



EASTERN CAPE PROVINCIAL LEGISLATURE

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Date: 02 June 2008

PORTFOLIO COMMITTEE ON SOCIAL DEVELOPMENT

Negotiating mandate on the Social Assistance Amendment Bill (B17-2008)

1. *Terms of reference*

The Social Assistance Amendment Bill (B17/2008), hereinafter referred to as the Bill, was referred by the NCOP Business Committee to the Portfolio Committee on Social Development for consideration.

2. *Consideration of the Bill*

The Portfolio Committee was briefed on the content and effect of the Bill by the Legal Officials of the Legislature and officials from the National Department of Social Development.

The Committee did not conduct public hearings on the Bill due to the fact that the timeframes for the consideration of the Bill were too short and further because the NCOP has requested that the Portfolio Committee must request objections on the Bill and not comments.

Comments and objections were requested from members of the public through the press and radio.



3. *Negotiating mandate of the Committee*

The Committee supports the spirit and purpose of the Bill but wishes to raise the following concerns:

Clause 1 of the Bill

3.1 The Bill should apply retrospectively to the 1st of April 2008.

3.2 The use of the word "after" in sub-clauses (i), (ii) and (v) may create interpretation problem as the 1st of April is excluded. It is therefore, proposed that the word "on or after" be used or alternatively the date be changed to 31st of March.

3.3 Numbering on clause (1)(b) needs to be looked at as roman figure (ii) is skipped.

Clause 2 of the Bill

3.4 It is proposed that a clause be inserted to require the Minister or Tribunal to respond to the appeal within 90 days from the date of receipt of the Appeal. This should not be left to Regulations as the period for lodging an appeal is not left to the Regulations.

3.5 In addition, the Committee has received an objection to the incremental roll-out of the older person's grant.

3.6 The Committee has resolved that the Special Delegate, Hon X Tom, represents the Province in a meeting to consider negotiating mandate.

N. KIVIET 
SPEAKER: EASTERN CAPE PROVINCIAL LEGISLATURE



GAUTENG
LEGISLATURE

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3 June 2008

Ms J M Masilo
Chairperson: Select Committee on Social Development
NCOP
PO Box 15
CAPE TOWN
8000
Fax: 021 403 2808

Cc: Mr R Mdakane
Speaker: Gauteng Provincial Legislature

Honourable Member Masilo,

SUBJECT COMMITTEE'S VIEW ON SUBMISSION OF NEGOTIATING MANDATE ON THE
: SOCIAL ASSISTANCE AMENDMENT BILL [B17-2008]

On Monday, 19 May 2008 the Speaker formally referred the Social Assistance Amendment Bill [B17-2008] - Section 76, to the Social Development Portfolio Committee for consideration and report, together with correspondence from the Chairperson of the NCOP requesting that the processing of the bill in both the NCOP and Provincial legislatures be expedited due to the challenges experienced by the Department relating to social assistance applications to other qualifying men.

In compliance with the request from the NCOP, a Committee meeting was urgently convened on Tuesday, 20th May 2008, for purposes of receiving a briefing on the Bill from the NCOP. Through Interactive Video Conferencing, which due to technical challenges, could not materialise, the Committee agreed to convene a meeting on 22nd May 2008 to receive a briefing on the Bill from the NCOP Permanent Delegate and senior officials from the National Department of Social Development.

While noting the challenges currently confronting the Department with the processing of the applications, it has been noted with great concern that due to legislative time tables, the Constitutional obligation of ensuring facilitation of public involvement in the construction of legislation with greater public interest, has to be compromised by not allowing legislators an opportunity to interact with the public and solicit their views in the proposed amendments to the Social Assistance Act.


The Committee considers itself bound by the pronouncement of the Constitutional Court by 21-Doctors for Life International matter wherein it pronounced *inter alia* in paragraph 1154 as follows – "*when it comes to establishing legislative timetables, the temptation to cut corners*

public involvement must be resisted. Problems encountered in speeding up a sluggish timetable do not ordinarily constitute a basis for inferring that inroads into the appropriate degree of public involvement are reasonable. The timetable must be subordinate to the rights guaranteed in the Constitution, and not the rights to the timetable".

