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**RAILWAY SAFETY BILL [B7-2021]**

The following comments were received on the publication of the Railway Safety Bill by Parliament for public comments and the response by the Department is provided as follows:

**The following stakeholders made submissions on the Railway Safety Bill:**

1. BOMBELA CONCESSION COMPANY (RF) (PTY) LTD

2. CAIA (CHEMICALS & ALLIED INDUSTRIES ASSOCIATION)

3. COSATU

4. DANIE NIEHAUS

5. EASIGAS (PTY) LTD

6. GAUTRAIN MANAGEMENT AGENCY

7. MICHAEL GRAAF

8. MPUMALANGA LANDBOU/AGRICULTURE

9. UNTU (UNITED NATIONAL TRANSPORT UNION)

10. PRASA (PASSENGER RAIL AGENCY OF SOUTH AFRICA)

11. WESTERN CAPE GOVERNMENT (MINISTRY OF TRANSPORT AND PUBLIC WORKS)

12. COMMISSION FOR GENDER EQUALITY

13. BOMBELA OPERATING COMPANY

**DEPARTMENT OF TRANSPORT**

**RAILWAY SAFETY BILL, 2021 (B7- 2021): COMMENTS SUBMITTED TO PORTFOLIO COMMITTEE ON TRANSPORT AND RESPONSES BY THE DEPARTMENT OF TRANSPORT**

