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		<p>(2) If, while it is within the prohibited area, a ship <b>[or a tanker]</b> 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 <b>[or tanker]</b>, or having sustained such damage, enters the prohibited area in such damaged condition, the master of such ship <b>[or tanker]</b>, 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 <b>[or tanker]</b> then is the fact that such damage was sustained, the nature and location on the ship <b>[or tanker]</b> of the damage, the position at sea where the damage was sustained, the name of the ship <b>[or tanker]</b>, 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 <b>[tanker]</b> ship to which <b>[the provisions of section 13 apply]</b> Part 3 of the Merchant Shipping (Civil Liability Convention) Act, 2009, applies, the particulars of the certificate.</p> <p>(3) For the purposes of subsection (2), damage to a ship <b>[or a tanker]</b> shall be deemed to have created the likelihood of a discharge of a harmful substance from such ship <b>[or tanker]</b> if it is of such a nature as to detrimentally affect, in any degree, the ship's <b>[or tanker's]</b> 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, <b>[or a tanker]</b> 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 <b>[or tanker]</b> 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 <b>[or a tanker]</b>, 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 a harmful <b>[substances]</b> <u>substance</u> 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, <b>[or an tanker]</b> it may take such measures, including the destruction, burning, or disposal in any other manner of the harmful substance in such ship, <b>[or tanker]</b> 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 <b>[relates to oil and]</b> 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 <b>[or tanker]</b> in question shall not be liable in terms of <b>[the provisions of]</b> section 9(1)(b) for any expenditure incurred <b>[by the Authority]</b> 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><b>"Moving of ship from certain area</b></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] the ship [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><b>Powers of inspection</b></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 <b>[or tanker]</b>, take soundings of tanks, spaces and bilges and test any equipment on board such ship <b>[or tanker]</b> which is intended for use in preventing a discharge of harmful substances from such ship <b>[or tanker]</b>.</p> <p>(2) Subsection (1) shall <u>mutatis mutandis 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 <b>[the Marine Pollution Acts]</b> this Act 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><b>"Liability for loss, damage or costs caused by discharge of harmful substance</b></p> <p>9. (1) Subject to <b>[the provisions of]</b> this Act, the owner of any ship <b>[tanker]</b> or offshore installation at the time of <b>[the]</b> an 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; and</p> <p>(ii) <b>[an amount deemed by the Director-General to be sufficient to compensate]</b> <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] 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 <b>[tanker]</b> 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 <b>[any]</b> <u>another</u> person, not being <b>[the owner or]</b> 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 <b>[the provisions of]</b> 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 <b>[the provisions of]</b> subsection (1) for any loss or damage suffered or costs incurred as a result of an incident <b>[which occurred without such owner's actual fault or privity]</b>—</p> <p>(a) <b>[the provisions of]</b> section 261 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), shall not apply in respect of such liability; <u>and</u></p> <p>(b) <u>subject to subsection (6)</u>, 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—</p> <p>(i) in the case of a ship, <b>[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]</b> <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>(aa) <u>if the ship does not exceed 5 000 tons, 4,51 million special</u></p>



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		<p>drawing rights; or</p> <p>(bb) 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</p> <p>(ii) 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 <i>Gazette</i> and, until the time that the amount is so determined, shall not exceed fourteen million [units of account] special drawing rights.</p> <p>(6) 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.</p> <p>(7) 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</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) This section does not apply in relation to pollution damage within the meaning of the Merchant Shipping (Civil Liability Convention) Act, 2009.</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><b>10.</b> 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 <b>[tanker]</b> or offshore installation, the owner of such ship <b>[tanker]</b> or offshore installation shall not be liable otherwise than under <b>[the provisions of]</b> 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) Subject to <u>subsection (7)</u>, no servant or agent of the owner of the ship <b>[tanker]</b> 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 <b>[tanker]</b> or offshore installation with the <b>[agreement] consent</b> 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 <b>[the Authority] an organ of state</b> 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 <b>[tanker]</b> or offshore installation or, in the case of such ship <b>[or tanker]</b>, 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 <b>[the provisions of]</b> section 5, measures are being taken to guard against, prevent or remove pollution of the sea by a harmful substance <b>[in the prohibited area]</b>, any person in the service or acting on the authority of the State or <b>[the Authority]</b> <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 <b>[tanker]</b> or offshore installation in the said area, or, in the case of such ship <b>[or tanker]</b>, 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;"><b>"Exemption in respect of warships</b></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;"><b>"Applications to court</b></p> <p style="padding-left: 80px;">12. (1) If the owner of a ship <b>[tanker]</b> or offshore installation has or is alleged to have incurred a liability in terms of <b>[the provisions of]</b> subsection (1) of section 9 in the circumstances contemplated</p>

