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[Short title, previously 'Prevention and Combating of Pollution of the Sea by Oil Act', substituted by s. 45 of Act 23 of 1997.]

[ASSENTED TO 6 FEBRUARY 1981]

[DATE OF COMMENCEMENT: 1 OCTOBER 1982]

*(English text signed by the State President)***published in**

GG 7427 of 25 February 1981

commencement

(see s. 32 of this Act)

provisions	date	refer to
whole Act	1 October 1982	Proc 156 in GG 8366 of 3 September 1982

as amended

by	with effect from	refer to
Prevention and Combating of Pollution of the Sea by Oil Amendment Act 59 of 1985	24 April 1985	s. 2 of Act 59 of 1985
Prevention and Combating of Pollution of the Sea by Oil Amendment Act 63 of 1987	25 September 1987	s. 3 of Act 63 of 1987
Prevention and Combating of Pollution of the Sea by Oil Amendment Act 9 of 1990	21 March 1990	s. 7 of Act 9 of 1990
Abolition of Restrictions on the Jurisdiction of Courts Act 88 of 1996	22 November 1996	s. 109 of Act 88 of 1996
Shipping General Amendment Act 23 of 1997	1 September 1997; to be proclaimed	s. 60 of Act 23 of 1997; Proc 50 in GG 18246 of 29 August 1997
South African Maritime Safety Authority Act 5 of 1998	1 April 1998	Proc R35 in GG 18806 of 31 March 1998
Merchant Shipping (Civil Liability Convention) Act 25 of 2013	30 May 2014	s. 19 of Act 25 of 2013; Proc 34 in GG 37687 of 26 May 2014

Regulations under this Act**ACT**

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 from ships, tankers and offshore installations; and to provide for matters connected therewith.

[Long title substituted by s. 47 of Act 23 of 1997 (wef 1 September 1997).]

BE IT ENACTED by the State President and the House of Assembly of the Republic of South Africa, as follows:-

1 This Act has been updated to include all available historical commencement details

1 Definitions

(1) In this Act, unless the context otherwise indicates-

'area of the Republic' includes the internal waters and the territorial waters;

[Definition of 'area of the Republic' substituted by s. 27 (a) of Act 23 of 1997 (wef 1 September 1997).]

'Authority' means the South African Maritime Safety Authority established by section 2 of the South African Maritime Safety Authority Act, 1998;

[Definition of 'Authority' inserted by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

'certificate' means a certificate contemplated in section 13;**'Convention'** means the International Convention on Civil Liability for Oil Pollution Damage, signed in Brussels on 29 November 1969 and

published for general information under General Notice 58 of 1978 in *Government Gazette* 5867 of 27 January 1978, and includes any amendments thereof and additions thereto signed, ratified or acceded to by the Republic of South Africa;

'Convention State' means a state which is a party to the Convention;

'Director-General' means the Director-General: Transport;

'discharge', in relation to a harmful substance, means any release, howsoever caused, from a ship, a tanker or an offshore installation into a part of the sea which is a prohibited area, and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying; and 'discharge', when used as a verb, has a corresponding meaning;

[Definition of 'discharge' substituted by s. 27 (b) of Act 23 of 1997 (wef 1 September 1997).]

'exclusive economic zone' means the exclusive economic zone referred to in section 7 of the Maritime Zones Act, 1994 (Act 15 of 1994);

[Definition of 'exclusive economic zone' inserted by s. 27 (c) of Act 23 of 1997 (wef 1 September 1997).]

'harmful substance' means any substance which, if introduced into the sea, is likely to create a hazard to human health, harm living resources and marine life, damage amenities or interfere with other legitimate uses of the sea, and includes oil and any other substance subject to control by MARPOL 1973/78, and mixtures of such substances and water or any other substance;

[Definition of 'harmful substance' inserted by s. 1 (c) of Act 23 of 1997 (wef 1 September 1997).]

'Fund'

[Definition of 'Fund' deleted by s. 1 (a) of Act 9 of 1990 (wef 21 March 1990).]

'high-water mark' means the highest line reached by the water of the sea during ordinary storms occurring during the most stormy period of the year, excluding exceptional or abnormal floods;

'incident' means any occurrence, or series of occurrences having the same origin, which causes a discharge of oil from any ship, tanker or offshore installation or which creates the likelihood of such a discharge;

'internal waters' includes the land between the high-water and low-water marks;

[Definition of 'internal waters' inserted by s. 27 (d) of Act 23 of 1997 (wef 1 September 1997).]

'low-water mark' means the low-water line as defined in section 1 of the Maritime Zones Act, 1994;

[Definition of 'low water mark' substituted by s. 27 (e) of Act 23 of 1997 (wef 1 September 1997).]

'Marine Pollution Acts' means the Marine Pollution (Prevention of Pollution from Ships) Act, 1986 (Act 2 of 1986), including any instrument made thereunder, and this Act;

[Definition of 'Marine Pollution Acts' inserted by s. 27 (f) of Act 23 of 1997 (wef 1 September 1997).]

'MARPOL 1973/78' means the convention contained in the Schedule to the Marine Pollution (Prevention of Pollution from Ships) Act, 1986;

[Definition of 'MARPOL 1973/78' inserted by s. 27 (f) of Act 23 of 1997 (wef 1 September 1997).]

'master', in relation to a ship or a tanker, means any person (other than a pilot) having charge or command of such ship or tanker and, in relation to an offshore installation, means the person in charge thereof;

'Minister' means the Minister of Transport;

[Definition of 'Minister' substituted by s. 27 (g) of Act 23 of 1997 (wef 1 September 1997).]

'National Revenue Fund' means the National Revenue Fund established by section 213 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

[Definition of 'National Revenue Fund' inserted by s. 27 (h) of Act 23 of 1997 (wef 1 September 1997).]

'natural oil'.....

[Definition of 'natural oil' deleted by s. 27 (i) of Act 23 of 1997 (wef 1 September 1997).]

'nautical mile' means the international nautical mile of 1852 metres;

'offshore installation' means a facility situated wholly or partly within the prohibited area and which is used for the transfer of harmful substances from a ship or a tanker to a point on land or from a point on land to a ship or tanker or from a bunkering vessel to a ship or a tanker, and includes any exploration or production platform situated within the prohibited area and used in prospecting for or the mining of natural oil;

[Definition of 'offshore installation' substituted by s. 27 (j) of Act 23 of 1997 (wef 1 September 1997).]

'oil', in relation to a discharge of oil from-

- (a) a ship, tanker or offshore installation in that part of the prohibited area which constitutes the territorial waters of the Republic and the sea adjoining the said territorial waters to the landward side thereof, means any kind of mineral oil and includes spirit produced from oil and a mixture of such oil and water or any other substance;
- (b) a ship, tanker or offshore installation in that part of the prohibited area which adjoins the said territorial waters to the seaward side thereof, means any kind of mineral oil and includes spirit produced from oil and a mixture of such oil and water or any other substance which contains one hundred parts or more of oil in a million parts of the mixture,

but in relation to loss or damage caused as contemplated in section 9 (1) (a) where the discharge in question took place from a tanker, and for the purposes of section 13 (1), means oil as defined in paragraph 5 of Article 1 of the Convention;

[NB: The definition of 'oil' has been substituted by s. 27 (k) of the Shipping General Amendment Act 23 of 1997, a provision which will be put into operation by proclamation. See PENDLEX.]

