on an agent of a ship under subsection (1) shall be deemed to have been served on the master or owner of the ship.</u></p> <p>(3) <u>In this section, 'agent', in relation to a ship, includes—</u></p> <p>(a) <u>the agent (if any) for the berthing or working of the ship while it is in port; and</u></p> <p>(b) <u>where the ship has left port, that agent, or if there was another agent for the ship when it left port, the last-mentioned agent."</u></p> <p>30. The insertion after section 30A of the following sections:</p> <p>"Evidence</p> <p>30B. <u>In any proceedings for an offence in terms of this Act—</u></p> <p>(a) <u>any record kept in pursuance of this Act is admissible as prima facie evidence of the facts stated in the record;</u></p> <p>(b) <u>a copy of an entry in such a record, being a copy certified by the person by whom the record is required to be kept to be a true copy of the entry, is admissible as prima facie evidence of the facts stated in the entry;</u></p> <p>(c) <u>a document purporting to be a record kept in pursuance of this Act, or purporting to be such a certified copy as referred to in paragraph (b), shall, in the absence of evidence to the contrary, be deemed to such a record or certified copy, as the case may be;</u></p> <p>(d) <u>an allegation in a complaint that notification of a discharge was not given in accordance with this Act shall, in the absence of evidence to the contrary, be taken as proved; and</u></p> <p>(e) <u>a written statement purporting to be signed by the Minister, or on behalf of the Authority, that a specified</u></p>

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		<p><u>person has been appointed or authorised for a specified purpose for the purposes of this Act is admissible as prima facie evidence of that fact.</u></p> <p>Evidence of analyst</p> <p>30C. (1) <u>The Authority may, in writing, appoint appropriately qualified persons to be analysts for the purposes of this Act.</u></p> <p>(2) <u>Subject to subsection (4), a certificate signed by an analyst appointed under subsection (1) setting out, in relation to a substance, one or more of the following:</u></p> <p>(a) <u>when and from whom the substance was received;</u></p> <p>(b) <u>what labels or other means of identifying the substance accompanied it when it was received;</u></p> <p>(c) <u>what container the substance was in when it was received;</u></p> <p>(d) <u>a description of the substance received;</u></p> <p>(e) <u>that he has analysed or examined the substance;</u></p> <p>(f) <u>the date on which the analysis or examination was done;</u></p> <p>(g) <u>the method used in conducting the analysis or examination;</u></p> <p>(h) <u>the results of the analysis or examination.</u></p> <p><u>shall be admissible in any proceedings for an offence in terms of this Act as prima facie evidence of the matters in the certificate and of the correctness of the result of the analysis or examination.</u></p> <p>(3) <u>For the purposes of this section, a document purporting to be a certificate referred to in subsection (2) shall, in the absence of evidence to the contrary, be deemed to be such a certificate.</u></p>

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		<p>(4) <u>A certificate referred to in subsection (2) shall not be received in evidence in pursuance of that subsection unless the person charged has been given a copy of the certificate together with reasonable notice of the intention of the prosecution to produce the certificate as evidence in the proceedings.</u></p> <p>(5) <u>Where, in pursuance of subsection (2), a certificate of an analyst appointed under subsection (1) is admitted in evidence, the person charged may require the analyst to be called as a witness for the prosecution and the analyst may be cross-examined as if the analyst had given evidence of the matters stated in the certificate.</u></p> <p>(6) <u>Subsection (5) does not entitle a person to require an analyst to be called as a witness for the prosecution unless—</u></p> <p>(a) <u>the prosecution has been given at least five days notice of the person's intention to require the analyst to be so called; or</u></p> <p>(b) <u>the court, by order, allows the person to require the analyst to be so called."</u></p> <p>31. The substitution for the long title of the following long title:</p> <p>"To provide for the protection of the marine environment from pollution by oil and other harmful substances, and for that purpose to provide for the prevention and combating of pollution of the sea by oil and other harmful substances; to determine liability in certain respects for loss or damage caused by the discharge of oil <u>or other harmful substances</u> from ships [tankers] and offshore installations; and to provide for matters connected therewith."</p>
Act No. 2 of 1986	Marine Pollution (Prevention of Pollution from Ships) Act, 1986	<p>32. The amendment of section 1—</p> <p>(a) by the deletion of the definitions of "Convention" and "Director-General";</p>

