

PARLIAMENT OF THE PROVINCE OF THE WESTERN CAPE

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

FRIDAY, 14 JUNE 2013

COMMITTEE REPORTS

The Speaker:

1. Report of the Standing Committee on Finance and Economic Development on the *Western Cape Seventeenth Gambling and Racing Amendment Bill* [B 3–2013], dated 12 June 2013, as follows:

The Standing Committee on Finance and Economic Development, having considered the subject of the *Western Cape Seventeenth Gambling and Racing Amendment Bill* [B 3–2013], referred to it in terms of Standing Rule 171, reports the Bill without amendments.

2. *(Negotiating mandate stage)* Report of the Standing Committee on Finance and Economic Development on the *Tourism Bill* [B 44B–2012] (NCOP), dated 12 June 2013, as follows:

The Standing Committee on Finance and Economic Development, having considered the *Tourism Bill* [B 44B–2012] (NCOP), referred to the Committee in terms of Standing Rule 220, confers on the Western Cape’s delegation in the National Council of Provinces the authority to support the Bill with the following amendments:

- (a) There is a typing error on page 11 in line 42, and it is suggested that the word “executive” after the words “chief executive” be deleted;
- (b) There is ambiguity between clauses 28 and 30. Clause 28(1) provides that the Minister “may develop a national grading system for tourism”, whereas clause

30(1) places an obligation on the Tourism Grading Council in the following terms: “The Council *must* implement and manage the national grading system for tourism contemplated in section 28.” Where the Bill (once enacted) creates a Tourism Grading Council (see clause 29) and places an obligation on the Council to implement and manage the national grading system contemplated in section 28, it follows that the Minister *must* develop a national grading system in order to enable the Council to fulfil the function for which it is created.

It is therefore suggested that the word “may”, on page 12 in line 18, be replaced by the word “must”;

- (c) There appears to be ambiguity between clauses 3(2) and 7(3). Clause 3(2) provides that the Bill (once enacted) will bind all organs of state and, in the case of provinces, will bind the provinces *subject to section 146*. Clause 7(3) is stated in broader terms and provides that all organs of state must apply the norms and standards established in terms of clause 7(1) of the Bill. Even though clause 7(2) provides that the Minister must consult with the MEC’s on norms and standards, it is suggested that the approach in clause 3(2) of the Bill is correct.

It is suggested that clause 7(3) be amended to clarify that the operation of the clause will be subject to clause 3(2)(b);

- (d) Clause 10(1) should make provision for support by the National Conventions Bureau to the various provincial and municipal convention bureaus.

The following item should be added after line 52 on page 7:

“(iii) *supporting relevant provincial and municipal convention bureaus in attracting events to the relevant province or municipality.*”;

- (e) The definition of “tourist guide” in the Bill is likely to cause interpretational difficulties. The definition states that a “tourist guide” means any person registered as such under section 50. Clause 57, in sub-clause (1) states, in paraphrase, that a person who is not a registered tourist guide *may not act as a tourist guide*. Section 57, in subsection (3) determines that no person may *employ another as a tourist guide* where the employed person is not a registered tourist guide. How will it be determined whether a person is employed as a tourist guide in circumstances where a tourist guide is defined as a person registered as a tourist guide in terms of section 50? Non-compliance with clause 57 will constitute a crime (see clause 59). The principle of legality requires that criminal offences be clearly defined and identified. In the absence of a comprehensive definition of “tourist guide” it is not possible for a person to determine whether her or his conduct is that of a tourist guide, and for an employer to determine whether a person is being employed as a tourist guide. Such vagueness will render criminalisation of the conduct stated in clause 57 objectionable and unlawful. It is proposed that a conviction on the offences foreseen in clause 57 cannot succeed in a criminal court.

It is suggested that the definition of “tourist guide” be fleshed out and given substance in such a manner as to clearly delineate the relevant scope of activities to which the term will apply;

- (f) In clause 34(6) of the Draft Tourism Bill published in 2011 for comment it states that the registration of a tourist guide shall be valid for two years. Clause 34(7) made provision for a tourist guide to renew his or her registration. Clause 34(3)(c) of the same Bill required a tourist guide to pass a prescribed quality assurance process not later than two years after the date of his or her last registration. In the comments submitted on this Draft Bill in 2011, DEDAT and Legal services suggested that a two year registration period was too short and cumbersome because it would result in unnecessary administration with regard to the frequent applications for renewal of registration. It was suggested that the period of registration be extended.