'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;

[Definition of 'owner' substituted by s. 27 (l) of Act 23 of 1997 (wef 1 September 1997).]

'prescribed' means prescribed by regulation;

'principal officer' means the officer in charge of the office of the Authority at any port;

[Definition of 'principal officer' amended by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

'prohibited area' means the internal waters, the territorial waters and the exclusive economic zone and, in relation to an offshore installation, includes the sea within the limits of the continental shelf;

[Definition of 'prohibited area' substituted by s. 27 (m) of Act 23 of 1997 (wef 1 September 1997).]

'sea' means the water and the bed of the sea and includes the land between the high- and low-water marks as well as any tidal lagoon or tidal river as defined in section 1 of the Sea-shore Act, 1935;

'ship' means any kind of vessel or other sea-borne object from which oil can be discharged, excluding a tanker, whether or not such vessel or object has been lost or abandoned, has stranded, is in distress, disabled or damaged, has been wrecked, has broken up or has sunk;

'State Revenue Fund'

[Definition of 'State Revenue Fund' inserted by s. 1 (b) of Act 9 of 1990 (wef 21 March 1990) and deleted by s. 27 (n) of Act 23 of 1997 (wef 1 September 1997).]

'tanker' means any seagoing vessel of any type whatsoever, actually carrying oil in bulk as cargo and in respect of which the provisions of the Convention are applicable;

'territorial waters of the Republic'

[Definition of 'territorial waters of the Republic' deleted by s. 27 (o) of Act 23 of 1997 (wef 1 September 1997).]

'this Act' includes any regulation made thereunder.

(2) Where more than one discharge of oil results from the same occurrence or from a series of occurrences having the same origin, they shall for the purposes of this Act be regarded as one discharge.

2 Discharge of oil prohibited

(1) If any oil is discharged from a ship, tanker or offshore installation the master of such ship, tanker or offshore installation and, if he is not the owner of such ship, tanker or offshore installation, also the owner thereof, shall be guilty of an offence unless-

- (a) the oil in question was discharged for the purpose of securing the safety of such ship, tanker or offshore installation or of any other ship or tanker or of preventing damage to such ship, tanker or offshore installation or to any other ship or tanker or the cargo thereof, or of saving life, and such discharge of the oil was necessary for such purpose or was a reasonable step to take in the circumstances;
- (b) the oil in question escaped from the ship, tanker or offshore installation in consequence of damage to the ship, tanker or offshore installation, and as soon as practicable after the damage occurred all reasonable steps were taken for preventing or (if it could not be prevented) for stopping or reducing the escape of the oil; or
- (c) the oil in question escaped by reason of leakage, and neither such leakage nor any delay in discovering it was due to any lack of reasonable care, and as soon as practicable after the escape was discovered, all reasonable steps were taken for stopping or reducing it.

(2) The onus of proving any exception, exemption or qualification contemplated in subsection (1) (a), (b) or (c) shall be upon the accused.

(3) If in any prosecution for an offence under subsection (1) it is proved that a mixture containing oil was discharged from a ship, tanker or offshore installation in the part of the prohibited area which adjoins the territorial waters of the Republic to the seaward side thereof, it shall be deemed, unless the contrary is proved, that such mixture contained one hundred parts or more of oil in a million parts of the mixture.

[NB: S. 2 has been repealed by s. 28 of the Shipping General Amendment Act 23 of 1997 (wef 1 September 1997), a provision which will be put into operation by proclamation.]

3 Reporting of discharge and damage causing discharge or likelihood of discharge

(1) When any harmful substance has been discharged from a ship, tanker or offshore installation the master of such ship, tanker or offshore installation, or any member of the crew of such ship or tanker or of the staff employed in connection with such offshore installation, designated by such master, shall forthwith by the quickest means of communication available report the fact that such discharge has taken place to the principal officer at the port in the Republic nearest to where such ship, tanker or offshore installation is.

[Sub-s. (1) amended by s. 29 (a) of Act 23 of 1997 (wef 1 September 1997).]

(2) If, while it is within the prohibited area, a ship or a tanker sustains any damage, whether to its hull, equipment or machinery, which causes, or creates the likelihood of, a discharge of any harmful substance from such ship or tanker, or having sustained such damage, enters the prohibited area in such damaged condition, the master of such ship or tanker, or any member of its crew designated by the master, shall forthwith by the quickest means of communication available report to the principal officer at the port in the Republic nearest to where such ship or tanker then is the fact that such damage was sustained, the nature and location on the ship or tanker of the damage, the position at sea where the damage was sustained, the name of the ship or tanker, its port of registry, its official number, its position, its course and, in the Republic, its destination, the quantity and type of harmful substances on board and, in the case of a tanker to which the provisions of section 13 apply, the particulars contained in the certificate.

[Sub-s. (2) amended by s. 29 (b) of Act 23 of 1997 (wef 1 September 1997).]

(3) For the purposes of subsection (2) damage to a ship or a tanker shall be deemed to have created the likelihood of a discharge of 'a harmful substance' from such ship or tanker if it is of such a nature as to detrimentally affect, in any degree, the ship's or tanker's seaworthiness or efficient working.

[Sub-s. (3) amended by s. 29 (c) of Act 23 of 1997 (wef 1 September 1997).]

(4) If the master of a ship or a tanker fails to comply with the provisions of subsection (1) or (2) or if the master of an offshore installation fails to comply with the provisions of subsection (1), such master shall be guilty of an offence.

4 Powers of Authority to take steps to prevent pollution of sea where harmful substance is being or is likely to be discharged

(1) If any harmful substance is being discharged or is in the opinion of the Authority likely to be discharged from a ship or a tanker, the Authority may, with a view to preventing the pollution or further pollution of the sea by such substance, require the master or the owner of such ship or tanker or both such master and owner-

- (a) (i) to unload the harmful substance from the ship or tanker or any such substance from a specified part of the ship or tanker;
 - (ii) to transfer any harmful substance from a specified part of the ship or tanker to another specified part of the ship or tanker;
 - (iii) to dispose of any harmful substance so unloaded or transferred,
- in such manner and within such period as the Authority may direct;

[Para. (a) amended by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

- (b) to move the ship or tanker or cause the ship or tanker to be moved to a place specified by the Authority;
- (c) not to move the ship or tanker from a place specified by the Authority, except with the approval of the Authority and in accordance with the conditions subject to which such approval was granted;
- (d) not to unload any cargo or harmful substance, or any cargo or harmful substance specified by the Authority, from the ship or tanker except with the approval of the Authority and in accordance with the conditions subject to which such approval was granted;
- (e) to carry out such operations for the sinking or destruction of the ship or tanker, or any part thereof, or the destruction of the harmful substances in the ship or tanker, or such quantity thereof, as the Authority may specify;
- (f) to steer such course, while the ship or tanker is within the prohibited area, as the Authority may specify;
- (g) to obtain the services of one or more suitable vessels to stand by such ship or tanker during a period determined by the Authority;
- (h) to take such other steps in regard to the ship or tanker or its cargo or the harmful substances therein or both the ship or tanker and its cargo or the harmful substances therein as may be specified by the Authority, to prevent the discharge or further discharge of any such substance from the ship or tanker.

