



**GAUTENG**  
**LEGISLATURE**

**ECONOMIC AFFAIRS PORTFOLIO COMMITTEE**  
**NEGOTIATING MANDATE ON THE CONSUMER**  
**PROTECTION BILL [B19-2008]**

**(Section 76)**

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**17 JUNE 2008**

**1. INTRODUCTION**

The Chairperson of the Economic Affairs Portfolio Committee, Mr D U Moiloa, tables the Committee's Negotiating Mandate on the Consumer Protection Bill [B19 – 2008]- Section 76 as follows:

**2. PROCESS FOLLOWED**

The Speaker, Honourable Richard Mdakane, formally referred the Consumer Protection Bill [B19-2008], a Section 76 Bill to the Economic Affairs Portfolio Committee for consideration and report in terms of Rule 232 (1)(a) read with 235(4), (6) and (7) on the 12 May 2008.

The Committee Co-ordinator, Mr Tiragalo Mogale and Mr Toyi Mkgari the Committee Researcher, presented an analysis on the social and economic impact of Bill to the Committee on the 22 May 2008 which was preceded by a briefing on the content of the Bill and its financial implications to the province by the Chief Director, Consumer Affairs, Mr Fati Manamela from the Department of Economic Development.

The Committee held the Public Hearing on the Consumer Protection Bill [B19-2008] from 06-12 June 2008 at Ekurhuleni, Pretoria, Ekangala, Vereeniging and Johannesburg City Hall.

On the 17<sup>th</sup> June 2008, the Committee deliberated on the Bill and adopted the Negotiating Mandate on the Consumer Protection Bill [B19-2008] and Mr Terence Makamu, NCOP and Legal Unit submitted a Legal opinion on the Bill.

### **3. PRINCIPLE OF THE BILL**

- The main objectives of the Bill are to promote and advance the social and economic welfare of consumers in South Africa by establishing a legal framework for the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable and responsible for the benefit of consumers generally;
- promoting fair business practices;
- protecting consumers from unconscionable, unfair, unreasonable or unjust or otherwise improper trade practices;
- improving consumer awareness and information and encouraging responsible and informed consumer choice and behaviour;
- promoting consumer confidence and empowerment, and the development of a culture of consumer responsibility through individual and group education, vigilance, advocacy and activism;
- providing for a consistent, accessible and efficient system of consensual resolution of disputes arising from consumer transactions;

### **4. OVERVIEW OF PUBLIC HEARINGS & SUBMISSIONS**

The Bill was welcomed by most stakeholders and members of the public because of the new consumer protection regime it sought to institutionalise. The majority of the submissions were verbal during the hearings and fifteen (15) written submissions were received. A total of eight hundred and fifty (850) people attended the public hearings on the Bill.

The Committee noted that there are transversal issues related to consumer rights which are matters patterning to other related legislations such as National Credit Act, Financial Advisory and Intermediary Services Act, South African Reserve Banking Act.

#### **4.1 MAIN ISSUES RAISED IN THE SUBMISSIONS**

##### **4.1.1 Oral submissions**

- Insurance cover in terms of natural disasters and riots compromise consumers while they are still paying for products from the suppliers. The consumers are not protected in case of natural disasters.
- Redress for Consumers whose money is unfairly taken by insurance companies.
- Consumer rights should be displayed in all retail and wholesale outlets.
- The Commission should be tasked with the responsibility of empowering the Consumers about the contents of the Consumer Protection Bill.
- Contracts between the consumer and the retailer should be simplified and standardised.
- Contracts between consumers and retailers should be in the preferred language of the consumer.
- More inspectors should be appointed to inspect the quality of perishable goods and unfair treatment shops.
- Reimbursement to Consumers who have suffered financial losses
- More powers to investigate Consumer complaints against the banks and insurance companies

- The Bill should provide speedy resolutions regarding faulty products from the suppliers.
- Detailed labeling of genetically modified and other foods to enable Consumers to make informed choices.