Technically, considering the set dates for the processing of the Bill, the Committee as indicated previously, will not be in a position to present a negotiating mandate to the NCOP as required by the 3rd June 2008 without having solicited the views of the affected stakeholders, considering the required processes involved in facilitating public involvement. A public hearing is scheduled for 4th June 2008 and it is the Committee's opinion that adhering to the set schedule in an attempt to satisfy administrative processes, would in fact mean that the Committee had failed to constitutional responsibility of facilitating public involvement as required in Section 116 of the Constitution of South Africa.

As a result, the Committee's voting position on the Social Assistance Amendment Bill will be contained in its final mandate which will not only be based on briefings received from the NSRF and the National Department but will also be informed by inputs from the public.

Yours sincerely,



STEWART NKWENYA
CHAIRPERSON: SOCIAL DEVELOPMENT COMMITTEE



Committee Services

PORRTFOLIO COMMITTEE ON HEALTH AND SOCIAL SERVICES

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Report of the negotiating mandate on the Social Assistance Amendment Bill [B17-2008]

1. Terms of reference

The Social Assistance Amendment Bill [B17-2008] has been referred to the Health and Social Services Committee by the Speaker.

2. Briefing

- a) On the 22 May 2008, Mr. Neels van Rooyen, NCOP permanent delegate of the Free State briefed the Committee on the content of the Bill;
- b) Advocate Malakoane, Assistant Legal Adviser of the Free State also briefed the Committee on the legal substance and the effects of the Bill.

3. Consultation

The Committee resolved to invite public inputs by placing adverts on national and local radio stations, national and local newspapers regarding the Bill.

5. RESOLUTION

The Committee resolved that:

- (a) Authority is conferred to the Free State Delegation, to vote for the adoption of the Bill.

Mr. T. M. H. Mofokeng
Chairperson: Health and Social Services Committee
Free State Legislature

02 May 2008

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ISISHAYAMTHETHO SAKWAZULU-NATAL

KWAZULU-NATAL WETGEWER

KWAZULU-NATAL PROVINCIAL LEGISLATURE

**TO: THE CHAIRPERSON,
NATIONAL COUNCIL OF PROVINCES**

NEGOTIATING MANDATE

PROVINCE : KWAZULU-NATAL

**BILL : SOCIAL ASSISTANCE AMENDMENT BILL
[B17 – 2008]**

PROVINCIAL PROCESS :

Provincial Portfolio Committee/s : Social Development Portfolio Committee
Portfolio Committee
meeting date/s : Wednesday, the 28th of MAY 2008
Provincial NCOP meeting date/s : Wednesday, the 28th of MAY 2008
Consultation : Parliamentary Legal Advisors, Special &
Permanent Delegates

MANDATE OF THE KWAZULU-NATAL PROVINCIAL LEGISLATURE:

The Provincial Standing Committee on National Council of Provinces Matters met today, Wednesday, the 28th of May 2008, & agreed to mandate the KwaZulu-Natal delegation to the National Council of Provinces to **support the Social Assistance Amendment Bill [B17-2008] subject to the following amendments:**

- (a) The deletion of Clause 2(b) dealing with the addition of subsection (3) as it is a repetition of the provision of section 18(b) of the principal Act.
- (b) It was proposed that the Bill is supported provided that payment of older person's grants must be paid retrospectively from 01 April 2008, as provided for in the Bill.

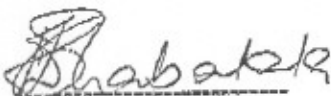
The Committee further recommended that the following proposals be considered:

1. Although the provision of an appeals process ensures fair treatment of all applicants, the process regarding the setting up and the operation of the Tribunal is not clear. There is no indication of the selection criteria for the appointment of appeals officers nor is the extent of their authority clear. Norms and standards for the timeous processing of appeals also have to be determined.
2. Regarding the tribunal panelists: provision is made for the inclusion of representatives from civil society who are in good standing in the community. Greater clarity is required as to the selection criteria. It is suggested that persons who represent organisations such as themselves (i.e. rendering services to the sector) should be included.
3. Regarding representation on the tribunal of persons in the medical field: It is not clear from which sector such a person should be, private or public. It is proposed that it should include persons from the private sector.
4. It appears the functioning of the Tribunal will only be activated once the adjudication of the appeals have been scheduled by the appeals officers. The scheduling of appeals should not be based on the availability of the panelists as this could delay processes. It is suggested that a sufficient number of panelists be selected per area to ensure that there is adequate representation when required.

The delegation is further mandated to consider any additional amendments, providing that-

- 1) the amendment/s does/do not alter the essential elements of the Bill; and
- 2) consensus is reached on the proposed amendment/s by the KwaZulu-Natal delegation.

