

HOW TO INITIATE CHANGES TO LAWS

2022 SARPA CONVENTION

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PROBLEM STATEMENT

- S v MINTOOR 1996 – THEFT OF ELECTRICITY
- THE COURT FOUND THAT ELECTRICITY IS NOT A TANGIBLE CORPOREAL THING AS REQUIRED BY COMMON LAW TO COMPLY WITH THE CRIME OF THEFT
- COURT DID NOT WANT TO EXPAND THE COMMON LAW (AS WAS DONE WITH MONEY)
- ARGUMENT WAS THAT SECTION 27 OF THE ELECTRICITY ACT 41 OF 1987 WAS SUFFICIENT
- THE ELECTRICITY REGULATION ACT 4 OF 2006 REPEALED THE ELECTRICITY ACT

BRIEF OVERVIEW OF LAWS

- IN SOUTH AFRICA THERE ARE THREE SOURCES OF LAW: CASE LAW, COMMON LAW AND STATUTE LAW – WE WILL FOCUS ON STATUTE LAW (I.E. LEGISLATION OR ACTS OF PARLIAMENT)
- WHAT IS IN A NAME? TWO TYPES OF LEGISLATION: PRINCIPAL ACTS AND AMENDMENT ACTS
- AMENDMENT ACTS-
 - PRINCIPAL ACT AMENDMENTS
 - GENERAL LAW AMENDMENTS: SPECTRUM OF LAWS, INCL CODIFICATION OF COMMON LAW
 - SPECIFIC CATEGORY AMENDMENTS: IN ONE CATEGORY I.E. CRIMINAL MATTERS AMENDMENT ACT

THE LEGISLATIVE PROCESS

- STATUTE LAW OR LEGISLATION IS MADE ON THREE LEVELS: NATIONAL, PROVINCIAL, LOCAL
- FOCUS OF THIS PRESENTATION IS ON NATIONAL LEGISLATION
- PARLIAMENT IS CONSTITUTIONALLY MANDATED TO PASS NATIONAL LEGISLATION
- THE LEGISLATIVE PROCESS CONSISTS OF THREE BASIC PHASES
- NOTE: WHAT IS A “DRAFT BILL”, A “BILL” AND AN “ACT”?

LEGISLATIVE PROCESS: PHASE 1 - PREPARATION

- A “MISCHIEF” IS IDENTIFIED WHICH REQUIRES A CHANGE IN POLICY, BEHAVIOUR OR LAW
- COULD ALSO BE A GENERAL POLICY STATEMENT BY GOVERNMENT (E.G. SONA)
- DPME PRESCRIBES A SOCIO-ECONOMIC IMPACT ASSESSMENT (SEIA)
- INITIAL SEIA IS DONE TO IDENTIFY A SOLUTION FOR THE “MISCHIEF” IDENTIFIED
 - IMPACT ON NATIONAL PRIORITIES, OTHER DEPARTMENTS AND THE PRIVATE SECTOR
 - COSTS AND RISKS ARE IDENTIFIED
 - SOLUTION TO THE PROBLEM STATEMENT IS CLARIFIED

LEGISLATIVE PROCESS: PHASE 1 - PREPARATION

- OFFICIALS WILL START FORMULATING THE BROAD OBJECTIVES AND IDENTIFY NEEDS
- LEGISLATIVE DRAFTERS WILL STRUCTURE THIS IN THE CORRECT FORMAT WHILE CONSULTING ON THE CONTENT REQUIRED TO ACHIEVE THE PURPOSE
- A DRAFT BILL IS CRAFTED THROUGH CONSULTATIONS AND CONTINUOUS REDRAFTING
- SEIA GOES TO DPME FOR SIGN-OFF
- DRAFT BILL GOES TO STATE LAW ADVISERS FOR PRELIMINARY CERTIFICATION THAT THE DRAFT BILL CONFORMS TO DRAFTING CONVENTIONS, IS CONSTITUTIONAL AND NOT IN CONFLICT WITH OTHER LAWS

