

5 December 2024

TO: **The Chairperson of the Portfolio Committee on Transport, National Assembly** vcarelse@parliament.gov.za
dmoseki@parliament.gov.za
c/o Valerie Carelse

FROM: **BIODIVERSITY LAW CENTRE** kate@biodiversitylaw.org
nina@biodiversitylaw.org

Total 4 Our ref: BLC/Comments/Merchant
pages: Shipping

Dear Honourable Selamolela

RE: Request to make submissions in relation to the Merchant Shipping Bill, [B12-2023]

1. We refer to the Merchant Shipping Bill [B12-2023] (**Bill**); the most recent discussion held by the Portfolio Committee on Transport (**Committee**) on 19 November 2024; and our recent exchange of correspondence with Ms Carelse regarding the Bill's comment period.
2. At the outset, we express our thanks to Ms Carelse for her prompt and helpful responses. We address this correspondence mindful of her guidance.
3. We understand from Ms Carelse that the closing date for written submissions on the Bill was 25 October 2024 and hearings are scheduled for February 2025. We, further, understand that the appropriate procedure for our seeking to make submissions at this stage of the process is to address them to yourself with a request for consideration. We have been advised that the ideal time for doing so is before the Parliamentary recess period.
4. Unfortunately, the Biodiversity Law Centre (**BLC**) will be entering its shut-down period on 12 December 2024 (with the relevant staff-member being on leave from 7 December 2024). At this stage of the year, it is not possible to liaise with our partner organisations as well as key experts for purposes of providing a meaningful submission. However, we would very much appreciate the opportunity to do so in the new year whether by way of written or oral submissions.
5. In support of our request, we set out a brief background to the BLC as well as the nature of the submissions we seek to make below. Thereafter, we provide a motivation for a general extension and/or re-opening of the comment period mindful of the nature, complexity and implications of the Bill on a wide range of stakeholders.

DIRECTORS
Kate Handley (Executive)
Cormac Cullinan
Nicole Loser
Ian Little
Alexander Paterson
Nonhlanhla Mnengi
Gregory Martindale
Rivasha Maharaj

biodiversitylaw.org
18A Ascot Road, Kenilworth 7708
www.biodiversitylaw.org

Biodiversity Law Centre NPC
Reg No. 2021/631341/08
NPO No. 264 246 NPO
PBO No. 930072892
Law Clinic registered with the Legal Practice Council

The Biodiversity Law Centre

6. The BLC is a non-profit organization and law clinic, registered in 2021. Our vision is flourishing indigenous species and ecosystems that support sustainable livelihoods in Southern Africa while our mission is to use the law to protect, restore and preserve indigenous ecosystems and species in the region. We have a particular interest in the protection of marine biodiversity and ensuring that all social and economic development (including those in the maritime sector) are conducted in a manner which gives proper effect to everyone's right to an environment which does not harm health and wellbeing and everyone's right to have the environment protected for the benefit of present and future generations. Moreover, we have a particular interest in considerations of biodiversity mainstreaming across all sectors as envisaged by the White Paper on Sustainable Use and Conservation of Biodiversity.
7. We have been working with partner organisations to address regulatory gaps pertaining to maritime activity, including ship-to-ship bunkering and maritime noise-pollution (a matter triggered by concerns regarding the behavioural impacts of noise pollution on the critically endangered African Penguin). In doing so, we have been alerted to the importance of ensuring integration between the marine and maritime pollution legislation within the transport portfolio; the environmental framework legislation constituted by National Environmental Management Act, 107 of 1998 (**NEMA**); and the suite of specific environmental management acts and related legislation addressing biodiversity, climate change and the ecologically sustainable use and development of South Africa's oceans and coasts.
8. As part of our mandate, we have an interest in ensuring that South Africa adheres to best international practice and all international obligations – including in relation to treaties concluded under the auspices of the International Maritime Organisation (**IMO**) as well as the United Nations Convention on the Law of the Sea (**UNCLOS**), Convention on Biological Diversity (**CBD**) and United Nations Convention on Climate Change (**UNFCC**).

The BLC's interest in the Bill

9. The BLC has been following the progress of various legislative amendments pertaining to maritime transport, marine pollution and merchant shipping, including the submissions, departmental responses and comments of the Committee under the sixth administration in relation to the Marine Pollution (Prevention of Pollution of Ships) Amendment) Bill [B5-2022] (**MARPOL Bill**).
10. During the course of the public participation process, a number of organisations raised issues of regulatory gaps in relation to the prevention of noise and light pollution.¹
11. While the issue of regulation of noise, light and heat pollution was not ultimately addressed in relation to the MARPOL Bill (now awaiting presidential signature), the debates by members of the Portfolio Committee recognised and endorsed concerns about the absence of regulation of these areas.²

¹ See public hearings held by the Portfolio Committee 8 November 2022 and submissions to the NCOP Select Committee on Public Infrastructure and Minister in the Presidency (**Select Committee**) held on 27 March 2024, available at < <https://pmg.org.za/committee-meeting/38730/>>, last accessed 5 December 2024.