#### 4.1.2 Written submissions

- Foodstuffs are already dealt with by the Foodstuffs, Cosmetics and disinfectants Act and related Regulations, and that this should be retained. Foodstuffs should be excluded from the Bill by way of a legislated, rather than a discretionary, exemption in terms of Section 5(2).
- Propose that the issue with foodstuffs be solved by including an exemption in Section 5(2)(a) by way of the following suggested amendment: Section 5(2)
 

" (a) (i) in terms of which goods or services are promoted to the State, or are supplied to or at the discretion of the State; **[or] (ii) in respect of foodstuffs which fall within the scope of the Foodstuffs, Cosmetics and Disinfectants Act and the Regulations thereunder; or"**
- It is proposed that Section 5(2) be amended to include a blanket exemption for business to business transactions in terms similar to that in respect of goods or services promoted or supplied to the State rather than the complex exclusion stated in Section 5(2)(b) which requires a particular transaction to be in excess of a certain threshold value which could lead to a situation where a smaller transaction between large businesses is exempted whereas a bigger transaction by a small business is not exempted
- In terms of Section 61(5), the only defences to strict liability will be those set out in (a) to (d) thereof of which at least (b) and (c) require vast infrastructure for product testing, failure analysis, and the like, which small to medium business just will not have access to and which are very expensive to set up and to run.
- As regards the cancellation period of 20 days, franchise agreements should summarily be excluded from Section 14(1)(b)(i) or at least (bb) thereof.

## 5. FINANCIAL IMPLICATIONS AND SOCIO-ECONOMIC IMPACT ASSESSMENT OF THE BILL FOR THE PROVINCE

### 5.1. Financial implications

The Bill will have financial implications for the province.

The dti must give a detailed breakdown of the financial implications which this bill will have on the fiscus of each province.

### 5.2. Socio economic impact

According to the Department of Economic Development, three Inspectors will lose their jobs as a result of the introduction of the Act. However, the Committee is of the opinion that the introduction of the Act will on the contrary create more employment as highlighted under organizational and personnel implications in the Bill.

With regards to the other socio-economic impact of the Bill, the Committee is satisfied that the Bill will significantly contribute towards achieving the following:

- Promoting a fair, efficient and transparent market place for consumers and business;
- Provide a consistent, predictable and effective regulatory framework that fosters consumer confidence, but also recognizes the developmental imperatives of the South African economy;
- Provide access to effective consumer redress for economic citizens;
- Promote better customer service in the public and private sector

#### **6. COMMITTEE COMMENTS AND CONCERNS**

The Committee deliberated on the Bill, the oral and written submissions from stakeholders and members of the public, opinion provided by the NCOP and legal unit and agreed on the following issues:

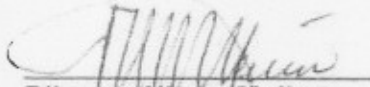
- The Bill promotes a culture of Consumer rights in South Africa
- The full implementation of the Bill requires informed Consumers
- The bill does not contradict the Constitution of South Africa

#### **7. COMMITTEE RECOMMENDATION**

The Committee recommends that a comprehensive education campaign be implemented to inform the public about the bill.

#### **8. NEGOTIATING POSITION ADOPTED BY COMMITTEE**

The Economic Affairs Portfolio Committee supports the principle and detail of the Consumer Protection Bill [B19-2008].



Dikgang Uhuru Moiloa

**Chairperson: Economic Affairs Portfolio Committee**



## **NORTH WEST PROVINCIAL LEGISLATURE**

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### **NEGOTIATING MANDATE**

**CONSUMER PROTECTION BILL [ B19 – 2008 ]**

**(Report by the North West Portfolio Committee on Economic Development &  
Tourism on Public Consultations on the Consumer Protection Bill [B19 – 2008])**

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**18 June 2008**

## **1. Terms of Reference**

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

## **2. Briefing**

The Portfolio Committee on Finance, Economic Development & Tourism, was briefed on 30 May 2008, by Hon Z Kolweni & representatives from Department of Trade & Industry, Nomfundo Maseti – Director of Consumer Affairs, who was accompanied by Siphon Tleane – Director Legal Support for Consumers and Babs Kuljeeth – Director of Consumer Investigations. The Committee had invited to this meeting the Consumer Affairs Directorate from the provincial Department Economic Development & Tourism, Mr Edwin Letswago – Consumer Affairs, Mr .K Sehularo – Chief Director of Business Regulation & Governance, Moeketsi Senghi – Director: Legal Support Services and Assistant Director- Legal Support Services Lepollo Monaheng attended.

## **3. Consideration**

The Committee called public hearings on 9<sup>th</sup> June 2008. The number of people who attended where forty (40), they comprised of officials from the department, those that belong to particular organizations and those from respective wards in the province.


## **4. Recommendations**

In terms of negotiating mandate the Committee wishes to submit that consistently National Departments have limited financial implications of nationally initiated legislation to the exclusion of provincial departments. The input we have received from our provincial department is that if this Bill is to be passed in the current financial year, there is no budget available in the Province to implement the legislation.

