

PARLIAMENT OF THE PROVINCE OF THE WESTERN CAPE

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

MONDAY 12 OCTOBER 2020

ANNOUNCEMENT

The Speaker:

Minister of Community Safety

Document referred to committee in accordance with Standing Rule 92:

Standing Committee on Community Safety, Cultural Affairs and Sport

Appointment of new members of the Governing Board of the Western Cape Liquor Authority to fill two vacancies.

COMMITTEE REPORTS

1. (*Negotiating Mandate Stage*) Report of the Standing Committee on Community Safety, Cultural Affairs and Sport on the Recognition of Customary Marriages Amendment Bill [B 12–2019] (NCOP) dated 30 September 2020, as follows:

The Standing Committee on Community Safety, Cultural Affairs and Sport, having considered the subject of the Recognition of Customary Marriages Amendment Bill [B 12–2019] (NCOP) referred to the Committee in accordance with Standing Rule 217, confers on the Western Cape's delegation in the NCOP the authority to not support the Bill.

In terms of the Western Cape Provincial Parliament's Standing Rule 90, the African National Congress and the Freedom Front Plus registered their Minority View to support the Bill.

2. (*Negotiating Mandate Stage*) Report of the Standing Committee on Social Development on the Social Assistance Amendment Bill [B 8B–2018] (NCOP), dated 6 October 2020, as follows:

The Standing Committee on Social Development, having considered the subject of the Social Assistance Amendment Bill [B 8B–2018] (NCOP) referred to the Committee in accordance with Standing Rule 217, confers on the Western Cape’s delegation in the NCOP the authority to support the Bill with amendments. The Committee proposes the following amendments:

1. Definitions

Clause 1 Section 1 of the Act

Definition Clause of the Bill. Insertion of “disaster” and “Independent Tribunal” definitions.

The Western Cape observes the inclusion of the definition “disaster” in section 1 of the Act. This is fundamental in view of the COVID 19 pandemic in South Africa that resulted in most South Africans losing their jobs. The pandemic further left women destitute due to lack of income. The inclusion of disasters under the Social Assistance Bill will go a long way in addressing poverty in women-headed households. It is submitted that the provision of social assistance during the state of disasters should primarily consider the vulnerability of women.

The Western Cape welcomes the inclusion of the Independent Tribunal under section 18 of the Act. To ensure that the Independent Tribunal effectively addresses appeals under section 18 of the Act, the members of the Tribunal must have the necessarily expertise, and this must include expertise of gender-related issues in South Africa. This is key to ensure that the decisions before the Independent Tribunal are gender-sensitive and conscious of the inequalities that exist between men and women in South Africa.

2. Clause 3

Substitution of Section 6 of the Act

The Western Cape observes that the death rate due to various factors in South Africa often results in children being orphaned and consequently requires a primary caregiver. There are reports of abuse of child support grant by care givers. From this premise, the Western Cape welcomes the inclusion of a child who heads a child-headed household, as contemplated in section 137 of the Children’s Act, 2005 (Act No. 38 of 2005) to be eligible for a child support grant.

3. Clause 7

Clause 7 of the amendment Bill in section 18(1) proposes that:

“The Minister must, after consultation with Parliament, appoint an Independent Tribunal”

The Western Cape proposes that the word “Parliament” be deleted and replaced with the relevant portfolio committee (having oversight of the Minister responsible for the Act) in the National Assembly, and the relevant committee of a provincial legislature.

Motivation

Proposed section 18 provides for an amended appeal provision. It is submitted that clarity is required in respect of proposed subsection (1) regarding the appointment of the Independent Tribunal. What constitutes “appropriately qualified persons” will be determined by regulations, as will the consideration of appeals against decisions of the Agency. However, what is not provided is the process by which the Independent Tribunal is appointed. The provision merely states that the Tribunal must be appointed “after consultation with Parliament”.

What process must be followed? Must the Minister advertise for nominations from the public? Can the public object to nominations? What are the timeframes? The role of Parliament in the appointment process is also not clear. Must a list of nominated persons be submitted to Parliament? Can Parliament veto nominations? The provision states that the Minister must appoint the Tribunal “after consultation with Parliament”. This is not the same as “in consultation with”.

The phrase “after consultation with” requires that the ultimate decision must be taken in good faith, after consulting with and giving serious consideration to the views of the other functionary. This contrasts with “in consultation with” another functionary where there must be concurrence between the functionaries. [*McDonald and Others v Minister of Minerals and Energy and Others* 2007 (5) SA 642 (C)] Is it the intention that the Minister must consult Parliament but not be bound by Parliament’s decisions regarding the appointment of the Independent Tribunal? It is submitted that clarity is required in this regard. Consulting with the provincial legislatures will afford these legislatures the opportunity to formally assess and provide comment on the proposed nominations for the Independent Tribunal in the best interests of the provinces and the country.

4. Clause 7

It is proposed that a retired social worker who was registered with a professional body and a legally qualified person should form part of the Independent Tribunal. Furthermore, social workers who are registered with a professional body should be permitted to make representations to the Independent Tribunal on behalf of applicants.

Motivation

The Independent Tribunal must apply Batho Pele principles in its functioning. Having a retired social worker and legally qualified person sitting on the Independent Tribunal will enable them to provide their expertise and objectivity to the proceedings. Having a social worker who is familiar with the requirements for lodging appeals assist applicants to lodge appeals with the Independent Tribunal will hasten the proceedings.

5. Clause 10. (c)

The wording should read:

“The Minister with the concurrence of the Minister of Finance—

(*b*) may determine additional payments linked to a social grant,

by notice in the *Gazette*.”

Motivation

It is submitted that the “by notice in the *Gazette*” contemplated in proposed section 32(3) applies to both paragraphs (*a*) and (*b*) and should therefore be placed on a separate line.