(2) (a) If, in the opinion of the Authority, the master and the owner of the ship or tanker in question are or would be incapable of complying with a requirement made or contemplated in terms of subsection (1) or could not reasonably be expected to comply with such requirement, or the powers conferred upon the Authority by subsection (1) are inadequate for the purpose contemplated in that subsection, the Authority may cause any such steps to be taken as it has power to require to be taken in terms of the said subsection.

[Para. (a) substituted by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

(b) Any reference in paragraph (a) to the power of the Authority to require steps to be taken under subsection (1), includes a reference to the power of the Authority under that subsection to require that a specified step be not taken.

(c) If any person performs salvage operations in connection with a ship or tanker, any requirement of the Authority under subsection (1) in connection with such ship or tanker or its cargo or the harmful substances therein shall also be made known to such salvor, and any such requirement that a specified step be not taken shall thereafter, unless the Authority otherwise directs, also be binding upon such salvor and any such requirement that a specified act be performed shall, unless the Authority otherwise directs, also be construed as a requirement under that

subsection and binding upon such salvor that no steps be taken by such salvor which would obstruct or be likely to obstruct the performance of the specified act.

- (3) If the owner of a ship or a tanker, in complying with a requirement of the Authority in terms of subsection (1), incurs any expenses and-
- (a) the discharge or likelihood of a discharge of the harmful substance in question was due wholly to the fault of the State; or
 - (b) the discharge or likelihood of a discharge of the harmful substance in question was due partly to the fault of the State,

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 34 of 1956), in the event contemplated in paragraph (b), shall become payable to the owner by the State.

(4) The provisions of subsections (1) (a), (d), (g) and (h), (2) (a) and (b) and (3) shall *mutatis mutandis* apply in respect of harmful substances discharged or, in the opinion of the Authority, likely to be discharged from an offshore installation.

[S. 4 substituted by s. 30 of Act 23 of 1997 (wef 1 September 1997) and amended by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

5 Prevention or removal of pollution of sea by harmful substances

(1) If in the opinion of the Authority a harmful substance is likely to be discharged from a ship or a tanker it may take such measures, including the destruction, burning or disposal in any other manner of the harmful substance in such ship or tanker, as it may deem fit to guard against or to prevent pollution of the sea by such harmful substance.

[Sub-s. (1) substituted by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

(2) If any harmful substance is discharged from a ship or a tanker the Authority may cause any pollution of the sea caused thereby to be removed.

[Sub-s. (2) amended by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

(3) If the Authority takes measures under subsection (1) or causes any pollution to be removed under subsection (2), it may order any person who-

- (a) is capable of supplying any goods or services; or
- (b) is capable of manufacturing, producing, processing or treating any goods; or
- (c) is the owner of or has the power to dispose of or has in his possession or under his control any goods, or is a supplier of any service,

which may be required for the purpose of such measures or the removal of such pollution, to supply or deliver or sell such goods or a specified quantity or number thereof, or to supply such service, to the Authority or a specified person, or to manufacture, produce, process or treat a specified quantity or number of such goods and to supply or deliver or sell it to the Authority or to a specified person, within a specified period and at a specified place, as the case may be.

[Sub-s. (3) amended by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

(4) Any person who has received an order under subsection (3) shall, in the absence of evidence to the contrary, be deemed to be capable of performing the act which he has been ordered to perform.

(5) In respect of any goods supplied, delivered, sold, manufactured, produced, processed or treated or any service supplied in terms of this section, the person concerned shall, when called upon to do so, declare and certify the cost to him of every item invoiced, in addition to stating the selling price, in the case of goods, and the amount of the compensation, in the case of a service, claimed by him.

(6) The Authority may institute, through an independent chartered accountant designated by it for that purpose, a cost investigation in connection with any goods or service in respect of which an order has been issued by it under subsection (3).

[Sub-s. (6) substituted by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

(7) In every contract resulting from an order issued under subsection (3), or from the acceptance, by or on behalf of the Authority, of an offer for the manufacture, production, processing, treating or supply of any goods or for the supply of any service, there shall be deemed to be incorporated a condition that the price or compensation stipulated by the seller or supplier concerned shall be subject to confirmation or adjustment by the Authority.

[Sub-s. (7) amended by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

(8) Every person who supplies any service, or supplies, delivers, sells, manufactures, produces, processes or treats any goods, in accordance with an order issued under subsection (3), shall, in the absence of agreement, be paid by the Authority or the person concerned, as the case may be, compensation or a price equal to the amount of the cost to him of the supply of the service in question, or of the goods in question, or of the manufacture, production, processing or treating thereof, plus a percentage of such cost or an amount fixed in the notice in question, or, where the Authority has instituted a cost investigation in terms of subsection (6), the compensation or price determined by the Authority.

[Sub-s. (8) amended by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

(9) If the discharge or likely discharge in question relates to oil and was due-

- (a) wholly to the fault of the State, the owner of the ship or tanker in question shall not be liable in terms of the provisions of section 9 (1) (b) for any expenditure incurred by the Authority by virtue of the provisions of this section;
- (b) partly to the fault of the State, 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 was at fault in relation to the discharge or likely discharge.

[Sub-s. (9) amended by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

(10) The provisions of this section, excluding the provisions of subsection (1), shall *mutatis mutandis* apply in respect of a discharge of harmful substances from an offshore installation.

[S. 5 substituted by s. 31 of Act 23 of 1997 (wef 1 September 1997).]

6 Moving of ship or tanker from certain area

The Authority may order the master of any ship or tanker to move, subject to such instructions as the Authority may issue, his 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.

[S. 6 amended by s. 32 of Act 23 of 1997 (wef 1 September 1997) and by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

7 Inspection of ship or tanker and of records, and taking samples of harmful substances

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 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 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 thereof, take samples of any harmful substance on board such ship or tanker, take soundings of tanks, spaces and bilges and test any equipment on board such ship or tanker which is intended for use in preventing a discharge of harmful substances from such ship or tanker.

