

**STANDING COMMITTEE ON FINANCE, ECONOMIC OPPORTUNITIES AND TOURISM SUBMISSIONS
RECEIVED ON THE NATIONAL SMALL ENTERPRISE AMENDMENT BILL [B 16B - 2023] (NCOP)**



The Standing Committee on Finance, Economic Opportunities and Tourism advertised via paid social media. The call for comment was also released for radio advertising and was advertised on WCPP's social media pages for public knowledge. Additional letters of invitation were sent to all municipalities in the Western Cape as well as additional stakeholders and business chambers in the related sectors. PMG posted the advert on its Call for Comments alert. The Department of Economic Development and Tourism was also requested to send the information to their stakeholder database.

The following written submissions and requests for oral submissions were received:

No.	Oral Sub (Y/N)	NAME	Clause	Comments	Department's Comments

1.	N	City of Cape Town	General	<p>The City appreciates that the amendments, as proposed in the Bill, seeks to foster a more conducive environment for the growth and development of small enterprises. The Bill rightly recognises the critical role of small enterprises as engines of growth innovation, and development, playing a crucial role in fostering inclusive and sustainable economic growth and job creation. Nonetheless, the City would like to note the following areas of concern:</p>	<p>Noted</p>
				<p>The role of local government in relation to this new agency is not spelled out – it is therefore suggested that a brief explanation on how SEDFA will work with local government and other spheres of government, be added.</p>	<p>The functions of the current agencies, i.e. Seda, sefa and CBDA are merged into SEDFA and will not change the how they will work with local government and other spheres of government. Furthermore, the National Integrated Small Enterprise Development (NISED) Strategic Framework requires improved collaboration and cooperation amongst the different spheres of government and ecosystem role-players to support the creation of an optimum environment that supports small enterprise development and growth.</p>
				<p>It is further hoped that the consolidation would lead to SEDFA improving its service delivery and footprint across the City and other under-served areas.</p>	<p>The objective is to ensure that the small enterprise and co-operative ecosystem is able to offer the most efficient business advice and support services.</p>

			<p>Currently small enterprises face major issues of late payment from government entities, insofar as the 30 days standard is often missed. This impacts negatively on the cashflow of these businesses. This needs to be explicitly addressed in the Bill, by amongst other interventions, empowering the Small Enterprise Ombud Service to hold guilty departments and national and provincial treasuries accountable on behalf of small businesses to ensure that this behaviour is corrected.</p>	<p>National Treasury regulations already provide for accounting authorities to be accountable for non-compliance with 30-day payment obligations.</p> <p>The Bill goes further by enabling the Ombud to make binding determinations on late payments. The Bill also stipulates the rights of small enterprises. These rights include the right to be paid on time and to be played interest on late payments.</p>
			<p>Load shedding has a significant negative impact on small enterprises, which are particularly vulnerable to such service delivery failures. Urgent support is required in the immediate term to support small enterprises to adopt to alternative energy options and mitigate the impact of such failures on their sustainability. All spheres of government should support small enterprises that are venturing into the energy supply chain (specifically IPPs) so that, in time, a more secure energy supply would be available as opposed to the current status quo.</p>	<p>Noted and supported. Various initiatives already in place to support this.</p>

			<p>South Africa's rigid labour laws have come under increasing scrutiny over the years by both national and international community – particularly collective bargaining wage agreements made between big business and labour and then extended to non-parties such as small businesses.</p> <p>Mandatory wage increases do not consider the unique characteristics of small enterprises and the viability of small enterprises to survive and compete with their larger enterprises.</p> <p>Emphasis should be given to assessing the impact of laws about business licensing, taxation, employment and planning on SMMEs.</p>	<p>Need for differential treatment important but needs to be balanced.</p> <p>The Department has published a business license policy for public comment. Comments would be greatly appreciated.</p> <p>This is not provisions in the Bill. Objective of public hearings is to comment on the Bill.</p>
			<p>Where possible the Bill should allow for the relevant data to be disaggregated to local government or lower levels.</p>	<p>Annual review, provided for in the Act, are published and made publicly available. Furthermore, pillar one of the NISED Strategic Framework call for improve data on the small enterprise sector for better policy making. This is a key area of improved collaboration amongst the different spheres of government.</p>

