



23 October 2015

CRIMINAL MATTERS AMENDMENT BILL [B20A – 2015] – KEY PORTFOLIO COMMITTEE AMENDMENTS

1. INTRODUCTION

The Criminal Matters Amendment Bill was introduced in Parliament as a s75 Bill despite **not** having been widely consulted by the Department.

Role players consulted were the South African Police Services (SAPS), the National Prosecuting Authority (NPA) and officials from the International Trade Administration Commission.

2. PUBLIC CONSULTATION DONE BY PARLIAMENT

The Portfolio Committee (PC) on Justice and Correctional Services held public hearings on the Bill at Parliament on 13 and 14 October 2015. It also received submissions from *inter alia* Lawyers for Human Rights, Cosatu, Eskom, Telkom, Transnet, SALGA and the City of Cape Town.

The Department responded to the submissions on 20 October and the Portfolio Committee concluded its deliberations and adopted the Bill with amendments on 21 October 2015.

3. MAIN ISSUES / CONCERNS RAISED IN SUBMISSIONS

- The Bill proposes harsh criminal sanctions, including imprisonment of up to 30 years in some instances.
- The amendment of the Criminal Procedure Act 51 of 1977, to remove the granting of bail from the purview of the police and the NPA in respect of crimes in terms of the Bill and to specify that only a court can grant bail in respect of such offences will overburden the already full courts rolls.
- Legal Aid South Africa raised concerns about the imposition of minimum sentences and reverse onus for bail on all offences created under Clause 3.
- The Bill introduces harsh discretionary minimum sentences of three years for first time offenders, increasing exponentially to five and 10 years which could be regarded as excessive considering theft of metals especially are 'economic' crimes fuelled by the relative poverty and economic circumstances of many perpetrators, many of whom are young, unemployed males.
- Nevertheless, the overwhelming majority of the submissions expressed support for the Bill.

4. PORTFOLIO COMMITTEE AMENDMENTS

• LONG TITLE

The Long Title was amended to include a reference to the amendment of the Prevention of Organised Crime Act 121 of 1998, in order to insert a new offence relating to essential infrastructure in Schedule 1 to the said Act.

• CLAUSE 3

Clause 3 was divided into two subsections, namely by inserting '(1)' in line 24 after 3 and to insert in line 28 '(2) for the purposes of this Act' after the word known.



The word 'suspected' was inserted in subsection(1) to correspond with the wording in the new subsection (2), as well as **provision for a fine of up to R100 million for offences committed by organisations fitting the description of a corporate body contemplated in s 332(2) of the Criminal Procedure Act 51 of 1977.**

Comment

The inclusion of the reference to 'corporate bodies' comes from the NPA's submission¹ over concern about sentencing options for corporate bodies, as copper theft was often committed with the assistance of corporate bodies. The NPA wants corporate bodies to be charged together with private persons and that fines for corporate bodies or 'legal persons' should be more severe.

The Department should provide (i) a definition of corporate bodies (ii) examples of 'corporate bodies' and (iii) instances of when they assist in committing cable theft.

- **CLAUSE 6**

Clause 6 was amended by the insertion of a reference to an offence under Act 121 of 1998 (i.e. the Prevention of Organised Crime Act).

- **NEW CLAUSE 9**

*The Portfolio Committee inserted a new Clause 9 to amend **Schedule 1 to the Prevention of Organised Crime Act 121 of 1998**, as amended by s36(1) of Act 12 of 2004², s27(1) of Act 33 of 2004³; substituted by s 68 of Act 32 of 2007⁴, amended by s11 of Act 13 of 2013⁵ and s48 of Act 7 of 2013⁶ **by creating a new offence relating to essential infrastructure in terms of s3 of the Criminal Matters Amendment Act, 2015 (i.e. the current bill when enacted).***

- **MEMORANDUM ON THE OBJECTS OF THE BILL**

The Memorandum on the Objects of the Bill was changed to reflect the new changes in the Bill.

5. ROLE OF THE NCOP

The Bill is classified as a s75 Bill, therefore the Select Committee on Security and Justice can only make non-binding proposal(s) on possible amendments to the NA for consideration.

¹ NPA (2015). Internal Memorandum. Comments on the Criminal Matters Amendment Bill (B-2015). 4 September 2015. At par 4.6.2.

² Prevention and Combating of Corrupt Activities Act

³ Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004

⁴ Criminal Law (Sexual Offences and Related Matters) Amendment Act

⁵ Prevention of Combating and Torture of Persons Act

⁶ Prevention and Combating of Trafficking in Persons Act