

Report of the Portfolio Committee On Small Business Development Public Hearings on the National Small Enterprise Amendment Bill [B16 – 2023] In all Provinces From 26 October to 23 November 2023, as well as in Parliament On 28 November 2023, Dated 30 November 2023.

1. INTRODUCTION

The Portfolio Committee on Small Business Development (“the Committee”) recently concluded the countrywide public hearings on the National Small Enterprise Amendment Bill (2023). The Minister of Small Business Development introduced the National Small Enterprise Amendment Bill [B16 - 2023] (“the Bill”) to Parliament on 29 June 2023 in accordance with Joint Rules of Parliament Rule 159 (1) (a) and (b). The Bill was given the green light by the Cabinet for introduction to Parliament on 7 June 2023. The notice and an explanatory summary of the Bill were published in the Gazette as required by Rules of the National Assembly 276 (b) and (c) on 12 June 2023. Accordingly, the Parliament was satisfied that the Department had adhered to the fundamental principles of tabling the bill before it.

1.1 Background

Before the introduction of the Bill in Parliament, the Committee had resolved on 7 September 2022 to initiate the Committee Bill in order to amend the same National Small Enterprise Act, 1996. On 22 February 2023, a memorandum was submitted to the Speaker in accordance with National Assembly Rule 273(1) to obtain authorisation from the House to institute and introduce the Bill. On 2 May 2023, the National Assembly considered and granted permission to the Portfolio Committee in accordance with Rule 273(3) to proceed with the legislative amendment. However, after the Minister introduced the National Small Enterprise Bill in Parliament, the Committee had to determine whether to proceed with its own Committee Bill or allow the Executive Bill to pass. It then voted to allow the Executive Bill to proceed on condition that contents of the Committee Bill shall be incorporated into the Executive Bill.

The Executive Bill was introduced in the National Assembly as an ordinary Bill that has no bearing on the provinces (NA - Section 75). The Bill was subsequently referred to the Committee and the Joint Tagging Mechanism (“the JTM”) for further processing. It however, in terms of Joint Rule 160 (4), found that the Bill substantially impacts the interests, concerns and capacities of provinces as it proposes a new system where certain trade practices are (and may still be) declared prohibited trade practices within the small enterprises sector. The JTM decided that the Bill has an impact on Schedule 4 of the Constitution in the concurrent functional area of “trade”. Procedurally, the JTM may classify the Bill as a constitutional amendment under section 74 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”), an ordinary Bill under section 75 of the Constitution, an ordinary Bill affecting provinces under section 76 of the Constitution, and a money Bill under section 77 of the Constitution. The revision to the categorisation of the Bill necessitated the Committee Secretariat to adjust the Committee's programme in order to meet section 76 criteria, which include, among other things, the public participation process.

1.2 The Purpose of the Report

The aim of this report is to therefore provide a brief overview of the steps taken prior to, during and after the referral of the Bill to the Committee for processing. Most notably, the report systematically outline the process of public participation as stipulated in Sections 59 and 72 of the Constitution public, as well as three major case laws that have come to govern how public facilitation should be carried out. In particular, the *Doctors for Life International v Speaker of the National Assembly CCT [2006] ZACC 11 (Doctors for life)*, *Land Access Movement of South Africa and Others v Chairperson of the National Council of Provinces and Others [2016] ZACC 22 (LAMOSA)* and *Mogale and Others v Speaker of the National Assembly and Others [2023] ZACC 14 (Mogale)* have considerable impact on the public participation process.

Furthermore, the 2013 Public Participation Framework for the South African legislative sector (often referred to as the Legislative Sector Public Participation Framework) remains the most important guideline which established norms and criteria for public participation within the legislative sector. The Portfolio Committee held public hearings in all nine provinces to receive input directly from the public. Consequently, the auxiliary objective of this report is to highlight the primary issues expressed throughout the public engagement process in order to bring those into the record. It will reference issues raised during the oral submissions held via virtual platform on 28 November 2023. The report further provides a summary of written submissions received from various interested parties, a clause-by-clause analysis, and proposals made in response to public comments on the National Small Enterprise Amendment Bill [B16 - 2023]. The Committee recognises that citizens' involvement in

public policy is a necessary component of democracy. It is therefore confident and pleased that its approach to these public hearings was exceptional, fulfilled all of the requirements and met the constitutional barometer.

2. HISTORICAL CONTEXT

The South African economy has risen tremendously since the National Small Enterprise Act was promulgated in 1996. New sectors have emerged, such as information and communication technology (ICT), while others, such as mining, have emaciated. The economy has become more sophisticated and characterised by complex challenges that necessitate the review of the legislation. In 1995, the South African government issued the White Paper on National Strategy for the Development and Promotion of Small Businesses in South Africa, which became the first attempt to pursue a more integrated approach to the development and support of small enterprises. The White Paper acknowledged a variety of constraints confronting small businesses, such as the legal and regulatory environment, market access, and access to capital to name the few. Its principal goal was to foster an enabling environment for small businesses. The White Paper was then converted into the National Small Enterprise Act No. 102 of 1996. To date, the Act has been amended twice: once in 2003 to “repeal all provisions pertaining to the National Small Business Council and to empower the Minister to establish an Advisory Body to represent the interests of small business”, and again in 2004 to “provide for the establishment of the Small Enterprise Development Agency and to repeal all provisions pertaining to the Ntsika Enterprise Promotion Agency”.

