



Republic of Namibia  
Annotated Statutes

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## Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981 (RSA)

(RSA GG 7427)

brought into force in South West Africa  
on 7 June 1985 by RSA Proc. 93/1985 (RSA GG 9774)

**APPLICABILITY TO SOUTH WEST AFRICA:** RSA Proc. 93/1985 (RSA GG 9774) makes the Act “and all amendments thereof” applicable to “the Territory of South-West Africa” from 7 June 1985.

**TRANSFER TO SOUTH WEST AFRICA:** The relevant transfer proclamation is the Executive Powers (Transport) Transfer Proclamation, AG 14 of 1989, dated 15 March 1978. However, section 3(1)(e) of the transfer proclamation excludes this Act from the operation of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, meaning that the administration of the Act was not transferred to South West Africa.

**as amended by**

**Prevention and Combating of Pollution of the Sea by Oil  
Amendment Act 59 of 1985 (RSA) (RSA GG 9772)**

deemed to have come into force on 24 April 1985 (section 2 of Act 59 of 1985)

**Prevention and Combating of Pollution of the Sea by Oil  
Amendment Act 63 of 1987 (RSA) (RSA GG 10936)**

came into force on date of publication: 25 September 1987

**Prevention and Combating of Pollution of the Sea by Oil  
Amendment Act 24 of 1991 (GG 326)**

came into force on date of publication: 21 December 1991

**Namibian Ports Authority Act 2 of 1994 (GG 810)**

came into force in relevant part on 1 March 1994 (section 32(1) of Act 2 of 1994)

**Prevention and Combating of Pollution of the Sea by Oil  
Amendment Act 5 of 2019 (GG 7075)**

came into force on date of publication: 13 December 2019

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## ACT

To provide for the prevention and combating of pollution of the sea by oil; to determine liability in certain respects for loss or damage caused by the discharge of oil from ships, tankers or offshore installations; and to provide for matters connected therewith.

*(English text signed by the State President)  
(Assented to 6 February 1981)*

**Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981 (RSA)****ARRANGEMENT OF SECTIONS**

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

**[Act 24 of 1991 makes the following substitutions throughout the Act:**

- \* "Permanent Secretary" for "Director-General";
- \* "territorial sea" for "territorial waters"; and
- \* "Namibia" for "the Republic".

**Act 24 of 1991 also provides the following transitional provision in section 13:**

"Anything done before the commencement of this Act under a provision of the principal Act shall be deemed to have been done under any such provision, as amended by this Act."

**Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981 (RSA)****Definitions**

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

“area of Namibia” includes the territorial sea of Namibia;

“certificate” means a certificate contemplated in section 13;

“Convention” means the International Convention on Civil Liability for Oil Pollution Damage, signed in Brussels on 29 November 1969 and published for general information under General Notice No. 58 of 1978 in *Government Gazette* No. 5867 of 27 January 1978, and includes any amendments thereof and additions thereto signed, ratified or acceded to by the Republic of Namibia;

[The definition of “Convention” is amended by Act 24 of 1991. There is no record of Namibia having confirmed accession to the *International Convention on Civil Liability for Oil Pollution Damage, 1969*, after Independence. Namibia acceded to the *Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969*, on 18 December 2002 and it became binding on Namibia on 18 December 2003 (Article 13(4) of the Protocol). According to Article 12(5) of the Protocol, parties to the Protocol that are not parties to the original Convention (such as Namibia) are bound by the terms of the Convention (as amended by the Protocol) in their relations with other parties to the Protocol, but not with states that are only parties to the Convention, and not the Protocol.]

