

PARLIAMENT
OF THE
REPUBLIC OF SOUTH AFRICA

**ANNOUNCEMENTS,
TABLINGS AND
COMMITTEE REPORTS**

TUESDAY, 28 NOVEMBER 2017

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ANNOUNCEMENTS

National Assembly

The Speaker

1. Referral to Committees of papers tabled

- (1) The following paper is referred to the **Standing Committee on Finance** for consideration and report. Report of the Auditor-General on the Financial Statements and Performance Information is referred to the **Standing Committee on Public Accounts** for consideration:
 - (a) Report and Financial Statements of the South African Revenue Service (SARS) for 2016-17, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2016-17.
- (2) The following papers are referred to the **Portfolio Committee on Justice and Correctional Services** for consideration and report:
 - (a) Report dated 21 November 2017 on the provisional suspension from office and withholding of remuneration of Ms F K Jasone-Twala, an Acting Additional Magistrate at George, in terms of section 13(3)(b) of the Magistrates Act, 1993 (No 90 of 1993).
 - (b) Report dated 21 November 2017 on the withholding of remuneration of Mr M J Kgomo, an Additional Magistrate at Randburg, in terms of section 13(4A)(b) of the Magistrates Act, 1993 (No 90 of 1993).

(3) The following paper is referred to the **Portfolio Committee on Justice and Correctional Services**:

- (a) Proclamation No R. 32, published in Government Gazette No 41165, dated 06 October 2017: Amendment of Proclamation No 7 of 2014, made under section 2(4) of the Special Investigating Units and Special Tribunals Act, 1996 (Act No 74 of 1996).

National Council of Provinces

The Chairperson

1. Message from National Assembly to National Council of Provinces in respect of Bills passed by Assembly and transmitted to Council

- (1) Bills passed by National Assembly and transmitted for concurrence on 28 November 2017:

- (a) **Insurance Bill** [B 1B – 2016] (National Assembly – sec 75).

The Bill has been referred to the **Select Committee on Finance** of the National Council of Provinces.

- (b) **Labour Laws Amendment Bill** [B 29 – 2017] (National Assembly – sec 75).

The Bill has been referred to the **Select Committee on Economic and Business Development** of the National Council of Provinces.

2. Referral to Committees of papers tabled

- (1) The following paper is referred to the **Select Committee on Education and Recreation** for consideration and report:

- (a) The Revised Addis Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and Other Academic Qualifications in Higher Education in African States, tabled in terms of section 231(2) of the Constitution, 1996.

- (b) Explanatory Memorandum to the Revised Addis Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and Other Academic Qualifications in Higher Education in African States.

- (2) The following papers are referred to the **Select Committee on Security and Justice** for consideration and report:
- (a) Draft Notice and Schedule in terms of section 2(4) of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No 47 of 2001), determining the rate at which salaries are payable to Constitutional Court Judges and Judges annually, with effect from 1 April 2017, for approval by Parliament.
 - (b) Draft Notice and Schedule in terms of section 12(3) of the Magistrates Act, 1993 (Act No 90 of 1993), determining the rate at which salaries are payable to magistrates annually, with effect from 1 April 2017, for approval by Parliament.
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TABLINGS

National Assembly and National Council of Provinces

1. The Speaker and the Chairperson

- (a) Draft Notice and Schedule in terms of section 2(4) of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No 47 of 2001), determining the rate at which salaries are payable to Constitutional Court Judges and Judges annually, with effect from 1 April 2017, for approval by Parliament.
- (b) Draft Notice and Schedule in terms of section 12(3) of the Magistrates Act, 1993 (Act No 90 of 1993), determining the rate at which salaries are payable to magistrates annually, with effect from 1 April 2017, for approval by Parliament.

2. The Minister of Higher Education and Training

- (a) The Revised Addis Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and Other Academic Qualifications in Higher Education in African States, tabled in terms of section 231(2) of the Constitution, 1996.
- (b) Explanatory Memorandum to the Revised Addis Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and Other Academic Qualifications in Higher Education in African States.

3. The Minister of Police

- (a) Annual Report for the period 1 April 2016 to 31 March 2017 of the Office of the Directorate for Priority Crime Investigation (DPCI) Judge.

National Assembly

1. The Speaker

- (a) Reply from the Minister of Basic Education to recommendations in *Report of Portfolio Committee on Basic Education on Oversight Visit to Ekurhuleni North, Ekurhuleni South and Tshwane North Education Districts*, as adopted by the House on 23 August 2017.

Referred to the **Portfolio Committee on Basic Education**.

- (b) Reply from the Minister of Basic Education to recommendations in *Third Quarterly Report of the Portfolio Committee on Basic Education on Performance of Department of Basic Education in meeting its strategic objectives for 2016/17*, as adopted by the House on 23 August 2017.

Referred to the **Portfolio Committee on Basic Education**.

- (c) Reply from the Minister of Basic Education to recommendations in *Report of Portfolio Committee on Basic Education on Oversight Visit to iLembe and King Cetshwayo Education Districts*, as adopted by the House on 23 August 2017.

Referred to the **Portfolio Committee on Basic Education**.

- (d) Reply from the Minister of Basic Education to recommendations in *Report of Portfolio Committee on Basic Education on Report of the South African Human Rights Commission on the investigative hearing into the impact of protest-related action on the right to basic education in South Africa*, as adopted by the House on 23 August 2017.

Referred to the **Portfolio Committee on Basic Education**.

- (e) Petition from residents of Greater Edenvale, calling on the Assembly to investigate pressure on schools in the Edenvale area and the fact that no state schools are planned in Greenstore to accommodate the increasing numbers of learners, submitted in terms of Rule 347 (Mr M Waters).

Referred to the **Portfolio Committee on Basic Education** for consideration and report.

COMMITTEE REPORTS

National Assembly

1. Report of the Portfolio Committee on Communications on the appointment of three Councillors to the Independent Communications Authority of South Africa (ICASA) Council, dated 28 November 2017

The Portfolio Committee on Communications (the Committee), having considered the request from the Minister of Communications to approve the appointment of three persons to fill three vacancies in the ICASA Council, reports as follows:

A letter dated 23 November 2017 was received from the Minister of Communications, requesting approval by the National Assembly for the appointment of Ms Nomonde Gongxeka-Seope and Ms Thembeke Semane to the ICASA Council in terms of section 5(1B) of the ICASA Act (No. 13 of 2000), as amended, to serve as Councillors for a period of four years. The Minister further requested that the National Assembly approves the appointment of Mr Rubben Mohlaloga as Councillor and Chairperson of the Council for a period of five years.

On 28 November 2017, the Committee considered the request from the Minister of Communications and recommends that the National Assembly approve the appointment of Ms Nomonde Gongxeka-Seope and Ms Thembeke Semane as Councillors for a period of four years and Mr Rubben Mohlaloga as Councillor and Chairperson of the Council for a period of five years.

The Democratic Alliance (DA) objected to the report.

Report to be considered.

2. Report of the Portfolio Committee on Communications on the Films and Publications Amendment Bill [B37 – 2015] (National Assembly – sec 75), dated 21 November 2017

The Portfolio Committee on Communications, having considered the subject of the *Films and Publications Amendment Bill [B 37 – 2015] (National Assembly – sec 75)*, referred to it and classified by the JTM as a section 75 Bill, reports the Bill with amendments [B 37A – 2015], as follows:

CLAUSE 1

1. On page 2, from line 7, to omit paragraph (a).
2. On page 3, in line 3, after “film” to insert “or game”.
3. On page 3, in line 4, to omit “F”.
4. On page 3 from line 6, to omit paragraph (c) and to substitute the following paragraph:
 - (c) by the substitution for the definition of “child pornography” of the following definition:

“ ‘child pornography’ means child pornography as defined in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007);”;
5. On page 3, from line 17, to insert the following paragraph:
 - (c) by the insertion after the definition of “classification committee” of the following definition:

“ ‘commercial online distributor’ means a distributor in relation to films, games and publications which are distributed for commercial purposes using the internet;”;
6. On page 3, from line 18, to omit paragraph (e).
7. On page 3 in line 34, after “hire”, to insert “, including using the internet”.
8. On page 3, in line 41, to omit paragraph (g) and to substitute the following paragraph:
 - (e) by the substitution for the definition of “distributor” of the following definition:

“ ‘distributor’ means a person who conducts the business of distributing films, games or publications and includes a commercial online distributor;”;
9. On page 3, after line 48, to insert the following paragraphs:
 - (f) by the insertion after the definition of “domestic violence” of the following definition:

“ ‘Enforcement Committee’ means the committee established in terms of section 3;”;
 - (g) by the substitution for the definition of “film” of the following definition:

“ ‘film’ means any sequence of visual images recorded in such a manner that by using such recording, such images will be capable of being seen as a moving picture, and includes any picture intended for exhibition through any medium, including using the internet, or device;”;

- (h) by the substitution for the definition of “game” of the following definition:

“**‘game’** means a computer game, video game or other interactive computer software for interactive game playing, including games accessed or played using the internet, where the results achieved at various stages of the game are determined in response to the decisions, inputs and direct involvement of the game player or players;”;

- (i) by the insertion after definition of “game” of the following definitions:

“**‘harmful’** means causing emotional, psychological or moral distress to a person, whether it be through a film, game or publication through any on or offline medium, including through the internet and ‘harm’ has a corresponding meaning;

‘hate speech’ includes any speech, gesture, conduct, writing, display or publication, made using the internet, which is prohibited in terms of section 16(2) of the Constitution of the Republic of South Africa, 1996, which propagates, advocates or communicates words against any person or identifiable group, which words could reasonably be construed to demonstrate a clear intention to be harmful, to incite harm and promote or propagate hatred against the said person or identifiable group.”;

10. On page 3, from line 57, to omit paragraph (j) and to substitute the following paragraph:

- (j) by the insertion after definition of “identifiable group characteristic” of the following definitions:

“**‘Independent Communications Authority of South Africa’** means the body established in terms of section 3 of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000);

‘internet’ means the Internet as defined in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);”;

11. On page 4, from line 1, to insert the following paragraph:

- (l) by the deletion of the definition “newspaper”;

12. On page 4 from line 1, to omit paragraph (l).

13. On page 4, from line 7, to insert the following paragraph:

- (m) by the insertion after definition of “newspaper” of the following definitions:

“**‘non-commercial online distributor’** means any person who distributes content using the internet, or enables content to be distributed by a user of online services, for personal or private purposes;

‘online medium’ means any website, communication or messaging system, social media facility or similar facility which is connected to the publicly available internet, and any public telecommunications messaging system;

‘permit’ means the permit issued by the Board pursuant to section 23(2) to an online distributor wherein the online distributor is exempted from submitting films and games to the Board for classification, subject to such terms and conditions as the Board may deem fit;”;

14. On page 4, from 8, to omit paragraph (*m*) and to substitute the following paragraph:

(*m*) by the insertion after the definition of “prescribed” of the following definitions:

“**Press Council of South Africa**’ means a voluntary independent self-regulatory body established in terms of the Constitution of the Press Council of South Africa and which has adopted the Press Council Constitution, which includes the Code of Ethics and Conduct for South African Print and Online Media;

“**prohibited content**’ means content which amounts to propaganda for war, incitement of imminent violence, advocacy of hatred that is based on an identifiable group characteristic, and that constitutes incitement to cause harm, or is prohibited in sections 16(2), 16(4) and 18(3);”;

15. On page 4, from line 16, to omit paragraph (*n*) and to substitute the following paragraphs:

(*n*) by the substitution in the definition of “publication” for the words preceding paragraph (*a*) of the following words:

“**publication**’ means, and includes, where applicable, any of the following, published using the internet—”;

(*o*) by the substitution in the definition of “publication” for paragraph (*a*) of the following paragraph:

“(a) any newspaper, magazine, book, periodical, pamphlet, poster or other printed matter;”;

(*p*) by the substitution in the definition of “publication” for paragraph (*i*) of the following paragraph:

“(i) any content made available using the internet, excluding a film or game;”.

