

SECRETARIAT FOR POLICE

SELECT COMMITTEE ON SECURITY AND CONSTITUTIONAL DEVELOPMENT

COMMENTARY ON NEGOTIATING MANDATES ON THE CIVILIAN SECRETARIAT FOR POLICE

Common Issues			
Province	Clause / Chapter	Amendment/ Comment	Response by Civilian Secretariat
Eastern Cape & Limpopo	Clause 17	Overlap between provincial secretariat and relevant departments in the provinces	Disagree. There is no overlap and / or duplication of functions and powers functions.
Western Cape, Gauteng, KwaZulu-Natal & Mpumalanga	Section 206(3) of the Constitution	Bill erodes the powers of provinces contemplated in section 206(3) of the Constitution	Disagree. The Bill reinforces the powers of the provinces in terms of clause 17(2).
	Clauses 4(2) and 4(5), 19, 17 and 10	Implication that the heads of provincial secretariats are employees of the Civilian Secretariat	Disagree. The accountability of the Provincial Secretary is very clear in terms of section 22. The Provincial Secretary accounts to the MEC via the HoD who is the accounting officer for the Provincial Secretariat.
		Bill does not provide for an accounting officer in the Provinces	Disagree. See above – the HOD is the accounting officer of the provincial Secretariat.
Gauteng, Mpumalanga & Limpopo	Clause 5 (i) Clause 25(1)	The role of the Community Police Forums are not adequately addressed w.r.t. resourcing and capacity building Expand clause to provide for establishing and training CPF's	The aspects of providing guidance to CPF's do not include establishment and resourcing. It is expected that the SAPS Act Review process will deal with this more extensively. In view of the fact that we are currently consulting on the SAPS Act, the roles and functions of the CPF's will become clearer as we finalise the policy consultation process

		The Bill is silent on the role of traditional leaders in matters of domestic violence	Matters of domestic violence are regulated by the Domestic Violence Act.
	Clause 4 (6) Clause 14(1)	Financial implications of the Bill is unclear	Disagree. Provincial secretariats will be constituted under and accountable to the MEC. They will be financed from monies appropriated by the respective provincial legislatures.
	Clause 8 (1)(a)(i)	The role of the Accounting Officer must be clearly articulated	Clause 18(1) must be read together with clause 8(2)
	Clause 22	Reporting lines are not clear to the HOD. The provincial secretary must report to the MEC	Disagree. The head of provincial secretariat will report to the HoD who in turn reports to the MEC in the province in all matters relating to civilian oversight of the provincial police on a quarterly basis.
KwaZulu-Natal Mpumalanga & Western cape	Clause 26(1) and (4)	Intervention by the National Secretariat	Agree. Interventions by Civilian Secretariats will have to comply with section 100 of the Constitution. Clause 26 will be accordingly redrafted and aligned to section 100 of the Constitution.
KwaZulu-Natal Western Cape	Clause 8(2) (e) Delete Clause 8(2) and (4)	Appointment of staff by the Secretary in conflict with the Public Service Act	These sections of the Bill reinforce and are not in conflict with the PFMA and, therefore, should be retained.
	Clause 14	Clause 14 and 15 is superfluous and should be removed	Disagree. These sections of the Bill reinforces and is not in conflict with the PFMA and should be retained
	Clause 16	The provincial secretariat should come into operation on a date to be determined by the MEC after consultation with the Minister	Disagree. The provincial secretariats should be established within 18 months after the Act comes into operation. The 18 month period is a reasonable period. It also allows for national uniformity of implementation.
	Clause 17(2)	The MEC must establish competencies and capabilities in its operations	Disagree. This relates to operations of the Secretariat which is administrative in nature

	Clause 18	The appointment of heads of provincial secretariats must be done by the MEC and cannot depend on approval by the Minister. It has to be done after consultation with the Minister	Agree.
	Clause 19	Enable respective heads of provincial secretariats to have similar powers to enter buildings under control of the police.	Agree. To be dealt with in the Regulations.
	Clause 21(1)(a) and (b), (2)(3)(4)(5)	Delete	Disagree. Clause 21 reinforces the PFMA. Furthermore, the Bill does not have subsections (4) and (5).
	Clause 31	Cooperation with the ICD must be extended to a provincial level to make provision for section 206(3) of the Constitution	Disagree. This section relates to the consultative forum contemplated in chapter 4 of the IPID Bill. This section is limited to the Executive Director of IPID and the Secretary for Police. The ICD is constituted differently from the National Secretariat. It does not make provision for such cooperation at provincial level.
Free State & North West		Avoid duplication of function with provincial secretariat and ICD	The ICD is an investigative body and the Secretariat is a monitoring body
Issues Per Province			

Free State	Clauses 7(4), 12(1) & 21(1)	<p>Exclusion of former members of the police service being appointed as National Secretary and heads of provincial secretariats.</p> <p>The section does not include staff members.</p> <p>This also refers to when there is an acting appointment</p>	<p>Agree re clauses 12(1) & 21(1). However, the exclusion of former SAPS members should not include junior staff members.</p> <p><u>Proposed new clause 12(2):</u> The provisions of section 7(1), (3) and (4) apply with the necessary changes for the filling of a vacancy in terms of subsection (2).</p> <p><u>Proposed new clause 21(2):</u> The provisions of section 18(1), (3) and (4) apply with the necessary changes for the filling of a vacancy in terms of subsection (2).</p>
Limpopo	Clause 5(a)	Extend oversight to Municipal Police Services	This will be dealt with under the SAPS Act review process. It will be a more extensive consultation process.
	Chapter 3	Appointment of Secretary : 6 months be a reasonable time to appoint a Secretary	Agree. <u>Proposed new clause 12(2):</u> In the case of a vacancy, the Minister must fill the vacancy within a reasonable period of time, which period must not exceed six months.
	Clause 21(2)	Appointment of a provincial secretary: 3 months a reasonable time to appoint a provincial secretary	Agree. <u>Proposed new clause 21(2):</u> In the case of a vacancy, the MEC must fill the vacancy within a reasonable period of time, which period must not exceed three months.
Mpumalanga	Clause 25(1)	Insert provisions (e) representative from the community police forums and (f) representative from relevant stakeholders	We are currently developing a policy on the roles and functions of the CPF as part of the SAPS Act review process. We will make sequential amendments thereafter. It cannot be a rushed process.
	Clause 16 and 34(2)	Alignment of functions between provincial and National Secretariat	Agree. The provincial department will report to the MEC
	Clause 19 and 22	Reporting requirements to HOD and MEC	Agree.

North West		Bills to be written in all official languages	Agree.
		Regulations on a code of conduct for members of the Civilian Secretariat	Members of the Secretariat are subject to the public service code of conduct as staff members are appointed in terms of the Public Service Act