

**EASTERN CAPE PROVINCIAL LEGISLATURE**

Independence Avenue
Private Bag X0051
Bhisho
5605

Tel: (040) 608 0287
Fax: (040) 636 4922
Enquiries: A. Sigama
Email: asigama@ecleg.gov.za

Date: 06 August 2008

PORTFOLIO COMMITTEE ON ECONOMIC AFFAIRS, ENVIRONMENT AND TOURISM

Report on Final Mandate of the Consumer Protection Bill

1. *Terms of reference*

The Consumer Protection Bill, herein referred to as the Bill, was referred to the Portfolio Committee on Economic Affairs, Environment and Tourism by the NCOP Business Committee for consideration in order to formulate a provincial mandate.

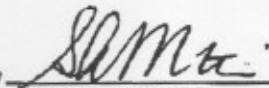
2. *Consideration of the Bill*

The Portfolio Committee was briefed on the content and effect of the proposed Bill.

3. *Resolution*

The Committee resolved that the following final mandate be conferred:

- To vote for the adoption of the Bill as amended.
- That the Permanent Delegate be mandated to represent the Province at the meeting considering the final mandates and vote for the adoption of the Bill.

PP 

HON. N KIVIET
SPEAKER: EASTERN CAPE PROVINCIAL LEGISLATURE

0137661458

OFFICE OF THE SPEAKER

MPUMALANGA
PROVINCIAL LEGISLATURE

Private Bag 11259

Nelspruit 1200

Tel +27 13 766 1061

Fax +27 13 766 1469

Building No 1, Mpumalanga

Government Complex

Riverside, Nelspruit

Mpumalanga Province

www.mpsleg.gov.za

Enquiries: Mr. DE Mashego

Tel. (013) 766 1399

FINAL MANDATE**CONSUMER PROTECTION BILL [B19-2008]**

The Portfolio Committee on Agriculture and Land Administration; Economic Development and Planning (the Committee) considered the Consumer Protection Bill [B19-2008] (the Bill).

In its meeting held on the 25th July 2008, the Committee noted the response of the Department of Trade and Industry to its concerns raised during the negotiations stage as forwarded by the National Council of Provinces (NCOP). The Committee also met on 5th August 2008 to consider the proposed amendments to the Bill. After meticulous deliberations, the Committee supported the Bill with the amendments as proposed by the Select Committee on Economic and Foreign Affairs of the NCOP.

The delegation representing the Province of Mpumalanga in the National Council of Provinces (NCOP) is conferred with authority and a mandate to vote in favour of the Bill.


HON. YIN PHOSA
SPEAKER: MPUMALANGA LEGISLATURE


DATE

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




**FINAL MANDATE OF THE WESTERN CAPE ON THE CONSUMER
PROTECTION BILL [B18-2008] (NCOP)**

Final mandate of the Western Cape Provincial Parliament on the *Consumer Protection Bill [B18-2008] (NCOP)*, as resolved by the Standing Committee on Finance and Economic Development on 4 August 2008.

The Western Cape Provincial Parliament having considered the subject of the *Consumer Protection Bill [B18-2008] (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 with the proposed amendments submitted by the NCOP and raised the following concern:

That the proposed repeal of the Businesses Act, 1991 (Act 71 of 1991) has not been specifically addressed in the proposed amendments. The department wishes to reaffirm its concerns regarding this specific issue and maintains that the possible implications as stipulated in our previous correspondence remain an area that requires due consideration by the Department of Trade and Industry.


J J BRYNARD
ON BEHALF OF THE SPEAKER
4 August 2008





GAUTENG
LEGISLATURE

ECONOMIC AFFAIRS PORTFOLIO COMMITTEE

VOTING MANDATE ON -

THE CONSUMER PROTECTION BILL [B19-2008]-(Section 76)

04 AUGUST 2008

1. INTRODUCTION

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

2. PROCESS FOLLOWED

On 17 June 2008 the Committee adopted the Negotiating Mandate on the Consumer Protection Bill [B19-2008], supporting the principle and detail of the Bill subject to consideration of the issues raised in the Negotiating Mandate by the Select Committee as well as the Department of Trade and Industry (DTI)

On 30 July 2008, the Select Committee on Economic and Foreign Affairs convened to receive the DTI's responses to the Negotiating Mandates of the Provinces on the Bill.