² See the record of discussions on 15 November 2022 available at < <https://pmg.org.za/committee-meeting/36023/>>, last accessed 5 December 2024.

12. One of the reasons provided by the Department of Transport (**Department**) for excluding noise regulation from the MARPOL Bill was that the proper place for regulating noise was under the Safety of Life at Sea Convention (**SOLAS**), Code on noise levels onboard ships and Marine Environment Protection Committee Circular 833 on 7 April 2014.³
13. SOLAS and onboard shipping noise is currently addressed under the Merchant Shipping Act, 57 of 1951 (**Act**). We understand that the Act is to be repealed and replaced by the Bill.
14. Accordingly, it appears appropriate that the issue of regulation of noise (as well as heat and light pollution) is now addressed during the Bill's public participation process.
15. The minutes of the Portfolio Committee's consideration of written submissions of the Bill on 19 November 2024,⁴ note that only five substantive submissions had been received. Of the five submissions available on the Parliamentary Monitoring Group website, three are from industry-related bodies and/or organisations, one from the South African Revenue Service and one from COSATU. Accordingly, there are no submissions comprehensively addressing the interrelationship between the Bill and environmental obligations under the international regime applicable to maritime transport, ocean conservation and climate change (nor the necessary interrelationship between the Bill and the domestic environmental framework).
16. It is these issues which the BLC would seek to address in further submissions.

Motivation for general extension and/or re-opening of comment period

17. Also during its meeting of 19 November 2024, members of the Portfolio Committee engaged in debate regarding the need to ensure full public participation in the forthcoming public hearings pertaining to the Bill.
18. The importance of full public participation is central to the operation of Parliament, the consideration of legislation and South Africa's representative and participatory democracy.⁵ The courts have emphasised that a "*truly representative people's Parliament*" relies on facilitating public debate and ensuring that the public is provided with meaningful opportunities to participate in decisions that affect them.⁶
19. Noting the narrow range of interests represented by submissions to date, and with regard to the broad scope of the Bill, we submit that a further call for comment would be reasonable.⁷ We submit that the wide-ranging effects on the public in relation to the ecologically sustainable use and development of the marine environment and the

³ See responses presented at the Portfolio Committee meeting on 15 November 2022. We note that the 2014 circular has subsequently been replaced. See further the response to the NCOP Select Committee held on 27 March 2024 referenced above.

⁴ See meeting minutes available at <<https://pmg.org.za/committee-meeting/39879/>>, last accessed 5 December 2024.

⁵ *Doctors for Life International v Speaker of the National Assembly* 2006 (6) SA 416 (CC) (**Doctors for Life**) para 115; 121-122; *Matatiele Municipality v President of the Republic of South Africa* 2007 (6) SA 477 (CC) (**Matatiele**) para 40; 60; *Mogale v Speaker of the National Assembly* 2023 (6) SA 58 (CC) (**Mogale**) paras 3-4; 32-33.

⁶ *South African Iron and Steel Institute v Speaker of the National Assembly* 2023 (10) BLCR 1232 (CC) paras 28-32.

⁷ See *Doctors for Life* para 127-129; *South African Veterinary Association v Speaker of the National Assembly* 2019 (3) SA 62 (CC) paras 41-43; *Mogale* para 35.

industries involved in such use and development warrants the input of a wider range of affected stakeholders at an early stage.⁸

20. In this regard, we note that the importance of the Bill for, *inter alia*, environmental and labour rights and potential impacts on coastal communities is a strong indicator that it would be reasonable to re-open and/or extend the comment period to avoid marginalisation of coastal communities – including those who may need more time to digest and understand the impacts of a very lengthy and complex piece of legislation. Such extension would be consonant with creating opportunities for publication participation⁹ and the importance of doing so in Parliament’s fulfilment of the rights to dignity, political participation and citizenship.¹⁰ Moreover there is no indication that the time afforded for further submissions would unduly delay the process.¹¹
21. For non-governmental and civil society organisations working in this space, the opportunity to engage with their own stakeholders and assist with the comment process is also an important contributor to the integrity and robustness of the parliamentary process. In this regard, we note that like the BLC, many of the relevant organisation are entering their shut-down period and will be unable to engage with the communities they service, their partners and collaborators.
22. Mindful of the duties placed on Parliament to create meaningful opportunities to participate; and to ensure that people are able to engage with such opportunities,¹² we urge you to consider issuing a further call for comment and/or re-opening the period for written submissions. Such an opportunity would enable a wider range of stakeholders to indicate their concerns and/or support for the Bill; address its various technical aspects based on varied expertise and experience; and highlight important interactions and/or consequences which need to be addressed to ensure that the Bill is robust; clear; consonant with international obligations and standards; and constitutional.
23. For all the above reasons, we urge you to consider our request, and to facilitate further submissions in the new year.

Yours faithfully,



BIODIVERSITY LAW CENTRE NPC

Per Nina Braude

⁸ See *Mogale* para 39.

⁹ *Doctors for Life* paras 119-120; *Matatiele* para 53.

¹⁰ *Matatiele* para 66; *Doctors for Life* paras 90ff.

¹¹ See *Mogale* paras 49-50.

¹² *Doctors for Life* paras 128-129.