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		<p>in subsection (5) of that section, he may <b>[in the prescribed manner]</b> apply to the court for the determination, in accordance with <b>[the provisions of the said]</b> that subsection <b>[(5)]</b>, 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 <b>[of the provisions]</b> of section 9(5), entitled to pay in respect of such liability an aggregate amount not exceeding an amount calculated in accordance with <b>[the provisions of]</b> that section <b>[9(5)]</b>, the court shall, after determining such aggregate amount <b>[in accordance with the provisions of section 9(5)]</b>, 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] and directing the payment into court of that amount—</p> <p>(a) <u>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>(b) <u>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>(3) <u>A payment into court of an amount determined in terms of subsection (2) shall be made in South African currency, and—</u></p> <p>(a) <u>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 <b>[trustees] court</b> in terms of subsection <b>[(4)] (2)</b> 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 <b>[trustees] court</b> in terms of subsection <b>[(4)] (2)</b> 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 <b>[any division of] the [Supreme] High Court of South Africa;</b></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><b>"Depositing of amount or furnishing of guarantee by owner of ship or offshore installation in respect of certain costs</b></p> <p>16. If an amount has in terms of <b>[the provisions of]</b> section 9(1)(b) become payable by the owner of a ship <b>[a tanker to which the provisions of section 13(1) do not apply]</b> or <b>[an]</b> offshore installation in respect of costs referred to in <u>that</u> section <b>[9(1)(b)]</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 <b>[which]</b> <u>that</u> has or may become so payable by the <b>[said]</b> 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 <b>[the provisions of]</b> that section by an owner referred to in section 16 and that no pollution or further pollution of the sea by <b>[oil]</b> <u>a harmful substance</u> will be caused by the ship <b>[tanker]</b> 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 and <u>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><b>"Ratification by Minister of certain expenses</b></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</u> (other than the Authority) 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) <b>[deposits] pays</b> an amount <b>[with the Master concerned or furnishes the said Master with a guarantee] into court</b> as contemplated in that section, before the realization, in terms of <b>[the said]</b> 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) <b>[Any division of the Supreme] The High</b> 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 <b>[of the provisions]</b> 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;"><b>"Authority's permission required for transfer of certain harmful substances or for certain other acts in respect of ships</b></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 <b>[Sea Fishery Act, 1988 (Act No. 12 of 1988)]</b> <u>Marine Living Resources Act, 1998 (Act No. 18 of 1998)</u>, and within the prohibited area, render any ship having <b>[oil or any other prescribed harmful substance]</b> on board (whether as cargo or otherwise) <b>[or any tanker]</b> <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 <b>[the provisions of]</b> 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><b>20.</b> 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 <b>[tanker]</b> or offshore installation."; and</p>

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		<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 <b>[the provisions of]</b> subsection (1) shall be deemed, <u>for the purposes of section 9, to be costs [referred to 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 <b>[the provisions of]</b> subsection (2), no person shall operate an offshore installation unless a pollution safety certificate issued in terms of <b>[the provisions of]</b> 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 <b>[a tanker]</b> <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>

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		<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 <b>[tankers]</b> 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, by the Authority, of [its] functions in terms of [the provisions of] 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 <b>[tanker]</b> or offshore installation shall not exempt the owner of such ship <b>[tanker]</b> 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;"><b>25.</b> The amendment of section 27 by the deletion of subsection (6).</p> <p style="padding-left: 40px;"><b>26.</b> 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>

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		<p>(a) prescribing measures to be taken on board or in <b>respect of a ship [or a tanker]</b> 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 <b>[of any such substance]</b> 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 <b>[or tankers]</b> registered <u>or licensed</u> in the Republic <b>[under the Merchant Shipping Act, 1951 (Act No. 57 of 1951)]</b> and in respect of ships <b>[or tankers]</b> not so registered <u>or licensed but [which] that</u> 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 <b>[or tankers]</b> for use in preventing a discharge of harmful substances, and</p>

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		<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;"><u>"(cA) 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;"><b>"Delegation by Minister</b></p> <p style="padding-left: 80px;">29. The Minister <b>[the Director-General and the Authority]</b> may delegate to any person <b>[or to two or more persons]</b> any of the powers conferred upon <b>[them respectively]</b> <u>the Minister</u> in terms of the provisions of this Act other than <b>[in the case of the Minister]</b> 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) <b>[13(7)]</b> or 24(5) <b>[or subsection (1)(a)(i)]</b> shall be liable to a fine not exceeding <b>[R25 000]</b> <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 <b>[R50 000]</b> <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 <del>[R90 000]</del> R200 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;</p> <p>(d) section 2<del>[(1)]</del> (2) <del>[or 13(6)]</del> or subsection (1)(b)(i) or (b)(ii) shall be liable to a fine not exceeding <del>[R200 000]</del> R500 000 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 <del>[R2 000]</del> R10 000 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;">"(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."</p> <p>29. The substitution for section 30A of the following section:</p> <p style="padding-left: 40px;"><b>"Service on master or owner of ship</b></p> <p style="padding-left: 80px;"><b>30A.</b> (1) 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.</p> <p style="padding-left: 120px;">(2) A document served</p>



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		<p>on an agent of a ship under subsection (1) shall be deemed to have been served on the master or owner of the ship.</p> <p>(3) In this section, 'agent', in relation to a ship, includes—</p> <p>(a) the agent (if any) for the berthing or working of the ship while it is in port; and</p> <p>(b) 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."</p> <p>30. The insertion after section 30A of the following sections:</p> <p>"Evidence</p> <p>30B. In any proceedings for an offence in terms of this Act—</p> <p>(a) any record kept in pursuance of this Act is admissible as <i>prima facie</i> evidence of the facts stated in the record;</p> <p>(b) 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 <i>prima facie</i> evidence of the facts stated in the entry;</p> <p>(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 deemed to such a record or certified copy, as the case may be;</p> <p>(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</p> <p>(e) a written statement purporting to be signed by the Minister, or on behalf of the Authority, that a specified</p>