



SOCIAL DEVELOPMENT PORTFOLIO COMMITTEE

**NEGOTIATING MANDATE
ON
PREVENTION OF AND TREATMENT FOR SUBSTANCE ABUSE BILL
[B12B 2008] – Section 76**

29 August 2008

1. INTRODUCTION

The Chairperson of the Social Development Portfolio Committee, Mr S Ngwenya, tables the Negotiating Mandates on the Prevention of and Treatment for Substance Abuse Bill [B12B-2008] - Section 76 as follows:

2. PROCESS FOLLOWED

The Speaker formally referred the Prevention of and Treatment for Substance Abuse Bill [B12B 2008], a Section 76 to the Social Development Portfolio Committee for consideration and report in terms of Rule 232 (1) (a) read with 235 (4), (6) and (7) on the 03 July 2008

On Tuesday 5 August 2008, the Chairperson accompanied by the Committee Researcher, Ms N Masuku and the Legal Assistant, Mr T Makamu attended a briefing session by the National Department of Social Development on the Bill to the NCOP in Cape Town. Following the briefing, the delegation attended a workshop on the Bill on 6 August 2008

Mrs M Magubane Madlala, the NCOP Permanent Delegate together with Ms Nomathemba Kola, the Chief Director for Social Welfare Services at the National Department of Social Development briefed the Committee on the content of the Bill on Friday, 8 August 2008.

On Monday, 11 August 2008, the Committee conducted a public hearing at the Turffontein Racecourse in Johannesburg in line with its constitutional obligation of promoting public participation.

The Committee deliberated on submissions from the public on Thursday, 21 August 2008 and the negotiating mandate on the Prevention of and Treatment for Substance Abuse Bill was subsequently adopted by the Committee on Friday, 29 August 2008

3. THE OBJECTIVES OF THE BILL

The main objectives of the Bill are

- To provide for a coordinated effort to combat substance abuse.
- To provide for the conditions for registration of all programmes, including those in treatment centres.
- To provide for the conditions and procedures for the admission of persons to treatment centres and the release of persons from treatment centres.
- To provide for early intervention, treatment and reintegration programmes for vulnerable persons, and
- To establish a Central Drug Authority, whose powers and duties are to monitor and oversee the implementation of the National Drug Master Plan.

4. FINANCIAL IMPLICATIONS OF THE BILL FOR THE PROVINCE

The Committee is concerned about the assumption that as the Minister of Social Development delegates functions and powers to provinces, these will automatically be accompanied with adequate financial resources. Although the National Department indicated that it had considered the financial implications, it was highlighted during both the briefing session and the workshop that the costing of the Bill was very conservative and that it was in fact under-budgeted for.

The Committee therefore proposes that the Department should, as soon as possible, provide provinces with a revised costing of the Bill that is in line with current economic conditions in the country.

5. OVERVIEW OF PUBLIC PARTICIPATION PROCESS

The Committee conducted a public hearing on the Bill on Monday, 11 August 2008 where one hundred and thirty six (136) members of the public from all six (6) provincial regions attended the hearing and a total of eleven (11) oral and written submissions were received.

The hearing was also attended by an NCOP Permanent Delegate, two senior officials from the National Department and three officials from the Provincial Department responsible for Social Welfare Services in the Department.

It is the Committee's hope that all those who participated will draw solace in knowing that the Committee and the GPL in particular regards every view or submission as an invaluable contribution towards strengthening our country's democracy. Although many issues were raised both orally and written down, the Committee felt that the below mentioned were relevant:

- i) **Section 5** should also include the Medicines Control Council, the South African Police Services, the Department of Labour, the SA Revenue Services and the Central Drug Authority.

It is the view of the committee that this proposal is sufficiently covered in the Tobacco Act, the Trafficking of humans, Drugs Act, Children's Act, National Health Act etc.

- ii) The provision in **Section 11(3)** does not take into consideration:

- a) The outcome of the assessment process, and
- b) The fact that anyone who is abusing substances may be seriously harmed. Prevention and early intervention should be voluntary for the person concerned and should take the person's motivation levels into account

With regard to the said submission, the committee is satisfied that the concerns raised are sufficiently addressed in certain chapters of the bill such as chapters 2, 3, 8 and 10

- iii) A recommendation that timeframes in terms of **Section 14(5)** be clarified

Ms Nomathemba Kele of the National CD, on 08 August 2008 responded to this concern by indicating that this concern and others would be dealt with under section 65. The reason being that an Act or Bill should not be burdened with details of how each section thereof would be operationalised, otherwise the Act or Bill would be too voluminous and perhaps even confusing to even the learned, let alone ordinary people. The idea is for any law to be simple, clear and intellectually accessible to a person's mind, with no legal jargon

