Thursday, 9 May 2024]

No 69—2024] SIXTH SESSION, SIXTH PARLIAMENT

PARLIAMENT

OF THE

REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

THURSDAY, 9 MAY 2024

TABLE OF CONTENTS

ANNOUNCEMENTS

National Assembly and National Council of Provinces

The Speaker and the Chairperson

1. Bills passed by Houses – to be submitted to President for assent

(1) Bills passed by National Assembly on 9 May 2024:

(a) **Housing Consumer Protection Bill** [B10D–2021] (National Assembly – sec 76).

(2) Bills passed by National Council of Provinces on 9 May 2024:

(a) **National Nuclear Regulator Amendment Bill** [B25B–2023] (National Assembly – sec 75).

(b) **South African Institute for Drug-Free Sport Amendment Bill** [B41B–2023] (National Assembly – sec 75).

(c) **Division of Revenue Bill** [B4–2024] (National Assembly – sec 76).

(d) **Gold and Foreign Exchange Contingency Reserve Account Defrayal Amendment Bill** [B7–2024] (National Assembly – sec 77).

(e) **Preservation and Development of Agricultural Land Bill** [B8B-2021] (National Assembly – sec 76).

National Assembly

The Speaker

1. Bills passed by Council and returned to Assembly for concurrence

(1) Bill amended by Council and returned for concurrence on 9 May 2024:

(a) **Public Procurement Bill** [B18D-2023] (National Assembly – sec 76).

The Bill has been referred to the **Standing Committee on Finance** of the National Assembly.

(2) Bill, subject to proposed amendments, passed by Council on 9 May 2024 and returned for consideration of Council's proposed amendments:

(a) **Statistics Amendment Bill** [B31B-2023] (National Assembly – sec 75) (for proposed amendments, see Announcements, Tablings and Committee Reports, 23 April 2024, p 4).

Bill and proposed amendments referred to the **Portfolio Committee on Planning, Monitoring and Evaluation** of the National Assembly.

2. Bills rejected – Assembly Rule 290(6)

(1) Bills rejected by National Assembly on 9 May 2024:

(a) **Responsible Spending Bill** [B9–2023] (National Assembly – sec 76).

(b) **Children's Amendment Bill** [B19–2023] (National Assembly – sec 76).

National Council of Provinces

The Chairperson

1. Bills passed by Assembly and transmitted to Council for concurrence

(1) Bill passed by National Assembly and transmitted for concurrence on 9 May 2024:

(a) **Older Persons Amendment Bill** [B11B–2022] (National Assembly – sec 76).

Bill has been referred to the **Select Committee on Health and Social Services** of the National Council of Provinces.

COMMITTEE REPORTS

National Council of Provinces

[The following report, replaces the Report of the Select Committee on Finance, which was published on page 6 of the Announcements, Tablings and Committee Reports dated 08 May 2024]

1. REPORT OF THE SELECT COMMITTEE ON FINANCE ON THE PUBLIC PROCUREMENT BILL (NATIONAL ASSEMBLY- SECTION 76, B18D-2023), DATED 07 MAY 2024

1. INTRODUCTION AND BACKGROUND

The Minister of Finance introduced the Public Procurement Bill, (B18-2023) (the Bill) in the National Assembly (NA) in June 2023. The Bill was passed by the NA and transmitted to National Council of Provinces (NCOP) for concurrence on 6 December 2023.

The objective of the Bill is to regulate public procurement and to prescribe a framework within which preferential procurement must be implemented.

The Bill intends to address the fragmentation of public procurement legislation, align it to international best practice, where appropriate, and assist in implementing government's socio-economic policy objectives.

2. OVERVIEW OF THE PUBLIC PROCUREMENT BILL

The PPB proposes to, (1) create a single framework regulating procurement, in line with all applicable provisions in sections 195, 216, and 217 of the Constitution of the Republic of South Africa, 1996 (Constitution), (2) establish a Public Procurement Office (PPO) in the National Treasury (NT), with specific functions for provincial treasuries (PTs) and duties of procuring institutions, (3) make provision for procurement integrity and debarment, (4) establish a framework providing for the implementation of a preferential procurement policy, (5) provide for the procurement system, methods and related matters (these include a bid committee system and development of information and communication technology (ICT) based procurement system), and (6) establish dispute resolution mechanisms.

3. PROCESSING OF THE BILL

The Bill was processed in terms of the procedure established in terms of section 76 of the Constitution. The Select Committee on Finance (Committee) invited the provincial Select Committees on Finance to the briefing on the Bill by NT on 06 February 2024 and all the other meetings.

The Committee held public hearings on 23 February 2024 and received a total of 33 submissions. Twelve stakeholders made oral submissions. These are Business Unity South Africa (BUSA), Public Affairs Research Institute (PARI), African Procurement Law Unit (APLU), Joint Strategic Resources (JSR), National Research Foundation (NRF), South African Institute for Chartered Accountants (SAICA), Corruption Watch (CW), Public Service

Accountability Monitor (PSAM), the South African Medical Technology Industry Association (SAMED), Congress of South African Trade Unions (COSATU) and Southern African Clothing and Textile Workers Union (SACTWU), Will Power (WP), and the Institute for Race Relations (IRR) Legal NPC.

Twenty one written submissions were received from the Solidary Trade Union (STU), Construction Industry Development Board (CIDB), Equal Education and Law Centre (EELC) and Equal Education (EE), Pharmaceutical Task Group (PTG), Consumer Goods Council of South Africa (CGCSA), Pharmaceuticals Made in South Africa (PHARMISA), City of Cape Town (CCT), Amabhungane Centre for Investigative Journalism, Health Justice Initiative (HJI), Budget Justice Coalition (BJC) and Imali Yethu Civil Society Coalition for Open Budgets, Construction Sector Charter Council (CSCC), University of Stellenbosch (US) (Venter, Quinot and Scott), Sakeliga (formerly Afribusiness), Webber Wentzel, Eskom, Perishable Products Export Control Board **(**PPECB), Civil Engineering Group, MEC Wenger, Mr Michael Freema, and Dear South Africa.

At a meeting of the Committee on 19 March 2024, the NT responded to the submissions of stakeholders, and they, in turn, responded to the NT's responses. The Committee then engaged with both NT and the stakeholders.

In its responses the NT dealt with, among others, concerns regarding constitutionality, independence of the Public Procurement Office (PPO), functions of PPO, provincial treasuries and procuring institutions, transparency and integrity measures, whistleblowing, dispute resolution and the extent of regulation-making powers. The Committee raised concerns about NT in some instances only noting stakeholders' comments and explaining that some of the issues will be addressed through regulations, circulars, guidelines, and instructions and should not form part of the primary legislation. The Committee expressed disappointment with NT's responses and urged NT to provide a comprehensive feedback and engage constructively in the process. The Committee invited stakeholders to submit further comments and directed NT to meet separately with the stakeholders to see if they can reduce the differences between them, given that the Bill is a Section 76 Bill which must include the views of the provinces.

Twelve stakeholders submitted summaries of outstanding issues that still had to be addressed. Those who made submissions were COSATU and SACTWU, JSR, Procurement Reform Working Group (PRWG) NRF, PSAM, CSCC, NRF, Willpowers, IRR Legal NPC, Black Business Council (BBC), Business Unit South Africa (BUSA) and Dr Ncedo Mkhondweni. An additional submission was received by MK Liberation War Veterans. Subsequently, NT met with the stakeholders between 8 and 10 April 2024 and provided feedback on the outcome of the engagements to the Committee on 17 April 2024. The report was discussed at length in subsequent sittings of the Committee.

Permanent delegates of the Committee briefed their respective provinces on the Bill between February and April 2024. On 30 April 2024 and 02 May 2024, the Committee considered the provincial negotiating mandates. The Committee held meetings on 23, 25, 26 and 30 April 2024 and 02 May 2024 to further process the Bill, decide on policy issues and consider the Bill

clause-by-clause. On 07 May 2024, the Committee considered and adopted the report. In all, the Committee spent 39 hours **(depends on how many hours today – but this figure allocates 3 hours) on the Bill.**

4. SUMMARY OF KEY ISSUES RAISED DURING THE COMMITTEE'S PUBLIC PARTICIPATION PROCESS AND NATIONAL TREASURY'S RESPONSES

This is a brief overview of the submissions made by stakeholders. Their full submissions can be found at on the website of Parliament (https://www.parliament.gov.za/). The following key issues were raised by the stakeholders in oral and written submissions:

4.1 **Poorly defined terms, omissions, and inconsistencies**: Some stakeholders raised concerns about definitions in the Bill, that must be amended, replaced, deleted, or reviewed. Some suggested insertions of new definitions and rectification of errors and omissions. Also, clauses were said to be poorly drafted, undefined, unclear, and hard to interpret, and may introduce the risk of poor implementation. The stakeholders suggested that the National Council of Provinces (NCOP) should strengthen this Bill to address these substantial drafting concerns before its finalisation.

4.2 **Inadequate public participation process:** Issues raised included that Chapter 4 has not been tested by a National Economic Development and Labour Council (NEDLAC) review process; inputs made in the NA were largely not considered; and there was a lack of meaningful public participation in the NA process. Stakeholders complained that the timeline for processing the Bill in the NA and NEDLAC was rushed. Proposals were made that the Bill not be processed by the Committee, and be returned to NEDLAC for further discussions and be brought back within six months.