3. OVERVIEW OF THE NATIONAL SMALL ENTERPRISE AMENDMENT BILL

The Bill before Parliament proposes amendments to the National Small Enterprise Act 102 of 1996 in order to provide for the establishment and registration of the Small Enterprise Development Finance Agency (SEDFA) in line with the Companies Act 71 of 2008, and the resultant incorporation of the Small Enterprise Financing Agency (Sefa), the Co-operative Banks Development Agency (CBDA) and the Small Enterprise Development Agency (Seda) with a vision of creating a one stop shop for aspiring entrepreneurs as well as the promotion and development of Co-operative Banking Institutions (CBIs). The two agencies, Seda and Sefa currently resides within the Department of Small Business Development. They are both incorporated in terms of the Companies Act (2008) and Public Finance Management Act (1999). While The CBDA is a statutory agency registered as a public entity in terms of section 3 (a) of the Public Finance Management Act.

The second most important aspect of the Bill is the creation of the Office of the Small Enterprise Ombud Service (“the Office”). Small enterprise firms do not compete on an equal footing with large companies and the government. Big firms, in particular, utilise their financial clout to harass and bully small enterprises without recourse. Bureaucratic inefficiencies from the state, on the other hand, undermine the goals of preferential procurement. Poor understanding of the best practices in procurement/invoicing/contracting, particularly among small and medium-sized businesses leads to needless, costly, and protracted disagreements. Available dispute resolution mechanisms i.e. internal company/government processes, the courts and arbitration services are failing to serve the interest of small businesses. The two proposals are long-standing recommendations of the Committee having observed over time that small enterprises get the short end of the stick both from the private sector and state organs.

In addition, the Bill proposes to empower the Minister to declare certain practices in relation to small enterprises to be prohibited as unfair trading practices and make regulations with regard thereto. Lastly, the Bill’s objective is to amend section 20(2) of the Act to align it with a recent Constitutional Court decision. This amendment is meant to bring the provisions of the Act in line with the decision in *Smit v Minister of Justice and Correctional Services and Others*, where the Constitutional Court declared section 63 of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992) to be inconsistent with the Constitution of the Republic of South Africa, 1996, and invalid to the extent that it purports to delegate plenary legislative power to amend Schedules 1 and 2 to the Drugs and Drug Trafficking Act to the Minister of Justice and Correctional Services.

4. APPROACH AND METHODOLOGY TO PUBLIC HEARINGS

Following the designation of the Bill as Section 76, the sphere of attention became the public participation process. As previously indicated, the process of public participation is regulated by various prescripts and guidelines. The mandate for public engagement originates from Parliament's constitutional responsibility to open up its proceedings to the public. However, the courts have

moreover accentuated a number of areas that Parliament must pay particular attention to when conducting effective public participation. This is with a view to guide and ensure that processes validate and give effect to the constitutional commitment of Parliament. These factors and many other considerations had a great impact on the development of a project management methodology. The National Small Enterprise Amendment Bill was referred to the Portfolio Committee on Small Business Development on 29 June 2023.

The Committee was briefed on the proposed amendments by the Department of Small Business Development on 30 August 2023. After resolving to withdraw its own Committee Bill, the Committee resolved to publish the Executive Bill for comments. The Bill was published for public comment from 10 October 2023 to 10 November 2023 in national and regional newspapers, on the Parliament website, Twitter and Facebook. The Committee decided to conduct public hearings on the Bill in all nine (9) provinces to solicit inputs on the Bill. The provincial hearings were held from 26 October 2023 to 23 November 2023. The public hearings were held on the Zoom platform on 28 November 2023 for stakeholders who had indicated that they would like to submit oral submissions, in addition to the written submissions. The Department responded to the oral and written submissions on 30 November 2023.

3.1 Preliminary Consultations

The Secretariat conducted a number of pre-consultation engagements both inside and outside of Parliament to ensure a smooth and successful public participation process. It began its preparations by holding a series of discussions with key Parliamentary departments. This was done in order to create a provincial workplan plan for nationwide public consultations in all nine provinces that is accommodating to the Committee members and project staff. The project team benefited considerably from the advice provided by Parliament's legal unit in terms of the nature and format of the hearings. As a result, there was a level of comfort from the Committee Secretariat that legislatures (both national and provincial) have discretion in determining how to best facilitate public involvement. In the process, the Committee safeguarded the principle that there should be a reasonable opportunity for meaningful engagement in the legislative process, and the public must be able to take advantage of it. These can be formal gatherings or conferences, or they can be informal meetings or roundtable discussions – a format followed by the Department probably because of the Bill's designation as section 75 before being introduced to Parliament.