“Convention State” means a state which is a party to the Convention;

[definition of “Director-General” deleted by Act 24 of 1991]

“discharge”, in relation to oil, means any discharge of oil from a ship or a tanker or an offshore installation into a part of the sea which is a prohibited area and includes any escaping, spilling, leaking, pumping or dumping of oil from such ship, tanker or offshore installation into such part of the sea; and “discharge” when used as a verb shall be construed accordingly;

[definition of “Fund” deleted by Act 24 of 1991]

“harmful substance” means any oil based substance which, if introduced into the sea, is likely to create a hazard to human health, harm any living substance, resources or marine life, damage amenities or interfere with other legitimate uses of the sea and includes mixtures of oil with water or any other substance;

[The definition of “harmful substance” is inserted by Act 5 of 2019. The adjective “oil-based” is usually written with a hyphen.]

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

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

“low-water mark” means the lowest line to which the water of the sea recedes during periods of ordinary spring tides;

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

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“Minister” means the Minister of Works, Transport and Communication;

**[definition of “Minister” amended by Act 24 of 1991]**

“natural oil” means any liquid or solid hydrocarbon or combustible gas existing in a natural condition in the earth’s crust, but does not include coal or bituminous shales or other stratified deposits from which oil can be obtained by destructive distillation, or gas arising from marsh or other surface deposits;

**[definition of “natural oil” substituted by Act 24 of 1991]**

“nautical mile” means the international nautical mile of 1 852 metres;

“offshore installation” means a facility situated wholly or partly within the prohibited area and which is used for the transfer of oil 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;

“oil”, in relation to a discharge of oil from -

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

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

“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;

“Permanent Secretary” means the Permanent Secretary: Works, Transport and Communication;

**[definition of “Permanent Secretary” inserted by Act 24 of 1991]**

“prescribed” means prescribed by regulation;

“principal officer” means the officer in charge of the office of the Directorate Maritime Affairs of the Ministry of Works, Transport and Communication at any port;

**[definition of “principal officer” substituted by Act 24 of 1991]**

“prohibited area” means the exclusive economic zone of Namibia, as defined in section 4 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act 3 of 1990) and internal waters as defined in section 1 of the Marine Traffic Act, 1981;

**Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981 (RSA)****[definition of “prohibited area” substituted by Act 24 of 1991 and substituted with amendment markings by Act 5 of 2019]**

“sea” means the water and the bed of the sea and includes the land between the high-water and low-water marks;

**[definition of “sea” substituted by Act 24 of 1991]**

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

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

“territorial sea of Namibia” means the territorial sea of Namibia, as defined in section 2 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act 3 of 1990);

**[definition of “territorial sea of Namibia” substituted for definition of “territorial waters of the Republic” by Act 24 of 1991]**

“this Act” includes any regulation made thereunder.

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

**Discharge of oil prohibited**

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

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

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

(3) If in any prosecution for an offence under subsection (1) it is proved that a mixture containing oil was discharged from a ship, tanker or offshore installation in the part of the prohibited area which adjoins the territorial sea of Namibia to the seaward side thereof, it shall

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be deemed, unless the contrary is proved, that such mixture contained one hundred parts or more of oil in a million parts of the mixture.

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

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

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

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

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

**Powers of Minister to take steps to prevent pollution of the sea where oil is being or is likely to be discharged**

4. (1) If any oil 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, require the master or the owner of such ship or tanker or both such master and owner -

- (a) (i) to unload the oil from the ship or tanker or oil from a specified part of the ship or tanker;
- (ii) to transfer oil from a specified part of the ship or tanker to another specified part of the ship or tanker;
- (iii) to dispose of any oil 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;

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- (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, or any cargo or oil 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 the ship or tanker, or such quantity thereof, as the Minister may specify;
  - (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;
  - (h) to take such other steps in regard to the ship or tanker or its cargo or the oil therein or both the ship or tanker and its cargo or the oil therein as may be specified by the Minister, to prevent the discharge or further discharge of oil from the ship or tanker.
- (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 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.
- (b) Any reference in paragraph (a) to the power of the Minister to require steps to be taken in terms of subsection (1), includes a reference to the power of the Minister in terms of that subsection to require that a specified step be not taken.
- (c) If any person performs salvage operations in connection with a ship or tanker, any requirement of the Minister in terms of subsection (1) in connection with such ship or tanker or its cargo or oil 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 that subsection and binding upon such salvor that no steps be taken by such salvor which would obstruct or be likely to obstruct the performance of the specified act.
- (3) If the owner of a ship or a tanker, in complying with a requirement of the Minister in terms of subsection (1), incurs any expenses and -
- (a) the discharge or likelihood of a discharge of the oil in question was due wholly to the fault of the State; or
  - (b) the discharge or likelihood of a discharge of the oil in question was due partly to the fault of the State,