4.3 Others suggested that a "supplementary" Bill and the regulations be brought back to NEDLAC in the next 18 months. NT outlined its public participation process undertaken since 2014. NT explained that it (1) conducted a comprehensive consultation process with stakeholders in all spheres of government, Cabinet and government institutions, (2) subjected the Bill to the NEDLAC process for six months in 2022, (3) ensured that the Ministers of Labour and Finance received a NEDLAC report signed off by all social partners, and (4) ensured that the Bill was certified by the Office of the State Law Advisers. Also, the Presidency, through the Department of Planning, Monitoring and Evaluation (DPME), issued a certificate for the Social Economic Impact Assessment Study (SEIAS), which permitted NT to proceed with the Bill; the Bill went though the NA process; and the Bill considered the Zondo Commission of Inquiry recommendations and the 2017 Constitutional Court judgement regarding preferential procurement regulations, amongst other judgements.

4.4 **Major concerns with the Chapter 4 amendments**: Several stakeholders raised the need for clarification of "pre-qualification", "set-asides", "sub-contracting", "asset management", "complementary goals", local production and content, and

"transformation". Suggestions were also made to redefine value for money in "set-asides" but also include social and economic redress for the injustices of the past to ensure that South Africa achieves all the objectives of section 217(1)(2) and (3) of the Constitution. Other issues identified included misalignment of Chapter 4 with the rest of the Bill; the removal of price as a criterion for evaluating tenders; and that the many amendments made in the NA process have created risks and potential legal challenges; and the role of municipal and provincial procuring institutions has been undermined. On the power to determine a preferential procurement policy, stakeholders argued that certain provisions in Chapter 4 of the Bill appear to supersede the five principles outlined in section 217(1) of the Constitution. A proposal was made that clauses 17, 18 and 19 be amended, to remove all categories that are not black or black-owned.

NT responded that:

4.4.1 The inclusion in clause 18(1) related to "prequalification" states that the prescribed thresholds and conditions must include a prescribed minimum of potentially qualifying suppliers to ensure competition. It is proposed that clause 17(5) be amended by omitting paragraph (a) to (c) which provides that a bid set-aside in terms of subsection (1) be evaluated in terms of the prescribed criteria. "Prequalification" for preferential procurement and subcontracting as a condition of contracts are included in a manner that aligns with the aims of sections 217(2) and (3) of the Constitution , especially considering the majority judgment in the Minister of Finance v Afribusiness (NPC [2022] ZACC 4) at paragraph 116 of the Constitutional Court judgement: "Happily, both the first judgment and this judgment and, indeed, the Minister understand the impugned regulations to do what is envisaged in section 217(2) of the Constitution."

4.4.2 Based on the intentions of section 217 of the Constitution, it is not correct that "set-asides" are unconstitutional, as section 217(2) provides for preference in the allocation of contracts and for the protection and advancement of persons or categories of persons previously disadvantaged by unfair discrimination. The reason that "set-asides" were regarded as not being valid was that the founding legislation, the Preferential Procurement Policy Framework Act (PPPFA), did not provide for "set-asides" per se, but for preferential procurement to only occur within the context of a preference point system. Clause 17 is drafted in a manner that recognises that it may not always be possible to implement the "set-asides" provisions, and clause 17(6) states what should happen in such instances. Furthermore, clause 18(7) is written in a manner that ensures that competition is not flouted when procuring institutions make use of the pre-qualification provisions. NT believes that the necessary checks and balances have been written into the designation provisions. Different categories of "set-asides" have been

proposed as stand-alone categories to further elevate different categories of people previously disadvantaged, in line with the comments received.

4.4.3 On local production and content, the Constitution in section 217(2)(a) provides for preferences in the allocation of contracts, which preferences may relate to several vulnerable categories, such as the local manufacturing base of the country. It is believed that the necessary checks and balances are contained in clause 20, the provision for designation of sectors for local production and content.

4.4.4 Stakeholders expressed a view that the price used in evaluating tenders could be deemed unconstitutional as section 217(1) of the Constitution makes provision for cost-effectiveness and competition as one of the principles of public procurement. NT said that procurement, and public procurement in particular, by its very nature, should first and foremost be about price. They further highlighted that only if the national legislation can be brought under section 217(3), which requires a legislative framework for the preferential procurement part of the exercise, can there be a departure from the requirements of section 217(1).

4.4.5 Regarding alignment, Chapter 4 should be understood in the context of the procurement system envisaged in section 217(1) of Constitution, and is also linked to Chapter 5, which provides a framework for this system to be prescribed by regulations. Procuring institutions must implement their procurement systems and policies considering the nuances of their sector and industries. In the Constitutional Court judgement of the Minister of Finance v Afribusiness, Justice Mhlantla stated at paragraph [79] that: “The stand-alone reading of section 217(1), which ignores section 217(2), is not only a disservice to statutory interpretation, but also ignores the founding values of the Constitution”. This reaffirms that national legislation providing a framework to give effect to section 217(2) of the Constitution must consider the founding values of the Constitution and the need to deliberately redress past discriminatory practices and provide for measures to make a meaningful difference to the lives of South Africans who suffered under apartheid.

4.4.6 It is proposed that procedural provisions in clause 17(5)(a) to (c) be omitted as well as all references to “complementary goals” in Chapter 4. It is proposed that clause 25(1) be amended to contain a general requirement on bid evaluation as prescribed by regulation as part of the framework for an institution’s procurement system, which is to include cost-effectiveness, functionality and technical requirements, where applicable. Institutions must apply the preferential procurement provided for in Chapter 4 within their procurement systems developed and implemented as determined by regulation under clause 25, read with clause 8, of the Bill. The PPO may issue a model policy, which the procuring institution may customise according to its own institutional requirements.

4.4.7 On transformation, as to the proposed removal in clause 17(3), 18(1) and 19(1) of categories that are not black people or owned by black people, NT did not support

removal of categories of “women”, “people with disabilities”, “youth”, “small enterprises” and "co-operatives" categories. These categories of persons accord with section 217(2)(a) and (b) of the Constitution in that persons who were previously disadvantaged by unfair discrimination included all women, not just black women, as an example. Furthermore, section 217(2)(a) allows for categories of preference in the allocation of contracts. Therefore, the framework in Chapter 4 may provide for preferences for other vulnerable categories of persons, such as "small enterprises" generally.

4.4.8 NT did not agree with the notion that preferential procurement is discretionary, as alleged. The Bill is clear that preferential procurement policy of a procuring institution must comply with the framework of Chapter 4 which includes matters to be prescribed by regulation. To make compliance with the regulations clearer it is proposed that it be included in clause 16.

4.4.9 As to comment that the five principles in section 217(1) of the Constitution are not adequately reflected in the Bill, various provisions in the Bill deal with these five principles. The principles in section 217(1) must be adhered to together with other provisions of the Constitution, which includes section 217(2) and (3), and sections 195(1)(b) and 216. The Bill, read together with regulations, will direct procuring institutions on how to give effect to these principles in their procurement systems which includes their policies.

4.5 **Transparency on the calculation of “premiums” in the Bill:** Some stakeholders raised concerns that, (1) NT appears to have no plan to ensure transparency and expenditure control over Black Economic Empowerment (BEE) “premiums” paid under the Bill, (2) there is no indication of how technology records “premiums”, “regulations” and “instructions”, and (3) the value of “excessive premiums” and how race will be tested is not clear. A proposal was made that the Methodology for Assessing Procurement Systems (MAPS) process is an intervention needed for the reform of South Africa’s public procurement system. NT referred to clause 33, obliging the Minister (it is not a discretion) to make regulations regarding the disclosure of procurement information and what these regulations must contain, as a minimum and this is sufficient. Subclauses (2) to (4) of clause 64 (which is clause 63 in the D-version of the Bill) sets out a rigorous process for the development of regulations, which enables a transparent process. Unlike in the current system where transparency was implemented through the use of instructions concerning institutions under the scope of the Public Finance Management Act (PFMA), the Bill will, together with the regulations, provides for compulsory measures of transparency in the primary and subordinate legislation. Premiums and transformation issues will be addressed in the regulations.

4.6 **No consideration for cooperative governance**: There was also a concern that there was no provision to consult the Department of Cooperative Governance and Traditional Affairs (CoGTA) or South African Local Government Association (SALGA); power is

centralized at the expense of provincial and local government; the Bill does not acknowledge the local government sphere; and there are limited cooperative governance arrangements. NT's response was that section 217 applies to all organs of state; and the legislative and executive powers of provincial and local government are not usurped. NT explained that the Minister of Finance is currently empowered to make regulations under the PFMA and Municipal Finance Management Act (MFMA) that are applicable to provincial institutions and municipalities, respectively. Also, NT is empowered by the PFMA to issue instructions applicable to provincial institutions, while provincial treasuries may issue instructions specific to their provinces. NT further indicated that the Bill does not seek to undermine or amend the independence and constitutional authority that is vested in municipal councils. It seeks to regulate procurement activities to ensure uniformity throughout the public sector. The municipality's right to exercise its power or perform its functions is not compromised, as the process will be after consultation with the relevant Minister, and as proposed, that organised local government be consulted. In addition, clause 64(2) compels the Minister to consult with the relevant Minister on a drafting of regulations affecting the portfolio of that Minister, which includes the Minister of CoGTA. NT proposed that the PPO may only issue non-binding circulars applicable to local government, which municipalities may choose to adopt and that the enforcement function for provincial treasuries be omitted.

4.7 **Potential non-compliance with the law and the Constitution**: Some stakeholders cautioned that the NA's consideration of about 36 per cent of the public comments received, and the lack of a framework for implementation with principles and checks and balances from a drafting point of view, might be legally challenged. The Bill raises significant issues concerning section 217 of the Constitution; and the lack of clarity about pricing mechanisms in the Bill may not align with the Constitution. NT advised that the concerns mentioned are of such a nature as to let the Bill fail constitutional muster, however, certain proposals have been made for amendments to limit the risks of potential Constitutional challenges.