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| **BOMBELA CONCESSION COMPANY (RF) (PTY) LTD** | **Clause of the Bill** | **Comment** | **DOT Response/Action** |
| **GENERAL**  Please note that proposed deletions to the wording of the Railway Safety Bill (“the Bill”) are  indicated by strikethrough font, proposed additions to the wording of the Bill are indicated in  *[square bracketed underlined Italics]*, and comments on the Bill are indicated in the table  below in the column entitled “Comment”). | **1** | "**network operator**" means  (i) a person who is ~~ultimately~~  responsible and accountable,  for the construction, operation  or maintenance of a railway,  including:  (a) the safety of a network or  part thereof, including the  proper design, construction,  operation, maintenance and  integrity of a network;  (b) ensuring compliance of  rolling stock with the applicable  standards of a network; or  (c) authorising and directing the  safe and secure movement of  rolling stock on a network; | Agree to delete the word “ultimately”.  See “operator proposal” at the end of this matrix. |
|  | **1**  New definition | *[“****concession network***  ***operator****” means the entity*  *within a Public Private*  *Partnership arrangement that,*  *although not the owner of the*  *network, is contractually,*  *practically and physically*  *responsible for the operation of*  *a railway, including:*  *(a) the safety of a network or*  *part thereof,*  *and*  *(b) authorising and directing the*  *safe and secure movement of*  *rolling stock on a network;]* | Disagree. The definition is not used in the Bill and therefore not accepted.  See “operator proposal” at the end of this matrix. |
|  | **1**  New definition | [“***Public Private Partnership***  ***arrangement****” means a public*  *private partnership or PPP as*  *that term is defined in terms of*  *Treasury Regulation 16 to the*  *Public Finance Management*  *Act, No.1 of 1999*;] | Disagree. The definition is not used in the Bill and therefore not accepted.  See “operator proposal” at the end of this matrix. |
|  | **1** | **‘‘operator’’** means a network  operator, train operator or  station operator or any  combination thereof~~; but in the~~  ~~case of a person who is a~~  ~~concessionaire or who~~  ~~operates, constructs, maintains~~  ~~or manages a railway on behalf~~  ~~of another person who owns~~  ~~the relevant assets, that~~  ~~concessionaire or that person~~  ~~who so operates, constructs,~~  ~~maintains~~  ~~or manages that railway is, for~~  ~~purposes of this definition,~~  ~~regarded as being the network~~  ~~operator~~; | Comments accepted, the definition is adequately defined where used.  Take out “who is a concessionaire or”  See “operator proposal” at the end of this matrix. |
|  | **1** | ***“safety permit”*** *means a license*  *issued to a concession network*  *operator, network operator,*  *train operator or station*  *operator or any combination*  *thereof, to construct, operate or*  *maintain a railway operation;* | Definition encapsulates all railway system operations or operational activities.  To be left as is. |
|  | **1** | **‘‘station operator’’** means a  person in control of a station,  and the management of a  station~~; but in the case of a~~  ~~person who is a concessionaire~~  ~~or who operates, constructs,~~  ~~maintains or manages a railway~~  ~~on behalf of another person~~  ~~who owns the relevant assets,~~  ~~that concessionaire or that~~  ~~person who so operates,~~  ~~constructs, maintains or~~  ~~manages that railway is, for~~  ~~purposes of this definition,~~  ~~regarded as being the network~~  ~~operator~~; | Definition should include part of the network that runs through the station.  The integration into network should assist in providing certainty as to who is responsible for what in a station and station precinct.  See “operator proposal” at the end of this matrix. |
|  | **7(1)(a)** | 7. (1) The Regulator must, for  purposes of achieving its  objects as contemplated in  section 6—  (a) perform its functions in a  fair, equitable, transparent,  efficient, *[reasonable]* and cost  effective manner; | Comment not accepted. An organ of state must in terms of the Constitution in any case act reasonably. |
|  | **7(1)(d)(i)** | 7(1)(d)(i) developing guidelines  for safe railway and railway  operations [*in consultation with*  *operators*]. | Comment not accepted. |
|  | **30(1)** | 30. (1) Any person who wants to  undertake any railway or  railway operation must  apply to the Regulator, in the  prescribed manner, for a safety  permit *[as defined.]* ~~but in the~~  ~~case of~~  ~~a person who~~  ~~(a) is a concessionaire;~~  ~~(b) operates, constructs,~~  ~~maintains or manages a railway;~~  ~~or~~  ~~(c) conducts or undertakes~~  ~~railway operations on behalf of~~  ~~another person who~~  ~~owns, finances or controls the~~  ~~relevant assets,~~  ~~that concessionaire or that~~  ~~person who so operates,~~  ~~constructs, maintains or~~  ~~manages that railway or who so~~  ~~conducts or undertakes such~~  ~~railway operations is,~~  ~~for purposes of this Chapter,~~  ~~regarded as being the applicant~~  ~~or safety permit~~  ~~holder, as the case may be.~~ | Disagree.  If the “operator proposal” is accepted, then “permit proposal” should be considered. Both are at the end of this matrix. |
|  | **27(b),**  **30(2), 66** | 1) The manner in  which the fee is  determined is not  specified.  2)Annual increases  should be subject to  a reasonable cap. | The comment is not accepted, the fees are dealt with in a safety permit fee determination/regulation in sufficient detail. |
|  | **30(4)(b)** | (4) The Regulator may, upon  receipt of any application  contemplated in subsection (1),  prior to taking a decision,  require the applicant—  *(a)*…;  (b) subject to section 40(2),  cause an independent review  *[at the cost of the Regulator]*, to  be conducted of the  information or evaluation of the  samples or objects supplied by  a person approved as  prescribed by the Regulator; | Comments not accepted. The review may be as a result of insufficient/inadequate submission by the operator. |
|  | **30(5)(a)(i)** | This section is vague.  What measures will  the Regulator use to  determine the  duration of the  permit? | The comment is not accepted. Taking into account the outcomes of the safety permit assessments-the risk levels, level of compliance and the maturity of the SMS. |
|  | **31(2)** | 31(2) The Regulator may, subject to subsection (3) and in justifiable circumstances *[after*  *consultation with the affected network operator],* impose special conditions in addition to  and not inconsistent with the safety permit conditions contemplated in subsection (1)  relating to any relevant matter, including. | The comment is not accepted. Will only be done in justifiable circumstances as stated in clause 31 (2) of the Bill. |
|  | **32(1**) | Please clarify what is meant by “justifiable  circumstances”? This wording is vague. We  suggest that specific instances of what  constitutes “justifiable circumstances” be included. | The comment is noted but not accepted. This is not vague, as it means the RSR will have to in terms of admin law have to justify its decision. Including specific instances excludes all others. |
|  | **33(2)** | We propose that the power to suspend or  revoke a safety permit sit with the  CEO, provided the CEO has Board  approval to take such action. Given the  extreme consequences of such an action it is  preferable for this power to sit with a  higher decision-making body. | The comment is noted but not accepted. The provision refers to the Regulator (The CEO acts on behalf of the Regulator according to the delegated authorities which includes to issue and to revoke/suspend a permit. |
|  | **39(3)** | 39(3) The Regulator may, in  writing, require a safety permit  holder to provide the Regulator,  within a *[reasonably]* specified  time or on a regular basis, with  relevant data, information,… | The comment is noted but not accepted. an organ of state must in terms of the Constitution in any case act reasonably. |
|  | **44(3)(a)** | 44(3a) A railway safety inspector may, for purposes of subsection (1) and subject to subsection (2)— *(a)* enter and search any premises; [*provided it is safe to do so*]. | The comment is noted but not accepted, in the discretion of the inspector. |
| **CAIA (CHEMICALS & ALLIED INDUSTRIES ASSOCIATION)** | **Clause of the Bill** | **Comment** | **DOT Response/Action** |
|  | **General** | CAIA would like to understand, apart from what is given in the Bill and Memorandum, the reasons for the Act’s review and ultimately the proposed repeal of the entire existing Act. Furthermore, the Bill states that Regulations in existence remain in force as if they had been made under the Bill. Please confirm that this means that the existing Act is not repealed to the extent that this provision becomes null and void. | A new Bill was a neater way of incorporating the many revisions that were introduced herein.  The regulations issue is dealt with under clause 69(2) dealing with transitional provisions and savings. |
|  | **1** | The term “concessionaire” should be defined for the specific context of the Bill. | Addressed above on the Definitions. |
|  | **1** | The matter of the need for international alignment regarding the concept of “dangerous goods” should be discussed between stakeholders. The Bill refers to a domestic standard developed by the South African Bureau of Standards. The Standard should be updated regularly in line with the agreed approach to update it according to the international standard. However, this process is administratively burdensome, slower than it needs to be and results in a document that needs to be purchased. Please also consider this comment when reviewing Section 36. Are the “Railway Safety Standards” to be South African National Standards? This should be discussed with stakeholders. | Comments noted. |
|  | **7(2)(a)** | “railway industry associations” is referred to but is restrictive. The Chemical and Allied Industries’ Association is not such an association but still provides valuable fora where matters of railway safety can be discussed. In fact, the Railway Safety Regulator is part of the Responsible Care® Standing Committee fora. The proposed replacement text is: “relevant industry associations”. | Comments noted, other non-railway institutions are included in 7(2)(c) (relevant bodies and institutions). The proposal is therefore not accepted. |
|  | **7(2)(d** | In order to provide clarity, both domestic and international experts should be catered for by adding the words “domestic and/or international;” after the word “engage”. | Comments noted but not accepted. The provision is general and does not limit the engagement to only domestic persons. |
|  | **10** | Regarding the composition of the Board, CAIA would like to understand why industry is not provided for. The standard definition of civil society does not include industry. CAIA does not support this section without industry involvement. Preferably this should include both the private and state-owned entities. | The aim is to have experts in the board and not industry representatives. |
|  | **10(4)** | It is not understood why the majority of Board members must be non-executive members. | Basic governance principle. |
|  | **13(1)(c)** | it is not understood why i) “at least one-third of non-executive members may retire annually”; and ii) why the Memorandum section of the document uses the word “must”. Once the terms are aligned there should be further explanation for this requirement. | Agree. “may” must be “must”. |
|  | **22** | A matter for discussion is whether provision needs to be made for cases where applicants should still be considered if he/she has resigned from a post prior to a disciplinary hearing. | Not in the Act. |
|  | **24** | It should be provided for that the responsibility to develop the organogram lies with the CEO | This is an operational matter. |
|  | **25, 26** | The inclusion of the concept of “in good faith” in the Bill is not supported at all but noted to only be included in the “Limitation of liability” and “Documents” sections. Whatever is undertaken as a part of the requirements of the Act cannot be only in “good faith”; especially when it comes to being liable. | Disagree.  Employees of the Regulator are always expected to act in an honest and proper way. |
|  | **35(1)** | The evaluation of prospective training institutions must be prescribed in Regulation. CAIA proposes “in the prescribed manner” is added after “must evaluate prospective training institutions”. | Disagree. Minister should not be prescribing the process of evaluation. |
|  | **41(3)(b)** | CAIA does not support that Railway Safety Inspectors are also Peace Officers as this confers too much power outside of their intended mandate. | Comments are noted and not accepted  The idea is to give them more teeth in the exercise of their duties. There are sufficient safeguards in law to control the exercise of their powers even if they are peace officers. |
|  | **44(1)** | A warrant should only be obtained if required. The latter words “if required” should be included after the words “on the authority of a warrant”. | Comments are noted but not accepted.  Clause 43 provides for warrantless compliance inspections. Powers to enter and search rail incidents? It is thus unnecessary to include “if required” since section 3 comprehensively deal with warrantless inspections. |
|  | **55** | Appeal to Board Appeals Committee – CAIA is of the view that the CEO should not be a part of this Committee as the CEO would have already made a decision on the appeal – this having led to the person approaching the Board Appeals Committee. | Agree. Already provided for in clause 19(3) and (4) |
| **COSATU**  **15 OCTOBER 2021** | **Clause of the Bill** | **Comment** | **DOT Response/Action** |
|  | **General** | COSATU welcomes the tabling of the Railway Safety Bill. This is a progressive and long overdue initiative. COSATU supports the progressive provisions of the Bill and supports its passage.  COSATU is however worried that many key clauses in the Bill are silent, vague or worrying on many important issues. These include:   * Failing to provide for and in fact de facto exclusion of representation of workers on the Railway Safety Board; * No fixed requirements for Board meetings annually; * No provision for and in fact undermining collective bargaining on labour matters; * Vagueness about the composition of the Consultative Forum; * Limiting enforcement inspections to working hours in most circumstances; * Denying employees the right to appeal to the Chief Executive Officer or Board Appeals Committee; and * Complete silence on who is responsible for ensuring the safety of commuters and pedestrians at rail crossings and rail lines; and   Complete silence on the debilitating levels of copper theft, arson, vandalism and general criminality that is crippling Transnet and collapsing Metro Rail | Participation is voluntary.  Labour laws are applicable.  Outside the scope of the Bill.  Outside the scope of the Bill.  The RSR is responsible for safety and security oversight while the operator is responsible for these. The RSR will only issue a safety permit to operators whose Safety Management System indicate adequate controls for the safety of commuters and security of assets. |
|  | **10** | COSATU is deeply disappointed that the Bill fails to provide for representation of organised labour on the Board.  This is despite COSATU and unions organising railway workers having raised this with the Department in their consultations on the Bill. This is in spite of a specific assurance given to organised labour by the Minister for Transport, Fikile Mbalula, that this would be included.  Workers run the railways. They have extensive experience in railway safety matters. They would bring invaluable knowledge and expertise to the Board. Their inclusion will help to ensure the collective buy in of the workers tasked with ensuring the safe running of the rail networks.  Organised Labour needs to be afforded representation. This needs to be provided for in the Bill. The existing clause speaking to expertise in labour can be interpreted to human resource managers or labour lawyers.  Organised labour needs to be afforded at least two representatives to ensure that the diversity of organised labour in passenger and freight rail is reflected as they represent distinct conditions. It is fundamental that these representatives be selected by organised labour and not imposed upon them by government in order to ensure a sense of representivity and accountability.  **COSATU Proposal:**  A new sub-clause 10 (1) (b) be inserted providing for not less than two representatives of organised labour reflective of passenger and freight rail to be selected by organised labour and included in the Board. | Dealt with above on page 9.  The aim is to have experts in the board and not industry representatives. |
|  | **15 (d) (i) and (ii)** | Clause 15 (d) (i) and (ii) prohibit the inclusion of any person in the employ of government, be it in the public service or any other organ of state. This would prohibit any worker employed by Transnet or Metro Rail from serving on the Board.  This would deny workers effective representation on the Board and representation that would include invaluable experience and expertise. The exceptions provided for this for government representatives, should be extended to organised labour representatives.  **COSATU Proposal:**  Sub-clause 15 (d) (ii) be extended to exclude organised labour representatives from Sub-Clauses 15 (d) (i) and (ii). | Government officials do not form part of the board, other than those contemplated in clause 10(2)(c), (d) and (e). |
|  | **17** | Clause 17 is silent on the minimum requirement of Board meetings to take place annually. This is against the norm in legislation which stipulate Boards should meet at least once per quarter.  The danger of the Bill failing to stipulate a minimum number of required meetings annually, is that the Board may choose to meet once a year or even less. This will undermine its ability to function and fulfil its legal mandates.  The Minister and Board members will have little recourse as the Bill is silent and thus the Board could not be held accountable. At the same time the Board has a critical role to play against a context of large-scale copper theft, vandalism, arson and criminality plaguing Transnet and Metro Rail on a daily basis.  The Bill should be amended to require the Board to meet at least quarterly.  **COSATU Proposal:**  A new 17 (2) be inserted to require the Board to meet at least once per quarter. | Board members have fiduciary duties which makes them accountable, in addition to PFMA requirements.  Meetings are covered in the Board charter. |