PROVINCIAL ENDORSEMENT



Mrs L F Shabalala
CHAIRPERSON :
KWAZULU-NATAL STANDING COMMITTEE ON
NATIONAL COUNCIL OF PROVINCES MATTERS

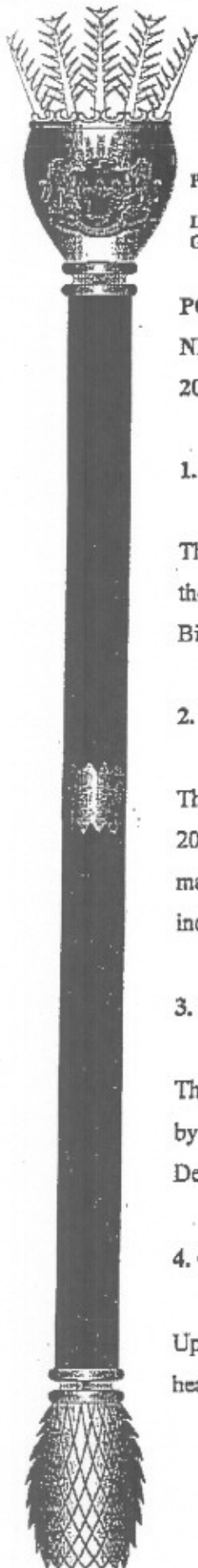
Wednesday, the 28th May 2008

DATE



Limpopo Legislature

OFFICE OF THE SECRETARY



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**PORTFOLIO COMMITTEE ON HEALTH AND SOCIAL DEVELOPMENT
NEGOTIATING MANDATE ON THE SOCIAL ASSISTANCE BILL [B17-
2008]**

1. INTRODUCTION

The Social Assistance Amendment Bill was referred to the Limpopo Legislature by the National Council of Province. Upon receipt of the Bill, the Speaker referred the Bill to the Portfolio Committee on Health and Social Development for consideration.

2. PURPOSE OF THE BILL

The Social Assistance Amendment Bill seeks to amend the Social Assistance Act, 2004, so as to regulate afresh the eligibility of men for an older person's grant; and to make further provision for the consideration of appeals against the Agency by an independent tribunal; and to provide for matters connected therewith.

3. BRIEFING BY THE NATIONAL COUNCIL OF PROVINCE DELEGATES

The Committee met on 23 May 2008 to consider the Bill and thereafter was briefed by the NCOP Delegate and the Officials from the National Department of Social Development on 27 May 2008.

4. COMMITTEE'S POSITION

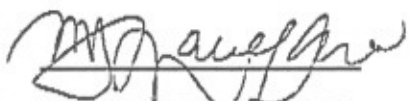
Upon being briefed, the Committee supported the Bill and decided that public hearings should be conducted.

Given the fact that the Bill is affecting the senior citizens of this province and also that it is aimed at assisting the poorest of the poor, proper consultation is imperative to ensure that the targeted people are taken on board on the Bill.

However due to time constraints the Committee agreed that adverts be put in newspapers to call for objections on the Bill as recommended by the Chairperson of NCOP.

5. NEGOTIATING MANDATE

The Committee having supported the Bill and confers a mandate to the NCOP delegates to negotiate in favour of the Bill as introduced in the national Assembly.


7 HON. E. NCHABELENG
COMMITTEE CHAIRPERSON



Office of the Secretary

Enq: Dimakatso Mashogo
Tel: (013) 766 1399/1147

NEGOTIATING MANDATE

SOCIAL ASSISTANCE AMENDMENT BILL [B17-2008]

The Portfolio Committee on Health and Social Services met on the 23 May 2008 for the briefing by the NCOP Permanent Delegate, Hon. BJ Tolo on the Bill. The Department of Health and Social Services, Legal Advisor of the Legislature were part of the briefing on the Social Assistance Bill [B17-2008] (the Bill).

After consideration of the Bill and the public inputs made at the radio slots conducted on 23 and 26 May 2008, the Committee agreed to the proposed Bill and supports it subject to the proposals contained in the attached report.

The delegation representing the Province of Mpumalanga in the National Council of Provinces are hereby conferred with authority and mandate to negotiate in favour of the Bill.

