

REPUBLIC OF SOUTH AFRICA

**SHIPPING GENERAL
AMENDMENT BILL**

(As introduced)

(MINISTER OF TRANSPORT)

[B 11—97]

REPUBLIEK VAN SUID-AFRIKA

**ALGEMENE
WYSIGINGSWETSONTWERP
OP SKEEPVAART**

(Soos ingedien)

(MINISTER VAN VERVOER)

[W 11—97]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Merchant Shipping Act, 1951, so as to insert certain definitions, to amend others and to delete others; to further regulate occupational safety in relation to vessels; to further regulate the powers of certain officers and courts; to delete or replace certain obsolete expressions and references; to further regulate the reporting of and investigation into casualties and accidents on vessels; to further regulate the making of regulations by the Minister of Transport; to amend the text; and to repeal the Third, Fourth and Sixth Schedules to the said Act; to amend the Marine Traffic Act, 1981, so as to insert two definitions, amend one and replace ten; to provide anew for offences in respect of offshore installations; to empower the said Minister to determine safety zones for certain offshore installations; to delete certain obsolete expressions; to make other provision in respect of certain penalties; to further regulate the making of regulations by the said Minister; to make other provision in relation to court jurisdiction; and to extend the application of the said Act to the Prince Edward Islands; to amend the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, so as to insert certain definitions, to amend others, and to delete others; to make other provision for the control of operational discharges of oil and oily mixtures from ships and offshore installations; to extend certain powers and functions in relation to the prevention and combating of pollution of the sea by oil to other harmful substances; to make other provision in relation to court jurisdiction; to further regulate the making of regulations by the said Minister; to increase the maximum amount of fines that may be imposed for a contravention of the said Act; to extend the application of the said Act to the Prince Edward Islands; and to replace certain obsolete expressions and references; to amend the Carriage of Goods by Sea Act, 1986, so as to give effect to the Protocol of 1979 to amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading 1924, as amended by the Protocol of 1968; and to extend the application of the said Act to the Prince Edward Islands; to amend the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties Act, 1987, so as to insert a certain definition, to amend another and to delete another; to give effect to the Protocol Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances Other than Oil 1973, as amended by MEPC.49(31); to regulate anew the application and interpretation of the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969 and the said Protocol; to regulate anew the making of regulations by the said Minister; to increase the maximum penalties for which may be provided by regulation; to make other provision in relation to court jurisdiction; and to extend the application of the said Act to the Prince Edward Islands; and to amend the

Maritime Zones Act, 1994, so as to amend a certain definition; and to provide for matters connected therewith.

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

CONTENTS OF ACT

| | | |
|--------------------------------|--|----|
| Sections 1—18: | Amendment of Merchant Shipping Act, 1951 | 5 |
| Sections 19—26: | Amendment of Marine Traffic Act, 1981 | |
| Sections 27—47: | Amendment of Prevention and Combating of Pollution of the Sea by Oil Act, 1981 | |
| Sections 48—50 and Schedule 1: | Amendment of Carriage of Goods by Sea Act, 1986 | 10 |
| Sections 51—58 and Schedule 2: | Amendment of International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties Act, 1987 | |
| Section 59: | Amendment of Maritime Zones Act, 1994 | |
| Section 60: | Short title and commencement | 15 |

Amendment of section 2 of Act 57 of 1951, as amended by section 3 of Act 30 of 1959, section 31 of Act 69 of 1962, section 1 of Act 40 of 1963, section 1 of Act 13 of 1965, section 1 of Act 42 of 1969, section 1 of Act 24 of 1974, section 1 of Act 5 of 1976, section 1 of Act 3 of 1981, section 1 of Act 3 of 1982, section 1 of Act 25 of 1985, section 1 of Act 18 of 1992 and section 1 of Act 16 of 1995 20

1. Section 2 of the Merchant Shipping Act, 1951, is hereby amended—

- (a) by the substitution in subsection (1) for the definitions of “cargo ship safety construction certificate” and “cargo ship safety equipment certificate” of the following definitions, respectively:
- “ ‘cargo ship safety construction certificate’ means such a certificate, 25
issued in conformity with the Safety Convention under subparagraph (a)
of paragraph (1) or (2) of section 193, or deemed in accordance with the
provisions of section 202(1)(b) to have been so issued;
‘cargo ship safety equipment certificate’ means such a certificate, issued 30
in conformity with the Safety Convention under subparagraph (b) of
paragraph (1) or (2) of section 193, or deemed in accordance with the
provisions of section 202(1)(b) to have been so issued;”;
- (b) by the insertion in subsection (1) after the definition of “cargo ship safety equipment certificate” of the following definition:
- “ ‘cargo ship safety radio certificate’ means such a certificate, issued in 35
conformity with the Safety Convention under subparagraph (b) of
paragraph (3) or (4) of section 193, or deemed in accordance with the
provisions of section 202(1)(b) to have been so issued;”;
- (c) by the deletion in subsection (1) of the definitions of “cargo ship safety radiotelegraphy certificate” and “cargo ship safety radiotelephony certificate”; 40

- (d) by the substitution in subsection (1) for the definitions of “country to which the Load Line Convention applies” and “country to which the Safety Convention applies” of the following definitions, respectively:
- “ ‘country to which the Load Line Convention applies’ means a country in respect of which the Load Line Convention is for the time being in force, and includes any territory to which the said Convention applies in accordance with the relative Article thereof; ” 5
- “ ‘country to which the Safety Convention applies’ means a country in respect of which the Safety Convention is for the time being in force; ”;
- (e) by the substitution in subsection (1) for the definition of “dangerous goods” 10 of the following definition:
- “ ‘dangerous goods’ means goods which by reason of their nature, quantity or mode of stowage, are either singly or collectively liable to endanger the lives or health of persons on or near the ship or to imperil the ship, and includes all substances within the meaning of the expression ‘explosives’ as used in the Explosives Act, 1956 (Act No. 26 of 1956), and any other goods [**which the Minister by notice in the Gazette may specify**] specified in the regulations as dangerous goods; ” 15
- (f) by the substitution in subsection (1) for the definition of “dynamically supported craft” of the following definition: 20
- “ ‘dynamically supported craft’ means any air-cushion vehicle, sidewall craft, hydrofoil boat, or [**any**] other [**prescribed**] similar craft, used [**for transportation or for any other purpose on or above the surface of**] wholly or principally in navigation by water; ”;
- (g) by the substitution in subsection (1) for the definition of “exemption certificate” of the following definition: 25
- “ ‘exemption certificate’ means such a certificate, issued in conformity with the Safety Convention under paragraph (c) of section 192, subparagraph (a) or (b) of paragraph (2) or subparagraph (a) of paragraph (4) of section 193, or deemed in accordance with the provisions of section 202(1)(a) or (b) to have been so issued; ” 30
- (h) by the insertion in subsection (1) after the definition of “goods” of the following definition:
- “ ‘hazard’ means a source of or exposure to danger; ”;
- (i) by the substitution in subsection (1) for the definition of “International Collision Regulations Convention” of the following definition: 35
- “ ‘International Collision Regulations Convention’ means the [**convention set out in the Third Schedule to this Act**] Convention on the International Regulations for Preventing Collisions at Sea done at London on 20 October 1972, as modified by any amendment made under Article VI of that Convention that has entered into force for the Republic; ” 40
- (j) by the substitution in subsection (1) for the definitions of “international load line certificate” and “international load line exemption certificate” of the following definitions, respectively: 45
- “ ‘international load line certificate’ means such a certificate, issued in conformity with the Load Line Convention under paragraph (i) of section 207, or deemed in accordance with the provisions of section 215(1) to have been so issued, and includes an international load line exemption certificate; ” 50
- “ ‘international load line exemption certificate’ means such a certificate issued in conformity with the Load Line Convention under section 204(1)(a); ”;
- (k) by the substitution in subsection (1) for the definition of “Load Line Convention” of the following definition: 55
- “ ‘Load Line Convention’ means the International Convention on Load Lines done at London on 5 April 1966, as modified by any amendment made under Article 29 of that Convention that has entered into force for the Republic; ”;
- (l) by the substitution in subsection (1) for the definition of “nautical mile” of the following definition: 60
- “ ‘nautical mile’ means a distance of 1 852 metres; and ‘mile’ has a corresponding meaning; ”;

- (m) by the substitution in subsection (1) for the definition of “occupational safety” of the following definition:
 “ ‘occupational safety’ means the safety of any employee working on [board] or in a ship and whilst boarding or leaving the ship;”;
- (n) by the substitution in subsection (1) for the definition of “passenger ship safety certificate” of the following definition: 5
 “ ‘passenger ship safety certificate’ means such a certificate, issued in conformity with the Safety Convention under paragraph (a) or (c) of section 192, or deemed in accordance with the provisions of section 202(1)(a) to have been so issued;”;
- (o) by the insertion in subsection (1) after the definition of “proper return port” of the following definition: 10
 “ ‘Protocol of 1978 relating to the Safety Convention’ means the Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974, done at London on 17 February 1978, the English text of which is set forth in the Second Schedule, as modified by any amendment made under Article VIII of the International Convention for the Safety of Life at Sea, 1974, as incorporated in that Protocol by Article II of that Protocol, that has entered into force for the Republic;”;
- (p) by the substitution in subsection (1) for the definition of “safe” of the following definition: 20
 “ ‘safe’ means free from any threat which may cause bodily injury, illness or death, and free from any hazard as far as practicable;”;
- (q) by the substitution in subsection (1) for the definition of “Safety Convention” of the following definition: 25
 “ ‘Safety Convention’ means the International Convention for the Safety of Life at Sea done at London on 1 November 1974, the English text of which is set forth in the Second Schedule, as modified by any amendment made under Article VIII of that Convention that has entered into force for the Republic and, after the date on which the Protocol of 1978 relating to the Safety Convention enters into force for the Republic, as also modified by that Protocol;”;
- (r) by the substitution in subsection (1) for the definition of “safety convention certificate” of the following definition: 30
 “ ‘safety convention certificate’ means a passenger ship safety certificate, a cargo ship safety construction certificate, a cargo ship safety equipment certificate, a cargo ship safety **[radiotelegraphy certificate, a cargo ship safety radiotelephony certificate]** radio certificate or an exemption certificate;”;
- (s) by the substitution in subsection (1) for the definition of “savings bank” of the following definition: 40
 “ ‘savings bank’ means the Post Office Savings Bank, or a **[deposit-taking institution]** bank registered under the **[Deposit-taking Institutions Act]** Banks Act, 1990 (Act No. 94 of 1990), or, in respect of the allotment of premiums, a person registered or deemed to be registered as an insurer under the Insurance Act, 1943 (Act No. 27 of 1943), or any other body designated by the Minister;”;
- (t) by the substitution in subsection (1) for the definition of “ship” of the following definition: 50
 “ ‘ship’ means any kind of vessel used in navigation by water, however propelled or moved, and includes—
 (a) a barge, lighter or other floating vessel;
 (b) a structure that is able to float or be floated and is able to move or be moved as an entity from one place to another; and
 (c) a dynamically supported craft; 55
 and ‘vessel’ has a corresponding meaning;”;
- (u) by the insertion in subsection (1) after the definition of “standard” of the following definition: 60
 “ ‘STCW Convention’ means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers done at London on 7 July 1978, the English text of which is set forth in the Fifth Schedule, as modified by any amendment made under Article XII of that Convention that has entered into force for the Republic;”;