|  | **24 (2) (a), (3) and (4)** | The Bill is silent on the constitutional right to collective bargaining and for workers to be engaged on their conditions of service. The provisions in the Bill undermine collective bargaining and occur against a backdrop of government increasingly seeking to collapse or at least ignore collective bargaining and the voice of workers. This goes against the traditions of collective bargaining and engaging workers at Transnet, Metro Rail and the existing Regulator.  It does not make sense for the state or workers, for the Regulator to establish its own provident fund and medical aid when the Government Employee Pension Fund and Government Employee Medical Scheme already exist and all state employees should be included in them.  **COSATU Proposal:**  Sub-clauses 24 (2) (a) and (3) be amended to include “in consultation with organised labour and subject to any collective agreement”.  Sub-clause 24 (4) be amended to provide for employees of the Regulator to be included in the Government Employee Pension Fund and Government Employee Medical Scheme. | Provided for in the Constitution and in labour legislation.  Clause 24(3) to be removed from the Bill to eliminate potential conflict with the Labour legislation. |
|  | **38** | Clause 38 provides for the establishment of consultative fora. Yet it does not indicate or provide any criteria as to who should be included in such a forum. This can undermine the very progressive intention of this clause.  It needs to indicate criteria, e.g. organised labour, commuters, businesses, civil society, communities and relevant government departments.  **COSATU Proposal:**  Sub-clause 38 (4) should be amended to specify that such fora should depending on the circumstances and objectives of the fora, include representation from organised labour, commuters, businesses, civil society, communities and relevant government departments. | Given that these fora are consultative, and membership is voluntary, the need for prescriptive measures is not established. |
|  | **44 (6)** | Sub-clause 44 (6) limits enforcement inspections to between 08h00 and 17h00 during workdays, unless authorised by a judge or magistrate.  This is an unnecessary infringement upon the powers of inspectors. Passenger and freight rail are not limited to operating from 08h00 to 17h00 Mondays to Fridays. Neither are matters affecting railway safety limited to office hours.  This is an unnecessary limitation on inspectors’ ability to fulfil their duties and may aid those at fault and provide them advance time to dispose of incriminating evidence. References to office hours and days should simply be deleted from this sub-clause.  **COSATU Proposal:**  Sub-clause 44 (6) should simply be deleted or amended to empower enforcement inspections to occur at any time or date as the need arises. | Disagree. clause 44(6) makes allowance for a judge/magistrate to allow for inspection outside these timelines should the circumstances dictate so. |
|  | **54 (1)** | Sub-Clause 54 (1) denies employees of the Regulator the right to appeal to the CEO.  This is an unconstitutional infringement upon the right of such workers. The Bill provides no other recourse for such workers. This exclusion must simply be deleted.  **COSATU Proposal:**  Sub-clause 54 (1) should be amended to delete the reference to employees in the list of those denied the right to appeal to the CEO. | Labour law provides for such situations. |
|  | **55 (1)** | Sub-Clause 55 (1) denies employees of the Regulator the right to appeal to the Board Appeals Committee.  This is an unconstitutional infringement upon the right of such workers. The Bill provides no other recourse for such workers. This exclusion must simply be deleted.  **COSATU Proposal:**  Sub-clause 55 (1) should be amended to delete the reference to employees in the list of those denied the right to appeal to the Board Appeals Committee. | Labour law applies. |
|  | **General** | **Silence of Bill on Responsibility for Safety of Pedestrians and Commuters at Rail Crossings and Along Rail Lines**  The Bill is silent on who is responsible for the safety of pedestrians and commuters at rail crossings and along rail lines. Many of the rail crossings, both urban and rural, lack sufficient or any safety provisions. Many rail lines, both urban and rural, are completely unsecured. This has resulted in the deaths of pedestrians and commuters.  Responsibility is often kicked between Transnet, Metro Rail, local government and provincial government. There is a lack of clarity on who is responsible for what.  The result is a deterioration in safety and security and the unnecessary tragic loss of life. It needs to be clarified and stated in the Bill for all to know, including the public.  **COSATU Proposal:**  A new clause be inserted to indicate who is responsible for securing crossing and lines and what are the differing responsibilities of Transnet, Metro Rail, provincial and local government. | The Regulations regarding Infrastructure Activity affecting safe railway operations (Railway Reserve Regulations) and the SANS 3000-2-2-1 standard on level crossings deal with the matters raised. |
|  | **General** | **Silence of Bill on Rampant Levels of Copper Theft, Arson, Vandalism and General Criminality and Government’s Commitment to Re-establish a Dedicated Railway Policing Unit**  Millions of Rands worth of copper cable is stolen monthly from Transnet and Metro Rail. This has caused delays in services and at times death in rail accidents. Few have been arrested.  More than a hundred Metro Rail carriages have been destroyed in arson attacks. This has cost millions of Rands and service delays. Few have been arrested.  Metro Rail and Transnet and the commuters and goods they transport have been subject to rampant criminality and theft. This has caused many commuters and businesses to abandon Metro Rail and Transnet. This has caused financial hardship to these commuters and businesses and cost Metro Rail and Transnet millions of Rands of lost revenue. Yet few have been arrested.  Billions have been spent on often very inefficient private security for Metro Rail and Transnet with little effect. These private security contracts have had little impact and have often been mired in corruption and at times be suspected to be involved in acts of criminality too.  The Minister of Police previously announced government’s intention to re-establish a dedicate railway policing unit, yet this has not come to fruition.  Such a dedicated railway police unit needs to be re-established. The South African National Defence Force should also be deployed to support the police in the interim to re-establish control of the railway lines, in particular commuter lines.  **COSATU Proposal**  SAPS re-establish a dedicated railway policing unit.  The SANDF be deployed to assist SAPS re-establish control of railway lines, in particular commuter lines. | The RSR is responsible for safety and security oversight while operators remain responsible for managing safety and security. The RSR will only issue a safety permit to operators whose Safety Management System include a Security Plan.  The deployment of SANDF is outside the scope of the RSR and the Department of Transport. |
| **COSATU**  **31 JANUARY 2022** |  |  |  |
| **DANIE NIEHAUS** | **Clause of the Bill** | **Comment** | **DOT Response/Action** |
|  | **General** | My kommentaar word nie op die wetsontwerp as sulks gerig nie maar om u te wys op gebrekkige bestuurstrukture wat spoorwegveiligheid raak  As inwoner van Robertson in die Kaapse Wynland voel ek my genoop om te verwys na u perseel waar die ou stasie gehuisves was en deesdae 'n terrein vir hawelose plakkers is. Bruikbare dwarslêers word 24/7 vir vuurmaakhout gebruik en hoewel daar twee persone in oorpakke is wat klaarblyklik toesig moet hou, sit hul heeldag nodeloos rond en toekyk hoe die plakkers die terrein bemors, met groot plastiekvelle besoedel en die rivier daarnaas as toilet en wasplek gebruik. Vir groot dele van die dag word op die treinspoor gesit of geloop en die probleem vererger by die dag  Dit alles skep opsigself 'n veiligheidsprobleem vir verbygaande treine en mense. Treine word ook soms deur vernielsugtige kinders met klippe bestook. Daar is ook geen moniterinstelsel of wetstoepassing om rommelstrooi of ongemagtigde betreding (wat wel op 'n kennisgewingsbord van Transnet verbied word) te bekamp nie. Die polisie is nodeloos en gooi hande in die lug hoewel dit skuins oorkant die polisiestasie gebeur  Ek hoop dat u spoedig iets aan die saak sal kan doen omdat die terrein aan u behoort en dit 'n wesenlike probleem vir spoorwegveiligheid is. | Comment noted. Beyond the scope of the Bill. |
| **EASIGAS (PTY) LTD** | **Clause of the Bill** | **Comment** | **DOT Response/Action** |
|  | **30 (5) (a) (iv)** | 1. The Regulator must, after considering an application contemplated in subsection 2. or an application for renewal contemplated in subsection (8), notify the applicant, in writing, of the outcome of the application, and if the application—    * 1. if applicable, the date by when the fee contemplated in subsection 3. or a levy contemplated in any legislation providing for the imposition of levies, must be paid by the applicant in respect of that specific safety permit; or   Comment:  Permit holders already pay high annual permit fees, and any reference to “applicable levies contemplated in any legislation” is too broad and leaves a vacuum for legislators to impose further levies at whim.  Recommendation:  Specify the applicable levies upfront in the Bill to ensure transparency and alleviate broad statements. | Disagree. The funding section put all the mechanisms that the Regulator can use to fund its activities. But they don’t have to be applied simultaneously. |
|  | **30 (6) (b**) | (6) The Regulator may only issue a safety permit to an applicant, if the applicant has paid—  (b) any applicable levy contemplated in any legislation providing for the imposition of levies relating to safety permits.  Comment:  Permit holders already pay high annual permit fees, and any reference to “applicable levies contemplated in any legislation” is too broad and leaves a vacuum for legislators to impose further levies at whim.  Recommendation:  Specify the applicable levies upfront in the Bill to ensure transparency and alleviate broad statements. | Disagree. |
| **GAUTRAIN MANAGEMENT AGENCY** | **Clause of the Bill** | **Comment** | **DOT Response/Action** |
|  | **1** | |  |  | | --- | --- | | We notice that the terms: “station operator”; “train operator”; and “network operator” seem to have been included for the sole purpose of clarifying the meaning of an “operator”, and are not used in the body of the Bill. This is despite the definition of an “operator” not expressly linking the terms: “station operator” and “train operator” to that of an “operator”. The practice of providing further meaning of a term in a definition of another term that is not cited in the body of an enactment is very unusual, thus expressly or by implication cross-referencing the meaning of an “operator” to these other terms may lead to varying interpretations.  Recommendation   |  | | --- | | We recommend that the definition of the term: “operator” be with express reference to a “safety permit holder or its assignee”. | | | The term “operator” refers to the different types of operators (and it is encompassing). |
|  | **12 (4)** | The current syntax of clause 12(4) is problematic as it requires the board to elect an acting chairperson, if either the chairperson “or” deputy chairperson is unable to discharge his or her duties. It is absurd that the board should elect an acting chairperson, if the chairperson him/herself or his or her deputy (based on the usage of the word: “or” in 12(4)) remains available to discharge chairing responsibilities.  Recommendation  We recommend that the phrase “the position of chairperson or deputy chairperson becomes” be replaced with the phrase “both the positions of chairperson and deputy chairperson become” in clause 12(4). | Agree to amend. Agree to amend to make it clear that the board will only appoint acting chairperson. |
|  | **13 (1) (c)** | On the face of it, clause 13(1)(c), merely stipulates up to one third of non-executive members “may retire”, and that creates an impression that such retirement will be a voluntary process that is based on the principle of rotating board members, yet allowing this to happen prior to board members serving their full term (as specified in 13(1)(a)) and subjecting the retirement of board members to board evaluation, gives an impression that this may be a mechanism that is aimed at enabling the Minister to lay off up to one-third of a poorly performing board. We are of the view that the distinction between the two provisions can be more succinct, such that there is no apparent misalignment between 13(1)(a) and 13(1)(c).  Recommendation  We recommend that clause 13(1)(c) be rephrased, such that its objective be explicitly clear, i.e. whether or not it is informed by a need to regularly rotate board members, or to enable the Minister to lay off up to one-third of poorly-performing non-executive members, subject to annual board evaluation. | Dealt with above in page 10. “may” must be “must”. |
|  | **20 (1)** | This provision entitles the board to delegate any of its functions or powers to the CEO or another senior employee of the Regulator, without providing parameters within which the said discretion will be exercised. A decision made by an individual, to whom a function or power of the board has been delegated, could give the public an incorrect impression that a certain function or power was discharged or exercised after due application of the board’s collective proficiency, whilst it may, in fact, have been exercised by a delegated individual, without the benefit of multi-disciplinary expertise contemplated by the composition of the board. Without limitation, this provision could, further, lead to a substantial delegation of the board’s powers or functions, thereby undermining good governance.  Recommendation  In order to: ensure that delegations do not derogate from a multi-disciplinary approach to decision-making envisaged by the composition of the board; prevent sweeping delegation of the board’s authority; and introduce checks and balances that facilitate natural rules of justice relating to impartiality and conflict of interests, we recommend that parameters within which a function, duty or power of the board would be delegated be outlined in the Bill. It may, to this end, be useful to specify functions or powers, which the board is precluded from delegating, even to a committee of the board. | Agree.  Proposal on powers which may be delegated. |
| **MICHAEL GRAAF** | **Clause of the Bill** | **Comment** | **DOT Response/Action** |
|  | **General** | Non-commercial nature of public transport: The reason why national and local governments subsidise buses, trains etc. is that the alternative would be much higher costs arising from congestion, health, social dislocation etc., and accrued across the whole of society. While fares collected may partially offset the money spent on subsidies, they are kept low precisely to encourage use of public transport, and to avoid the aforementioned social costs.  Changing socio-economic balance: In recent decades, due to successful unionisation of the workforce, the salaries of public employees have risen faster than the fares charged on public transport, because fares are calculated according to the pockets of the very poor. This has resulted in the cost of collection exceeding the revenue received.  Opportunity cost of poor security: Due to factors such as more dense habitation along railway lines, cable theft and vandalism have greatly increased. At the same time, train users and would-be train users have to rely largely on safety in numbers, meaning that they are reluctant to use trains outside of peak hours. This has contributed to the decline of the passenger rail system.  Possibilities arising from ICTs: Although a limited number of security cameras have been installed at some stations, there has been insufficient investment in the back-ends of such systems. There should also be cameras on trains themselves. One of the constraints is that, while Artificial Intelligence (AI) can reduce the number of human eyes and minds necessary to monitor input from the cameras, a considerable number of people are needed to do such monitoring and to dispatch on-the-ground response teams.  Proposal: If the staff currently working to sell and inspect tickets were redeployed to serve the security of trains, infrastructure and passengers, the reduced losses in cable theft and vandalism would more than compensate for the loss of fare revenue. | Security issue. |
| **MPUMALANGA LANDBOU/AGRICULTURE** | **Clause of the Bill** | **Comment** | **DOT Response/Action** |
|  | **General** | National Veld and Forest Fire Act,101 of 1998  CHAPTER 2 point 4(8) reads as follows:  ‘the owner in respect of State land MUST join any fire protection association in the area in which the land lies’ note definition of owner(xiii)  CHAPTER 4 point 12(1) reads as follow  ‘Every owner on whose land a veldfire may start or burn or from whose land it may spread must prepare and maintain a firebreak on his or her side of the boundary between his or her land and adjoining land’  From our side we want to bring under your attention the following issues, amongst all the other, to be addressed by the bill as well:   1. manage of fuel load in rail reserve 2. fire suppression in rail reserve 3. active participation on Fire Protection Associations | Policy issue. |
| **UNTU (UNITED NATIONAL TRANSPORT UNION)** | **Clause of the Bill** | **Comment** | **DOT Response/Action** |
|  | **General** | UNTU welcomes the Bill. UNTU is concerned that some crucial issues are silent i.e.:-   * No reference is made as to the composition of the Consultative Forum and how often will they meet. * Enforcement Inspectors are limited to working hours, whilst Incidents can take place outside these hours. * Silence with regards to the continuous theft and vandalism that affects PRASA Rail and Transnet and negatively impacts the economy. * Failing to provide for the inclusion of Representation of workers on the Railway Safety Board. * The Rail Safety Regulator (RSR) reporting to the Minister of Transport, whilst PRASA is also reporting to PRASA – where will the Minister’s loyalty be? | Dealt with. Under COSATU comments. |
|  | **10** | We are very concerned, notwithstanding the fact we have on numerous occasions requested that workers be presented on the Board, especially taking cognisance of our daily experience of what is happening within the Operations of both Transnet and Prasa, being the majority users of the current infrastructure across the country.  The Bill should make provision for at least Representatives and should be elected by “Organised Labour” to ensure Labour Representivity and accountability.  UNTU Proposal:  A new sub-clause 10 (1) (b) be inserted, providing for not less than two (2) Representatives of Organised Labour consisting of Passenger and Freight Rail who are elected by Organised Labour to form part of the Board. | Addressed above in page 9.  The aim is to have experts in the board and not industry representatives. |
|  | **15 (d) (i) and (ii)** | This would prohibit any worker that is employed by Transnet or Prasa from serving on the Board. In effect, it will deny effective Representation on the Board that will include invaluable expertise.  UNTU Proposal:  Sub-clause 15 (d) (11) be extended to exclude Organised Labour from sub-clauses 15 (d)  (1) and (11). | Interpretation is correct. Proposal not agreed with, as this is not a representative board. |