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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 discharged or, in the opinion of the Minister, likely to be discharged from an offshore installation.

**Prevention or removal of pollution of the sea by oil**

5. (1) If in the opinion of the Minister oil 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 in such ship or tanker, as he may deem fit to guard against or to prevent pollution of the sea by such oil.

(2) If any oil 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 subsection (1) or causes any pollution to be removed in terms of subsection (2), he may order any person who -

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

which may be required for the purpose of such measures or the removal of such pollution, to supply or deliver or sell such goods or a specified quantity or number thereof, or to supply such service, to the 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.

(4) Any person who has received an order under subsection (3) shall 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.

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

(6) The 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 subsection (3).

(7) In every contract resulting from an order issued in terms of 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.



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(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 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 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 discharge of the oil in question was due -

- (a) wholly to the fault of the State, the owner of the ship or tanker in question shall not be liable under the provisions of section 9(1)(b) for any expenditure incurred by the Minister by virtue of the provisions of this section;
- (b) partly to the fault of the State, the amount of any expenditure so incurred by the 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) The provisions of this section, excluding the provisions of subsection (1), shall *mutatis mutandis* apply in respect of a discharge of oil from an offshore installation.

**Moving of ship or tanker from certain area**

6. The Minister may order the master of any ship or tanker to move, subject to such instructions as the Minister may issue, his ship or tanker and any object it may have in tow from an area in which removal of pollution of the sea by oil is in progress or about to be undertaken.

**Inspection of ship or tanker and of records, and taking of samples of oil**

7. Any person authorized thereto by the Minister and any member of the Namibian Police 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 to be carried on board such ship or tanker is so carried on board or, if such authorized person has reasonable grounds for believing that any provision of this Act 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 on board thereof, take samples of any oil 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 from such ship or tanker.

[section 7 amended by Act 24 of 1991]

**Right of entry upon land**

8. (1) 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 investigations with a view to determining whether any pollution of the sea by oil 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,

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or for the purpose of ascertaining whether or not any provision of this Act or condition imposed thereunder is being complied with, and may, for the purpose of gaining access to such land, enter upon and cross any other land with the said workmen, machinery, vehicles, equipment, appliances, instruments and other articles: Provided that -

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

**[paragraph (b) amended by Act 24 of 1991]**

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

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

**9.** (1) Subject to the provisions of this Act the owner of any ship, tanker or offshore installation shall be liable for -

- (a) any loss or damage caused, elsewhere than on such ship, tanker or offshore installation, in the area of Namibia by pollution resulting from the discharge of oil from such ship, tanker or offshore installation;
- (b) the costs of any measures taken or caused to be taken by the Minister in terms of this Act after an incident has occurred in respect of such ship, tanker or offshore installation, for the purposes of reducing loss or damage caused as contemplated in paragraph (a) through the discharge of any oil, or for the purposes of preventing such loss or damage being caused, whether or not a discharge as contemplated in paragraph (a) has occurred and whether or not such a discharge in fact subsequently occurs; and
- (c) any loss or damage caused in the area of Namibia by any measures so taken or caused to be taken after a discharge as contemplated in paragraph (a) has occurred.

