

PARLIAMENT OF THE PROVINCE OF THE WESTERN CAPE

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

WEDNESDAY, 7 NOVEMBER 2018

ANNOUNCEMENT

The Speaker:

Appointment of members of the Provincial Cabinet

The Premier announced the appointment of members of the Provincial Cabinet in the attached documents dated 1 November 2018.

COMMITTEE REPORT

(Negotiating mandate stage) Report of the Standing Committee on Environmental Affairs and Development Planning on the Marine Spatial Planning Bill [B 9D–2017] (NCOP), dated 26 October 2018, as follows:

The Standing Committee on Environmental Affairs and Development Planning, having considered the subject of the Marine Spatial Planning Bill [B 9D–2017] (NCOP) referred to the Committee in accordance with Standing Rule 220, confers on the Western Cape's delegation in the NCOP the authority to support the Bill subject to the following amendments:

1. Definitions

1.1 Marine spatial planning must be defined in the Bill.

1.2 The Bill applies to "South African waters", which is defined to include "internal waters". The Maritime Zones Act, 1994 (Act 15 of 1994) states that: "(1) The internal waters of the Republic shall comprise- (a) all waters landward of the baselines; and (b) all harbour." The Bill specifically excludes all fresh water bodies as defined in the National Environmental Management: Integrated Coastal Management Act, 2008 (Act 24 of 2008).

It is submitted that “freshwater bodies” also be defined to further clarify that the Bill is not applicable to inland waters. Terrestrial planning with regard to inland waters is already covered by other legislation.

- 1.3 The term “Knowledge and information system” is used throughout the Bill. It is submitted that a definition is required for the sake of clarity as to the meaning of the term.

2. Marine Spatial Planning Frameworks (MSPFs): Clause 9

The development and drafting of Marine Spatial Planning Frameworks (MSPFs) are designated to the National Working Group in terms of clause 9(2). The Bill is silent to the manner in which MSPFs must be drafted, whether such frameworks must be national or drafted for certain regions or areas, to whom draft MSPFs must be submitted, how and by whom these draft MSPFs will be evaluated and reviewed and who will be responsible for the approval and implementation of these frameworks.

It is submitted that MSPF’s be included as a separate clause, in which the process, from drafting to acceptance and review, be set out.

3. National Working Group (NWG): Clause 9

No determinable requirements are set in the Bill for officials to qualify for nomination to the NWG. Furthermore, if the NWG is to be comprised of persons who are considered to be experts in their respective fields of study or practice, a rider must be included in clause 9(4) so that experts may only be appointed in the event where the NWG is not capable of dealing with a specific matter internally. The National Working Group on Marine Spatial Planning created in terms of clause 9 includes competent officials from various national departments but it does not make provision for the inclusion of provincial officials on the committee.

The Bill may have significant implications for provinces which have a coastline and it is therefore submitted that provision should be made for the inclusion of provincial officials on the National Working Group on Marine Spatial Planning.

Clause 9(2)(b)(xiv): It is submitted that the “cultural values” mentioned in line 50 is a repetition of that in line 45 and should be deleted.

4. Directors-General Committee: Clause 10

The Directors-General Committee created in terms of clause 10 does not provide for provincial or municipal representation on the committee. The Bill also does not provide for representation by the Department of Water and Sanitation, Disaster Management Authorities, the South African Maritime Safety Authority and the South African Local Government Association.

It is not agreed that marine spatial planning can be done without the provincial and municipal input that is responsible for the terrestrial areas that will support the ocean-based activities. The terrestrial areas adjacent to the ocean will be directly affected by marine spatial planning. Provincial governments and municipalities will have to be prepared and ready to respond to the marine spatial planning system.

The Bill may have significant implications for provinces and municipalities that have a coastline and it is therefore submitted that provision should be made for provincial and municipal representation from the entities mentioned on the Directors-General Technical Committee and any other committee created in respect of marine spatial planning.

5. Drafting Corrections

5.1 Clause 4

As there is no other legislation dealing with marine spatial planning, clause 4 is probably intended to read as follows:

‘In the event of any conflict between the provisions of this Act and other legislation, this Act prevails where the conflict relates to marine spatial planning.’

5.2 Clause 5

Clause 5(1)(a) starts with capitalisation, which should be lower case.

In clause 5(1)(k) it appears as though ‘... good administration coherent...’ should be ‘... good administrative coherence...’

5.3 Clause 6

Clause 6(a) starts with capitalisation, which should be lower case.

5.4 Clause 8

It is submitted that the ‘the’ preceding the words ‘marine area plans’ in the first sentence of clause of 8(1) be deleted.

5.5 Clause 9

5.5.1 It is submitted that ‘data base’ in the second line of clause 9(2)(b) should be ‘database’.

5.5.2 Clause 9(2)(b)(i) starts with capitalisation, which should be lower case.

It is submitted that everything after the expression ‘subsection (3)(a)’ in the first line of clause 9(2)(c) be deleted, since the obligation here to report to the Directors-General Committee is also stated in subsection 3(a).

5.6 Clauses 10(1) and 11(1):

A comma needs to be inserted between “planning” and “monitoring” in lines 17 and 47.

5.7 Clause 11

5.7.1 It is submitted that the word ‘the’ be inserted between the word ‘of’ and ‘Ministers’ in the second line of clause 11(1).

5.7.2 It is submitted that clause 11(4) be redrafted to state that, ‘Decisions made by the Ministerial Committee must be by consensus.’ The current draft suggests that there is only one type of decision to which the consensus-requirement applies. From clause 11(5) it appears that this is not the case, and that there are various decisions that the Committee may make.

5.8 Clause 12

Parliament does not have a Speaker. Parliament consists of the National Assembly and the National Council of Provinces. If it is the intention for the relevant portfolio committee of the National Assembly to consider these frameworks and plans, clause 12(1) should follow the following approach:

Clause 12(1) Any marine spatial framework and marine area plans that have been approved by the Ministerial Committee must be submitted by the Minister to the Speaker of the National Assembly for tabling for consideration by the relevant committee of the National Assembly.

(See rule 337 of the Rules of the National Assembly)

The Committee further wishes to express the following:

Given the complexity of this Bill and the fact that the Bill is a technical Bill requiring expert consultation and input, the lack of support from the National Department of Environmental Affairs was disappointing. This lack of support from the National Department of Environmental Affairs also impacted on the constitutional mandate of the Committee in terms of effective law-making, oversight and public participation.

Similarly, no support was provided to the Committee at the first two public hearings thus placing the Committee in a difficult position when faced with questions from the public.

Marine planning and resources are of significant economic importance to the Western Cape, to persons employed in these industries as well as to persons and stakeholders that have a direct or indirect interest in the well-being of the industry. It is incomprehensible that members of the public who took the time to attend public hearings were not shown the courtesy of the National Department to be in attendance to answer their questions.

In terms of the Mandating Procedures of Provinces Act, 2008 (Act 52 of 2008), a “negotiating mandate means the conferral of authority by a committee designated by a provincial legislature on its provincial delegation to the NCOP of parameters for negotiation when the relevant NCOP Select Committee considers a Bill after tabling and before consideration of final mandates, and may include proposed amendments to the Bill”.

In light of the above, the Standing Committee on Environmental Affairs and Development Planning submits this report, without the support of the National Department of Environmental Affairs and without clarity on pertinent issues in the Bill, to respect rules 220 and 222 of the Standing Rules of the Western Cape Provincial Parliament.