|  | **38** | The above clause makes no reference as to what should be included in the referred Forum.  We support the Forum, but it should elaborate on the inclusion of parties and what the goal of the Forum entails. | Refer to the comments from COSATU. |
|  | General | **Silence of Bill on Responsibilities for safety of Commuters**  Responsibility is always flying between Transnet and Prasa. The Bill should make clear reference as to who must take responsibility. | The safety of commuters is the responsibility of operators. |
|  | General | **Silence of Bill: Copper Theft, Vandalism, Criminality and Re-establishment of Railway Police dedicated to Rail**  Billions of Rands worth of copper cable is stolen monthly from Transnet and Prasa, which enables them to deliver a dependable service to the commuters and South Africa which results in the economy being seriously negatively impacted.  Billions of Rands are often spent on incompetent private security that are not efficiently armed and trained to deal with the current criminals in this environment.  The current dedicated Railway Policing Unit has not succeeded and is inefficient.  UNTU Proposal:  Government establishes a dedicated Railway Police and that the current SANDF be deployed to assist to regain “Control” of the Railway Lines in South Africa for the benefit of all. | Beyond scope of the Bill. |
| **PRASA (PASSENGER RAIL AGENCY OF SOUTH AFRICA)** | **Clause of the Bill** | **Comment** | **DOT Response/Action** |
|  | **General** | **Infrastructure Security**  The railway and in particular commuter railway has developed along spatial lines. As a result the infrastructure reflects, has maintained risk and vulnerability level to the extent that those risk are societal / community based. In the meanwhile the security of railway and railway infrastructure has been left to the operators, which has become unsustainable. The risk of and cost of security cannot be passed down to passengers / commuters, who are , mere users of the train services and many are at the low end of the socio-economic strata. The cost required to provide the required security takes away the funds required to maintain and keep the railway infrastructure in good state of repair to ensure safe railway operation. This is in line with the preamble that places the prime responsibility and accountability of railway operators in ensuring the safety of railway operations. [*Underlined for emphasis*]  Railway infrastructure is critical infrastructure and therefore safety of same requires equal measures by Government. This should enable equitable access to Railway Police who will be:  2.1.2.1. the dedicated to Rail and protection thereof;  2.1.2.2. appropriate training on railway and railway incident;  2.1.2.3. investigation capacity;  2.1.2.4. develop common standards for security responses and measures.  The total amount of reported incidents from April 2018 – August 2021 is 9 034 (nine thousand and thirty four). The extent of vandalism and theft appears to be the work of organised syndicates that have access to market for such commodities. Operators are limited in scope, scale and capacity to meet these challenges, for eg operators cannot by law develop intelligence capacity and resources to deal this scourge.  Therefore capital investments into railway infrastructure and safety measures must be protected in the interest of national security.  In addition, and given the closeness of operation, interface and interoperability between the major operators, all who are public entities, the Bill should express the need for cooperation including resource allocation for security operations across the railway infrastructure.  As a result the Bill should reflect and give expression to these needs and appropriate adequate security protection of railway infrastructure of this key national asset to the relevant authorities as a government function and in a manner that will instil confidence in the railway system for all stakeholders; including employees, commuters, communities living adjacent the railway operating tunnels or affected by it. | Operators to ensure safety and security of passengers and asset. The Department to look at supporting this requirement through facilitation with other relevant departments. |
|  | **General** | **Safety Management System (“SMS”) and Standards for Rail Safety**  We welcome the proposed changes i.e. that the Board of the Regulator has sole responsibility to determine the SMS.  The SANS 3000 series is an established safety management system within the rail industry in South Africa. It has been and should continuously be updated to keep up with international railway standards and as such we believe it is desirable that it should be the sole basis for the development and implementation of the SMS. | Comment noted. |
|  | **General** | **Safety Permit and Conditions**  The term / phrase “Railway Safety” appears to be an activity covered under licensed undertaking, as such it must be defined. Under section 30(4) of the Bill, dealing with Safety Permit application, it [railway safety] serves as the basis for request for additional information that the Regulator may require from a prospective applicant. As a result it is critical to clarify what this phrase engenders. This clarity is required so that the licensed operations are not unnecessarily burdened, on account of the lack of clarity.  The outcome of the Safety Permit Application  2.3.2.1. The Bill should consider prescribing timeline for the communication of the outcome of the Safety Permit application. Preferably not less than 15 days prior to the expiry of the current permit if an operator is applying for a renewal. This will enable stability and assurance to the railway activities of the operator.  2.3.2.2. Alternatively the current permit should extend by application of law until the Regulator issues its determination.  Renewal of Safety Permit  Section 30(5)(b) should clarify and distinguish the position where the Regulator has not approved an application for a safety permit within the 30 days. The desirable position is that:  2.3.3.1.1. such period for consideration of an application should be extended by operation of law to a defined and stated period in the Bill for e.g. fixed time period, failing which the Regulator should be obligated to pronounce on the application or be deemed to have made a stated pronouncement;  2.3.3.1.2. for the current operators, the position should be that for such period the current safety permit i.e. issued under the current Legislation [The National Railway Safety Act, 2002] automatically continues and deemed to be extended for such defined period of the extension. Otherwise, it would lead to the undesirable position where it impels the current operators to institute urgent Court process to keep the safety permit “alive” as it were.  Suspension of Safety Permit  The suspension / revocation of duly issued safety permits should be orders of the last resort as they have the effect of stopping the business of an operator, many of which are legislative mandates.  Section 33(6) is undesirable. A properly issued safety permit cannot be suspended for reasons unrelated to safety concerns.  Review of Conditions of the Safety Permit  Once the conditions to the safety permit have been issued the Regulator and the Board are functus officio is as far as those conditions. To the extent that unsafe railway conditions occur these are usually managed though improvement directives, through the safety inspectorate as contemplated under section 47, including issuance of a penalty under section 67 of the Bill. Therefore it is undesirable and unnecessary for the Board or the Regulator to review or amend the conditions to a safety permit during its operations.  The Bill should consider allowing an Operator the right to apply to the Regulator to cancel the special conditions once it is met by an operator satisfactorily and issue a compliance certificate, as they [special conditions] may affect the insurance conditions for the insurance cover that an Operator may have.  We therefore suggest that section 32 should be amended to delete section 32(1) and (2) and the Bill should insert a provision that will enable / allow an Operator to request the cancellation of a special/specific condition/s during the life of a safety permit, considering that a 3 – 5-year safety permit cycle is considered. Therefore section 35(5) should provide for cancellation of a special conditions. | Disagree.  Disagree.  Disagree.  Disagree. The RSR procedures address the conditions of permits (including special conditions). The special conditions are on a case by case basis depending on prevailing risks. |
|  | **General** | **Decision of the Board of the Regulator**  Given the importance of certain decisions of the board of the Regulator, and the fact that the board members must collectively have wide-ranging, relevant expertise (in terms of section 10(1)), we submit that it is inappropriate for the board to be empowered to delegate [as contemplated in section 20 of the Bill] all of its functions, duties or powers.  PRASA submits that the board should, at least, not be empowered to delegate the power to decide the matters contemplated under sections [other than to a committee of the board]:  2.4.2.1. 35(2) [determination of policy for registering of training institutions];  2.4.2.2. 37, including the determination of safety management systems; suitability, qualifications and training for railway safety inspector; or  2.4.2.3. any matter intended to be decided by a board, particularly those matters contemplated in section 14 of the Bill. | Dealt with above in page 21. |
|  | **General** | **Funding of the Regulator**  The financial implications of the Bill (and the current Railway Safety Regulator Act, 2002 (“**the RSR Act**”) on railway operators are significant – both in terms of ensuring their own regulatory compliance and in funding the activities of the Regulator. These costs are of particular concern to PRASA as a state-owned entity with a public-interest mandate providing state-subsidised services to commuters who fall into South Africa's lowest income bracket. While PRASA appreciates the need for the Regulator to be adequately funded in order to carry out its important mandate, the current manner in which fees are levied should reflect accountability and transparency.  PRASA and other railway operators currently pay lump sum safety permit fees but it is most unclear what functions of the Regulator are to be covered by these fees and the Regulator regularly invoices PRASA for regulatory activities as and when they take place. Section 27(1) of the Bill provides for the funding of the Regulator, which includes money appropriated by Parliament as well as fees paid to the Regulator.  It is submitted that holders of safety permits should pay annual fees that are to be calculated so as to (collectively) cover the Regulator’s budgeted costs for regulating holders of safety permits for the coming year. If it is also necessary for the Regulator specifically to charge the relevant safety permit holder for particular functions, these functions should be specified in the Bill or the related Regulations If there are any shortfalls as between the annual amounts charged to permit holders and the Regulator’s actual costs, this should either be recovered through parliamentary appropriation or through a suitable adjustment to the annual fees payable in the following year.  The Bill should, in our submission, specify that the Minister must publish a policy governing the manner in which the Regulator is to be funded, including the costs that are to be covered by the relevant fees charged to safety permit holders / operators. | Clause 27(1) read with clause 66 and 67(3) provides for the funding mechanism of the RSR.  Full disclosure of income is provided in the RSR’s annual report.  If Prasa wants to be exempted in anyway they must use provisions provided.  “ ... holders of safety permits should pay annual fees that are to be calculated so as to (collectively) cover the Regulator’s budgeted costs for regulating holders of safety permits for the coming year. If it is also necessary for the Regulator specifically to charge the relevant safety permit holder for particular functions ...” – agreed – see relevant clauses.  Minister has a discretion to do so – see clause 61(1)(d) |
|  | **General** | **Safety Critical Grade Licensing**  The licensing of safety critical grades creates an unnecessary duplication as the safety critical grades are regulated as part of the [currently the SANS 3000-1] standard, which when prescribed will form part of the Act. These sections are thus autologous and will lead to unnecessary over-regulations. In addition, the service providers accreditation, if there is a need for the same must be accredited by South African Qualification Authority. For the Regulator to regulate them and in addition license the employees of the operators will lead to conflict of interest. | Comment noted but not accepted. SANS 3000-1 does not comprehensively deal with this aspect to the extent of licensing (for example).  We do not see the highlighted potential conflict of interests.  Board Of Inquiry (BOI) conducted in the past has always identified Human error as the cause of accidents and proper training and refresher training not being adhered to by operators. With the Private Sector participation in the country they will be employees from International operators in our rail environment. |
|  | **General** | **Protection of Information**  We believe that any matter that relates to an operator under the Promotion of Access to Information Act and the Protection of Personal Information Act should be within the remit of an Operator and having regard to the existence of a specialised Regulator for these matters.  The Bill should reflect and express the Protection of Personal Information Act obligations on the Regulator, with specific undertakings to the industry in as far as processing, safe keeping, disclosure of breaches of personal information that the Regulator or its service providers may process.  Therefore we believe that a fact any matter under POPI Act disclosed by an Operator to the Regulator or its service provider should be kept and maintained confidential. Otherwise it exposes a safety permit holder, who is a Responsible Person, to liability. We believe that it is undesirable for the Regulator to deal with matters that are within the remit of an Operator in the manner expressed in section 40(1)(e) and consequently any residual application under section 40(2) should be deleted. | RSR has undertaken to comply with POPIA and provisions is contained in clause 40 of the Bill. |
|  | **General** | **Transitional arrangements for current training institution and Authority to determine policy for registration**  We suggest that a transitional period be provided for the current training institution. There are no transitional arrangements for current training institutions which may be providing the training including inhouse training facilities and refresher courses, as they will be required to immediately register with the Regulator upon the Bill been passed into law, subject to the policy to be issued by the Board as envisaged in section 35(2) of the Bill and the regulations contemplated under section 68(c) and (d) of the Bill.  The Bill should clarify whether the Board or the Minister has authority or the overlap of the respective authorities in as far as setting the criteria for the registration of training institutions. At section 35(2), the board is impelled to develop such policy as follows: *The board must, subject to the National Qualifications Framework Act, 2008, and the Skills Development Act, 1998, determine a policy for* ***the registration of training institutions****, taking into account all relevant factors.. “*. Yet at section 68(c) and (d) it appears that this will be encapsulated in a regulation to be issued by the Minister and hence a ministerial prerogative. | Agree. The Minister will determine. |
|  | **General** | **Appeal**  The Bill should reflect on the effect of an appeal. In general legal jurisprudence and parlance the effect of an appeal is to suspends a decision which is subject to appeal. Although the Bill provides for access to court on an urgent basis, the matter at hand may not meet the muster for urgency required by a Court.  As a result the Bill should provide **for suspension of the decision** pending the prosecution of the appeal. To avoid abuse of the appeal process, the Bill may specify / provide for the grounds for appeal. | The procedural elements of an appeal are universal in that they have a suspensive effect on the decision.  Chapter 8 of the Bill outlines the specific appeal process in detail. |
|  | **General** | **New Criminal Offences**  Interference with investigations – section 43(4) of the Bill 2.10.1.1. Although we appreciate the intended enforcement regime that this provision seeks to create, the sanction is harsh. We believe a maximum 12-month imprisonment or fine should be sufficient deterrent and sanction that fits the crime.  Failure to Report an occurrence  2.10.2.1. Section 49(2) creates a new offence for failure to timeously report an occurrence. The effect thereof is 5 years or fine or both. Although we recognise the criticality of the information, it is undesirable to create strict liability offence unless there is a demonstrable intention to frustrate compliance with the law. The mere failure should not give rise to such offence and the indicated sanction is too ghastly / harsh to fit the charge.  Unlicensed safety critical grade  2.10.3.1. No person may occupy a position of safety critical grade, as defined, unless they possess the required license. This offence extends to safety permit holders who employ / allow an employee or person to hold such position without the required license.  Criminal liability for Directors  2.10.4.1. It appears the Bill intends to visit criminal liability for a [single individual] director. A director is expected to take reasonable steps to prevent the commission of offences under the Bill.  It is trite that directors [of a board] act in concert as a board, unless a single director has been delegated authority by a board. The Bill should clarify under what circumstances will a single director be held individually liable. No director has authority to act individually unless specifically authorised by a board. However the Bill seem to indicate that the duty of care expected of a director extends to failure to anticipate the wrongdoing or not taking active action in situation that indicates a reckless attitude towards safety matters, which may lead to contravention of the provisions of the Bill. This is at odds with the Business Judgment Rule expected of directors appointed under the Companies Act, 2008.  As a result, a director who accepts the position of director without the necessary knowledge, skill and experience does so at his or her own risk. The composition of the Board of Control under PRASA enabling legislation, The Legal Succession to the South African Transport Services Act, requires the Board to have in its midst certain specialist. Therefore directors appointed for their specialist skill and competencies will be measured accordingly i.e. to the extent that they exercise or fail to exercise their skills and experience should PRASA contravene any provision under the Bill.  Section 59 provides that a director, trustee or member of a juristic person at the time of the commission by that juristic person of an offence in terms of this Act, is guilty of that offence, and is liable, on conviction, to the penalty specified in respect of that offence, if that offence resulted from the **failure of the director, trustee or member to take all steps that were reasonable under the circumstances to prevent the commission of the of the commission by that juristic person of an offence in terms of this Act**, is guilty of that offence, and is liable, on conviction, to the penalty specified in respect of that offence, if that offence resulted from the failure of the director, trustee or member to take **all steps that were reasonable** under the circumstances to prevent the commission of the offence.  It is common for a board to delegate operational responsibility to management and, as per the Corporate Governance Principles applicable / accepted in South Africa i.e. King IV, boards are expected to provide strategic direction and oversight and to exercise a *duty to exercise care and skill in the performance of their activities*. The essence of which is predicated on the delegatee acting within the bounds of delegation and propriety. In that light, the Bill should reflect on the extent to which a director is expected to take [what appears to be active] preventative steps. This is distinguishable from the expectation that a director exercise the duty of care.  In addition, the Bill should make clear what is required of that (1) duty to exercise care and skill in the performance of their activities or oversight role and (2) if there is a enumerative list of actions that are expected, for eg those that are contemplated under the Business Judgement Rule. The phrase “..all steps..” may raise difficulty of interpretation. It is undesirable to make an quantitative requirement on a matter that is intended to be qualitative.  We submit that the word “..all..” should be deleted. | Comments are noted, no further comments to add. (Note that the courts will deal sentencing)  Disagree.  Disagree.  Agree. “all” to be replaced by “appropriate” |