In the current version of the *Tourism Bill* [B 44B–2012], it is noted that the registration period has been extended to three years [clause 50(7)(a)]. In other words the drafters complied with our request to extend the registration period. However, clause 50(3)(d) of the same Bill retains the provision that a tourist guide must pass a prescribed quality assurance process not later than two years after the date of his or her last registration. It seems nonsensical that a tourist guide must reregister every three years but pass a quality assurance process i.e. a test, every two years. It is submitted that the timing of the quality assurance process must run concurrently with the re-registration. In other words, the prescribed quality assurance process should be undertaken every three years.

The following section should substitute clause 50(3)(d) of the Bill:

“ (d) has failed to pass the prescribed quality assurance process that a tourist guide must complete not later than **[two] three years** after the date of his or her last registration as a tourist guide.”

PARLEMENT VAN DIE PROVINSIE WES-KAAP

AANKONDIGINGS, TERTAFELLEGGINGS EN KOMITEEVERSLAE

VRYDAG, 14 JUNIE 2013

KOMITEEVERSLAE

Die Speaker:

1. Verslag van die Staande Komitee oor Finansies en Ekonomiese Ontwikkeling oor die *Wes-Kaapse Sewentiende Wysigingswetsontwerp op Dobbelary en Wedrenne* [W 3–2013], gedateer 12 Junie 2013, soos volg:

Nadat die Staande Komitee oor Finansies en Ekonomiese Ontwikkeling oorweging geskenk het aan die onderwerp van die *Wes-Kaapse Sewentiende Wysigingswetsontwerp op Dobbelary en Wedrenne* [W 3–2013], wat ingevolge Staande Reel 171 na die Komitee verwys is, rapporteer hy die Wetsontwerp sonder wysigings.

2. (*Onderhandelingsmandaatstadium*) Verslag van die Staande Komitee oor Finansies en Ekonomiese Ontwikkeling oor die *Tourism Bill* [W 44B–2012] (NRVP), gedateer 12 Junie 2013, soos volg:

Nadat die Staande Komitee oor Finansies en Ekonomiese Ontwikkeling oorweging geskenk het aan die onderwerp van die *Tourism Bill* [W 44B–2012] (NRVP), wat ingevolge Staande Reël 220 na die Staande Komitee verwys is, die Wes-Kaapse afvaardiging in die Nasionale Raad van Provinsie met die gesag bekleed word om die Wetsontwerp met die volgende wysigings te steun.

- (a) There is a typing error on page 11 in line 42, and it is suggested that the word “executive” after the words “chief executive” be deleted;
- (b) There is ambiguity between clauses 28 and 30. Clause 28(1) provides that the Minister “*may develop a national grading system for tourism*”, whereas clause

30(1) places an obligation on the Tourism Grading Council in the following terms: “The Council *must* implement and manage the national grading system for tourism contemplated in section 28.” Where the Bill (once enacted) creates a Tourism Grading Council (see clause 29) and places an obligation on the Council to implement and manage the national grading system contemplated in section 28, it follows that the Minister *must* develop a national grading system in order to enable the Council to fulfil the function for which it is created.

It is therefore suggested that the word “may”, on page 12 in line 18, be replaced by the word “must”;

- (c) There appears to be ambiguity between clauses 3(2) and 7(3). Clause 3(2) provides that the Bill (once enacted) will bind all organs of state and, in the case of provinces, will bind the provinces *subject to section 146*. Clause 7(3) is stated in broader terms and provides that all organs of state must apply the norms and standards established in terms of clause 7(1) of the Bill. Even though clause 7(2) provides that the Minister must consult with the MEC’s on norms and standards, it is suggested that the approach in clause 3(2) of the Bill is correct.

It is suggested that clause 7(3) be amended to clarify that the operation of the clause will be subject to clause 3(2)(b);

- (d) Clause 10(1) should make provision for support by the National Conventions Bureau to the various provincial and municipal convention bureaus.