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		<p>(b) by the insertion after the definition of "exclusive economic zone" of the following definitions:</p> <p style="padding-left: 40px;"><u>" 'foreign ship' means a ship that is not a South African ship;</u></p> <p style="padding-left: 40px;"><u>'inspector' means a person who is appointed by the Authority, in writing, to be an inspector for the purposes of this Act;</u></p> <p style="padding-left: 40px;"><u>'Law of the Sea Convention' means the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982.;</u></p> <p>(c) by the insertion after the definition of "Minister" of the following definition:</p> <p style="padding-left: 40px;"><u>" 'organ of state' has the meaning it has in section 239 of the Constitution of the Republic of South Africa, 1996.;</u></p> <p>(d) by the insertion after the definition of "regulation" of the following definition:</p> <p style="padding-left: 40px;"><u>" 'Republic' includes the Prince Edward Islands referred to in section 2.;"</u></p> <p>(e) by the deletion of the definition of "ship";</p> <p>(f) by the substitution for the definition of "South African ship" of the following definition:</p> <p style="padding-left: 40px;"><u>" 'South African ship' means—</u></p> <p style="padding-left: 80px;"><u>(a) a ship registered in the Republic; or</u></p> <p style="padding-left: 80px;"><u>(b) an unregistered ship having South African nationality.;"</u></p> <p>(g) by the deletion of the definition of "territorial waters";</p> <p>(h) by the insertion after the definition of "South African ship" of the following definition:</p> <p style="padding-left: 40px;"><u>" 'the Convention' has the meaning given by section 1A.;"</u></p> <p>(i) by the substitution for the definition of "this Act" of the following definition:</p>

No. and year of law	Short title	Extent of amendment
		<p style="text-align: center;"><u>"this Act' includes the Convention and the regulations;"</u>;</p> <p>(j) by the addition of the following definition:</p> <p style="padding-left: 40px;"><u>"Tonnage Convention' has the meaning it has in section 2(1) of the Merchant Shipping Act, 1951 (Act No. 57 of 1951)"; and</u></p> <p>(k) by the addition of the following subsections, the existing section becoming subsection (1):</p> <p style="padding-left: 80px;"><u>"(2) Unless the context indicates otherwise, an expression used in this Act and in the Convention (whether or not a particular meaning is given to it by the Convention) has, in this Act, the meaning it has in the Convention.</u></p> <p style="padding-left: 80px;"><u>(3) If, at any time, the gross tonnage applicable to a ship has been determined otherwise than in accordance with the Tonnage Convention, then, in the application of this Act to the ship at that time, a reference in this Act to the gross tonnage of a ship not expressed in tons is taken to be a reference to the gross tonnage of the ship expressed in tons."</u></p> <p>33. The insertion after section 1 of the following sections:</p> <p style="padding-left: 40px;">"Meaning of Convention</p> <p style="padding-left: 80px;">1A. (1) <u>The Convention is the International Convention for the Prevention of Pollution from Ships, 1973—</u></p> <p style="padding-left: 40px;"><u>(a) as corrected by the Procés-Verbal of Rectification dated 13 June 1978;</u></p> <p style="padding-left: 40px;"><u>(b) as modified and added to by the 1978 Protocol relating to the Convention; and</u></p> <p style="padding-left: 40px;"><u>(c) as affected by any amendment made under Article 16 of the Convention or Article VI of the Protocol and accepted by the Republic.</u></p>

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		<p>(2) Before the commencement of this section, the Minister must publish a notice in the <i>Gazette</i> setting out the English text of the provisions of the Convention as in force at the commencement.</p> <p>(3) If an amendment is made under Article 16 of the Convention or Article VI of the Protocol and accepted by the Republic, the Minister must publish a notice in the <i>Gazette</i> setting out the English text of the amendment and specifying the day or days on which its provisions enter into force for the Republic.</p> <p>(4) In interpreting this Act, the Convention is taken to be the English text of the Convention as in force for the Republic and set out in notices in terms of this section.</p> <p>Act binds State</p> <p>1B. (1) This Act binds the State and every organ of state.</p> <p>(2) However, this Act does not makes the State or any organ of state liable to be prosecuted for an offence."</p> <p>34. The substitution for section 2 of the following section:</p> <p>"Operation of Act</p> <p>2. This Act applies both within and outside the Republic and extends to the Prince Edward Islands within the meaning of section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948)."</p> <p>35. The insertion after section 2 of the following sections:</p> <p>"Convention has force of law</p> <p>2A. (1) The Convention has the force of law, subject to this Act, as part of the law of the Republic.</p> <p>(2) The provisions of the Convention as so having the force of law that apply to ships shall apply—</p>