|  | **General** | **Vicarious Liability or extension of principal -agency for Criminal Conduct**  The offences created under this Bill requires “wilful” intent on the part of the accused. Please refer to our comments in respect of section 49(2) of the Bill, where we have suggested that no conduct by an operator or its employees should attract criminal liability merely for failure to conduct itself/ or through its employees in a manner that draws noncompliance.  We submit that it is not competent for a liability for criminal conduct or at least the offences created in this Bill, to be attributable to a person on principal -agency or vicarious liability.  We therefore believe that section 58 of the Bill should be deleted. | Disagree.  The employer must also bear responsibility. |
|  | **1** | Definition of **‘‘network operator’’**  Commentary / Input  The definition includes the word “responsible”. There is only one person indicated and assigned those responsibility. The previous formulation referred to “person or persons”  Therefore the function although delegated, remain the responsibility of the CEO/GCEO and the liability spans over all those activities.  The Current Act sought to distinguish each of the activities having a distinct accountable person.  The network operator is not responsible for all these activities especially subsection (b) ensuring compliance of rolling stock with the applicable standards of a network. Therefore subsection {b) should be deleted | Disagree. |
|  | **1** | New definitions of Railway Inspectorate  41. (1) The CEO may appoint a person who meets the requirements determined by the board in respect of suitability, qualifications and training, as a railway safety inspector to exercise the powers and perform the duties contemplated in section 42  Commentary/ Input  The inclusion of this definitions and the appointment of the Inspectorate based on a criteria to be determined by the Board [for a Railway Inspector] is welcome.  However having regard to the Inspectorate role under sections 42 to 45 inclusive the criteria for his/her appointment, experience and qualifications, should be transparent as the function [of Railway Inspectorate] is central to safety within the railway system. These criteria should be. prescribed and the decision of the Board be directed by such known requirements i.e. the factors to be considered as determinative by the Board be known. Therefore these criteria should be expressed in the appropriate regulation/s or the updated applicable South African National Standard, cognisant of the Inspectorate role under sections 42 to 45 inclusive.  The appointed person reports to the CEO, at his/her “back and call”. This is strengthened by the functions of the CEO under section 23 including to “ensure that the functions of the Regulator in terms of this Act are performed”. This function is expressed under section 6 of the Bill as including “ The objects of the Regulator are to—  (a) promote, regulate and report on safe railway and railway operations through  the appropriate and timely application of support, monitoring and enforcement  ▪ instruments provided for in this Act”. These functions are undertaken by the Inspectorate appointed by the CEO.  Therefore the CEO does not only render administrative capacity but drives the key Regulator responsibility and mandate of the Regulator which includes those functions that the Inspectorate undertake. The CEO regulates the operations of the licensed Operators.  Refer to the comments under section 54:  1. the appeal process to the CEO, especially in respect of the Inspectorate conduct”. The conduct of appeal by the CEO is not desirable. If however, it is intended to ensure speed / expediency of decision making, the decision must be based on a panel of “experts” which includes the head of legal of the Regulator and the Head of the function within the Regulator who oversees the issue which is subject of the appeal. | Out of scope.  Disagree. The CEO will decide who will advise him or her. |
|  | **1** | Definition of railway  Line 52  Commentary/ Input  Remove second reference to ‘rolling stock’ | Comment noted and accepted. |
|  | **1, 34 68 and 69 (9)** | Safety critical grade  New definition and licensing requirements  Commentary/ Input  The licensing of safety critical grades creates an unnecessary duplication as the safety critical grades are regulated as part of the [currently the SANS 3000-1] standard, which when prescribed will form part of the Act. These sections are thus autologous and will lead to unnecessary over-regulations. In addition, the service providers accreditation, if there is a need for the same must be accredited by South African Qualification Authority. For the Regulator to regulate them and in addition license the employees of the operators will lead to conflict of interest.  The definition is limited in scope i.e. to those positions “ … responsible for the authorisation and control of the movement of rolling stock”  All persons performing safety critical grades will be required to be licensed. No person may perform work in a safety critical grade position, unless such person is in possession of a relevant safety critical grade licence granted by the Regulator.  Although is it clear that licensing is required, it is unclear whether section 34(2) proposes a dual licensing arrangement i.e. that training institution may issue such licensed and the final register therefore is kept by the Regulator or that the license can only be issued by the Regulator, especially if one reads section 34(1)and 34(2) together. Section 34(2) provides that –  o “ No person may— (a) perform work in a safety critical grade position, unless such person is in possession of a relevant safety critical grade licence granted by the Regulator”  Underlined for emphasis. For additional input, refer to commentary in respect of section 7 and 35 below  Training institution  It appears to apply to in-house training facilities as well. Section 35(6).  All training institution, especially for safety critical grade roles [including for refresher courses] will now be regulated by the Regulator and therefore such institutions, their curricula and training will be subject to evaluation and registration by the Regulator. The registration is renewable every 5 years.  We suggest that a transitional period be provided for the current training institution. There are no transitional arrangements for current training institutions which may be providing the training including inhouse training facilities and refresher courses, as they will be required to immediately register with the Regulator upon the Bill been passed into law, subject to the policy to be issued by the Board as envisaged in section 35(2) of the Bill and the regulations contemplated under section 68(1) of the Bill.  The licensing requirements will become applicable as per Regulations but the licensing will take effect 2 years after the promulgation of the Bill into law. “The Minister must, not later than the date of commencement of section 34, by  notice in the Gazette, publish a timetable in respect of persons already appointed to, or performing work in, a safety critical grade position at the time of commencement of that section, specifying the date by which such persons must comply with that section, but such a timetable may not extend beyond two years of the commencement of that section” | There is no duplication. |
|  | **3 and 6 read with 30** | “Safe Railway Operation” and “Railway Safety”, “Safe Railway”; “ Safe Railway and Railway Operations”  Aims of the Bill  Commentary / Input  The legislation is intended to regulate safe railway operation and “railway safety”  ▪ The term “safe railway operations” is a defined term. The use of the phrases “railway safety” or safe railway” are however undefined. It is not clear if they are to be utilised interchangeably.  ▪ The reading of section 3 and 6, seems to indicate that that the term “safe railway and safe railway operations” is utilised in respect of licensed operations [i.e. as licensed undertakings under section 30 for which a permit is required] and hence operators [i.e. within the “operating tunnel” and the generic terms are merely referenced to the other work of the Regulator. Section 6(1) incorporates both Safe Railway and Railway Operations, as the aims of the Regulator.  ▪ The term “Railway Safety” as a licensed undertaking, must be defined. This clarity is required so that the licensed operations are not unnecessarily burdened on account of the lack of clarity. Under section 30(4) of the Bill, dealing with Safety Permit application, it serves as the basis for request of additional information that the Regulator may require from a prospective applicant. As a result it is critical to clarify what this phrase engenders. | Disagree. |
|  | **1** | Definition of safety management system  Line 16  Commentary/ Input  Replace the phrase “risk assessment” with “safety risk assessment” and replace it wherever it appears including on page 19, line 33 | Comment noted and accepted. |
|  | **1** | Definition of “station operator”  Correction in the definition as reference is made to a ”network” operator  Commentary/ Input  It appears that there is a typographical mistake as at the end of that definition, reference is made to “network” operator. It seems that is should be to a “..station..” operator | Comment noted and accepted |
|  | **4** | Exemption  This is new addition.  The requirements for an exemption under the Act / regulation / standard [once promulgated]  Commentary/Input  The requirements and the formal process and procedure for the Exemption are spelt out.  ▪ The Exemption is intended to last for a maximum of 36 months/3years. | Agree. |
|  | **20** | Delegation of Powers by the Board  Limited authority to delegate  Commentary/ Input  PRASA submits that the board should, at least, not be empowered to delegate the power [other than to a committee of the board] to decide the matters contemplated under sections 14, 35(2) and 37 of the Bill | Will consider the limitations of delegation |
|  | **23** | Role of the CEO  Role as the Regulator  Commentary/ Input  The CEO appoints the inspectorate.  ▪ The appointed person reports to the CEO, at his/her “back and call”. This is strengthened by the functions of the CEO under section 23 including to “ensure that the functions of the Regulator in terms of this Act are performed”. This function is expressed under section 6 of the Bill as including “ The objects of the Regulator are to—  (a) promote, regulate and report on safe railway and railway operations through  the appropriate and timely application of support, monitoring and enforcement  instruments provided for in this Act”. These functions are undertaken by the Inspectorate appointed by the CEO.  ▪ Therefore the CEO does not only render administrative capacity but drives the key Regulator responsibility and mandate of the Regulator which includes those functions that the Inspectorate undertake. As a result, the CEO regulates the operations of the licensed Operators thorough the inspectorate. This includes receiving the reports from the Inspectorates | Comment noted, CEO functions are specifically defined and the Regulator is also defined in chapter 2. |
|  | **27, read with 66 and 67** | Funding of the Regulator  Cost coverage based and transparent charging  Commentary / Input  It is submitted that holders of safety permits should pay annual fees that are to be calculated so as to (collectively) cover the Regulator’s budgeted costs for regulating holders of safety permits for the coming year. If it is also necessary for the Regulator specifically to charge the relevant safety permit holder for particular functions, these functions should be specified in the Bill or the related Regulations If there are any shortfalls as between the annual amounts charged to permit holders and the Regulator’s actual costs, this should either be recovered through parliamentary appropriation or through a suitable adjustment to the annual fees payable in the following year | In developing the fee model, the RSR consult the operators to solicit inputs and the process is transparent.  The issue of safety permit fee model is determined by the Minister with inputs from the RSR. Operators are given opportunity to comment to the published gazette. |
|  | **30(5)(b)** | Safety Permit Application  Extension of the period  Commentary/ Input  Section 30(5)(b) should clarify and distinguish the positions in the event where the Regulator has not approved an application for a safety permit within the 30 days. The desirable position is that:  ▪ (1) such period for consideration of an application should be extended by operation of law to a defined and stated period, failing which the Regulator should be obligated to pronounce on the application or be deemed to have made a stated pronouncement;  ▪ (2) for the current operator, the position should be that for such period the current safety permit automatically continues until such a period of the extension. Otherwise, it would lead to the undesirable position where it impels the current operator to institute urgent court process to keep the safety permit “alive” as it were | See earlier discussion in page 28 and 29. |
|  | **32 read with 35(5)** | Conditions to Permit  Cancellation of Special Conditions upon fulfilment thereof  Commentary/ Input  Section 32 should be amended to delete section 32(1) and (2) and the Bill should insert a provision that will enable / allow an Operator to request the cancellation of a special/specific condition/s during the life of a safety permit, considering that a 3 – 5-year safety permit cycle is considered. Therefore section 35(5) should provide for cancellation of a special conditions | See earlier discussion in page 30. |
|  | **33** | Suspension of Safety Permit  Suspension due to failure to pay the fee or levy  Suspension of railway operation due to suspension of a permit.  Section 8 provides that:  (8) The holder of a safety permit which has been suspended, either by the Regulator or by operation of the law, may not conduct or undertake any railway or railway operation or a component of a railway or railway operation or any action in relation to a railway or railway operation permitted under that safety permit until the suspension has been withdrawn  Commentary/ Input  The suspension / revocation of duly issued safety permits should be orders of the last resort as they have the effect of stopping the business of an operator, many of which are legislative mandates.  ▪ Section 33(6) is undesirable. A properly issued safety permit cannot be suspended for reasons unrelated to safety concerns.  ▪ We believe that section 33(6) and its operation should at least be subject to the process stated in section 33(4) of the Bill.  It is undesirable that the suspension of a Safety Permit should affect any routine maintenance work. Therefore this subsection (8) should be deleted | See earlier discussion in page 29. |
|  | **34** | Safety Critical Grade Framework  Licensing of persons performing safety critical grades  Commentary/ Input  Although is it clear that licensing is required, it is unclear whether section 34(2) proposes a dual licensing arrangement i.e. that training institution may issue such licensed and the final register therefore is kept by the Regulator or that the license can only be issued by the Regulator, especially if one reads section 34(1)and 34(2) together. Section 34(2) provides that –  o “ No person may— (a) perform work in a safety critical grade position, unless such person is in possession of a relevant safety critical grade **licence granted** by the Regulator”  ▪ Clause 33.4 of the Explanatory Memorandum indicates that the role of the Regulator is to oversee the implementation of the framework and maintenance of the data base for safety critical grades. | See earlier discussion page 32. |
|  | **35 read with 7** | Registering of Training Institution  Oversight over / licensing of safety critical grade and Authority to develop rules for registration of training institution  Commentary/ Input  The function of the Regulator includes , “evaluating and registering appropriate training institutions, as contemplated in section 35, in order to monitor the licensing of persons employed in safety critical grades”  ▪ The Bill reflects the same monitoring responsibility under 35.  ▪ Authority to develop rules for registration of training institution  ▪ The Bill should clarify whether the Board or the Minister has authority or the overlap of the respective authorities in as far as setting the criteria for the registration of training institutions. At section 35(2), the board is impelled to develop such policy as follows: The board must, subject to the National Qualifications Framework Act, 2008, and the Skills Development Act, 1998, determine a policy for the registration of training institutions, taking into account all relevant factors.. “. Yet at section 68(1) it appears that this will be encapsulated in a regulation to be issued by the Minister and hence a ministerial prerogative. | See earlier discussion in page 10. |
