

No. and year of law	Short title	Extent of amendment
		<p><u>person has been appointed or authorised for a specified purpose for the purposes of this Act is admissible as <i>prima facie</i> evidence of that fact.</u></p> <p><b>Evidence of analyst</b></p> <p><b>30C.</b> (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> <ul style="list-style-type: none"> <li><u>(a) when and from whom the substance was received;</u></li> <li><u>(b) what labels or other means of identifying the substance accompanied it when it was received;</u></li> <li><u>(c) what container the substance was in when it was received;</u></li> <li><u>(d) a description of the substance received;</u></li> <li><u>(e) that he has analysed or examined the substance;</u></li> <li><u>(f) the date on which the analysis or examination was done;</u></li> <li><u>(g) the method used in conducting the analysis or examination;</u></li> <li><u>(h) the results of the analysis or examination.</u></li> </ul> <p><u>shall be admissible in any proceedings for an offence in terms of this Act as <i>prima facie</i> 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 <b>[tankers]</b> 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>

No. and year of law	Short title	Extent of amendment
		<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>" 'this Act' includes <u>the Convention and the regulations</u>";</p> <p>(j) by the addition of the following definition:</p> <p>" 'Tonnage Convention' has the <u>meaning it has in section 2(1) of the Merchant Shipping Act, 1951 (Act No. 57 of 1951)</u>"; and</p> <p>(k) by the addition of the following subsections, the existing section becoming subsection (1):</p> <p style="padding-left: 40px;">"(2) <u>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: 40px;">(3) <u>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;"><b>"Meaning of Convention</b></p> <p style="padding-left: 80px;"><b>1A. (1) <u>The Convention is</u></b>  <u>the International Convention for the Prevention of Pollution from Ships, 1973—</u></p> <p style="padding-left: 40px;">(a) <u>as corrected by the Procès-Verbal of Rectification dated 13 June 1978;</u></p> <p style="padding-left: 40px;">(b) <u>as modified and added to by the 1978 Protocol relating to the Convention; and</u></p> <p style="padding-left: 40px;">(c) <u>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>

No. and year of law	Short title	Extent of amendment
		<p>(2) Before the commencement of this section, the Minister must publish a notice in the <u>Gazette</u> 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 <u>Gazette</u> 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><b>Act binds State</b></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><b>"Operation of Act</b></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><b>"Convention has force of law</b></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>

No. and year of law	Short title	Extent of amendment
		<p>(a) to South African ships anywhere;</p> <p>(b) to foreign ships when in the Republic, the territorial waters or the exclusive economic zone; and</p> <p>(c) to any ship—</p> <p>(i) that is situated on or above any part of the continental shelf extending beyond the outer limits of the exclusive economic zone; and</p> <p>(ii) that is subject to the jurisdiction of the Republic.</p> <p>(3) Unless the context indicates otherwise, a reference in the Convention—</p> <p>(a) 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</p> <p>(b) 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.</p> <p><b>Power to require information (foreign ships)</b></p> <p><b>2B. (1) If —</b></p> <p>(a) a foreign ship is navigating in the territorial waters or the exclusive economic zone; and</p> <p>(b) 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,</p> <p>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.</p> <p>(2) All or any of the</p>

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		<p><u>following information may be required:</u></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><b>Powers of inspection</b></p> <p><b>2C. (1) For the purpose of—</b></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><b>an inspector may—</b></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>

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		<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><b>Detention of ships in connection with pollution breaches</b></p> <p><b>2D. (1) The Authority may detain a foreign ship if—</b></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>

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		<p><u>released immediately if—</u></p> <p>(a) <u>security is provided in accordance with subsection (6);</u></p> <p>(b) <u>all proceedings that have been instituted in respect of the pollution breach have been discontinued;</u></p> <p>(c) <u>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>(d) <u>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>(e) <u>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>(f) <u>the Authority determines for any other reason that the ship should be released.</u></p> <p>(6) <u>Security referred to in subsection (5)(a) shall—</u></p> <p>(a) <u>be in a form acceptable to the Authority; and</u></p> <p>(b) <u>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>(7) <u>The master and the owner of the ship each commits an offence if—</u></p> <p>(a) <u>the ship was detained at a port and leaves the port;</u></p> <p>(b) <u>the ship was detained in the territorial waters and leaves the outer limits of the territorial waters;</u>  <u>or</u></p>

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		<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><b>Notification of measures taken in relation to foreign ships</b></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><b>Failure to comply with requirements for information under foreign laws</b></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><b>36. The amendment of section 3—</b></p> <p><b>(a)</b> by the substitution for paragraph (b) of subsection (1) of the following paragraph:</p>

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		<p>"(b) <u>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>"(b) <u>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>"(1) If—</p> <p>(a) <u>a harmful substance is discharged from a ship in contravention of this Act; or</u></p> <p>(b) <u>unless subsection (2) applies, any other requirement of this Act is contravened or not complied with in relation to a ship,</u></p> <p><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>"(1A) <u>Every 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>

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		<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;"><b>"Time limits for prosecution</b></p> <p style="padding-left: 80px;"><u>4A. (1) Subject to subsection (2), a prosecution for an offence in terms of this Act may be brought at any time.</u></p>

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		<p>(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><b>"Service on master or owner of ship</b></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><b>Evidence</b></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 prima facie 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>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 taken to be 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 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 <i>prima facie</i> evidence of that fact.</p> <p><b>Evidence of analyst</b></p> <p>4D. (1) The Authority may, in writing, appoint appropriately qualified persons to be analysts for the purposes of this Act.</p> <p>(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:</p> <p>(a) when and from whom the substance was received;</p> <p>(b) what labels or other means of identifying the substance accompanied it when it was received;</p> <p>(c) what container the substance was in when it was received;</p> <p>(d) a description of the substance</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 <i>prima facie</i> 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

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\*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*.

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