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		<p>(a) <u>to South African ships anywhere;</u></p> <p>(b) <u>to foreign ships when in the Republic, the territorial waters or the exclusive economic zone; and</u></p> <p>(c) <u>to any ship—</u></p> <p style="padding-left: 2em;">(i) <u>that is situated on or above any part of the continental shelf extending beyond the outer limits of the exclusive economic zone; and</u></p> <p style="padding-left: 2em;">(ii) <u>that is subject to the jurisdiction of the Republic.</u></p> <p style="padding-left: 4em;">(3) <u>Unless the context indicates otherwise, a reference in the Convention—</u></p> <p>(a) <u>to a State Party shall be construed as, or as including, a reference to the Republic, and any reference to a Party shall be construed accordingly; and</u></p> <p>(b) <u>to the Administration or Government shall, in relation to the Republic, a South African ship, or any foreign ship covered by subsection (2)(c), be construed as, or as including, a reference to the Authority.</u></p> <p>Power to require information (foreign ships)</p> <p>2B. (1) <u>If —</u></p> <p>(a) <u>a foreign ship is navigating in the territorial waters or the exclusive economic zone; and</u></p> <p>(b) <u>there are clear grounds for believing that an act or omission that constitutes a contravention of this Act has occurred in relation to the ship while in the exclusive economic zone,</u></p> <p><u>the Authority may require the master of the ship to give to the Authority such of the information referred to in subsection (2) as the Authority requires.</u></p> <p style="text-align: right;">(2) <u>All or any of the</u></p>

No. and year of law	Short title	Extent of amendment
		<p>following information may be required:</p> <p>(a) <u>the ship's identity;</u></p> <p>(b) <u>its port of registry;</u></p> <p>(c) <u>its last port of call;</u></p> <p>(d) <u>its next port of call;</u></p> <p>(e) <u>any other relevant information required to establish whether the contravention occurred.</u></p> <p>Powers of inspection</p> <p>2C. (1) For the purpose of—</p> <p>(a) <u>ascertaining whether a provision of this Act that is applicable in relation to a South African ship has been complied with in respect of the ship;</u></p> <p>(b) <u>ascertaining whether there has been a discharge from a ship in contravention of this Act;</u></p> <p>(c) <u>ascertaining whether a provision of this Act that is applicable in relation to a foreign ship has been complied with in respect of the ship;</u></p> <p>(d) <u>ascertaining whether a provision of a law of a country other than the Republic giving effect to the Convention, being a provision that is applicable in relation to a foreign ship, has been complied with in respect of the ship; or</u></p> <p>(e) <u>carrying out any other investigation required for the purposes of this Act.</u></p> <p>an inspector may—</p> <p>(i) <u>go on board the ship with such assistants and equipment as he or she considers necessary;</u></p> <p>(ii) <u>require the ship's master to take such steps as the inspector directs to facilitate the boarding;</u></p> <p>(iii) <u>inspect or test any</u></p>

No. and year of law	Short title	Extent of amendment
		<p><u>machinery or equipment of the ship or require the machinery or equipment to be tested;</u></p> <p>(iv) <u>require the ship's master to take such steps as the inspector directs to facilitate the inspection or testing of any machinery or equipment of the ship;</u></p> <p>(v) <u>open, or require the ship's master to cause to be opened, any hold, bunker, tank, compartment or receptacle in or on board the ship;</u></p> <p>(vi) <u>require the ship's master to produce any record book required by this Act to be carried in the ship or any other books, documents or records relating to the ship or its cargo that are carried in the ship;</u></p> <p>(vii) <u>make copies of, or take extracts from any such books, documents or records;</u></p> <p>(viii) <u>require the ship's master to certify that a copy of an entry in any record book required by this Act to be carried in the ship made by the inspector is a true copy of such an entry;</u></p> <p>(ix) <u>examine, and take samples of, any substance or thing being in, on or in the vicinity of a ship in respect of which an investigation of a discharge or suspected discharge in contravention of this Act is being made;</u></p> <p>(x) <u>require the ship's master, or any person representing the master, to certify the taking of samples; and</u></p>