- (v) by the substitution in subsection (1) for paragraph (a) of the definition of “standard” of the following paragraph:
 “(a) any provision occurring in a specification, **[standard specification,]** compulsory specification, code of practice or standard method within the meaning of the Standards Act, **[1982 (Act No. 30 of 1982)]** 1993 (Act No. 29 of 1993); or”;
- (w) by the substitution in subsection (1) for the definition of “timber cargo regulations” of the following definition:
 “ ‘timber cargo regulations’ means the regulations made under **[paragraph (c) of subsection (2) of section three hundred and fifty-six]** section 356(2)(a) to give effect to the relative provisions of the **[Load Line Convention]** Safety Convention, or such regulations as applied under subsection (3) of **[the said]** section 356;”;
- (x) by the substitution in subsection (1) for the definition of “Tonnage Convention” of the following definition:
 “ ‘Tonnage Convention’ means the International Convention on Tonnage Measurement of Ships done at London on 23 June 1969, as modified by any amendment made under Article 18 of that Convention that has entered into force for the Republic;”;
- (y) by the deletion in subsection (1) of the definition of “vessel”; and
- (z) by the substitution for subsection (4) of the following subsection:
 “(4) (a) In this Act references to a ship built or constructed before or after any date shall be construed as references to a ship the keel of which has been laid or which is at a similar stage of construction before or after that date, as the case may be.
 (b) In paragraph (a) ‘similar stage of construction’ means the stage at which—
 (i) construction identifiable with the ship has begun; and
 (ii) assembly of the ship has commenced and comprises at least 50 tons or one per cent of the estimated mass of all structural material, whichever is less.”.

Amendment of section 3 of Act 57 of 1951, as amended by section 4 of Act 30 of 1959, section 32 of Act 69 of 1962, section 2 of Act 40 of 1963, section 2 of Act 13 of 1965, section 2 of Act 25 of 1985 and section 2 of Act 18 of 1992

2. Section 3 of the Merchant Shipping Act, 1951, is hereby amended by the substitution for paragraphs (c) and (d) of subsection (12) of the following paragraphs:
 “(c) every other person on board a vessel in the execution of his duties, or working on the exterior shell or appurtenances of a vessel, including the equipment used by such person, whether or not the vessel is afloat;
 (d) every working gear, lifting gear, anchor or cable, any machinery, every gangway or accommodation ladder, any equipment or every appurtenance in or on a vessel which forms a part of the construction or equipment of such vessel, **[excluding]** including any machinery or equipment brought on board a vessel and which does not form part of the equipment of such vessel.”.

Amendment of section 5 of Act 57 of 1951, as substituted by section 5 of Act 30 of 1959 and amended by section 3 of Act 25 of 1985

3. Section 5 of the Merchant Shipping Act, 1951, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) All powers conferred and all duties imposed upon the Director-General may be exercised or performed by the Director-General personally, or by an officer or organization or, with respect to conditions prescribed under section 68(3)(b), by a person or organization under a delegation or under the control or direction of the Director-General.”.

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Amendment of section 9 of Act 57 of 1951, as amended by section 7 of Act 30 of 1959 and section 3 of Act 18 of 1992

4. Section 9 of the Merchant Shipping Act, 1951, is hereby amended by the deletion of “and” at the end of paragraph (vi), and of paragraph (vii), of subsection (1).

Amendment of section 193 of Act 57 of 1951, as amended by section 11 of Act 13 of 1965

5. Section 193 of the Merchant Shipping Act, 1951, is hereby amended—

(a) by the substitution in paragraph (3) for subparagraphs (a) and (b) of the following expression:

“a cargo ship safety radio certificate;”;

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(b) by the substitution in paragraph (4) for subparagraphs (i) and (ii) of subparagraph (b) of the following expression:

“, a cargo ship safety radio certificate.”.

Amendment of section 197 of Act 57 of 1951, as amended by section 14 of Act 13 of 1965 and section 6 of Act 3 of 1981

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6. Section 197 of the Merchant Shipping Act, 1951, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) An exemption certificate shall not remain in force for a period longer than the period of the passenger ship safety certificate, the cargo ship safety construction certificate, the cargo ship safety equipment certificate [the cargo ship safety radiotelegraphy certificate] or the cargo ship safety [radiotelephony certificate] radio certificate, and a local safety exemption certificate shall not remain in force for a period longer than the period of the local general safety certificate, issued in respect of the same vessel.”.

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Amendment of section 200 of Act 57 of 1951, as amended by section 31 of Act 40 of 1963 and section 16 of Act 13 of 1965

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7. Section 200 of the Merchant Shipping Act, 1951, is hereby amended—

(a) by the substitution in subsection (1) for subparagraph (iii) of paragraph (c) of the following subparagraph:

“(iii) a cargo ship safety [radiotelegraphy certificate] radio certificate and if an exemption certificate has been issued, such exemption certificate; or”;

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and

(b) by the deletion in subsection (1) of subparagraph (iv) of paragraph (c).

Amendment of section 215 of Act 57 of 1951, as substituted by section 23 of Act 13 of 1965

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8. Section 215 of the Merchant Shipping Act, 1951, is hereby amended by the substitution in subsection (1) for the expression “paragraph 1” of the expression “paragraph (i)”.

Amendment of section 238 of Act 57 of 1951

9. Section 238 of the Merchant Shipping Act, 1951, is hereby amended by the substitution for the words “two thousand pounds” of the words “one thousand kilograms”.

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Amendment of section 259 of Act 57 of 1951, as substituted by section 15 of Act 18 of 1992

10. Section 259 of the Merchant Shipping Act, 1951, is hereby amended—

(a) by the insertion after subsection (1) of the following subsection:

“(1A) (a) Whenever a stevedore, a shore contractor or incidental persons are involved in a casualty resulting in loss of life or serious injury to any person, or in an accident, their employer shall, in the form and stating the particulars referred to in subsection (1), forthwith report the event to the nearest proper officer by the fastest means of communication available.”

(b) In paragraph (a)—

‘incidental persons’ means persons other than the master and crew, and stevedores and shore contractors on board a vessel in the course and scope of their duties;

‘shore contractor’ means a person temporarily employed to effect general or specific repairs, alterations, renovations, improvements, painting, maintenance of vessel or machinery, tank or hatch cleaning and related tasks on or in a vessel;

‘stevedore’ means a person employed in the loading or unloading of a vessel or in related activities.”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) [Subsection] Subsections (1) and (1A) shall, subject to subsection (3), apply to every ship which is registered or licensed in the Republic or which is in terms of this Act required to be so registered or licensed and to or in respect of or on board of which any such event as is referred to in [subsection] subsections (1) and (1A) has occurred anywhere, and [it] shall apply to a ship registered in a country other than the Republic only while [she] the ship is within the Republic or the territorial waters thereof and if any such event has occurred to or in respect of or on board of the ship during a voyage to a port in the Republic or within the Republic or the territorial waters thereof.”;

(c) by the addition to subsection (4) of the following paragraph the existing subsection becoming paragraph (a):

“(b) The owner or master of any ship concerned and any employee or user who learns about an event referred to in subsection (1A), shall forthwith notify the employer concerned of such event.”; and

(d) by the addition of the following subsection:

“(5) No person shall disturb or remove anything from the scene of an accident required to be reported in terms of this section unless permitted by the proper officer, or if a person has been appointed under section 264 to hold a preliminary enquiry into the accident, by that person.”.

Amendment of section 261 of Act 57 of 1951, as amended by section 33 of Act 30 of 1959, section 7 of Act 25 of 1985 and section 4 of Act 16 of 1995

11. (1) Section 261 of the Merchant Shipping Act, 1951, is hereby amended—

(a) by the substitution for paragraphs (a), (b) and (c) of subsection (1) of the following paragraphs:

“(a) if no claim for damages in respect of loss of or damage to property or rights arises, be liable for damages in respect of loss of life or personal injury to an aggregate amount exceeding [an amount equivalent to two thousand six hundred and thirty-five gold francs] 206,67 special drawing rights for each ton of the ship’s tonnage; or

(b) if no claim for damages in respect of loss of life or personal injury arises, be liable for damages in respect of loss of or damage to property or rights to an aggregate amount exceeding [an amount

equivalent to eight hundred and fifty gold francs] 66,67 special drawing rights for each ton of **[a]** the ship's tonnage; or
 (c) if claims for damages in respect of loss of life or personal injury and also claims for damages in respect of loss of or damage to property or rights arise, be liable for damages to an aggregate amount exceeding **[an amount equivalent to two thousand six hundred and thirty-five gold francs]** 206,67 special drawing rights for each ton of **[a]** the ship's tonnage: Provided that in such a case claims for damages in respect of loss of life or personal injury shall, to the extent of an aggregate amount equivalent to **[one thousand seven hundred and eighty-five gold francs]** 140 special drawing rights for each ton of the ship's tonnage, have priority over claims for damages in respect of loss of or damage to property or rights, and, as regards the balance of the aggregate amount equivalent to **[two thousand six hundred and thirty-five gold francs]** 206,67 special drawing rights for each ton of the ship's tonnage, the unsatisfied portion of the first-mentioned claims shall rank *pari passu* with the last-mentioned claims.”; and

(b) by the substitution for subsection (4) of the following subsection:

“(4) (a) The amounts mentioned in subsection (1) shall be converted into South African currency on the basis of the value of such currency on the date of the judgment or the date agreed upon by the parties.

(b) For the purpose of converting from special drawing rights into South African currency the amounts mentioned in subsection (1) in respect of which a judgment is given, one special drawing right shall be treated as equal to such a sum in South African currency as the International Monetary Fund have fixed as being the equivalent of one special drawing right for—

(i) the day on which the judgment is given; or
 (ii) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed.

(c) A certificate given by or on behalf of the Treasury stating—

(i) that a particular sum in South African currency has been so fixed for a particular day; or
 (ii) that no sum has been so fixed for that day and that a particular sum in South African currency has been so fixed for a day which is the last day for which a sum has been so fixed before the particular day, shall be *prima facie* proof of those matters for the purposes of subsection (1); and a document purporting to be such a certificate shall, in any proceedings, be admissible in evidence and, in the absence of evidence to the contrary, be deemed to be such a certificate.”.