		Agency's powers and functions 13	<p>In addition to the functions of the agency also include:</p> <ul style="list-style-type: none"> • Foster economic inclusion by promoting participation in and development of small enterprises in historically disadvantaged and less formal areas. 	This is part of government policy and implemented through various programmes.
		Finances of Agency 15	<p>Finances of Agency</p> <p>It is suggested that the procedures should also set out the service standard, including timeframes for consideration and granting of financial or -non-financial support by the Agency. Alternatively, Section 20 of the principal Act should include reference to defining service standards that the Agencies is required to set, uphold and report on.</p>	Service standards not defined in legislation but will be set by the agency in collaboration with role-players. If so agreed and so required, guidelines or regulations may be developed.

		Jurisdiction for complaints 17 J	Overlap of jurisdiction of Ombud	Section 17X enables the Office to take any steps in line with the Intergovernmental Relations Framework Act, 2005 (Act No.13 of 2005), to facilitate, promote and establish inter-agency collaboration and co-ordination measures including institutional arrangements, agreements and joint programmes with bodies or institutions such as the Competition Commission, Consumer Commission, Companies Tribunal and the Companies and Intellectual Property Commission to avoid the duplication of services and ensure optimal utilisation of existing ADR services.
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No.	Oral Sub (Y/N)	NAME	Clause	Comments	Department's Comments
2.	N	Western Cape Government	General	<p>Thank you for the opportunity to comment on the National Small Enterprise Amendment Bill [B16B — 2023] (the Bill).</p> <p>Please find attached hereto, marked as “Annexure A”, the Western Cape Government’s comments in relation to the Bill for consideration.</p> <p>Although the Western Cape Government supports the establishment of an ombud service for small enterprises, the Bill in its current form cannot be supported as it is seriously flawed and requires extensive revision (as set out in the comments). In addition, the Bill misses an opportunity to address many of the red tape challenges affecting small enterprises, including the administrative and compliance burden associated with doing business. An enabling environment for small enterprises must be created, which includes addressing challenges with regards to business registration, licensing requirements, infrastructure, utilities, taxation, competitiveness conditions, and labour issues.</p>	<p>Red tape reduction provisions are provided for under Chapter 2, as part of the functions of the Advisory Body, and Chapter 4 clause 18. In addition to these legislative provisions various policy and programme interventions at national as well as provincial levels are in place to reduce red tape reduction.</p> <p>Business registration provisions and licensing provisions are not provided for in the National Small Enterprise Act but appropriate legislation such as the Companies Act as well as Business Act 71 of 1991 and Companies Act 71 of 2008.</p>
				<p>It is pointed out that the Bill contains language and drafting errors.</p>	<p>The Bill was certified by OCSLA that the Bill is consistent with the Constitution and properly drafted in the form and style which conforms to legislative practices.</p>

			<p>The establishment of the Ombud service should not come at the cost of the advisory body.</p> <p>Both bodies are vital to the ecosystem within which small businesses operate and may easily feed into each other to facilitate a more conducive environment in which to do business.</p>	<p>The Ombud service not established to replace the advisory body.</p> <p>Advisory body and Ombud service has different functions as stipulated in the Act and Bill.</p>
			<p>17G(7)(c) The Ombud has a wide discretionary power, without any guidance (see <i>Dawood judgment</i>)</p>	<p>During Portfolio Committee responses to comments the Parliamentary Legal Advisor confirmed that the <i>Dawood judgment</i> is not applicable: (a). Dawood applies to the delegation of a legislative function. (b) Dawood deals with human rights being affected and, in those instances, clear guidance must be given to the Minister who is making regulations.</p> <p>s17G sets up an Ombud and gives it powers to do the work it is being set up for. There are no sweeping powers and no legislative powers. It is exactly what Parliament wants the Ombud to do.</p> <p>Furthermore, the Ombud does not make actual regulation, but makes recommendations for amendments to the regulation and policy guidelines.</p>
			<p>It is unclear if a SEIA was conducted, and matter required in terms of SEIAS considered.</p>	<p>A SEIA was conducted, and a certificate issued.</p>