LEGISLATIVE PROCESS: PHASE 1 - PREPARATION

- DRAFT BILL IS APPROVED BY THE CABINET MEMBER FOR THE DEPARTMENT
- PROMOTION THROUGH VARIOUS COMMITTEES TO OBTAIN CABINET AUTHORITY TO PUBLISH
- DRAFT BILL IS PROCESSED BY-
 - DEVELOPMENT COMMITTEE (SENIOR OFFICIALS IN VARIOUS DEPARTMENTS)
 - CLUSTER D-Gs COMMITTEE
 - CLUSTER CABINET COMMITTEE
 - CABINET
- DRAFT BILL NOW READY FOR PUBLICATION IN *GAZETTE*, INVITING PUBLIC COMMENTS

LEGISLATIVE PROCESS: PHASE 2 - CONSULTATION

- DRAFT BILL IS PUBLISHED IN *GAZETTE* AND COMMENTS INVITED AND PROCESSED
- FINAL SEIA IS SIGNED-OFF BY DPME AND DRAFT BILL MUST GET FINAL SLA CERTIFICATION
- DRAFT BILL IS APPROVED BY THE CABINET MEMBER FOR THE DEPARTMENT
- PROMOTION THROUGH COMMITTEES: CABINET AUTHORITY TO INTRODUCE IN PARLIAMENT
- DRAFT BILL IS AGAIN PROCESSED BY DEVELOPMENT COMMITTEE, CLUSTER D-Gs COMMITTEE, CLUSTER CABINET COMMITTEE FOR CABINET AUTHORITY TO INTRODUCE
- DRAFT BILL IS INTRODUCED OR TABLED IN PARLIAMENT

LEGISLATIVE PROCESS: PHASE 3 - PARLIAMENT

- DRAFT BILL IS INTRODUCED IN PARLIAMENT - CONSISTS OF TWO HOUSES: NA AND NCOP
- THE DRAFT BILL NOW BECOMES A BILL, IS “TAGGED” AND ASSIGNED A NUMBER
- THE BILL IS ALLOCATED TO A PORTFOLIO COMMITTEE IN THE NATIONAL ASSEMBLY
- THE PORTFOLIO COMMITTEE PUBLISHES THE BILL AGAIN, INVITING SUBMISSIONS
- SUBMISSIONS ARE MADE AND CONSIDERED
- BILL IS DELIBERATED ON AND EVENTUALLY A CLAUSE-BY-CLAUSE VOTE IS CAST
- BILL ADOPTED BY PORTFOLIO COMMITTEE AND REFERRED TO NA AND PASSED

LEGISLATIVE PROCESS: PHASE 3 - PARLIAMENT

- THE BILL IS REFERRED TO THE NATIONAL COUNCIL OF PROVINCES (“TAGGING”)
- THE BILL IS DEALT WITH IN THE NCOP BY A SELECT COMMITTEE
- THE SELECT COMMITTEE SOMETIMES PUBLISHES THE BILL AGAIN, INVITING SUBMISSIONS
- SUBMISSIONS ARE MADE AND CONSIDERED
- BILL IS DELIBERATED ON AND EVENTUALLY A CLAUSE-BY-CLAUSE VOTE IS CAST
- BILL ADOPTED BY SELECT COMMITTEE AND REFERRED TO THE NCOP TO PASS
- REFERRED TO THE PRESIDENT FOR ASSENT

CONCLUSION

- THE NEED FOR LEGISLATION IS IDENTIFIED IN THE DEPARTMENT BUT COULD ALSO BE IDENTIFIED BY A PARLIAMENTARY COMMITTEE (“COMMITTEE BILL”) OR A MP (“MEMBER’S BILL”)
- IN THE CASE OF AN AMENDMENT TO THE ELECTRICITY REGULATION ACT, 2006 THE MINISTER OR THE DEPARTMENT MUST BE LOBBIED TO IDENTIFY THE SHORTCOMING IN THE LEGISLATION:
 - THE CIRCUMSTANCES (MISCHIEF) THAT CAUSES THE PARTICULAR PROBLEM;
 - THE LAW AS IT EXISTS AT THE TIME OF THE PARTICULAR MISCHIEF;
 - WHAT PRESCRIPTIONS ARE NECESSARY TO DEAL WITH THE PARTICULAR MISCHIEF; AND
 - THE MANNER IN WHICH THE EXISTING LAW SHOULD BE AMENDED OR SUPPLEMENTED TO ADDRESS OR DEAL WITH THE PROBLEM STATEMENT OUTLINED IN THE FIRST BULLET POINT.

QUESTIONS