16. On page 4, after line 20, to insert the following paragraph:

(*q*) by the insertion after the definition of “**Review Board**” of the following definition:

“**self-classification**’ for the purposes of a permit contemplated in section 23(2), means the rating and classification of films, games and publication with regard to the suitability for audiences in terms of the Board’s classification guidelines and the Act;”;

17. On page 4, from line 38, to omit paragraph (*p*) and to substitute the following paragraph:

(*r*) by the insertion after the definition of “**sexual violence**” of the following definitions:

“**social media**’ includes the various online technology tools and forms electronic communication via the internet, such as websites for social networking and micro blogging through which users create online communities to share information, ideas, personal messages and other content; **streaming**’ means the delivery of films by an online distributor or broadcaster, including the online streaming or downloading of films and catch-up services that enable time-shifted viewing of a film online, to the end user of an online delivery medium, including the internet;”.

CLAUSE 2

1. On page 4, in line 49, to omit “Penalty” and to substitute “Enforcement”.

CLAUSE 3

1. On page 4, from line 59, to omit “classification decisions of the Board” and to substitute “this Act”.

CLAUSE 4

1. On page 5, in line 6, to omit “Penalty” and to substitute “Enforcement”.
2. On page 5, in line 11, to omit “a Penalty” and to substitute “an Enforcement”.
3. On page 5, from line 12, to omit paragraph (e) and to substitute the following paragraph:

(e) by the substitution for subsection (2) of the following subsection:

“(2) The Board, the Council, the Enforcement Committee and the Appeal Tribunal shall be independent, impartial and must perform their functions without fear, favour, or prejudice and act in accordance with applicable law.”.

NEW CLAUSE

1. That the following be a new clause:

“**Amendment of section 4A of 65 of 1996, as amended by section 7 of Act 3 of 2009**

5. Section 4A of the principal Act is amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) in consultation with the Minister, issue directives of general application, including classification guidelines, regarding the accreditation contemplated in section 18D, in accordance with matters of national policy consistent with the purpose of this Act;”

(b) by the deletion in subsection (1) of the word “and” at the end of paragraph (f);

(c) by the substitution in subsection (1) for the fullstop at the end of paragraph (g) of the expression “; and”; and

(d) by the addition in subsection (1) of the following paragraph:

“(h) appoint the Enforcement Committee members in terms of section 6A.”.

CLAUSE 5

1. Clause rejected.

CLAUSE 6

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Insertion of sections 6A, 6B and 6C in Act 65 of 1996

7. The following sections are hereby inserted in the principal Act after section 6:

“Composition of Enforcement Committee

6A. (1) The Enforcement Committee shall consist of four members plus a chairperson.

(2) The members of the Enforcement Committee must be appointed by the Council.

(3) The members of the Enforcement Committee must be—
 (a) a judge or retired judge of the High Court of South Africa;
 (b) an advocate or attorney with at least 10 years of appropriate experience;
 (c) a magistrate or retired magistrate with at least 10 years appropriate experience; or
 (d) a lecturer of law or a retired lecturer of law of a South African University with at least 10 years appropriate experience.

(4) The members of the Enforcement Committee shall have experience in or knowledge of any one or more of the following fields:

- (a) law;
 (b) law enforcement;
 (c) regulatory matters;
 (d) film, games, publications, arts, literature;
 (e) digital technology and electronic communications; or
 (f) sentencing.

(5) A member of the Enforcement Committee appointed in terms of subsection (2) shall—

- (a) be a fit and proper person;
 (b) be of good character; and
 (c) not be disqualified in terms of section 7.

(6) A quorum for a session of the Enforcement Committee shall be the chairperson plus two members and where the votes are equal, the chairperson shall have a deciding vote.

Powers and duties of Enforcement Committee

6B. (1) The Enforcement Committee shall—

- (a) investigate all cases referred to it by the Board for adjudication in respect of non-compliance with any provision of the Act by a distributor, exhibitor or any other person to whom the Act applies, except persons to whom sections 24A, 24B, 24C and 27A(2),(3) and (4) apply;
 (b) adjudicate all cases and make appropriate findings, after the Board and the respondent have been heard or granted a reasonable opportunity to be heard;
 (c) hear evidence under oath or affirmation or evidence by affidavit and come to a finding when it is convinced on a consideration of all the facts before it that such a finding is fair, reasonable and justified;
 (d) where appropriate—
 (i) impose a fine;
 (ii) as prescribed, suspend a registration certificate; or

- (iii) through the Board, refer a matter to the National Director of Public Prosecutions for prosecution and, in such a case, the Enforcement Committee shall not make a finding; and
 - (e) where a fine is not paid, at the instance of the chief executive officer, apply to a court for the enforcement of such a fine as a civil debt to the Board.
- (2) The finding of a contravention by the Enforcement Committee in terms of subsection (1) shall not be regarded as a conviction in respect of a criminal offence and no prosecution for that offence shall thereafter be competent.
- (3) An aggrieved person may appeal to the Appeal Tribunal against a finding of the Enforcement Committee.
- (4) The Minister may, from time to time and after consultation with the Board, by notice in the Gazette, adjust the amount of fines that may be imposed by the Enforcement Committee in accordance with the average of the consumer price index, as published from time to time in the Gazette, for the immediately preceding 12 months multiplied by the number of years that the amount has remained the same.
- (5) The chairperson, members of the Enforcement Committee and each member of the staff of the Enforcement Committee, must not—
- (a) engage in any activity that may undermine the integrity of the Enforcement Committee;
 - (b) participate in any investigation, hearing or decision concerning a matter in respect of which that person has a direct financial interest or any similar personal interest;
 - (c) make private use of, or profit from any confidential information obtained as a result of performing that person's official functions in the Enforcement Committee; or
 - (d) divulge any information referred to in paragraph (iii) to any third party, except as required as part of that persons official functions within the Enforcement Committee.

Removal of members of Enforcement Committee from office

6C. (1) The Council may remove a member of the Enforcement Committee from office on the grounds of incapacity, incompetence, misconduct or misrepresentation.

(2) A decision to remove a member of the Enforcement Committee from office shall be based on a finding of a disciplinary committee appointed by the Council: Provided that a member shall have a right to be heard.

(3) The Council may suspend a member of the Enforcement Committee from office pending the finding of the disciplinary committee referred to in subsection (2A).

(4) A member of the Enforcement Committee shall vacate his or her office when any of the circumstances referred to in section 7 becomes applicable in respect of him or her, and the Council issues him or her with a notice of removal to that effect.”.

CLAUSE 7

1. On page 6, in line 37, to omit “Penalty” and to substitute “Enforcement”.
2. On page 6, in line 41, to omit “Penalty” and to substitute “Enforcement”.
3. On page 6, in line 45, to omit “Penalty” and to substitute “Enforcement”.

CLAUSE 8

1. On page 6, in line 54, to omit “Penalty” and to substitute “Enforcement”.
2. On page 6, in line 56, to omit “Penalty” and to substitute “Enforcement”.

CLAUSE 9

1. Clause rejected.

CLAUSE 10

1. On page 7, from line 28, to omit paragraph (c) and to substitute the following paragraph:
 - (c) by the addition in subsection (2) of the following paragraphs:
 - “(d) accredit commercial online distributors’ classification systems in terms of section 18C;
 - (e) perform the functions in respect of the complaints procedure in section 18E; and
 - (f) take such step as may be necessary in regard to—
 - (i) the accreditation of any foreign or international classification system in relation to the classification of films, games and publications;
 - (ii) the conclusion of a compliance and online distribution agreement with a commercial online distributor in relation to the online distribution in the Republic, of films, games and publications classified through the accredited foreign or international classification system; and
 - (iii) the exemption of any commercial online distributor from the classification of films, games and publications in terms of the Act.”.

CLAUSE 11

1. On page 7, in line 45, to omit “Penalty” and to substitute “Enforcement”.
2. On page 7, in line 48, to omit “Penalty” and to substitute “Enforcement”.

CLAUSE 12

1. On page 8, in line 5, to omit “Penalty” and to substitute “Enforcement”.
2. On page 8, in line 7, to omit “Penalty” and to substitute “Enforcement”.

CLAUSE 13

1. On page 8, in line 16, to omit “Penalty” and to substitute “Enforcement”.

CLAUSE 14

1. On page 8, in line 24, to omit “Penalty” and to substitute “Enforcement”.
2. On page 8, in line 26, to omit “Penalty” and to substitute “Enforcement”.
3. On page 8, in line 29, to omit “Penalty” and to substitute “Enforcement”.

CLAUSE 15

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Substitution of section 15A of Act 65 of 1996, as inserted by section 18 of Act 3 of 2009

16. The following section is hereby substituted for section 15A of the principal Act:

“Functions and powers of compliance officers”

15A. (1) A compliance officer may, for the purpose of achieving the objects of this Act—

- (a) **[advising]** advise the distributors and exhibitors of films and games, of the requirements of this Act with regard to the distribution or exhibition of films and games; and
- (b) **[ensuring]** ensure that all films and games offered for sale or hire by a distributor or an online distributor have been classified and labelled in terms of this Act and that all such films and games display, in the prescribed manner, the classification reference number, the age restriction, consumer advice and such other conditions as may have been imposed on the distribution of such films and games by the Board,

[enter any premises, with the consent of the person in charge of such premises, on or in which the business of the sale, hire or exhibition of films or games is being conducted].

(1A) For the purpose of subsection (1), the compliance officer may—

- (a) at all reasonable times, with the consent of the person in charge of such premises or with the assistance of a member of the South African Police Service, enter any premises on or in which the business of the sale, hire or exhibition of films or games is being conducted;
- (b) at all reasonable times, with the consent of the person in charge of such premises or facility or the assistance of the South African Police Services, enter any premises or facilities that are used to store films or games being distributed or intended for distribution, and view and take copies of all the information, reports, documents and other material needed for the inspection of labelling; with the consent of the person in charge of such premises or the assistance of the South African Police Services, enter the premises of any internet access providers to check compliance with this Act;
- (c) review a product list of all films and games offered for sale or hire through the internet which can be accessed by any persons;
- (d) with the consent of the person in charge of operating the online medium or the assistance of the South African Police Services, review a product list of all films and games offered for sale or hire through an online medium which can be accessed by a closed group of persons;
- (e) in the prescribed form, issue a compliance notice and notice to remove from display, including from display in an online medium, unclassified films or games;

- (f) with the consent of the person in charge of such premises or the assistance of the South African Police Services, seize any unclassified film or game or any film or game that does not comply with the requirements of this Act;
- (g) direct that the film, game or publication contemplated in paragraph (vii) be removed from display, including from display in an online medium, or offer for sale or hire until it complies with the requirements of this Act or complies with any decision of the Board with regard to its distribution;
- (h) request the production of a certificate of registration as a distributor or exhibitor of film or games issued by the Board;
- (i) where relevant, request the production of a licence to conduct the business of adult premises issued by a licensing authority contemplated in section 24; and
- (j) with the consent of the person in charge of the premises or the assistance of the South African Police Services, examine or inspect any premises being used to conduct the business of adult premises for compliance with the conditions contemplated in section 24(2).