On 04 August 2008, the Committee convened to consider and deliberate on the Minutes of the Select Committee meeting wherein Negotiating Mandates were considered as well as DTI responses to the Negotiating Mandates of the Provinces

3. RESPONSES TO ISSUES RAISED IN THE NEGOTIATING MANDATE

The DTI responded to the issues that were raised by Gauteng as follows -

| Committee Comments | Recommendation from DTI |
|--|--|
| Insurance cover in terms of natural disaster and riots compromise consumers while they are paying for products from suppliers. The consumers are not protected in cases of natural disaster. | Insurance issues are excluded in the Bill as part of the agreement with National Treasury after the dti realised that the legislation in the sector provides acceptable levels of consumer protection but that there are gaps that need to be addressed, especially relating to unfair contract terms. Cabinet approved that these laws should be brought in line with this Bill within two years of promulgation. |

| Committee Comments | Recommendation from DTI |
|---|---|
| Redress for consumers whose money is unlikely to be taken by insurance companies | Currently consumers can access redress through the various Ombudsman operating in the short and long term insurance sector as well as the FAIS Ombudsman. These mechanisms need to be reviewed as part of the overall review of financial sector laws to ensure that adequate levels of protection and redress are provided for. National Treasury has agreed to engage in this process. |
| Consumer Rights should be displayed in all retail and wholesale outlets | Sectors will be encouraged to form industry associations and their accredited codes of conduct may be displayed in member stores. |
| The Commission should be tasked with the responsibility of empowering consumers on the contents of the Bill | Cabinet also made the same call. The dti has already begun with a massive public awareness campaign to educate consumers on their rights as contained in this Bill. The Bill provides for this mandate in section 96 of the Bill. How the Commission will do this is outlined in the Business Case that has been submitted to National Treasury. |
| Contracts between consumers and retailers should be simplified and standardised | Section 50 provides that the Minister will prescribe categories of contracts that have to be in writing and the Commission will endeavour to standardise and simplify the contracts in the identified categories. The Bill also takes this further through the plain language requirements in section 22. The provisions relating to unfair contracts in section 48, 49, 50, 51 and 52 will ensure that all consumers enjoy the same rights when it comes to concluding contracts thus providing for similar standards across sectors. However it should be recognised that contracts will differ based on the types of goods and services. |
| More inspectors should be appointed to the quality of perishable goods and unfair treatment | Inspectors will be appointed to carry out various responsibilities in terms of section 88. Section 55 also provides consumers with the right to quality and safety. This is also a capacity issue that must be addressed with National Treasury to ensure that the Business case, when approved provides for the NCC to have adequate financial resources to implement this Act. The same applies to provincial treasuries. |
| Contracts between consumers and retailers should be in the preferred language on the consumer | The Bill provides that contracts should be in a simple language and we feel this is sufficient protection and not a regulatory burden on business, especially small business. |
| Reimbursement of consumers who have suffered financial loss | Section 74 provides for consent orders, this may include reimbursements or any other amicably resolved outcome. The Bill provides in most instances for consumers to be refunded or for |