The process of public participation began with the creation of a project plan which defined essential deliverables for public engagement events as well as predicted logistics specifications. Despite limited time - venues, communication plans, bill translation, and other logistical arrangements were developed, albeit, not without hiccups. With assistance from other units, publicisation was achieved through using information sessions, educational publications, communication strategies such as radio, social media platforms, and suitable information sharing initiatives to ensure that the public was informed and made aware of the Bill. In addition, media statements and press releases were issued, and some were placed on the Parliament website to inform the public about the exact dates of the public hearings in each district and local municipalities. The persistent struggle to secure venues on time almost disrupted the programme, and this is an area that has to be improved in future public hearings.

Another important consideration that weighed heavily on the Committee's schedule was the amount of time left before Parliament dissolve in 2024. That is, at the conclusion of the term, all Bills before Parliament must have been completed. The Committee decided to split into two groups for the first four provinces, with group one led by the Chairperson of the Committee Hon Siwela visiting Limpopo and Mpumalanga provinces, and group two led by Hon Jacobs conducting hearings in the Northern Cape and Free State provinces. The Committee reunited again from Western Cape onwards. The content and complexity of the Bill, as well as the number of stakeholders or interested groups likely to be impacted by the Bill, are some of the dynamics that the Committee considered before the actual public engagement began.

3.2 Public Involvement and Stakeholder Awareness

Team work and support from internal stakeholders in Parliament was extraordinary. The units assisted the Committee to achieve community readiness and awareness. Public involvement and stakeholder awareness sessions were conducted in the designated municipalities by colleagues from the Public Education Office and Parliamentary Democracy Office (PDO), who despite being deployed

to service other Committees, straddled between the Committees to make sure that Parliament's work gets done. Despite concerns that not enough time had been allocated to galvanise communities and key stakeholders from selected district municipalities, information sessions in identified areas went ahead. The public education workshops were delivered by experienced staff members who used a simplified version of the Bill to improve people's understanding of the Bill's goals and aims. The publications were also distributed to the general public and attendees during the stakeholder awareness meetings. All official languages were used to translate the Bill summaries. Due to time constraints, the Bill summary was not created in Braille Format to accommodate those who are visually impaired — an omission the Committee regretted and identified for future improvement.

3.3 Communication Strategy

As part of the communication plan, Parliamentary Communication Services created WhatsApp Posters and a video promo for the Bill. The content of the posters indicated the province, date, time, and venue of the public hearings for the respective provinces. Mobilisation took place to inform the public about the public hearings. According to the interaction with Parliamentary Communication Services, the Communication Strategy comprised video promos, media warnings, and radio broadcasts. The Parliamentary Communication Services also prepared media statements or press releases on a continual basis to update the public about the Bill, progress, comments, concerns, and recommendations from the communities visited. The Chairperson of the Committee is also the Committee's Spokesperson. In this regard, the Chairperson conducted a few radio interviews to invite interested persons to attend the sessions or submit written comments to strengthen the Bill. The public hearings appear to have had a good turnout overall, with the exception of one or two places, as detailed below.

3.4 Attendance by Members of the Portfolio Committee

The following Committee members and staff formed the core team that crisscrossed the country to conduct the hearings -

Table 1: Attendance by Members of the Portfolio Committee

Political Party	Committee Member
African National Congress	1. Ms VS Siwela, MP (Leader of the delegation)
	2. Mr HG April, MP
	3. Mr F Jacobs, MP
	4. Ms ML Lubengo, MP
	5. Mr TE Myeni, MP
	6. Ms KB Tlhomelang
Democratic Alliance	7. Mr HC Kruger, MP
	8. Mr M Mabika, MP
	9. Mr JN De Villiers, MP
Economic Freedom Fighters	10. Ms B Mathulelwa, MP
Inkatha Freedom Party	11. Mr Inkosi BN Luthuli, MP
Parliamentary Officials	
Mr NK Kunene	Committee Secretary
Mr V Ramaano	Committee Secretary (PC on Justice and Correctional Services)
Ms N Matinise	Committee Secretary (PC on Public Works)
Ms A Kakaza	Committee Secretary (PC on Agriculture, Land Reform and Rural Development)
Mr S Gumede	Content Advisor
Ms N Mbelekane	Committee Researcher
Mr M Dodo	Committee Assistant
Ms P Mahlathi	Committee Assistant (PC on Transport)
Ms C Maledu	Committee Assistant (PC on Agriculture, Land Reform and Rural Development)
Ms N Mokoena	Public Relations
Mr J Molafo	Communication Officer

4. PUBLIC HEARINGS

This section provides a summary of consolidated reports from each district municipality and it is subdivided into five categories as follows - provincial public hearings, written submissions, written forms/inputs collated during the hearings, email submissions and oral presentations held in Parliament via a virtual platform. The public participation was set to begin on 26 October 2023, and end on 19 November 2023. Nonetheless, due to voter registration days from 19 to 20 November 2023, the end date was eventually moved to 23 November 2023. The Committee's decision to undertake public hearings was based on the basic principle of the South African Constitution, which states that South Africa is a constitutional democracy that values representational and participatory democracy. In particular, Sections 59(1)(a) and 72(1)(a) of the Constitution state that the National Assembly and the National Council of Provinces must enable public participation in the Assembly's and its committees' legislative and other activities. As stressed hereinabove, this process is significant.