(2) Any entry and inspection of premises or facility made in terms of subsection (1) may occur at any reasonable time but must be conducted with strict regard for decency and order, and with regard to each person's right to dignity, freedom, security and privacy.

(3) A record shall be kept of any material seized in terms of subsection (1) indicating the purpose of seizure and the material seized: Provided that the person from whom the material is seized, if identifiable, is provided with a copy of such a record.

(4) In order to give effect to the objects of the Act and fulfillment of the functions of the compliance officer provided for in this section, the Minister may, with the concurrence of the Minister of Police, deploy a member of the South African Police Service within the Board to carry out any compliance or monitoring duties."

CLAUSE 16

1. On page 9, from line 49, to omit subsection (1) and to substitute the following subsection:

"(1) Any person may request, in the prescribed manner, that a publication, other than a [*bona fide newspaper*] publication that is published by a member of the Press Council of South Africa [*a body, recognised by the Press Ombudsman which subscribes, and adheres, to a code of conduct that must be enforced by that body,*] or an advertisement that falls under the jurisdiction of the Advertising Standards Authority of South Africa, which [*is to be or*] is being distributed in the Republic, be classified in terms of this section."

2. On page 9, from line 57, to omit paragraph (b) and to substitute the following paragraph:

(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"Any person, except the publisher of a [*newspaper*] publication contemplated in subsection (1), who, for distribution or exhibition in the Republic creates, produces, publishes or advertises any publication that—";

3. On page 10, after line 7, to insert the following paragraphs:
 - (e) by the substitution in subsection (2) for paragraph (c) of the following paragraph:
“(c) incites imminent violence; or”;
 - (f) by the substitution in subsection (2) for paragraph (c) of the following paragraph:
“(c) advocates hatred based on any identifiable group characteristic and that constitutes incitement to cause harm and imminent violence,”;
4. On page 10, in line 28, to omit “violent”.
5. On page 10, in line 28, after “conduct”, to insert “accompanied by explicit violence”.
6. On page 10, in line 30, to omit “bestially” and to substitute “bestiality”.

NEW CLAUSE

1. That the following be a new clause:

Substitution of heading of Chapter 4 of Act 65 of 1996

18. The following heading is hereby substituted for the heading of Chapter 4 of the principal Act:

“Classification of films and games, self-classification, accreditation, complaints and prohibited content”.

CLAUSE 17

1. On page 10, in line 59, to omit “publication” and to substitute “film or game”.
2. On page 11, in line 4, to omit “violent”.
3. On page 11, in line 4, after “conduct”, to insert “accompanied by explicit violence”.
4. On page 11, in line 10 to omit “sexual or”.
5. On page 11, in line 25, after the semi-colon, to insert “and”.
6. On page 11, in line 29, after “broadcasting”, to insert “and online streaming”.
7. On page 11, in line 32, to omit “; and”, and to substitute a full-stop.
8. On page 11, from line 33, to delete paragraph (d).

CLAUSE 19

1. Clause rejected.

NEW CLAUSE

2. That the following be a new clause:

Insertion of sections 18C, 18D, 18E, 18F, 18G, 18H, 18I and 18J in Act 65 of 1996

19. The following sections are hereby inserted in the principal Act after section 18:

“Self-classification

18C. (1) The Board may, on application and upon payment of the prescribed fee, by a commercial online distributor approve and accredit such commercial online distributor to conduct classifications of films, games and publications.

(2) A commercial online distributor of films, games or publications contemplated in subsection (1) shall not be subject to section 18(1)(b) provided that—

- (a) the commercial online distributor referred to in subsection (1) has been accredited by the Board to classify its own films, games or publications;
- (b) the commercial online distributor applies the classification guidelines as determined by the Board in consultation with the Minister;
- (c) the decisions of the commercial online distributor comply with the requirements as may be set by Board from time to time;
- (d) the registered distributors remain subject to classifications which were issued before such commercial online distributor was approved and may apply for re-classification by the Board only after two years of a classification decision of the Board;
- (e) the commercial online distributor informs the Board of all its “XX” and “X18” classifications of films, games and publications and any other classification of films, games and publications so that the Board may publish these classifications in the *Gazette*, after which such classifications are deemed to have been made by the Board; and
- (f) if a film, game or publication is already classified, or is subsequently classified, by the Board the commercial online distributor may not classify or re-classify differently to the Board’s classification of the said film, game or publication.

(3) The Board may provide training to commercial online distributors contemplated in subsection (1) in terms of this Act.

(4) The commercial online distributor shall upon demand by the Board make available all its classification decisions in relation to films, games and publications, for auditing purposes.

(5) The accreditation of a commercial online distributor may, after due inquiry, be suspended by the Board—

- (a) if the commercial online distributor acts contrary to the provisions of this section,
- (b) until the Board is satisfied that the commercial online distributor will comply with the provisions of this section in the future, and commercial online distributor may also be subject to prosecution for an offence in terms of this Act.

(6) No film, game or publication may be distributed in the Republic unless it has been classified in terms of section 16, section 18, this section or section 18D, and a clearly visible label indicating the age limit and the nature of content is displayed on or in connection with the film, game or publication and appearing next to the logo of the Board.

Approval of accredited foreign or international classification systems by the Council

18D. (1) The Council may, on application by an online distributor wishing to distribute films, games or publications in the Republic using classification ratings issued by a foreign or international classification authority or body, approve the use of classification ratings issued by the foreign or international classification authority or body.

(2) The Council may approve the application contemplated in subsection (1), subject to such conditions as the Board may consider necessary in relation to the online distribution of films or games.

(3) The Council shall, in considering the application contemplated in subsection (1), take into account—

- (a) the accessibility by the Board of the distributor's online service for compliance, monitoring and auditing purposes; and
- (b) the alignment of the foreign or international ratings to the applicable ratings in terms of the Act and the Council's classification guidelines.

(4) An application in terms of subsection (1) must be accompanied by the payment of the prescribed fee, determined by the Minister.”.

Complaints against prohibited content

18E. (1) Any person may complain to the Board about unclassified, prohibited content, or potential prohibited content, in relation to services being offered online by any person, including commercial online distributors and non-commercial online distributors.

(2) If, upon investigation by the Board or by the compliance officers in terms of section 15, it is established that there is merit in the complaint and or that the prohibited content or content being hosted or distributed using the internet constitutes prohibited content in terms of this Act or has not been submitted for examination and classification as required in terms of sections 16, 18, 18C or 18D, the matter must be referred to the Board which may, subject to due process of law—

- (a) in the case of a non-commercial online distributor, issue a take-down notice in accordance with the procedure in section 77 of Electronic Communications and Transactions, 2002 (Act No. 25 of 2002); or
- (b) in the case of internet service providers, issue a take-down notice in terms of section 77 of Electronic Communications and Transactions, 2002 (Act No. 25 of 2002)

(3) For the purposes of this section and sections 24E, 24F and 24G, the internet service provider shall be compelled to furnish the Board or a member of the South African Police Services with information of the identity of the person who published the prohibited content.

(4) In the case of content hosted outside of the Republic that is found to contain child pornography, the Board shall refer the matter to the South African Police Service or to the hotline in the country concerned for the attention of law enforcement officials in that country.

(5) For the purposes of this section an “internet service provider” means the service provider contemplated in section 70 and section 77 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002).

Prohibition against distribution of private sexual photographs and films

18F. (1) No person may expose, through any medium, including the internet and social media, a private sexual photograph or film if the disclosure is made—

- (a) without the consent of the individual or individuals who appear in the photograph or film; and
- (b) with the intention of causing that individual harm.

(2) It is a defence for a person charged with an offence under this section to prove that he or she reasonably believed that the disclosure was necessary for the purposes of preventing, detecting or investigating crime.

(3) The prohibition referred to in subsection (1) shall apply notwithstanding that the individual who appears in the photograph or film might have consented to the original creation of such photograph or film.

(4) For the purposes of this section and section 24E a photograph or film is “private” if, judging from the context in which the photograph or film is taken or made, it was not intended by any individual in the photograph or film to be seen by others.

(5) For the purposes of this section a photograph or film is “sexual” if such photograph or film—

- (a) it shows all or part of an individual’s exposed female breasts, anus, genitals or pubic area;
- (b) it shows something that a reasonable person would consider to be sexual because of its nature; or
- (c) its content, taken as a whole, is such that a reasonable person would consider it to be sexual.

(6) For the purposes of this section and sections 24E, 24F and 24G, the internet service provider shall be compelled to furnish the Board or a member of the South African Police Services with information of the identity of the person who published the private sexual photograph or film.

Prohibition against filming and distribution of films and photographs depicting sexual violence and violence against children

18G. (1) No person may create, produce or distribute in any medium, including the internet, and social media any films or photographs depicting sexual violence and violence against children.

(2) For the purposes of this section “photograph or film” means a still or moving image in any form that—

- (a) consists of, or includes one or more photographed or filmed images; or
- (b) appears to consist of or includes one or more photographed or filmed images.

(c) The prohibition in subsections (1) and (2) shall apply despite that the individual who appears in the photograph or film might have consented to the original creation of such photograph or film.”

(3) The reference in subsection (2)(b) to photographed or filmed images includes photographed or filmed images that have been altered in any way.

(4) For the purposes of this section “photographed or filmed image” means a still or moving image that—

- (a) was originally captured by photography or filming, or
- (b) is part of an image originally captured by photography or filming.

(5) For the purposes of this section “filming” means making a recording, on any medium, from which a moving image may be produced by any means.

(6) References to a photograph or film include—

- (a) a negative version of an image described in subsection (2), and
- (b) data stored by any means which is capable of conversion into an image described in subsection (2).

(7) For the purposes of this section and sections 24E, 24F and 24G, the internet service provider shall be compelled to furnish the Board or a member of the South African Police Services with information of the identity of the person who published a film or photograph depicting sexual assault and violence against children.

Prohibition against propaganda for war; incitement of imminent violence and advocacy of hatred that is based on identifiable group characteristics, and that constitutes incitement to cause harm

18H. No person may distribute through any medium including the internet and social media, any film, game or publication which amounts to propaganda for war, incites imminent violence or advocates hate speech.

Display of classification decisions

18I. (1) Where a film, or game has been classified or exempted from classification in terms of this Act, or such film or game has been classified by a commercial online distributor referred to in section 18C, the film or game must—

- (a) if it is a film or game approved for sale or hire, display a label in the prescribed form;
- (b) if it is a film or game approved for sale or hire online, must conspicuously display the Board’s classification decision and logo on the landing page of the online medium, the online medium catalogue and at the point of sale of the commercial online distributor services.

(2) The format, including the size and design, as well as the manner of the display of certificates of classification on films or games approved for distribution or exhibition, must be prescribed.

