**HYDRORAPHIC BILL [B 17 – 2018]**

**COMMENTS / NOTES**

**Processing:** The was tagged as a section 75 Bill, which means that when it goes to the NCOP for consideration that House does not have to vote per Provincial mandate, but can consider the Bill and make proposed amendment suggestions to the NA if it so wishes.

**Public Participation:** The Constitutional Court has made it clear that it does not prescribe the format that public participation should take, but merely (as per the Constitution) requires that Parliament, through its Committees as extensions of the Houses, facilitates public participation to allow for an opportunity for sufficient engagement on the content of a Bill. The content of the Bill (i.e. how technical or how broad in reach it is) will determine the type of public participation required. As the Hydrographic Bill is extremely narrow (office specific) and technical, and as there was a call for written submissions and two such were received, there is no obligation on the Committee to hold public hearings if it deems the written submission sufficient or if it does not deem it necessary that a specific interest group should be invited to address the Committee on the Bill.

The two submissions received do not appear to propose anything that looks to be problematic from a legal perspective. But, it may from a content perspective be open to scrutiny and ultimately it is a policy decision of the Committee whether these proposals should be included in the Bill. For this reason it is not reflected in the clause by clause legal/drafting comments below.

**Clause 1:** From a drafting perspective there should be an ‘and’ included on page 3, in line 24, after ‘thereunder;’. The exclusion of the ‘and’ however does not change the meaning or cause ambiguity in the interpretation of the clause. Such would merely be a technical correction.

**Clause 2:** Outlines the objects of the Act. No legal comments. Policy consideration required.

**Clause 3:** Formalises the Office which is already in existence and functional. No legal comments. Policy consideration required.

**Clause 4:** Technical outline of the functions associated with the Office in question. No legal comments. Policy consideration required.

**Clause 5:** Outlines the appointment procedure and conditions of service. From a drafting perspective there should be a ‘,’ on page 4, in line 18, after the word ‘service’. The exclusion of the ‘,’ however does not change the meaning or cause ambiguity. No further legal comments. Policy consideration required.

**Clause 6:** The clause outlines the control and management considerations in relation to the Hydrographic Office. No legal comments. Policy consideration required.

**Clause 7:** The clause outlines the powers and duties of the Hydrographer. No legal comments. Policy consideration required.

**Clause 8:** In the previous meeting, the Committee expressed concern with the fact that ‘Any person’ used in clause 8 (to create an obligation in terms of the submission of hydrographic data) may be too broad. Inserting the word ‘knowingly’ after ‘who is’ on page 5, in line 18, may address this concern. No further legal comments. Policy consideration required.

**Clause 9:** The clause addresses technical issues re survey marks. No legal comments. Policy consideration required.

**Clause 10:** In the precious meeting, the Committee expressed concern as to the potential ambiguity in the regulation of archiving in this section. This concern can potentially be addressed by means of a cross reference to the Defence Act and the National Archives of South Africa Act by merely including a subsection (3), that reads as follows:

(3) Subsections (1) and (2) find application subject to the Defence Act and the National Archives of South Africa Act, 1996 (Act 43 of 1996).

No further legal comments. Policy consideration required.

**Clause 11:** The clause addresses issues re copyright. No legal comments. Policy consideration required.

**Clause 12:** The clause makes provision for the limitations of civil liability. Subsection (1) is not easily readable, as it contains multiple elements in one sentence. The following redraft would be proposed to break down the issues addressed in the subsection:

12(1) In the event of gross negligence or a wilful act or omission relating to use of any nautical publication or nautical charts produced and sold by the Hydrographic Office, the Hydrographic Office or an employee of the Hydrographic Office is liable for—

*(a)* loss or damages resulting from bodily injury;

*(b)* loss of life; or

*(c)* damage to property,

to any person or to a dependant of such person.

*[Note: “relating to” encapsulates “caused by or arising out of or connected with” in a simplified manner and in line with the Plain Language drafting guidelines.]*

No further legal comments. Policy consideration required.

**Clause 13:** The clause addresses issues relating to funding. No legal comments. Policy consideration required.

**Clause 14:** The clause articulates an obligation for co-operation agreements. No legal comments. Policy consideration required.

**Clause 15:** The clause puts in place an annual report obligation. No legal comments. Policy consideration required.

**Clause 16:** This clause empower the Minister to put in place regulations to aid in the application of the Bill once enacted.

**Clause 17:** The clause puts in place certain transitional arrangements. No legal comments. Policy consideration required.

**Clause 18:** Short title. No legal comments. Policy consideration required.