				<p>The Memorandum on the Objects of the Bill refers to a business case (e.g. in paragraph 5). It is unclear whether the above matters have been thoroughly addressed therein. A copy thereof is, therefore, requested.</p>	<p>A Memorandum of Objects has been submitted as part of the required information. Business was developed and submitted to National Treasury.</p>
				<p>Some amendments in the Bill have been made to infer greater involvement of and consultation with provincial authorities.</p> <p>The active participation of provincial authorities should be provided for to give effect to the Bill's implementation.</p>	<p>To further strengthen to participation of provinces the Bill requires that members of the Board for the new Agency must be representative of the 9 provinces.</p>
		<p>Small Enterprise Development Finance Agency Establishment and shareholder of Agency Chapter 3</p>		<p>It is recommended that a clear separation be made of the indicators for financial and non-financial support in order to effectively monitor and evaluate the Agency's support to businesses.</p>	<p>Primary legislation sets the objectives at functions of the agency. Service delivery standards and indicators for monitoring and evaluation for part of the governance of the agency and is not part of legislation. The importance of effective and efficient service delivery is fully supported and needs to be monitored through regulate monitoring and evaluation.</p>

		Agency's powers and functions 13(b)	While uniformly applied, it is recommended that the standard national delivery network undertakes a spatial focus to ensure the Agency's delivery meets the needs of all businesses seeking support.	The objective is to ensure equitable service delivery to avoid unfair and discrimination in service delivery but still based on and informed by the unique service delivery needs for small enterprises in different geographic areas.
			<p>It is recommended that the Bill prescribes the skills composition of the Board.</p> <p>The proposed section 11(3), empowering the Minister to obtain a court order to circumvent the recommendation of the Board, should be removed.</p>	<p>The Bill provides for a transparent process for the selection of Board members that includes a matrix of agreed skills. Skills, knowledge and experience requirements should be informed by the objectives of the Agency.</p> <p>Reasons needs to be provided for the rationale for the removal of section 11(3).</p>
		Dispute Resolution Mechanism Establishment of Office of Small Enterprise Ombud Service Chapter 3A	<p>Establishment of Ombud service</p> <p>It is recommended that the compensation of employees' budget is not placed under further pressure to set up the new offices.</p> <p>Further, where regional offices are established, it is recommended that consideration be given to the creation of provincial offices with extended service reach via digital infrastructure.</p>	Deputy Ombuds will be appointed on a need's bases. This is informed by best practice and guidance by the DPSA.
		Appointment of Ombud and deputy Ombud	<p>Appointment of Ombud and Deputy Ombud</p> <p>It is recommended that the Bill be revised to make provision for an acting Ombud, in the event that the</p>	The Bill provides for the appointment of a Deputy Ombud who can act as Ombud is required.

		17 F	<p>incumbent is unable to perform his or her duties due to illness, vacation, etc.</p> <p>That the Bill stipulate the minimum years of practical experience etc.</p> <p>It is recommended that more details be provided in relation to the appointment process. Is this not a function of National Parliament?</p>	<p>Bill provides for the appointment of the Ombud and deputy Ombuds by the Minister.</p> <p>Open and transparent appointment processes must be followed.</p>
		17F(5)	Tt is proposed that the remuneration should not exceed that of level 15 / Deputy Director-General.	Bill stipulated that the remuneration and other terms of appointment of the Ombud and a deputy Ombud must be determined by the Minister, in consultation with the Minister of Finance. This is in terms of normal practice.
		Powers and functions of Ombud 17G (1) (a)	<p>The proposed section 17G(1)(a) refers.</p> <p>The proposed section uses the word adjudicate while noting that complaints must be dealt with via Alternative Dispute Resolution (ADR).</p> <p>The words “adjudicate” and “adjudication” denote a process that is not part of ADR. ADR is specifically intended to amicably resolve disputes without adjudication. The proposed section is thus ambiguous and must be amended.</p>	The Bill was certified by the OCSLA as consistent with the Constitution and properly drafted in the form and style which conforms to legislative practices.