(3) No film or game may be distributed in the Republic, unless it has been classified in terms of section 18, 18C or 18D and a clearly visible label indicating the age limit and the nature of content is displayed on or in connection with the film or game.

Re-classification

18J. (1) Any person may, after a period of two years from the date when a film, game or publication was first classified in terms of this Act, apply to the Board in the prescribed manner, for a less restrictive classification of that film, game or publication.

(2) Any member of the public who is aggrieved or offended by a classification decision in respect of a film, game or publication, may in prescribed manner and upon payment of a prescribed fee, apply to the Board for re-classification of such film, game or publication.

(3) The Board shall, upon receipt of the application contemplated in subsections (2) and (3), inform the distributor in writing of the application for re-classification and request the distributor to make representations before a decision is made as to whether or not to reclassify the film, game or publication.”.

CLAUSE 22

1. On page 15, from line 23, to omit subsection (6) and to substitute the following subsection:

“(6) Where a commercial online distributor of a film or game is a commercial online distributor referred to in section 18C, such commercial online distributor shall not have the right to appeal to the Appeal Tribunal against a classification by that commercial online distributor in line with a Board classification, unless the Board, based on a complaint in terms of section 18G, imposes a more onerous classification, in which case that commercial online distributor may appeal to the Appeal Tribunal against such a classification.”.

CLAUSE 24

1. On page 16, in line 25, to omit “newspaper, magazine or advertisement” and to substitute “publication”.
2. On page 17, in line 13, after “knowingly”, to insert “, or who ought to have reasonably known”.

CLAUSE 25

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Amendment of section 24B of Act 65 of 1996, as inserted by section 29 of Act 3 of 2009

- 25.** Section 24B of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:

“**[Prohibition, offences] Offences and penalties [on possession of films, games and publications] in respect of child pornography and sexual exploitation of children**”;
 - (b) by the substitution in subsection (1) for paragraphs (a), (b) and (c) of the following paragraphs, respectively:
 - “(a) unlawfully possesses child pornography;
 - (b) creates, produces or in any way contributes to, or assists in the creation or production of child pornography;
 - (c) imports or in any way takes steps to procure, obtain or access or in any way knowingly assists in, or facilitates the importation, procurement, obtaining or accessing of child pornography; or”; and

(c) by the addition of the following subsections:

“(4) A court which convicts a person of an offence in terms of subsection (1)(b) may, where a penalty is not prescribed in respect of that offence by any other Act of Parliament, impose a sentence as referred to in section 276 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), which that court considers appropriate and which is within that court’s penal jurisdiction.

(5) Any person who contravenes subsection (1)(d), is liable—

(a) in the case of a first conviction, to a fine or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment; or

(b) in the case of a second and subsequent conviction, to a fine or to imprisonment for a period not exceeding 15 years or to both such fine and imprisonment.

(6) Any person who contravenes subsection (1)(a) or (c), is liable—

(a) in the case of a first conviction, to a fine or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment;

(b) in the case of a second conviction, to a fine or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment; or

(c) in the case of a third or subsequent conviction, to a fine or to imprisonment for a period not exceeding 15 years or to both such fine and imprisonment.

(7) Any person who contravenes the provisions of subsection (2), is liable, on conviction, to a fine or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment.

(8) Any person who contravenes the provisions of subsection (3) is liable—

(a) in the case of a first conviction, to a fine of R1 000 000 or to imprisonment for a period not exceeding 5 years, or to both such fine and imprisonment; or

(b) in the case of a second or subsequent conviction, to a fine of R2 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment.”.

CLAUSE 27

1. On page 18, from line 7, to omit section 24E and to substitute the following section:

“24E. (1) Any person who knowingly distributes private sexual photographs and films in any medium including the internet and social media, without prior consent of the individual or individuals in the said sexual photographs and films with the intention to cause the said individual harm shall be guilty of an offence and liable upon conviction, to a fine not exceeding R150,000 or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

(2) Any person who knowingly distributes private sexual photographs and films in any medium including through the internet, without prior consent of the individual or individuals and where the individual or individuals in the photographs or films is identified or identifiable in the said photographs and films, shall be guilty of an offence and liable upon conviction, to a fine not exceeding R300 000 or to imprisonment for a period not exceeding four years or to both a fine and such imprisonment.”.

2. On page 18, from line 22, to omit section 24G and to substitute the following section:

“Prohibitions, offences and penalties on propaganda for war, incitement of imminent violence, and advocacy of hatred based on an identifiable group characteristic and that constitutes incitement to cause harm

24G. Any person who knowingly distributes in any medium, including the internet and social media any film, game or publication which amounts to propaganda for war, incites imminent violence, or advocates hate speech, shall be guilty of an offence and liable upon conviction, to a fine not exceeding R150,000 or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.”.

CLAUSE 28

1. On page 18, from line 33, to omit paragraph (a) and to substitute the following paragraph (a):

(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“If an [Internet] internet [service] access provider has knowledge that its services are being used for the hosting or distribution of child pornography, propaganda for war, incitement of imminent violence or advocating hatred based on an identifiable group characteristic and that constitutes incitement to cause harm, such [Internet] internet service provider shall—”;

2. On page 18, in line 40, to omit “subsection (1)” and to substitute “subsections (1) and (2)”.

CLAUSE 30

3. On page 30, in line 8, to omit “Penalty” and to substitute “Enforcement”.

NEW CLAUSE

1. That the following be a new clause:

Insertion of section 31A in Act 65 of 1996

31. The following section is hereby inserted in the principal Act after section 31:

“Procedure for making regulations

31A. (1) The Minister must, before making or amending any regulations referred to in section 31, publish a notice in the *Gazette*—

- (a) setting out that draft regulations have been developed;
- (b) specifying where a copy of the draft regulations may be obtained; and
- (c) inviting written comments to be submitted on the proposed regulations within a specified period.

(2) After complying with subsection (1), the Minister may—

- (a) amend the regulations; and

(b) subject to subsection (3), publish the regulations or directives in final form in the *Gazette*.

(3) (a) The Minister must, within 30 days before publication of the regulations in the *Gazette*, as referred to in subsection (2)(b), table them in Parliament.

(b) Subsection (1) does not apply in respect of any amendment of the regulations as a result of the process referred to in paragraph (a).”.

CLAUSE 32

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Amendment of arrangement of sections in Act 65 of 1996

33. The arrangement of sections after the long title of the principal Act is hereby amended—

(a) by the substitution for the heading of Chapter 2 of the following heading:

“Film and Publication Board [: Film and Publication Appeal Tribunal], Council, Appeal Tribunal and Enforcement Committee”;

(b) by the substitution for item 3 of the following item:

“3. Establishment of Film and Publication Board, Council [and], Appeal Tribunal and Enforcement Committee”;

(c) by the substitution for item 6 of the following item:

“6. [Members] Appointment of members of Council and Appeal Tribunal [to be appointed] by Minister”;

(d) by the insertion after item 6 of the following item:

**“6A. Composition of Enforcement Committee
6B. Powers and duties of Enforcement Committee”;**

(e) by the substitution for item 7 of the following item:

“7. Disqualifications with regard to membership of Council [or], Appeal Tribunal or Enforcement Committee”;

(f) by the substitution for item 8 of the following item:

“8. Period of office of members of Council [and], Appeal Tribunal and Enforcement Committee”;

(g) by the substitution for item 11 of the following item:

“11. Administrative support for Council [and], Appeal Tribunal and Enforcement Committee”;

(h) by the substitution for item 15A of the following item:

“15A. Functions and powers of compliance officers”;

(i) by the substitution for the heading of Chapter 4 of the following heading:

“Classification of Films and Games, Self-classification, Accreditation, Complaints and Prohibited Content”;

(j) by the deletion of items 18A and 18B;

(k) by the insertion after item 18 of the following items:

- “18C. Self-classification
18D. Approval of accredited foreign or international classification systems by the Board
18E. Complaints against content services distributed online
18F. Prohibition against distribution of private sexual photographs and films
18G. Prohibition against filming and distribution of films and photographs depicting sexual assault and violence against children”;**

- (l) by the substitution for the heading of Chapter 5 of the following heading:
“Right to [Appear,] appear and to [Appeal] appeal to Appeal Tribunal [and Supreme Court]”; and
- (m) by the insertion after item 24C of the following item:
“24D. Prohibition, offences and penalties for submission of false and misleading information to online submission system of Board”.

LONG TITLE

To amend the Films and Publications Act, 1996, so as to insert and amend certain definitions; to provide for the establishment, composition and appointment of members of the Enforcement Committee; to provide for the powers and duties of the Enforcement Committee; to regulate online distribution of films and games; to extend the compliance obligations of the Films and Publications Act and the compliance and monitoring functions of the Film and Publication Board to online distributors; to revise and further regulate the functions of compliance officers regarding entering and inspection of premises and facilities in which the business of the sale, hire or exhibition of films or games is being conducted; to further regulate the classification of publications, films and games; to provide for accreditation of independent commercial online distributors by the Film and Publication Board; to provide for classification of publications, films and games by the independent industry classification bodies; to provide for foreign and international classification systems and approval thereof by the Film and Publication Board; to provide for the use of classification ratings issued by a foreign and international classification authority or body; to provide for the right of appeal against classifications issued by independent industry classification bodies; to provide for exemptions in respect of online distribution of films and games; to further provide for the obligations of internet access providers regarding curbing the use of their services in propagating prohibited content; to revise and strengthen penal provisions; and to provide for matters connected therewith.

3. Report of the Ad Hoc Committee on the Funding of Political Parties, dated 28 November 2017

The ad hoc Committee on the Funding of Political Parties having reviewed the regulatory framework governing the funding of political parties represented at national and provincial legislatures, reports as follows:

1. Introduction

- 1.1 On 6 June 2017 the National Assembly (NA) resolved to establish the ad hoc Committee on the Funding of Political Parties (the Committee) in terms of NA Rule 253(1)(a).
- 1.2 The Committee was charged with inquiring into and making recommendations on the funding of political parties represented in national and provincial legislatures with a view to introducing, if necessary, amending legislation. In doing so, the Committee was to consider a model of public and private funding for political parties; and the need for, and possible means of, regulating private funding in all its forms (including investment entities owned by political parties). The Committee was set to report to the National Assembly by 30 November 2017.
- 1.3 The multi-party committee comprises eleven permanent and seven alternate members of Parliament, of which seven members represent the African National Congress , four members represent the Democratic Alliance , two members represent the Economic Freedom Fighters), and five represent other political parties.. The represented political parties selected the following members to serve on the Committee: Adv. BT Bongo, MP (ANC); Ms DE Dlakude, MP (ANC); Mr DM Gumede, MP (ANC); Ms NN Mafu, MP (ANC); Ms LM Maseko, MP (ANC); *Ms CN Ncube-Ndaba, MP (ANC); Mr VG Smith, MP (ANC); *Dr MJ Figg, MP (DA); Mr RA Lees, MP (DA); *Mr D Maynier, MP (DA); Mr J Selfe, MP (DA); *Mr MM Dlamini, MP (EFF); Ms L Mathys, MP (EFF); Mr N Singh, MP (Inkatha Freedom Party); Dr CP Mulder, MP (Freedom Front Plus); *Prof. NM Khubisa, MP (National Freedom Party); *Mr NT Godi, MP (African People's Convention); and *Mr NL Kwankwa, MP (United Democratic Movement). On 21 June 2017 the Committee unanimously elected Mr VG Smith, MP as its chairperson.