No. and year of law	Short title	Extent of amendment
		<p>(xi) <u>require a person to answer questions.</u></p> <p>(2) <u>This section does not authorise the inspection of a foreign ship navigating in the exclusive economic zone if the inspection is in respect of an act or omission, or possible act or omission, in relation to the ship while in the exclusive economic zone unless—</u></p> <p>(a) <u>there are clear grounds for believing that the act or omission was a substantial discharge causing or threatening to cause significant pollution of the marine environment; and</u></p> <p>(b) <u>a requirement for information under section 2B has not been complied with, or information supplied purportedly in compliance with such a requirement is manifestly at variance with the evident factual situation.</u></p> <p>(3) <u>A person may not fail or refuse to comply with a requirement made of the person by an inspector under subsection (1).</u></p> <p>(4) <u>A person may not, in answering a question that the person is required to answer under subsection (1), make a statement that is false or misleading in a material particular.</u></p> <p>(5) <u>An inspector may not, in exercising powers under subsection (1), unnecessarily delay a ship from beginning a voyage.</u></p> <p>(6) <u>Subsection (3) does not apply if the person has a reasonable excuse.</u></p> <p>Detention of ships in connection with pollution breaches</p> <p>2D. (1) <u>The Authority may detain a foreign ship if—</u></p> <p>(a) <u>the ship is voluntarily at a port and there are clear grounds for believing that a pollution breach has occurred because of acts or omissions in</u></p>

No. and year of law	Short title	Extent of amendment
		<p><u>relation to the ship in the internal or territorial waters or the exclusive economic zone;</u></p> <p><u>(b) the ship is in the territorial waters and there are clear grounds for believing that a pollution breach has occurred because of acts or omissions in relation to the ship while navigating in the internal or territorial waters; or</u></p> <p><u>(c) the ship is in the territorial waters or the exclusive economic zone and there is clear objective evidence that—</u></p> <p><u>(i) a pollution breach has occurred because of acts or omissions in relation to the ship in the exclusive economic zone; and</u></p> <p><u>(ii) the actions resulted in a discharge from the ship that has caused or threatens to cause major damage to the coastline of the Republic, to related interests of the Republic or to any resources of the territorial sea or exclusive economic zone.</u></p> <p><u>(2) The Authority may detain a South African ship if there are clear grounds for believing that a pollution breach has occurred as a result of acts of omissions in relation to the ship.</u></p> <p><u>(3) If a ship is detained under subsection (1) or (2), the Authority may—</u></p> <p><u>(a) direct the ship's master to move the ship to a reasonable stated place; or</u></p> <p><u>(b) acting with any reasonable help or force, escort the ship to the place.</u></p> <p><u>(4) The master must comply with a direction under subsection (3)(a), unless the master has a reasonable excuse.</u></p> <p><u>(5) The ship shall be</u></p>

No. and year of law	Short title	Extent of amendment
		<p>released immediately if—</p> <p><u>(a) security is provided in accordance with subsection (6);</u></p> <p><u>(b) all proceedings that have been instituted in respect of the pollution breach have been discontinued;</u></p> <p><u>(c) all such proceedings have been concluded (whether or not any appeal is pending) without any person being convicted of an offence or being found liable to pay an amount of money;</u></p> <p><u>(d) all such proceedings have been concluded and all penalties and other amounts of money ordered to be paid in respect of the pollution breach have been paid;</u></p> <p><u>(e) the Authority forms the belief that the pollution breach did not occur, or did not occur as a result of actions in relation to the ship; or</u></p> <p><u>(f) the Authority determines for any other reason that the ship should be released.</u></p> <p><u>(6) Security referred to in subsection (5)(a) shall—</u></p> <p><u>(a) be in a form acceptable to the Authority; and</u></p> <p><u>(b) be an amount that, in the Authority's opinion, is sufficient to meet the amount of all penalties and other amounts of money that could be payable by the master and the owner of the ship in respect of the pollution breach.</u></p> <p><u>(7) The master and the owner of the ship each commits an offence if—</u></p> <p><u>(a) the ship was detained at a port and leaves the port;</u></p> <p><u>(b) the ship was detained in the territorial waters and leaves the outer limits of the territorial waters; or</u></p>