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

- (a) any measures taken or caused to be taken by the Minister in terms of this Act to remove or prevent pollution of the sea by oil discharged or likely to be discharged from any ship, tanker or offshore installation, shall be deemed to be measures taken or caused to be taken by the Minister for the purposes contemplated in that subsection;
- (b) the costs referred to in that subsection shall include -
  - (i) expenses reasonably incurred in connection with the taking of measures referred to in that subsection;
  - (ii) an amount deemed by the Permanent Secretary to be sufficient to compensate any organization registered under the National Welfare Act, 1965 (Act No. 79 of 1965), as a welfare organization, or any similar organization approved

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by the Minister, and which has as its aim the conservation of the sea and animal life along the coast, 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.

[subparagraph (ii) amended by Act 24 of 1991]

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

- (a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon; or

[The word “irresistible” is misspelt in the *Government Gazette*, as reproduced above.]

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

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

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

- (a) the provisions of section 261 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), shall not apply in respect of such liability;
- (b) the aggregate of all amounts payable by such owner in respect of such liability, in so far as it relates to a particular incident, shall not exceed -
- (i) in the case of a ship or a tanker, one hundred and thirty-three units of account for each ton of the ship’s or tanker’s tonnage, or fourteen million units of account, whichever is the lesser;
- (ii) in the case of an offshore installation, a sum determined by the Minister, but not exceeding fourteen million units of account.

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

(7) No legal proceedings to enforce a claim in respect of a liability incurred in terms of subsection (1) shall be entertained by any court unless such proceedings are commenced with not later than three years after the date on which such claim arose: Provided that no such

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proceedings shall be so entertained after the expiration of a period of six years after the date on which the incident by reason of which the said liability was incurred, took place, or in the case where the incident consists of a series of occurrences having the same origin, six years after the date on which the first of those occurrences took place.

(8) For the purposes of this section -

(a) “unit of account” means a Special Drawing Right as defined by the International Monetary Fund, and the value of such Special Drawing Right in Namibian currency shall be calculated in accordance with the method of valuation applied by the International Monetary Fund and which is in effect at the time when payment is made, or, in the event of an application in terms of section 12(1), at the time when such application is considered by the court;

[paragraph (a) amended by Act 24 of 1991]

(b) the tonnage of a ship or a tanker shall be its net tonnage with the addition of any engine room space deducted for the purpose of ascertaining its net tonnage.

**Limitation of liability**

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

(a) loss or damage referred to in section 9(1)(a) or (c); or

(b) costs referred to in section 9(1)(b),

suffered or incurred as a result of that incident.

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

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

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

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

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(6) Any person in the service of the State or any person engaged in terms of section 27(1) read with section 4(2)(a) or section 22(1), as the case may be, to perform any act required to be performed in terms of section 4(1), shall not be liable (except in the case of any wilful act or omission on the part of any such person) for any loss or damage suffered or costs incurred by any person as a result of any measures taken, or as a result of any measures not having been taken, in terms of this Act, to prevent or remove pollution of the sea by oil.

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

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

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

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

**Applications to court**

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

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

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

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

(5) Where any amount has already been paid in or towards satisfaction of any claim in respect of the loss, damage or costs to which the liability relates, by the owner of the ship, tanker or offshore installation in question or by the person referred to in section 15 as the

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

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

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

(8) For the purposes of this section “court” means the High Court of Namibia.

[subsection (8) amended by Act 24 of 1991]

**Compulsory insurance against liability for loss, damage or costs**

**13.** (1) No tanker carrying more than 2 000 long tons of oil in bulk as cargo shall enter or leave a port in Namibia or arrive at or leave an offshore installation in the territorial sea of Namibia nor, if such tanker is registered in Namibia, a port in any other country or an installation similar to an offshore installation in the territorial sea of any other country, unless it carries on board a valid certificate, issued by the competent authority specified in subsection (2), stating that there is in force in respect of such tanker a contract of insurance or other financial security for an amount not less than an amount fixed, *mutatis mutandis*, in accordance with the provisions of section 9(5)(b), to cover the liability of the owner of such tanker for any loss, damage or costs which may become payable by him in terms of the provisions of section 9(1) as a result of any incident which may occur in respect of such tanker.