(2) Section 261 of the Merchant Shipping Act, 1951, as amended by subsection (1), shall not apply in respect of a cause of action that arose before the date of commencement of this section.

Amendment of section 264 of Act 57 of 1951, as substituted by section 16 of Act 18 of 1992

12. Section 264 of the Merchant Shipping Act, 1951, is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) The Director-General may request the Director-General of **[Manpower] Labour** to assign a person designated as an inspector under section **[20] 28** of the **[Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983)] Occupational Health and Safety Act, 1993 (Act No. 85 of 1993)**, to assist a person appointed under subsection (1) to hold a preliminary enquiry.”; and

(b) by the addition of the following subsection:

“(3) A ship referred to in subsection (1)(a), (b) or (d) on board of which loss of life or serious injury to any person has occurred may be

detained for purposes in relation to the holding of a preliminary enquiry thereunder, provided the ship is not thereby unduly delayed.”.

Amendment of section 265 of Act 57 of 1951, as amended by section 17 of Act 18 of 1992 and section 5 of Act 16 of 1995

13. Section 265 of the Merchant Shipping Act, 1951, is hereby amended by the deletion of subsection (2). 5

Amendment of section 335 of Act 57 of 1951

14. Section 335 of the Merchant Shipping Act, 1951, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A proper officer may cause a vessel or a share in a ship or any goods which by this Act is declared to be liable to detention, to be detained.”. 10

Amendment of section 356 of Act 57 of 1951, as amended by section 42 of Act 30 of 1959, section 59 of Act 40 of 1963, section 6 of Act 24 of 1974, section 11 of Act 5 of 1976, section 19 of Act 3 of 1982, section 9 of Act 25 of 1985, section 32 of Act 18 of 1992 and section 7 of Act 16 of 1995 15

15. Section 356 of the Merchant Shipping Act, 1951, is hereby amended—

(a) by the substitution for paragraph (i) of subsection (1) of the following paragraph:

“(i) **[prescribing]** for and in connection with, including the approval of, the books, forms and other documents to be used for the convenient and effective carrying out of the provisions of this Act, and of the particulars which shall be contained therein;”;

(b) by the substitution for subparagraph (a) of paragraph (xxxviA) of subsection (1) of the following subparagraph:

“(a) requiring such life-saving appliances to comply with specifications determined by the South African Bureau of Standards mentioned in the Standards Act, **[1982 (Act No. 30 of 1982)] 1993 (Act No. 29 of 1993)**; and”;

(c) by the substitution for paragraph (xIA) of subsection (1) of the following paragraph:

“(xIA) as to the design, construction, **[licensing]** operation, use and maintenance of dynamically supported craft and any other matter which may be reasonably necessary for the safe and orderly operation of such craft;”;

(d) by the substitution for paragraph (xliB) of subsection (1) of the following paragraph:

“(xliB) as to the safety measures to be taken **[on] in relation to** vessels by employers, employees, owners and users;”;

(e) by the substitution for subsections (2) and (3) of the following subsections:

“(2) The Minister may make such notifications, declarations and regulations as may be reasonably necessary to give effect, subject to such exemptions, restrictions and modifications as may be desirable, to the provisions of—

(a) the Safety Convention; 45

(b) the International Collision Regulations Convention; 45

(c) the Load Line Convention; **[and**

(d) any other convention relating to merchant shipping ratified or acceded to on behalf of the Republic and set out in any Schedule to this Act]

(d) the Tonnage Convention; and 50

(e) the STCW Convention.

The regulations made under this subsection may include other and more extensive provisions than those contained in the said conventions, provided they relate to the same or similar matters as are dealt with in the said conventions.

(3) The Minister may by regulation apply, subject to such exemptions, restrictions and modifications as may be desirable, [in] any of the regulations made under subsection (2), to ships to which and in circumstances in which the provisions of the [**Safety Convention, the International Collision Regulations Convention, the Load Line Convention and any convention referred to in subsection (2)(d)**] conventions mentioned in that subsection do not apply.”.

Substitution of section 356bis of Act 57 of 1951, as substituted by section 8 of Act 16 of 1995

16. The following section is hereby substituted for section 356bis of the Merchant Shipping Act, 1951:

“Conventions in Schedules to have force of law

356bis. (1) The provisions of the Safety Convention and the STCW Convention shall, subject to the provisions of this Act, have the force of law in the Republic.

(2) The Minister shall, as soon as practicable after the entry into force for the Republic of any amendment to the Safety Convention or the STCW Convention, by notice in the *Gazette* amend the appropriate Schedule to reflect such amendment.

(3) In interpreting the Safety Convention and the STCW Convention—
 (a) references to the Administration shall, in relation to ships of South African nationality, be construed as a reference to the Director-General or any officer or organization acting on his authority; and
 (b) the English text shall prevail in the event of conflict between the English and Afrikaans texts.”.

Amendment of section 356ter of Act 57 of 1951, as inserted by section 34 of Act 18 of 1992

17. Section 356ter of the Merchant Shipping Act, 1951, is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) The provisions of section [33] 31 of the Standards Act, [1982 (Act No. 30 of 1982)] 1993 (Act No. 29 of 1993), shall not affect any incorporation of a safety standard or of any amendment or substitution of a safety standard, under this section.”.

Repeal of Third, Fourth and Sixth Schedules to Act 57 of 1951

18. The Third, Fourth and Sixth Schedules to the Merchant Shipping Act, 1951, are hereby repealed.

Amendment of section 1 of Act 2 of 1981, as amended by section 1 of Act 5 of 1983, section 1 of Act 38 of 1993 and section 15 of Act 15 of 1994

19. Section 1 of the Marine Traffic Act, 1981, is hereby amended—

(a) by the substitution for the definition of “authorized person” of the following definition:

“ ‘authorized person’ means—

(a) any officer as defined in section [1] 1(1) of the Public Service Act, [1957 (Act No. 54 of 1957)] 1994 (Proclamation No. 103 of 1994), designated by the Minister;

(b) any officer of the South African Navy;

- (c) any member of the South African Police Service above the rank of sergeant;
- [(d) any member of the South African Railways Police Force above the rank of sergeant;]**
- (e) any member of the South African National Defence Force above the rank of sergeant employed on police duties in terms of section 3(2) [(d)] (b) of the Defence Act, 1957 (Act No. 44 of 1957); 5
- (f) any person accompanying any person referred to in paragraph (a), (b), (c) [(d)] or (e) and acting under his instructions;”;
- (b) by the substitution for the definition of “Director-General” of the following definition: 10
 “ ‘Director-General’ means the Director-General: Transport or any officer of the Department of Transport acting on his authority;”;
- (c) by the insertion after the definition of “Director-General” of the following definition: 15
 “ ‘exclusive economic zone’ means the exclusive economic zone referred to in section 7 of the Maritime Zones Act, 1994 (Act No. 15 of 1994);”;
- (d) by the substitution for the definition of “fishing harbour” of the following definition: 20
 “ ‘fishing harbour’ means a fishing harbour as defined in section 1 of the Sea **[Fisheries Act, 1973 (Act No. 58 of 1973)]** Fishery Act, 1988 (Act No. 12 of 1988);”;
- (e) by the substitution for the definition of “foreign” of the following definition: 25
 “ ‘foreign’, in relation to any ship, submarine or other underwater vehicle, means a ship, submarine or other underwater vehicle **[which is not registered or licensed in the Republic]** not having South African nationality by virtue of section 64 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951);”;
- (f) by the substitution for the definition of “harbour” of the following definition: 30
 “ ‘harbour’ means a 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 No. 9 of 1989);”;
- (g) by the substitution for the definition of “internal waters” of the following definition: 35
 “ ‘internal waters’ excludes those waters in respect of which the right of innocent passage exists by virtue of section 3(3) of the Maritime Zones Act, 1994;”;
- (h) by the substitution for the definition of “Minister” of the following definition: 40
 “ ‘Minister’ means the Minister of Transport **[Affairs];**”;
- (i) by the substitution for the definition of “offshore installation” of the following definition: 45
 “ ‘offshore installation’ means any of the following situated within the internal waters, territorial waters or the exclusive economic zone or on or above the continental shelf:
 (a) Any installation, including a pipeline, which is used for the transfer of any substance to or from—
 (i) a ship;
 (ii) a research, exploration or production platform; or
 (iii) the coast of the Republic; 50
 (b) any exploration or production platform used in prospecting for or the mining of any substance;
 (c) any exploration or production vessel used in prospecting for or the mining of any substance;
 (d) a telecommunications line as defined in section 1 of the Post Office Act, 1958 (Act No. 44 of 1958); 55
 (e) any vessel or appliance used for the exploration or exploitation of the seabed;”;
- (j) by the substitution in the definition of “passage” for the words preceding paragraph (a) of the following words: 60
 “ ‘passage’ means navigation through the territorial waters in a continuous and expeditious manner **[on a normal and customary route]** for the purpose of—”;

- (k) by the substitution for paragraph (b) of the definition of “passage” of the following paragraph:
 “(b) proceeding to or from [a harbour, whether through] internal waters [or not,] or a call at any such roadstead or offshore installation,”; 5
- (l) by the insertion before the definition of “ship” of the following definition:
 “ ‘safety zone’ means—
 (a) the area within a distance of 500 meters measured outward from any point on the exterior side of an offshore installation referred to in paragraphs (a) and (b) of the definition of offshore installation (other than a pipeline); or 10
 (b) the area determined by the Minister under section 8C;” and
- (m) by the substitution for the definition of “territorial waters” of the following definition:
 “ ‘territorial waters’ includes those waters in respect of which the right of innocent passage exists by virtue of section 3(3) of the Maritime Zones Act, 1994.”. 15

Substitution of section 8B of Act 2 of 1981, as inserted by section 2 of Act 38 of 1993

20. The following section is hereby substituted for section 8B of the Marine Traffic Act, 1981: 20

“Offences in respect of offshore installations

- 8B.** (1) (a) The master; or
 (b) any person on board a ship in charge of the navigation of such ship, shall be guilty of an offence if— 25
- (i) through his act or omission in connection with the navigation of the ship in question an offshore installation or any part thereof is damaged; 25
- (ii) the ship, except while rendering an emergency service or previously agreed service to the offshore installation in question, enters a safety zone, or drops or drags anchor nearer than 500 meters to a pipeline or a telecommunications line; or 30
- (iii) while engaged in fishing, the ship bottom trawls nearer than 500 meters to such a pipeline or telecommunications line. 30
- (2) No liability arises in terms of subsection (1) where the master or person on board the ship in charge of the navigation thereof acted for the purpose of securing the safety of the ship, any other ship or an offshore installation or of preventing damage to the ship, any other ship or the cargo thereof or an offshore installation, or of saving life, and such action was necessary for that purpose or was reasonable in the circumstances.”. 35

Insertion of section 8C in Act 2 of 1981 40

21. The following section is hereby inserted in the Marine Traffic Act, 1981, after section 8B:

“Minister may determine safety zone

- 8C.** Subject to compliance with Article 60(5) of the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982, the Minister may, in respect of an offshore installation referred to in paragraphs (a) and (b) of the definition of offshore installation (other than a pipeline), by notice in the *Gazette* determine that the area specified in the notice shall be the safety zone for the offshore installation in question.”. 45

Amendment of section 9 of Act 2 of 1981, as amended by section 9 of Act 5 of 1983

22. Section 9 of the Marine Traffic Act, 1981, is hereby amended by the substitution in subsection (5) for the expression “State Revenue Fund” of the expression “National Revenue Fund”.