4.8 **Lack of consistency and alignment between the Bill and other legislation**. Some stakeholders identified potential conflicts and inconsistencies with other legislation, such as the National Health Insurance Bill (NHI Bill), Municipal Systems Act (MSA), and MFMA, while some sections in the current version of Chapter 4 were found to overlap with and override the Broad-Based Black Economic Empowerment (BBBEE) Act. NT's response was that the Bill does refer to several Acts that are relevant or appropriate for the implementation thereof, such as the Promotion of Administrative Justice Act (PAJA), Public Service Act (PSA), Construction Industry Development Board Act (CIDB Act), Companies Act, and the Broad-based Black Economic Empowerment Act (BBBEE Act). NT indicated that the Schedule to the Bill contains

amendments to and repeals of several Acts and these will be reviewed to limit reliance on the trumping clause (3) (4) in the Bill, and changes to the Schedule are proposed.

4.9 **Lack of independence of the PPO**: Some stakeholders raised concerns that the role, structure, and independence of the PPO is not aligned with the recommendations of the Zondo Commission Report, while accountability mechanisms are not clearly defined and sometimes absent in the Bill. Also, extensive law-making powers given to the PPOs and PTs may be unconstitutional and may lead to more fragmentation in public procurement law. Suggestions were made that the PPO should be separate from NT and accountable to Parliament; and that PTs should be empowered to issue instructions. On the effectiveness of the PPO and NT, there is a need to consider best practices internationally. NT's response was that the PPO's functions pertain to when government procures and not when the private sector procures. Therefore, no need for the PPO to be independent since it performs a function for government. Section 216(2) of the Constitution stipulates that NT must enforce compliance with uniform norms and standards, which includes procurement. Therefore, having the PPO in NT accords with section 216(2). The Bill does not propose chief or central buyer functions for the PPO. It proposes to confer original powers on the PPO which allows for separation from other functions of NT. Therefore, the PPO should be located in NT. The officials of the PPO will be appointed in terms of the Public Service Act (PSA) and the provisions of that Act will apply to these officials.

4.10 **Confusing functions and structure of the PPO and PTs**: Some stakeholders raised that the PPO functions are not aligned with those of PTs and the provisions are drafted in broad and vague terms. They found it confusing that the legislation empowers PTs to issue binding instructions for procuring entities within their provinces, but only when they are not inconsistent with instructions from NT (through the PPO). NT contested this. It asserted that the functions of the PPO, PTs and the procuring institutions are clearly articulated in the Bill. It clarified that some functions will be performed by the PTs, which are the same as the PPOs. The difference is that such functions will only be performed within the provincial administration of that PT and in relation to procuring institutions within that province. NT further emphasised that the role of the PPO is comparable to the current role of the NT in terms of the PFMA and MFMA.

4.11 **The Bill ignores incentivised whistleblowing**: Some stakeholders complained that repeated calls made by them at NEDLAC and various other civil society organisations for the inclusion of incentivized whistleblowing in the Bill were ignored, and the Bill fails to entrench mechanisms and processes that would assist in the fight against corruption. Some stakeholders expressed apprehension that incentivizing whistleblowing could lead to the creation of an unwelcome market for criminal conduct, with people falsely accusing others of wrongdoing to qualify for the financial support given to whistle-blowers. NT responded that strengthening the protection of whistle-blowers is supported through amendments to the Protected Disclosures Act (PDA) administered by the Department of Justice (DoJ) and not through this Bill. In 2023, the

Minister of Justice has published a discussion paper on the review of the PDA in this regard.

4.12 **Flouting of transparency, accountability, fairness, and integrity measures**: Some stakeholders are concerned that the Bill allows for corruption to continue; denies the public access to some procurement processes which are in the public interest; and the concept of "confidential information" in the Bill is vague and overly broad to constitute a legitimate ground for secrecy. They cautioned that the Bill will violate section 216 of the Constitution insofar as it prescribes measures that impair transparency and expenditure control. Stakeholders suggested the establishment of a national publicly available register of who has received which tenders and the disclosure of tenders received by political leaders and their immediate relatives.

NT responded that:

4.12.1 Transparency is a constitutional requirement and is embedded in provisions of the Bill.

4.12.2 Issues relating to the fight against corruption and anti-corruption measures need collaboration with relevant government institutions and law enforcement agencies.

4.12.3 The Bill, with all its provisions on integrity of the procurement system and anti-corruption measures and transparency, is not the only instrument through which to combat corruption.

4.12.4 Regarding the proposed anti-corruption agency, recommended by the Zondo Commission, NT's view is that such an agency is best placed within the departments in the justice cluster.

4.12.5 The Bill provides for the Codes of Conduct for everyone involved in procurement, and prohibition of undue influence in the procurement processes; the declaration of interests regarding persons involved in procurement as well as automatic exclusion of specified persons from submitting bids and debarment of bidders and suppliers. The Bill also makes directions inconsistent with the Act punishable, as well as offences for persons from submitting bids. It also considers the debarment of bidders and suppliers; and makes directions inconsistent with the Act punishable, as well as offences for persons who knowingly give false or misleading information, or connive or collude to commit corruption or fraudulent, collusive acts.

4.12.6 The Bill contains several transparency provisions such as clauses 2(2)(b) (objects), 15(6) (debarment register), 30(2)(a) and (b) (access to procurement

services and open data), 32 (access to procurement processes) and 33 (disclosure of information) and 64 and 65 (process to make regulations and instructions).

4.12.7 To enable adaption over time, the disclosure of information should be determined by regulations.

4.12.8 NT supported the proposal of stakeholders that confidential information be defined with reference to the Promotion of Access to Information Act, 2000.

4.13 **Lack of balance between the Act and the Regulations:** Stakeholders raised concerns that there are regulatory alignment problems, and the Minister of Finance has too much power to regulate. Suggestions were made that the power of the Minister to rule by regulation must be significantly reduced and the concrete rules of procurement should be spelt out in the legislation. NT's response was that providing in the Bill for all the different prescripts required for different types of procuring institutions and different types of procurement is not viable. For sections 216(1) and 217(3) of the Constitution, national legislation includes subordinate legislation according to section 239 of the Constitution. The Bill sets a framework for procurement with specificity to be provided in Ministerial regulations, the Public Procurement Office's instructions, and procurement systems and policies of institutions determined within the framework of the Bill and requirements of the regulations. The primary reason for this approach is to allow for different regulations to be made for different categories of procurement (e.g. infrastructure, capital assets, PPPs, normal goods and services, consultants, etc.) and different categories of institutions (e.g. departments, government business enterprises, municipalities), and to cater for new developments in procurement. These regulations may be amended or repealed when required without the need for amendments to the primary legislation. Concerning several aspects, the Bill obliges the Minister to make regulations, with details on these aspects including, in some instances, the required minimum content. Where the Minister has a discretion to make regulations, the subject thereof is restricted and does not confer broad unconstrained powers. The process to develop regulations is more rigorous than before. It includes consultation with the relevant Ministers and, consultation with organised local government on draft regulations affecting local government. Public consultation is required through publication of draft regulations for comment as well as a statement explaining the need for and the intended operation of the regulations and the expected impact of the regulations. Parliamentary scrutiny for a 30-day period is also required. When the regulations are made, the Minister must publish a consultation report including a general account of the issues raised in public submissions and responses to those issues. Instructions must also be published for public comment.

4.14 **Financial implications and resources needed to implement the Bill**: Many stakeholders cautioned that skills and resources are key in the implementation of the Bill. There will be set-up and transitional costs; increased operational costs; and an increased cost on procurement itself, especially to provinces and municipalities. The cost implications of Chapter 4 have not been specified in the Bill, and this exposes the

provinces and municipalities to the risk of unfunded mandates and hidden costs. It is unacceptable that NT cannot project or estimate the financial implications of the Bill on all affected parties. NT's response was that the elements of the procurement systems mentioned in clause 25 are existing elements which may have to be made part of the procurement system. NT further said that most of these are not new functions for institutions but are elevated to primary legislation, and that the enforcement function for PTs is also not new. PTs already have an enforcement role in respect of provincial departments in section 18(2)(b) of the PFMA. While NT's view is that shifting functions within the institutions should result in limited costs, it proposes to remove the enforcement role for PTs in respect of municipalities. NT acknowledged that the establishment of the Tribunal will result in additional costs. clause 68 of the Bill provides for the provisions of the Act to be brought into operation on different dates and also on different dates for different categories of institutions and different categories of procurement. Where applicable, the availability of funds will be considered in determining the effective date of provisions.

4.15 **Issues with the dispute resolution mechanisms and the Public Procurement Tribunal**: Concerns were raised that, (1) the Bill fails to introduce truly effective oversight and accountability mechanisms, (2) it is not clear that the Tribunal in section 38 (clause 36 in the D-version of the Bill) will be adequately resourced to effectively fulfil its duties, (3) the Tribunal does not meet the urgent need to address corruption in procurement, (4) no provision is made for transitional arrangements during the proposed 18 to 24 months period to establish the Tribunal, (5) a single procurement Tribunal for all issues may result in bottlenecks and delayed resolution of issues. They feel that panels in the Tribunal in the Bill and the financial costs be included. NT said that clause 29 explicitly speaks about Bid Committees. NT's other responses were: The dispute resolution procedures are aimed at saving costs and improving turnaround times in service delivery, and the remedies are clearly set out. Also that:

4.15.1 Tribunals are provided for in existing legislation – for example, the Financial Services Tribunal (FST) established by the Financial Sector Regulation Act (FSRA), 2017 and the Tribunal established by the Social Assistance Act (SSA), 2004 for appeals against South African Social Security Agency (SASSA) decisions. The Tribunals will reduce the prospects of judicial reviews. This matter is provided for in clause 54(1).