- (2) The certificate referred to in subsection (1) shall be a certificate issued -
- (a) in the case of a tanker registered in Namibia, by the Permanent Secretary in terms of the provisions of section 14;
  - (b) in the case of a tanker registered in a Convention State other than Namibia, by or under the authority of the government of such other Convention State.
- (3) (a) A certificate shall not be a valid certificate for the purposes of subsection (1) if the period of validity of the insurance or other financial security to which it relates, will expire while the tanker concerned will be within the territorial sea of Namibia at a time before a new contract for such insurance or other financial security becomes operative.
- (b) Insurance or other financial security shall be deemed not to satisfy the requirements of this section if such insurance or other financial security can be terminated, for reasons other than the expiry of the period of validity thereof, before the expiration of a period of three months from the date on which notice of such termination is given to the authority who issued the certificate in question, unless a new certificate is issued within the said period of three months.

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(4) The master of a tanker referred to in subsection (1) shall at the request of any principal officer, oil pollution officer, customs officer, pilot, port captain or person authorized by the Minister in terms of section 7, produce the certificate in question to such principal officer, oil pollution officer, customs officer, pilot, port captain or person.

(5) If a tanker attempts to leave a port in Namibia or an offshore installation in the territorial sea of Namibia in contravention of the provisions of subsection (1), the Minister may cause such tanker to be detained until a valid certificate in respect of such tanker is produced.

(6) If a tanker enters or leaves, or attempts to enter or to leave, a port or arrives at or leaves, or attempts to arrive at or to leave, an offshore installation in contravention of the provisions of subsection (1), the master of such tanker and, if the master is not the owner of such tanker, also the owner thereof, shall be guilty of an offence.

(7) If the master of a tanker refuses or fails to produce a certificate when requested in terms of subsection (4) to do so, the said master shall be guilty of an offence.

(8) (a) No ship carrying more than 2 000 long tons of oil in bulk as cargo and which is registered in a state other than a Convention State shall enter or leave a port in Namibia or arrive at or leave an offshore installation in the territorial sea of Namibia unless it carries on board a certificate as contemplated in subsection (1), issued by or under the authority of the government of a Convention State, or such a certificate recognized by the Permanent Secretary.

(b) The provisions of subsections (3) to (7), inclusive, shall *mutatis mutandis* apply in respect of any ship and any certificate referred to in paragraph (a).

**Issue of certificate by Permanent Secretary**

14. (1) (a) Every person desiring a certificate referred to in section 13(2)(a) shall in writing apply therefor to the Permanent Secretary.

(b) An application referred to in paragraph (a) shall be accompanied by the prescribed particulars and such other particulars as may be required by the Permanent Secretary in connection therewith, as well as a prescribed amount.

(2) If, on an application referred to in subsection (1), the Permanent Secretary is satisfied that there will be in force in respect of the tanker in question, throughout the period for which the certificate is to be issued, a contract of insurance or other financial security for an amount contemplated in section 13(1), he shall issue to the applicant such certificate in the prescribed form.

(3) If, on such an application, the Permanent Secretary is of the opinion that a doubt exists as to whether the person providing the insurance or other financial security will be able to meet his obligations under the relevant contract, or as to whether the insurance or other financial security in question will in all circumstances cover the owner's liability for any loss, damage or costs which may become payable by him in terms of the provisions of section 9(1), he may refuse to issue a certificate.

(4) (a) If at any time after the issue of a certificate in terms of this section the Permanent Secretary is of the opinion that due to a change in the circumstances a doubt of the nature contemplated in subsection (3) has arisen, he may cancel such certificate and shall upon such cancellation immediately notify the owner of the

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tanker in question and the person providing the insurance or other financial security thereof.

