



DRAFT NEDLAC REPORT ON THE MERCHANT SHIPPING AMENDMENT BILL, 1951

1. BACKGROUND

- 1.1. The Merchant Shipping Act No. 57 of 1951 is amended to give effect to the Consolidated Maritime Labour Convention adopted by the International Labour Organisation (ILO), Geneva, 2006 and Work in the Fishing Convention, 2007.
- 1.2. The Department of Transport, amended Chapter 4 of the Merchant Shipping Act, due to the fact that the conditions within the Act was outdated and does not meet the current demands of merchant shipping, to align Chapter 4 which deals primarily with conditions of employment for sea farers with the current Labour legislation.
- 1.3. The Department of Transport (DoT) presented the Bill at the Merchant Shipping task team meeting held on 19 September 2011.

2. INTRODUCTION

- 2.1. The Task Team consisted of the following representatives:

Business: Vikashnee Harbhajan; Tim Reddell; Fred Jacobs; Siva Pather and Vanessa Phaia.

Labour: Norma Craven; Mbalisi Tonga; Mthunzi Mhlakane; Luyanda Matuntuta; and Louis Broekett.

Government: Virgil Seafield; Karen Naidoo; Nigel Campbell; Siphon Mbatha and Mpatliseng Ramaema.

2.2. The task team met on the following dates:

- 19 September July 2011;
- 07 October 2011;
- 07 November 2011;
- 17 February 2012;
- 15 March 2012;
- 14 June 2012; and
- 11 September 2012.

2.3. The amendments in the sections or sub-sections are set out in a table attached as annexure A.

3. ANALYSIS OF CLAUSES

- 3.1. Clause 1 amends section 1 by replacing "seaman" with "seafarer" for gender sensitivity.
- 3.2. Clause 2 and 3 section 91 and 92 to delete obsolete wording of apprentice-officers. Also amend South African ship to replace it with ship that is registered or licensed in the Republic to cover all ships irrespective of their size.
- 3.3. Clause 4 repeals sections 93, 94, 95, 96, 97, 98, 99 and 100, all of which the apprentice-officers no longer exist.
- 3.4. Clause 5 amends section 102 as follows:

- Subsection 1 requires all ships to enter into an agreement with the crew, irrespective of their tonnage;
 - Paragraphs f, i, j, k, l and m insert respectively the details to be contained in the agreement with the crew;
 - Subsection 5 inserts new definitions of “basic wages” and “overtime”. The definitions cover payment for normal working days; and time worked in excess of normal working hours, respectively.
- 3.5. Clause 6 amends section 110 by prohibiting any ship to employ person under the age of sixteen. This introduces consistency with regulation 1.1 of the Convention which the country intends to ratify.
- 3.6. Clause 7 amends section 111 as follows:
- Subsection 1 by allowing young person to work at night in a ship provided that he or she is on school-ship or training-ship approved by the Authority; and
 - Subsection 8 inserts new definitions of “night”. The definition covers a period not later than midnight and earlier than 05h00.
- 3.7. Clause 8 inserts new section 111A to introduce entitlement of seafarer’s leave. Subsection 4 inserts new definition of a “month”. The definition covers the period of thirty days.
- 3.8. Clause 9 amends section 121(1) to introduce a duty on the master or the owner of a ship to furnish the seafarer with monthly account of his or her wages.
- 3.9. Clause 10 amends section 130 to give seafarer an option to remit all or part of his or her wages at the cost of the master or shipowner.
- 3.10. Clause 11 inserts new section 159A which obliges the owner or the master to have complaints procedure on board the ship; and seafarer’s rights to complain following such procedures.

- 3.11. Clause 12 amend section 162 (1) to allow even one seafarer to lodge a complaint to the proper officer.
- 3.12. Clause 13 inserts new section 356 (1) (xxxiA) to have appropriate enabling powers regarding regulation 5.3 of the Convention.
- 3.13. Clause 14 is a standard provision dealing with the short title and commencement of the enactment. Commencement is to be on a day proclaimed by the President.

4. CONCLUSION

- 4.1. This report therefore concludes the consideration of the Merchant Shipping Amendment Bill at NEDLAC. The report is submitted to the Ministers of Labour and the Minister of Transport in terms of Section 8 of the Nedlac Act, No. 35 of 1994.
- 4.2. It is acknowledged that the Nedlac parties may continue to advocate their views in the public consultation and other structured processes.