[S. 7 substituted by s. 33 of Act 23 of 1997 (wef 1 September 1997) and amended by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

8 Right of entry upon land

(1) Any person or member referred to in section 7 and any other person authorized thereto by the Authority may enter upon any land with such workmen, machinery, vehicles, equipment, appliances, instruments and other articles, and may perform all such acts thereon, as may be necessary for the purpose of complying with any provision of this Act, or for the purpose of making any enquiries or undertaking any investigations with a view to determining whether any pollution of the sea by a harmful substance has occurred and whether the removal of such pollution is feasible, or for the purpose of erecting camps or other temporary works which may be considered necessary in connection with the removal of such pollution, or for the purpose of ascertaining whether or not any provision of the Marine Pollution Acts 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-

- (a) no such entry shall be made into any building, or upon any enclosed space attached to a dwelling, except with the consent of the occupier thereof;
- (b) as little damage, loss or inconvenience as possible shall be caused in the exercise of the powers conferred by this subsection, and such compensation as may be agreed upon or, failing agreement, determined by a competent court, shall be paid from the National Revenue Fund for any damage, loss or inconvenience so caused.

[Para. (b) substituted by s. 2 of Act 9 of 1990 (wef 21 March 1990).]

[Sub-s. (1) amended by ss. 34 and 46 of Act 23 of 1997 (wef 1 September 1997) and by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

(2) Any person who prevents any entry authorized or the exercise of any powers conferred by subsection (1) or who wilfully obstructs or hinders any person so entering in the performance of his functions under this Act shall be guilty of an offence.

9 Liability for loss, damage or costs caused by discharge of oil

(1) Subject to the provisions of this Act, the owner of any ship, tanker or offshore installation at the time of the incident, or, where the incident consists of a series of occurrences, at the time of the first such occurrence shall be liable for-

- (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 from such ship, tanker or offshore installation;
- (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, 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

[Para. (b) amended by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

- (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.

[Sub-s. (1) amended by s. 35 (a) of Act 23 of 1997 (wef 1 September 1997).]

(2) For the purposes of subsection (1) (b)-

- (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 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;

[Para. (a) amended by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

- (b) the costs referred to in that subsection shall include-

- (i) expenses reasonably incurred in connection with the taking of measures referred to in that subsection;
- (ii) an amount deemed by the Director-General to be sufficient to compensate the South African National Foundation for the Conservation of Coastal Birds, an organization registered in terms of the National Welfare Act, 1978 (Act 100 of 1978), as a welfare organization, or any similar organization approved by the Minister, for expenses incurred in rescuing, conveying, treating, feeding, cleaning and rehabilitating coastal birds polluted by oil discharged from the ship, tanker or offshore installation in question.

[Sub-para. (ii) substituted by s. 35 (b) of Act 23 of 1997 (wef 1 September 1997).]

(3) The owner of any ship, tanker or offshore installation shall not be liable for any loss, damage or costs as set out in subsection (1) if he proves that the discharge or, as the case may be, the anticipated discharge in question-

- (a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon; or
- (b) was wholly caused by an act or omission on the part of any person, not being the owner or a servant or agent of the owner, with intent to do damage; or
- (c) was wholly caused by the negligence or other wrongful act of any government or other authority responsible for the maintenance of lights or other navigational aids, in the exercise of that function.

(4) Where a ship or a tanker is together with another ship or tanker or with an offshore installation involved in an incident and a liability is incurred by virtue of the provisions of subsection (1) by each of the owners concerned, but the loss, damage or costs for which each of the owners would be liable cannot reasonably be separated from that or those for which the other owner or owners would be liable, the owners concerned shall be jointly and severally liable for all such loss, damage or costs.

(5) If the owner of any ship, tanker or offshore installation incurs a liability in terms of the provisions of subsection (1) for any loss or damage suffered or costs incurred as a result of an incident which occurred without such owner's actual fault or privity-

- (a) the provisions of section 261 of the Merchant Shipping Act, 1951 (Act 57 of 1951), shall not apply in respect of such liability;
- (b) 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-
 - (i) in the case of a ship or a tanker, one hundred and thirty-three units of account for each ton of the ship's or tanker's tonnage, or fourteen million units of account, whichever is the lesser;
 - (ii) in the case of an offshore installation, a sum determined by the Minister, but not exceeding fourteen million units of account.

(6) The provisions of subsection (1) (b) shall not be construed as rendering, in the case of a tanker, any costs incurred in terms of the said subsection before a discharge of oil from such tanker has occurred, recoverable by virtue of the application of the provisions of the Convention.

(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 occurrences having the same origin, six years after the date on which the first of those occurrences took place.

(8) For the purposes of this section-

- (a) '**unit of account**' means a Special Drawing Right as defined by the International Monetary Fund, and the value of such Special Drawing Right in South African currency shall be calculated in accordance with the method of valuation applied by the International Monetary Fund and which is in effect at the time when payment is made, or, in the event of an application in terms of section 12 (1), at the time when such application is considered by the court;
- (b) the tonnage of a ship or a tanker shall be its net tonnage with the addition of any engine room space deducted for the purpose of ascertaining its net tonnage.

10 Limitation of liability

(1) When an incident has occurred in respect of a ship, tanker or offshore installation the owner of such ship, tanker or offshore installation shall not be liable otherwise than under the provisions of this Act to any person for any-

- (a) loss or damage referred to in section 9 (1) (a) or (c); or
- (b) costs referred to in section 9 (1) (b),

suffered or incurred as a result of that incident.

(2) No servant or agent of the owner of a ship, tanker or offshore installation shall be liable to any person for any loss, damage or costs referred to in subsection (1).

(3) Any person performing salvage operations in connection with a ship, tanker or offshore installation with the agreement of the owner or master thereof, shall, for the purposes of subsection (2), be regarded as the agent of such owner.

(4) Any person in the service or acting on the authority of the State or the Authority or any person engaged in terms of section 27 (1) read with section 4 (2) (a) or section 22 (1), as the case may be, to perform any act required to be performed in terms of section 4 (1), shall not be liable (except in the case of any wilful act or omission on the part of any such person) to any person for any loss of or damage to any ship, tanker or offshore installation or, in the case of such ship or tanker, its cargo or harmful substances, caused by or arising out of or in any manner connected with the performance of such act.

[Sub-s. (4) substituted by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

(5) If by virtue of the provisions of section 5 measures are being taken to guard against, prevent or remove pollution of the sea by a harmful substance in the prohibited area, any person in the service or acting on the authority of the State or the Authority, any officer of or member of the crew of any vessel employed in the taking of such measures, the employer of such officer or member, or the owner of such vessel, shall not be liable (except in the case of any wilful act or omission on the part of any such person, officer, member, employer or owner) to any person for any loss of or damage to any ship, tanker or offshore installation in the said area, or, in the case of such ship or tanker, its cargo or harmful substances, caused by or arising out of or in any manner connected with the taking of such measures.

[Sub-s. (5) amended by s. 36 (a) of Act 23 of 1997 (wef 1 September 1997) and substituted by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

(6) Any person in the service or acting on the authority of the State or the Authority 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) for any loss or damage suffered or costs incurred by any person as a result of any measures taken, or as a result of any measures not having been taken, in terms of this Act, to prevent or remove pollution of the sea by a harmful substance.