For public participation, 20 district/local municipalities and five metropolitan municipalities had been identified. No adverse incidents were reported except in the Ugu District Municipality that was dropped from the list due to unforeseen logistical challenges and there being no deployment from Parliament to conduct public mobilisation and education. Also, there were last-minute adjustments in the Waterberg District Municipality, from Lephalale to Modimolle Local Municipality. The Committee was informed at the eleventh hour of a traditional ceremonial activity that was to be held on the same day the Committee was due to conduct public hearings. Consequently, and as a gesture of respect, all activities that were originally scheduled to take place in Lephalale were seamlessly relocated to OR Tambo hall, Mookgophong, Modimolle Local Municipality. The Committee did, however, hold provincial public hearings in all nine provinces, as shown in table 2 below. This segment outlines the five ways the Committee utilised to obtain data or submissions from the public. A consolidated summary of the public hearings is attached herewith the report as Annexure A. During the hearings, Parliament collated a total of 150 written inputs. There were also substantive written submissions received - with attachments, while others were inconsiderable submissions with simple yes or no responses collected via electronic mail. But these are very important statistically. Lastly, the virtual hearing was held on 28 November 2023 to provide an opportunity to all those who had indicated interest in making oral submissions.

Table 2: District Municipalities, Dates and Venues of the Provincial Public Hearings

Provinces	Date	Municipalities and Venues
Limpopo	26 – 28 October 2023	<ul style="list-style-type: none"> Vhembe District Municipality, Thulamela LM (Thulamela Hall, Thohoyandou) Capricorn District Municipality, Polokwane LM (Westernburg Community Hall, Polokwane) Waterberg District Municipality, Modimolle LM (OR Tambo Hall, Modimolle)
Northern Cape	26 – 28 October 2023	<ul style="list-style-type: none"> ZF Mgcawu District Municipality, David Kruiper LM (Piet Thole, Upington) Pixley Ka Seme District Municipality, Siyancuma LM (Braaipal Community Hall, Douglas) Frances Baard District Municipality, Sol Plaatjie LM (Kimberly City Hall, Kimberly)
Mpumalanga	30 – 31 October 2023	<ul style="list-style-type: none"> Ehlanzeni District Municipality, Bushbuckridge Local Municipality (Bushbuckridge Technical College) Nkangala District Municipality, Emalahleni Local Municipality (Kriel Community Hall)
Free State	29 – 31 October 2023	<ul style="list-style-type: none"> Mangaung Metropolitan Municipality, Bloemfontein, (Botshabelo Hall) Lejweleputswa District Municipality, Matjhabeng LM (Ferdyn Meyer Hall, Welkom) Fezile Dabi District Municipality, Ngwathe LM (Mokwallo Multi-Purpose Hall, Parys)

Western Cape	2 – 3 November 2023	<ul style="list-style-type: none"> Overberg District Municipality, Cape Agulhas LM (Overberg Academy of Sports, Bredasdorp) City of Cape Town Metropolitan Municipality (Joseph Stone Auditorium, Athlone)
Eastern Cape	6 – 8 November 2023	<ul style="list-style-type: none"> Buffalo Metropolitan Municipality (Mdantsane, East London) OR Tambo District Municipality, King Sabatya Dalindyebo LM (Mthatha) Alfred Nzo District Municipality, Matatiele LM (Maluti a Phofung)
KwaZulu Natal	10 – 12 November 2023	<ul style="list-style-type: none"> Umgungundlovu District Municipality, Msunduzi LM (Civic Centre, Pietermaritzburg) King Cetshwayo District Municipality, uMhlathuze LM (Veldenvlei Community hall, Richards Bay) eThekweni Metro (Greenwood Park community hall, Durban North)
North West	14 – 16 November 2023	<ul style="list-style-type: none"> Dr Ruth Segomotsi Mompati District Municipality, Greater Taung LM (Taung) Ngaka Modiri Molema District Municipality, Mahikeng LM (Mmabatho Civic Centre, Mahikeng) Bojanala Platinum District Municipality, Rustenburg LM (Rustenburg)
Gauteng	21 – 23 November 2023	<ul style="list-style-type: none"> West Rand District Municipality, Merafong LM (Umtata Town Hall) City of Joburg, (Welfare Park Community Hall) eKurhuleni Metro (Boksburg Civic hall, Boksburg)

4.1 Summary of Provincial Hearings

Members of the Committee travelled to all corners of the country to gather public opinion about the National Small Enterprise Amendment Bill. Participants in the Bill came from both rural and urban areas. Political parties, small entrepreneurs, informal traders, spaza shop owners, co-operative enterprises, traditional leadership, small scale farmers, sole proprietors, community leadership, people living with disabilities, business associations, business forums, chambers of commerce and industry, and youth formations were among them. They made comments, criticised the Bill, and proposed areas of improvement. Submissions were evaluated and brought to the Committee's notice, and no point of view or opportunity was rejected. Other submissions included mere suggestions. Other concerns that were not related to the Bill but dominated the proceedings, such as foreign ownership of spaza stores, procurement issues as well as access to business premises and property were identified as serious issues that required urgent consideration by the Department and the Committee. Table 3 summarises the overall number of attendance per province, speakers, those in favour of the Bill, those opposed to it, and those who were neutral.