|  | **36** | Safety Standards  The Minister to issue or prescribe the railway safety standards  Commentary / Input  In the Current Act, the Board was entitled to issue the standards but in accordance with the procedure issued by the Minister.  ▪ The Regulator or an Operator may propose a standard.  ▪ The SABS [SANS] may still issue industry standards, but these are subservient to those issued per Regulations, in the event of any clashes | Agree. |
|  | **37** | Safety Management System  The SMS determination for railway safety and the SMS Report to become a Board prerogative  Commentary/ Input  The change is welcome so that there is a distinction between the Regulator and the policy owner.  ▪ The SMS is defined as:  “ a formal framework contemplated in section 37, which integrates safety into day-to-day railway operations and includes consultation, safety goals and performance targets, risk assessment, responsibilities and authorities, rules and procedures, and monitoring and evaluation processes”  ▪ NB. The Board of the Regulator will have the authority over the Safety Management System i.e. to determine the form and content, for SMS; and the form, content and manner of submission of the safety management system Report | Comment noted. |
|  | **38** | Consultative Forum  Create a formal structure  Subsection(8), page 23 line 16: Reporting by the Permanent Secretary to the Board  Commentary/ Input  Although we welcome the institutionalisation of a Consultative Forum, the genesis thereof, its work and character should be defined.  ▪ The growth of railway regulation developed within an era of consultation and the daily operations of Operators including the Safety Management System; security is underpinned by cooperative engagement including interface agreements.  ▪ The national standards is a product of consultation.  ▪ We therefore believe that it is desirable and imperative for a formalised consultative process that will include measures to bolster cooperation on security, for dispute resolution related to interface / interoperations/ the developing of the standards. This agenda is aligned with the object of the Regulator i.e. to:   * promote railway safety ; * encourage the collaboration and participation of interested and affected parties in improving railway safety ; * (d) promote the harmonisation of the railway safety regime of the Republic with the objectives and requirements for safe railway operations of the SADC; * (e) prevent the proliferation of laws, policies and approaches to the execution of such laws and policies from materially prejudicing the beneficiaries of railway   safety”  Underlined for emphasis. Refer to section 3.  ▪ We believe that this will not limit or compromise the authority of the Regulator or any of the proposed instruments of regulation in the Bill.  ▪ We suggest that the reporting be Quarterly and not annually, as the activities of the Consultative Forum should be ongoing | clause 38 addresses this requirement. |
|  | **40** | Protection of Information  Disclosure under the Promotion of Access to  Information Act and the Protection of Personal Information Act  Commentary/ Input  We believe that any matter that relates to an operator under the Promotion of Access to Information Act and the Protection of Personal Information Act should be within the remit of an Operator.  ▪ In fact any matter under POPI Act disclosed by an Operator to the Regulator should be kept and maintained confidential. Otherwise it exposes an Operator, who is a Responsible Person, to liability. We believe that it is undesirable for the Regulator to deal with matters that are within the remit of an Operator in the manner expressed in section 40(1)(e) and therefore this aforementioned subsection should be deleted | RSR has undertaken to comply with POPIA and provisions is contained in clause 40 of the Bill. |
|  | **43(3) read with 57(1)** | Routine Compliance  Interference with investigations – section 43(4) of the Bill  Commentary/ Input  Section 43(4) of the Bill create a new offence for a person to wilfully remove an item that an Inspector has issued a notice prohibiting its removal. The offence visited with 15 years or fine or both | Clause 43 (3) and 43 (4) relates to inspectors routine compliance inspection. Appeal is provided for in the Bill. |
|  | **49 read with 57(2)** | Reporting of Occurrences  New Criminal offence for failure to report an incident/occurrence on time  Commentary/ Input  Section 49(2) creates a new offence for failure to timeously report an occurrence. The effect thereof is 5 years or fine or both.  ▪ Although we recognise the criticality of the information, it is undesirable to create strict liability offence unless there is a demonstrable intention to frustrate compliance with the law. The mere failure should not give rise to such offence and the indicated sanction is too ghastly / harsh to fit the charge.  ▪ Therefore the caveat must be that there must be an intention not to report | Comment accepted. Negligence as required standard is recommended.  “An operator who negligently fails to report ...” |
|  | **54** | Appeals to the CEO  Appeals of decision by the Regulator / Inspectorate  Commentary/ Input  In light of the role of the CEO as the Regulator and immediate supervisor of the Inspectorate, it is not desirable for the CEO to hear appeals from the Inspectorate as there is an apparent conflict of interest, . The decision of the Inspectorate is that of the Regulator which is the key function of the CEO. By law the CEO is “functus officio” and the repository of that role and therefore the appeal is essentially a review of his/her “own decision”.  ▪ The conduct of appeal by the CEO is not desirable. If however, it is intended to ensure speedy resolution /expediency of decision making, the decision must be based on a panel of “experts” which includes the head of legal of the Regulator and the Head of the function / division within the Regulator who oversees the issue which is subject of the appeal. To ensure fairness and transparency, such [Regulator] internal panel should not have been party to that decision which is the subject of an appeal to ensure appropriate “Chinese wall”, as it were | Agree. Already provided for in clause 19(3) and (4)  Disagreed. Speedy resolution is required. CEO has discretion who advises him or her prior to independently applying his or her mind to the appeal. |
|  | **55** | Board Appeal  Members of the Board Appeal  Commentary/ Input  As this is a Board process, it is undesirable that an employee of the Regulator should be a member of the board appeal panel, considering that the subject of the appeal is a decision by the employee supervisor. There is an apparent conflict of interest.  ▪ Therefore at section 55(6) reference to “.. or employee of the Regulator ..” should be deleted.  ▪ We suggest that board appeal panel should be chaired by a legal practitioner. | Conflict of interest – see clause 19(3) and (4). Board independently appoints its own board appeals committee.  The board may, for purposes of this section, appoint a standing board appeals committee chaired by a member of the board, together with two persons who are **not** members of the board or employees of the Regulator, |
|  | 56 | Appeal to the Transport Appeal Tribunal  Jurisdiction of the Tribunal  Commentary/ Input  The Tribunal is authorised to deal with appeals from National Land Transport Act, 2009, and under the Cross-Border Road Transport Act, 1998.  ▪ Although the Explanatory Memorandum indicates that the enabling legislation is being amended by Transport Appeal Tribunal Amendment Bill [B8–2020], presumably to cater for matters emanating from the current Act and/or the Bill, it appears that until then, the Tribunal may lack the required jurisdiction. | Commencement of Bill (if adopted by Parliament) to be the same date. |
|  | **58** | Vicarious Liability for criminal conduct  Commentary / Input  The offences created under this Bill requires “wilful” intent on the part of the accused. With regards to section 49(2), please refer to our comments in respect of this section of the Bill, where we have suggested that no conduct by an operator or its employees should attract criminal liability merely for failure to conduct itself/ or through its employees in a manner that draws non-compliance.  It is not competent for a liability for criminal conduct, or at least the offences created in this Bill, to be attributable to a person on principal -agency or vicarious liability.  ▪ We therefore believe that section 58 of the Bill should be deleted. | See earlier discussion in page 37. |
|  | **59** | Director’s Liability  Criminal liability for to take all steps that were reasonable under the circumstances to prevent the commission of the of the commission by that juristic person of an offence in terms of this Act  Commentary/ Input  Directors are expected to take reasonable steps to prevent the commission of offences under the Bill. Directors act in concert as a board, unless a director has delegated authority. The Bill should clarify under what circumstances will a director be held individually liable. No director has authority to act individually unless specifically authorised by a board.  ▪ Section 59 provides that a director, trustee or member of a juristic person at the time of the commission by that juristic person of an offence in terms of this Act, is guilty of that offence, and is liable, on conviction, to the penalty specified in respect of that offence, if that offence resulted from the **failure of the director, trustee or member to take all steps that were reasonable under the circumstances to prevent the commission of the of the commission by that juristic person of an offence in terms of this Act**, is guilty of that offence, and is liable, on conviction, to the penalty specified in respect of that offence, if that offence resulted from the failure of the director, trustee or member to take **all steps that were reasonable** under the circumstances to prevent the commission of the offence. Board commonly delegate operational responsibility to management and, as per the Corporate Governance Principles applicable / accepted in South Africa i.e. King IV, boards are expected to provide strategic direction and oversight and to exercise a duty to exercise care and skill in the performance of their activities. The essence of which is predicated on the delegatee acting within the bounds of delegation and propriety. In that light, the Bill should reflect on the extent to which a director is expected to take [what appears to be active] preventative steps. This is distinguishable from the expectation that a director should exercise the duty of care.  In addition, the Bill should make clear what is required i.e. if there is a enumerative list of actions that are expected. The phrase “..all steps..” may raise difficulty of interpretation. It is undesirable to make an quantitative requirement on a matter that is intended to be qualitative.  ▪ We submit that the word “..all..” should be deleted | See earlier discussion in page 36. |
|  | **60** | Compensation and Damages  Claim for compensation or damages arising from criminal conduct  Commentary/ Input  This section proposes a legislative compensation and damages for loss/harm/damage to property and/or to the environment.  ▪ The Bill should consider a general compensation scheme similar to the Road Accident Fund for compensation | Do not agree to the model and its relevance. This a policy issue. |
|  | **67** | Regulations for Compliance Notices and Penalties  Differential imposition and application of penalties  Commentary/ Input  Section 67(2) states that a Regulation contemplated under this section 67 may allow for differential penalty regime for various operators.  ▪ The Bill should make clear and indicate the grounds for such differential treatment and place the authority to determine this differential treatment. | Committee guidance.  Differentiation be in the regulations. |
| **WESTERN CAPE GOVERNMENT (MINISTRY OF TRANSPORT AND PUBLIC WORKS)** | **Clause of the Bill** | **Comment** | **DOT Response/Action** |
|  | **General** | ***The Bill in its current form is not supported***, for the reasons set out in this document.  Suggestion/ Recommendation  Revise the Bill as set out herein. |  |
|  | **Socio-Economic Impact Assessment (SEIA)** | It is unclear whether a SEIA has been conducted.  International best practice necessitates that there should be seamless integration in the rail environment of the safety and security arrangements of the property owner (fixed property and rolling stock), operator and law enforcement agencies. In the Western Cap, particularly Cape Town, has seen the destruction of its railway transport infrastructure.  The opposite of international best practice, therefore, became a reality in the Western Cape and the rest of South Africa, and during the Covid-19 lockdown the destruction of railway infrastructure intensified. Vandalism of the rail system has resulted in the loss of trainsets, which affects poor communities that rely on safe and effective rail transport services.  As the Passenger Rail Association of South Africa (PRASA) cancelled all contracts by 2019, inclusive of all security contracts, it resulted in a severe security void and by 2020 (Alfred, 2020), due to a severe escalation in crime on the 34 lines, the cost escalated more than three times to R1,4 billion for central line damages and after the widespread looting of PRASA assets since April 2020, the cost again doubled from 2020 to 2021 (Hlati,2021) to a level of R2,8 billion. Taking into consideration the intensification of damages in the period of especially 2020 to 2021, the R4 billion overall cost of damages suffered by PRASA in all of the four provinces where Metrorail is functioning.  The Western Cape Government (WCG), in partnership (Francke, 2020) with the City of Cape Town and PRASA, established the Rail Enforcement Unit to improve security on the rail network, focusing on both public transport asset protection and commuter security. This initiative was not continued at the time of the cancellation of all contracts, due to PRASA not continuing with the partnership, even after 67% of the cost was carried by WCG and the City of Cape Town.  Furthermore, (SARP, 1984) by 1977, the South African Railway Police Reservist group reached a total of 2,800 members by 1977; recruited from the ranks of railway workers. This highly important law enforcement capacity was severely neglected by the SAPS and by, more or less 1990, none of these reservists were available as force multipliers to the small number of SAPS appointed police officials for urban commuter rail policing duties.  The effect of crime on urban commuter rail and rail in general intensified during Covid-19 lockdown and widespread (Ash, Nombembe and Singh, 2021) looting resulted in 27 of the 34 railway lines in four provinces where Metrorail operate being in a dysfunctional state by June 2021.  By 2019 the insurance cover (Mantshasha, 2019) for the Cape Town central line was withdrawn due to crime and by 2020/21, the insurance cover of the 26 lines followed.  The national Department of Transport is facilitating the massive investment of R172 billion investment in rolling stock and other assets in urban commuter rail environment without insurance cover for 27 of the 34 lines, which is a recipe for disaster. A comprehensive and integrated safety and security strategy in dealing with crime in the rail environment is currently severely lacking.  Over a period exceeding 65 years of 1930 to 1998, the popularity of the South African urban commuter rail system increased substantially and the 104 plus million journeys recorded by 1939 (SAR 1947:102), reached its highest level of 765 million journeys per annum in 1998 which is more than seven fold than that of 1939. The extreme lowering (Mitchell, 2021) in the number of commuter journeys of 125 million, as recorded for 2019/20, with a further decrease to possibly below 100 million journeys for 2020/21, is less than what was recorded in 1939 in an apple versus apple comparison, as in 1939 the journeys via Metrorail was called suburban journeys. The attack (Toyana, 2021) on railway infrastructure is also becoming increasingly organised and stations are targeted by armed groups of 20-30 criminals, confirming the organised nature of the crime on the SA rail network.  The wider impact of the theft of assets such as cables and vandalism (Larkin, 2021) for state owned enterprises such as PRASA, Transnet, Telkom, Eskom and private entities, inclusive of cell phone operators such as Vodacom and MTN was, by 2021, measured to be at R7 billion a year. The negative knock-on effect for the economy as a result of these direct losses was calculated to be R187 billion per year, which is equal to nearly 27 times that of the direct losses to the economy.  Suggestion/ Recommendation  Given the far-reaching implications of this Bill, it is recommended that a SEIA be conducted. If a SEIA has been conducted, a copy of same is requested. | Comments noted. The Bill has undergone the SEIAS process aligned with approved guidelines. |
|  | **Need for a new Bill / Act** **compared to amending National Railway Safety Regulator Act** | It is unclear why a new Bill was prepared, instead of preparing an Amendment Bill that amends the National Railway Safety Regulator Act, 2002 (Act 16 0f 2002).  The Bill does not create a new regulatory entity i.e. the Railway Safety Regulator (the Regulator) continues to exist, and it retains many of the existing provisions of the National Railway Safety Regulator Act, with amendments thereto. While it introduces some new concepts and provisions, these could easily fit within the scheme of the National Railway Safety Regulator Act.  Suggestion/ Recommendation  Consider whether it would not be prudent to amend the National Railway Safety Regulator Act instead of providing for a new Bill/ Act that essentially deals with the same subject matter as the National Railway Safety Regulator Act, 2002. | A new Bill was a neater way of incorporating the many revisions that were introduced herein. |