## **5. Resolution**

The Committee wish to mandate our permanent delegates to negotiate that DTI revise its financial implications to include funding needed to assist provincial departments to roll out this legislation. If no funds could be found in the current financial year, the proposal is that the implementation of the legislation be delayed until 2009/10 Financial Year in order to allow budgeting processes within provincial departments to make provision for this legislation.

**Signed**

  
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**Hon T. Modise**  
**Speaker**  
**North West Provincial Legislature**



Northern Cape  
Provincial Legislature

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The Chairperson  
National Council of Provinces  
Hon MJ Mahlangu

### NEGOTIATING MANDATE FOR THE CONSUMER PROTECTION BILL [B19 – 2008]

#### 1. INTRODUCTION

The Chairperson of the Portfolio Committee on Economic Affairs & Tourism, Hon JT Beukes, tables the Committee's negotiating mandate on the *Consumer Protection Bill [B19 - 2008]* as adopted by the Portfolio Committee on 24 June 2008.

#### 2. PROCESS FOLLOWED

- 2.1 The Speaker of the Northern Cape Provincial Legislature, on receipt, referred the *Consumer Protection Bill [B19 - 2008]* to the Portfolio Committee on Economic Affairs & Tourism on 29 May 2008.
- 2.2 The Portfolio Committee received a briefing on the Bill from the Northern Cape's Permanent Delegate to the NCOP, Hon L Matloahela-Mtembe on 04 June 2008.
- 2.3 The Portfolio Committee resolved to hold public hearings of the referred Bill in Hopetown, Britstown, Griquastad, Williston and Postmasburg to solicit the views of the affected beneficiary communities and stakeholders with regard to the *Consumer Protection Bill [B19 – 2008]*.
- 2.4 Five (5) public hearings were held on 23 June 2008 as per Committee resolution and both written and oral submissions were called for. The public engaged with the Members of the Provincial Legislature on their views.
- 2.5 On 24 June 2008, the Portfolio Committee on Economic Affairs & Tourism deliberated and considered the *Consumer Protection Bill [B19 – 2008]*.



**3. PUBLIC INPUTS ON THE BILL****3.1 HOPETOWN**

- 3.1.1 The concerns raised by the community were covered in the bill.
- 3.1.2 Pension and CPS payout service – people don't get money – shop owners keep their cards.
- 3.1.3 Hawkers cause local businesses to lose business, thereby taking the money out of the community.
- 3.1.4 No written inputs were received from the community.
- 3.1.5 The community voted in favour of the bill.

**3.2 BRITSTOWN**

- 3.2.1 Goods must be advertised with all costs included, people must not be attracted by prices that have not already been taxed. For instance if the price of an item must remain as advertised.
- 3.2.2 Prices of a company or store must remain the same no matter in what town the company or store is situated.
- 3.2.3 Interest charged on items bought or sold must be reasonable.
- 3.2.4 Electricity hikes must differ according the size of the town or area.

**3.3 GRIQUASTAD**

- 3.3.1 The bill should protect the consumer more against the increase of prices especially on items that that they use on a daily basis.
- 3.3.2 The majority of the public voted in favour of the bill.

**3.4 WILLISTON**

- 3.4.1 The powers of the Office of the Sheriff in term of repossessing items from consumers.
- 3.4.2 Consumer problems experienced in terms of informal agreements.
- 3.4.3 The majority of the public voted in favour of the bill.

### **3.5 POSTMASBURG**

- 3.5.1 The quality of service rendered, usually does not equal to the money paid;
- 3.5.2 Suppliers who are in possession of personal information of people, without their knowledge;
- 3.5.3 People of the remote areas cannot necessarily meet the five days grace period for the returning of goods after purchasing;
- 3.5.4 The community members have problems with suppliers who sometimes remove the expiry date on their products.

(Most of the concerns raised are relevant, and are already being addressed in the bill itself).

### **4. COMMITTEE INPUTS ON THE BILL**

- 4.1 CPS payouts in shops where the cards of pensioners are kept by shop owners, is a concern to the committee.
- 4.2 Lack of visibility of the Consumer Protection Unit in the Northern Cape, as most of the consumers reached by the public hearing were not aware of its existence.

### **5. LEGAL TECHNICAL INPUTS ON THE BILL**

- 5.1 It is proposed that Chapter 2 of the Bill (Fundamental Consumer Rights) be contained in a first Schedule to the Bill in order to be afforded better prominence and not to interrupt the flow of the Bill.
- 5.2 It is furthermore proposed that Chapter 5, which introduces National Consumer Protection Institutions, brought forward to be Chapter 2 in the Bill and that the existing Chapter 3 then follows.
- 5.3 It is not clear, from clause 5, whether provision or (the working of certain provisions) of this Bill may be excluded contractually, although clause 11 5 states that an agreement, provision of an agreement may be declared to be void.