4.15.2 Clause 47(1) provides that the Chairperson of the Tribunal must constitute a panel for each application, and in terms of clause 48, having panels to attend to disputes in provinces could be provided for in Tribunal rules.

4.15.3 NT proposes that clauses 47 and 48 be amended to specifically deal with the regulation of panels and requirements for operation at a provincial level. The costs of Tribunals are to be carried through appropriations from the National Revenue Fund (NRF) by Parliament and will be proposed through the normal budget

process once the estimated costs have been determined and the there is the required readiness for the Tribunal to commence its work.

4.16 **Problematic donor funding clause in the Bill**: Some stakeholders submitted that the Bill requires that all procurement using donor funds must comply with the Act but that may cause significant financial implications for municipalities, as international donors may opt not to adhere to red-tape requirements. While requesting an exemption may result in delays, provinces and municipalities may lose their grant or donor funding if there is a protracted review process which may severely impact service delivery. Significant delays may also result in the need for more costly solutions. A suggestion was made to include a "standstill" clause (54) in the regulations since the delay may result in losing donor funding. NT explained that many government institutions can't spend all their allocations from the fiscus. The "standstill" clause is there because there is a Tribunal to address disputes; there is provision for exemption in case of emergencies; NT has a unit that specifically manages donor funding; and donors must also comply with the requirements of the Bill. The Bill in clause 62 enables exemptions for donor funded procurement and in clause 64(1)(a)(vii) the regulation of donor funding.

5. PROVINCIAL MANDATES

The Committees met by 30 April 2024 and by 07 May 2024, respectively, to consider negotiating and final mandates from the provinces. NT's written responses to issues raised in negotiating mandates were sent to provinces on 30 April 2024.

5.1 Negotiating mandates

The Eastern Cape supported the Bill and made comments; Free State supported the Bill with proposed amendments and made recommendations; Gauteng supported the Bill and made recommendations; KwaZulu-Natal supported the Bill with proposed amendments; Limpopo supported the Bill and made recommendations; Mpumalanga supported the Bill; North West supported the Bill with proposed amendments; Northern Cape supported the Bill with proposed amendments; and Western Cape did not support the Bill. It provided reasons and made recommendations.

5.2 Final mandates

The Eastern Cape; Free State; Gauteng; KwaZulu-Natal; Limpopo; Mpumalanga; Northern Cape and North-West provinces supported the Bill. The Western Cape did not support the Bill.

The committee expresses its appreciation for the quality of the submissions received from the provinces generally.

6. COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

6.1 The Committee appreciates the active participation of civil society stakeholders in the Bill and the quality of the submissions received. NT could obviously not respond to each and every point made by all the stakeholders. The verbal responses by NT were significantly better and more comprehensive than the written submissions, especially because NT was constantly challenged by Committee members in robust exchanges. The Committee thoroughly went through NT's report on its April meeting with stakeholders and its other responses to the stakeholder's submissions. The same applied to the submissions of the provinces when they forwarded their negotiating mandates. Overall, the Committee is satisfied with NT's responses to the key issues in the Bill.

6.2 **A "first phase" bill:** The Committee believes that there are several issues raised by the stakeholders and the Committee that are not addressed in this Bill. The Committee sees this Bill as a "first phase" Bill. Further matters can be considered in a "second phase" Bill. The Committee recommends that within two years, the Bill be reviewed, including through a NEDLAC process, and any amendments needed, be brought to Parliament.

6.3 **Need for Bill:** The Committee considered statistics from NT, DTI, the Committee researcher**,** and some of the stakeholders on the extent to which Blacks have been empowered. While there has been some progress it is not enough at all. The reasons for this are many, and some of the points made in this regard by stakeholders are correct. The government and Parliament must accept our failures in this regard. The Committee reiterates its rejection of the same people being empowered repeatedly, mainly because of their political connectivity, at the expense of other sections of Black people. Empowerment has to be spread equitably across all strata of Black people and due recognition has to be given to smaller emerging businesses within the framework of this Bill.

6.4 **Drafting errors, omissions, and inconsistencies:** The Committee notes that there were drafting errors, omissions and inconsistencies in the Bill, many identified by the stakeholders and others by Committee members. While acknowledging the urgency in which this Bill was processed by the NA, the Committee finds this unacceptable.

6.5 **Inadequate public participation process:** The Committee notes the calls by civil society stakeholders to return the Bill to NEDLAC for further consultation, particularly on the significant amendments made in Chapter 4 in the NA process. The Committee also notes, as mentioned above, that NT conducted a comprehensive consultation process with stakeholders in all spheres of government, Cabinet, and government institutions. NT also subjected the Bill to the NEDLAC process for six months in 2022 and to the NA process. In a reply to the stakeholders, the Committee noted:

We have the fullest regard for Nedlac and the negotiations and other processes that take place there. It helps if Bills have been processed through Nedlac because they usually come with a degree of consensus or at least a sense of what the differences are between the parties. While Nedlac plays a very important role, it is Parliament, as you well know, that ultimately decides on Bills, taking into account what was decided during the Nedlac process.

Our processing of this Bill has followed the usual process, except that we have given far more attention to it than to other Bills, and we asked for a further process of consultation between yourselves and NT. As usual, we receive a briefing on the bill; then have public hearings where we engage with your submissions; then comes NT's response to your submissions, after which you reply to what NT says and then we engage with both yourselves and NT. We had the further process of your engagements with NT between 8 and 10 April, and when the report was brought to Parliament, we had further engagements with yourselves and NT. It is usually after having heard the stakeholders and NT – all sides - that the committee begins to shape its views. Which is exactly what we have been doing since the committee stage began on this Bill. And you are free to attend meetings or catch up on its proceedings through YouTube. Moreover, our views will be expressed in the amendments that are being processed. If all goes well, we will have processed the amendments by Thursday or Friday this week. We hope to send you the Bill with the amendments by Friday evening for you to send your comments by noon on Monday (6 May 2024). We know that some of you will argue it is too brief a period for you to comment. I'm afraid that's the best we can do. Some of you have been engaging with this Bill over several years, including when it was first gazetted for comment and in the Nedlac process and since, including through the SCoF process. As you might know, we are not obliged in terms of Parliament's rules and norms on processing legislation to take further comments from you beyond the engagements we have already had with you, subject to the standard of reasonableness. We will consider your responses to the amendments at our meeting of 7 May. Some of you want to overhaul the entire bill, we understand, but we are not in support of that. So, we would strongly recommend that you send your comments on the amendments in a brief, precise form and if you want to offer any alternative wording, kindly do so. Ultimately, it is for Parliament, not NT, to decide on these amendments and that is exactly what will happen…

…Adv Jenkins was present in all the SCoF meetings – and I refer you to his comments. He does not find the public participation process to be flawed. Normally, civil society stakeholders complain that Parliament does not carry out its oversight and legislative roles effectively. SCoF made changes to the Bill. That its right.

Several of the stakeholders seem to think that Parliament has to agree with what was decided at NEDLAC. If we were to mechanically or automatically agree with the outcomes of NEDLAC negotiations, Parliament would be abdicating its role in terms of the Constitution, relevant legislation and Rules of Parliament. Besides, the Committee cannot ignore the submissions of stakeholders who were not involved in the NEDLAC process, several of whom had different views from those who took part in NEDLAC.

To create more space and time for public participation, the Committee applied for permission to the NCOP Chairperson for an extension beyond the usual eight-week cycle to process Bills.

The permission was granted. According to Adv Frank Jenkins of Parliament's Legal Services Unit, to his knowledge, this is the first time a committee has sought such an extension. The Committee, in fact, spent an extra five to six weeks beyond the eight-week cycle, which ended on or about 2 March 2024 on this Bill.

According to the Committee Secretary, Mr Nkululeko Mangweni, the Committee sat for 40 hours, as follows:

Hours spent on the bill

Date	**No. of Hours**	**Agenda**
6 Feb 24	3	Briefing by NT
23 Feb 24	3	Public hearing on the bill
1 March 24	3	Responses by NT on submissions
14 March 24	3	Responses by NT on submissions
19 March 24	3	Responses by NT on submissions
17 April 24	3	Report back by NT on engagement with stakeholders
23 April 24	3	Further processing of the bill
25 April 24	3	Further processing of the bill
26 April 24	3	Further processing of the bill
30 April 24	3	Consideration of negotiating mandates
2 May 24	6	Further processing of the bill
7 May 24	4	Consideration of final mandates
Total	**40**	

Members of the Committee also took part in meetings of the provincial legislatures during the negotiating and final mandates process.

The Chair of the Committee also engaged for many hours with NT officials and Committee members.

Adv Jenkins' overview of the legitimacy of the public participation process and some of the key constitutional issues are attached as Annexure A.

6.6 **Public participation in the Provinces:** NT participated in hearings between 08 February 2024 and 22 March 2024 on the Bill. Public participation hearings took place in eight provinces as follows: in districts in the Eastern Cape (four towns in OR Tambo/ Alfred Nzo, four in Amathole/ Buffalo City Metro, four in Chris Hani/ Joe Gqabi and four in Sarah Baartman/ Nelson Mandela Metro), three districts in Mpumalanga (Mbombela, eNkangala, and Gert Sibande), three districts in Free State (Parys, Welkom/Virgina and Smithfield/ Bloemfontein), three hearings in the Western Cape (George, Cape Town and Saldanha Bay), one hearing in Limpopo, one hearing in Gauteng and Northern Cape arranged a virtual public hearing for its entire province.

NT did not attend public participation hearings of the KwaZulu-Natal and Northwest legislatures. NT responded in writing to the public submissions made in Gauteng, Western Cape and KZN.

