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## GENERAL NOTICE

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### **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:

The Department of Transport  
Private Bag x193  
PRETORIA  
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REPUBLIC OF SOUTH AFRICA

MERCHANT SHIPPING (CIVIL LIABILITY CONVENTION) BILL, 2009

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

*(The English text is the official text of this Bill)*  
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(MINISTER OF TRANSPORT)

[B — 2009]

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**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 <b>[the internal waters and]</b> 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;">" '<u>certificate</u>' 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, <b>[from a ship, a tanker or an offshore installation]</b> into <b>[a part of]</b> the sea <b>[which is a prohibited area]</b>, 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><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><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><u>" 'harmful substance' means—</u></p> <p><u>(a) oil;</u></p> <p><u>(b) 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><u>(c) 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><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, <b>[which] that</b> causes a discharge of <b>[oil] a harmful substance</b> from any ship <b>[tanker]</b> or offshore installation or <b>[which] that</b> 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>" 'master', in relation to a ship <b>[or a tanker]</b>, means any person (other than a pilot) having charge or command of such ship <b>[or tanker]</b> 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>" 'offshore installation' means a facility situated wholly or partly within the prohibited area and <b>[which] that</b> is used <b>[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]</b> in or in connection with any transfer operation, and includes any fixed or floating exploration, <b>[or]</b> production or storage platform situated <b>[within the prohibited area] on or above the continental shelf</b> and used in <b>[prospecting for or the mining of natural oil]</b> or in connection with the exploration or exploitation of the natural resources of the continental shelf;"</p> <p>(k) by the substitution in subsection (1) for the definition of "oil" of the following definition:</p> <p>" '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;"><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>(m) by the substitution in subsection (1) for the definition of "owner" of the following definition:</p> <p style="padding-left: 40px;"><u>" '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;"</u></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' includes the 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;"><u>" 'sea' means the water and bed of the sea and includes—</u></p> <p style="padding-left: 80px;"><u>(a) the land between the high- and low-water marks [as well as];</u></p> <p style="padding-left: 80px;"><u>(b) any tidal lagoon or river as defined in section 1 of the Sea-shore Act, 1935 (Act No. 21 of 1935); and</u></p> <p style="padding-left: 80px;"><u>(c) 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;"><u>" 'ship' means any kind of vessel or other sea-borne object, [from which oil can be discharged,</u></p>

No. and year of law	Short title	Extent of amendment
		<p><b>excluding a tanker]</b> 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) <u>a ship registered in the Republic; or</u></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><b>"Operation of Act</b></p> <p><b>1B.</b> (1) 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>(2) This Act shall not be construed as limiting or otherwise affecting any right or power that the State may have apart from this Act—</p> <p>(a) under any other enactment; or</p> <p>(b) under international law, both customary and conventional.</p> <p>(3) 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).</p> <p>(4) Nothing in the National Heritage Resources Act, 1999 (Act No. 25 of 1999), affects the operation of this Act."</p> <p>3. The substitution for section 2 of the following section:</p> <p><b>"Prohibition of discharge of harmful substance during transfer operation</b></p> <p><b>2.</b> (1) This section applies to the discharge within the prohibited area of a harmful substance—</p> <p>(a) from a ship in or in connection with a transfer operation; or</p> <p>(b) from an offshore installation used in or in connection with a transfer operation (whether or not it is being so used).</p> <p>but does not apply to a discharge that occurs on the landward side of the first isolating valve on land of any offshore</p>

No. and year of law	Short title	Extent of amendment
		<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>(2) (a) If a <u>discharge occurs, each relevant person in relation to the discharge shall be guilty of an offence unless the person shows—</u></p> <p>(i) <u>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>(ii) <u>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>(b) For the <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>(i) <u>arose in circumstances where a relevant person in relation to the discharge—</u></p> <p>(aa) <u>acted within intent to cause damage; or</u></p> <p>(bb) <u>acted recklessly and with knowledge that damage would probably result; or</u></p> <p>(ii) <u>arose as a result of the negligence of that person.</u></p> <p>(c) For the <u>purposes of paragraphs (a)(ii) and (b), damage to a ship or offshore installation, or its equipment, does not include—</u></p> <p>(i) <u>deterioration resulting from failure to maintain the ship, offshore installation or equipment; or</u></p> <p>(ii) <u>defects that develop during the normal operation of the ship, offshore installation or equipment.</u></p>

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		<p>(3) If—</p> <p>(a) 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</p> <p>(b) it is not reasonably practicable to identify the harmful substance that has been discharged from a particular ship or offshore installation,</p> <p>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.</p> <p>(4) In this section, 'relevant person', in relation to—</p> <p>(a) a discharge from a ship, means the owner and the master of the ship; or</p> <p>(b) a discharge from an offshore installation, means the owner and the master of the offshore installation."</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>"(1) <b>[When]</b> If any harmful substance <b>[has been]</b> is discharged from a ship <b>[tanker]</b> within the prohibited area or from an offshore installation, the master of such ship <b>[tanker]</b> or offshore installation, or any member of the crew of such ship <b>[or tanker]</b> 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 <b>[tanker]</b> or offshore installation is.</p>