[Sub-s. (6) amended by s. 36 (b) of Act 23 of 1997 (wef 1 September 1997) and substituted by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

11 Exemption in respect of warships or tankers used in the service of a State

(1) The provisions of section 9 (1) shall not apply in respect of any warship or in respect of any tanker for the time being used exclusively in the service of any State for other than commercial purposes.

(2) In relation to a tanker owned by a State and for the time being used for commercial purposes, section 13 (1) shall be deemed to have been complied with if there is in force in respect of such tanker a certificate, issued by the government of such State, in which it is stated that the tanker is owned by that State and that any liability which may be incurred in connection with such tanker by virtue of the provisions of section 9 (1) will be met by the government concerned to the extent of the aggregate amount contemplated in section 9(5).

(3) Every Convention State shall, for the purposes of any legal proceedings brought in a court referred to in section 20 (1) to enforce a claim in respect of a liability incurred under section 9 (1) as a result of a discharge of oil from a tanker referred to in subsection (2), be deemed to have submitted to the jurisdiction of that court: Provided that nothing in this subsection contained shall authorize the issue of execution against the property of any Convention State.

12 Applications to court

(1) If the owner of a ship, tanker or offshore installation has or is alleged to have incurred a liability in terms of the provisions of subsection (1) of section 9 in the circumstances contemplated in subsection (5) of that section, he may in the prescribed manner apply to the court for the determination, in accordance with the provisions of the said subsection (5), of the aggregate amount payable by him in respect of such liability.

(2) If on an application referred to in subsection (1) the court finds that the applicant has incurred the liability in question and is, by virtue of the provisions of section 9 (5), entitled to pay in respect of such liability an aggregate amount not exceeding an amount calculated in accordance with the provisions of section 9 (5), the court shall, after determining such aggregate amount in accordance with the provisions of section 9 (5), direct the applicant to deposit such amount with the Master of the said court or to furnish the said Master with a written guarantee, acceptable to the court, for the payment of such amount, and any amount so deposited or guarantee so furnished shall, for the purposes of this section, be deemed to constitute a fund.

(3) The Master referred to in subsection (2) shall appoint a person nominated by the applicant and a person nominated by the Authority as joint trustees of the fund referred to in subsection (2).

[Sub-s. (3) amended by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

(4) The trustees referred to in subsection (3) shall in the prescribed manner administer the fund referred to in subsection (2) and distribute it among the several persons establishing claims in connection with the incident from which the liability originated.

(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 insurer, the person who paid such amount shall, to the extent of that amount, be in the same position with respect to any distribution made by the trustees in terms of subsection (4) as the person to whom such amount was paid would have been.

(6) If the owner concerned has made any reasonable sacrifice or taken any other reasonable measures to prevent or reduce loss or damage to which the liability relates, he shall be in the same position with respect to any distribution made by the trustees in terms of subsection (4) as if he had a claim in respect of the liability equal to the cost of the sacrifice or other measures.

(7) If the owner or insurer referred to in subsection (5) establishes that he may be compelled to pay, at a date subsequent to the distribution in terms of subsection (4) of the fund referred to in subsection (2), an amount in or towards satisfaction of any claim as contemplated in subsection (5), which payment would have entitled him to the right envisaged in subsection (5) had it been made before the said distribution, the trustees may out of the said fund provisionally set aside an amount in order to enable the said owner or insurer to enforce the said right against the said fund at such subsequent date.

(8) For the purposes of this section '**court**' means any division of the Supreme Court of South Africa.

13

[S. 13 amended by s. 46 of Act 23 of 1997 (wef 1 September 1997) and amended by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998) and repealed by s. 17 of Act 25 of 2013 (wef 30 May 2014).]

14

[S. 14 amended by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998) and repealed by s. 17 of Act 25 of 2013 (wef 30 May 2014).]

16 Depositing of amount or furnishing of guarantee by owner of ship, tanker or offshore installation in respect of certain costs

If an amount has in terms of the provisions of section 9 (1) (b) become payable by the owner of a ship, a tanker to which the provisions of section 13 (1) do not apply or an offshore installation in respect of costs referred to in section 9 (1) (b), or if the Authority believes, on reasonable grounds, that an amount may become so payable, such owner shall either deposit with the Authority an amount, or furnish the Authority with a written guarantee, acceptable to it, for the payment of an amount deemed by the Authority to be sufficient to satisfy the amount which has or may become so payable by the said owner.

[S. 16 substituted by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

17 Refund of excess costs paid by owner

(1) If the Authority is satisfied that no amount in respect of costs referred to in section 9 (1) (b) is, or will become, payable in terms of the provisions of that section by an owner referred to in section 16 and that no pollution or further pollution of the sea by oil will be caused by the ship, tanker or offshore installation in question, it shall-

- (a) refund any amount deposited in terms of section 16, or so much thereof as has not been utilized to satisfy any amount which had become payable by such owner in respect of such costs;
- (b) cancel any guarantee furnished in terms of section 16 if no amount is payable in terms thereof in respect of such costs or if any amount which became so payable in respect of such costs has been paid.

[Sub-s. (1) amended by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

(2) The Authority may at any time refund 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 section by so much, as, in its opinion, is not required to satisfy any costs referred to in section 9 (1) (b).

[Sub-s. (2) substituted by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

(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 section by so much, as exceeds the amount to which the State is entitled in terms of a distribution made in terms of section 12 (4).

[Sub-s. (3) amended by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

18 Ratification by Minister of certain expenses

The Minister may ratify the 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 or any other person in removing pollution of the sea by oil 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 to be costs referred to in section 9 (1) (b).

[S. 18 amended by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

19 Detention of ships pending payment of costs for which owner is liable

(1) If the owner of a ship fails to pay costs payable by him in terms of section 9 (1) (b), or fails to make a deposit or to furnish a guarantee which he is in terms of section 16 required to make or to furnish, the Authority may, in the prescribed manner-

- (a) cause the ship in question or any other ship or ships, or the ship in question and any other ship or ships of the owner-
 - (i) to be detained until such costs have been paid or such deposit has been made or guarantee furnished, as the case may be: Provided that such detention shall not exceed a period of seven days or such further period as the division of the Supreme Court of South Africa having jurisdiction may authorize; and
 - (ii) on the authority of the said division of the Supreme Court of South Africa and subject to its directions-
 - (aa) where such detention has been effected because of a failure to pay such costs due, to be seized and, after notice in the *Gazette* of the proposed realization thereof, to be realized in satisfaction of those costs;
 - (bb) where such detention has been effected because of a failure to make a deposit or to furnish a guarantee, and costs become payable by the owner in terms of section 9 (1) (b) at a time when the required deposit has not yet been made or guarantee has not yet been furnished, to be seized and, after notice as prescribed in item (aa), to be realized in satisfaction of those costs;
- (b) on the authority of the said division of the Supreme Court of South Africa and subject to its directions, cause to be seized and realized in satisfaction of those costs, any goods of such owner on such ship or ships.

