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LEGAL OPINION

[Confidential]

TO: Mr V G Smith, MP and Ms M G Boroto, MP
Co-chairpersons of the Interim Joint Committee on
Scrutiny of Delegated Legislation

COPY: Secretary to Parliament

DATE: 29 May 2013

SUBJECT: Amendments to the National Road Traffic
Regulations, 2000

LEGAL ADVISER: Ms V Ngcobozi
Parliamentary Legal Adviser

REFERENCE NUMBER: 158/13

MESSAGE : Attached please find a Legal Opinion for your attention



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Background

1. The Minister of Transport (the Minister) submitted the draft Regulations Amendments to National Road Traffic Regulations, 2000 (the draft Regulations) to the Secretary of Parliament on 31 May 2012. The draft Regulations were tabled in the Assembly and referred on 22 October 2012 to the Portfolio Committee on Transport and the Interim Joint Committee on Scrutiny of Delegated Legislation (the Committee) for consideration and report (ATC, 22 October 2012). The draft regulations seek to amend the National Road Traffic Regulations, 2000.
2. Our Office was requested to comment on the draft Regulations to ensure that they meet the scrutiny criteria for delegated legislation.

Regulatory framework

3. The draft Regulations were submitted to Parliament for comment in terms of section 75(6)(a) of the National Road Traffic Act, 1996 (Act No.93 of 1996) (the Act)
4. Section 75(6)(a) of the Act provides that "Before the Minister makes any regulation, the Minister must cause a draft of the proposed regulations to be referred to Parliament for comment".[Emphasis added.]
5. Section 75(1) of the Act provides that "The Minister may after a decision has been taken in the Shareholders Committee make regulations not inconsistent with this Act, in respect of any matter contemplated, required or permitted to be

prescribed in terms of this Act and generally regarding the operation of any vehicle on a public road, the construction and equipment of such vehicle and the conditions on which it may be operated, and in any other respect for the better carrying out of the provisions or the achievement of the objects of this Act..." This provision gives powers to the Minister to make regulations. [Emphasis added.]

6. The Committee must, amongst others, scrutinise delegated legislation that requires consideration and report by Parliament in accordance with the criteria set out in the interim Rules applicable to the Committee (Minutes of Proceedings of NCOP, 20 September 2011, Rule 3(2))a(iii) read with rule 4(1)).

Advice

7. The draft Regulations deal with the issues provided for in section 75(1) of the Act. It is necessary to compare the provisions of the draft Regulations with the scrutiny criteria set out in interim rule 4(1).
8. The draft Regulations has no provisions imposing levies, taxes or duties.
9. The draft Regulations appear to comply with the procedural aspects. They have been submitted to Parliament for comment. Furthermore the Minister confirmed in writing in its covering letter to Parliament dated 26 April 2012 that a proper consultative process was followed in compliance with the provisions of section 75(1) and (6) of the Act. The draft regulations were also published in the *Gazette*.
10. The draft Regulations do not impinge on the jurisdiction of the Courts.
11. I have identified the following provisions in the draft regulations that have a retrospective effect-
 - 11.1 Draft Regulation 20 provides that "No person shall operate on a public road a motor vehicle manufactured after 01 October 2012..."
 - 11.2 Draft Regulation 36 provides that "in a case of a minibus, or bus, first registered on or after October 2012 and operating for a reward..."
 - 11.3 Draft Regulation 72 seeks to insert regulations 337B to 337C. The proposed regulation 337C(1) which should be 337B(see my comment in paragraph 16.5 below) provides that "If a South African Police Service vehicle clearance for a motor vehicle is required on or after 1 September 2012 in terms of the regulations..." and 337C(2) provides that "The title holder or owner of the motor vehicle referred to in sub-regulation (1) shall ensure that microdots are applied to such motor vehicle in accordance with the requirements of SANS 534-1, if not already fitted with microdots on or after 1 September 2012." 337C provides that "Notwithstanding provisions contained in SANS 534-1, all the information relating to the application of microdots, including the manufacturer, supplier and installer of microdots shall be stored on the NATIS system as from 1 September 2012." [Emphasis added.]
12. Subordinate legislation is required to apply prospectively not retrospectively unless expressly provided for in the principal Act. In this instance the principal

Act does not have a provision that allows retrospective application of the regulations.

13. I recommend that the Department should change the dates that are retrospective and make them prospective.

14. The draft Regulations conform to the objects of the Act.

15. The provisions of the draft Regulations do not appear to make unusual use of powers conferred by the Act.

15.1 The Act confers powers on the Minister to make regulations. The Minister is doing so in respect of section 75 (1) of the Act as stated in paragraph 5 above. In addition to the specific provisions of section 75(1) (a) to (z), subsection (zA)(ii) provides that the Minister may make regulations regarding, "any other matter for which this Act does not, in the Minister's opinion, make provision or enough provision."

15.2 None of the regulations seem to be outside the powers conferred upon the Minister.

16. Subject to the comments below, the draft Regulations are properly drafted.

16.1 The set of regulations submitted to our office appears to be different from the set that has been published in the Gazette. My comments are based solely on the draft regulations as submitted to our office.

16.2 In draft Regulation 2- the spelling of "**adapter dolly**" should be corrected to read "**adaptor dolly**".

16.3 In draft Regulation 29- 107A (a) "**commit**" should be corrected to read "**committed**" and 107(b) "**being**" should be deleted and replaced with "**is.**"

16.4 In draft Regulation 60- 272D(3), the last sentence seems to be a side comment that needs to be deleted from the regulations.

16.5 In respect of the draft Regulations referred to in paragraph 11.3 above, there is a duplication of numbers. In the draft Regulations there is no 337B but two 337Cs. It appears as if the first 337C was supposed to be a 337B. That needs to be corrected as well.

17. The draft Regulations do not trespass on personal rights and liberties, including those set out in the Bill of Rights, in a manner inconsistent with the Constitution.

18. The draft Regulations do not amount to substantive legislation.

19. In conclusion, it is my considered view that the regulations fail to meet one of the elements of the scrutiny criteria because of the provisions that have a retrospective effect as indicated in paragraph 11 to 13 above.



Ms V Ngcobozi
Parliamentary Legal Adviser