6.7 **Constitutionality of the Bill:** The Committee notes the views of several stakeholders that the Bill is not constitutionally sound. However, the State Law Advisors (in respect of the tabled Bill, NT's legal advisers, and Parliamentary Legal Service unit could not establish any grounds for unconstitutionality. The Committee relies on advice from the Parliamentary Legal Services unit. Annexure A covers issues related to the constitutionality of the Bill.

6.8 **Major concerns with Chapter 4 amendments:** The Committee notes conflicting views from stakeholders on the constitutionality of Chapter 4 in general and on various clauses. The Committee further notes the concerns about "pre-qualification", "set-asides", "sub-contracting", "transformation", removal of price as a criterion for evaluating tenders, and misalignment of the Bill with section 217 of the Constitution. Many of these concerns have been addressed by the amendments made.

6.9 **Exclusion of reference to price or premium in the Bill:** The Committee believes that small emerging businesses are often not able to compete with established businesses on price and are often excluded from procurement. The Committee requested NT to insert price and related criteria in the Bill without undermining the prospects of small emerging businesses being empowered. The Bill takes into account: (1) section 25, which deals with criteria for evaluation, has been amended to include cost-effectiveness, capability, functionality and technical requirement with limiting new entrants and emerging suppliers and (2) refers to section 195(1)(b) of the Constitution, which relate to Efficiency, Economy and Effectiveness (EEE) use of resources (3) the expected percentage of the premium and the evaluation criteria will be published for public comment, and (4) the clauses on debarment and criminal offences in the Bill seeks to address abuse of the procurement system.

6.10 **Cooperative governance undermined:** The Committee notes the concerns raised, which include that the Bill does not acknowledge the local government sphere; the specific Sections 125 and 217 of the Constitution, where the spheres were separated, may be unconstitutional; and economic development ignores the local and socio-economic objectives of the provinces and local government. However, the Bill is amended to include the requirement that organised local government be consulted on draft regulations affecting municipalities and municipal entities. The removal of powers of the PPO and PTs in respect of local government is proposed. Amendments to enable procurement in a geographical area – a municipality or a province - are also proposed.

6.11 **Too much regulatory powers given to the Minister of Finance:** The Committee notes the comprehensive reply to this matter in section 4.13 above. While the Committee accepts NT's views, we believe that as the Bill comes into effect, there has

to be a review of the extent of the Minister's power to regulate and this matter be considered in the "second phase" of the Bill process.

6.12 **Financial implications of implementing the Bill**: The Committee notes that the expected ICT-based procurement, and establishment of PPOs and Tribunal and its panels would require additional funds, while there will be transitional costs for provinces and municipalities because of the Bill. The Committee also notes many stakeholder's dissatisfaction about NT's initial assertion that no additional financial resources were required to implement the Bill, and its recent reluctant acknowledgement that while the quantum is not known, setting up the Tribunal and its panels will have financial implications. The Committee further notes NT's explanation that the existing pools of practitioners in the departments would help implement the Bill and there are no direct impacts on PTs. The Committee is clear that there will be financial implications in the implementation of the Bill, and cannot understand why NT could have thought there would be none. However, NT has altered the memorandum to mention that there will be financial implications to the implementation of the Bill. The Committee recommends that within six months NT estimates the financial cost of the Bill and reports to the Committee on this.

6.13 **Concerns about capacity to implement:** The Committee is concerned about the capacity of NT and the relevant institutions in all three spheres of government to effectively implement the Bill. It notes, however, that the Bill provides for different sections of the Bill to be implemented at different times. The Committee recommends that capacity, funding and other resources should also be taken into account when decisions are taken on this phasing in of the Bill. The Committee recommends that within six weeks of the Committee being constituted in the 7th term of Parliament, NT must present an implementation programme on this Bill to the Committee.

6.14 **Lack of transparency and access to information:** The Committee notes that some stakeholders are concerned that the Bill does not provide for transparency and might be in violation of the Constitution because of this. NT holds that the Bill adequately covers transparency in different sections and that the public would have adequate access to information through the enabling provisions in the Act for public access to procurement processes and information including through ICT based portals. The Committee recommends that PPO, provincial treasuries and procuring institutions should put as much information in the public domain as possible, subject to market sensitive and other confidential information. The Committee is aware of the market sensitivities entailed and the need to protect the confidential information of companies, but in the "second phase" review of the Bill, consideration needs to be given to the relevant legal and other issues and whether it is viable for stakeholders to attend the bid adjudication process or parts of it or watch a video of the full or parts of the process (whether it be live-streamed or recorded).

6.15 **Whistleblowing**: The Committee notes the calls made by stakeholders for the inclusion of incentivized whistleblowing in the Bill. NT believes that strengthening the protection

of whistle-blowers is supported through the amendment of the Protected Disclosures Act (PDA) administered by the Department of Justice (DoJ) and cannot be through this Bill, and that the Minister of Justice has published a paper for this purpose and invited interested parties to submit written comments on the discussion paper on proposed reforms for whistle-blower protection regime in South Africa. The Committee is seriously concerned about the lack of protection for whistle-blowers. Some have been killed, others have lost their jobs and remained unemployed, many have suffered huge financial losses, and others have been seriously affected in other ways. In principle, the Committee supports some form of incentivized whistle-blowing, but as this issue falls under the DoJ and they have published a paper on this recently, we do not have the authority to make a decision on this. However, the Committee recommends that the review of the Protected Disclosures Act be finalised urgently, and consideration be given to incentivized whistle-blowers being included.

6.16 **Lack of independence of the PPO**: The Committee notes concerns that the role, structure, and independence of the PPO is not aligned with the Zondo Commission Report recommendations, while accountability mechanisms are not clearly defined in the Bill and that the PPO should be separate from NT and accountable to Parliament. NT replied, as mentioned above, that the role of the PPO is to perform functions regarding government's requirements, which cannot be provided in-house, and does not regulate the procurement by the private sector. In addition, the PPO is not the chief buyer on behalf of the government. There is no justification from creating an entity separate legal entity for this purpose. The Committee agrees that the PPO should remain within NT.

6.17 **Problematic donor funding clause in the Bill**: The Committee notes the concerns raised that the Bill requires all procurement using donor funds to comply with the Act and that this may have significant financial implications for municipalities. NT's argument is that all procurement, regardless of the source of funding should be subjected to the Bill. The Bill in clause 62 enables exemptions for donor funded procurement and in clause 64 (1) (a) (vii) enables the regulation of donor funded procurement.

6.18 **The Bill is not applicable to Parliament**: The Committee notes that clause 3(2) of the Bill provides for the application of the preferential procurement provisions to Parliament and Provincial Legislatures and not the rest of the Act. The legal doctrine of separation of powers is expressed in the Constitution and requires that Parliament and provincial legislatures must determine and control their own internal arrangements, which includes policies for public procurement. However, such policies must be consistent with the framework in national legislation contemplated in section 217 of the Constitution. The Preferential Procurement Policy Framework Act - which will be repealed when the Bill is promulgated - provides the framework and hence the Bill replaces that framework in chapter 4. The Financial Management of Parliament and Provincial Legislatures Act (FMPPLA), 2009 determines that Parliament must

prescribe a policy for public procurement that must be consistent with the PPPFA and BBBEEA. The FMPPLA should consider what is relevant to Parliament in this Bill.

6.19 **Concerns of the construction sector:** The Committee is very concerned about the destructive consequences of the "construction mafia", with its demands of 30 per cent of the cost of every project. The Committee notes that clause 27 has preventative measures that procuring institutions must take and the provisions on debarment and offences (specifically extortion), if duly enforced, will address this partly. But the law enforcement and justice system need to be far more effective in dealing with this.

6.20 **Concerns raised by provinces in negotiating mandates:** The Committee appreciates the concerns raised by the provinces. Many of these issues were raised by the stakeholders in the NCOP public hearings and have been addressed. Some of the issues will be addressed through regulations and others in the implementation process. There were also issues raised that do not belong in this Bill. These concerns include the challenges with the CIDB grading system; non-adherence to the 30-day payments rule by most departments and translations of bid documents to all languages. NT's response to the latter concern was that it would consult with the Pan South African Language Board (PanSALB) and other relevant bodies for this requirement to be considered for inclusion in the regulations. The Committee supports the proposal that bid documents should not only be in English. The Committee believes that consideration needs to be given when this Bill is reviewed to establish a Procurement Regulator as either an independent entity or part of the National Treasury, with assured operational independence. The submissions from the provinces - some more than others – were very comprehensive and helpful, and the Committee expresses its appreciation.

6.21 **Proposed amendment of the definition of "Black people" in the BBBEE Act:** The Committee notes the concern from KZN about the categories listed under "Black" in the B-BBEE Act and the recommendation that the PPB should separate the demographic reference to "Black people" from Indian and "Coloured" people. Many African entrepreneurs believe that Indians in KZN benefit disproportionately through B-BBEE – and that this is not fair. The Committee recognises this concern. However, this would mean changing many other BEE and other laws that refer to all people of colour as Black and this review will have to be done through a proper policy process, not in this Bill.

6.22 **Protection of Officials:** The Committee notes the concern that there is no protection of procuring officials against the notorious behaviour of business forums who demand a certain percentage and chase companies away from projects. Procuring officials also need protection from other abuse as well. The Committee recognises the need for the protection of officials; however, this cannot be addressed in this Bill. Ultimately it is a

criminal matter, cutting across all spheres of government, which must be reported to the police and be dealt with by law enforcement agencies.

6.23 The Committee has decided that the Minister must, within 24 months after the Act is published as an Act in the Gazette, review the implementation of the Act and the need for any amendments to the Act. This should be done after consultation with stakeholders, including NEDLAC and within 30 months after the Act is Gazetted, a report on the review should be made public and submitted to Parliament. As part of the review process, the Department must perform an assessment of the cost-effectiveness of procurement and competitiveness, taking into account price, social cohesion, the need to redress past disadvantages entrenched through legislated and societal mechanisms, together with effective delivery of government objectives.