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HON DS MKHWANAZI
ACTING CHAIRPERSON: PORTFOLIO COMMITTEE
ON HEALTH AND SOCIAL SERVICES

29/5/8-
DATE

**REPORT OF THE PORTFOLIO COMMITTEE ON HEALTH AND
SOCIAL SERVICES ON THE SOCIAL ASSISTANCE
AMENDMENT BILL [B17-2008]**

INTRODUCTION

The Social Assistance Act, 2004 (Act No. 13 of 2004) ("the Act") regulates the provision of social grant and further provides for the eligibility of persons who qualify to obtain such grants. It provides for the different ages in respect of men and women for eligibility to receive such a grant. This age differentiation has been found to be discrimination on the basis of age. The Social Assistance Amendment Bill [B17-2008] ("the Bill") seeks to correct the said discrimination and align the Act to the principles enshrined in our Constitution. The Bill has been tagged a section 76 Bill and was transmitted from the NCOP to the Legislature in compliance with the Constitution.

OBJECTIVES OF THE BILL

The Bill seeks to amend the Social Assistance Act, 2004 (Act No. 13 of 2004) ("the Act") so as to:

- regulate afresh the eligibility of men for an older person's grant;
- make further provision for the consideration of appeals against the Agency by an independent tribunal; and
- provide for matters connected therewith

COMMITTEE PROCESS

The Bill was referred to the Committee by the Speaker immediately upon its receipt from the NCOP. The Committee met on Friday, 23 May 2008 for a briefing by the NCOP permanent delegate, the Hon BJ Tolo on the Bill. The Department of Health and Social Services and Legal Section of Mpumalanga Provincial Legislature also attended.

The Committee decided to conduct interviews through Radio Slots and to place advertisements in the print media inviting public inputs/comments on the Bill. The Bill was advertised in the Sowetan of 27 May 2008.

Radio slots were secured and the discussion on the Bill was successfully held as follows:

- ✓ Radio Alpha on 23 May 2008
- ✓ Ligwalagwala FM on 26 May 2008
- ✓ Ikwewezi FM on 26 May 2008
- ✓ Barberton Community Radio Station on 26 May 2008

The community in general were the stakeholders that participated through the radio slots.

The Committee then met on the 29 May 2008 to consider the comments made by the public on the radio on the Bill and to consider its report.

PROCESS AT THE RADIO SLOTS

The Bill and its purpose were categorically and clearly explained to the public by the deployed Committee members. The public raised clarity seeking questions and shared their feelings and/or opinions on the Bill.

ISSUES RAISED BY THE PUBLIC

While the public generally accepts the Bill as presented to them over the radio, the following issues were raised:

- ❖ That the qualifying age should be brought down to 55 for men and 50 for women in view of the fact that the life expectancy for South Africans is now at 47.

In response to the above proposal, Hon Members referred the public to the objective of the Bill, namely: to equalise the ages of eligibility for men and women over a period of time.

WRITTEN SUBMISSIONS ON THE BILL:

No written comments were received as requested and expected from the public.

The concerns raised by the public over the radio were considered by the Committee and some of them were accommodated in the Bill.

RECOMMENDATION

The Committee recommends that the House adopts the Committee report and confer authority upon the Province's delegation in the National Council of Provinces to negotiate in favour of the Bill.

CONCLUSION

On behalf of the Committee, the Chairperson would like to thank Honourable Members of the Committee, the Department of Health and Social Services, support staff, as well as the stakeholders for actively participating through the radio slots on the Bill.



**HON DS MKHWANAZI
ACTING CHAIRPERSON:
PORTFOLIO COMMITTEE ON HEALTH
AND SOCIAL SERVICES**

29/5/8
DATE



Northern Cape
Provincial Legislature

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Date: 2008-06-02

The Chairperson
National Council of Provinces
Hon MJ Mahlangu

NEGOTIATING MANDATE FOR THE SOCIAL ASSISTANCE AMENDMENT BILL [B17-2008]

1. INTRODUCTION

The Chairperson of the Portfolio Committee on Social Services & Population Development, Hon CJ de Beer, tabled the Committee's negotiating mandate on the *Social Assistance Amendment Bill* [B 17-2008] as adopted by the Portfolio Committee on 02 June 2008.

2. PROCESS FOLLOWED

- 2.1 The Speaker of the Northern Cape Provincial Legislature, on receipt, referred the *Social Assistance Amendment Bill* [B 17 - 2008] to the Portfolio Committee on Social Services & Population Development 16 May 2008.
- 2.2 The Portfolio Committee received a briefing on the Bill on 23 May 2008 from the National Department of Social Development, Mr Thabo Rakoloti, and the Provincial Department of Social Services & Population Development.