Table 3: Numerical Summary - Public Hearings

Provinces	No. of Attendees	Speakers	Support	Not Support	Neutral
Limpopo	673	70	60	1	9
Northern Cape	590	48	44	4	0
Mpumalanga	457	44	35	0	9
Free State	358	41	30	4	7
Western Cape	203	40	31	0	9
Eastern Cape	685	72	53	3	16
KwaZulu Natal	481	64	60	0	4
North West	828	57	39	0	18
Gauteng	658	72	49	19	6
Total	4933	508	401	31	78

A total of 508 speakers across all the provinces made oral submissions on the Bill. A total of 401 (79%) speakers were in support of the Bill, while 31 (6%) of those who spoke rejected it. A total of 78 (15%) of the speakers partially supported the Bill. Inferring from these figures, it is evident that the Bill enjoys widespread support. There were issues that arose emphatically throughout the hearings, complaints against both agencies, Sefa and Sefa, with respect to the criteria that they use when evaluating applications, their absence on the ground, turnaround time, and so on. Most people supported the Bill on the grounds that SEDFA may potentially improve the way both agencies operate. The main recommendation, as stated below, is that the offices must be decentralised. The establishment of the Ombudsman's office drew widespread support, resulting in the Bill approval. Those who rejected or opposed the Bill did so due to a lack of understanding of the Bill's purpose, a failure to read the Bill on time, or a negative experience with the Department or agencies. Some participants were neither in favour of nor opposed to the Bill. To them, the Bill is a bit of both, and they primarily argue that the government has very good policies, but the challenge is putting them into action.

4.2 Written Forms

Those who were unable to speak, or whose allotted time had ended without them finishing their contributions, were encouraged to make written responses. The forms were handed out during the public hearings. Stakeholders from various business formations took this opportunity and came forward to offer their views on the Bill by putting their view, concerns, suggestions and recommendations on paper. Members of the public expressed tremendously interesting points of view, topics that concerned them, and how they believed some clauses, if left unattended, would affect their businesses. For record keeping purposes, the Committee Secretariat collected written forms from all sites. As of 23 November 2023, the total number of written forms collected was 310. Unlike statistics on public participation hearings, information on written inputs is not organised according to local municipalities but a total number of forms of received. Of the 310 written inputs collected, an overwhelming 249 or 80 percent agree with the Bill, 47 or 15 percent opposed it, while 14 or five percent were unsure or neutral. Those who rejected the Bill claimed to have been seeing the Bill for the first time and had not gone through it adequately.

4.3 Written Submissions

Written submissions are a good alternative to in-person hearings if traveling to the hearing venue is prohibitively expensive, the facts are not in dispute, or there are no credibility issues to be determined. Making submissions allows any member of the public to suggest changes or indicate potential actions to ensure that the laws enacted by Parliament or any other item under consideration by Parliament achieve their intended purpose. When issuing an advertisement, the Parliament had expressly indicated that those who wish to make written submissions may do so before the 10 November 2023 closing. The extensive nature of written submissions, respondents are often given the opportunity to explain part of their proposals before the Committee in order to help it in carrying out its duties properly. The number of substantive written submissions as at 10 November 2023, stood at twenty-one three (3) from individuals and 16 from organisations. Ten of them sought oral presentations, and a meeting was convened on 28 November 2023, via a virtual platform. Some of the written submissions were lengthy, emphasizing aspects of the Bill that need to be amended, rewritten, or removed entirely. These are covered in the section below.

Table 4: Written Submissions

Written Submissions (Organisations)	Individuals (Individuals)	Request for Oral Presentations
<ul style="list-style-type: none"> ▪ 22 On Sloan ▪ AfriForum ▪ Black Agricultural Commodities Federation (BACF) ▪ Black Management Forum ▪ Congress of South African Trade Union (COSATU) and South African Clothing and 	<ul style="list-style-type: none"> ▪ Vusumuzi Zwelendaba ▪ Kagisho Machele ▪ Salome Letlape 	<ul style="list-style-type: none"> ▪ Congress of South African Trade Union (COSATU) and South African Clothing and Textile Workers Union (SACTWU) ▪ DigiBiz Community ▪ Employer SA ▪ Black Agricultural Commodities Federation (Did not pitch)

<ul style="list-style-type: none"> Textile Workers Union (SACTWU) ▪ DigiBiz ▪ Employer SA ▪ GVS Law ▪ KPS Consulting ▪ NAFCOC North West ▪ Property Point ▪ South African Institute of Race Relations ▪ South African Co-operative Banking Association (SACOBA) ▪ Take-a-Lot.Com ▪ Tshwane Business Academy ▪ Western Cape Government 		<ul style="list-style-type: none"> ▪ KPS Consulting ▪ NAFCOC North West (Did not pitch) ▪ Property Point ▪ South African Co-operative Banking Association (SACOBA)
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4.4 Electronic Mail Submissions

There is a considerable number of individuals who opted to send their submissions via emails. Others, on the other hand, presented extensive reasons for opposing the Bill or remaining neutral. The total number of such emails was 392 in total. Again, Parliament stated at the outset that interested parties could submit via email, postal mail, or hand delivery. The Committee Secretariat recorded the details of the individuals, email addresses, and reasons for supporting or opposing the Bill while processing the submitted contributions. Those who supported the Bill constitute 68%, those who rejected it makes 19% and those are neutral makes 13% of the respondents. The establishment of the Ombudsman's office, in particular, received widespread approval. For record purposes, the consolidated electronic mail contributions are appended as Annexure B.