Substitution of section 11 of Act 2 of 1981, as amended by section 10 of Act 5 of 1983 and section 3 of Act 38 of 1993 5

23. The following section is hereby substituted for section 11 of the Marine Traffic Act, 1981:

“Penalties

- 11.** (1) Any person shall be liable on conviction of— 10
- (a) any offence **[under]** in terms of section 3(2), to a fine **[not exceeding R5 000]** or to imprisonment for a period not exceeding twelve months **[or to both such fine and such imprisonment];**
- (b) any offence **[under]** in terms of section 4(2) or 5(4), to a fine **[not exceeding R10 000]** or to imprisonment for a period not exceeding two years **[or to both such fine and such imprisonment];** 15
- (c) any offence **[under]** in terms of section 6(2) or 7(3), to a fine **[not exceeding R1 000]** or to imprisonment for a period not exceeding three months **[or to both such fine and such imprisonment];**
- (d) any offence **[under]** in terms of section 8B(1), to a fine not exceeding R200 000, or to imprisonment for a period not exceeding **[10]** five years or to both such fine and such imprisonment. 20
- (2) If any person—
- (a) admits to the Director-General that he has contravened or failed to comply with any provision of this Act, which contravention or failure constitutes an offence; 25
- (b) agrees to abide by the decision of the Director-General; and
- (c) deposits with the Director-General such sum as that officer may require of him, but not exceeding the maximum fine which may be imposed upon a conviction for the contravention or failure in question, the Director-General may, after such enquiry as he deems necessary, determine the matter summarily and may, without legal proceedings, order the whole or any part of the said deposit to be forfeited by way of a fine. 30
- (3) There shall be a right of appeal to the Minister from a determination or order by the Director-General under subsection (2) whereby a fine exceeding R2 000 is imposed, provided such right is exercised within a period of three months from the date of such determination or order. 35
- (4) The imposition of a fine under subsection (2) shall be deemed not to be a conviction for an offence, but no prosecution in respect of the offence in question may thereafter be instituted.” 40

Insertion of section 11A in Act 2 of 1981

24. The following section is hereby inserted in the Marine Traffic Act, 1981, after section 11:

“Jurisdiction

- 11A.** (1) 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 45

within the area of jurisdiction of the court in which the prosecution is instituted.

(2) Notwithstanding anything to the contrary in any law contained, a magistrates' court shall have jurisdiction to impose any penalty prescribed by this Act."

5

Amendment of section 14 of Act 2 of 1981

25. Section 14 of the Marine Traffic Act, 1981, is hereby amended—

(a) by the substitution for paragraph (a) of the following paragraph:

“(a) regulating marine traffic in the territorial and internal waters, including the prescribing of ship reporting procedures, sea lanes and traffic separation schemes for ships in general or for any class of ship or for ships carrying nuclear or other dangerous or noxious substances;”;

(b) by the insertion after paragraph (b) of the following paragraph:

“(bA) prescribing measures to be taken on or in respect of offshore installations, including the equipment to be installed and maintained thereon, in the interests of the safety of navigation;”;

(c) by the substitution for the words following paragraph (d) of the following words:

“and, in general, [**as to all matters which he considers it necessary or expedient to prescribe in order that the purposes of this Act may be achieved**] for the better achievement of the objects of this Act.”; and

(d) by the addition of the following subsection the existing section becoming subsection (1):

“(2) Regulations made under subsection (1) may—

(a) prescribe for any contravention thereof or failure to comply therewith a penalty of a fine or imprisonment for a period not exceeding two years;

(b) be applicable outside the Republic."

Insertion of section 17A in Act 2 of 1981

30

26. The following section is hereby inserted in the Marine Traffic Act, 1981, after section 17:

“Application of Act to Prince Edward Islands

17A. This Act shall also apply to the Prince Edward Islands referred to in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948), and any reference in this Act to the Republic shall include a reference to those Islands."

Amendment of section 1 of Act 6 of 1981, as amended by section 1 of Act 9 of 1990

27. Section 1 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, is hereby amended—

(a) by the substitution in subsection (1) for the definition of “area of the Republic” of the following definition:

“ ‘area of the Republic’ includes the internal waters and the territorial waters [of the Republic];”;

(b) by the substitution in subsection (1) for the definition of “discharge” of the following definition:

“ ‘discharge’, in relation to a harmful substance, means any release, however 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;”;

- (c) by the insertion in subsection (1) after the definition of “discharge” of the following definitions:
- “ ‘exclusive economic zone’ means the exclusive economic zone referred to in section 7 of the Maritime Zones Act, 1994 (Act No. 15 of 1994);” 5
- “ ‘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;” 10
- (d) by the insertion in subsection (1) after the definition of “incident” of the following definition:
- “ ‘internal waters’ includes the land between the high-water and low-water marks;” 15
- (e) by the substitution in subsection (1) for the definition of “low-water mark” of the following definition:
- “ ‘low-water mark’ means the low-water line as defined in section 1 of the Maritime Zones Act, 1994;”
- (f) by the insertion in subsection (1) after the definition of “low-water mark” of the following definitions: 20
- “ ‘Marine Pollution Acts’ means the Marine Pollution (Prevention of Pollution from Ships) Act, 1986 (Act No. 2 of 1986), including any instrument made thereunder, and this Act;”
- “ ‘MARPOL 1973/78’ means the convention contained in the Schedule to the Marine Pollution (Prevention of Pollution from Ships) Act, 1986;” 25
- (g) by the substitution in subsection (1) for the definition of “Minister” of the following definition:
- “ ‘Minister’ means the Minister of Transport [**Affairs**];”
- (h) by the insertion in subsection (1) after the definition of “Minister” of the following definition: 30
- “ ‘National Revenue Fund’ means the National Revenue Fund established by section 213 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);”
- (i) by the deletion in subsection (1) of the definition of “natural oil”; 35
- (j) by the substitution in subsection (1) for the definition of “offshore installation” of the following definition:
- “ ‘offshore installation’ means a facility situated wholly or partly within the prohibited area and which is used for the transfer of [**oil**] 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;” 40
- (k) by the substitution in subsection (1) for the definition of “oil” of the following definition: 45
- “ ‘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 50
- (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;”
- (l) by the substitution in subsection (1) for the definition of “owner” of the following definition: 55
- “ ‘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;” 60

- (m) by the substitution in subsection (1) for the definition of “prohibited area” of the following definition:
 “ ‘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;”;
- (n) by the deletion in subsection (1) of the definition of “State Revenue Fund”;
- (o) by the deletion in subsection (1) of the definition of “territorial waters of the Republic.”.

Repeal of section 2 of Act 6 of 1981

28. Section 2 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, is hereby repealed.

Amendment of section 3 of Act 6 of 1981

29. Section 3 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, is hereby amended—

- (a) by the substitution in subsection (1) for the word “oil” of the words “any harmful substance”;
- (b) by the substitution in subsection (2) for the word “oil” where it—
 (i) first appears of the words “any harmful substance”; and
 (ii) thereafter appears of the words “harmful substances”; and
- (c) by the substitution in subsection (3) for the word “oil” of the word “a harmful substance”.

Substitution of section 4 of Act 6 of 1981

30. The following section is hereby substituted for section 4 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981:

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

4. (1) If any [oil] harmful substance is being discharged or is in the opinion of the Minister likely to be discharged from a ship or a tanker, the Minister may, with a view to preventing the pollution or further pollution of the sea by such [oil] substance, require the master or the owner of such ship or tanker or both such master and owner—
- (a) (i) to unload the [oil] harmful substance from the ship or tanker or [oil] any such substance from a specified part of the ship or tanker;
- (ii) to transfer [oil] 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 [oil] harmful substance so unloaded or transferred,
 in such manner and within such period as the Minister may direct if he deems fit to do so;
- (b) to move the ship or tanker or cause the ship or tanker to be moved to a place specified by the Minister;
- (c) not to move the ship or tanker from a place specified by the Minister, except with the approval of the Minister and in accordance with the conditions subject to which such approval was granted;
- (d) not to unload any cargo or [oil] harmful substance, or any cargo or [oil] harmful substance specified by the Minister, from the ship or tanker

- except with the approval of the Minister 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 [oil on] harmful substances in the ship or tanker, or such quantity thereof, as the Minister may specify; 5
- (f) to steer such course, while the ship or tanker is within the prohibited area, as the Minister 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 Minister; 10
- (h) to take such other steps in regard to the ship or tanker or its cargo or the [oil] harmful substances therein or both the ship or tanker and its cargo or the [oil] harmful substances therein as may be specified by the Minister, to prevent the discharge or further discharge of [oil] any such substance from the ship or tanker. 15
- (2) (a) If, in the opinion of the Minister, 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 Minister [in terms of] by subsection (1) are inadequate for the purpose contemplated in that subsection, the Minister may cause any such steps to be taken as he has power to require to be taken in terms of the said subsection. 20
- (b) Any reference in paragraph (a) to the power of the Minister to require steps to be taken [in terms of] under subsection (1), includes a reference to the power of the Minister [in terms of] under that subsection to require that a specified step be not taken. 25
- (c) If any person performs salvage operations in connection with a ship or tanker, any requirement of the Minister [in terms of] under subsection (1) in connection with such ship or tanker or its cargo or [oil] 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 Minister otherwise directs, also be binding upon such salvor and any such requirement that a specified act be performed shall, unless the Minister otherwise directs, also be construed as a requirement [in terms of] 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. 30 35
- (3) If the owner of a ship or a tanker, in complying with a requirement of the Minister in terms of subsection (1), incurs any expenses and— 40
- (a) the discharge or likelihood of a discharge of the [oil] harmful substance in question was due wholly to the fault of the State; or
- (b) the discharge or likelihood of a discharge of the [oil] harmful substance in question was due partly to the fault of the State, 45
- the amount of such expenses, in the event contemplated in paragraph (a), or the applicable proportion of the amount of such expenses determined in accordance with the provisions of the Apportionment of Damages Act, 1956 (Act No. 34 of 1956), in the event contemplated in 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 [oil] harmful substances discharged or, in the opinion of the Minister, likely to be discharged from an offshore installation.” 50