- (b) Whenever the person to whom a certificate was issued by the Permanent Secretary in terms of this section, ceases to be the owner of the tanker to which the certificate relates, the Permanent Secretary shall cancel such certificate.

(5) The Permanent Secretary shall send a copy of every certificate issued by him and a copy of every notice of cancellation in terms of subsection (4) to every principal officer, who shall hold such copies available for public inspection.

(6) Whenever a certificate is cancelled in terms of subsection (4) the person to whom the certificate was issued shall at the request of the Permanent Secretary return such certificate to him within a period of thirty days as from the date of such request.

**Proceedings against insurers**

**15.** (1) If it is alleged that the owner of a tanker has incurred a liability in terms of the provisions of section 9(1) as a result of an incident which occurred in respect of such tanker while there was in force in respect of such tanker a contract of insurance or other financial security to which a certificate referred to in section 13(1) related, proceedings to enforce a claim in respect of that liability may be brought against the person (hereinafter in this section referred to as the insurer) who provided the insurance or other financial security.

(2) In any proceedings brought against the insurer by virtue of the provisions of this section it shall be a defence, in addition to any defence relating to the liability of the owner concerned, for such insurer to prove that the incident in question was caused by the wilful act or omission of the owner himself.

(3) The insurer may, whether or not the incident in question occurred without the owner's actual fault or privity, limit his liability in respect of claims relating to such incident, instituted against him by virtue of the provisions of this section, to an aggregate amount determined in accordance with the provisions of section 9(5)(b) and shall for that purpose make an application to the court *mutatis mutandis* in accordance with the provisions of section 12.

(4) Where the owner as well as the insurer made an application to the court in terms of the provisions of section 12, any amount deposited or the payment of which was guaranteed in terms of section 12(2) in pursuance of either application shall be deemed to have been so deposited or guaranteed also in pursuance of the other application.

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

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

**Refund of excess costs paid by owner**



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

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

(2) The Permanent Secretary may at any time refund so much of any amount deposited in terms of section 16, or, as the case may be, agree to a reduction of any amount guaranteed in terms of the said section by so much, as, in his opinion, is not required to satisfy any costs referred to in section 9(1)(b).

(3) In the event of an application having been made to the court in terms of section 12 in respect of the incident in question, the Permanent Secretary shall refund to the owner concerned so much of any amount deposited in terms of section 16, or, as the case may be, agree to a reduction of any amount guaranteed in terms of the said section by so much, as exceeds the amount to which the State is entitled in terms of a distribution made in terms of section 12(4).

**Ratification by Minister of certain expenses**

**18.** The Minister may ratify the incurring of any expenses by the State (otherwise than in pursuance of section 5(1) or (2)) or by any local authority or other public body or any other person in removing pollution of the sea by oil discharged from any ship, tanker or offshore installation, to the extent to which such expenses could have been incurred by the Minister in terms of section 5(1) or (2), and any expenses the incurring of which has been so ratified, shall be deemed to be costs referred to in section 9(1)(b).

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

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

- (a) cause the ship in question or any other ship or ships, or the ship in question and any other ship or ships of the owner -
  - (i) to be detained until such costs have been paid or such deposit has been made or guarantee furnished, as the case may be: Provided that such detention shall not exceed a period of seven days or such further period as the High Court of Namibia may authorize; and

**[subparagraph (i) amended by Act 24 of 1991]**

- (ii) on the authority of the High Court of Namibia and subject to its directions -
  - (aa) where such detention has been effected because of a failure to pay such costs due, to be seized and, after notice in the *Gazette* of the

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proposed realization thereof, to be realized in satisfaction of those costs;

- (bb) where such detention has been effected because of a failure to make a deposit or to furnish a guarantee, and costs become payable by the owner in terms of section 9(1)(b) at a time when the required deposit has not yet been made or guarantee has not yet been furnished, to be seized and, after notice as prescribed in item (aa), to be realized in satisfaction of those costs;

**[subparagraph (ii) amended by Act 24 of 1991]**

- (b) on the authority of the High Court of Namibia and subject to its directions, cause to be seized and realized in satisfaction of those costs, any goods of such owner on such ship or ships.

