

**the doj & cd**

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

OFFICE OF THE CHIEF STATE LAW ADVISER  
P/bag X9069, Cape Town, 8000  
12th Floor, Atterbury House, 9 Riebeeck Street, Cape Town, 8001  
Tel (021) 441-4900 Fax (021) 421-7923

sv020813

Ref: 8/7/Shipping/2013/158A+B  
Enq: Sisa Makabeni  
Tel: 021-441494912  
e-mail: [SMakabeni@justice.gov.za](mailto:SMakabeni@justice.gov.za)  
website: <http://www.justice.gov.za>  
Date: 03 September 2013

Dr Maria Du Toit  
Acting Director-General  
Department of Transport  
Private Bag X395  
Pretoria  
0001

**Attention: Mr Trevor Mphahlele**

Dear Dr Du Toit

**RE: OPINION ON MERCHANT SHIPPING AMENDMENT BILL, 2013**

## 1. INTRODUCTION

1.1 We have been requested by the Department of Transport ("the Department") to provide a legal opinion on the constitutionality of the draft Merchant Shipping Amendment Bill, 2013 ("the Bill").

1.2 We have considered the draft Bill provided to us by the Department and have proposed changes to the text of the Bill taking into account the provisions of following legal prescripts:

- The Constitution of the Republic of South Africa, 1996 ("the Constitution");
- the Merchant Shipping Act, 1951 (Act No. 57 of 1951)("the principal Act"); and
- the relevant Conventions.



## DISCUSSION

2.1 In *Affordable Medicines Trust and Others v Minister of Health and Others*<sup>1</sup> the court indicated that the exercise of all legislative power is subject to at least two constitutional constraints. Firstly, there must be a rational connection between the legislation and the achievement of a legitimate government purpose. Secondly, the legislation must not infringe any of the fundamental rights enshrined in the Constitution. Rights may be limited by law of general application, but only to the extent provided for in section 36(1) of the Constitution ("limitation of rights").

2.2 The Bill according to its long title seeks to amend the Merchant Shipping Act, 1951, so as to give effect to the Maritime Labour Convention, 2006 and the Work in Fishing Convention, 2007; and to provide for matters connected therewith.

2.3 In our view the Bill effects technical amendments to the principal Act to bring it in line with the Conventions referred to in paragraph 2.2. It further seeks to make the Conventions part of our law by incorporating them as Schedules to the principal Act. There has, according to documents on file, been compliance with the requirements of section 231(2) of the Constitution with regard to approval of the Conventions by Parliament<sup>2</sup>.

2.4 In the light of the above, we did find issues of constitutional concern on the provisions of the Bill as the Conventions seek to uphold and advance the rights and interests of persons working in the maritime industry.

2.5 We have the following comments with regard to the provisions of the Bill:

### ***Ad clause 1***

2.5.1 With regard to the inserted definitions of "Maritime Labour Convention" and "Work in Fishing Convention" the information on the approval of the Conventions by Parliament and publication in the *Gazette* has been omitted as it does not add to the definitions.

---

<sup>1</sup> 2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC), paras 74 and 76.

<sup>2</sup> Section 231(2) of the Constitution provides that an international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession.



2.5.2 The definition of "South African ship" has been substituted to mean "a ship that is registered or licensed in the Republic". It is therefore not necessary to delete the reference to South African Ship in the principal Act or to insert the words "that is registered to or licensed in the Republic" in the relevant provisions as the substituted definition caters for that.

2.5.3 We have rephrased the provisions of subsection (5)(a) and (b) added to section 102 of the principal Act by clause 5(d) of the Bill in an effort to express the meaning thereof better. Kindly review the reworded subsection and advise if in agreement.


2.5.4 In view of the substitution of the definition of "South African ship" we have left out the proposed amendment to section 111(7) of the principal Act as it is no longer necessary.

### 3. CONCLUSION

3.1 We are of the view that the attached Bill, as redrafted by our office, is properly drafted in the form and style that conforms to legislative practice and constitutional.

3.2 Please do not hesitate to contact us should you require any clarification regarding our opinion.

Yours sincerely

  
CHIEF STATE LAW ADVISER  
S. MAKABENI/ G HOON/ A JOHAAR