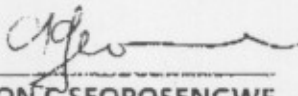
### **6. PORTFOLIO COMMITTEE POSITION ON THE BILL**

After due deliberation, the Portfolio Committee on Economic Affairs & Tourism supports the Bill.

### **7. COMMITTEE ADOPTION OF THE BILL**

The Committee adopted this negotiating mandate duly signed by the Chairperson of the Committee, Hon JT Beukes.

The Committee recommends to the House to mandate the Permanent Delegates to participate in deliberations at the negotiating stage and to support the Bill.



HON. C. SEOFOENGWE  
SPEAKER

# Limpopo Legislature

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### **PORFOLIO COMMITTEE ON ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM**

#### **NEGOTIATING MANDATE ON CONSUMER PROTECTION BILL, 2008 [B19-2008]**

##### **1. INTRODUCTION**

The National Council of Provinces referred the Consumer Protection Bill, 2008[B19-2008] to the Limpopo Legislature. Upon receipt by the Legislature, the Bill was referred to the Portfolio Committee on Economic Development, Environment and Tourism to make further inputs for consideration by the NCOP when negotiating the mandate.

##### **2. PURPOSE OF THE BILL**

To promote a fair, accessible and sustainable marketplace for consumer products and services and for that purpose to establish national norms and standards relating to consumer protection, to provide for improved standards of consumer information, to prohibit certain unfair marketing and business practices, to promote responsible consumer behaviour, to promote a consistent legislative and enforcement framework relating to consumer transactions and agreements, to establish the National Consumer transactions and agreements, to repeal sections 2 to 13 and sections 16 to 17 of the Merchandise Marks Act, 1941 ( Act No.17 of 1941), the Business Names Act, 1960 (Act No.27 of 1960), the Price Control Act,1964 (Act No. 25 of 1964), the Sales and Service Matters Act, 1964 ( Act No. 25 of 1964), Trade Practices Act, 1976 ( Act No. 76 of 1976), the Consumer Affairs ( Unfair Business Practices) Act, 1998 ( Act No. 71 Of 1998), and the Business Act, 1991 ( Act No. 71 Of 1991), and make consequential amendments to various other Acts; and to provide for related incidental matters.

##### **3. CONSIDERATION OF THE BILL**

The Committee met on 05 June 2008 to consider the Bill. NCOP Permanent Delegate, Hon. J. Sibiya, S.J Tleane and J. Modiba from the National Department of Trade and Industry, briefed the Committee on the principle and the provisions of the Bill.

Having considered the Bill, the Committee would like to make the following submission:

### *3.1 The need for public education*

The Committee appreciates the introduction of this piece of legislation and would further advise that much work needs to be done in the area of public education in order to empower ordinary citizens (mostly located in rural areas) who may not be familiar with the provisions of the Bill. Although the role of NGOs with regard to public education is acknowledged, it is crucial to consider reality of this challenge when making the necessary provisions and implementing the Bill. The Bill needs to consider that community organizations and other structures rooted in communities may be useful, hence the need to acknowledge this aspect and make the necessary provisions accordingly where the above challenges exist, especially in a rural province like Limpopo. There is need for working with communities to assist in building a culture of the 'activist citizenry' if this Bill is to be successfully implemented.

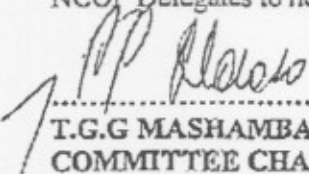
### *3.2 Financial implications for provinces should be considered.*

The Committee is concerned about the fact that the cost of R51, 3 million has been projected by the National Department for 2009/10 for the implementation of the Bill without consideration the financial implications of implementing the Bill by Provinces. Without the necessary funding, provinces may not be able to move at the same speed with National government when it comes to the implementation of the Bill.

## 4. RECOMMENDATIONS

The Committee, having considered the Bill, found that the Bill's enactment into law will address many problems that affect consumers and will protect them from unfair business practices. All the concerns raised in paragraphs 3.1 and 3.2 respectively should be taken into consideration before the Bill proceeds to the next stage. The Committee supports the provisions of the Bill.

The Committee, having supported the provisions of the Bill recommends to the NCOP Delegates to negotiate in favor of the Bill.

  
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T.G.G MASHAMBA, MPL  
COMMITTEE CHAIRPERSON