**[paragraph (b) amended by Act 24 of 1991]**

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

**[Subsection (2) is amended by Act 24 of 1991. This amendment changes the phrase “the guarantee referred to in that subsection” to “the guarantee referred to in that section”, without indicating this by amendment markings – but the change appears to be in error. The amendment also corrects a misspelling of the word “contemplation” in the original Act.]**

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

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

### **Jurisdiction of courts**

**20.** (1) The High Court of Namibia, and within the limits of its jurisdiction as determined in section 29 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), but subject to the provisions of section 12(8), any magistrate's court, shall have jurisdiction in respect of all causes of action arising out of the provisions of this Act.

**[subsection (1) amended by Act 24 of 1991]**

(2) The High Court of Namibia, and, within the limits of its jurisdiction as determined in section 92 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), any magistrates' court for a regional division, shall have jurisdiction in all criminal matters arising out of the provisions of this Act.

**[subsection (2) amended by Act 24 of 1991]**

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(3) No prosecution in respect of an offence under this Act shall be instituted except on the authority, which may be given in writing or otherwise, of the Prosecutor-General.

[subsection (3) amended by Act 24 of 1991]

(4) Any offence under 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.

[subsection (4) inserted by Act 63 of 1987]

### **Minister's permission required for transfer of oil or for certain other acts in respect of ships or tankers**

21. (1) No person shall -

- (a) outside a harbour, being a port as defined in section 1 of the Namibian Ports Authority Act, 1994 (Act No. 2 of 1994), or a fishing harbour as defined in section 1 of the Sea Fisheries Act, 1992 (Act No. 29 of 1992), and within the prohibited area, render any ship or tanker, having any oil or harmful substance on board (whether as cargo or otherwise), incapable of sailing or manoeuvring under its own power; or

[The word which appears here as "manoeuvring" is normally spelt in British English as "manoeuvring" or in American English as "maneuvering".]

- (b) within the prohibited area transfer any oil or 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.

[Subsection (1) is amended by Act 24 of 1991, substituted by Act 2 of 1994, and substituted with amendment markings by Act 5 of 2019.

The Sea Fisheries Act 29 of 1992 has been replaced by the Marine Resources Act 27 of 2000.]

(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.

### **Powers of Minister in case of default by master or owner**

22. (1) If -

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

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

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

**Salvor not to be prejudiced**

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

**Pollution safety certificate required for operation of offshore installation**

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

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

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

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

(5) Any person who -

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

shall be guilty of an offence.

**Exemptions by Minister**

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

(2) The Minister may exempt any person performing salvage operations in connection with a ship or a tanker from which oil is being discharged or, in the opinion of the Minister, is

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likely to be discharged, from any liability in respect of any consequences of the discharge of the oil in question.

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**26.**

[section 26 amended by Act 59 of 1985 and deleted by Act 24 of 1991]

**Sundry powers of Minister**

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

(2)

[subsection (2) deleted by Act 24 of 1991]

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

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

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

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

(6) The Minister may cause steps to be taken to remove or prevent pollution of the sea by oil outside the prohibited area in such circumstances and on such conditions as he may deem fit.

**Regulations**

28. (1) The Minister may make regulations -

(a) prescribing measures to be taken on board or in respect of a ship or a tanker when such ship or tanker is rendered incapable of sailing or manoeuvring under its own power as contemplated in section 21;

(b) prescribing the machinery and equipment to be installed and maintained on or in connection with a ship, tanker or offshore installation for the purposes of the removal or prevention of pollution of the sea by oil discharged or likely to be discharged from such ship, tanker or offshore installation during a transfer of oil as contemplated in section 21(1)(b) or, in the case of such ship or tanker, during the period when such ship or tanker has been rendered incapable of sailing or manoeuvring under its own power as contemplated in section 21(1)(a);