4.5 Oral Hearings (Parliament)

As noted in section 4.3 above, there were organisations and individuals that had demonstrated an interest in giving oral presentations. Oral submissions allow submitters to reaffirm what they would have said in written submissions while also providing an opportunity for the Committee to clarify points raised in the submission. The Committee embarked on virtual oral hearings in Parliament on 28 November 2023. The hearings afforded an opportunity to the stakeholders who had shown interest to make oral presentations of their written submissions. Stakeholders included professional associations, civil society organisations and individuals. The names of the organisations and individuals are recorded in table 4 above. The matters or clauses flagged in the submissions, both written and oral, are dealt with separately under section six (6). Taking everything into account, the Portfolio Committee on Small Business Development is convinced that all aspects of the responsibility and right to facilitate public participation in legislative processing of the Bill were met. The Committee had verified that adequate safeguards were in place to allow for full engagement of stakeholders.

5. STATISTICAL ANALYSIS

The public hearings were attended by 4 933 people from all South Africa's nine regions. A total of 508 of the 4 933 participants submitted oral submissions to the National Small Enterprise Amendment Bill, with the majority unreservedly supporting it. It should be noted that some participants handed in written forms or inputs, while others submitted them by email. This report takes into account all of those submissions. Figure 1 below shows a statistical breakdown of persons who attended the public hearings and made oral submissions.

Figure 1: Number of Attendees and Speakers Province

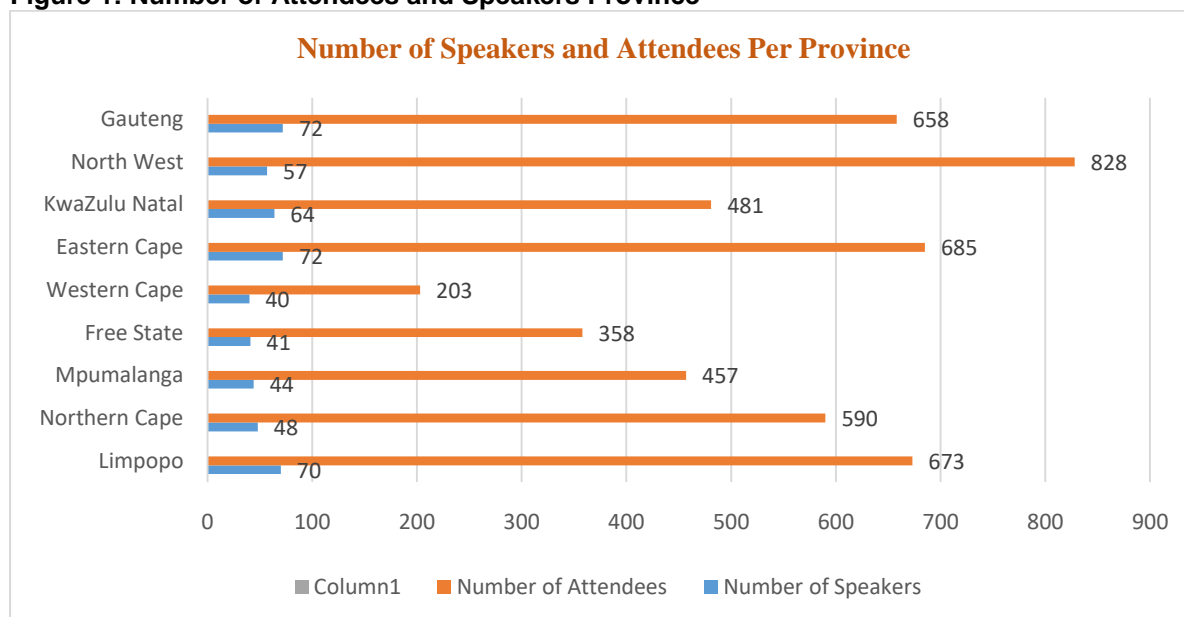


Figure 1 is for illustrative purposes only, and it is not in alphabetical order. The North West had the most participants (n=828), followed by the Eastern Cape (n=685), and Limpopo (n=678). The provinces with the fewest attendees were Free State (n=358) and Western Cape (n=203). The Gauteng had (n=658), Northern Cape (n=590), KwaZulu Natal Province (n=481) and Mpumalanga at (n=457) attendees. Despite an excellent attendance of 828, North West was unable to leverage on this advantage by having more speakers on the list. Gauteng and the Eastern Cape tied for the most speakers (n=72), followed by Limpopo (n=70) and KwaZulu-Natal (n=64).