6.24 The committee expresses serious concern that a Government Department, the Department of Trade, Industry and Competition (DTIC), has brought up an issue at the last stage. The Committee believes that these differences should have been settled in the cabinet process. The Committee is not clear why the DTIC's concern was not raised at an earlier stage in the Standing Committee on Finance (SCoF) process. However, the National Assembly might consider take this further. The Committee recommends that NT meets with DTIC by the time the SCoF process begins to address their concern.

6.25 The DA is opposed to the Bill because it rejects the premise that race can be used as a proxy for the historically disadvantaged. While it acknowledges that the majority of people who have historically been deprived of opportunity are black, there are many others who have been disadvantaged. Furthermore, the past 30 years of democracy have gone some way to correcting the injustices experienced by many South Africans during the Apartheid years. While much more needs to be done, focus should be on empowering those who have remained unempowered. Race is, therefore, an outdated measure. It is furthermore demeaning to South Africans to still be subjected to the "race classifications" that made Apartheid the evil system that it was. Our present government's policies are contributing to racial polarisation. The DA believes that the best way for government to achieve socio-economic redress is to govern well, uplifting the majority of South Africans who remain trapped in hardship rather than advantaging a select few. Many of the programmes favouring the few have to date been counter-productive, with projects designed to uplift large groups failing because of lack of skills or malfeasance of the project bid-winner. While redress is essential and fast-tracking interventions are necessary, the current model does not achieve this, and the Bill is a continuation of the same stale thinking. This bill undermines social cohesion under the guise of restorative justice, and its impacts will be far reaching. While strategic government procurement is nothing new, the mechanisms entrenched by this bill are the same mechanisms that have failed to have a broad impact over the past 30 years in South Africa, and affirmative action has been internationally proven to be ineffectual. It is disappointing that the Methodology for Assessing Procurement Systems (MAPS) has not been engaged to evaluate the proposed implementation of the bill and been

consulted to achieve a more constructive system that has greater impact in terms of addressing the chosen ideological outcomes. In stark contrast, the DA tabled our solution through a Social Impact Bill, formally titled the Preferential Procurement Policy Framework Amendment Act, in June 2023 which proposes a focus on the Sustainable Development Goals to address the root causes of inequality of opportunity, to benefit the majority of poor and vulnerable citizens. While the Bill before us is a marked improvement on the bill that entered this House, we cannot accept the perpetuation of legislation that entrenches the racially divisive policies of the governing party.

6.26 The FF Plus also opposes the Bill and says that the pervasive influence of Broad-Based Black Economic Empowerment (BBBEE) on South Africa's public procurement process has been profoundly negative, exacerbated by the entrenchment of state capture and 30 years of cadre deployment. While the quality of products and services should be the primary concern, BBBEE often prioritises race-based criteria, distorting procurement practices. The Freedom Front Plus has always been vigorously opposed to what it sees as essentially a race-based legislation since democracy's inception in South Africa. Stricter BBBEE regulations won't necessarily uplift black communities, and the proposed Bill, as it stands, fails to combat corruption and wasteful spending, further entrenching the ANC's ideology. Introducing a sunset clause to BBBEE legislation, alongside other race-based laws, is imperative as the current open-ended approach impedes genuine transformation and economic evolution. Overregulation perpetuates discrimination against non-black minorities while failing to drive real progress in impoverished communities.

6.27 The ANC fundamentally disagrees with the positions of the DA and FF Plus and strongly believes that without effective empowerment of Black people, especially from the more disadvantaged strata, the race, class and gender polarisation in this country will significantly increase. Moreover, the social stability of the country will be severely undermined, and the prospects of economic growth will also be considerably reduced.

6.28 The Committee expresses considerable gratitude and appreciation to NT officials, Mr Willie Mathebula and Adv. Empie Van Schoor and their team, for the many hours they spent on the Bill and enormous work they did.

6.29 The Chairperson expresses his appreciation to the Committee members for the work they put into the processing of this Bill. In particular, members of the opposition parties who are opposed to the Bill but participated actively and usefully in the Committee meetings.

Democratic alliance and Freedom Front plus rejected the report

The Select Committee on Finance, having considered and examined the Public Procurement Bill [B18D - 2023] (National Assembly – section 76), referred to it, and classified by the JTM as a section 76 Bill reports the Bill with amendments.

Report to be considered.

ANNEXURE A

Notes on the correspondence regarding the processing of the Public Procurement Bill [B 18B-2023]
Prepared by Constitutional and Legal Services Office of Parliament, F Jenkins, 26 April 2024

1. Public participation

The correspondence indicates that the public participation process was flawed and that Parliament should engage with, and be aware of, the constitutional deficiencies in the Bill before it is passed. The main request made is that, given the time that is still available to consider the Bill, Parliament and Treasury should consider engaging in a workshop on the constitutionality of the Bill before it takes its final decision to pass it.

1.1 The test set out by the Constitutional Court

The Constitutional Court held in *Doctors for Life International v Speaker of the National Assembly* (Doctors for life) that there are at least two aspects of the duty to facilitate public involvement:

(i) the duty to provide meaningful opportunities for public participation in the law-making process; and

(ii) the duty to take measures to ensure that people have the ability to take advantage of the opportunities provided.

Parliament has the discretion to decide on appropriate measures in each case, provided these must be reasonable.

1.2 Factors to be taken into account to determine the reasonable measures to give effect to the constitutional obligation to facilitate public involvement.

(i) Parliament has a discretion and courts will not be quick to second guess what Parliament deemed necessary in the circumstances, provided that the measures must be reasonable. The Court will not prescribe measures.

(ii) Standing rules/models/framework will provide a guiding measure to what is required.

(iii) The nature and impact of the legislation under consideration.

(iv) Time concerns (urgency), efficiency and cost may be considered but "saving of money and time in itself does not justify inadequate opportunities for public involvement."

1.3 Failures

(i) In the *Doctors for life* matter, there were neither public hearings held at provincial legislatures, nor at the level of the NCOP.

(ii) In *Land Access Movement of South Africa and Others (LAMOSA) v Chairperson of the National Council of Provinces and Others* – concerning the Restitution of Lands Rights Amendment Act – inadequate notice periods for the public hearings, inadequate translations of the Bill – lack of attendance of NCOP Members in the hearings.

(iii) The case of *South African Veterinary Association v Speaker of the National Assembly and Others* concerned an amendment during deliberations that added the requirement that veterinarians also be licensed to compound and dispense medicines. This new amendment was never presented to the public prior to finalisation of the legislative process. There should have been permission sought from the Assembly to expand the scope of the Bill as required by the rules and a call for comments on this amendment.

(iv) In *Mogale and Others v Speaker of the National Assembly and Others (Mogale)* the Court considered the Public Participation Framework and the Practical Guide for Members of Parliament and Provincial Legislatures and made findings due to the lack of compliance with pre-hearing workshops on the Bill; insufficient notice periods prior to hearings; lack of transport to the hearings; misrepresentation about the scope of the Bill during the hearings; inability to participate in the hearings; insufficient copies of the Bill during hearings and insufficient translation of the Bill for certain communities.

1.4 <u>Response to correspondence relating to public participation</u>

Parliament has a discretion to determine the manner in which to fulfil the obligation to facilitate public involvement; the cardinal issue is whether Parliament's process was reasonable. There are at least two aspects of the duty to facilitate public involvement. The first is the duty to provide meaningful opportunities for public participation in the law-making process. The

second is the duty to take measures to ensure that people have the ability to take advantage of the opportunities provided.

In this instance the only issue with the opportunity to make submissions on the Public Procurement Bill pertains to the period allowed to make the submissions. Be that as it may, many submissions were received as indicated in the correspondence. Given that the Public Procurement Bill was introduced in the National Assembly on 30 June 2023. Prior to that, National Treasury briefed the Standing Committee on Finance on 23 May 2023, and formally on the tabled Bill 5 September 2023. The call for public comment was published in all official languages in print media and the website of Parliament starting 18 August 2023, with a deadline of 11 September 2023. Extension was granted to those that requested it. The SCoF held public hearings on the Bill on 12 and 13 September 2023. The Bill was adopted by the NA and referred to the NCOP on 6 December 2023. The allegation that National Treasury could only respond directly to just more than a third of the public comments in its written reply to the Standing Committee does not mean that the Standing Committee did not consider the issues that emanated from all the public submissions. The process of public engagement is still ongoing in the Select Committee. Looking forward, it is probable that the Standing Committee will once again have an opportunity to look at the amendments made by the NCOP.

The were neither obstacles to attend the physical meetings by the Standing Committee nor those the virtual meetings of the Select Committee, and to participate during those meetings. Notices of the meetings were given, and people attended. The correspondence does not question anything in this regard.

In respect of the ability to take advantage of the opportunity provided to make comments, there were no issue about language, translations, understanding of the purpose of the Bill and so on. The critical question pertains whether the use of the opportunity to participate in legislative process was capable of influencing the decision to be taken. The record of the process in the Assembly and the Council shows that public comments resulted in many changes to the Bill, and this process is ongoing.

It is not correct to aver that those who took part in public participation were not “capable of influencing Parliament’s decision making” as the stakeholders do not know the views of the Members to the Standing and Select Committees. The interaction between National Treasury and stakeholders plays out in public with the purpose that the Committee is placed in a position to give effect to its mandate to report back to the relevant House. The Select Committee is still considering the Bill. The Committee will begin with a clause-by-clause consideration of the Bill on 30 April and stakeholders will be able to ascertain whether their comments were accommodated in the Bill. What is clear is that the respective committees have been open to being influenced by the public hearings.