- 1.4 In executing its mandate the Committee, as a point of departure, reviewed the Public Funding of Represented Political Parties Act, No 103 of 1997 and its regulations. That process led to the decision to repeal the existing legislation, and develop a new framework to address the weaknesses identified in the existing legislation.
- 1.5 This report comprises three parts:
- Part A, reflecting on the review of the Public Funding of Represented Political Parties Act, No 103 of 1997 and its regulations;
 - Part B, reflecting on the development of the Political Party Funding Bill, Bill 33 of 2017; and
 - Part C, reflecting the Committee's key observations and recommendations

Part A

2. Review of the Public Funding of Represented Political Parties Act, No 103 of 1997

On 21 June 2017 the Committee unanimously agreed to, as a point of departure, invite comment on the Public Funding of Represented Political Parties Act, No 103 of 1997. The call for public comment was published in all official languages on Parliament's website as well as in national and regional newspapers.

2.1 Public Comment

- 2.1.1 The Committee received seventeen written submissions from the following individuals and organisations: South African Catholics Bishops Conference; African National Congress; Mr L Scott; My Voice Counts; Cool Youth Church; Council for the Advancement of the South African Constitution; Human Sciences Research Council; South African History Archive; the Right2Know Campaign; Corruption Watch; Forum of Cape Flats Civics; Democracy Development Programme; Public Affairs Research Institute; Mr K Gottschalk; Congress of South African Trade Unions; Azanian People's Organisation; and the Black First Land First Movement. All but Messrs. Gottschalk and Scott, the Forum of Cape Flats Civics and the Black First Land First Movement participated in the public hearings which took place at Parliament on 15 and 16 August 2017.

2.1.2 All input received was in favour of public funding being increased so as to promote and strengthen democracy. They further agreed that public funding should be increased in line with what the fiscus could afford.

2.1.3 With regard to private funding, all commentators agreed that to prevent over-reliance on public funding, private funding should be allowed. However, such funding should be strictly regulated to prevent donors having undue influence on the political system. The majority proposed that the regulation of private funding should include full disclosure (above a certain threshold) by the recipients of monies received and funders' details.

2.1.4 Several proposals also argued for that the use of both public and private funding should be regulated. In the main, they proposed the following:

- that recipients use a significant part of their public funding to finance activities that support and enhance participation;
- that recipients ring-fence a significant part of their private funding for capacity building and research;
- that restrictions be imposed on election campaigns-expenditure; and
- that the use of private donations to finance represented political parties' operational costs be banned.

2.1.5 Several proposals argued for the establishment of multi-party democracy fund for the management of private funding. The majority argued that in order to ensure that the proposed legislative provisions and regulations are implemented, the Independent Electoral Commission (IEC) had to be adequately resourced.

2.2 Independent Electoral Commission

2.2.1 The IEC presented its proposals and concerns to the Committee on 17 August 2017.

- 2.2.2 The IEC indicated that to manage the existing public and proposed private funds while still executing its main function of ensuring free and fair elections, it would require significant financial and other resources to manage the funds, as well monitor compliance with the legislation and regulations.
- 2.2.3 They further proposed that the regulations should provide for a wide range of sanctions with varying degrees of severity, to motivate represented political parties to comply.
- 2.2.4 The IEC also emphasised that in order to protect its independence, careful consideration should be given to the establishment of a separate regulatory body mandated solely to monitor and enforce compliance with the new regulatory framework.

Part B

3. Draft Political Party Funding Bill, 2017

3.1 Background

- 3.1.1 On 22 August 2017 the Committee, having deliberated on the public input received, agreed that the Public Funding of Represented Political Parties Act would be repealed. The Parliamentary Legal Services Unit was instructed to draft new legislation that would regulate both the private and public funding of political parties.
- 3.1.2 The Committee approved the Draft Political Party Funding Bill, 2017 on 14 September 2017.

3.2 Overview

- 3.2.1 In the main, the Political Party Funding Bill, 2017 (the Bill) proposes:
- the repeal of the Public Funding of Represented Political Parties Act, No 103 of 1997;
 - the establishment of a Represented Political Party Fund (RPPF), managed by the IEC, to enhance multi-party democracy by providing funds to political parties that are represented in Parliament and provincial legislatures;
 - the establishment of a Multi-Party Democracy Fund (MPDF), managed by the IEC, for the receipt, allocation and management of private donations to political parties that are represented in Parliament and provincial legislatures;

- a prescribed formula for the allocation of funds from the RPPF and MPDF to represented political parties, that is based on equitable as well as proportional allocations;
- purposes for which funds from the MPDF and RPPF may or may not be used;
- the regulation of direct funding to political parties, including the disclosure of all donations above a certain threshold; and the prohibition of direct funding to individual members of political parties;
- that represented political parties be required to account for the monies received from the above-mentioned funds, and to disclose certain information to the IEC; and
- that municipal councils be prohibited from funding political parties and independent candidates.

3.3 Public Participation

- 3.3.1 The draft bill was published in the Government Gazette on 19 September 2017. The Committee received 22 written submissions from the following individuals, organisations and institutions: the Black First Land First Movement (BLF); the South African Local Government Association (SALGA); the Information Regulator; the Department of Political Science at the University of South Africa (UNISA); the Organisation Undoing Tax Abuse (OUTA); the South African Editor's Forum (SANEF) and amaBhungane Centre for Investigative Journalism; My Vote Counts; the Southern African Catholics Bishops Conference; the Council for the Advancement of the South African Constitution (CASAC); the Right2Know Campaign; the South African History Archive; the Helen Suzman Foundation; Corruption Watch; Business Leadership South Africa; the IEC; the Public Affairs Research Institute (PARI); the Commission for Gender Equality (CGE); the South African Human Rights Commission (SAHRC); Dr G. Ash; Mr R. Bryant; Mr N. Murray and Mr K Gottschalk.
- 3.3.2 The Committee held public hearings on 7, 8 and 10 November 2017. All but Mr K Gottschalk, the Public Affairs Research Institute, the South African Human Rights Commission and the Commission for Gender Equality participated in the hearings.

3.3.3 The following are the main comments and proposals emanating from the public input:

- while all commentators supported the establishment of a Multi-Party Democracy Fund, there were differing views on how this fund should be managed and how funds should be distributed;
- some were in favour of full disclosure of all donations regardless of their value, while others proposed that for practical reasons it would be best to determine a threshold for disclosure;
- monies from the two funds should be allocated according to two different formulae, with the Multi-Party Democracy Fund allocations skewed towards equitable distribution, and the Represented Political Party Fund allocations skewed towards proportional but with a marginal difference between the equitable and proportional allocations;
- all donations in kind above R10 000 should be declared;
- some proposed that all donations from foreign persons, entities or governments be scrapped, while others were of the view that they should be permitted to donate via the Multi-Party Democracy Fund;
- a cap on the quantum that a donor could donate over a funding cycle;
- reasonable guidelines should be outlined in the legislation and/or regulations for campaign expenditure so as to level the playing field;
- the fines contained in Schedule 1 should be represented in percentages of an allocation, instead of in monetary values;
- the legislation should include political parties and independent candidates at local government level too;
- a management fee of between 3 and 5 per cent of the allocation received from the Multi-Party Democracy Fund should be paid, to cover the cost of managing that fund; and

- companies that do business with the state and political parties' investment vehicles should be banned from making donations, or their donations should be strictly regulated.

Part C

4. Observations and Recommendations

4.1 Observations

- 4.1.1 The Committee believes that there is a need to provide for and regulate funding to represented political parties.
- 4.1.2 The financial implications of the proposed legislation are limited to the resources the IEC would require to manage the additional fund. The Committee further notes the IEC's concerns with regard to balancing its responsibility to manage elections in an independent fashion, and the proposed new responsibilities in terms of managing the two funds, and monitoring compliance with the legislation.
- 4.1.3 The Committee notes SALGA's submission that the funding model, which only accommodates political parties represented at national and provincial legislatures, should also be extended to the local government sphere. In this regard, SALGA proposed two remedies: firstly, that a percentage of the income of the Multi-Party Democracy Fund be ring-fenced for political parties represented in municipal councils; and secondly, that the legislative and constitutional lacuna that is preventing political parties represented in municipal councils from benefitting from the Represented Political Party Fund, be addressed.
- 4.1.4 The Committee has noted the Western Cape High Court's recent judgment that Parliament should remedy the defects in the Promotion of Access to Information Act, No 2 of 2000 (PAIA) to allow for the recording and disclosure of private funding of political parties and independent candidates.

4.2 Recommendations

4.2.1 The Committee recommends that Parliament passes legislation to provide for and regulate the funding of political parties represented in national and provincial legislatures. The legislation should:

- provide for the establishment and management of funds to fund represented political parties sufficiently;
- prohibit certain donations made directly to represented political parties;
- regulate disclosure of the donations accepted;
- determine the duties of represented political parties in respect of funding;
- provide for the powers and duties of the IEC;
- provide for administrative fines; and
- repeal the Public Funding of Represented Political Parties Act and provide for transitional matters.

4.2.2 The Committee recommends that the Represented Political Party Fund and the proposed Multi-Party Democracy Fund be managed by the IEC. The two funds should be managed by a separate business unit with its own chief executive who should report to the IEC's accounting officer.

4.2.3 The Committee has noted SALGA's proposals which its mandate does not allow it to address during this process. It recommends that Parliament pays due attention to SALGA's concerns and proposals which are summarised in paragraph 4.1.3.

4.2.4 The Committee believes that the legislation it proposes will complement Parliament's efforts to address the above-mentioned weaknesses in the PAIA legislation.

5. Acknowledgement

The Committee wishes to express its profound gratitude to the individuals, organisations, and stakeholders who participated in our process, and contributed to development of the Political Party Funding Bill.

Report to be considered.

National Council of Provinces

1. Report of the Select Committee on Land and Mineral Resources (DMR) on the International Study Tour undertaken, dated 28 November 2017

The Select Committee on Land and Mineral Resources undertook an International Study Tour to Australia from 21 – 28 October 2017 reports as follows:

1. Background and Introduction

During recent State of the Nation Addresses, the President of South Africa, the Hon. Mr Jacob Zuma, focused repeatedly on a number of key challenges, including challenge of food security. It is on the basis of this focus, and the relevance of 5 of the 9 points of the President's 9-Point Plan listed below to the oversight role of the Select Committee on Land and Mineral Resources, that the study tour has been proposed. These are:

- Resolving the energy challenge;
- Revitalising agriculture and the agro-processing value chain;
- Advancing beneficiation or adding value to our mineral wealth;
- More effective implementation of a higher impact Industrial Policy Action Plan;
- Encouraging private sector investment;
- Moderating workplace conflict;
- Unlocking the potential of small, medium and micro enterprises (SMMEs), cooperatives, township and rural enterprises;
- State reform and boosting the role of state owned companies, information and communications technology (ICT) infrastructure or broadband roll-out, water, sanitation and transport infrastructure; as well as
- Operation Phakisa aimed growing the ocean economy and other sectors.