6. KEY EMERGING SUBSTANTIVE ISSUES ACROSS PROVINCES

The following is a summary of the comments received during the public hearings, both oral and written. Speakers in provinces discussed a variety of issues concerning small businesses, including compliance, access to financing, red tape, access to land, business premises, and property to market access. At first glance, some of the issues presented appeared to be unrelated to the Bill. However, when you listen courteously, you can tell that in many cases, it comes down to expression or interpretation. For example, the topic of red tape dominated the proceedings. But there were few speakers who referred to the phenomenon as 'red tape'. They would refer to the practice as time consuming and costly, needless paperwork, documentation, rules, administrative or management procedures, tender fees, renewal fees, harassment by South African Revenue Services (SARS), Companies and Intellectual Property Commission (CIPC), Construction Industry Development Board (CIDB) and so forth. There is therefore an emerging view that the Ombudsman should be given powers by the Act to rule against some of these requirements or set them aside.

Furthermore, the subject of market access dominated the hearings. The Bill has no provisions relating to procurement. However, there is a general consensus that SEDFA's bridging financial initiatives should be expanded. For example, speakers stated that if a small business receives a government contract, SEDFA should immediately qualify that entrepreneur for bridging finance. The term is referred to as 'cession' in the supply chain circles. Speakers essentially want SEDFA to be given the authority to enter into cession with all state organs. They want all these suggestions to find expression in the Bill. People also voiced service delivery concerns that were unrelated to the Bill. Among these were municipal failures to deliver basic social services. There were also recommendations raised by speakers, which the Committee will also need to consider as it deliberates on the issues raised.

Clause 1: Definitions

- A. There is a general concern around how the term small enterprise is defined in the proposed Bill. The proposed definition, "the small enterprise means a separate and distinct business entity, together with its branches or subsidiaries, if any, including a co-operative, co-operative financial institution, or a co-operative bank, carried on in any sector or sub-sector of the economy classified as a micro, small or medium enterprise which satisfies the prescribed

criteria". This concern did come out strongly in the public hearings but written submission has certainly elevated it. There are proposals that the term should be broadened "to include a full spectrum of SMMEs – the Body must focus on all three, small, micro and medium, more especially the start-ups", alternatively, the Department to consider reverting back to the original definition.

- B. Re-insertion of the concept of "Federation" in the Definition. Chapter One of Original Act, 102 of 1996, included the concept of the "small business organisation". By this it meant any entity, whether or not incorporated or registered under any law, which consists mainly of persons carrying on small business concerns in any economic sector, or which has been established for the purpose of promoting the interests of or representing small business concerns, and includes any federation consisting wholly or partly of such association, and also any branch of such organisation.
- C. Recognition of "Household-based Enterprises" which the current definition seems to have excluded. There is a level of uncertainty regarding the future of businesses trading as sole proprietors, smallholder farmers, informal traders and so forth.
- D. Clause 1 (f) relates to the definition of a 'complainant'. However, Section 17S. (1) suggest states that "the Minister must make regulations including different regulations in respect of different categories of complaints or investigations by the Ombud, regarding— (ii) the category of small enterprises qualifying as complainants".
- E. Clause 1 (g) the definition of a co-operative enterprise raises concerns that it is being reduced to a small enterprise yet the two are separate and governed by separate legislations.

Clause 2: Superiority of the Proposed Legislation

- A. Clause 2(2) "in the event of a conflict between the provisions of this Act and the Companies Act, the Co-operatives Act, 2005 or the Co-operative Banks Act, 2007, the provisions of this Act prevail" – if such a scenario were to happen this clause presupposes that the National Small Enterprise Act is superior than the other laws. It is a technical written that once again was not raised during public hearings.

Clause 3

- A. Speakers at the public hearings generally did not say much about this clause. Nonetheless, written submissions have pointed out that the draft bill proposes, among others, the repeal of Chapter 2 of the National Small Enterprise Act, 1996 (Act 102 of 1996) (the principal Act), which includes provisions relating to the Advisory Body. While there is also a proposition to combine the Advisory Body envisaged in the National Small Enterprise and Co-operative Advisory Council envisioned in the Co-operatives Act - with footprints in all local municipalities.

Clause 4

- A. Strong support across the board for the merging of the agencies to form SEDFA. All respondents are quite pleased with this initiative of creating a one stop shop for SMMEs. The co-operative banking sector on the other hand, is not pleased with the developments. They cite, among others, lack of consultation by National Treasury, which remains the custodian of the Co-operatives Banks Act. While they are content with CBDA moving to DSBD, they however, wish CBDA functions to be retained and the whole process to repeal of Chapters VI and VII of Act 40 of 2007 rescinded until proper consultations with National Treasury and NEDLAC are embarked upon.
- B. There is a widespread call from all submitters, both oral and written, for the SEDFA and to a certain extent the Ombuds office to establish local offices across all local municipalities. The proposed clause 13(b) (d) provides for the "establishment of provincial structures to ensure the effective implementation of its functions". Therefore, it is submitted that SEDFA should adopt a spatial approach to business support, based on the prevailing circumstances in each locale.

Clause 5

- A. The creation of the Ombuds office received extensive support from the public hearings, written inputs from the hearings, written submissions, email submissions and from those who made oral presentations in Parliament. There are just few issues for Committee's attention in relation the description of the terms: adjudication as opposed to Alternative Dispute Resolution (ADR), the duration, eligibility criteria to serve as Ombuds person etc.
- B. There is equally, strong opposition to Section 17Y(1)(a) which states that "the Minister may declare certain practices in relation to small enterprises to be prohibited".