No. and year of law	Short title	Extent of amendment
		<p><u>(c) the ship was detained in the exclusive economic zone and leaves the outer limits of the exclusive economic zone,</u></p> <p><u>before it is released from detention.</u></p> <p><u>(8) In this section—</u></p> <p><u>'pollution breach' means a discharge from a ship in contravention of this Act or the Marine Pollution (Control and Civil Liability) Act, 1981 (Act No. 6 of 1981);</u></p> <p><u>'port' means a port in the Republic within the meaning of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), and includes an offshore installation over which the Republic has jurisdiction.</u></p> <p>Notification of measures taken in relation to foreign ships</p> <p><u>2E. The Authority shall comply with the requirements of Article 231 of the Law of the Sea Convention in relation to any measures taken, under this Act, the Marine Pollution (Control and Civil Liability) Act, 1981 (Act No. 6 of 1981), or Part 4 of the Merchant Shipping (Civil Liability Convention) Act, 2009, in relation to a foreign ship.</u></p> <p>Failure to comply with requirements for information under foreign laws</p> <p><u>2F. The master and the owner of a South African ship each commits an offence if—</u></p> <p><u>(a) a requirement to give information is made, in relation to the ship, under a law of a foreign country in circumstances in which paragraph 3 of Article 220 of the Law of the Sea Convention permits such a requirement to be made; and</u></p> <p><u>(b) the requirement is not complied with."</u></p> <p>36. The amendment of section 3—</p> <p><u>(a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:</u></p>

No. and year of law	Short title	Extent of amendment
		<p style="text-align: center;"><u>"(b) providing for the granting by the Minister or another specified person, on such terms (if any) as the Minister or other person may specify, of exemptions from specified provisions of the regulations for classes of cases or individual cases, and for the alteration or cancellation of exemptions so granted;"</u>;</p> <p>(b) by the substitution for paragraph (b) of subsection (2) of the following paragraph:</p> <p style="padding-left: 40px;"><u>"(b) prescribe, for any contravention thereof or failure to comply therewith, penalties not exceeding the maximum penalties prescribed by section 3A(4)(b);"</u>; and</p> <p>(c) by the deletion of paragraph (c) of subsection (2).</p> <p>37. The amendment of section 3A—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p style="text-align: center;"><u>"(1) If—</u></p> <p style="padding-left: 40px;"><u>(a) a harmful substance is discharged from a ship in contravention of this Act; or</u></p> <p style="padding-left: 40px;"><u>(b) unless subsection (2) applies, any other requirement of this Act is contravened or not complied with in relation to a ship,</u></p> <p style="padding-left: 40px;"><u>the master and the owner of the ship each commits an offence."</u>;</p> <p>(b) by the insertion after subsection (1) of the following subsection:</p> <p style="text-align: center;"><u>"(1A) Every</u> <u>person commits an offence who contravenes or fails to comply with any provision of this Act with which it is that person's duty to comply."</u>;</p>

No. and year of law	Short title	Extent of amendment
		<p>(c) by the substitution for subsection (2) of the following subsection:</p> <p style="padding-left: 40px;"><u>"(2) At a prosecution for an offence in terms of subsection (1)(a), it is sufficient for the prosecution to prove that the discharge occurred, but it is a defence for the accused to show that the requirements of this Act were complied with in relation to the discharge in question."</u>;</p> <p>(d) by the deletion of subsection (3);</p> <p>(e) by the substitution for subsection (4) of the following subsection:</p> <p style="padding-left: 40px;"><u>"(4) (a) An offence in terms of subsection (1)(a) or section 2D(7) is punishable upon conviction by a fine not exceeding R500 000 or by imprisonment for a period not exceeding five years, or both.</u></p> <p style="padding-left: 40px;"><u>(b) An offence in terms of subsection (1)(b) or (1A) or section 2F is punishable upon conviction by a fine not exceeding R100 000 or by imprisonment for a period not exceeding one year, or both."</u>; and</p> <p>(f) by the substitution for paragraph (a) of subsection (5) of the following paragraph:</p> <p style="padding-left: 40px;"><u>"(a) admits to the Authority that he or she has contravened or failed to comply with any provision of this Act [or the Convention], which contravention or failure constitutes an offence under this Act;"</u>.</p> <p>38. The substitution for section 4A of the following section:</p> <p style="padding-left: 40px;">"Time limits for prosecution</p> <p style="padding-left: 80px;">4A. (1) Subject to subsection (2), a prosecution for an offence in terms of this Act may be brought at any time.</p>