2. Content of the amendments

2.1 Amendments by the Standing and Select Committee to Chapter 4 that are questioned in the correspondence is a policy matter, as indicated. The amendments were as a result of public input, in my understanding. I cannot find any of these amendments to be unconstitutional and it is my responsibility to inform the Committee if any amendments the Committee effects are unconstitutional. The process followed is in my view compliant with the constitutional requirements for public involvement.

2.2 The public involvement process must give the public a meaningful opportunity to influence Parliament, and Parliament must take account of the public's views. Even if the lawmaker does not change its mind, it must approach the public involvement process with a willingness to do so. However, this does not mean that the legislature must accommodate all demands arising in the public participation process, even if they are compelling.

3. Lack of regulations

The argument presented in the correspondence indicates that the absence of regulations at this point in time poses challenges to the understanding of the complete regulatory framework being established by the Public Procurement Bill. Whilst it is understood that the regulations will provide a clearer picture of the entire regulatory framework pertaining to public procurement as envisaged in the Bill, the submission by the stakeholders that it is impossible to properly interrogate the effect and constitutionality of the Bill without sight of how the provisions will play out in practice is fallacious. The absence of the regulations at this point in the process does not affect the constitutionality of the Bill. Regulations must be consistent with the enabling legislation. As was the case in the matter of *Minister of Finance v Afribusiness NPC* – concerning the constitutionality of the 2017 Regulations to the Preferential Procurement Policy Framework Act – the regulations to the Public Procurement Bill must comply with the enabling statute. The absence of regulations does not impugn the constitutionality of the enabling statute in this matter. Usually, Bills are passed in Parliament without the regulations being finalised.

4. Memorandum to the Bill

The comment about the issue of financial implications of the Bill does not impugn the constitutionality of the Bill. The Memorandum to the Bill is not part of the Bill, as regulations will form part of the Act after the promulgation of the Act. The issue of the financial implications has been discussed in an open hearing and it is not intended to mislead the public or Parliament. The Committee has already expressed its concerns about the financial implications of the Bill and will make this clear in its report to Parliament.

[The following report, replaces the Report of the Select Committee on Education and Technology, Sports, Arts, and Culture, which was published on page 6 of the Announcements, Tablings and Committee Reports, dated 02 May 2024]

2. Report of the Select Committee on Education and Technology, Sports, Arts, and Culture on the Basic Education Laws Amendment Bill [B2B – 2022], dated 02 May 2024.

The Select Committee on Education and Technology, Sports, Arts, and Culture (the Committee), having considered the subject of the Basic Education Laws Amendment Bill [B 2B -2022] (National Assembly – Sec 76); referred to it as a section 76 Bill, reports as follows:

1. Introduction

The draft Bill proposes to amend the South African Schools Act, 1996 (Act No. 84 of 1996), and the Employment of Educators Act, 1998 (Act No. 76 of 1898) (the SASA and the EEA, respectively), so as to align them with developments in the education landscape. This is to ensure that systems of learning and excellence in education are put in place in a manner which respects, protects, promotes and fulfils the right to basic education enshrined in section 29(1) of the Constitution of the Republic of South Africa, 1996. Certain technical and substantive adjustments are also made to the SASA and the EEA. This is to clarify certain existing provisions and to insert certain provisions to cover matters which are not provided for in the existing legislation.

2. The Select Committees process followed in processing the Bill.

On the 26th of October 2023, the National Assembly Passed the BELA Bill, which was subsequently referred to the National Council of Provinces. On the 08th of November 2023 the Department of Basic Education (DBE) presented the BELA Bill [B2B-2022] to the Select Committee on Education and Technology, Sports, Arts, and Culture. The parliamentary legal services provided a legal framework on the processing of the Bill. On the 13th of November the Bill was referred to the nine provinces in the country to allow for them to conduct their public participation process on the Bill until the 15th of February. The Select Committee conducted its own public participation process by calling for submissions by all interested parties on the

Bill from the 20th of November 2023 until the 19th of January 2024. On the 15th of January various stakeholders and NGOs sent written requests for an extension in making submissions. An extension was granted. The deadline for written submissions was extended to the 31st of January 2024. On Friday the 2nd of February 2024, the Committee Secretary delivered an update on the progress of provinces in terms of public participation. Occurring after the Western Cape provincial legislature requested for an extension until the end of April 2024 to conduct their public hearings on the BELA Bill. The Select Committee, however, issued an extension to all provinces to conclude their public participation process by the 29th of February 2024. In the Select Committee's call for written submissions, a total of 38 170 submissions were received and analysed. Upon analysing the written submissions to the Select Committee, about 32 organisations requested to make additional oral submissions to the committee, of which the request was granted. From the 06 to 08 March 2024, the Select Committee held oral hearings with all 32 organisations on a virtual platform. The organisations that made oral submissions were as follow:

- AfriForum
- Independent Schools Association of Southern Africa (ISASA)
- SA Onderwysersunie (SAOU)
- Concerned Young People of South Africa (CYPSA)
- Western Cape Forum for Intellectual Disability (WCFID)
- Federation of Governing Bodies of South African Schools (FEDSAS)
- South African Education Development Trust (SAAOT)
- ActionSA
- FW de Klerk Foundation
- Solidarity
- Equal Education and Equal Education Law Centre
- Centre for Child Law
- South African Institute of Race Relations NPC (IRR)
- Fathers 4 Justice South Africa
- Association for Homeschooling
- Gauteng Association for Homeschooling
- Skole Ondersteuning Sentrum (SOS)
- Hoer Landsbou Skool Jacobsdal

- Pestalozzi Trust
- Christian View Network
- Cape Home Educators
- Selborne Primary School SGB
- Laerskool Laeveld SGB
- Northcliff High School SGB
- Independent Micro Schools / Education First Research Group
- Section27
- Learning Kat Remedial Teaching
- Learn Free
- Home School Association South Africa (HSSA)
- Let's do it 2gether 4 EDUCATION
- The Cape Forum
- Ms Tanya Furniss (Private)

On the 13th of March 2024, the Select Committee held a meeting where the committee report from the written and oral submissions was considered and adopted by the committee. On the 20th of March the committee received a response from the DBE on the issues raised during the submissions in the committee's report.

3. The Negotiating Mandates

On the 27th of March 2024, the committee convened a meeting to receive the provincial negotiating mandates of the BELA Bill, whereby eight of the nine provinces voted in favour of the Bill.

The following reflects the vote of the provincial legislatures in respect of the Basic Education Laws Amendment Bill [B2B-2022]

Province	In Support/ Not in Support
Gauteng	In Support
North West	In Support
Eastern Cape	In Support
Western Cape	Not in Support

Free State	In Support
Northern Cape	In Support
Mpumalanga	In Support
Kwa-Zulu Natal	In Support
Limpopo	In Support

The Eastern Cape Legislature supported the Bill but proposed amendments to several clauses to strengthen the provisions. Some of the proposed amendments dealt with monitoring learner attendance, effective search and seizure at schools, training provided to School Governing Bodies, and empowering the Minister to make regulations on learner disciplining methods that are alternatives to the abolished corporal punishment.

4. Deliberations on the Clause-by-Clause

From the 17th of April 2024, the Parliamentary Legal Advisor presented a detailed analysis of the constitutional provisions related to education rights. Focusing on the state's obligations to ensure access to basic education and the right to establish Independent Educational Institutions. The need for compliance with international laws and treaties was emphasized. Including the implications of the proposed Amendment Bill on existing legislation and education policies. A detailed explanation of the constitutional obligations and rights related to public engagement, emphasizing the role of legislatures in facilitating public involvement and considering public views in the legislative process was provided. The legal advisor further distinguished between facilitated public engagement and referendums, highlighting the different purposes and processes involved in each. The legal advisor also referred to specific legal definitions and acts to support her points. Though concession may have come from the responses by the Department on their responses, and the fact that they, as the Parliamentary Legal Unit, were also making suggestions of possible amendments, it was still their considered view that the current version of the Bill was perfectly fine, and if it were to be taken for litigation, it may pass constitutional muster, but that is the place for the courts.

The Legal Advisor further made a presentation on procedural matters raised during the Committee meetings on the processing of the Bill. The presentation was prepared considering the questions and requests made during the progression of activities of the Committee in its

past meetings. It sought to show the required principles of reasonableness, s36 limitation exercise and striking the balance demanded by the stipulations of s28, 29 and 36 of the Constitution. The legal advisor concluded by cautioning the members not to prioritize technical matters over form and substance on that which will help every child.

The Committee deliberated on the BELA Bill clause-by-clause from the 17th to the 18th of April 2024, considering the submissions from public, and the responses given by the DBE. For each of the clauses the Committee followed the following format:

- The Legal Advisor to read the clause in totality.
- An input by the DBE
- Members deliberations and engagements
- Responses from DBE, the State Law Advisor and Parliamentary Legal Services
- Committee final decision on the Clause (support/not support/object/amend/remove).

The Committee called for amendments of various clauses as listed in the C-List of the BELA Bill [B2C-2022].

5. Consideration of the C-List of the BELA Bill

On the 24th of April, the Parliamentary Legal Advisor took the Committee through the list of amendments that were agreed to during the clause-by-clause deliberations stage on the BELA Bill. A total of eight out of nine provinces supported the following amendments as contained in the Committee C-List:

CLAUSE 1

1. On page 4, in line 44, to omit "";" and to substitute "and".

2. On page 4, after line 44, to add the following paragraph:

"*(d)* any acts which seek to belittle, humiliate, threaten, induce fear or ridicule the dignity and person of a learner;".

3. On page 4, after line 44, to add the following paragraph:

"*(d)* by the insertion in subsection (1) after the definition of "*Council of Education Ministers*" of the following definition:

‘Criminal Procedure Act’ means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);".