		17G (1)(c)	<p>It is unclear why the word “decide” was used. In the proposed section 17G(1)(c), it is stated that the Ombud must consider and approve the strategic plan of the Office.</p> <p>The proposed section 17G(1)(e) states that the Ombud must “prepare reports on a quarterly basis on the nature and progress on all complaints and investigations for submission to the Minister and Parliament”.</p> <p>It is recommended that the proposed section 17G(1)(c) be revised to state that the Ombud must consider and approve all capital acquisitions.</p> <p>Further, is it not rather the job of the Director to do these reports and they are then approved by the Ombud?</p>	<p>The Bill was certified by the OCSLA as consistent with the Constitution and properly drafted in the form and style which conforms to legislative practices.</p> <p>The office and director provides administrative support to the Ombud. The Ombud remains accountable.</p>
		17G (4) (b)	<p>Reference is made to the following wording: “in the manner he or she deems fit” and “when he or she deems it fit but as soon as possible”.</p> <p>The proposed wording is broad and vague and thus open to interpretation, potential abuse, and delays. It is thus recommended that the wording be amended to stipulate a specific time frame or empower the Minister to set a specific time frame in Regulations.</p>	<p>The Bill was certified by the OCSLA as consistent with the Constitution and properly drafted in the form and style which conforms to legislative practices.</p>

			17 G (7)(c)	<p>The proposed provision states that “[a] report or finding, recommendation or determination in respect of an investigation by the Ombud must be open to the public...”.</p> <p>It is recommended that a time frame be specified regarding the length of time within which the document is to be made available.</p>	<p>The Bill was certified by the OCSLA as consistent with the Constitution and properly drafted in the form and style which conforms to legislative practices.</p>
			Determination s by Ombud 17M(1)(a) and(b)	<p>The proposed section 17M(1)(a) and (b) provide that the Ombud may make a final determination on the merits of a complaint that was not amicably resolved. This therefore implies that the Ombud will have adjudication powers. The proposed section is, however, silent on what process will be followed by the Ombud when making such a determination. Will this determination be made after a hearing where oral evidence.</p>	<p>The Ombud will make determinations and copies of determinations and reasons must be submitted to Court that that, under normal litigation processes, would have adjudicated over the matter.</p> <p>The Bill was certified by the OCSLA as consistent with the Constitution and properly drafted in the form and style which conforms to legislative practices.</p>
			Staff of Office 17N(4)(a)	<p>It is proposed that the remuneration should not exceed that of a level 14 / Chief Director.</p>	<p>The determination of remuneration levels in collaboration with Minister of Finance is done in terms of agreed remuneration practices.</p>

		Accountability 17Q(3)	<p>The proposed provision states as follows: “[w]ithin three months after the end of each financial year, the director must prepare financial statements in accordance with established accounting practice, principles and procedures...”.</p> <p>It is recommended that this period be aligned to the two months for national departments as provided for in section 40(1)(c) of the Public Finance Management Act, 1999 (Act 1 of 1999) (the PFMA).</p>	<p>The Bill state the accountability should be aligned to PFMA requirements</p>
		Regulations applicable to Ombud 17S(1)(b)	<p>The Bill should provide guidance on the types of case fees that the Office may charge.</p>	<p>17 S enables the Minister to make regulations. The process for making regulations allows for transparency and public comments and inputs.</p>
		Record-keeping 17T(2)	<p>The proposed section states as follows: “Any interested person may, subject to the discretion of the Ombud and applicable regulations of confidentiality, obtain a copy of any record on payment of a fee determined by the Ombud”.</p> <p>It is unclear whether the provisions of the Promotion of Access to Information Act, 2000 (Act 2 of 2000) (PAIA), were considered in the drafting of this provision. PAIA regulates access to records of public and private bodies.</p> <p>It is unclear how the proposed section is intended to be implemented, given the provisions of PAIA.</p> <p>In the circumstances, it is recommended that this provision be reconsidered with due consideration to the provisions of PAIA and that the matter be clarified.</p>	<p>The Bill was certified by the OCSLA as consistent with the Constitution and properly drafted in the form and style which conforms to legislative practices.</p>

