



**Western Cape  
Government**

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The Secretary  
Portfolio Committee on Police  
National Parliament  
CAPE TOWN

For attention: Ms Babalwa Mbengo

**Per Email: [bmbengo@parliament.gov.za](mailto:bmbengo@parliament.gov.za)**

Dear Madam,

**COMMENTS ON THE DRAFT CRITICAL INFRASTRUCTURE PROTECTION BILL**

The Draft Critical Infrastructure Protection Bill, 2017 ("the Draft Bill") which was advertised for comment on 29 October 2017 has reference.

The comments of the Western Cape Government ("the WCG") are attached hereto marked "A".

The Western Cape Government supports the Draft Bill subject to the incorporation of the changes proposed in the attached detailed comments.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D Plato', written over a horizontal line.

**MINISTER D PLATO**  
**MINISTER OF COMMUNITY SAFETY**  
**DATE: 23 November 2017**

## COMMENTS:

Clause (Indicate clause/ regulation Number)	Comment (State why the clause/regulation or proposed amendment is not supported or what the problem is with the provision)	Suggestion (Suggested deletion/amendment/ addition)
	The Draft Bill should be tagged as a section 76 Bill. In this regard the Draft Bill potentially has a substantial impact on certain provincial competencies, <i>inter alia</i> , disaster management, public works and road traffic regulation.	The Draft Bill should be tagged as a section 76 Bill.
1.	In the interests of clarity the definition of <b>"infrastructure"</b> should exclude information infrastructure as defined in the cybersecurity legislation.	It is proposed that the definition of <b>"infrastructure"</b> be amended as follows: <b>"infrastructure"</b> means building, centre, establishment, facility, pipeline, premises or systems needed for the functioning of society, the Government or enterprises of the Republic, and includes any transport network or network for the delivery of electricity or water <u>but excludes information infrastructure as defined in the cybersecurity legislation that applies in the Republic.</u>
	Add definition for <b>"Republic"</b>	It is proposed that the definition of <b>"Republic"</b> be amended as follows: <b>"Republic"</b> means the Republic of South Africa'.
	The definition of <b>"cyber response committee"</b> is too wide.	It is proposed that the definition of <b>"cyber response committee"</b> be amended as follows: <b>"cyber response committee"</b> means a cyber response committee established in terms of cybersecurity legislation that applies in the Republic.'
	In the definition of <b>"person in control of critical infrastructure"</b> any other right from <b>"any other person"</b> in paragraph b(ii) is vague.	The reference to <b>"any other person"</b> should be clarified. For example refer to Head of a

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		Government Department, Head of any other organ of the State or the Minister, etc.
4(6)(f)	It serves no purpose to submit a report to the Parliamentary Portfolio Committee on Police for noting only.	Amend this provision to provide that the list of recommended candidates be tabled in Parliament for endorsement.
4(7)	The Chairperson of the Critical Infrastructure Council (CIC) should be appointed on the recommendation of Parliament.	Provision should be made for the Chairperson of the Critical Infrastructure Council (CIC) to be appointed on the recommendation of Parliament.
7 and 9(2)	<p>Clause 9(2) provides as follows:</p> <p><i>“(2) The functions of the National Commissioner  are to develop uniform standards, guidelines and  protocols for consideration by the Council  regarding –</i></p> <p style="padding-left: 40px;"><i>(a) the manner in which –</i></p> <p style="padding-left: 80px;"><i>(i) infrastructure must be identified,  categorised and declared critical  infrastructure”:</i></p> <p>If one of the functions of the CIC is to consider  applications for declaration of  infrastructure as critical infrastructure, in terms of  7(b), then the CIC should also approve the  guidelines and protocols for identifying,  categorising and declaring infrastructure as  critical infrastructure.</p> <p>It is proposed that the Commissioner develops</p>	<p>Clause 9(2) should be  amended as follows:</p> <p><i>“The functions of the National  Commissioner are to develop  uniform standards, guidelines  and protocols for consideration  and <u>approval</u> by the Council  regarding—”</i></p> <p>It is also proposed that the  functions of the Critical  Infrastructure Council (CIC) be  amended to include the  <u>approval</u> of any uniform  standards, guidelines and  protocols developed by the  National Commissioner.</p> <p>It is submitted that the CIC is  better placed than the Minister</p>