4. On page 4, in line 45, to omit "*(d)*" and to substitute "*(e)*".

5. On page 5, in line 10, to omit "*(e)*" and to substitute "*(f)*".

6. On page 5, in line 15, to omit "*(f)*" and to substitute "*(g)*".

7. On page 5, in line 18, to omit "*(g)*" and to substitute "*(h)*".

8. On page 5, in line 29, to omit "*(h)*" and to substitute "*(i)*".

9. On page 5, in line 30, to omit "*(i)*" and to substitute "*(j)*".

10. On page 5, in line 34, to omit "*(j)*" and to substitute "*(k)*".

11. On page 5, in line 42, to omit "*(k)*" and to substitute "*(l)*".

12. On page 5, in line 52, to omit "*(l)*" and to substitute "*(m)*".

13. On page 5, in line 57, to omit "*(m)*" and to substitute "*(n)*".

14. On page 6, in line 30, to omit "*(n)*" and to substitute "*(o)*".

CLAUSE 2

1. On page 6, in line 52, after "imprisonment" to insert ", alternatively a court may impose a sentence within the court's discretion as contemplated in terms of the Criminal Procedure Act".

2. On page 6, in line 57, after "imprisonment" to insert ", alternatively a court may impose a sentence within the court's discretion as contemplated in terms of the Criminal Procedure Act".

CLAUSE 4

1. On page 7, from line 47, to omit paragraphs "*(a)*" and "*(b)*".

2. On page 7, in line 52, to omit "*(c)*" and to substitute "*(a)*", and to omit "*the Head of Department*" and to substitute "the *governing body*".

3. On page 8, in line 8, to omit "*(d)*" and to substitute "*(b)*".

4. On page 8, in line 11, to omit "*(e)*" and to substitute "*(c)*".

5. On page 8, from line 15, to omit paragraph *(e)*.

6. On page 8, in line 38, to omit "*(f)*" and to substitute "*(e)*".

7. On page 8, in line 43, to omit "*(g)*" and to substitute "*(f)*".

CLAUSE 5

1. On page 9, in line 5, to omit "(13)" and to substitute "(7)".

2. On page 9, from line 14, to omit subsections (5) and (6).

3. On page 9, in line 19, to omit "(7)" and to substitute "(5)".

4. On page 9, from line 19 to omit "The *Head of Department*, when considering the language policy of a *public school* or any amendment thereof for approval" and to substitute "The *governing body* of a *public school*, when determining the language policy of the *school* or any amendment thereof,".

5. On page 9, in line 34, to omit "(8)" and to substitute "(6)" and in line 36 to omit "(7)" and to substitute "(5)".

6. On page 9, from line 38, to omit subsections (9), (10), (11) and (12).

7. On page 9, in line 59, to omit "(13)" and to substitute "(7)" and in line 61, to omit "(7)" and to substitute "(5)".

8. On page 10, in line 1, to omit "(14)" and to substitute "(8)".

9. On page 10, in line 12, to omit "(15)" and to substitute "(9)" and to omit "(13)" and to substitute "(7)".

10. On page 10, in line 15, to omit "(13)" and to substitute "(7)".

11. On page 10, in line 38, to omit "(16)" and to substitute "(10)".

12. On page 10, in line 40, to omit "(13)" and to substitute "(7)".

13. On page 10, in line 41, to omit "(15)" and to substitute "(9)".

14. On page 10, in line 44, to omit "(17)" and to substitute "(11)" and to omit "(13)" and to substitute "(7)".

15. On page 10, from line 52, to omit subsection (18) and to substitute the following subsection:

"(12) If the *governing body* is not satisfied with the directive of the *Head of Department* as contemplated in subsection (7), the *governing body* may appeal against the directive to the *Member of the Executive Council* within 14 days after receiving the directive.".

16. On page 10, in line 58, to omit "(19)" and to substitute "(13)" and to omit "(18)" and to substitute "(12)".

17. On page 11, in line 1, to omit "(20)" and to substitute "(14)" and in line 2, after "policy" to insert "of the *public school*".

CLAUSE 7

1. On page 11, from line 33, to omit "just cause shown" and to substitute "account of, but not limited to, the following circumstances that a learner may bring to the attention of the principal or governing body of the school:

(i) cultural beliefs;

(ii) religious observances; and

(iii) medical grounds.".

CLAUSE 8

1. On page 12, after line 19, to insert the following paragraph:

"*(d)* by the substitution in subsection (5) for paragraph *(c)* of the following paragraph:

"*(c)* handed over to the police immediately to dispose of it in terms of section 31 of the Criminal Procedure Act**[, 1977 (Act No. 51 of 1977)]**." ".

2. On page 12, in line 20, to omit "*(d)*" and to substitute "*(e)*".

3. On page 12, from line 27, to omit ", 1977 (Act No. 51 of 1977)" and to substitute "**[, 1977 (Act No. 51 of 1977)]**".

4. On page 12, in line 29, to omit "*(e)*" and to substitute "*(f)*".

5. On page 12, in line 33, to omit "*(f)*" and to substitute "*(g)*".

6. On page 12, in line 39, to omit "*(g)*" and to substitute "*(h)*".

7. On page 12, in line 43, to omit "*(h)*" and to substitute "*(i)*".

8. On page 12, in line 49, to omit "*(i)*" and to substitute "*(j)*".

CLAUSE 9

1. On page 12, from line 57, to omit subsection (1)*(a)* and to substitute the following subsection:

"(1) The *governing body* may, on reasonable grounds and as a precautionary measure, suspend a *learner* who is **[suspected]** accused of serious misconduct from attending *school*, but may only enforce such suspension **[only after the *learner* has been granted a reasonable opportunity to make representations to it in relation to such suspension.]** in the following manner:".

2. On page 13, in line 1, to omit "*(b)* Serious misconduct by a *learner* is defined as—" and to substitute "*(a)* Where a learner is accused of committing the following acts of serious misconduct—".

3. On page 13, in line 24, to omit ", 1977 (Act No. 51 of 1977),".

4. On page 13, in line 25, to omit "."." and to substitute a comma.

5. On page 13, after line 25, to insert "such *learner* may be suspended only after the *learner* has been granted a reasonable opportunity to make representations in relation to the accusation of such serious misconduct; or".

6. On page 13, after line 25, to add the following paragraph:

"*(b)* where a *learner* is accused of committing the following acts of serious misconduct —

(i) murder and attempted murder;

(ii) culpable homicide;

(iii) any sexual offence including rape;

(iv) robbery;

(v) theft;

(vi) assault with intent to do grievous bodily harm;

(vii) breaking or entering any premises with an intent to harm or actual harm to other persons;

(viii) any offence under any law relating to illicit possession of any dependence-producing drugs; or

(ix) conveyance or supply of dependence-producing drugs at *school* and to *learners*,

which occurs on a *school* premises or at a *school activity*, and the *learner* has been formally charged by the South African Police Service, the *governing body* must suspend such *learner* immediately without granting the *learner* an opportunity to make representations in relation to the accusation of such serious misconduct.".

CLAUSE 10

1. On page 13, from line 32, to omit subsection (2) and to substitute the following subsection:

"(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a **[sentence which could be imposed for assault]** fine or to imprisonment, or to both such fine and imprisonment, which a court may, in its discretion, determine after considering the circumstances of each case.".

CLAUSE 14

1. On page 16, in line 16, after "standards" to omit the full stop and insert ": Provided that the *governing body*—

(a) may, subject to paragraph *(b)*, procure identified learning and teaching support material from a supplier where such procurement will be more cost effective than the central procurement of such material by the *Head of Department*; and

(b) must provide the *Head of Department* with documentary proof that the procurement of the identified learning and teaching support material from the supplier referred to in paragraph *(a)* will be more cost effective than the central procurement thereof by the *Head of Department*.".

CLAUSE 20

1. On page 18, in line 49, after "personal" to insert "or financial".

CLAUSE 26

1. On page 21, in line 37, to omit "*Member of the Executive Council*" and to substitute "*Head of Department*".

CLAUSE 54

1. On page 31, in line 25, to omit "2022" and to substitute "2024".

The members voted for the amendments on the C-List as follows:

Province	In Support/ Not in Support of amendments
Gauteng	In Support of amendments
North West	In Support of amendments

Eastern Cape	In Support of amendments
Western Cape	Not in Support of amendments
Free State	In Support of amendments
Northern Cape	In Support of amendments
Mpumalanga	In Support of amendments
Kwa-Zulu Natal	In Support of amendments
Limpopo	In Support of amendments

6. Consideration of Final Mandates

On the 2nd of May 2024 the members deliberated on the D-version of the BELA Bill [B 2D-2022]. The Final Mandates submitted by the nine provinces were considered on the 2nd of May 2024, which were submitted as follows:

Province	In Support/ Not in Support
Gauteng	In Support
North West	In Support
Eastern Cape	In Support
Western Cape	Not in Support
Free State	In Support
Northern Cape	In Support
Mpumalanga	In Support
Kwa-Zulu Natal	In Support
Limpopo	In Support

7. Outcome of Committee's consideration of the Bill

The Select Committee on Education and Technology, Sports, Arts, and Culture having deliberated on and considered the subject of the Basic Education Laws Amendment Bill [B 2B-2022], referred to it as a section 76 Bill, reports that it has agreed to it with amendments [B 2D-2022].

8. Consideration of the Committee's Report

The Committee considered the Report and eight provinces voted in support and one province voted not in support as follows:

Province	In Support/ Not in Support
Gauteng	In support
North West	In support
Eastern Cape	In support
Western Cape	Not in support
Free State	In support
Northern Cape	In support
Mpumalanga	In support
Kwa-Zulu Natal	In support
Limpopo	In support

Report to be considered.