			17 U Annual Report of Ombud	<p>The three-month period in the proposed section 17U(1) refers.</p> <p>This period should be aligned to the two months for national departments as per section 40(1)(c) of the PFMA.</p>	<p>The Bill states that the Ombud is subject to PFMA. The Ombud thus needs to comply with PFMA requirements for ADR bodies.</p>
			17 W Promotion of stakeholder education	<p>It is noted that the Office may take any steps conducive to stakeholder education and the promotion of awareness of the nature and availability of the Ombud.</p> <p>This appears, almost, a cursory inclusion; despite the immense value to be drawn from the Ombud service. What good is the service if the beneficiaries of the work are not aware of it?</p> <p>In the circumstances, this proposed section requires greater detail in respect of how the Ombud should engage with stakeholders.</p>	<p>The Bill provides for the provision of stakeholder education by the Ombud and as such the Ombud will have to report in terms of this responsibility. Based on reports and evidence this can be strengthened. Education is however a shared responsibility that should be executed at all spheres of government.</p>
			17 X Promotion of inter-agency co-ordination and collaboration	<p>The proposed section 17X should be expanded to more expressly outline the nature and scope of the inter-agency coordination and collaboration to promote the principles and objectives of the Bill.</p>	<p>The objective is to make provision for the promotion of inter-agency coordination and collaboration as provided for in terms of existing legislation and not to be prescriptive especially given that the Ombud will be newly established with no evidence to inform such detail.</p>

			<p>This proposed provision prohibits unfair trading practices.</p> <p>Although laudable, the proposed section appears to be shoehorned into the principal Act. On the face of it, it appears to encroach on the jurisdiction of the Department of Trade Industry and Competition (the DTIC) and the Competition Commission, which are mandated and duly resourced to investigate claims of unfair trading practices.</p> <p>While the need to protect small businesses is clear, it should not take the form of duplicating already existing functions currently carried out by other departments or organs of state.</p> <p>Section 17Y(1)(c) seems to envisage this in the way that it requires the Minister at DSBD to consult the Minister at DTIC before issuing a Notice on unfair trading practices.</p> <p>There exists the potential for unnecessary tension between the two departments when carrying out overlapping functions and investigations in respect of trading practices which are unfair to small businesses. To avoid this, the Ombud service should look to provide support where necessary to those Competition Commission inquiries which affect the rights and interests of small businesses.</p> <p>The proposed section 17Y is wide and has the potential to cause unintended consequences.</p> <p>The descriptions of some of the practices that could be declared unfair trading practices are very wide or</p>	<p>It was confirmed during consultation with the Department of Trade, Industry and Competition and in writing by the Competition Commission that the provisions under section 17 Y does not duplicate provisions under the Department of Trade, Industry and Competition or the Competition Commission.</p> <p>It was also confirmed that the Bill sets the parameters for the Minister, on recommendation of the Ombud, to act in terms of the provision, that it is aligned to good legislative practice.</p> <p>The Bill states that the Ombud is subject to PFMA. The Ombud thus needs to comply with PFMA requirements for ADR bodies.</p>
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				<p>unclear e.g. “ambiguous contract terms” and “reasonable payment date”.</p> <p>The principles that are intended to guide the Minister and the Ombud are similarly wide and unclear e.g. “the practice concerned, directly or indirectly, has or is likely to have the effect of...deceiving any small enterprise”. This could lead to difficulties in interpretation and implementation by the Minister and the Ombud.</p>	
		<p>19 National Review of Small Enterprises</p>		<p>It is not clear from the wording whether the review is a standing requirement that must be produced on request by the Minister, or whether a review shall only be performed on request by the Minister.</p>	<p>This is a provision under the Act. The Act currently requires annual review to be conducted annually. Evidence proved this to be practically impossible to commission and execute annual reviews. The provision is amended to ensure that it will be practical to execute and not create unrealistic expectations.</p> <p>These reviews are made publicly available and are published on the Department website.</p>