[Sub-s. (1) amended by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

(2) The Authority shall cause any ship or goods detained or seized in terms of subsection (1) to be released forthwith from detention or seizure if the owner concerned pays the costs, makes the deposit or furnishes the guarantee referred to in that subsection or by virtue of a direction contemplated in section 12 (2) deposits an amount with the Master concerned or furnishes the said Master with a guarantee as contemplated in that section, before the realization, in terms of the said subsection, of the ship or goods in question.

[Sub-s. (2) amended by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

(3) Notwithstanding anything to the contrary in any law contained, the proceeds of the realization of any ship or goods which took place in terms of this section, shall be applied to satisfy the costs in connection with which the realization took place, with preference over the satisfaction of any lien upon such ship or any obligation secured by a mortgage over such ship or goods or a share therein.

(4) The provisions of this section shall *mutatis mutandis* apply to the owner of a tanker to which the provisions of section 13 (1) do not apply.

20 Jurisdiction of courts

(1) Any division of the Supreme Court of South Africa, and within the limits of its jurisdiction as determined in section 29 of the Magistrates' Courts Act, 1944 (Act 32 of 1944), but subject to the provisions of section 12 (8), any magistrate's court, shall have jurisdiction in respect of all causes of action arising out of the provisions of this Act.

(2) Any division of the Supreme Court of South Africa, and, within the limits of its jurisdiction as determined in section 92 of the Magistrates' Courts Act, 1944 (Act 32 of 1944), any magistrates' court for a regional division, shall have jurisdiction in all criminal matters arising out of the provisions of this Act.

(3) No prosecution in respect of an offence under this Act shall be instituted except on the authority, which may be given in writing or otherwise, of the attorney-general having jurisdiction in the area of the court in question.

(4) Any offence in terms of this Act shall, for purposes in relation to jurisdiction of a court to try the offence, be deemed to have been committed within the area of jurisdiction of the court in which the prosecution is instituted.

[Sub-s. (4) added by s. 1 of Act 63 of 1987 (wef 25 September 1987) and substituted by s. 37 of Act 23 of 1997 (wef 1 September 1997).]

21 Authority's permission required for transfer of certain harmful substances or for certain other acts in respect of ships or tankers

(1) No person shall-

- (a) outside any harbour of which Transnet Limited has become the owner in terms of section 3 of the Legal Succession to the South African Transport Services Act, 1989 (Act 9 of 1989), or a fishing harbour as defined in section 1 of the Sea Fishery Act, 1988 (Act 12 of 1988), and within the prohibited area, render any ship having oil or any other prescribed harmful substance on board (whether as cargo or otherwise), or any tanker, incapable of sailing or manoeuvring under its own power;
- (b) within the prohibited area transfer any oil or other prescribed harmful substance from any ship or tanker to any other ship or tanker or to an offshore installation or from such offshore installation to any ship or tanker,

except with the permission of the Authority and in accordance with the provisions of this Act.

(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.

[Sub-s. (2) substituted by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

[S. 21 substituted by s. 38 of Act 23 of 1997 (wef 1 September 1997) and amended by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

22 Powers of Authority in case of default by master or owner

(1) If-

- (a) the master or owner of a ship or a tanker refuses or fails to perform, within the time specified by the Authority, any act which he has in terms of paragraph (a), (b), (e), (f), (g) or (h) of section 4 (1) been required to perform;
- (b) the master of an offshore installation refuses or fails to perform, within the time specified by the Authority, any act which he has in terms of paragraph (a), (g) or (h) of section 4 (1) been required to perform; or
- (c) any person refuses or fails to comply with a condition imposed by the Authority in terms of section 21 (2),

the Authority may cause such act to be performed or such condition to be complied with, and for that purpose may cause steps to be taken which may include the taking over of control of such ship, tanker or offshore installation.

(2) All expenses reasonably incurred by the Authority by virtue of the provisions of subsection (1), shall be deemed to be costs referred to in section 9 (1) (b).

[S. 22 amended by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

23 Salvor not to be prejudiced

Subject to the provisions of section 19 (3) no provision of this Act shall be construed as derogating from any right to a salvage award, nor shall a salvor who would otherwise be entitled to a salvage award in respect of an act of salvage actually performed, cease to be so entitled merely on the ground that such act was carried out as a direct or indirect result of a requirement laid down or an order issued in terms of this Act.

24 Pollution safety certificate required for operation of offshore installation

(1) Subject to the provisions of subsection (2) no person shall operate an offshore installation unless a pollution safety certificate issued in terms of the provisions of this section is in force in respect thereof.

(2) No offshore installation which is operated at the date of commencement of this Act shall continue to be so operated after the expiration of a period of twelve months as from the said date unless a pollution safety certificate has in terms of the provisions of this section been issued in respect thereof.

(3) Any person desiring a pollution safety certificate shall in writing apply therefor to the Authority, and the Authority shall, subject to the provisions of subsection (4), upon receipt of such an application issue a pollution safety certificate in the prescribed form in respect of the offshore installation in question, subject to such conditions relating to the operation of the offshore installation as may be determined by the Authority and specified in the pollution safety certificate.

[Sub-s. (3) amended by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

(4) No pollution safety certificate shall be issued by the Authority in terms of this section unless the offshore installation in question complies with such conditions and requirements relating to the construction and operation thereof as the Minister may prescribe by regulation.

[Sub-s. (4) amended by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

(5) Any person who-

- (a) operates an offshore installation in contravention of the provisions of subsection (1) or (2);
- (b) in operating an offshore installation fails to comply with any condition specified in the pollution safety certificate in question,

shall be guilty of an offence.

25 Exemptions by Minister

(1) The Minister may exempt any ship or any class of ships or any tanker or any class of tankers or any offshore installation from any of or all the provisions of this Act.

(2) The Minister may exempt any person performing salvage operations in connection with a ship or a tanker 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.

[Sub-s. (2) amended by s. 39 of Act 23 of 1997 (wef 1 September 1997).]

26 Income and expenditure

(1) There shall be paid into the National Revenue Fund-

- (a) any amount deposited in terms of section 16 representing a sum deemed to be sufficient in terms of section 9 (2) (b) (ii);
- (b) any other money which may become payable to the State by virtue of the provisions of this Act.