The following item should be added after line 52 on page 7:

“(iii) *supporting relevant provincial and municipal convention bureaus in attracting events to the relevant province or municipality.*”;

- (e) The definition of “tourist guide” in the Bill is likely to cause interpretational difficulties. The definition states that a “tourist guide” means any person registered as such under section 50. Clause 57, in sub-clause (1) states, in paraphrase, that a person who is not a registered tourist guide *may not act as a tourist guide*. Section 57, in subsection (3) determines that no person may *employ another as a tourist guide* where the employed person is not a registered tourist guide. How will it be determined whether a person is employed as a tourist guide in circumstances where a tourist guide is defined as a person registered as a tourist guide in terms of section 50? Non-compliance with clause 57 will constitute a crime (see clause 59). The principle of legality requires that criminal offences be clearly defined and identified. In the absence of a comprehensive definition of “tourist guide” it is not possible for a person to determine whether her or his conduct is that of a tourist guide, and for an employer to determine whether a person is being employed as a tourist guide. Such vagueness will render criminalisation of the conduct stated in clause 57 objectionable and unlawful. It is proposed that a conviction on the offences foreseen in clause 57 cannot succeed in a criminal court.

It is suggested that the definition of “tourist guide” be fleshed out and given substance in such a manner as to clearly delineate the relevant scope of activities to which the term will apply;

- (f) In clause 34(6) of the Draft Tourism Bill published in 2011 for comment it states that the registration of a tourist guide shall be valid for two years. Clause 34(7) made provision for a tourist guide to renew his or her registration. Clause 34(3)(c) of the same Bill required a tourist guide to pass a prescribed quality assurance process not later than two years after the date of his or her last registration. In the comments submitted on this Draft Bill in 2011, DEDAT and Legal services suggested that a two year registration period was too short and cumbersome because it would result in unnecessary administration with regard to the frequent applications for renewal of registration. It was suggested that the period of registration be extended.

In the current version of the *Tourism Bill* [B 44B–2012], it is noted that the registration period has been extended to three years [clause 50(7)(a)]. In other words the drafters complied with our request to extend the registration period. However, clause 50(3)(d) of the same Bill retains the provision that a tourist guide must pass a prescribed quality assurance process not later than two years after the date of his or her last registration. It seems nonsensical that a tourist guide must reregister every three years but pass a quality assurance process i.e. a test, every two years. It is submitted that the timing of the quality assurance process must run concurrently with the re-registration. In other words, the prescribed quality assurance process should be undertaken every three years.

The following section should substitute clause 50(3)(d) of the Bill:

“ (d) has failed to pass the prescribed quality assurance process that a tourist guide must complete not later than **[two] three years** after the date of his or her last registration as a tourist guide.” *

* *Nie in Afrikaans beskikbaar nie.*

IPALAMENTE YEPHONDO LENTSHONA KOLONI

IZAZISO, IMICIMBI EZA KWANDLALWA NEENGXELO ZEKOMITI

LWESIHLANU, 14 JUNI 2013

IINGXEKO ZEKOMITI

USomlomo:

3. INgxelo yeKomiti eSisigxina kwezeMali noPhuhliso lwezoQoqosho ngoMthetho oSayilwayo woLungiso weShumi elineSixhenxe woNgcakazo noMdyarho weNtshona Koloni [B 3–2013], ebhalwe owe-12 Juni 2013, ngolu hlobo lulandelayo:

IKomiti eSisigxina kwezeMali noPhuhliso lwezoQoqosho, emva kokuqwalasela umba woMthetho oSayilwayo woLungiso weShumi elineSixhenxe woNgcakazo noMdyarho weNtshona Koloni [B 3–2013], othunyelwe kuyo ngokwemigaqo yoMthetho oSisigxina 171, inika ingxelo ngoMthetho oSayilwayo ngaphandle kwezilungiso.

4. (***Inqanaba lesigunyaziso sothethathethwano***) INgxelo yeKomiti eSisigxina kwezeMali noPhuhliso lwezoQoqosho ngoMthetho oSayilwayo wezoKhenketho [B 44B–2012] (NCOP), ebhalwe owe-12 Juni 2013, ngolu hlobo lulandelayo:

IKomiti eSisigxina kwezeMali noPhuhliso lwezoQoqosho, emva kokuqwalasela umba woMthetho oSayilwayo wezoKhenketho [B44B–2012] (NCOP) othunyelwe kwiKomiti ngokwemigaqo yoMthetho oSisigxina 220, inikezela kwigqiza leNtshona Koloni kwiBhunga leSizwe laMaphondo igunya lokuxhasa uMthetho oSayilwayo kunye nezi zilungiso zilandelayo:

- (c) There is a typing error on page 11 in line 42, and it is suggested that the word “executive” after the words “chief executive” be deleted;
- (d) There is ambiguity between clauses 28 and 30. Clause 28(1) provides that the Minister “*may develop a national grading system for tourism*”, whereas clause

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*Ayifumaneki ngesiXhosa.