| Committee Comments | Recommendation from DTI |
|---|--|
| | <p><i>defective products to be replaced The Tribunal can also make orders that consumers be refunded with interest Where consumers want to claim consequential losses they would need to approach the courts, however the Tribunal can accelerate this process by issuing a certificate confirming that prohibited conduct has taken place and the courts can just confirm damages</i></p> |
| <p>More powers to investigate Consumer complaints against banks and insurance companies</p> | <p><i>The Commission will have sufficient powers to investigate any contravention of this legislation. The Commission has jurisdiction over Banks and will therefore have sufficient powers to investigate. The FSB(Financial Services Board) regulates insurance companies and their powers are quite extensive and as part of the review agreed to by Cabinet these powers can be enhanced if necessary.</i></p> |
| <p>The Bill should provide speedy resolution regarding faulty products from the suppliers.</p> | <p><i>Section 53 to 59 deals with issues around speedy resolution of complaints relating to faulty products. For instance the sections provide for consumer's rights to demand quality service, rights to safety and quality goods, implied warranty on new and repaired goods, warning on risks and the safety around disposal of goods.</i></p> |
| <p>Detailed labeling of Genetically Modified Organisms food and other foods to enable consumers to make informed decisions.</p> | <p><i>This still needs to be resolved. The dti does not oppose the labelling of GMOs for the purpose of enhancing consumer choice, without pronouncing on whether GMOs are safe or not</i></p> |
| <p>Foodstuffs are already dealt with by the Foodstuffs, Cosmetics and Disinfectant Act and related Regulations and that this should be retained Foodstuffs should be excluded from the Bill by way of a legislated, rather than discretionary, exemption in terms of Section 5 (2).</p> | <p><i>We will only exclude upon a proper application by a competent regulatory authority to be exempted and the Commission will look for duplication and how well consumers are protected before exemption. The Act referred to does not go far enough in terms of providing redress for consumers. For example, it does not deal with product liability where a consumer becomes ill as a result of eating contaminated food. It also deals with technical safety issues and not contractual matters as addressed in the Bill. It is therefore important to conduct a thorough evaluation of the gaps through the discretionary exemption in the interests of consumers</i></p> |
| <p>Propose that the issue with foodstuff 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</p> | <p><i>We will only exclude upon a proper application by a competent regulatory authority to be exempted and the Commission will look for duplication and how well consumers are protected before exemption. See above comment.</i></p> |

| Committee Comments | Recommendation from DTI |
|---|--|
| <p>supplied to or at the discretion of the State;</p> <p>[or] (ii) in respect of foodstuffs which falls within the scope of the Foodstuffs, Cosmetics and Disinfectants Act and Regulations thereunder, or*</p> | |
| <p>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 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 business is exempted whereas a bigger transaction by a small business is not exempted.</p> | <p><i>The Department would like to include small businesses in the protection that the Act affords, because in many cases small businesses cannot afford to protect their rights in court due to limited resources. The blanket exclusion will not help in that regard. To determine the threshold in accordance with the value of the transaction is the best possible option available at this stage.</i></p> |
| <p>In terms of section 61 (5) the only defense to strict liability will be those set out in (a) to (d) thereof of which at least 9 (b) and (c) require vast infrastructure for product testing, failure analysis, and the like, which small to medium businesses just will not have access to and which are very expensive to set up and to run.</p> | <p><i>Strict liability is long overdue in this country even courts have said that it is up to the legislature to introduce it. The defences are adequate for businesses whether small or otherwise. Consumers feel they are short-changed with these defences, however the department had to strike a balance between consumers and business. Small to medium companies cannot be excused for introducing dangerous goods into the market. Most will be retailers who can use their bargaining power to require their manufacturers, importers etc to ensure that they supply them with safe and good quality goods. They will not need to test directly but to require guarantees from the manufacturers.</i></p> |
| <p>As regards the cancellation period of 20 days, franchise agreements should summarily be excluded from section 14 (1) (b) (i) or at least (bb).</p> | <p><i>The issue will be considered. Franchise agreements are already excluded as the definition of "consumer agreement" specifically excludes franchise agreements. Section 14(1) refers to a "consumer agreement" which is defined.</i></p> |
| <p>The dti must give a detailed breakdown of the financial implications which this Bill will have on the fiscus of each Province</p> | <p><i>Provinces will have to do this on their own. It will be very difficult for the dti to do it for them because circumstances in provinces are not the same, some provinces already have consumer courts while others do not; so it will be very difficult to come up with a general estimation on the financial impact of the Bill on provinces. This was communicated to the provinces in the initial</i></p> |