(2) Expenses incurred-

- (a) to undertake or promote the research determined by the Minister, on any matter which, in the opinion of the Minister, is connected with the pollution of the sea by harmful substances;
- (b) when the Minister deems it necessary or expedient in the public interest, for defraying expenditure incurred in preventing or removing the pollution of the sea by harmful substances in or discharged from ships, tankers or offshore installations and in connection with matters incidental thereto;
- (c) for the payment of remuneration and allowances of persons engaged in terms of section 27 (1) and persons referred to in section 27 (3) (b);
- (d) for the defraying of expenses incurred in removing, or in taking steps to prevent, pollution of the sea by harmful substances, in terms of section 27 (6);

- (e) for the hire or purchase of equipment, buildings, machinery and accessories, apparatus, seagoing vessels, vehicles, aircraft and any other movable or immovable property deemed by the Minister to be necessary for or conducive to the achievement of the objects of this Act;
- (f) for the defraying of expenses incurred in the instruction of officers of the State and other persons in connection with pollution of the sea by harmful substances and in the training of such officers and persons in the prevention and removal of such pollution and in activities incidental thereto;
- (g) for any purpose connected with the performance by the Authority of its functions in terms of the provisions of this Act,

shall be defrayed out of money appropriated by Parliament for such purpose: Provided that, for the purposes of paragraph (b), the defraying of expenditure incurred in preventing or removing pollution of the sea by harmful substances in or discharged from any ship, tanker or offshore installation shall not exempt the owner of such ship, tanker or offshore installation from liability under this Act for payment of such expenditure.

(3) There shall be paid to the Authority-

- (a) any amount deposited in terms of section 16 other than a sum deemed to be sufficient in terms of section 9 (2) (b) (ii);
- (b) the proceeds of the realisation of any goods, property or assets in terms of section 19;
- (c) all money paid to or recovered by the Authority in consequence of a removal in terms of section 27 (6); and
- (d) any other money which may become payable to the Authority by virtue of the provisions of this Act.

[S. 26 amended by s. 1 of Act 59 of 1985 (wef 24 April 1985), substituted by s. 3 of Act 9 of 1990 (wef 21 March 1990), amended by ss. 40 and 46 of Act 23 of 1997 (wef 1 September 1997) and substituted by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

27 Sundry powers

(1) The Minister may, subject to the laws governing the public service, engage as many persons as he may deem necessary to perform such functions as may be required to be performed in order to carry out the provisions of this Act.

(2) If a person who is or was employed by virtue of the provisions of subsection (1) caused the State any loss or damage because he-

- (a) is or was responsible for a deficiency in money in the National Revenue Fund, or for the destruction of, or damage to, any property acquired with money from the National Revenue Fund or any other State property;
- (b) due to any wilful act or omission on his part, is or was responsible for any claim necessitating any payment from the National Revenue Fund, such loss or damage may be recovered from such person in the prescribed manner.

(3) (a) The Minister may establish such bodies as he may deem necessary to assist him in carrying out the provisions of this Act.

(b) The remuneration and other conditions of service of persons serving on any body contemplated in paragraph (a) shall from time to time be determined by the Minister with the concurrence of the Minister of Finance.

(4) The Minister may establish and maintain a patrol service by means of boats, ships and aircraft to patrol the prohibited area with a view to combating pollution of the sea by harmful substances.

(5) The Minister and the Authority may do all such other things as are incidental or conducive to the performance of his or its functions in terms of this Act.

(6) The Minister and the Authority may cause steps not in conflict with the Marine Pollution (Intervention) Act, 1987 (Act 64 of 1987), to be taken to remove or prevent pollution of the sea by harmful substances outside the prohibited area in such circumstances and on such conditions as he or it may deem fit.

[S. 27 amended by s. 4 of Act 9 of 1990 (wef 21 March 1990) and by ss. 41 and 46 of Act 23 of 1997 (wef 1 September 1997) and substituted by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

28 Regulations

(1) The Minister may make regulations-

- (a) prescribing measures to be taken on board or in respect of a ship or a tanker when such ship or tanker is rendered incapable of sailing or manoeuvring under its own power as contemplated in section 21;
- (b) prescribing the machinery and equipment to be installed and maintained on or in connection with a ship, tanker or offshore installation for the purposes of the removal or prevention of pollution of the sea by harmful substances discharged or likely to be discharged from such ship, tanker or offshore installation during a transfer of any such substance 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);
[Para. (b) amended by s. 42 (a) of Act 23 of 1997 (wef 1 September 1997).]
- (c) prescribing, in respect of ships or tankers registered in the Republic under the Merchant Shipping Act, 1951 (Act 57 of 1951), and in respect of ships or tankers not so registered but which ply between a port in the Republic or an offshore installation and any other port or installation similar to an offshore installation, the equipment to be carried on board such ships or tankers for use in preventing a discharge of harmful substances, and standards for the maintenance of such equipment;
[Para. (c) amended by s. 42 (b) of Act 23 of 1997 (wef 1 September 1997).]
- (d) as to the powers, duties and conditions of service of trustees appointed in terms of section 12 (3);
- (e) as to all matters which in terms of this Act are required or permitted to be prescribed by regulation,

and, generally, for the better achievement of the objects and purposes of this Act.

(2) Regulations made under subsection (1) may-

- (a) prescribe, for any contravention thereof or failure to comply therewith, penalties not exceeding the penalties prescribed in section 30 (2) (a);
- (b) be applicable outside the Republic.

[Sub-s. (2) substituted by s. 42 (c) of Act 23 of 1997 (wef 1 September 1997).]

29 Delegation of powers

The Minister, the Director-General and the Authority may delegate to any person or to two or more persons any of the powers conferred upon them respectively in terms of the provisions of this Act other than, in the case of the Minister, the provisions of section 28.

[S. 29 amended by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

30 Offences and penalties

(1) Any person who-

- (a) contravenes or fails to comply with the provisions of-
 - (i) section 14 (6); or
 - (ii) section 21 (1);
- (b) wilfully fails to comply with an order or requirement of the Authority in terms of-
 - (i) section 4 (1);
 - (ii) section 4 (2) (c);

- (iii) section 5 (3); or
- (iv) section 6;

[Para. (b) amended by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

- (c) hinders or obstructs any person in the performance of his functions by virtue of the provisions of-
 - (i) section 4 (2) (a);
 - (ii) section 5 (6);
 - (iii) section 7; or
 - (iv) section 22 (1),

shall be guilty of an offence.

(2) Any person convicted of an offence referred to in-

- (a) section 3 (4), 8 (2), 13 (7), 24 (5) or subsection (1) (a) (i), shall be liable to a fine not exceeding R25 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment;
[Para. (a) amended by s. 43 (a) of Act 23 of 1997 (wef 1 September 1997).]
- (b) subsection (1) (b) (iii), (b) (iv), (c) (i), (c) (ii), (c) (iii) or (c) (iv), shall be liable to a fine not exceeding R50 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment;
[Para. (b) amended by s. 43 (b) of Act 23 of 1997 (wef 1 September 1997).]
- (c) subsection (1) (a) (ii), shall be liable to a fine not exceeding R90 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;
[Para. (c) amended by s. 43 (c) of Act 23 of 1997 (wef 1 September 1997).]
- (d) section 2 (1) or 13 (6) or subsection (1) (b) (i) or (b) (ii), shall be liable to a fine not exceeding R200 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[NB: Para. (d) has been substituted by s. 43 (d) of the Shipping General Amendment Act 23 of 1997, a provision which will be put into operation by proclamation. See PENDLEX.]

