

Parliament of the Republic of South Africa
Chairperson of The Portfolio Committee on Justice and Correctional Services
Hon. M Motshekga, MP
PO Box 15
Cape Town
8000

Email: vramaano@parliament.gov.za

Dear Sir/Madam

Eskom Comments on the Criminal Matters Amendment Bill, 2015 ("the Bill")

Eskom would like to thank you for granting us the opportunity to comment on the Bill.

Eskom generally supports the aims and objectives of the Bill. We do however have a number of concerns and recommendations, the detail of which are as follows:

i. Clause 1: Definitions

We recommend that the definition of "*basic services*" be amended to delete the words "*the interference with which may prejudice the livelihood, well-being, daily operations or economic activity of the public*". The purpose of this amendment is to ensure that our burden of proof is less onerous. In other words, in order to benefit from the act, we now simply need to prove that we provided an energy related service. We would now be able to rely on the act without having to demonstrate that the interruption of the energy related service prejudiced the livelihood, well-being, daily operations or economic activity of the public.

In our view, the definition of "essential infrastructure" is inadequate as it does not appear to cater for illegal connections to essential infrastructure. We recommended that the definition be amended to include the words "*or diverting from*". The definition also does not make reference to *measurement devices* and *dispensing machines*. We accordingly recommend that these devices be added.

We recommend the introduction of electricity theft as new offence. We accordingly recommend the inclusion of the definition of "*Divert*".

ii. Clause 3 (a): Offences relating to essential infrastructure

We recommend the introduction of theft of electricity infrastructure as new offence. We accordingly recommend the inclusion of the word "*steals*".

iii. **Clause 3 (c): Offences relating to essential infrastructure**

We recommend that you specifically deal with electricity theft under this clause. We accordingly recommend the inclusion of the word *(c) diverts from essential infrastructure.*


iv. **Clause 3 (last paragraph): Offences relating to essential infrastructure**

We recommend the introduction of penalties for electricity infrastructure related offences. We accordingly recommend the inclusion of the words *.....to pay penalties.....*

The detailed comments are outlined in the attachment hereto.

Eskom trusts that the input will be received as value adding to the finalisation of the Bill. We are available if you require any clarity or wish to engage us individually or with other stakeholders.

Yours sincerely



Dr. Brian Molefe
Chief Executive Officer (Acting)
Date: 29.9.15.

ESKOM COMMENTS ON CRIMINAL MATTERS AMENDMENT BILL 2015: GG 39031: REGULATIONS NOTICE 648

SECTION	CONTENT	COMMENTARY	PROPOSAL
1.	<p>Eskom proposes the following amendments to certain definitions in the Bill, such that they read as follows</p> <p>"basic service"</p>	<p>Delete "the interference with which may prejudice the livelihood, well-being, daily operations or economic activity of the public"</p> <p>The retention of this sentence will make the burden of proof more onerous</p>	<p>Amend to read</p> <p>In this Act, unless the context indicates otherwise—</p> <p>"basic service" means a service provided by the public or private sector, and includes a service relating to energy, transport, water, sanitation and communication;</p>
	<p>"essential infrastructure"</p>	<p>Amend to include "or diverting from"</p> <p>The definition of "essential infrastructure" may be inadequate as it does not appear to cater for illegal connections to the essential infrastructure.</p> <p>Amend further to include "measurement device"</p> <p>Amend further to include "basic service dispensing machine"</p>	<p>Amend to read</p> <p>"essential infrastructure" means any installation, measurement device, basic service dispensing machine, structure, facility or system, whether publicly or privately owned, the loss or damage of, or the tampering with, or <i>diverting from</i> which may interfere with the provision or distribution of a basic service to the public;</p>
	<p>"Divert"</p>	<p>Include as defined term</p>	<p>Means the branching off or abstracting of a basic service from essential infrastructure by any means.</p>

			method or device
3 (a)	Offence relating to essential infrastructure	Amend to include "steals"	Amend to read Offence relating to essential infrastructure 3. Any person who unlawfully and intentionally— (a) tampers with, steals, damages or destroys essential infrastructure; or
3 (c)	Offence relating to essential infrastructure	Amend to include (c) diverts from essential infrastructure;	Amend to read Offence relating to essential infrastructure 3. Any person who unlawfully and intentionally— (a) tampers with, steals, damages or destroys essential infrastructure; or (b) colludes with or assists another person in the commission, performance or carrying out of an activity referred to in paragraph (a); or (c) diverts from essential infrastructure; and who knows or ought reasonably to have known that it is essential infrastructure, is guilty of an offence and liable on conviction to a period of imprisonment not exceeding 30 years.
3 last paragraph	Offence relating to essential infrastructure	Amend to include	Amend to read

	<p>“or to pay penalties”</p>	<p>Offence relating to essential infrastructure</p> <p>3. Any person who unlawfully and intentionally— (a) tampers with, steals, damages or destroys essential infrastructure; or (b) colludes with or assists another person in the commission, performance or carrying out of an activity referred to in paragraph (a); or (c) diverts from essential infrastructure; and who knows or ought reasonably to have known that it is essential infrastructure, is guilty of an offence and liable on conviction to a period of imprisonment not exceeding 30 years or to pay the following penalties: (i) a first offender, R15 000 00 (ii) a second offender R30 000 00 (iii) a third or subsequent offender R60 000 00</p>
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