



# Wes-Kaapse Provinsiale Parlement Western Cape Provincial Parliament IPalamente yePhondo leNtshona Koloni

## MINUTES OF PROCEEDINGS

### STANDING COMMITTEE ON FINANCE, ECONOMIC OPPORTUNITIES AND TOURISM

Wednesday, 21 February 2024 (08h00)  
Virtual via MS Teams

#### ATTENDANCE

##### Members:

##### **Democratic Alliance**

Murray, C (Chairperson)  
Sileku, I  
Van der Westhuizen, A

##### **African National Congress**

Nkondlo, N

##### **Al Jama-ah**

Brinkhuis, K

##### The following persons were in attendance:

##### **National Council of Provinces**

Mr J Londt, Permanent Delegate

##### **Department of Small Business Development**

Ms B Mlambo, Director

##### **National Treasury**

Mr W Mathebula, Chief Director  
Adv E van Schoor, Chief Director  
Ms M Nxumalo, Director  
Mr N Mathebula, Deputy Director

## **Western Cape Provincial Parliament:**

Ms Z Adams, Procedural Officer  
Ms L Cloete, Senior Procedural Officer  
Ms M Mrubata, Committee Assistant  
Adv R Maasdorp, Legal Adviser  
Adv M Khoele, Legal Adviser

### **1. Welcome and attendance**

The Chairperson welcomed the Members, the Department of Small Business Development (the DSBD), the National Treasury, the Provincial Treasury, the Department of Economic Development and Tourism, and the members of the public. The Chairperson noted the rules of engagement for virtual meeting before proceeding with the briefing on the National Small Enterprise Amendment Bill [B 16B-2023] and the Public Procurement Bill [B 18B-2023].

### **2. Briefing on the National Small Enterprise Amendment Bill [B 16B-2023]**

Member Londt introduced the Bill. The Department of Small Business Development briefed the Committee on the Bill

The Committee deliberated on the briefing and held a question-and-answer session with the Department.

Adv Maasdorp noted his concern with the presentation, indicating that it was vague because it did not focus on the clauses of the Bill. He indicated that he did not have any substantive issues with the Bill in terms of constitutionality; however, the Committee was tasked with passing good laws. Adv Maasdorp raised the following concerns:

- (i) Clause 17L – provides that the Ombud may investigate a matter. This discretion was too broad. He questioned under which circumstances the Ombud may investigate if a significant number of small enterprises were impacted. He did not know how a court would determine a “significant number”. He recommended that a drafting approach be used to assist with the interpretation of provisions.
- (ii) Clause 17Y (3) – provides for instances that will guide the Minister and Ombud to consider whether certain practices were fair. Clause 17Y(3)(ii) was not any different to Clause 17Y(3)(iv). Conceptually, there was hardly a distinction between the two clauses. Legally, there was hardly a distinction between something that was unreasonable and unfair, or something that prejudiced or impacted negatively, or affected something unfairly.
- (iii) General – The Bill was loaded with “elastic” concepts, as if everyone had a common understanding of what is meant in the Bill, what it purports to indicate, and that it would be commonly interpreted by any court in this country. Concepts such as “unreasonable prejudicing” and “unfairly affecting” were elastic concepts. The drafting of the Bill seemed to be open-ended, which would not assist courts in the future when they needed to interpret the law. Adv Maasdorp recommended that at least one of the provisions be deleted, or the Bill needed to

properly qualify the instances that would guide the Minister or Ombud to decide whether a practice is an unfair trading practice.

Member Londt indicated that he agreed with the matters raised with Adv Maasdorp. These issues were raised in the National Assembly and by him in the Select Committee in the NCOP, so it was not the first time that the Department heard these issues. Member Londt had raised the matter that there were clauses in the Bill that were open for interpretation – there were clauses that gave powers to individuals that seemed to be in a very broad, grey area.

The Committee concluded its discussion and moved on to the next briefing.

### **3. Briefing on the Public Procurement Bill [B 18B-2023]**

Member Londt introduced the Public Procurement Bill and handed over to the National Treasury for the briefing.

The Committee deliberated on the briefing and held a question-and-answer session with the Department.

Member van der Westhuizen requested that it be put on record that the Committee was being put under immense pressure to process Bills in a very short period before elections, especially since some Bills were at the National Assembly and National Council of Provinces already for quite some time before they were referred to the provinces. The Public Procurement Bill was an important piece of legislation that required serious consideration.

Adv Khoele indicated that she had several concerns with the criminalisation aspect in the Bill. There were issues in respect of the power to enter and search premises, and the issuing of warrants. In terms of investigations, the individuals authorised to conduct investigations, the entering of premises, and the seizing of items – on what authority do they enter the premises? Typically, to have such powers, one would need to be cloaked with the powers of being a peace officer. This not evident in the Bill, and there is nothing in the Bill that addresses this issue. These laws had constitutional implications.

In terms of Clause 27C of the Bill, when criminality was identified, when was it referred to the authorities? Was it that the Bill empowered that the investigation took place first, and then it would be referred? Or was it a concurrent referral? The referral to the SAPS was not clear in the Bill.

The Department indicated that this was clarified in Clause 57 of the Bill.

### **4. Way forward on the Bills**

The Committee held a discussion on the way forward on the National Small Enterprise Amendment Bill and the Public Procurement Bill.

The Committee agreed that the WCPP's Communications Section would be tasked with providing media plans, including social media and radio advertising, for both Bills. The Committee also agreed that the WCPP's Public Education and Outreach unit would be requested to reach out to their network of Community Development Workers and coordinators to attend the public hearings.

The Chairperson noted that the Communications Section had depleted its budget and was unable to fund the paid social media request. After a brief discussion, the Committee agreed that, if it was possible, the funding for paid social media would come from the Committee's budget.


The Committee agreed that three public hearings would be held on the Public Procurement Bill. The areas would include Cape Town, George and Saldanha Bay. The committee further agreed that there would be one public hearing on the National Small Enterprise Amendment Bill in Cape Town. The hearings in Cape Town would take place in person and virtually via MS Teams.

## **5. Resolutions/Actions**

The Committee REQUESTED the following:

- 5.1 The Socio-Economic Impact Assessment reports for the National Small Enterprise Amendment Bill and the Public Procurement Bill; and
- 5.2 The Business Case for the entity as described by the Department of Small Business Development.

The meeting adjourned at 11h08.



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**MS CAT MURRAY, MPP**

**CHAIRPERSON: STANDING COMMITTEE ON FINANCE, ECONOMIC OPPORTUNITIES  
AND TOURISM**

**DATE: 15 April 2024**