[Sub-s. (2) substituted by s. 5 of Act 9 of 1990 (wef 21 March 1990).]

(3) If any person-

- (a) admits to the Authority that he has contravened any provision of this Act, or that he has failed to comply with any such provision with which it was his duty to comply;
- (b) agrees to abide by the decision of the Authority; and
- (c) deposits with the Authority such sum as may be required of him, but not exceeding the maximum fine which may be imposed upon a conviction for the contravention or failure in question,

the Authority may, after such enquiry as it deems necessary, determine the matter summarily and may, without legal proceedings, order by way of penalty the whole or any part of the said deposit to be forfeited.

[Sub-s. (3) added by s. 2 of Act 63 of 1987 (wef 25 September 1987) and substituted by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

(4) There shall be a right of appeal to the Minister from a determination or order of the Authority under subsection (3) whereby a penalty exceeding R2 000 is imposed, provided such right is exercised within a period of three months from the date of such determination or order.

[Sub-s. (4) added by s. 2 of Act 63 of 1987 (wef 25 September 1987), substituted by s. 88 of Act 88 of 1996 (wef 22 November 1996) and by s. 43 (e) of Act 23 of 1997 (wef 1 September 1997) and amended by s. 2 (2) of Act 5 of 1998 (wef 1 April 1998).]

(5) The imposition of a penalty under subsection (3) shall be deemed not to be a conviction of an offence, but no prosecution in respect of the offence in question may thereafter be instituted.

[Sub-s. (5) added by s. 2 of Act 63 of 1987 (wef 25 September 1987).]

30A Application of Act to Prince Edward Islands

This Act shall also apply to the Prince Edward Islands referred to in section 1 of the Prince Edward Islands Act, 1948 (Act 43 of 1948), and any reference in this Act to the Republic shall include a reference to those Islands.

[S. 30A inserted by s. 44 of Act 23 of 1997 (wef 1 September 1997).]

31 Repeal of laws, and savings

(1) Subject to the provisions of subsection (2), the Prevention and Combating of Pollution of the Sea by Oil Act, 1971 (Act 67 of 1971), the Prevention and Combating of Pollution of the Sea by Oil Amendment Act, 1972 (Act 92 of 1972), and the Prevention and Combating of Pollution of the Sea by Oil Amendment Act, 1973 (Act 72 of 1973), are hereby repealed.

(2) Any notice, approval, authorization or document given, granted or issued and any other thing done under any provision of any law repealed by this Act shall, unless inconsistent with the provisions of this Act, be deemed to have been given, granted, issued or done under this Act.

32 Short title

This Act shall be called the Marine Pollution (Control and Civil Liability) Act, 1981.

[S. 32 substituted by s. 45 of Act 23 of 1997 (wef 1 September 1997).]

PENDLEX: Marine Pollution (Control and Civil Liability) Act 6 of 1981 after amendment by the Shipping General Amendment Act 23 of 1997

Section 1 - definition

'oil', in relation to-

- (a) a discharge of oil from a ship, a tanker or an offshore installation, means oil as defined in regulation 1 of Annex I to MARPOL 1973/78, and includes an oily mixture as defined in that regulation; and
- (b) loss or damage caused as contemplated in section 9 (1) (a) where the discharge in question took place from a tanker, and for the purposes of section 13 (1), means oil as defined in paragraph 5 of Article 1 of the Convention;

Section 2 - repealed

Section 30 (2) (d)

section 13 (6) or subsection (1) (b) (i) or (ii), shall be liable to a fine not exceeding R500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

PREVENTION AND COMBATING OF POLLUTION OF THE SEA BY OIL AMENDMENT ACT 59 OF 1985

[ASSENTED TO 24 MAY 1985]

[DATE OF COMMENCEMENT: 24 APRIL 1985]

(see s. 2 of this Act)

(Afrikaans text signed by the State President)

published in

GG 9772 of 5 June 1985

ACT

To amend the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, so as to make other provision in respect of certain amounts to be paid into the Oil Pollution Prevention Fund; and to provide for matters connected therewith.

¹ This Act has been updated to include all available historical commencement details

1

Amends section 26 (2) of the Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981 by substituting paragraph (a).

2 Short title and commencement

This Act shall be called the Prevention and Combating of Pollution of the Sea by Oil Amendment Act, 1985, and shall be deemed to have come into operation on 24 April 1985.

PREVENTION AND COMBATING OF POLLUTION OF THE SEA BY OIL AMENDMENT ACT 63 OF 1987

[ASSENTED TO 11 SEPTEMBER 1987]

[DATE OF COMMENCEMENT: 25 SEPTEMBER 1987]

(see s. 3 of this Act)

(English text signed by the State President)

published in

GG 10936 of 25 September 1987

ACT

To amend the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, so as to make provision for the jurisdiction of courts and for the imposition of penalties; and to provide for matters connected therewith.

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:-

¹ This Act has been updated to include all available historical commencement details

1

Amends section 20 of the Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981 by adding subsection (4).

2

Amends section 30 of the Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981 by adding subsections (3), (4) and (5).

3 Short title

This Act shall be called the Prevention and Combating of Pollution of the Sea by Oil Amendment Act, 1987.

PREVENTION AND COMBATING OF POLLUTION OF THE SEA BY OIL AMENDMENT ACT 9 OF 1990

[ASSENTED TO 9 MARCH 1990]

[DATE OF COMMENCEMENT: 21 MARCH 1990]

(see s. 7 of this Act)

(Afrikaans text signed by the State President)

published in

GG 12352 of 21 March 1990

ACT

To amend the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, so as to provide for the abolition of the Oil Pollution Prevention Fund and the substitution of the State Revenue Fund therefor; and to increase the fines which may be imposed under the Act; and to provide for incidental matters.

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:-

¹ This Act has been updated to include all available historical commencement details

1

Amends section 1 (1) of the Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981, as follows: paragraph (a) deletes the definition of 'Fund'; and paragraph (b) inserts the definition of 'State Revenue Fund' after the definition of 'ship'.

2

Amends section 8 (1) of the Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981 by substituting paragraph (b).

3

Substitutes section 26 of the Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981.

4

Amends section 27 of the Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981 by substituting subsection (2).

5

Amends section 30 of the Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981 by substituting subsection (2).

6 Assets, liabilities, rights, duties and obligations of Oil Pollution Prevention Fund to devolve upon State

(1) Any credit in the Oil Pollution Prevention Fund referred to in section 26 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981 (Act 6 of 1981), immediately before the date of commencement of this Act, shall be paid into the State Revenue Fund established by section 81 of the Republic of South Africa Constitution Act, 1983 (Act 110 of 1983), while all other assets and the liabilities, rights, duties and obligations of such first-mentioned Fund on such date, shall devolve upon the State.

(2) Any reference in any law or document to the Oil Pollution Prevention Fund shall be construed as a reference to the State.

7 Short title

This Act shall be called the Prevention and Combating of Pollution of the Sea by Oil Amendment Act, 1990.