Substitution of section 5 of Act 6 of 1981

31. The following section is hereby substituted for section 5 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981: 55

“Prevention or removal of pollution of sea by harmful substances

5. (1) If in the opinion of the Minister [oil] a harmful substance is likely to be discharged from a ship or a tanker, he may take such measures, including the destruction, burning or disposal in any other manner of [oil] the harmful substance in such ship or tanker, as he may deem fit to guard against or to prevent pollution of the sea by such [oil] harmful substance. 5
- (2) If any [oil] harmful substance is discharged from a ship or a tanker the Minister may cause any pollution of the sea caused thereby to be removed.
- (3) If the Minister takes measures [in terms of] under subsection (1) or causes any pollution to be removed [in terms of] under subsection (2), he may order any person who— 10
- (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, 15
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 Minister 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 Minister or to a specified person, within a specified period and at a specified place, as the case may be. 20
- (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 **[unless he proves that he is not so capable]**. 25
- (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. 30
- (6) The Minister may institute, through an independent chartered accountant designated by him for that purpose, a cost investigation in connection with any goods or service in respect of which an order has been issued [in terms of] by him under subsection (3). 35
- (7) In every contract resulting from an order issued [in terms of] under subsection (3), or from the acceptance, by or on behalf of the Minister, 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 Minister. 40
- (8) Every person who supplies any service, or supplies, delivers, sells, manufactures, produces, processes or treats any goods, in accordance with an order issued [in terms of] under subsection (3), shall, in the absence of agreement, be paid by the Minister 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 50

Minister has instituted a cost investigation in terms of subsection (6), the compensation or price determined by the Minister.

(9) If the discharge or **[likelihood of the] likely discharge [of the oil]** 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 **[under] in terms of** the provisions of section 9(1)(b) for any expenditure incurred by the Minister by virtue of the provisions of this section; 5
- (b) partly to the fault of the State, the amount of any expenditure so incurred by the Minister 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. 10

(10) The provisions of this section, excluding the provisions of subsection (1), shall *mutatis mutandis* apply in respect of a discharge of **[oil] harmful substances** from an offshore installation.”. 15

Amendment of section 6 of Act 6 of 1981

32. Section 6 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, is hereby amended by the substitution for the word “oil” of the words “a harmful substance”. 20

Substitution of section 7 of Act 6 of 1981

33. The following section is hereby substituted for section 7 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981:

“Inspection of ship or tanker and of records, and taking samples of harmful substances” 25

7. Any person authorized thereto by the Minister and any member of the South African Police Service or of the **[police force of the South African Railways and Harbours Administration] 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 **[this Act] 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 **[this Act] 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 **[oil] the harmful substances** on board thereof, take samples of any **[oil] 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 **[oil] harmful substances** from such ship or tanker.”. 30 35 40

Amendment of section 8 of Act 6 of 1981, as amended by section 2 of Act 9 of 1990

34. Section 8 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, is hereby amended by the substitution in subsection (1) for the words preceding the proviso of the following words: 45

“Any person or member referred to in section 7 and any other person authorized thereto by the Minister 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 50

investigations with a view to determining whether any pollution of the sea by [oil] 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 [of the sea by oil], or for the purpose of ascertaining whether or not any provision of [this Act] 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:”.

Amendment of section 9 of Act 6 of 1981 10

35. Section 9 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “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—”; and
- (b) by the substitution for subparagraph (ii) of paragraph (b) of subsection (2) of the following subparagraph:
- “(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 [under] in terms of the National Welfare Act, [1965 (Act No. 79 of 1965)] 1978 (Act No. 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.”.

Amendment of section 10 of Act 6 of 1981 30

36. Section 10 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, is hereby amended—

- (a) by the substitution in subsection (5) for the word “oil” where it—
- (i) first appears of the words “a harmful substance”; and
- (ii) thereafter appears of the words “harmful substances”; and
- (b) by the substitution in subsection (6) for the word “oil” of the words “a harmful substance”.

Amendment of section 20 of Act 6 of 1981, as amended by section 1 of Act 63 of 1987

37. Section 20 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Any offence [under] 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 [at any place where the accused happens to be] within the area of jurisdiction of the court in which the prosecution is instituted.”.

Substitution of section 21 of Act 6 of 1981

38. The following section is hereby substituted for section 21 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981:

“Minister’s permission required for transfer of certain harmful substances or for certain other acts in respect of ships or tankers 50

21. (1) No person shall—

- (a) outside any harbour [as defined in section 1(1) of the Railways and Harbours Control and Management (Consolidation) Act, 1957 (Act No. 70 of 1957)] 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 No. 9 of 1989), or a fishing harbour as defined in section 1 of the Sea [Fisheries Act, 1973 (Act No. 58 of 1973)] Fishery Act, 1988 (Act No. 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 Minister and in accordance with the provisions of this Act.
- (2) In giving his permission for the performance of any act referred to in subsection (1), the Minister 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 Minister.”.

Amendment of section 25 of Act 6 of 1981

39. Section 25 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, is hereby amended by the substitution in subsection (2) for the word “oil” where it—
- (a) first appears of the words “a harmful substance”; and
- (b) thereafter appears of the words “harmful substance”.

Amendment of section 26 of Act 6 of 1981, as substituted by section 3 of Act 9 of 1990

40. Section 26 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, is hereby amended—
- (a) by the substitution in paragraph (d) of subsection (1) for the word “oil” of the words “a harmful substance”;
- (b) by the substitution in paragraph (a) of subsection (2) for the word “oil” of the words “harmful substances”;
- (c) by the substitution in paragraph (b) of subsection (2) for the word “oil” of the words “harmful substances”;
- (d) by the substitution in paragraph (d) of subsection (2) for the word “oil” of the words “harmful substances”;
- (e) by the substitution in paragraph (f) of subsection (2) for the word “oil” of the words “harmful substances”; and
- (f) by the substitution in subsection (2) in the words following paragraph (h) for the word “oil” of the words “harmful substances”.

Amendment of section 27 of Act 6 of 1981, as amended by section 4 of Act 9 of 1990

41. Section 27 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, is hereby amended—
- (a) by the substitution in subsection (4) for the word “oil” of the words “harmful substances”; and
- (b) by the substitution for subsection (6) of the following subsection:
- “(6) The Minister may cause steps not in conflict with the provisions of the Marine Pollution (Intervention) Act, 1987 (Act No. 64 of 1987), to be taken to remove or prevent pollution of the sea by [oil] harmful substances outside the prohibited area in such circumstances and on such conditions as he may deem fit.”.

Amendment of section 28 of Act 6 of 1981

42. Section 28 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, is hereby amended—

- (a) by the substitution in paragraph (b) of subsection (1) for the word “oil” where it—
 - (i) first appears of the words “harmful substances”; and 5
 - (ii) thereafter appears of the words “any such substance”;
- (b) by the substitution in paragraph (c) of subsection (1) for the word “oil” of the words “harmful substances”; and
- (c) by the substitution for subsection (2) of the following subsection: 10
 - “(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.”.

Amendment of section 30 of Act 6 of 1981, as amended by section 2 of Act 63 of 1987 and section 5 of Act 9 of 1990 15

43. Section 30 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, is hereby amended—

- (a) by the substitution in paragraph (a) of subsection (2) for the expression “R10 000” of the expression “R25 000”; 20
- (b) by the substitution in paragraph (b) of subsection (2) for the expression “R20 000” of the expression “R50 000”;
- (c) by the substitution in paragraph (c) of subsection (2) for the expression “R40 000” of the expression “R90 000”;
- (d) by the substitution for paragraph (d) of subsection (2) of the following paragraph: 25
 - “(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] R500 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.”; and 30
- (e) by the substitution for subsection (4) of the following subsection: 35
 - “(4) There shall be a right of appeal to the Minister [whose decision shall be final] from a determination or order of the Director-General under subsection (3) whereby a penalty exceeding [R500] R2 000 is imposed, provided such right is exercised within a period of three months from the date of such determination or order.”.

Insertion of section 30A in Act 6 of 1981

44. The following section is hereby inserted in the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, after section 30:

“Application of Act to Prince Edward Islands 40

30A. This Act shall also apply to the Prince Edward Islands referred to in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948), and any reference in this Act to the Republic shall include a reference to those Islands.”.

Substitution of section 32 of Act 6 of 1981 45

45. The following section is hereby substituted for section 32 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981:

“Short title

32. This Act shall be called the [Prevention and Combating of Pollution of the Sea by Oil Act] Marine Pollution (Control and Civil Liability) Act, 1981 [and shall come into operation on a date fixed by the State President by proclamation in the Gazette].”.

Substitution of certain expressions in Act 6 of 1981

46. The Prevention and Combating of Pollution of the Sea by Oil Act, 1981, is hereby amended by the substitution for the expressions “State Revenue Fund” and “territorial waters of the Republic”, wherever they occur, of the expressions “National Revenue Fund” and “territorial waters”, respectively.

5

Substitution of long title of Act 6 of 1981

47. The following long title is hereby substituted for the long title of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981:

“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 [or] and offshore installations; and to provide for matters connected therewith.”.

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Insertion of section 2A in Act 1 of 1986

48. The following section is hereby inserted in the Carriage of Goods by Sea Act, 1986, after section 2:

“Units of account and conversion

2A. (1) The amounts mentioned in paragraph 5(a) of Article IV of the Rules shall be converted into South African currency on the basis of the value of such currency on the date of the judgment or the date agreed upon by the parties.

20

(2) For the purpose of converting from special drawing rights into South African currency the amounts mentioned in paragraph 5(a) of Article IV of the Rules in respect of which a judgment is given, one special drawing right shall be treated as equal to such a sum in South African currency as the International Monetary Fund have fixed as being the equivalent of one special drawing right for—

25

(a) the day on which the judgment is given; or
(b) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed.

30

(3) A certificate given by or on behalf of the Treasury stating—
(a) that a particular sum in South African currency has been so fixed for a particular day; or

35

(b) that no sum has been so fixed for that day and that a particular sum in South African currency has been so fixed for a day which is the last day for which a sum has been so fixed before the particular day, shall be *prima facie* proof of those matters for the purposes of Article IV of the Rules; and a document purporting to be such a certificate shall, in any proceedings, be admissible in evidence and, in the absence of evidence to the contrary, be deemed to be such a certificate.”.