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	the guidelines and protocols but any such guidelines and protocols must be approved by the CIC.	to perform this function.
16	It is submitted that the CIC will be better qualified than the Minister to make the decision as to whether infrastructure should be declared critical infrastructure.	The CIC, and not the Minister, should make the final decision as to whether infrastructure should be declared as critical infrastructure.
16(2)	The clause should include provision for the inputs of the provincial MEC and/or provincial department concerned or custodian of the critical infrastructure where this falls within a provincial government's property portfolio.	The clause should include provision for the inputs of the provincial MEC and/or provincial department concerned or custodian of the critical infrastructure where this falls within a provincial government's property portfolio.
16(4)	<p>Consultation should be with the Minister responsible for cybersecurity.</p> <p>The Cybercrimes and Cybersecurity Bill only refers to information infrastructure and not information and communications infrastructure.</p>	Amend to read " <i>In the event where any infrastructure partly consists of, incorporates or houses any information <b>[and communications]</b> infrastructure as contemplated in any legislation on cybersecurity that applies in the Republic, the Minister must consult with the Cabinet member responsible for <b>[State Security]</b> <u>cybersecurity</u> before exercising any power contemplated in subsection (1).</i> "

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17(j)	<p>Clause 17(j) provides that one of the factors that must be taken into account when an application for declaration as critical infrastructure is considered is:</p> <p><i>"any other factor which may, from time to time, be determined by the Minister, after consultation with the Critical Infrastructure Council, by notice in the Gazette".</i></p>	<p>Clause 17(j) should be amended as follows:</p> <p><i>"any other factor which may, from time to time, be determined by the <b>[Minister, after consultation with the]</b> Critical Infrastructure Council, by notice in the Gazette".</i></p>
19(3)(b)	<p>The timeframe in which written representations are made should be limited to expedite the process.</p>	<p>Add the following words at the end of the sentence <i>"...within a reasonable time period as determined by the National Commissioner"</i>.</p>
20(2)	<p>To the extent that the definition of a 'person in control' does not cover the custodian of critical infrastructure which falls within the portfolio of a provincial government, the clause should also provide that the custodian must be afforded an opportunity to make written representations within 30 days.</p>	<p>To the extent that the definition of a 'person in control' does not cover the custodian of critical infrastructure which falls within the portfolio of a provincial government, the clause should also provide that the custodian must be afforded an opportunity to make written representations within 30 days.</p>
20(4)	<p>Clause 20(4) provides for the final declaration of critical infrastructure by the Minister. The Critical Infrastructure Council, and not the Minister, should make the final decision as to whether infrastructure should be declared as critical infrastructure.</p>	<p>The Critical Infrastructure Council, and not the Minister, should make the final decision as to whether infrastructure should be declared as critical infrastructure.</p>

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21(4)	The clause is ambiguous and needs to be clarified. The application and the scope of the proposed Act need to be defined more precisely. [See for example section 2 of the Spatial Planning and Land Use Management Act, 2013].	The application and the scope of the proposed Act should be defined more precisely.
24(1)	If a person cannot afford to secure critical infrastructure at their own expense what are the proposed next steps? Clause 24(6) indicates that the Minister must take steps to secure the critical infrastructure in the event that the person in control of critical infrastructure refuses or fails to do so, and recover the costs thereof from that person. Clarity is required on whether or not public funds will be used to install security at private sites which have been declared as critical infrastructure.	<p>Certainty is required on the cost implications to the public fiscus in relation to providing security on behalf of a private owner in circumstances where the funds are not recoverable from the owner.</p> <p>It is recommended that the costs of securing all critical infrastructures be borne by the State, unless in the case of privately owned critical infrastructure the owner considers it necessary to bear costs in whole or part.</p>
24(6)	The Minister must be empowered to close a critical infrastructure and not only secure it if the person in control refuses or fails to take the necessary steps.	Insert the following after "critical infrastructure" in the fourth line: ...", which may include the closure of the critical infrastructure,".
25	Persons entering a critical infrastructure should be notified before or upon entering the infrastructure <b>that their vehicles and persons may be searched upon leaving the infrastructure in accordance with subsection (5).</b>	Insert subclause (9): "The person in control of a critical infrastructure must indicate in a notice in the prescribed form and manner at every entry point of a critical

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		<p>infrastructure that persons and vehicles leaving that critical infrastructure can be searched in accordance with the provisions of subsection (5)."</p>
<p>25(2)(b)</p>	<p>Where service providers are appointed their staff may not fall under the direction of the security manager, and provision should therefore be made for the personnel of service providers.</p>	<p>Amend clause 25(2)(b) to read:  "For the purpose of granting permission, the security manager or the security personnel under the direction of the security manager, <u>or the personnel of the service provider appointed by the person in control of the critical infrastructure,...</u>"</p>