Linked to the SONA references, government is currently in the process of developing its Aquaculture Lab strategies as part of Operation Phakisa, and the Department of Agriculture, Forestry and Fisheries is in the process of finalising its Aquaculture Act, together meant to create an enabling environment for aquaculture in South Africa. The Aquaculture Act, in particular, is of interest to the committee as it is a comprehensive piece of legislation designed to facilitate the development and regulation of an aquaculture sector within a complex legal environment. Aquaculture practice is different from many other industries as a result of the number of pieces of legislation that could potentially impact on it.

The list below highlights the Departments and pieces of legislation relevant to aquaculture:

Department of Agriculture, Forestry and Fisheries

- Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).
- The Animal Diseases Act, 1984 (Act No 35 of 1984).
- The Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997).
- The Animal Improvement Act, 1998 (Act No. 62 of 1998).
- Animals Protection Act (Act No 71 of 1962).
- Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983).
- Agricultural Pests Act, 1983 (Act No. 36 of 1983).
- Animal Diseases Act, 1984 (Act No. 35 of 1984).
- Animal Improvement Act, 1998 (Act No. 62 of 1998).
- The Genetically Modified Organisms Act, 1997 (Act No.15 of 1997), (GMO Amendment Bill).

Department of Environmental Affairs

- The Biodiversity Act, 2004 (Act No. 10 of 2004).
- The National Environmental Management Act, 1998 (Act No. 107 of 1998).
- The National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004).
- The National Environmental Management: Protected Areas Act, 2003 (Act No. 10 of 2003).
- The National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008).
- The National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008).
- The Sea Birds and Seals Protection Act, 1973 (Act No. 46 of 1973).
- The Seashore Act, 1935 (Act No. 21 of 1935).

Department of Health

- The Health Act, 1977 (Act No. 63 of 1977).
- The Medicines and Related Substances Control Act, 1965 (Act No. 101 of 1965).
- The Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972).

The Department of Water Affairs

- The Water Services Act, 1997 (Act No. 108 of 1997).
- The National Water Act, 1998 (Act No. 36 of 1998).
- The National Regulator for Compulsory Specifications
- The National Regulator for Compulsory Specifications Act, 2008 (Act No. 5 of 2008).

The South African Bureau of Standards

- Standards Act, 2008 (Act No. 8 of 2008).

As a result of the massive amount of legislation that could impact on the aquaculture sector, any piece of legislation that is designed to govern and facilitate such an industry need to be comprehensive and complex. The Aquaculture Act, in its current draft format, makes provision for the required institutional arrangements, the development of national and provincial aquaculture strategies, licensing and permitting requirements, the development and regulation of aquaculture zones, and the required environmental and quality control mechanisms required to retain environmental sustainability and food health in the industry. South Africa has not developed its aquaculture sector or regulatory environment to this degree yet, and therefore it was considered important to study similar developments conducted in a country such as Australia, which shares significant environmental and market characteristics with South Africa.

1.1. Delegation

The delegation consisted of the following members of Parliament, Mr OJ Sefako (Chairperson, ANC), Ms ZV Ncitha (ANC), Ms E Prins (ANC), Mr AJ Nyambi (ANC), Mr EM Mlambo (ANC), Mr A Singh (ANC), Mr P Parkies (ANC), Ms C Labuschagne (DA), Mr JWW Julius (DA), Mr CFB Smit (DA), Mr LB Gaehler (UDM), Ms NP Mokgosi (EFF) and Parliamentary support staff, Mr AA Bawa (Committee Secretary), Mr JG Jooste (Researcher), and Ms A Zindlani (Committee Assistant).

1.2. Aims and objectives

The aim and objective of the study tour was to learn and gain insight / first-hand knowledge about aquaculture policy, legislation and industry development actions taken by Australia. These can then, during the deliberations that will follow in the committee when the Aquaculture Act is tabled, be used to better assess the strengths and weaknesses of South

Africa's own Aquaculture Policy / Act. This long-awaited piece of legislation is supposed to fill the gap in legislative framework, policy and industry support that is long overdue. Most countries with a long history of exploiting marine resources as a food source have a long-standing track record of initiating the development of aquaculture in order to substitute dwindling wild-caught marine and freshwater resources. South Africa has some established aquaculture industry, but these are minuscule compared to capture fisheries. Part of the challenge is the lack of legislative support and guidance for the industry. The Department of Agriculture, Forestry and Fisheries (DAFF) Identified this lack of an "enabling environment" for aquaculture, but the process of drafting the Act required has taken some time. In the interim, Operation Phakisa was initiated. Aimed at encouraging the "Blue Economy" which also includes aquaculture, Operation Phakisa called for the rapid implementation of projects that could stimulate the economy of coastal communities. It is, however, concerning that Operation Phakisa is forging ahead with aquaculture developments, as the Aquaculture Act is not yet finalized and by its own admissions, DAFF is aware of the challenges aquaculture is facing without the required legislative and policy support.

South Africa has some potential for aquaculture development, but the fledgling industry faces significant obstacles. Countries with South Africa's environmental conditions and geography is not the world's biggest aquaculture producers. A cold tropical or sub-tropical climate with abundant water (for inland production) and a sheltered coastline (for sea-based farming) creates ideal conditions. South Africa possesses very little such attributes compared to top aquaculture producers. Having indigenous fish species at your disposal is also of great benefit – China alone cultures over 200 species commercially, although a smaller amount is statistically significant. There are less than 200 indigenous freshwater fish species in South Africa in total, of which the majority are not large enough to consider for commercial aquaculture. This underlines the difference in aquaculture potential between South Africa and global trend setters. South Africa has a far more limited number of fish species with potential for commercial aquaculture. Even fewer have been adequately studied in order to develop a knowledge base for aquaculture potential. Ideally, these matters need to be addressed as urgently as the need to evaluate policy and legislation.

This is, however, where the Select Committee of Land and Mineral Resources (The Committee) has identified some challenges which motivates the proposal of this study tour. Without the required legislative support, the dominant environmental management legislation that South Africa has put into place, including the suite of National Environmental Management legislation, severely inhibits the development of aquaculture through stringent regulation of listed activities that require costly assessments, operating permits and controlled environments. The industry support mechanisms required by the aquaculture industry to thrive and expand is also not in place. South Africa has very few indigenous fish species that has any potential to be used in aquaculture. Most potential species have not been researched properly and where experimentation has begun, the industry is not totally market ready or competitive. As a result, South Africa will likely be in need of considering alien species, which will place that operator in direct, and costly, exposure to environmental legislation.

Constraints identified are:

- Shortage of expertise and aquaculture professionals.
- Lack of technical skills and technical support or extension services.
- High feed, equipment and technology costs.
- Lack of veterinary services and disease management.
- Poor government understanding and support.
- Lack of species choice and good seed stock.
- Complex resource-based legislation.
- Inaccessible financial sector and poor financial support services.
- Uncoordinated institutional environment;
- Lack of appropriate technology;
- Difficulties in obtaining suitable culture sites;
- Inadequate public sector support measure to pioneer farmers;
- High production costs;
- Lack of local quality feed; and
- Lack of access to suitable water quantity and quality for freshwater aquaculture

- Lack of marketing services, marketing structures and market penetration.
- Climatic variability and seasonality.

Opportunities that may exist include:

- There is high demand for affordable protein and shortages in traditional fisheries products.
- Aquaculture is moving onto Government agenda.
- High potential for agricultural diversification.
- Good natural resources.
- Good infrastructure.
- Potential for export opportunities.
- Linkages with tourism.
- Growing economy and good economic climate.

A second concern is South Africa's water scarcity. Where freshwater aquaculture is going to be considered, it will have to be water-wise as well as compliant with environmental legislation. This combination will result, without legislative support from DAFF, in a situation where low cost options studied abroad and used as reference in Operation Phakisa planning is not applicable to the local reality. The third concern is that the South African industry is not developed to the level that Operation Phakisa may be expecting, particularly in terms of research into suitable species, their culture, and the cost-effective operation of a production facility. As South Africa is so far behind industry leaders in terms of support industries and market development, there is a real risk that it would not be economically viable to operate an aquaculture facility that produces the same products as those that can be imported frozen from major producers. Those industries doing well in South Africa at present are experts at producing niche or fresh produce. There are few if any companies that can produce in South Africa at a rate cheaper than current import costs for aquaculture products.

The final concern is that South Africa is not an ideal setting for aquaculture. Operation Phakisa makes some comparisons in its industry profile with other countries in order to determine the potential size of the industry. Very little of these direct comparisons are applicable to the South African scenario. The country has a high energy ocean with a very straight coastline, providing very little shelter from storm swells. The shallow coastal shelf amplifies the risk of storms, while also creating unfavourable environmental occurrences such as upwelling events, which can cause harmful conditions at aquaculture facilities. The most lucrative aquaculture sectors can operate in sheltered waters with an annual temperature averaging around 10⁰C. There are not really any part of the South African coastline that offers those opportunities. Warm-water aquaculture opportunities does exist, but then species cultured become more niche-market orientated. A comparison is needed between South Africa and a country with similar climate, water scarcity, and strong environmental legislation.

It was thus proposed that the Committee visit an established and rapidly developing aquaculture country. In terms of a country that has a large amount of similarities to our own in terms of climate, water scarcity and mature environmental legislation, Australia is an ideal country to visit. It has a flourishing aquaculture industry with dedicated organs of state focusing on policy development, research and industry support. Operation Phakisa also drew some parallels between South Africa and Australia, suggesting that this study can benefit the country in terms of the acquisition of knowledge on how this country developed policy, legislation and research capacity to grow and support an environmentally sustainable aquaculture industry. The similarities between the climate and water scarcity of Australia and South Africa should also assist in studying freshwater aquaculture production systems that will likely be suitable to South Africa.

2. Meetings and Site Visits

2.1. Presentation by the Department of Agriculture and Water Resources (DAWR) – Fisheries Branch – Canberra

The presentation by the Australian Department of Agriculture and Water Resources highlighted that the value and production of aquaculture has increased substantially over the past decade, with the forecast of global growth expected to continue. The presenter further explained that unlike in the past, Australia is now focusing on premium products that generates more interests within the fish market at home and also of an economic value when exporting to other countries. Australia's marine exclusive zone is the world's 3rd largest spanning 13,3 million sq km, also having the 7th largest coastline which spans 34 218 km as well as being ranked 54th in the world for fishing and aquaculture production. The Australians thus see their aquaculture programme as an opportunity to increase sustainable growth of their industry through exporting their knowledge and technology in order to increase global production. The 2014 – 15 Australian fishing statistics reveal that oceanic wild catch amounted to 1.61 billion (\$ AUD) or 151,439 tonnes of fish versus aquaculture harvests of 1.19 billion (\$ AUD) or 91,036 tonnes of fish.

In South Australia, aquaculture is regulated through:

- Aquaculture Act 2001
- Aquaculture Regulations 2005
- Aquaculture Zone Policies
- Aquaculture leases/licences (production, research, pilot, and emergency leases)
- Livestock Act 1997

Other key legislation with concurrence, approval or referral obligations includes:

- Environment Protection Act 1993
- Native Title (South Australia) Act 1994
- Development Act 1993

The primary responsibility of regulating land based and marine aquaculture projects such as planning, leasing, and licensing; land management; and most environmental controls is entrusted with the various states and territories. The Australian government has oversight / authority over aquaculture as well as aquaculture in Commonwealth waters; environmental approval for any development of national significance as well as national programmes for aquaculture research. Their responsibility in all aquaculture related projects and research remains the management of biosecurity; aquatic animal health; food safety and market access and trade.