|  | **Crime in the rail environment: roles and responsibilities of stakeholders / revision of Bill** | Section 205 (3) of the Constitution of the Republic of South Africa (the Constitution) states that the “objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law”.  The Bill does not provide for the roles and responsibilities of the SAPS, relevant metropolitan police services or municipal law enforcement structures, PRASA (as owners of fixed assets and rolling stock), Metrorail (as operator of commuter rail services in certain metropolitan areas of South Africa), and Transnet (as main operator of freight services and long-distance rail commuter services), in dealing with all acts of crime in rail environment, including the normal police functions of crime prevention / visible policing, crime intelligence and crime investigation.  The Bill is limited in its scope to mainly the safety provisions from a rail transport engineering perspective and, in the process, little, if any, provisions are contained in the Bill to deal with the important issue of crime and crime prevention in the rail environment.  Suggestion / Recommendation  It is proposed that the Bill be revised to place specific emphasis on a more comprehensive explanation / clear description of the primary and secondary roles and responsibilities of the key stakeholders in dealing with all safety and security arrangements (including dealing with criminal activity) in the rail environment, especially those of the Police Service (SAPS) and a railway police reservist component should be integral to these arrangements.  There need to be seamless crime intelligence, visible policing and crime investigation functions in the rail environment, in accordance with the responsibilities transferred to the SAPS in terms of applicable legislation.  Railway safety legislation for South Africa (including the Bill) should be compiled in line with a methodology whereby a more comprehensive approach is followed in dealing with railway safety to include all aspects of safety as per the mandate of:  1. rail transport engineering; and  2. crime in the rail environment.  By following the more comprehensive approach, a railway safety strategy is compiled in line with the provisions of railway safety legislation where specific emphasis will be placed on dealing with the following main themes:   1. information systems; 2. education; and 3. regulation.   The Bill should make provision for services targeted at crime affecting rail services, for example, through the appointment of Rail Enforcement Officers. | The comments are noted but the issues dealt with in other legislations that created other organs of state. |
|  | **Proposed formal agreement** | Suggestion / Recommendation  It is proposed that a formal agreement be reached between relevant national heads of Transnet / PRASA, SAPS and Metrorail.  This formal agreement needs to be transparent, in ensuring that there is a common understanding of the safety and security roles and responsibilities of the owners of rail property (fixed and rolling stock), the operator, as well as law enforcement agencies with specific reference to the legislation on the integration of the South African Railways Police Force into the SAPS of 1986. Please refer to the list of sources provided earlier I this document for details of the legislation. It is noted that the SAPS do not refer to same in their annual reporting documents. | Outside the scope of the Bill. |
|  | **Security requirements** | Suggestion / Recommendation  It is recommended that the Bill be revised to provide for security requirements to be met by the owner (of fixed property and rolling stock), operator and law enforcement agencies, with specific emphasis placed on the SAPS. More details are provided below. | The recommendation is noted, but it is outside the scope of this Bill. |
|  | **Provisions relating to persons with disabilities:**  **Definition of “persons with disabilities”, and clauses 31 (2) (i) (i) and 62 (1) (e)** | From a historical perspective, South African urban commuter rail infrastructure and rolling stock were not upgraded to be accessible for persons with disabilities and catered especially for the transport of the urban masses with reference to the working class.  The Bill creates the impression or perception that Metrorail, as the operator of commuter rail service in South Africa, can be held primarily responsible for the execution of safety and security arrangements of commuters, inclusive of commuters with special needs, which include persons with disabilities.  The redevelopment of station infrastructure and rolling stock to be user friendly for persons with disabilities translates into a high cost and this cost needs to be shouldered by the property owner and not the operator of rolling stock, by following the cost benefit analysis approach as prescribed by the Public Finance Management Act, 1999 (Act 1 of 1999) (the PFMA). Please refer to the discussion on the preamble to the Bill, which also deals with the cost benefit analysis.  This impression/ perception is not correct. The Bill does not specify the primary responsibility of the SAPS in terms of the safety of commuters on trains and stations and the primary responsibility of Transnet and PRASA as owners of property in the rail environment (fixed and rolling stock) to safeguard commuters and their associated secondary responsibilities in terms of the safety of commuters.  Substantial funding that was made available since approximately 2008 became the target of state capture in both Transnet and PRASA, as highlighted in the Zondo Commission. This forced government to withdraw funding that were either utilised in a corrupt manner (irregular and fruitless expenditure categories) and funding not utilised as per an agreed timeframe, to be withdrawn and re-allocated by the Minister of Finance.  Suggestion / Recommendation  It is recommended that the Bill be amended to provide for a more comprehensive explanation / description of primary and secondary responsibilities of key stakeholders (property owners, operator and law enforcement agencies) in dealing with all safety and security arrangements (inclusive of dealing with all aspects of criminal activity) in the rail environment, including arrangements of persons with special needs. | The recommendation is noted, but it is outside the scope of this Bill. |
|  | **Risk assessments** | The Bill creates the impression that the rail operator can be primarily held responsible for the safety of rail commuters.  Thus, it appears that the operator would need to do a risk assessment to determine the level of crime of crime and other risks for commuters in the rail environment.  This is not correct, as the SAPS and PRASA / Transnet has a primary role to play in developing the risk assessment in line with their primary / secondary mandates.  Metrorail, as the operator, needs to add, where applicable, to the risk assessment in line with its duties as operator in ensuring seamless integration of safety and security of all commuters.  Suggestion / Recommendation  It is recommended that the Bill be amended to provide for a more comprehensive explanation / description for primary and secondary responsibilities of key stakeholders (property owners, operator and law enforcement agencies) in dealing with all safety and security arrangements (inclusive of dealing with all aspects of criminal activity) in the rail environment, including risk assessments. | Outside the scope of this Bill. |
|  | **Safety and security matters such as overcrowding** | The Bill creates the impression that the rail operator can be primarily held responsible for such matters as overcrowding on trains and stations.  The primary responsibility for providing sufficient station platform infrastructure and rolling stock rests in terms of commuter rail with PRASA and transport of freight, with Transnet. It is not reasonable to expect the operator of the rail service, who is not the owner of such a service, to prevent overcrowding on trains and stations.  The operator needs to provide the required personnel to ensure the productive utilisation of the required number of trainsets, which in the case of the Western Cape, is 88 full train sets.  PRASA was by 6 March 2020 only able to provide 34 (39% of the 88 full sets) train sets in the Western Cape and approximately 21 (25% of the 88 full sets) were by that time full train sets.  The reduced number of train sets and full train sets has also been the result of continuous arson attacks and the SAPS being unable to comply with their three-pronged mandate to deal with these arson attacks.  Suggestion / Recommendation  It is recommended that the Bill be amended to provide for a more comprehensive explanation / description of primary and secondary responsibilities of key stakeholders (property owners, operator and law enforcement agencies) in dealing with all safety and security arrangements (inclusive of dealing with all aspects of criminal activity) in the rail environment, including matters such as overcrowding. | The recommendation is noted, but it is outside the scope of this Bill. |
|  | **Safety and security matters such as lighting** | The Bill creates the impression that the rail operator can be primarily held responsible for matters such as the installation of lighting on all walkways, subways, platforms and shelters, and pedestrian bridges having adequate lighting, in order to enhance the safety of rail commuters.  This is not correct, as PRASA / Transnet has a primary role to play to provide proper lighting on station and other rail infrastructure. Where applicable, other owners of property, such as municipal property (subways are examples of municipal property), need to complement the installations by PRASA / Transnet.  Suggestion/ Recommendation  It is recommended that the Bill be amended to provide for a more comprehensive explanation / description of primary and secondary responsibilities of key stakeholders (property owners, operator and law enforcement agencies) in dealing with all safety and security arrangements (inclusive of dealing with all aspects of criminal activity) in the rail environment, including matters such as lighting. | The recommendation is noted, but it is outside the scope of this Bill. |
|  | **Safety and security matters such as communication capacity** | The Bill creates the impression that the rail operator can be primarily held responsible for matters such as the installation of communication infrastructure.  As there will be a high cost associated with the installation of such communication infrastructure, it is not reasonable to expect the operator to carry such a high initial capital cost. It is reasonable to expect that PRASA / Transnet carry such high cost, with the operator carrying the cost of operating the communication system.  Suggestion / Recommendation  It is recommended that the Bill be amended to provide for a more comprehensive explanation / description of primary and secondary responsibilities of key stakeholders (property owners, operator and law enforcement agencies) in dealing with all safety and security arrangements (inclusive of dealing with all aspects of criminal activity) in the rail environment, including matters such as communication capacity. | This is outside the scope of this Bill. |
|  | **Safety and security matters such as theft, malicious damage to property and other criminal acts that impact on safe railway operations.** | The Bill creates the impression that the rail operator can be primarily held responsible for matters such as theft, malicious damage to property and other criminal acts that impact on safe railway operations.  This is not correct. No attempt is made to specify the primarily responsibility of the SAPS in terms of the safety of commuters on trains and stations and the primary responsibility of Transnet and PRASA as owners of property in the rail environment (fixed and rolling stock) to safe guard such property.  Suggestion / Recommendation  It is recommended that the Bill be amended to provide for a more comprehensive explanation / description of primary and secondary responsibilities of key stakeholders (property owners, operator and law enforcement agencies) in dealing with all safety and security arrangements (inclusive of dealing with all aspects of criminal activity) in the rail environment, including matters such as theft, malicious damage to property and other criminal acts. | Outside the scope of this Bill. |
|  | **Safety and security matters such as deployment of security personnel** | The Bill creates the impression that the rail operator can be primarily held responsible for matters such as deployment of security personnel at strategic areas of the operators’ facilities, station precincts, on trains and railway network depots.  This is not correct. No attempt is made to specify the primary responsibility of the SAPS in terms of the safety of commuters on trains and stations and the primary responsibility of Transnet and PRASA as owners of property in the rail environment (fixed and rolling stock) to safeguard such property.  It is recommended that the Bill be amended to provide for a more comprehensive explanation / description of primary and secondary responsibilities of key stakeholders (property owners, operator and law enforcement agencies) in dealing with all safety and security arrangements (inclusive of dealing with all aspects of criminal activity) in the rail environment, including the deployment of personnel. | The recommendation is noted, but it is outside the scope of this Bill. |
|  | **Safety and security matters such as technology** | The Bill creates the impression or perception that Metrorail as the operator of commuter rail service in South Africa can be held primarily responsible for the execution of safety and security arrangements.  The impression / perception created is not correct, as substantial capital outlay is needed to install and contract technology for safeguarding of fixed assets such as stations / depots and rolling stock with a combined value of R373 billion (Transnet’s assets are valued at approximately R355 billion and PRASA’s are valued at approximately R18 billion).  The use of innovative means of ensuring security which includes electronic security systems and aids and, under this cost, items such as highly advanced CCTV, access control systems and drone technology can be applicable.  The majority of this cost should be carried by the owner of fixed property and rolling stock and not the operator.  The operator has a reasonable expectation that PRASA and Transnet as the property owners and the SAPS to adhere to minimum standards in the safeguarding of commuters and property (fixed and rolling stock) respectively.  The operator should adhere to the core business of operating the rail system and not be primarily tasked to provide a full safety and security function in the rail environment.  At best, the operator needs to complement the safety and security arrangements of the said key stakeholders in ensuring the safety of commuters and property in the rail environment.  As per procedural requirements under the PFMA, PRASA and Transnet as state-owned enterprises and owners of substantial combined property portfolios exceeding R373 billion, are expected to develop business cases where the process of cost / benefit analysis is followed to indicate the cost of investing high amounts of capital versus the benefit of projected positive economic impact of both freight rail and commuter rail transport.  It is recommended that the Bill be amended to provide for a more comprehensive explanation / description of primary and secondary responsibilities of key stakeholders (property owners, operator and law enforcement agencies) in dealing with all safety and security arrangements (inclusive of dealing with all aspects of criminal activity) in the rail environment, including matters such as technology. | The recommendation is noted, but it is outside the scope of this Bill. |
|  | **Minister of Transport’s conflict of interest** | The Bill does not address concerns around the Regulator and state-owned operators such as PRASA reporting to the Minister of Transport.  The current reporting structure might have an impact on the Minister’s ability to ensure that all operators comply with the new Act, while at the same time ensuring the provision of rail services provided by operators such as PRASA. There may be case in which the Minister faces difficulties in balancing these two needs.  Suggestion / Recommendation  It is recommended that the Bill be amended to elaborate on how the Minister is expected to manage situations in which his ability to make fair decisions or to enforce the provisions in the Bill/ Act is compromised by his oversight role over both the Regulator and operators such as PRASA. | The proposed Bill confers powers to the RSR staff to act independently in spite of the RSR being under the minister’s oversight.  The arrangements of Government and its Entities is the prerogative of the Executive. |
|  | **Discretionary powers are broad** | Many of the discretionary powers contained in the Bill are too broad (e.g. see clauses 4(3), 47 (1), 51 (9) and 52 (7). The Bill should contain clear guidelines in relation to the exercise of the powers.  The courts require that an empowering Act must provide safeguards against abuse and arbitrary application of the power conferred and must provide clear, adequate and substantive criteria for the exercise of the power. See Executive Council of the Province of Western Cape v Minister for Provincial Affairs and Constitutional Development and Another, Executive Council of Kwazulu-Natal v President of the Republic of South Africa and Others 2000 (1) SA 661, at paras 94 and 118.  The Legislature must, in terms of the case law, also provide guidance to the executive if it confers upon the executive discretionary powers which have the potential to limit constitutional rights. See Dawood and Another v Minister of Home Affairs and Others; Thomas and Another v Minister of Home Affairs and Others (CCT35/99) [2000] ZACC 8, at para 54.  Suggestion / Recommendation  It is recommended that the discretionary powers conferred in the Bill be reconsidered and that it is ensured that there is appropriate guidance for the exercise of the powers. | No need to go into more detail. |
|  | **Language and drafting errors** | The Bill contains various language and drafting errors.  Some of the errors are as follows (this is not a closed list):  1. The format of the preamble is incorrect. Further, it is unclear why the Bill has a preamble, given that preambles are typically used in legislation which are of constitutional or international importance, or of an historic nature; the Bill is not of this nature.  2. The chapter numbers should be in Roman numerals.  3. Definitions should not be of a substantive nature e.g. the definition of “board appeals committee” (please see the comment in this regard later in the document).  4. Certain terms are used in the definitions but not in the body of the Bill; e.g. the acronym “SANS”.  5. Many clauses contain broad or vague language e.g. the words “within a reasonable time” in clause 4 (4) and “good grounds” in clause 4 (9).  6. Plain language is not always used (e.g. the word “acumen” is used in clause 10 (1).  7. There are problems with punctuation i.e. incorrect punctuation marks are used, punctuation marks appear on the wrong place, or no punctuation marks are used when they should be used; e.g. a comma should be inserted in clause 4 (10) (c), after the word “suspension”.  Suggestion / Recommendation  To improve the text, it is recommended that the legislative drafter review the Bill using generally accepted commonwealth legislative drafting practices, as well as enlist the support of a language practitioner familiar with these practices. | The Bill (which in principle can always be improved) has been certified by the State Law Advisers as meeting all the necessary legal requirements.  The State Law Advisers’ Legislative Drafting Guide was used, not a foreign system. The SLA’s certified this text as meeting all requirements.  The Constitution’s chapter numbers are not Roman.  Agree. |
