

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 15 two years [or to both such fine and such imprisonment];
- (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 20 R200 000, or to imprisonment for a period not exceeding [10] five years or to both such fine and such imprisonment.
- (2) If any person—
- (a) admits to the Director-General that he has contravened or failed to 25 comply with any provision of this Act, which contravention or failure constitutes an offence;
- (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 30 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.
- (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 35 exceeding R2 000 is imposed, provided such right is exercised within a period of three months from the date of such determination or order.
- (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 40 in question may thereafter be instituted."

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 45 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.

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

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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;"

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(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;"

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(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

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

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

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(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

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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."

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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—

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(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:

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

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- (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:
- “‘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:
- “‘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
- (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;” 50
- (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.”.

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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 15 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 20 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 25 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 30 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 35 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; 40
- (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; 45
- (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 salver. and any such requirement that a specified step be not taken shall thereafter, unless the Minister otherwise directs, also be binding upon such salver 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 salver that no steps be taken by such salver 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,

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. 45

(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