The Australian National Aquaculture Strategy was released on 28 September 2017 and was developed in collaboration with state and territory governments and industry with the intention / aim of increasing the value of Australian aquaculture to 2 billion (\$AUD) by the year 2027. Although aquaculture generally occurs in state waters, all aquaculture activities occurring in commonwealth waters would be the responsibility of the Australian Government. Because of the increasing awareness and interest shown by aquaculture operators the government of Australia has committed to delegate aquaculture regulations within commonwealth waters to state governments. Both the commonwealth, state and territorial governments share the responsibility of and for environmental regulations with the Australian government being responsible for multiple jurisdictions, international obligations as well as matters of national significance. The Australian Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act) sets out the assessment and approval processes for activities impacting on protected areas to ensure ecological sustainability, with state and territory governments conducting their own environmental

assessments and approvals as well. This Act further allows for a strategic assessment and approval of a variety of policy, plans and programs and is particularly useful when significant economic development occurs.

An important aspect that the committee was briefed on was the development, by both the Federal government as well as in specific cases, State Government Departments, effective Biosecurity measures tailor-made for the aquaculture sector. As aquaculture takes place in “open” systems, it has the potential to introduce diseases from farmed organisms to the environment, or alternatively, cultured organisms can be infected by naturally occurring diseases from the surrounding environment. As the official government strategy is to concentrate aquaculture into zones where leases are offered to prospective farmers, it is the responsibility of the Australian government to develop, update and enforce bio-security protocols for aquaculture practitioners.

Biosecurity describes the systems put in place to protect your farm from diseases. These systems will reduce the risk of damaging diseases entering your farm, can prevent health issues emerging within the farm, and can reduce impacts of disease when it occurs

The Australian aquaculture biosecurity strategy aims to:

- reduce the risk of diseases being introduced into a farm (entry-level biosecurity)
- reduce the risk of diseases spreading within a farm (internal biosecurity)
- reduce the risk of diseases escaping from one farm and contaminating adjacent farms or the natural environment (exit-level biosecurity)
- have emergency response protocols in place for serious disease outbreaks (all three levels of biosecurity).

The committee was briefed on the development of two concurrent plans to ensure biosecurity in the aquaculture sector. These are Aquaplan and Aquavetplan

AQUAPLAN - Australia's National Strategic Plan for Aquatic Animal Health

AQUAPLAN is Australia's National Strategic Plan for Aquatic Animal Health. The plan outlines objectives and priorities to enhance Australia's management of aquatic animal health. AQUAPLAN is a collaborative initiative that is developed and implemented by the Australian and state and territory governments and aquatic animal industries. The Department of Agriculture and Water Resources coordinates the development and implementation of AQUAPLAN. National implementation of AQUAPLAN activities and projects is overseen by the Animal Health Committee (AHC) and its Sub-Committee on Aquatic Animal Health (SCAAH) in close collaboration with industry. Australia has had two previous five-year AQUAPLANs. AQUAPLAN 2014–2019 is Australia's current national strategic plan for aquatic animal health.

AQUAPLAN 2014-2019

AQUAPLAN 2014–2019 is Australia's third national strategic plan for aquatic animal health. It outlines the priorities to strengthen Australia's arrangements for managing aquatic animal health, and to support sustainability, productivity, and market access—and ultimately the profitability of Australia's aquatic animal industries.

AQUAPLAN 2014–2019 has five objectives:

1. Improving regional and enterprise-level biosecurity
2. Strengthening emergency disease preparedness and response capability
3. Enhancing surveillance and diagnostic services
4. Improving availability of appropriate veterinary medicines
5. Improving education, training and awareness

Each AQUAPLAN 2014–2019 objective is supported by activities to address specific aquatic animal health management issues associated with infectious diseases of finfish, molluscs and crustaceans. The plan covers

aquatic animal health issues relevant to aquaculture, commercial fisheries, recreational fisheries, the ornamental fish industry, the tourism industry and the environment. AQUAPLAN 2014–2019 excludes management of environmental toxins and microorganisms that may affect food safety (for example, algal blooms), chemical pollutants affecting the health of aquatic ecosystems, and invasive aquatic pests. Each chapter is focused on one of the five objectives. At the end of each chapter a table provides details about specific activities, the expected activity outcomes, organisations responsible for progressing each activity and the resource or financial implications.

AQUAVETPLAN is the Australian Aquatic Veterinary Emergency Plan. It is a series of manuals that outline Australia's approach to national disease preparedness and proposes the technical response and control strategies to be activated in a national aquatic animal disease emergency. The Department of Agriculture and Water Resources manages the development and maintenance of AQUAVETPLAN manuals. The manuals are authored by Australian aquatic animal health experts with extensive stakeholder consultation. Each manual undergoes a formal endorsement process through government and relevant industry sectors. Manuals are prepared during 'peace time' so that the information is readily available in the event of an actual emergency. AQUAVETPLAN manuals are working documents that are updated as required to ensure they take into account new research, experience, and emerging disease threats

The Aquavetplan is a comprehensive aquaculture strategy that includes the following:

- Training Resources;
- Diagnostic Resources;
- Agency support plan;
- Disease strategy manuals;
- Management manuals;
- Operational procedure manuals; and an
- Enterprise manual

The combined efforts of government in developing the two plans are substantial. The comprehensive plans for part of the Australian government's strategy to support, and to ensure as far as possible, that aquaculture businesses have every chance in being successful.

Aquaculture research and development

Australia's investment into aquaculture research has been substantial in their effort to become the global exporter of aquaculture products. Hence the formation of the Fisheries Research and Development Corporation (FRDC) which is a statutory authority that manages investment by the Australian Government and the Australian fishing and aquaculture industry. The owner (i.e. sole shareholder) of FRDC is the Commonwealth Government that has entered into partnership with the fishing industry. The FRDC has four ministerially declared representative organisations.

- National Seafood Industry Alliance (representing the seafood industry)
- Recfish Australia (representing recreational and sport fishers)
- Commonwealth Fisheries Association (representing commercial operators' in Commonwealth)
- National Aquaculture Council (representing the aquaculture industry)

The FRDC is one of fifteen Australian rural research and development corporations managing investment by the Australian Government and primary industries that during the past 25 years has been crucial to the doubling of the productivity of the agriculture, fisheries and forestry sectors. At its inception in 1992, the Corporation's major focus was on research concerning the management of commercial wild-catch fisheries and, to a lesser extent, aquaculture. Since then, the scope has widened greatly to encompass economic, environmental and social aspects of the entire fishing and aquaculture industry – that is, the recreational and indigenous customary sectors in addition to the commercial wild-catch and aquaculture sectors.

The FRDC is unique among the corporations in balancing its investment between natural resource management and industry productivity and development. Therefore, a significant proportion of funding is directed at research that has a public good benefit. In fulfilling its role of planning, investing in and managing fisheries research, development and extension (RD&E) activities in Australia, the FRDC provides leadership and coordination of the monitoring, evaluating and reporting on RD&E activities and facilitates the dissemination, extension and commercialisation of research results to end-users. The FRDC achieves this through coordinating investment by government and industry, and involving stakeholders to set and address RD&E priorities. The FRDC also monitors and evaluates the adoption of RD&E outputs that informs future decisions.

2.1.1. Engagement with the Department

Engagements with officials from the DAWR proved invaluable with them highlighting that most of the countries' aquaculture equity was invested in aquaculture project leases and licenses. In order for a farm / project to be deemed successful, warranting further government investment, the farm has to produce in excess of 5000 tonnes per annum. It was further explained that a particular farm / project typically has a large lease area assigned to it in order to make it possible for production areas to lie fallow. This spreads the impacts of aquaculture over a wider area, reducing pressure on any one site. This practice reduces the risk of disease outbreak. Most of the discussions centred around Australia's aquaculture legislation; government vs private investment; viability and location of fresh water aquaculture; job creation; and transformation.

Discussions revealed that Australia's legislation grew with the industry and that besides abalone farming, all knowledge informing current legislation was initially imported from abroad and modified for the Australian context. At present, Tasmania is the state with a dedicated aquaculture policy and legislation. Most other States (territories) are working towards emulating this model, as these states have comparatively more complex legislative

environments within which compliance for aquaculture operators can take much longer to obtain. Due to time constraints and the need to visit research sites studying species applicable to the South African context, Tasmania was not visited. It has a massive salmon culture industry that is Australia's most lucrative sector, but salmon culture relies on water around or below 10°C.

In terms of policy and legislative matters, the national government model was sufficient to indicate to the delegates how involved government has been in developing a "one stop shop" of policy and legislation in order to ensure that aquaculture development is fostered. This example is applicable to the South African context, where agriculture, water resources, environmental management and port infrastructure are mostly national or concurrent competencies, and therefore more applicable to national legislation and the management actions of the executive.

The Australian counterparts admitted that they would have preferred one National Act, but had to settle for a Federal Act, with individual federal states working towards developing a similar structure in its legislative environment. In answering the question pertaining to the responsibility of project success, the delegation was informed that in South Australia and Tasmania a fund is set up with both government and private partnership investing in this fund to ensure project viability and sustainability. It was important to note, however, that the states invest heavily in developing the infrastructure, policy and research (training) capacity is put in place. Funding is not directed towards propping up unsustainable farming ventures, although significant resources will be directed towards ensuring that solutions are found for challenges experienced by commercial farmers. Examples of such research and development efforts include research into poly-culture that would make farms more profitable, research into commercialising new species and research into creating more cost-effective feeds. The DAWR explained that typically during the establishment of a new aquaculture venture, government provides the funding for the infrastructure and remains the sole owner of said infrastructure. The government department(s) involved with the research has to comply with all

legislation, and also has to apply for rights to operate the research farm. Once commercial success is achieved, the development of aquaculture zones around the experimental site is undertaken, and tenders are sought for companies to take over the commercial operation of the farm.

They further explained that in order to keep environmental and ecological costs in check as well as minimise the risk of diseases, it is best to farm / harvest indigenous species. The DAWR also explained that in Australia no inland / fresh water aquaculture projects are established near natural water sources so as to avoid water contamination. Estuaries and marine environments, however, are utilised for aquaculture. The reason for this was that water coming out of the fish farms / projects must be of the same quality as the water in the river, dams and streams to prevent contamination of the natural water sources.

In response to questions pertaining to the empowerment of the indigenous inhabitants, the delegation was informed that in each zone cleared and approved for aquaculture, 50% of opportunities go to the indigenous people. The DAWR further stated that projects in these areas are generally more expensive as these indigenous people live in far remotely isolated areas where water is a scarce commodity. It was also mentioned that a method of trying to combat / offset the high cost of the projects, only projects in indigenous areas can harvest certain species of fish that are not necessarily indigenous to the area.

The DAWR also explained that the one sector that enjoys extensive funding is their bio-security division, as empowering and capacitating this sector is a major priority in protecting their natural resources. It was explained that the National Bio-Security Plan feeds into individual state plans, with each state having its own early detection programme and response protocols, working hand in hand in a collaborative network.