No. and year of law	Short title	Extent of amendment
		<p style="text-align: center;">(2) <u>If the prosecution relates to an act or omission that involves a foreign ship—</u></p> <p>(a) <u>the prosecution may not be brought more than three years after the act or omission; and</u></p> <p>(b) <u>the prosecution shall be suspended if under paragraph 1 of Article 228 of the Law of the Sea Convention the prosecution is required to be suspended, and shall be terminated if under that paragraph the prosecution is required to be terminated.</u></p> <p>39. The insertion after section 4A of the following sections:</p> <p>"Service on master or owner of ship</p> <p>4B. (1) <u>A document to be served on the master or owner of a ship in respect of an offence in terms of this Act may be served on the agent of the ship instead.</u></p> <p>(2) <u>A document served on an agent of a ship under subsection (1) is taken to have been served on the owner or master of the ship.</u></p> <p>(3) <u>In this section, 'agent', in relation to a ship, includes—</u></p> <p>(a) <u>the agent (if any) for the berthing or working of the ship while it is in port; and</u></p> <p>(b) <u>where that ship has left port, that agent, or if there was another agent for the ship when it left port, the last-mentioned agent.</u></p> <p>Evidence</p> <p>4C. <u>In any proceedings for an offence in terms of this Act—</u></p> <p>(a) <u>any record kept in pursuance of this Act is admissible as <i>prima facie</i> evidence of the facts stated in the record;</u></p> <p>(b) <u>a copy of an entry in such a record,</u></p>

No. and year of law	Short title	Extent of amendment
		<p><u>being a copy certified by the person by whom the record is required to be kept to be a true copy of the entry, is admissible as prima facie evidence of the facts stated in the entry;</u></p> <p><u>(c) a document purporting to be a record kept in pursuance of this Act, or purporting to be such a certified copy as referred to in paragraph (b), shall, in the absence of evidence to the contrary, be taken to be such a record or certified copy, as the case may be;</u></p> <p><u>(d) an allegation in a complaint that notification of a discharge was not given in accordance with this Act shall, in the absence of evidence to the contrary, be taken as proved; and</u></p> <p><u>(e) a written statement purporting to be signed on behalf of the Authority that a specified person has been appointed or authorised for a specified purpose for the purposes of this Act is admissible as prima facie evidence of that fact.</u></p> <p>Evidence of analyst</p> <p><u>4D. (1) The Authority may, in writing, appoint appropriately qualified persons to be analysts for the purposes of this Act.</u></p> <p><u>(2) Subject to subsection (4), a certificate signed by an analyst appointed under subsection (1) setting out, in relation to a substance, one or more of the following:</u></p> <p><u>(a) when and from whom the substance was received;</u></p> <p><u>(b) what labels or other means of identifying the substance accompanied it when it was received;</u></p> <p><u>(c) what container the substance was in when it was received;</u></p> <p><u>(d) a description of the substance</u></p>

No. and year of law	Short title	Extent of amendment
		<p>received;</p> <p>(e) <u>that he or she has analysed or examined the substance;</u></p> <p>(f) <u>the date on which the analysis or examination was done;</u></p> <p>(g) <u>the method used in conducting the analysis or examination;</u></p> <p>(h) <u>the results of the analysis or examination.</u></p> <p><u>is admissible in any proceedings for an offence in terms of this Act as prima facie evidence of the matters in the certificate and of the correctness of the result of the analysis or examination.</u></p> <p>(3) <u>For the purposes of this section, a document purporting to be a certificate referred to in subsection (2) shall, in the absence of evidence to the contrary, be taken to be such a certificate.</u></p> <p>(4) <u>A certificate referred to in subsection (2) shall not be received in evidence in pursuance of that subsection unless the person charged has been given a copy of the certificate together with reasonable notice of the intention of the prosecution to produce the certificate as evidence in the proceedings.</u></p> <p>(5) <u>Where, in pursuance of subsection (2), a certificate of an analyst appointed under subsection (1) is admitted in evidence, the person charged may require the analyst to be called as a witness for the prosecution and the analyst may be cross-examined as if the analyst had given evidence of the matters stated in the certificate.</u></p> <p>(6) <u>Subsection (5) does not entitle a person to require an analyst to be called as a witness for the prosecution unless—</u></p> <p>(a) <u>the prosecution has been given at least five days notice of the person's intention to require the analyst to be so called; or</u></p> <p>(b) <u>the court, by order, allows the</u></p>