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Insertion of section 3A in Act 1 of 1986

49. The following section is hereby inserted in the Carriage of Goods by Sea Act, 1986, after section 3:

45

“Application of Act to Prince Edward Islands

3A. This Act shall also apply to the Prince Edward Islands referred to in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948), and

any reference in this Act to the Republic shall include a reference to those Islands.”.

Amendment of Schedule to Act 1 of 1986

50. The Schedule to the Carriage of Goods by Sea Act, 1986, is hereby amended to the extent indicated in Schedule 1. 5

Amendment of section 1 of Act 64 of 1987

51. Section 1 of the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties Act, 1987, is hereby amended—

(a) by the substitution for the definition of “Convention” of the following definition: 10

“ ‘Convention’ means the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties done at Brussels on 29 November 1969, the English text of which is set forth in Schedule 1;”;

(b) by the deletion of the definition of “Minister”; and 15

(c) by the insertion before the definition of “regulation” of the following definition:

“ ‘Protocol’ means the Protocol Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances Other than Oil done at London on 2 November 1973, the English text of which is set forth in Schedule 2, as modified by any amendment made under Article III of that Protocol that has entered into force for the Republic;”.

Substitution of section 2 of Act 64 of 1987

52. The following section is hereby substituted for section 2 of the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties Act, 1987: 25

“Application and interpretation of Convention and Protocol

2. (1) Subject to the provisions of this Act, the Convention and Protocol shall have the force of law in the Republic.

(2) The Minister shall, as soon as practicable after any amendment of the Protocol has entered into force for the Republic, by notice in the *Gazette* amend Schedule 2 to reflect such amendment. 30

(3) Unless the context indicates otherwise, a reference in the Convention and Protocol to a State or State Party shall, in relation to the Republic, be construed as a reference to the Minister of Transport or any officer of the Department of Transport acting on the authority of that Minister, and any reference to a Party shall be construed accordingly. 35

(4) The English text of the Convention and Protocol shall prevail in the event of conflict between the English and Afrikaans texts.”.

Substitution of section 3 of Act 64 of 1987

53. The following section is hereby substituted for section 3 of the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties Act, 1987: 40

“Regulations

3. (1) The Minister of Transport may make regulations relating to the carrying out of, and giving effect to, the provisions of the Convention and 45

- Protocol, and generally for the better achievement of the objects of this Act.
- (2) Regulations made under subsection (1) may—
- (a) prescribe, for any contravention thereof or failure to comply therewith, penalties of a fine not exceeding R500 000, or imprisonment for a period not exceeding five years, or such fine as well as such imprisonment;
- (b) be applicable outside the Republic.”.

Amendment of section 4 of Act 64 of 1987

54. Section 4 of the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties Act, 1987, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) 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.”.

Insertion of section 4A in Act 64 of 1987

55. The following section is hereby inserted in the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties Act, 1987, after section 4:

“Application of Act to Prince Edward Islands

4A. This Act shall also apply to the Prince Edward Islands referred to in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948), and any reference in this Act to the Republic shall include a reference to those Islands.”.

Substitution of section 5 of Act 64 of 1987

56. The following section is hereby substituted for section 5 of the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties Act, 1987:

“Short title

5. This Act shall be called the [International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties Act] Marine Pollution (Intervention) Act, 1987.”.

Addition of Schedule to Act 64 of 1987

57. The International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties Act, 1987, is hereby amended by the addition of the Protocol Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances Other than Oil 1973, as amended by MEPC.49(31), set forth in Schedule 2, as Schedule 2 to the Act, the existing Schedule becoming Schedule 1.

Substitution of long title of Act 64 of 1987

58. The following long title is hereby substituted for the long title of the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties Act, 1987:

“ACT

To [provide for the application in the Republic of] give effect to the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, and to the Protocol Relating to Intervention on the High Seas in Cases

of Marine Pollution by Substances Other than Oil 1973; and to provide for matters incidental thereto.”.

Amendment of section 1 of Act 15 of 1994, as amended by section 3 of Act 74 of 1995

59. Section 1 of the Maritime Zones Act, 1994, is hereby amended by the substitution for paragraph (f) of the definition of “installation” of the following paragraph: 5

“(f) Any [area situated within a distance of 500 metres measured from any point on the exterior side of an installation referred to in paragraph (a) or (b) other than a pipeline] safety zone as defined in section 1 of the Marine Traffic Act, 1981 (Act No. 2 of 1981).”.

Short title and commencement 10

60. This Act shall be called the Shipping General Amendment Act, 1997, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Schedule 1**(Section 50)**

AMENDMENT OF THE SCHEDULE TO THE CARRIAGE OF GOODS BY SEA ACT, 1986: PROTOCOL OF 1979 TO AMEND THE INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES OF LAW RELATING TO BILLS OF LADING 1924, AS AMENDED BY THE PROTOCOL OF 1968 5

Definition

1. In this Schedule “the Rules” means the Hague Rules as amended by the Brussels Protocol of 1968, as contained in the Schedule to the Carriage of Goods by Sea Act, 1986 (Act No. 1 of 1986). 10

Amendment of Article IV of Rules

2. Article IV of the Rules is hereby amended—

(a) by the substitution for subparagraph (a) of paragraph 5 of the following subparagraph:

“(a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding [the equivalent of 10 000 francs] 666,67 units of account per package or unit or [30 francs per kilo] two units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher.”; and 15 20

(b) by the substitution for subparagraph (d) of paragraph 5 of the following subparagraph:

“(d) The unit of account mentioned in this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in sub-paragraph (a) of this paragraph shall be converted into national currency on the basis of the value of that currency on a date to be determined by the law of the Court seized of the case.”. 25

Schedule 2

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(Section 57)

ADDITION OF SCHEDULE 2 TO THE MARINE POLLUTION (INTERVENTION) ACT, 1987: PROTOCOL RELATING TO INTERVENTION ON THE HIGH SEAS IN CASES OF MARINE POLLUTION BY SUBSTANCES OTHER THAN OIL 1973, AS AMENDED BY MEPC.49(31) 35

“Schedule 2**PROTOCOL RELATING TO INTERVENTION ON THE HIGH SEAS IN CASES OF MARINE POLLUTION BY SUBSTANCES OTHER THAN OIL 1973¹**

Note: 40

The present text incorporates the original text as amended by the following:

| <i>Amendments</i> | <i>Date of entry into force</i> | |
|---------------------------------------|---------------------------------|----|
| 1991 (Annex) amendments (MEPC.49(31)) | 24 July 1992 | 45 |

The Parties to the present Protocol,

Being Parties to the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, done at Brussels on 29 November 1969,

1. The Protocol entered into force on 30 March 1983.

Taking into account the Resolution on International Co-operation Concerning Pollutants other than Oil adopted by the International Legal Conference on Marine Pollution Damage, 1969,

Further taking into account that pursuant to the Resolution, the Inter-Governmental Maritime Consultative Organization² has intensified its work, in collaboration with all interested international organizations, on all aspects of pollution by substances other than oil,

Have agreed as follows:—

ARTICLE I

1. Parties to the present Protocol may take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution by substances other than oil following upon a maritime casualty or acts related to such a casualty, which may reasonably be expected to result in major harmful consequences. 10

2. 'Substances other than oil' as referred to in paragraph 1 shall be— 15

(a) those substances enumerated in a list which shall be established by an appropriate body designated by the Organization and which shall be annexed to the present Protocol, and

(b) those other substances which are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea. 20

3. Whenever an intervening Party takes action with regard to a substance referred to in paragraph 2(b) above that Party shall have the burden of establishing that the substances, under the circumstances present at the time of the intervention, could reasonably pose a grave and imminent danger analogous to that posed by any of the substances enumerated in the list referred to in paragraph 2(a) above. 25

ARTICLE II

1. The provisions of paragraph 2 of Article I and of Articles II to VIII of the Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969, and the Annex thereto as they relate to oil, shall be applicable with regard to the substances referred to in Article I of the present Protocol. 30

2. For the purpose of the present Protocol the list of experts referred to in Articles III(c) and IV of the Convention shall be extended to include experts qualified to give advice in relation to substances other than oil. Nominations to the list may be made by Member States of the Organization and by Parties to the present Protocol. 35

ARTICLE III

1. The list referred to in paragraph 2(a) of Article I shall be maintained by the appropriate body designated by the Organization.

2. Any amendment to the list proposed by a Party to the present Protocol shall be submitted to the Organization and circulated by it to all Members of the Organization and all Parties to the present Protocol at least three months prior to its consideration by the appropriate body. 40

3. Parties to the present Protocol whether or not Members of the Organization shall be entitled to participate in the proceedings of the appropriate body.

4. Amendments shall be adopted by a two-thirds majority of only the Parties to the present Protocol present and voting. 45

5. If adopted in accordance with paragraph 4 above, the amendment shall be communicated by the Organization to all Parties to the present Protocol for acceptance.

6. The amendment shall be deemed to have been accepted at the end of a period of six months after it has been communicated, unless within that period an objection to the 50

² The name of the Organization was changed to the 'International Maritime Organization (IMO)' by virtue of amendments to the Organization's Convention which entered into force on 22 May 1982.

amendment has been communicated to the Organization by not less than one-third of the Parties to the present Protocol.

7. An amendment deemed to have been accepted in accordance with paragraph 6 above shall enter into force three months after its acceptance for all Parties to the present Protocol, with the exception of those which before that date have made a declaration of non-acceptance of the said amendment. 5

ARTICLE IV

1. The present Protocol shall be open for signature by the States which have signed the Convention referred to in Article II or acceded thereto, and by any State invited to be represented at the International Conference of Marine Pollution 1973. The Protocol shall remain open for signature from 15 January 1974 until 31 December 1974 at the Headquarters of the Organization. 10

2. Subject to paragraph 4 of this Article, the present Protocol shall be subject to ratification, acceptance or approval by the States which have signed it.

3. Subject to paragraph 4, this Protocol shall be open for accession by States which did not sign it. 15

4. The present Protocol may be ratified, accepted, approved or acceded to only by States which have ratified, accepted, approved or acceded to the Convention referred to in Article II.

ARTICLE V

20

1. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the present Protocol with respect to all existing Parties or after the completion of all measures required for the entry into force of the amendment with respect to all existing Parties shall be deemed to apply to the Protocol as modified by the amendment. 25

ARTICLE VI

1. The present Protocol shall enter into force on the ninetieth day following the date on which fifteen States have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization, provided however that the present Protocol shall not enter into force before the Convention referred to in Article II has entered into force.³ 30

2. For each State which subsequently ratifies, accepts, approves or accedes to it, the present Protocol shall enter into force on the ninetieth day after the deposit by such State of the appropriate instrument. 35

ARTICLE VII

1. The present Protocol may be denounced by any Party at any time after the date on which the Protocol enters into force for that Party.