*Taking into account the numerous public concerns around issues that would or should be addressed through regulations such as Section 65, rather than in the total body of the Bill to be an Act later. The Committee hereby proposes that under Section 65(1), the word **may** after the Minister be replaced with either the word **should/would** or **must**. The reason is that there is a dire need for this Bill – Act to be operationalised in an environment that is underpinned by clear details that responds to who, when, how and time-frames, norms and standards. Setting of regulations, norms and standards should not be optional but obligatory upon the Minister, MEC and MMC. Accordingly, the said political representatives would be each or be collectively accountable for the monitoring and evaluation of the effective, efficient and economical implementation of this Bill to be an Act.*

- iv) **Section 25** that deals with Appeals indicates that an aggrieved person " .. **may appeal to the Minister in the proscribed manner.**" but there are no procedures that provide for this 'proscribed manner' in the Bill

In its meeting of 08 August 2008, the Committee was informed that this matter would be addressed under the regulations – section 65. The Committee proposes that the Department be given a chance to draft the Regulations which before approval, should be presented to the relevant and respective legislative committees, at various spheres of government for their consideration.

Until then the Committee would like to propose that all concerned stakeholders including the Committee, take the Department's assertion that this issue of the 'proscribed manner' will definitely be explained under the Regulation, Chapter 11 of the expected Act

- v) With regards to **Section 32(2)** stakeholders call for:
 - a) A detoxification protocol for the Department of Health on the national level;
 - b) Detoxification services also be provided by SAPS in holding cells, and by the Department of Correctional Services for awaiting trial prisoners; and
 - c) Hospitals that should render these services be identified and staff be trained accordingly

With regards to detoxification the Bill is in line with legislation such as the National Health Act provided that the service provider would comply as indicated in section 32(4)

The submission regrettably does not give convincing reason contrary to what the Bill in Sections 32 and 33 seeks to address

Having considered the submission, the Committee duly recommends that the said concern and other incidental related issues are as of now covered in the Bill in Sections 32 and 33

- vi) **Section 55** – the need for the Secretariat to be an independent body, which is not linked to the Department of Social Development so that other departments will be unable to shirk their responsibilities with regards to substance abuse by making it a problem of Social Development

It must be borne in mind that the Department of Social Development is the proponent of this Bill. Consequently it is the political respondent for its implementation failure or success, whilst other departments such as Health, Safety and Security, Education, Sports and Recreation and Local Government are expected to be involved

The Committee agrees and supports the need for the secretariat of the Central Drug Authority (CDA) to be as impartially and independent as humanly possible. In this regard, the committee proposes that the appointment of any person to the CDA be in line with Section 95 of the Constitution of South Africa, Administrative Public Justice as well as any other related legislative Act. In the final analysis, a thorough study and understanding thereof of Section 55 of the Bill should be enough to dispel any fears or concerns raised in the submission vis-a-vis, Section 55.

- vii) **General concerns:**

- a There is no mention of drug testing in the Bill. It should be included as part of early intervention and the procedures that need to be followed, be should stipulated especially when it involve minors

According to the Committee, this concern is broadly covered under Section 56 (j), (l) and (k). With regards to the crucial issue about the minors, the Committee genuinely observe that the concern is well captured under Section 152 of the Children's Act as stated in Section 34 of this Bill and any other incidental legislation

Regarding the matter of the forth-coming Regulations, the Committee would once again like to assure all participants, present or in abstentia, that vigilance and a concentrated effort in deference of the public will ever continue/remain

The Committee notes through its deliberations that the concern regarding "procedures to be followed" should be covered in Section 65 under Regulations. The plea from the Committee is that a draft of the Regulations be awaited for before a vigorous interaction ensues and implementation by all departments concerned takes place

- b The deaf community is excluded from the Bill and the cost of interpretation should be included in the revised costing of the Bill

It is the Committee's view that the Bill is an all encompassing one, including every person irrespective of their physical, economic, race or gender status. It is

noted that in the public hearing of 11 August 2008, a sign language specialist was provided for purposes of an all inclusive engagement and no dissatisfaction was indicated.

6. NEGOTIATING POSITION ADOPTED BY THE COMMITTEE

The Social Development Portfolio Committee supports the principle and detail of the Prevention and Treatment for Substance Abuse Bill [B12B-2008] subject to the following key issue

- ↳ In **Section 12(3) & (4)** the word "may" after "the MEC may" should be replaced with the word "must".
- ↳ The same should apply under **Section 17 (2)**. The Committee suggests that "may" be replaced with "must" for consistency and obligatory imperatives.
- ↳ The Bill also needs to define what constitutes a 'fit and proper person' in **Section 53(2)**.
- ↳ In **Section 65(1)** after the word "Minister", "may" should be replaced with the word "should" to ensure that the Minister is indeed obliged to make regulations.
- ↳ In **Section 58(k)**, "recommended" should be "recommend".



Mr S NGWENYA
CHAIRPERSON: SOCIAL DEVELOPMENT PORTFOLIO COMMITTEE