| Committee Comments | Recommendation from DTI |
|---|---|
| <p>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 organisational and personnel implications of the Bill</p> | <p><i>workshops. The structure of the Bill is such that the Commission will be able to deal with matters where there are capacity challenges in a specific province.</i></p> <p><i>The transitional arrangement states clearly that all employees who are tasked with the responsibility of enforcing laws that will be repealed will become employees of the Commission. This section relates only to dti employees. The inspectors can be retained to do other work in terms of the Bill.</i></p> |
| <p>The Committee recommends that a comprehensive educational campaign be implemented to inform the public about the Bill</p> | <p><i>The dti has already begun with a massive public awareness campaign to educate consumers on their rights as contained in this Bill.</i></p> |

The Committee having considered and deliberated on the responses above acknowledged the said responses.

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

4.1. Financial implications

The Gauteng Province has established Consumer Affairs Offices and as a result, there will be no financial implications, however, due to the envisaged increase on the number of inspectors as required by the Act, that would have an impact on the budget of the administering Department. (Economic Development)

4.2. Socio economic impact

With regards to the other socio-economic considerations and impact of the Bill on Gauteng, 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 sectors.

5. **COMMITTEE POSITION**

- Emanating from the Select Committee's Minutes dated 30 July 2008, the Portfolio Committee on Economic Affairs has noted the proposed amendments to the version of the Bill as introduced being [B19-2008], and the recommendation that the proposed amendments be handed to the State Law Advisor for certification and be sent to the Provinces to enable conferral of Final Voting Mandates on a proper version of the amended Bill – [B19B-2008].
- Despite the above, the Committee has not received the amended version of the Bill [B19B-2008], but has nonetheless been required to provide a Final Mandate.
- While in principle the Consumer Protection Bill is supported in respect of its principle and detail, the Portfolio Committee on Economic Affairs is however not in a position to recommend a Final Voting position for consideration and adoption of a Resolution by the House in terms of section 65 of the Constitution, in the absence of the exact version of the Bill to be passed by the NCOP Plenary.



MR D. U. NTOLO

CHAIRPERSON: PORTFOLIO COMMITTEE ON ECONOMIC AFFAIRS



Committee Service

FREE STATE LEGISLATURE

Our reference:
Ons verwysing:
Ishupo ya rona:

TOURISM, ENVIRONMENTAL AND ECONOMIC AFFAIRS COMMITTEE

**Report on the voting mandate regarding Consumer Protection Bill
[B19 -2008]**

1. Report from the inter-provincial meeting

- a) The Committee received a report on inter provincial negotiating mandate held on 25 June 2008, NCOP.

2. Consideration

The Portfolio Committee considered the report of the Select Committee, and amendments agreed to on the Bill.

3. Resolution

The Committee resolved that:

- (a) Authority be conferred to the Free State Delegation, to vote for the adoption of the Bill as amended by the NCOP.

> *AK-bela*

Mr. P. Matosa
Speaker: Free State Legislature
05 August 2008



ISISHAYAMTHETHO SAKWAZULU-NATAL

KWAZULU-NATAL WETGEWER

KWAZULU-NATAL PROVINCIAL LEGISLATURE

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

FINAL MANDATE

PROVINCE : KWAZULU-NATAL

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

DATE : Tuesday, 5th August 2008

PROVINCIAL PROCESS :

Provincial Portfolio Committee/s : Finance and Economic Development
Portfolio Committee

Portfolio Committee meeting date/s : Friday, the 1st of AUGUST 2008

Provincial NCOP meeting date/s : Tuesday, the 5th of AUGUST 2008

Consultation : Parliamentary Legal Advisors, Special &
Permanent Delegates

VOTE OF THE KWAZULU-NATAL PROVINCIAL LEGISLATURE:

The Provincial Standing Committee on National Council of Provinces Matters met today, Tuesday, the 5th of AUGUST 2008, to consider the Consumer Protection Bill [B19 – 2008]. Having considered the list of proposed amendments from the Select Committee on Economic and Foreign Affairs (annexed hereto as Annexure "A"), the Committee agreed to support the bill with the proposed amendments.