3.	Y	Kennedy Ramatsoa	General	<p>Transformation requires action. The community needs to take part in changing the business structure within townships and rural areas. Even if you have brilliant ideas, without direction, you will not go anywhere. We need good and concise leadership that understands us and shows us where we are headed. The Office of the Ombudsman will bring that into practice, and into reality.</p> <p>The youth is here to offer our services. There is a new generation of young people that does not want to be paid for services; we want to rebuild our country. We want to make South Africa great again. We want to be part of the decisions.</p> <p>We believe that there should be an ECG monitoring of big businesses. We welcome that you are forcing big companies to do business with small businesses. But, as I said we need more leadership.</p> <p>We need to encourage cooperatives. Many brands are able to come together and sell their brands as a unit. This is strength and this is what is called Amandla.</p> <p>I would suggest that there is ECG monitoring of how businesses can offset their carbon emissions and water usage. They can do so by mentoring small businesses, especially businesses from townships and other areas classified as villages. I believe that this will allow those</p>	<p>Youth is one of the priority focus areas for Government and various policy and programme interventions are in place that focus on youth development. The Department of Small Business Development reports on youth support in terms of all its programme outcomes to ensure that dedicated targeted support is provided to youth.</p>
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4.	N	George Municipality	Promotion of inter-agency coordination and collaboration	<p>Promotion of inter-agency coordination and collaboration</p> <p>17X. The Office may take any steps in line with the Intergovernmental Relations Framework Act, 2005 (Act No.13 of 2005), to facilitate, promote and establish inter-agency collaboration and co-ordination measures including institutional arrangements, agreements and joint programmes with bodies or institutions such as the Competition Commission, Consumer Commission, Companies Tribunal and the Companies and Intellectual Property Commission.</p> <p>Page-17</p> <p>The intergovernmental structures are meant to create a shared space for collaboration, however, it cannot function properly without strict monitoring and communication to ensure consistency and continuity.</p>	<p>Recommendation noted.</p> <p>The National Integrated Small Enterprise Development (NISED) Strategic Framework, confirmed as the National Strategy for Small Enterprise Development underpin and support the this the need for intergovernmental collaboration and coordination to address problems of fragmentation and duplication and the design for better targeted tailor-made support interventions for small enterprises. It furthermore also calls for the mobilisation of available resources in the small enterprise ecosystem to create an enabling environment that encourage ecosystem role-players to work with government and each other, direct role-payers to forge practical partnerships to scale up access to markets, access to finance and business development services.</p>

		National Review of Small Enterprises	<p>National Review of Small Enterprises</p> <p>19. (1) The Director-General must, at the request of the Minister, compile a review called the National Review of Small Enterprises which must cover areas defined by the Minister or the Director-General, including—</p> <p>Page – 18</p> <p>Add –</p> <p>(f) Reports on the challenges or barriers faced by the small businesses, and recommendations of possible solutions.</p>	<p>Recommendation noted. Barriers and constraints faced by small enterprises are key focus areas of annual reports as well as feedback from on possible recommendations to address and overcome these barriers or challenges.</p> <p>Furthermore, the functions of the Advisory Body include to advise Minister on constraints and barriers faced by small enterprises.</p>
		1.1 Establishment of SEDFA	<p>Upon the establishment of the SEDFA, it advised that a red tape reduction unit be established within the agency to route out delays and unnecessary long processes to financial assistance applications.</p> <p>SMME's are still struggling to access funds through SEFA and NYDA due to cumbersome processes that drains the energy and interests of entrepreneurs. The incorporation of the red tape reduction unit will assist the agency in approving applications quickly and efficiently.</p>	<p>The Department has a dedicated unit working on red tape reduction that covers legislative impediments as well as administrative simplifications. These interventions are coordinated through role-players including government agencies such as Seda, sefa and the CBDA that will be merged into SEDFA.</p>