2. Denunciation shall be effected by the deposit of an instrument to that effect with the Secretary-General of the Organization. 40

3. Denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General of the Organization.

4. Denunciation of the Convention referred to in Article II by a Party shall be deemed to be a denunciation of the present Protocol by that Party. Such denunciation shall take effect on the same day as the denunciation of the Convention takes effect in accordance with paragraph 3 of Article XII of the Convention. 45

ARTICLE VIII

1. A conference for the purpose of revising or amending the present Protocol may be convened by the Organization. 50

³ The Protocol entered into force on 30 March 1983.

2. The Organization shall convene a conference of Parties to the present Protocol for the purpose of revising or amending it at the request of not less than one-third of the Parties.

ARTICLE IX

1. The present Protocol shall be deposited with the Secretary-General of the Organization. 5

2. The Secretary-General of the Organization shall—

- (a) inform all States which have signed the present Protocol or acceded thereto of—
- (i) each new signature or deposit of an instrument together with the date thereof; 10
 - (ii) the date of entry into force of the present Protocol;
 - (iii) the deposit of any instrument of denunciation of the present Protocol together with the date on which the denunciation takes effect;
 - (iv) any amendments to the present Protocol or its Annex and any objection or declaration of non-acceptance of the said amendment; 15
- (b) transmit certified true copies of the present Protocol to all States which have signed the present Protocol or acceded thereto.

ARTICLE X

As soon as the present Protocol enters into force, a certified true copy thereof shall be transmitted by the Secretary-General of the Organization to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations. 20

ARTICLE XI

The present Protocol is established in a single original in the English, French, Russian and Spanish languages, all four texts being equally authentic. 25

In witness whereof the undersigned⁴, being duly authorized for that purpose, have signed the present Protocol.

Done at London this second day of November one thousand nine hundred and seventy-three. 30

ANNEX⁵

LIST OF SUBSTANCES

Appendix 1—Oil carried in bulk as listed in Appendix I to Annex I of MARPOL 73/78 other than those covered by the 1969 Intervention Convention

| | | |
|--|---------------------|----|
| <i>Asphalt solutions</i> | <i>Distillates</i> | 35 |
| Blending stocks | Straight run | |
| Roofers flux | Flashed feed stocks | |
| Straight run residue | | |
| <i>Oils</i> | <i>Gas oil</i> | 40 |
| | Cracked | |
| Clarified | | |
| Road oil | <i>Naphtha</i> | |
| Transformer oil | | |
| Aromatic oil (excluding vegetable oil) | Solvent | 45 |
| Mineral oil | Petroleum | |

4. Signatures omitted.

5. The Annex to this Protocol was adopted by the Marine Environment Protection Committee by resolution MEPC.1(II) of 21 November 1974. The list of substances was revised by resolution MEPC.49(31) of 4 July 1991.

| | | |
|---------------------------|----------------------------------|----|
| Motor oil | Heartcut distillate oil | |
| Penetrating oil | | |
| Spindle oil | <i>Gasolines blending stocks</i> | |
| Turbine oil | | |
| Polymer-fuel | Alkylates-fuel | 5 |
| | Reformats | |
| | Fuel oil No. 2 | |
| | Fuel oil No. 2-D | |
| <i>Gasolines</i> | | |
| Cashinghead (natural) | <i>Jet fuels</i> | |
| Automotive | | 10 |
| Aviation | JP-1 (Kerosene) | |
| Straight run | JP-3 | |
| Fuel oil No. 1 (Kerosene) | JP-5 (Kerosene, heavy) | |
| Fuel oil No. 1-D | Turbo fuel | |
| | Kerosene | 15 |
| | Mineral spirit | |

Appendix 2—Noxious liquid substances carried in bulk

| | | |
|---|--|----|
| Acetone cyanohydrin | | |
| Acetic anhydride | | |
| Acrylonitrile | | 20 |
| Alcohol (C12-C15) poly (1-3) ethoxylates | | |
| Alcohol (C12-C15) poly (3-11) ethoxylates | | |
| Alcohol (C6-C17)(secondary) poly (3-6) ethoxylates | | |
| Alcohol (C6-C17)(secondary) poly (7-12) ethoxylates | | 25 |
| Allyl alcohol | | |
| Allyl chloride | | |
| Ammonium sulphide solution (45% or less) | | |
| Aniline | | |
| Benzene and mixtures having 10% benzene or more | | |
| Benzyl chloride | | 30 |
| Butene oligomer | | |
| n-Butyl acrylate | | |
| Butylbenzenes (all isomers) | | |
| Butyl benzyl phthalate | | |
| n-Butyraldehyde | | 35 |
| Calcium hypochlorite solution (more than 15%) | | |
| Calcium naphthenate in mineral oil | | |
| Camphor oil | | |
| Carbolic oil | | |
| Carbon disulphide | | 40 |
| Carbon tetrachloride | | |
| Chlorinated paraffins (C10-C13) | | |
| Chlorobenzene | | |
| Chloroform | | |
| o-Chloronitrobenzene | | 45 |
| m-Chlorotoluene | | |
| o-Chlorotoluene | | |
| p-Chlorotoluene | | |
| Chlorotoluene (mixed isomers) | | |
| Coal tar | | 50 |
| Coal tar naphtha solvent | | |
| Cobalt naphthenate in solvent naphtha | | |
| Creosote (coal tar) | | |
| Creosote (wood) | | |
| Cresols (all isomers) | | 55 |
| Cresylic acid, sodium salt solution | | |
| Crotonaldehyde | | |
| Cyclohexyl acetate | | |
| 1,3-Cyclopentadiene dimer (molten) | | |
| Cyclopentene | | 60 |
| Decene | | |
| Decyl acrylate | | |

| | |
|---|----|
| Decyl alcohol (all isomers) | |
| Dibutyl phthalate | |
| Dichlorobenzenes (all isomers) | |
| 1,1-Dichloroethane | |
| Dichloroethyl ether | 5 |
| 1,6-Dichlorohexene | |
| 2,4-Dichlorophenol | |
| 2,4-Dichlorophenoxyacetic acid, diethanolamine salt solution | |
| 2,4-Dichlorophenoxyacetic acid, dimethylamine salt solution (70% or less) | |
| 2,4-Dichlorophenoxyacetic acid, triisopropanolamine salt solution | 10 |
| 1,1-Dichloropropane | |
| 1,2-Dichloropropane | |
| 1,3-Dichloropropane | |
| 1,3-Dichloropropene | |
| Dichloropropene/Dichloropropane mixtures | 15 |
| Diethyl sulphate | |
| Diglycidyl ether of bisphenol A | |
| Diglycidyl ether of bisphenol F | |
| Di-n-hexyl adipate | |
| Diisobutylene | 20 |
| Diisobutyl phthalate | |
| Diisopropylbenzene (all isomers) | |
| Dimethyl adipate | |
| Dimethylamine solution (45% or less) | |
| Dimethylamine solution (greater than 45% but not greater than 55%) | 25 |
| Dimethylamine solution (greater than 55% but not greater than 65%) | |
| Dinitrotoluene (molten) | |
| Diphenyl | |
| Diphenyl/Diphenyl ether mixtures | |
| Diphenyl ether | 30 |
| Diphenyl ether/Diphenyl phenyl ether mixture | |
| Diphenylmethane diisocyanate | |
| Diphenylol propane-epichlorohydrin resins | |
| Dodecene (all isomers) | |
| Dodecyl alcohol | 35 |
| Dodecyl diphenyl ether disulphonate solution | |
| Dodecyl phenol | |
| Drilling brines, containing Zinc salts | |
| Epichlorohydrin | |
| Ethyl acrylate | 40 |
| Ethylene chlorohydrin | |
| Ethylene dibromide | |
| Ethylene dichloride | |
| 2-Ethylhexyl acrylate | |
| 2-Ethylhexylamine | 45 |
| Ethylidene norbornene | |
| o-Ethylphenol | |
| 2-Ethyl-3-propylacrolein | |
| Ethyltoluene | |
| Fluorosilicic acid | 50 |
| Fumaric adduct of rosin, water dispersion | |
| Glycidyl ester of C10 trialkylacetic acid | |
| Heptyl acetate | |
| Hexyl acetate | |
| 2-Hydroxyethyl acrylate | 55 |
| Isobutyl acrylate | |
| Isophorone diisocyanate | |
| Isopropylbenzene | |
| Lactonitrile solution (80% or less) | |
| Lauric acid | 60 |
| Mercaptobenzothiazol, sodium salt solution | |
| Metam sodium solution | |
| Methacrylic resin in 1,2-Dichloroethane solution | |

| | |
|--|----|
| Methacrylonitrile | |
| Methyl acrylate | |
| Methylcyclopentadiene dimer | |
| 2-Methyl-5-ethyl pyridine | |
| Methyl heptyl ketone | 5 |
| Methylnaphthalene | |
| 2-Methylpyridine | |
| 4-Methylpyridine | |
| N-Methyl 2-pyrrolidone | |
| Methyl salicylate | 10 |
| alpha-Methylstyrene | |
| Motor fuel anti-knock compounds | |
| Naphthalene (molten) | |
| Naphthenic acids | |
| Nitrobenzene | 15 |
| o-Nitrophenol (molten) | |
| Nonene | |
| Nonylphenol | |
| Nonylphenol poly (4-12) ethoxylates | |
| Octane (all isomers) | 20 |
| Octene (all isomers) | |
| Octyl aldehydes | |
| Octyl nitrates (all isomers) | |
| Olefin mixtures (C5-C15) | |
| Oleum | 25 |
| alpha-Olefins (C6-C18) mixtures | |
| Pentachloroethane | |
| Perchloroethylene | |
| Phenol | |
| Phosphorus, yellow or white | 30 |
| Pinene | |
| n-Propyl chloride | |
| Propylene tetramer | |
| Propylene trimer | |
| Rosin | 35 |
| Rosin soap (disproportionated) solution | |
| Sodium hydrosulphide/Ammonium sulphide solution | |
| Sodium hydrosulphide solution (45% or less) | |
| Sodium sulphide solution | |
| Sodium nitrite solution | 40 |
| Sodium thiocyanate solution (56% or less) | |
| Styrene monomer | |
| Tall oil (crude and distilled) | |
| Tall oil soap (disproportionated) solution | |
| Tetrachloroethane | 45 |
| Toluene | |
| Toluene diisocyanate | |
| Tributyl phosphate | |
| 1,2,4-Trichlorobenzene | |
| 1,1,1-Trichloroethane | 50 |
| 1,1,2-Trichloroethane | |
| Trichloroethylene | |
| 1,2,3-Trichloropropane | |
| Tricresyl phosphate (containing less than 1% ortho-isomer) | |
| Tricresyl phosphate (containing 1% or more ortho-isomer) | 55 |
| Triethylbenzene | |
| Trimethyl benzenes (all isomers) | |
| Trimethylhexamethylene diisocyanate (2,2,4- and 2,4,4-isomers) | |
| Trixylyl phosphate | |
| Turpentine | 60 |
| 1-Undecene | |
| Undecyl alcohol | |
| Vinylidene chloride | |