(c) prescribing, in respect of ships or tankers registered in Namibia under the Merchant Shipping Act, 1951 (Act No. 57 of 1951), and in respect of ships or tankers not so registered but which ply between a port in Namibia or an offshore installation and

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any other port or installation similar to an offshore installation, the equipment to be carried on board such ships or tankers for use in preventing a discharge of oil, and standards for the maintenance of such equipment;

- (d) as to the powers, duties and conditions of service of trustees appointed in terms of section 12(3);
- (e) as to all matters which in terms of this Act are required or permitted to be prescribed by regulation,

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

(2) Regulations made under subsection (1) may prescribe for any contravention thereof or failure to comply therewith penalties not exceeding the penalties prescribed in section 30(2)(a).

**Delegation of powers**

**29.** The Minister as well as the Permanent Secretary may delegate to any person or to two or more persons any of the powers conferred upon them respectively in terms of the provisions of this Act other than, in the case of the Minister, the provisions of section 28.

**Offences and penalties**

- 30.** (1) Any person who -
- (a) contravenes or fails to comply with the provisions of -
    - (i) section 14(6); or
    - (ii) section 21(1);
  - (b) wilfully fails to comply with an order or requirement of the Minister in terms of -
    - (i) section 4(1);
    - (ii) section 4(2)(c);
    - (iii) section 5(3); or
    - (iv) section 6;
  - (c) hinders or obstructs any person in the performance of his functions by virtue of the provisions of -
    - (i) section 4(2)(a);
    - (ii) section 5(6);
    - (iii) section 7; or
    - (iv) section 22(1),

shall be guilty of an offence.

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

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- (a) section 3(4), 8(2), 13(7), 24(5) or subsection (1)(a)(i), shall be liable to a fine not exceeding N\$40 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment;
- (b) subsection (1)(b)(iii), (b)(iv), (c)(i), (c)(ii), (c)(iii) or (c)(iv), shall be liable to a fine not exceeding N\$80 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;
- (c) subsection (1)(a)(ii), shall be liable to a fine not exceeding N\$800 000 or to imprisonment for a period not exceeding 20 years or to both such fine and such imprisonment;
- (d) section 2(1) or 13(6) or subsection (1)(b)(i) or (b)(ii), shall be liable to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding 25 years or to both such fine and such imprisonment.

**[subsection (2) amended by Act 24 of 1991 and substituted with amendment markings by Act 5 of 2019]**

- (3) If any person -
  - (a) admits to the Permanent Secretary that he has contravened any provision of this Act, or that he has failed to comply with any such provision with which it was his duty to comply;
  - (b) agrees to abide by the decision of the Permanent Secretary; and
  - (c) deposits with the Permanent Secretary 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 Permanent Secretary may, after such enquiry as he deems necessary, determine the matter summarily and may, without legal proceedings, order by way of penalty the whole or any part of the said deposit to be forfeited.

**[subsection (3) inserted by Act 63 of 1987]**

(4) There shall be a right of appeal to the Minister, whose decision shall be final, from a determination or order of the Permanent Secretary under subsection (3) whereby a penalty exceeding R500 is imposed, provided such right is exercised within a period of three months from the date of such determination or order.

**[subsection (4) inserted by Act 63 of 1987]**

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

**[subsection (5) inserted by Act 63 of 1987]**

### **Repeal of laws, and savings**

**31.** (1) Subject to the provisions of subsection (2), the Prevention and Combating of Pollution of the Sea by Oil Act, 1971 (Act No. 67 of 1971), the Prevention and Combating of Pollution of the Sea by Oil Amendment Act, 1972 (Act No. 92 of 1972), and the Prevention and

**Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981 (RSA)**

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Combating of Pollution of the Sea by Oil Amendment Act, 1973 (Act No. 72 of 1973), are hereby repealed.

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

**Short title and commencement**

**32.** This Act shall be called the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.