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PORTFOLIO COMMITTEE ON DEFENCE AMENDMENTS TO THE HYDROGRAPHIC BILL [B17B – 2018]¹

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1. INTRODUCTION

The Minister of Defence and Military Veterans introduced the Hydrographic Bill [B17 – 2018] in Parliament on 20 June 2018, to be dealt with in terms of section 75 of the Constitution². The Bill *inter alia* aims to (a) give legislative status to the Office of the Hydrographer (located within the South African Navy since 1954) by establishing the Hydrographic Office of the Republic and (b) align South Africa’s domestic law with its international obligations to monitor maritime safety in terms of the United Nations International Maritime Convention.

The Portfolio Committee on Defence and Military Veterans (“PC”) reported the Bill with amendments on 14 September 2018.³ The Hydrographic Bill [B17B – 2018] is now before the Select Committee on Justice and Security for consideration (“SC”).

2. OBJECTIVES OF THE HYDROGRAPHIC BILL [B17B – 2018]

The Objects of the Bill⁴ are to:

- (a) **Provide** for the (i) establishment of the Hydrographic Office; (ii) appointment of the Hydrographer; (iii) powers and duties of the Hydrographer and (iv) safety of navigation in the exclusive economic zone and the internal waters of the Republic; and
- (b) **Ensure** that hydrographic surveying is carried out in accordance with internationally accepted specifications and standards.

3. PUBLIC SUBMISSIONS RECEIVED AND PORTFOLIO COMMITTEE PROCESS

- The PC received only two written submissions, from Associate Prof J F Whittal (UCT) and Mr Stefan van Veenendaal (UCT), possibly due to the technical nature of the bill.

¹ Members are also referred to the paper by Peter Daniels, which provides background information on hydrography and the functions of the hydrographer.

² Constitution of the Republic of South Africa, 1996

³ Parliament of South Africa (2018a)

⁴ Clause 2 of the Hydrographic Bill.



- The PC did not hold public hearings as both submitters were unavailable for oral presentations.
- Nevertheless, the PC amendments to the Bill largely emanated from the two written submissions and input from the Department of Defence and the Parliamentary Legal Advisers.
- **Generally, the proposed amendments concerns the insertion of certain definitions and the correction of terms and legislation referred to in the Bill. These included the definition of “Hydrographic Surveyor”** as being registered in terms of the *Geomatics Profession Act 19 of 2013*, and not the *Professional and Technical Surveyors Act* as stated in the introduced version of the Bill.

4. SELECTED DEFINITIONS IN THE HYDROGRAPHIC BILL (CLAUSE 1)

- **“Hydrographer”** means the person appointed in terms of section 5⁵ to head up the Hydrographic Office established in the Bill. Clause 5 of the Bill requires that this person must have practised for at least 10 years as a Hydrographic Surveyor.
- **“Hydrographic Surveyor”** means any person who studied and practises the science of hydrography, and who is registered **in terms of the Geomatics Profession Act 19 of 2013**. *This was one of the amendments flowing from both submissions.*
- **“Hydrographic surveying”** means surveying for determining hydrographic data.
- **“Hydrographic data”** means all data obtained from the measurement and description of the physical features of the exclusive economic zone, all internal waters and adjacent terrain, including the depth of the water, configuration and the nature of the topography beneath, the direction and force of currents, heights and times of tides and water stages, location of topographic features and fixed objects for survey and navigation.
- **“Navigational warning”** means a broadcast message that conveys navigational information.
- **“NAVAREAs”** are the geographic areas in which various governments are responsible for navigational warnings. *There are 21 NAVAREAs and South Africa is responsible for NAVAREA VII. Navigational warnings include coastal weather warnings.*⁶
- **“User”** means any person who obtains through purchase, or otherwise, information from or products of the Hydrographic Office, or who pays for the services of the Hydrographic Office.⁷ *This was one of the amendments flowing from the submissions which pointed out that users went beyond those who paid for Hydrographic services.*

⁵ Clause 5 of the Bill.

⁶ South African Navy Hydrographic Office (2018).

⁷ Users of hydrographic data include navigators, legislators, planners and researchers. The Hydrographic Office generates income mainly through sales of products, data usage agreements and data from other hydrographic institutions. In 2015/16 the office generated R8.5 million; R9.02 million in 2016/17; and R9.05 million in 2017/18. However, the Hydrographic Office does not have access to any funds, which all goes to the central revenue fund. Operating costs were R6.3 million, R2.9 million and R2.8 million for the three years, respectively. The Hydrographic Office does not have access to any funds – these go directly to the central revenue fund.



5. MAIN PORTFOLIO COMMITTEE AMENDMENTS

The following table sets out selected comments/concerns raised in respect of specific clauses in the Bill:

SELECTED COMMENTS / CONCERNS RAISED ON ORIGINAL BILL [B17 – 2017]		DEPARTMENT RESPONSES / AMENDED BILL [B17B – 2017] VERSION
<p>S van Veenendaal; J F Whittal</p> <hr/> <p>J F Whittal</p>	<p style="text-align: center;"><u>Clause 1 (definitions)</u></p> <ul style="list-style-type: none"> Amend “Hydrographic Surveyor” to refer to a person who studied and practises the science of hydrography, and who is registered in terms of the Geomatics Profession Act 19 of 2013. <hr/> <ul style="list-style-type: none"> Navigation should include air, land and sea. Amend definition of hydrographic data to read physical features of the sea and adjoining coastal zones with reference for the purpose of offshore navigation. Amend the definition of “user” to clarify that there are users that do not purchase information. 	<p style="text-align: center;"><u>Clause 1 (definitions) amended</u></p> <ul style="list-style-type: none"> Definition amended by replacing the reference to the Professional and Technical Surveyors Act with Geomatics Profession Act 19 of 2013. <hr/> <ul style="list-style-type: none"> The Department rejected the proposal, because the Bill deals with navigation of the sea. The Department accepted the proposal but proposed the definition of hydrographic data used by the International Hydrographic Organisation (IHO). The definition of “user” was amended to include third party subscribers to the field of hydrography.
<p>J F Whittal</p>	<p style="text-align: center;"><u>Clause 4</u></p> <ul style="list-style-type: none"> Include in Section 4(c) the determination of the positions of the low water line and straight base lines. 	<p style="text-align: center;"><u>Clause 4</u></p> <ul style="list-style-type: none"> The Department rejected the proposal, as this is inherent in the functions of hydrographic data capturing. The Hydrographer cannot produce a chart without having tidal information.
<p>J F Whittal</p>	<p style="text-align: center;"><u>Clause 7</u></p> <ul style="list-style-type: none"> Beach is not the seashore, but the land above the high-water mark used for public purposes such as parking, ablutions, etc. Replace ‘beach’ with “sea-shore” Add ‘coastal’ before word ‘reserve’ Delete ‘ocean’ and replace with ‘sea’ 	<p style="text-align: center;"><u>Clause 7</u></p> <ul style="list-style-type: none"> Amended as proposed. Rejected – “coastal reserve” too restrictive. Hydrographic data also applies to topographic features in areas like dams and rivers where vessels can sail. Ocean substituted with “internal waters”.
<p>J F Whittal</p>	<p style="text-align: center;"><u>Clause 8</u></p> <ul style="list-style-type: none"> Clearly define the separation of powers and responsibilities between the Minister of Defence (per Maritime Zones Act), the Minister of Environmental Affairs (per Integrated Coastal Management Act), the 	<ul style="list-style-type: none"> The proposal was to a certain extent taken up in Clause 14. The amendment, however, does not refer to the separation of powers or mention the departments proposed in the submission. The amended Clause 14 merely provides that the Secretary of Defence “may” enter into agreements with “other



	<p>Minister of Transport (per Hydrographic Bill), and the Minister of Rural Development and Land Reform regarding:</p> <ul style="list-style-type: none"> • Surveying of the low-water line (normal baselines) and low-water mark. • Determining basepoints of straight baselines and the boundaries between adjacent States (Departments need to cooperate to determine the median lines between adjacent States). 	<p>interested parties” on matters of joint interest that may arise from the implementation of the Act.</p> <ul style="list-style-type: none"> • Only the Department of Transport is directly referred to as a department with which the Secretary of Defence “must” conclude a co-operation agreement.
<p>S van Veenendaal</p>	<p style="text-align: center;"><u>Clause 14</u></p> <ul style="list-style-type: none"> • Provide for an implementation protocol between the Departments of Defence, and Rural Development and Land Reform to assist the Hydrographer and the Chief Director (National Geospatial Information) with possible spatial data similarity and overlaps and to facilitate the Hydrographer’s spatial data in the Southern African Infrastructure, as provided by the Spatial Data Infrastructure Act 54 of 2003. 	<p style="text-align: center;"><u>Clause 14</u></p> <ul style="list-style-type: none"> • Proposal accepted to a certain extent, as the amendment does not refer to other Departments except the Department of Transport (not mentioned in the submission). • The amended Clause 14 provides that the Secretary of Defence must enter into co-operation agreements with the Department of Transport and may enter into such agreements with other interested parties in respect of matters of joint interest that may arise from the execution of the Act.
<p>Additional amendments proposed the PC</p>	<ul style="list-style-type: none"> • Long Title • Clause 8(1) and 9(2) to include a penalty and offence for any person who fails to convey information regarding navigational dangers to the Office of the Hydrographer. 	<p style="text-align: center;"><u>Amended Long Title</u></p> <p>To provide for the establishment of the Hydrographic Office; to provide for its objects, functions and the manner in which it is to be managed; to provide for the appointment and powers of the Hydrographer and the staff in the Hydrographic Office; to regulate the submission of hydrographic data; to regulate the manner in which hydrographic survey marks and copyrights may be protected; to provide for the limitation of civil liability; to provide for the manner in which the income of the Hydrographic Office must be dealt with; to provide for co-operation agreements and to provide for matters connected therewith.</p> <p style="text-align: center;"><u>Clause 8</u></p> <p>8.(1) Any person identified by the Hydrographer from time to time by notice in the <i>Gazette</i> must communicate and submit any information in his or her possession regarding anything that poses a navigational danger and is relevant to or has an influence on the safety of navigating the area contemplated in section 2(b).</p> <p>(2) Any person contemplated in subsection (1) who fails to communicate or submit information is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.</p>



	<ul style="list-style-type: none">• Clause 12(1) to provide for the liability of the Hydrographic Office and its staff for gross negligence or a willful act or omission relating to the use of any of the nautical publications or charts produced by the Hydrographic Office.	<p style="text-align: center;"><u>Clause 12(1)</u></p> <p>12.(1) In the event of gross negligence or a wilful act or omission relating to the 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—</p> <ul style="list-style-type: none">(a) loss or damages resulting from bodily injury;(b) loss of life; or(c) damage to property, <p>to any person or to a dependent of such person.</p>
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6. SOURCES

Constitution of the Republic of South Africa, 1996

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