Clause 6

- A. Clause 6 aims “to substitute section 19 of the Act to provide for the Director-General responsible for small business development to conduct a national review of small enterprises”. There is nil concern raised regarding this proposal.

Clause 7

- A. This amendment is being opposed, most likely because it was not well stated to members of the public. Several speakers spoke out against the revisions. Hopefully, the matter will be considered and settled during the Committee's deliberations, with the assistance of the legal section.

Clause 8

- A. There were no concerns raised.

Clause 9

- A. This amendment is being challenged. The provision refers to the planned removal of numerous clauses in the Co-operative Banks Act, which will influence cooperative banks' relationship with the South African Reserve Bank.

Clause 10

- A. There were no concerns raised.

Clause 11

- A. There are no concerns raised.

Clause 12

- A. There are no concerns raised.

7. OBSERVATIONS

Following public participation in 16 local municipalities and six metros around the country, the Committee wishes to record the following remarks based on public hearing inputs and after listening to submitters. –

- 7.1 The Committee notes that when the Department tabled the bill in Parliament, it designated it as Section 75, thus reasonable consultation had not taken place before the Bill was referred to Parliament. This was noticeable in all of the regions visited by the Committee, little was known about the Bill, including the fact that Seda and Sefa are being consolidated. However, when those attending were informed that one of the Bill's objectives is the merger of the agencies, people instantly expressed their support. This demonstrates that the Committee was correct all along in calling for the merger of the two entities in order to create a one-stop shop and entry point for small businesses.
- 7.2 Based on various speakers' statements during the hearings, as well as written and oral submissions, the cooperatives sector, and particularly the cooperative banking sector, is concerned about the Co-operative Banks Development Agency and efforts to repeal certain sections of the Co-operative Banks Act – without being consulted. As stated earlier, the Committee is mindful that the Department had not embarked on a full-scale consultation before the Bill was introduced to Parliament. During the oral presentations, the Committee was further informed that the National Treasury, as the custodian of the Co-operative Banks Act, had not fully reassured nor consulted the sector about changes in the CBA and subsequent disestablishment of the CBDA. This includes consultations that ought to have been held at NEDLAC level.
- 7.3 Aside from the merger of Sefa and Seda, the Ombuds office gained overwhelming approval. Small business owners face a variety of challenges, but one of the most pressing is timely payment of suppliers, which the Ombuds office is likely to address once fully operational. Submitters advocated for stronger penalties for Departments and officials who refuse to comply with National Treasury regulations requiring 30-day payment. Others contended that interest payable to service providers should be recovered from the salaries of Director Generals, Heads of Departments, and Accounting Officers.
- 7.4 The Committee notes that red tape related issues featured quite prominently in the hearings, written submissions and oral hearings. There is therefore a view that measures aimed at reducing red tape must find expression the Bill. This may be achieved through giving more powers to the Ombuds office.
- 7.5 The Committee wishes to record and take note of several parties' concerns about provision 17Y(1)(a), which claims to provide the Minister authority to prohibit certain practices relating to small businesses. As a result, the Committee has requested that anybody affected or interested in the topic provide relevant language while the Bill is before the Committee. This invitation was also given to stakeholders such as COSATU, who delivered oral presentations on 28 November 2023.
- 7.6 Some of the issues raised during the public hearings are critical. However, they are not part of the Bill, and others lie outside the purview of the Department of Small Business Development. This

could be because parliamentary staff involved in public education are not subject matter experts. It is actually not fair to actually expect them to provide public education for all the Committees of Parliament given the technical nature of the Bills.

7.7 The Committee is pleased that attendance was high at almost all venues. Despite reports of logistical difficulties in some places, Parliament's management and personnel did all possible to guarantee that the legislative agenda was not derailed. There are certainly lessons for the management.

8. RECOMMENDATIONS

Following the public participation on the National Small Enterprise Amendment Bill [B16 - 2023], the Portfolio Committee on Small Business Development proposes the following recommendations partly to strengthen the public hearings process.

- 8.1 Substantive issues highlighted at public hearings and recorded in this report will be addressed during the Bill's deliberation process.
- 8.2 The Department should explain how thoroughly it consulted the public on the Bill before tabling it in Parliament. A schedule detailing the public consultation process, including the business case referred to in the Department's submission to Parliament, should be submitted to the Committee so that the Committee can answer any questions that may be posed to it regarding the complaints that the Department did not consult.
- 8.3 It is recommended that in future, when conducting public education on the Bill, the Parliamentary Public Participation Unit should be accompanied by Parliamentary Researchers, Content Advisors, or Committee Secretaries in order to assist with content concerns during their training sessions. The process of crafting a new Bill or amending the existing legislation is highly involved and technical.
- 8.4 In connection with the foregoing, the Unit should ensure that it engages with relevant government ministries, including the participation of Parliament Constituency Offices, Councilors, Provincial and Local Speakers.

9. CONCLUSION

The report provides the Committee with information for the final consideration of the Bill. The issues during the public hearings were consolidated in the summary contained in this report. Committee consideration of this report takes into cognisance that it combines both the written submissions outcomes and the provincial public hearings into a consolidated report.

Report to be considered.