On 02 June 2008, the Portfolio Committee on Social Services & Population Development deliberated and considered the *Social Assistance Amendment Bill* [B17 - 2008].

3. COMMITTEE INPUTS ON THE BILL

- The Committee is of the view that the powers of the Minister will be diluted should an independent tribunal be allowed to consider all appeals and not only those specifically referred to it.

LEGAL TECHNICAL COMMENT ON THE BILL

The Committee proposes the following amendments based on the legal technical inputs on the Bill.

i) Clause 1

The ages 62 – 64 years should not be implied, but should for legal certainty be included in the clause.

ii) Clause 2(3)

It seems incorrect that **all appeals** must be considered by the tribunal.

The following amendment proposal –

[] words in **bold** in brackets indicate omissions
– words underlined indicate insertions

- (iii) If the Minister has appointed an independent tribunal in terms of sub-section (2)(b) **[all appeals contemplated in sub-section (1)]** that appeal must be considered by **[that]** the tribunal.
(Please refer to the Committee input in paragraph 3).

4. **KEY DETERMINING PRINCIPLES**

The Constitutional imperatives based on equality is addressed through this Bill

There will be no more discrimination based on age in accessing old pension benefit from government.

The engagement with the public through the media was successful.

The majority of the people who responded during the engagements supported the Bill.

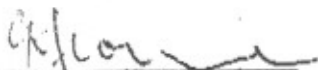
5. **PORTFOLIO COMMITTEE POSITION ON THE BILL**

After due deliberation and taking note of the Public's input, the Portfolio Committee on Social Services & Population Development.

6. **COMMITTEE ADOPTION OF THE BILL**

The Committee adopted this negotiating mandate duly signed by the Chairperson of the Committee.

The Committee recommends to the House to mandate the Permanent Delegates to participate in deliberations at the negotiating stage and to **support** the Bill, taking note of the comments and recommendations raised by the Committee as well as inputs from the public.


HON C SEOPOSENGWE
SPEAKER

RECEIVED
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OFFICE OF THE SPEAKER

SOCIAL DEVELOPMENT PORTFOLIO COMMITTEE

28 May 2008

Report on the negotiating Mandate of Social Assistance Amendment Bill
[B17 -2008]**1. TERMS OF REFERENCE**

The above mentioned Bill was referred to the Portfolio Committee for consideration as a matter of priority.

2. BRIEFING

On the 26 May 2008, Hon. P. Moatshe, NCOP Permanent Delegate briefed the members of the Portfolio Committee on Social Development on the above Bill. Present at the briefing was a Legal Advisor from the Legislature.

The North West Provincial Legislature placed an advert at Motsweding FM and North West FM because of high coverage and listenership. The advert was placed both in setswana and English to cover the whole Province. The advert was also placed in the Sowetan newspaper because we could not reach the deadline of the local newspapers.

The public was given from 22nd May to the 25th May 2008, to raise objections via telephone, cell phone, e-mail and fax. There were no objections received from the public.

3. CONSIDERATION

There were no public hearings conducted because no objections were received from the public.

7. CONCLUSION

The Committee having considered the amendment bill, resolved to accept and support the Bill.

Signed

T. Modise

Hon. T. Modise

The Speaker: NWPL

Wes-Kaapse Provinsiale Parlement
Western Cape Provincial Parliament
Palamente yePhondo leNtshona Koloni



**NEGOTIATING MANDATE OF THE SOCIAL ASSISTANCE AMENDMENT
BILL
[B17-2008 (REPRINT)]**

Negotiating mandate of the Western Cape Provincial Parliament on the *Social Assistance Amendment Bill [B17-2008 (Reprint)]* (NCOP), as resolved by the House on 27 May 2008.

The Western Cape Provincial Parliament, having considered the subject of the *Social Assistance Amendment Bill [B17-2008 (Reprint)]* (NCOP), referred to the Provincial Parliament in terms of the rules of the National Council of Provinces (NCOP), begs to report that it confers on the Western Cape's delegation in the NCOP the authority to support the Bill.

**S BYNEVELDT
SPEAKER
27 MAY 2008**

RECEIVED
2008
MAY 27 10:00 AM
SPEAKER'S OFFICE
WESTERN CAPE PROVINCIAL PARLIAMENT
Cape Town