2.2. Presentation by the Department of Agriculture and Fisheries (DAF) – Queensland Government – Brisbane

The presentation stated that in Brisbane most of the aquaculture projects are land based projects that are either discharge (cleaned water released back into its natural source) or non-discharge (tanks) systems with a few salt discharge systems situated near the coast.

The current value of the industry in Queensland in 2015 – 16 was approximately 120 million (\$AUD), equating to roughly 7783 tonnes harvested from predominantly land based aquaculture farms. The most important aquaculture sectors are prawn and barramundi harvestings which employs 528 full time workers with 56% working in the prawn farming sector. Queensland currently has no cage culture operations but boasts a suitable climate for cultivating a wide range of species, as well as coastal areas suitable for land based farms. The state also has a highly developed transport infrastructure in all the major centres and is also very well positioned to access global markets.

Challenges experienced in the state of Queensland relates to the regulatory framework governing aquaculture that have some of the most complex licensing requirements. The lack of planning to accommodate the growth of the aquaculture industry is also a concern coupled with the fact the wastewater discharge limits are more significant than anywhere else, due to the high water quality requirements in the GBR region. The DAF further explained that due to regulatory constraints locations to set up aquaculture farms are limited, which is why most farms are located in central and north Queensland where cyclones pose serious risks as well. Adverse economic factors such as higher wage and electricity costs vs cheaper Asian competitors also way in on the price of the end product.

In 2014, the Queensland government compiled and produced a report reviewing the aquaculture regulations, with the report recommending a regulatory approach which facilitates the expansion of the aquaculture

industry in Queensland. A number of key recommendations were endorsed by the Queensland Government to facilitate expansion of aquaculture in Queensland while addressing environmental concerns. The recommendations endorsed by the Government included:

- the creation of terrestrial aquaculture development areas (ADAs), including the identification of 450 hectares suitable for aquaculture operations;
- developing assessment codes which contain the regulatory conditions for aquaculture in that area for each ADA;
- providing certainty about the future price and availability of environmental offsets; and
- investigating the potential for marine aquaculture development areas.

2.2.1. Engagement with the Department

Discussion between the delegation and officials from the DAF focused on the lease agreements for the farms; fish demand vs supply and the creation of indirect jobs. The DAF explained that the average lease agreement on fish farms in the Queensland area is approximately 5 years for small farms, where after the whole licensing process has to be redone. In response to the questions posed about the relatively small farms being operated, the DAF responded by stating that the demand in the state was relatively small. Indirect jobs, as explained by the DAF, was created further down the food chain in the industry.

2.2.2. Bribie Island

At Bribie Island, research and development focused heavily on the prawn industry needs. Aspects such as improving discharge water quality and disease prevention has been researched in the recent past, but unfortunately, for the delegation, disease outbreak in the area resulted in most of the prawn research facilities being placed under quarantine.

The committee members were, however, able to see the research work carried out in terms of developing polyculture at prawn farms. Many commercial prawn farmers were looking for ways in which to utilise their farms better, and wanted to develop fish culture in the same ponds that prawn are kept in. The aquaculture research facility at Bribie Island was involved with the commercialisation of the culture of a warm water species, Cobia, which showed significant aquaculture potential in many areas of the world. Of interest to the delegation was the fact that Cobia is endemic to the warmer East Coast of South Africa, and is therefore a suitable species to consider for local aquaculture development in the north of the Eastern Cape and in KZN.

The current project was conceived as a “hatchery to plate” project across the whole production chain. It was aimed at moving Australian Cobia aquaculture from pilot towards commercialisation. The project was undertaken in conjunction with a large, successful prawn farming company, Pacific Reef Fisheries (PRF) based in Ayr, north Queensland. The strategy therefore involved the integration of Cobia aquaculture into an existing prawn aquaculture business, and addressing some specific research outcomes related to this. There was also a need to address some generic research questions related to pond-based Cobia production, as well as to investigate aspects of post-harvest product development and consumer acceptance of this emerging species.

A new method of brood stock maturation assessment was developed, based on the quantification of all stages of oocytes in an ovarian biopsy sample. An essential part of the project was to facilitate the development of PRF’s hatchery, nursery and grow-out production capabilities through the provision of stock, training of staff and development of on-farm expertise. A comprehensive assessment of the effectiveness of two commercially aqua feeds was also completed.

An expert consumer panel was commissioned to undertake a detailed assessment of the flavour and textural characteristics of fresh Cobia, and to compare Cobia with other similar products. This demonstrated Cobia to be equivalent to Atlantic Salmon and superior to Yellowtail Kingfish in terms of overall appeal, flavour and texture. A hot-smoked Cobia product was also developed, and this had a number of favourable characteristics as good as, or better than similar Atlantic Salmon products.

2.3. Port Stephens Fisheries Institute

The Port Stephens Fisheries institute is responsible for a wide range of projects focusing on ecosystem management, fisheries and aquaculture. The aquaculture research group develops technology for new or existing aquaculture industries. Key facilities used for this research at the PSFI include a mollusc hatchery, a quarantine mollusc hatchery, marine fish brood stock centre, marine fish hatchery, marine fish nursery facilities and grow-out tanks and ponds. Facilities for commercial and pilot-scale research are available as well as replicated, small-scale facilities for applied research. Research directions are developed in consultation with representatives from industry through the Aquaculture Research Advisory Committee. The delegation was briefed on the focus of aquaculture research at the facility, which includes:

Oysters

- Developing and improving hatchery and nursery techniques for Sydney rock, Pacific, Pearl and Flat oysters, as well as other molluscs (eg. pipis).
- Genetically improving Sydney rock oysters (eg for disease resistance, faster growth and improved condition).
- Researching the impacts of human activities and climate change on oysters.

Marine Fish

- Improving methods for hatchery production of mullocky, Australian bass, yellowtail kingfish and southern bluefin tuna.
- Producing Australian bass and mullocky for stock enhancement.
- Investigating potential of inland saline water for aquaculture.

Algal Production

- Production of live algae for PSFI and industry.
- Mass culture 7-12 algal species.

Nutrition, Diet Development

- Developing and improving diets for fish and prawns.
- Currently focused on mullocky and yellowtail kingfish growout diets.
- Replacing fishmeal with Australian agriculture ingredients.
- Producing more cost-effective, environmentally friendly feeds.

The aquaculture research unit has an international role in assisting with developing and managing the aquaculture projects funded by the Australian Council for International Agricultural Research. The delegation was very interested in the aquaculture development role that the unit described, as the scientists at Port Stephens were confident that they have the ability to train individuals with an attention to detail, rather than people with university qualifications, to become successful at aquaculture.

The committee was also interested in the work being carried out in terms of testing a special offshore cage for the culture of two fish species that also occur in South Africa: yellowtail and kob (kabeljou). The researcher at Port Stephens have developed commercially viable feed, culture methods and equipment for the culture of these species in challenging marine environments similar to that experienced along the South African South and East Coasts. It was felt that the experience of the scientists at the facility could be of benefit to the South African marine aquaculture sector.

2.3.1. Visit to the Tailor Made Fish Farm PTY Ltd (TMFF)

The Tailor Made Fish Farm has been operating as a fully functional production system for over 19 years and have developed an easy to operate, land-based modular fish production system that is both sustainable and environmentally responsible. Production of 'year-round' premium quality fish and vegetables is achieved through compact and controlled production areas using much less water than conventional methods, with additional benefit and cash stream are enjoyed by utilizing wastewater from the fish production as a resource to produce a second crop of fresh vegetables.

This efficient combination of fish & vegetable production has two major advantages, firstly water use is minimized, and secondly waste water release is prevented to a large degree through the utilization of vegetables as a biological filter. Wastewater from fish production are filtered through vegetable beds instead of being discharged into the environment. All fish production equipment has been developed on farm by TMFF. TMFF designed technology has been embraced by their clients from the commercial and government sector, as well as leading Universities and Educational Facilities.

Tailor Made Fish Farms, unlike many of its competitors, successfully operate a commercial scale food production system that offer a complete service from feasibility studies to supply & installation of proven cutting edge technology encompassing comprehensive training and after sales support and backup. The Australian Marine Conservation Society (AMCS) are strong advocates for the pursuit of environmentally and socially sensitive aquaculture developments and recommend that in light of all the well-documented problems associated with 'open' fish farms, only 'closed loop', non-polluting, on-land aquaculture facilities that do not release pollutants into the sea or rivers should be considered. TMFF's system design and operation is in line with these recommendations.

Fish species selected by Tailor Made Fish Farms for grow-out in their controlled land-based system is Barramundi (*Lates calcarifer*) because of its universal market appeal and suitability for culture under this type of production technique. However, the system can support almost any species. Optimum growing conditions for any species can be achieved in these systems, as they are life support systems for aquatic life where their growing conditions, unlike in the wild, can be controlled. The feasibility of alternate species can be determined by 3 major key points: i.e. the time taken for the selected species to reach its acceptable market size; the sale price the market is willing to pay for the product and the availability of the seed stock (fingerlings).

Optimal use of our precious water resources should be a consideration in any new venture. By combining fish and vegetable production the use of this limited resource is minimised and production outputs maximised under controlled growing conditions. The TMFF System ensures efficient water use along with a quicker growing product that is cleaner and healthier with the need to use heavy chemicals normally associated with intensive production methods negated.

Delivery of fresh product can be tailored to suit the individual customer needs, by supplying both live and chilled markets with produce that can be grown right on the market doorstep, all year round. TMFF is committed to supplying environmentally responsible, sustainable food production systems to meet the growing demand for fresh, clean food throughout the world.

3. Recommendations

The committee intends to study the outcomes of the study tour closely when the Aquaculture Act is reviewed, with a particular intent to study the policy provisions for enabling aquaculture development while shouldering as much of the work towards legal compliance and infrastructure development as possible. The committee noted that the Australian model, while not perfect in terms of National (federal) and provincial (state) synergy in legislation, provides a clear example of state involvement in developing aquaculture zones, ensuring legal compliance, environmental sustainability and economic viability.

The Australian experience further emphasised the need for strong technical support from government in terms of market access and market stimulation, as well as dedicated research and development support in order to ensure that companies are able to capitalise on local markets and opportunities.

The committee further recommends that discussions are held with the Department of Agriculture, Forestry and Fisheries, as well as its research support institutions regarding aspects of the Australian industry that could benefit South Africa.

In particular, the committee proposes investigating closer ties between South African counterparts and the research institutions at Bribie Island and Port Stephens, with the aim to investigate the following:

1. Investigating the possibility of developing Cobia aquaculture along the Eastern Cape and KZN coastlines;
2. Studying the Australian experience regarding developing cost-effective feeds for their kingfish (yellowtail) and Mulloway (cob) and culture technology in order to determine whether the local industry can benefit;
3. Investigating the opportunity to study and potentially use the “fortress cage” technology under development in Australia. These nearshore and offshore fish cages hold great potential for high-energy shores and could play a role in South African Aquaculture.
4. Investigating the possibility of facilitating farmer and student training between DAFF and the Port Stephens facility; and
5. Liaising with DAFF and the DRDLR in terms of their plans for small-scale family-based aquaculture development, and to investigate the possibility of developing small-scale aquaculture systems for freshwater environments as were observed at the barramundi farm of Taylor Made Fish Farms.

Report to be Considered.