Northern Cape
Provincial Legislature

Northern Cape Provincial Legislature
Private bag 2 7066
Kimberley 8300
T +27 53 839 8000
F +27 53 839 8794
www.ncplg.gov.za

Roboaulo Extension
Galeshewe
Kimberley
8300

Date: 2008-08-01

Reference: 2.8.2.2

Enquiries: CPC HAAS

TO: Hon L Ntembe
Permanent Delegate: NCOP (Northern Cape)

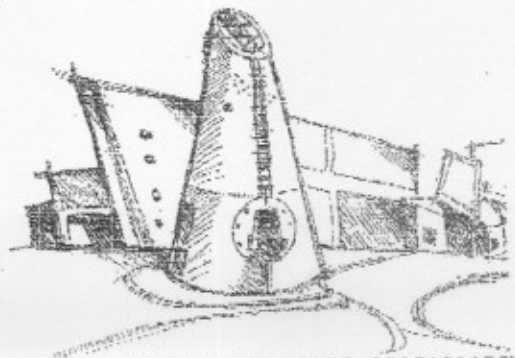
Your letter regarding the comments on concerns raised during public hearings on the Consumer Protection Bill, bears reference.

We have studied the comments and are satisfied with the responses on the issues raised.

The issues raised on page seven(7) in respect of Chapter two and five relating to sequence should be discussed.

Kind Regards,

CPC HAAS
Manager: NCOP & PROCEEDINGS





Northern Cape
Provincial Legislature

OFFICE OF THE SPEAKER

Private Bag X5065
Kimberley 8300

Nobengula Extension
Galoshewe
Kimberley 8300

Fax: Admin (053) 839 8094
Tel: (053) 839 8005

Date: 2008-08-05

The Chairperson
National Council of Provinces
Hon MJ Mahlangu

FINAL MANDATE FOR THE CONSUMER PROTECTION BILL [B19 - 2008]

INTRODUCTION

The Chairperson of the Portfolio Committee on Economic Affairs & Tourism, Hon JT Beukes, tables the Committee's final mandate on the *Consumer Protection Bill [B19 - 2008]* as adopted by the Portfolio Committee on 05 August 2008.

PROCESS FOLLOWED

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.

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.

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]*.

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.

On 24 June 2008, the Portfolio Committee on Economic Affairs & Tourism deliberated and considered the *Consumer Protection Bill [B19 - 2008]*.

PUBLIC INPUT ON THE BILL

The Public voted for the Bill.

COMMITTEE INPUTS ON THE BILL

None

LEGAL TECHNICAL INPUTS ON THE BILL

None

PORTFOLIO COMMITTEE POSITION ON THE BILL

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

PORTFOLIO COMMITTEE POSITION AT THE NEGOTIATING STAGE

The Portfolio Committee on Economic Affairs & Tourism supports the Bill.

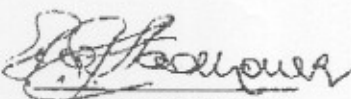
The negotiating mandate was tabled on 26 June 2008 in the House. The Committee recommended to the House to mandate the Permanent Delegates to participate in deliberations at the negotiating stage and to support the Bill, taking note of the concerns raised by the Committee as well as those of the public.

COMMITTEE POSITION AFTER CONSIDERATION OF NEGOTIATING MANDATE BY THE NCOP SELECT COMMITTEE

The Portfolio Committee's Negotiating Mandate indicated that the Northern Cape will support the *Consumer Protection Bill [B19-2008]*.

FINAL VOTING MANDATE

In terms of Section 65 of the Constitution, the Portfolio Committee on Economic Affairs & Tourism recommends that the House confer authority on the Head of its delegation to the NCOP to vote in support of the *Consumer Protection Bill [B19-2008]* with amendments.


HON I.W.J. STADHOUER
CHAIRPERSON OF COMMITTEES