No. and year of law	Short title	Extent of amendment
		<p><u>person to require the analyst to be so called."</u></p> <p>40. The repeal of the Schedule.</p>
Act No. 23 of 1997	Shipping General Amendment Act, 1997	<p>41. The amendment of section 27—</p> <p>(a) by the deletion of paragraph (k) of the English text; and</p> <p>(b) by the deletion of paragraph (j) of the Afrikaans text.</p> <p>42. The repeal of section 28.</p> <p>43. The amendment of section 43 by the deletion of paragraph (d).</p>

MEMORANDUM ON THE OBJECTS OF THE MERCHANT SHIPPING (CIVIL LIABILITY CONVENTION) BILL

1. PURPOSE OF BILL

This Bill implements the 1992 Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1969 (*the Civil Liability Convention*). The Bill forms part of a package of measures designed to give effect to South Africa's obligations under the Civil Liability Convention and the 1992 Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (*the Fund Convention*). Parliament has already approved the two protocols under section 231(2) of the Constitution. The full package includes the Merchant Shipping (International Oil Pollution Compensation Fund) Bill and a Money Bill, the Merchant Shipping (International Oil Pollution Compensation Fund) (Contributions) Bill, both of which give effect to the Fund Convention.

2. CIVIL LIABILITY AND FUND CONVENTIONS

2.1 The Civil Liability and Fund Conventions were adopted under the auspices of the International Maritime Organization (IMO). They deal with questions of liability and compensation for loss or damage caused by contamination resulting from the escape or discharge of persistent oil from tankers (i.e. ships constructed or adapted for the carriage of oil in bulk as cargo).

2.2 Under the Civil Liability Convention claimants are entitled to compensation from the registered shipowner (or the provider(s) of financial security for the shipowner's liability) for pollution damage suffered in the territory (including territorial sea) or exclusive economic zone of a Contracting State. The shipowner's liability is strict (only limited exemptions and defences are available), but this liability is subject to limitation in accordance with the provisions of the convention. Where limitation applies, the shipowner's liability is determined with reference to the tonnage of the ship concerned, subject to an overall liability limit of SDR 89,770,000 (\pm ZAR 831,395,878)*.

2.3 Whereas the Civil Liability Convention establishes and regulates the liability of the registered shipowner, the Fund Convention establishes an international fund, called the International Oil Pollution Compensation (IOPC) Fund, the purpose of which is to pay compensation to victims of pollution damage (within the meaning of the Civil Liability Convention) where they have been unable to obtain compensation, or compensation in full, under the provisions of the Civil Liability Convention. The IOPC Fund receives its funds from cargo owners, specifically from persons who receive annually, in the ports or terminal installations of the Contracting States, more than 150,000 tonnes of contributing oil. The total amount of compensation payable by the IOPC Fund in respect of an incident is

*1 SDR = ZAR 9.261400 (22 March 2005). Source: IMF.

currently SDR 203,000,000 (\pm ZAR 1,880,064,200), which, in certain cases, may be increased to SDR 300,740,000 (\pm ZAR 2,785,273,436).

2.4 Because the Fund Convention is supplementary to the Civil Liability Convention, a state cannot become a party to the Fund Convention without, at the same time, also becoming a party to the Civil Liability Convention.

3. SUMMARY OF BILL'S PROVISIONS

3.1 *Clause 1* is a standard provision that defines certain expressions and deals with other matters of interpretation.

3.2 *Clause 2* deals specifically with the meaning of the Civil Liability Convention. It requires the Minister of Transport to give publicity to the Convention and its amendments by appropriate notification in the *Gazette*.

3.3 *Clause 3* is a standard provision dealing with the enactment's application to the State and its organs.

3.4 *Clause 4* is a standard provision dealing with the geographical application of the enactment. The clause provides for extraterritorial application, which is consistent with the Civil Liability Convention, and specifically extends the enactment to the external territories of the Prince Edward Islands, which is consistent with section 4 (Limitation on future application of laws) of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948).

3.5 *Clause 5* allows the Minister of Transport to give publicity to the Contracting States to the Civil Liability Convention by appropriate notification in the *Gazette*.

3.6 *Clause 6* gives certain provisions of the Civil Liability Convention the force of law; these provisions relate mainly to the shipowner's liability to pay compensation. Subclauses (2) and (3) provide for the interpretation of references to territorial sea and exclusive economic zone in a manner that is consistent with the Maritime Zones Act, 1994 (Act No. 15 of 1994), and subclause (4) provides for the interpretation of paragraph 1 of Article VII (which requires the owner of a ship registered in a Contracting State to maintain certain financial security) in relation to ships registered in the Republic.