Vinyl neodecanoate
 Vinyltoluene
 White spirit, low (15-20%) aromatic
 Xylenol

Appendix 3—Harmful substances carried in packaged form 5

| | |
|---|----|
| Binapacryl | |
| Cadmium compounds, except Cadmium selenide and Cadmium sulphide | |
| Chlorinated paraffins (C10-C13) | |
| Chlorophenates | |
| Copper cyanide | 10 |
| Coumarin derivative pesticides as follows: | |
| Brodifacoum | |
| Coumaphos | |
| Cresyl diphenyl phosphate | |
| Cypermethrin | 15 |
| Diphenylamine chloroarsine | |
| Diphenylchloroarsine | |
| Dodecylphenol | |
| Ethylchloroarsine | |
| Fenprothrin | 20 |
| Hexachlorobutadiene | |
| Mercuric arsenate | |
| Mercuric chloride | |
| Mercuric nitrate | |
| Mercuric potassium cyanide | 25 |
| Mercurous nitrate | |
| Mercury acetates | |
| Mercury ammonium chloride | |
| Mercury based pesticides | |
| Mercury benzoate | 30 |
| Mercury bromides | |
| Mercury compounds, except Mercuric sulphide and Mercury iodide | |
| Mercury cyanide | |
| Mercury gluconate | |
| Mercury nucleate | 35 |
| Mercury oleate | |
| Mercury oxide | |
| Mercury oxycyanide desensitized | |
| Mercury potassium iodide | |
| Mercury salicylate | 40 |
| Mercury sulphates | |
| Mercury thiocyanate | |
| Nickel cyanide | |
| Nickel carbonyl | |
| Organochlorine pesticides as follows: | 45 |
| Aldrin | |
| Camphechlor | |
| Chlordane | |
| DDT | |
| Dieldrin | 50 |
| Endosulfan | |
| Endrin | |
| Heptachlor | |
| Lindane (gamma-BCH) | |
| Organophosphorus pesticides as follows: | 55 |
| Azinphos-methyl | |
| Azinphos-ethyl | |
| Bromophos-ethyl | |
| Carbophenothion | |
| Chlorpyrifos | 60 |
| Chlorthiophos | |

| | |
|--|-----------|
| Dialifos | |
| Diazinon | |
| Dichlofenthion | |
| Dichlorvos | |
| Dimethoate | 5 |
| EPN | |
| Ethion | |
| Fenitrothion | |
| Fenthion | |
| Fonofos | 10 |
| Isoxathion | |
| Mevinphos | |
| Parathion | |
| Parathion-methyl | |
| Pirimiphos ethyl | 15 |
| Phenthoate | |
| Phorate | |
| Phosalone | |
| Phosphamidon | |
| Pyrazophos | 20 |
| Sulprophos | |
| Terbufos | |
| Organotin compounds | |
| Organotin pesticides | |
| Osmium tetroxide | 25 |
| Pentachlorophenol | |
| Phenylmercuric acetate | |
| Phenylmercuric compounds | |
| Phenylmercuric nitrate | |
| Prosphorus, white or yellow | 30 |
| Polychlorinated biphenyls or terphenyls | |
| Polyhalogenated biphenyls or terphenyls | |
| Potassium cuprocyanide | |
| Silver arsenite | |
| Sodium cuprocyanide | 35 |
| Sodium pentachlorophenate | |
| Triaryl phosphates | |
| Tricresyl phosphates, more than 1% ortho-isomer | |
| Zinc cyanide | |
| Appendix 4—Radioactive materials | 40 |
| Radioactive materials which are transported in type B packages, or as fissile materials, or under special arrangement, as covered by the provisions of Schedules 10 to 13 of Class 7 of the International Maritime Dangerous Goods Code. | |
| Appendix 5—Liquefied gases carried in bulk | |
| Acetaldehyde | 45 |
| Anhydrous Ammonia | |
| Chlorine | |
| Dimethylamine | |
| Ethyl chloride | |
| Ethylene oxide | 50 |
| Hydrogen chloride, anhydrous | |
| Hydrogen fluoride, anhydrous | |
| Methyl bromide | |
| Methyl chloride | |
| Sulphur dioxide | 55 |
| Vinyl chloride monomer.”. | |

MEMORANDUM ON THE OBJECTS OF THE SHIPPING GENERAL AMENDMENT BILL, 1997

1. The Shipping General Amendment Bill, 1997, proposes amendments to the following six Acts: Merchant Shipping Act, 1951 (Act No. 57 of 1951); Marine Traffic Act, 1981 (Act No. 2 of 1981); Prevention and Combating of Pollution of the Sea by Oil Act, 1981 (Act No. 6 of 1981); Carriage of Goods by Sea Act, 1986 (Act No. 1 of 1986); International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties Act, 1987 (Act No. 64 of 1987); and Maritime Zones Act, 1994 (Act No. 15 of 1994).

2. Merchant Shipping Act, 1951

2.1 Certain administrative amendments are made. (*clauses 1, 3 to 9 and 11 to 17*)

2.2 Supplementary provision is made in relation to occupational safety on vessels. In particular, the definition of “safe” is broadened to include freedom from a hazard as far as practicable (“hazard” is defined as “a source of or exposure to danger”). Persons, including their equipment, working on the exterior shell of a vessel are also now expressly included in the occupational safety provisions of the Act. Employers of stevedores, shore contractors and other persons, not being crew, performing services on or in a vessel are required to report certain accidents involving their employees. Disturbing the scene of an accident is prohibited unless permission is granted, and the detention of a ship on which there has been loss of life or a serious injury to any person is authorised for the purpose of conducting a preliminary enquiry into the circumstances of that death or injury. (*clauses 1, 2, 10, 12 and 15*)

2.3 The Third, Fourth and Sixth Schedules to the Act (Convention on the International Regulations for Preventing Collisions at Sea, 1972, International Convention on Load Lines, 1966, and International Convention on Tonnage Measurement of Ships, 1969) are repealed. The provisions of those conventions are reimplemented in regulations made under the Act. (*clauses 1 and 16*)

3. Marine Traffic Act, 1981

3.1 Certain administrative amendments are made. (*clauses 19 and 22*)

3.2 The entering by a ship of the safety zone of an offshore installation or dropping or dragging anchor or trawling nearer than 500 metres to a pipeline or telecommunications line is made an offence, subject to certain limitations. (*clauses 20 and 23*)

3.3 The Minister of Transport is empowered to determine the size and shape of the safety zone of certain offshore installations. This power must be exercised in accordance with article 60(5) of the Law of the Sea Convention 1982. (*clause 21*)

3.4 Penalty provisions made superfluous by the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), are deleted. The maximum prison term that may be imposed for a contravention in terms of the Act is reduced to five years, but the maximum penalty is for the time being fixed at R200 000. Provision is also made for the summary imposition of a penalty by the Director-General of Transport upon admission of guilt. (*clause 23*)

3.5 Offences in terms of the Act are deemed to have been committed within the area of jurisdiction of the court trying the offence, and jurisdiction to impose any penalty prescribed by the Act is conferred upon a magistrates’ court. (*clause 24*)

3.6 The Minister of Transport is empowered to make regulations in connection with ship reporting procedures and navigational safety in relation to offshore installations.

Provision is also made for the imposition of penalties for a contravention of the regulations, of a fine, or imprisonment for a period not exceeding two years. *(clause 25)*

3.7 The Act is made applicable to the Prince Edward Islands. *(clause 26)*

4. Prevention and Combating of Pollution of the Sea by Oil Act, 1981

4.1 Certain administrative amendments are made. *(clauses 27, 30, 31, 32, 33, 35, 37, 38, 41, 42, 43, 45, 46 and 47)*

4.2 The prohibition of operational discharges of oil is deleted by the repeal of section 2. Those discharges are regulated by Annex I of MARPOL 1973/78 (International Convention for the Prevention of Pollution from Ships 1973, as amended by the 1978 Protocol), which has effect under the Marine Pollution (Prevention of Pollution from Ships) Act, 1986 (Act No. 2 of 1986). *(clauses 28 and 43)*

4.3 Prevention and combating functions are extended to harmful substances other than oil, and specifically to those substances regulated by MARPOL 1973/78. *(clauses 27, 29, 30, 34, 35, 36, 38, 39, 40, 41, 42, 45 and 47)*

4.4 Offences in terms of the Act are deemed to have been committed within the area of jurisdiction of the court trying the offence. *(clause 37)*

4.5 The maximum fines that may be imposed for offences in terms of the Act are increased. The maximum fine is for the time being fixed at R500 000. *(clause 43)*

4.6 The Act is made applicable to the Prince Edward Islands. *(clause 44)*

5. Carriage of Goods by Sea Act, 1986

5.1 The Act is amended so as to give effect to the Protocol of 1979 to amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading 1924, as amended by the Protocol of 1968. The Protocol replaces the “Poincaré” Franc with the Special Drawing Right (SDR). *(clauses 48, 50 and Schedule 1)*

5.2 The Act is made applicable to the Prince Edward Islands. *(clause 49)*

6. International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties Act, 1987

6.1 The Act is amended so as to give effect to the Protocol Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances Other than Oil 1973, pursuant to the Republic’s proposed accession to that Protocol. The Protocol extends the provisions of the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969 to substances other than oil. *(clauses 51, 52, 53, 57, 58 and Schedule 2)*

6.2 The maximum fine that may be imposed for a contravention of the Act is increased to R500 000, but the maximum prison term is reduced to five years. *(clause 53)*

6.3 Offences in terms of the Act are deemed to have been committed in the area of jurisdiction of the court trying the offence. *(clause 54)*

6.4 The Act is made applicable to the Prince Edward Islands. *(clause 55)*

7. Maritime Zones Act, 1994

The definition of “offshore installation” is amended to include a safety zone as defined in section 1 of the Marine Traffic Act, 1981. *(clause 59)*

8. General

8.1 Provision is made for the later commencement of the Act so as to allow an opportunity for accession to the above-mentioned 1973 Protocol, and so as to co-ordinate the implementation of related amendments to other laws. (*clause 60*)

8.2 The Department of Environmental Affairs and Tourism was consulted with regard to the amendments proposed to the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, and interested parties were consulted with regard to substantive amendments. No other departments or bodies are involved with the administration of the above-mentioned Acts.

8.3 The Department of Transport and the State Law Advisers are of the opinion that the procedure set out in section 75 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), should be followed with the Bill.