3.7 *Clause 7* deals with claims for compensation under the provisions of the Civil Liability Convention. It confirms the High Court's admiralty jurisdiction in relation to such proceedings

3.8 *Clause 8* deals with limitation proceedings under the provisions of the Civil Liability Convention that are brought in the High Court.

3.9 *Clause 9* supplements clause 6 by allowing regulations about carrying out and giving effect to the provisions of the Civil Liability Convention that, in terms of clause 6, have the force of law as part of the law of the Republic. Subclause (3) confirms the power to make rules of court with respect to matters not provided for in the regulations.

3.10 *Clause 10* is a standard provision dealing with the interpretation of certain references in Part 3 [Insurance certificates] of the Bill. Part 3 gives effect to the provisions of the Civil Liability Convention that relate to the compulsory carriage of "insurance certificates" (i.e. documentation evidencing compliance with the shipowner's financial security obligations).

3.11 *Clause 11* is a standard provision dealing with the material application of Part 3 of the Bill. Part 3 does not apply to Government ships used for non-commercial purposes.

3.12 *Clause 12* provides for the enforcement of insurance certificate carriage requirements and establishes penalties for non-compliance.

3.13 *Clauses 13 and 14* deal with matters related to the issue, validity and cancellation of certain insurance certificates, and provide for the functions of the South African Maritime Safety Authority (SAMSA) in that regard.

3.14 *Clause 15* deals with Government ships. For ships owned by the State, it allows the Minister of Transport, with the consent of the Minister of Finance, to issue a certificate stating that liabilities under the Civil Liability Convention will be met by the State, and provides, furthermore, for the period of validity and for the lapsing of certificates of this kind. Also, subclause (4) embodies the convention's rules (in paragraph 2 of Article XI) on sovereign immunity in relation to claims against Contracting States.

3.15 *Clauses 16 and 17* deal with the recovery, under the Civil Liability Convention, of pollution response costs incurred by organs of state under the Marine Pollution (Control and Civil Liability) Act, 1981 (Act No. 6 of 1981). These costs constitute a charge on any ship to which they relate, and clause 17 allows SAMSA to detain the ship until the costs are paid or secured to its satisfaction.

3.16 *Clause 18* allows regulations about giving effect to Article X of the Civil Liability Convention; this Article deals with the mutual recognition and

enforcement of judgments in Contracting States. Subclause (2) confirms the power to make rules of court with respect to matters not provided for in the regulations.

3.17 *Clause 19* is a standard provision allowing the Minister of Transport to make regulations under the enactment. Regulations fixing fees are required to be made with the consent of the Minister of Finance.

3.18 *Clause 20* allows an offence to be prosecuted at any place the accused happens to be, regardless of where the offence was committed. It also extends the jurisdiction of the magistrates' courts in matters of punishment.

3.19 *Clause 21* and *the Schedule* deal with consequential and other amendments to specified enactments, namely: the Marine Pollution (Control and Civil Liability) Act, 1981 (Act No. 6 of 1981); the Marine Pollution (Prevention of Pollution from Ships) Act, 1986 (Act No. 2 of 1986); and the Shipping General Amendment Act, 1997 (Act No. 23 of 1997).

3.20 These are the main objects of the amendments to the Marine Pollution (Control and Civil Liability) Act, 1981:

- To delete provisions governing liability and compensation under the original 1969 Civil Liability Convention, thereby confining the Act's liability provisions to non-Civil Liability Convention incidents.
- To expand these liability provisions to substances other than oil and to introduce liability limits similar to those under the Civil Liability Convention.

- To harmonise the Act's provisions with those of the Marine Pollution (Prevention of Pollution from Ships) Act, 1986, and the Marine Pollution (Intervention) Act, 1987 (Act No. 64 of 1987).
- To increase the penalties for contravening the Act.

3.21 The main object of the amendments to the Marine Pollution (Prevention of Pollution from Ships) Act, 1986, is to improve the implementation and administration of the Act by, for example, introducing specific provision for the inspection and detention of ships and for the prosecution of offences against the Act.

3.22 The main object of the amendments to the Shipping General Amendment Act, 1997, is to repeal certain amendments to the Marine Pollution (Control and Civil Liability) Act, 1981, that have not been put into operation; these amendments have been superseded by the amendments in the Bill.

3.23 *Clause 22* is a standard provision dealing with the enactment's short title and commencement. Subclause (2) requires the President to fix the commencement date by proclamation in the *Gazette*.