|  | **Preamble: Prime responsibility of railway operators** | The preamble refers to the “prime responsibility and accountability of railway operators in ensuring the safety of railway operations”.  The preamble does not specify the primary responsibility of the SAPS in terms of the safety of commuters on trains and stations and the primary responsibility of Transnet and PRASA as owners of property in the rail environment (fixed and rolling stock) to safeguard commuters and their associated secondary responsibilities in terms of the safety of commuters.  Suggestion / Recommendation  Please refer to the earlier comments on roles and responsibilities in the rail environment.  It is recommended that the preamble be aligned with said comments. | There is nothing wrong in the preamble referring to the “prime responsibility and accountability of railway operators in ensuring the safety of railway operations”.  The recommendation is noted, but it is outside the scope of this Bill. |
|  | **1** | Insert new definition ‘Republic’  The term ‘Republic’ is used throughout the Bill (e.g. clause 3 (d) and (f), however, it is not defined.  Suggestion / Recommendation  It is recommended that the term ‘Republic’ be defined in the Bill. | Comments noted and accepted. |
|  | **1** | ‘board of appeals committee’  Definitions should not contain substantive provisions; these should be set out in the body of the Bill.  It should be ensured that definitions in the Bill do not contain substantive provisions.  Suggestion / Recommendation  The definition of “board appeals committee” should say, for example, that the board appeals committee is a committee *contemplated* in section 55 (6). | Not a substantive provision – although “contemplated” is better |
|  | **1** | “aerial cable-operated transportation system”  The definition says an aerial cable-operated transportation system is operated on track, which is not accurate.  Suggestion / Recommendation  It is recommended that the definition be revised to state that a cable-operated transportation system operated on a cableway. | Comments noted and accepted. |
|  | **1** | “network operator”  Suggestion / Recommendation  Delete the word “ultimately”. | Agree. |
|  | **1** | “operator”  The definition of “operator” includes the term “concessionaire”, but this is not defined anywhere in the Bill.  Suggestion / Recommendation  It is recommended that the term “concessionaire” be defined, considering that not all readers would be familiar with the term. Also, different readers might interpret the term differently, making it important to provide a definition for the term in the Bill. | See “operator” proposal at the end of the matrix. |
|  | **1** | “persons with disabilities”  It is unclear why the definition should be limited to long-term impairments, as there may be persons with short-term impairments that also require assistance in the railway environment.  Suggestion / Recommendation  It is recommended that the term be extended to include persons with short-term impairments. | Not to be addressed in this Bill. |
|  | **1** | “station operator”  The definition incorrectly refers to “network operator” (i.e. please refer to the wording at the end of the definition). The reference should be to ‘station operator’.  Suggestion / Recommendation  Replace “network operator” with ‘station operator’. | Comments noted and accepted. |
|  | **1** | “technologies”  The definition of “technologies” is vague.  Suggestion / Recommendation  It is recommended that the definition be expanded to clarify what is intended. | Comments are noted. The definition is appropriate in places where it is used in the Bill. |
|  | **4 (4) and 4 (6)** | A specific time period should replace the reference to “reasonable time”, to ensure greater certainty in the provisions.  Suggestion / Recommendation  Insert a specific time frame, that may be extended by the Minister. | Comments are noted but not accepted. Regulations, Determinations and Guides provide further details for governing related activities. |
|  | **4 (5)** | It should be mandatory for the Minister to publish the application for public comment in the Government Gazette, and for the applicant to respond to comments received on the application.  Suggestion / Recommendation  Change the word ‘’May’’ to ‘Must’ (i.e. ‘the Minister must…’). | Can be published on the website.  The Minister to decide. |
|  | **4 (9)** | The phrase “good grounds’’ is vague and open to interpretation.  Suggestion / Recommendation  It is recommended that factors be set out in the Bill that will guide the discretion of the Minister.  This also applies to other similar provisions e.g. clause 21(1)(d). | Disagree. |
|  | **4 (10)** | Normally the word ‘withdraw’ and words derived from that word are used in respect of a Notice. The word ‘repeal’ and words derived from that word are not used.  Suggestion / Recommendation  It is recommended that the word ‘withdrawal ‘be used instead of ‘’repeal’’. A law is repealed, not a Notice. | Comments are noted and accepted.  Words such as cancel, replace, revoke, retract, reverse can be used. |
|  | **7** | The Bill in its current form does not place sufficient emphasis on the need for the Regulator to firstly be represented on provincial level, secondly that the operational capacity of freight trains and commuter trains should be focused upon and, thirdly, that in terms of commuter trains, a report be provided on a monthly basis of actual operational capacity.  Suggestion / Recommendation  It is recommended that the below principles be incorporated in clause 7(1)(a) i.e. it must be clear that the Regulator’s functions must be performed-   1. with due regard for where rail services are provided in South Africa; the Regulator should be expected to have operational capacity in all the provinces of the country; 2. with a specific focus placed on the unique operational challenges placed on the operators of commuter rail (urban and long distance) and freight rail respectively; 3. in the case of commuter rail as the intended backbone of the South African public transport system, a report should be provided on the actual specific rolling stock availability at monthly intervals specifying the number of full train sets and all variations thereof;   and   1. that the report as specified in point 3 above be provided by the Regulator to the Minister of Transport and the Members of the Executive Council responsible for transport on a monthly basis. | Comments are noted but not accepted. |
|  | **7 (1) (b)** | It is unclear why the words “if necessary” were inserted.  The Regulator should be required to provide the relevant information and advice from time to time.  Suggestion / Recommendation  Reconsider the use of the words ‘’if necessary’’. | Comments are noted but not accepted. |
|  | **9 (2)** | The words “as far as possible” suggest that the Regulator need not achieve its objectives.  Suggestion / Recommendation  Delete the words “as far as possible”. | Not correct. |
|  | **9 (4)** | The words “highest applicable standards of ethics and governance” is vague. It is important for board members to understand what the standard of ethics entails.  Suggestion / Recommendation  Elaborate on the applicable standards of ethics. | Comments are noted but not accepted. |
|  | **9 (5) (a) (i)** | The term ‘’railway environment ‘’ is generally used to refer to the operational conditions and not the business / industry sector as intended in this clause.  Suggestion / Recommendation  It is recommended that the term ‘’railway environment ‘’ be changed to ‘railway sector’. | The comments are noted but not accepted: The use of the phrase “environment” is consistent with the literal meaning. |
|  | **10 (1) (e)** | The use of the word ‘’and’’ means that a person must have competence in all of the fields listed in clause 10 (1)(e). This is inconsistent with the introductory words in clause 10(1).  The word ‘or’ should be used instead of “and”.  Suggestion / Recommendation  Replace the word “and” with ‘or’.  Further, the drafter could consider listing each field in a separate paragraph. | The comments are noted but not accepted: the use of “and” is only to conclude the list referred to. |
|  | **10 (2)** | It is noted that the Department of Public Enterprises is not included on the board of the Regulator, despite the department being a key stakeholder in the rail sector, considering its oversight in the rail sector, considering its oversight role over Transnet.  Suggestion / Recommendation  It is recommended that representation from the Department of Public Enterprises be included on the board of the Regulator. | Disagree. |
|  | **10 (4)** | The only executive member of the board is the CEO, which automatically makes the majority of the members non-executive.  Suggestion / Recommendation  It is recommended that this clause be deleted, as it appears to be redundant. | Disagree. Some of the civil society members could be appointed to executive positions. This subclause does not have any negative impacts. |
|  | **11 (1)** | In the phrase “person who have experience of’’, the word ‘in’ instead of ‘’of’’ is more appropriate.  Suggestion / Recommendation  Change the word “of” to ‘in’. | Agree. |
|  | **11 (3)** | The use of the word ‘’must’’ could potentially create the impression that the Minister is under an obligation to appoint all potential candidates for board membership. This is presumably not the intention.  Suggestion / Recommendation  Amend the clause so that it is clear that the Minister has a choice to appoint potential candidates or not and is not obligated to appoint them. | It is the intention that the Minister is obligated to appoint from nominated list. |
|  | **11 (4)** | It is unclear whether the intention is for the 30 days to apply to the appointment of individual board members, or all the board members.  Suggestion / Recommendation  It is recommended that the wording be revised to make it clear what the intention of the provision is. Please refer to the wording in clause 11(5), which is clearer. Similar wording could potentially be used in clause 11(4).  In order to reach a wider audience, it is recommended that the Notice be published in the Government Gazette as well. | It is the appointment of a board members. |
|  | **12 (1)** | It is unclear whether or not the intention is to state that the chairperson and deputy chairperson may only be chosen from the non-executive board members. If the intention is to state this, then the wording should be revised to clarify same.  Suggestion / Recommendation  Reconsider the wording and revise to clarify the intention. | Disagree. |
|  | **12 (4) (a)** | It is unclear what is intended by the term “vacant”, as this implies that the person is no longer in that position. In this regard, is the intention to refer to temporary incapacity or unavailability?  Suggestion / Recommendation  Reconsider the use of the word ‘’vacant’’ with regard to clause 12(4)(a). | The reference is to the positions being vacant, not to a person as the comment indicates. It means that no person has been appointed to the positions listed. |
|  | **12 (5)** | A notice period for the chairperson or deputy chairperson to vacate his or her office is not included.  Suggestion / Recommendation  It is recommended that a specific notice period be inserted for the chairperson or deputy chairperson wishing to vacate his or her office. | Not to specify. |
|  | **13 (1) (d)** | It appears that an executive board member is intended to refer to a member that is in the full-time employment of any organisation, which might be the reason why more than one executive board member is envisaged in clause 10.  This meaning of executive board member seems inaccurate. A board member should be an executive member if he/she is employed by the Regulator, not by any other organisation. All other board members are non- executive, even if they are employed full-time by other organisations.  Suggestion / Recommendation  Review the intended meaning of executive and non-executive board members and ensure that this is reflected throughout the Bill, where applicable. | Incorrect. The members in clause 10(2)(c) – (e) could be seconded to serve as executive board members. |
|  | **15 (f)** | It is unclear what would constitute an ‘’immediate family member’’.  Suggestion / Recommendation  Elaborate on the meaning of this term. A definition could be inserted in the clause with wording that could start with the following, or similar, words: ‘For the purposes of this section, “immediate family member means’’…’. | The comment is valid, but in providing a finite list, all other possibilities are excluded. The committee is requested to provide guidance as to who should be included. |
|  | **15 (g)** | Suggestion / Recommendation  The phrase ‘’disqualified to act’’ should be changed to ‘disqualified from acting’. | Agree. |
|  | **16 (3)** | Suggestion / Recommendation  It is recommended that the word ‘’that’’ (i.e. “that termination’’) be replaced with word ‘the’ (i.e. ‘the termination’). | Disagree. |
|  | **17 (2)** | Assigning responsibilities for determine the time and venue for board meetings to both the chairperson and deputy chairperson could cause confusion and duplication, considering that the deputy chairperson has the chairperson`s responsibilities only when acting in place of the chairperson.  Suggestion / Recommendation  Assign these responsibilities to the chairperson only. The deputy chairperson can play this role in the absence of the chairperson, because he/she is the default chairperson in such cases. | Suggested alternative text: “The chairperson or any three board members may, at any time, call a special meeting of the board, to be held at the time and place determined by the chairperson if that special meeting is called by the chairperson, or within 14 days at the board’s usual meeting place if the special meeting is called by three board members.”. |
|  | **18 (1) (b)** | It is unclear what is meant by “appropriate persons”.  Suggestion / Recommendation  It is recommended that the clause stipulates the particular criteria for skills or expertise that the persons must possess. | It means relevant people. |
|  | **21 (3) (a)** | It is unclear who may be appointed as an administrator.  Suggestion / Recommendation  It is recommended that the Bill be revised to clarify this issue. | Suggested alternative text: “(a) immediately appoint an appropriately skilled person who is not an employee of the Regulator to take over those functions of the board to do anything which the board might otherwise be empowered or required to do by or under this Act or any other applicable law, as enumerated by the Minister in that person’s appointment letter.”. Also (4). |
|  | **22 (2)** | It could be worth including board participation in the setting of terms and conditions of service for the CEO. Boards often have Remuneration Committees for that purpose. Such a committee could recommend the conditions to the Minister, based on its members’ knowledge of conditions for such positions, which would give the Minister a basis for initiating discussions with the Minister of Finance.  Suggestion / Recommendation  Consider amending the clause to provide for assigning responsibilities for determining the terms and conditions of service of the CEO to the board or its committee responsible for remuneration. | There is a general power to appoint a committee. |
|  | **22 (4)** | The phrase ‘’the due process of the law’’ is vague.  Suggestion / Recommendation  Delete the words “due process of the law’’ and stipulate the applicable procedure. | Disagree. |
|  | **23 (5) (a)** | It might not be necessary to restrict the acting CEO to an employee of the Regulator, in the event that there are situations in which no suitable candidate is found from the Regulator staff and an external person is required to act as the CEO.  Suggestion / Recommendation  It is recommended that the qualification that the acting CEO should be an employee of the Regulator be removed, as this will allow for flexibility to appoint external parties in certain cases. | Disagree. |
|  | **23 (8)** | The phrase “all strategic documents or policies” is vague.  Suggestion / Recommendation  It is recommended that details of the documents be stipulated, so that there is clarity on what must be prepared and submitted to the board. | Comments noted and not accepted. |
|  | **25** | No measures are in place in the Bill to hold the Regulator accountable for its action or omissions. The Regulator is absolved from any liability whereas the operator not adhering to the regulations is committing an offence. In the circumstances, accountability in the Bill appears to be one-sided.  Regulation comes at a cost to society; therefore, the Regulator should be held liable for its actions and add value to railway safety.  Suggestion / Recommendation  It is recommended that the Bill be amended to provide for accountability of the Regulator. | Disagree. |
|  | **30 (4) (d)** | The application should be published in various media in order to ensure that it reaches a wider audience.  Suggestion / Recommendation  It is recommended that the application be published in the Government Gazette, in two local newspapers, and any other media which the Regulator considers appropriate in the circumstances. | Comments noted but not accepted. |
|  | **30 (7)** | To the extent that the clause includes aspects set out in clause 30(5), then it is advisable to cross- refer to that clause (or the relevant subclauses), instead of repeating the contents thereof.  Suggestion / Recommendation  Consider whether it would be useful to cross-refer to clause 30(5) instead of repeating aspects thereof in this clause. | Agree to add cross reference. |
|  | **31 (3) (b)** | It is not clear why additional safety permit conditions must be unique to the person submitting the application. What will happen in the case of factors or conditions that affect two or more applicants and are, therefore not unique to an applicant, but have impacts such as increased safety risks on all the affected operations?  Suggestion / Recommendation  Reconsider this statement or revise it to improve its clarity. Special conditions could be applied to operators, regardless of whether these conditions are unique to an operator, provided they are likely to have negative impacts on any operator. In these cases, the conditions could apply to permits of all such operators. | Disagree.  The special conditions are over and above the general conditions, and will apply to the applicant, the RSR will also consider other affected parties. |
|  | **32 (1)** | It is unclear why both the board and the Regulator are mentioned, as it creates uncertainty as to who is required to be the initial decision maker.  It is important to know who the initial decision maker is so that the appropriate appeal authority / body can be identified.  Suggestion / Recommendation  It is recommended that the Bill be amended to specify whether the Regulator or the board will be the initial decision maker. | The board should not be included. Delete the word “board”. |
|  | **32 (4)** | It is unclear whether the initial decision is taken by the board or the Regulator.  It is important to know who the initial decision maker is so that the appropriate appeal authority/ body can be identified.  Suggestion / Recommendation  Reconsider clauses where the initial decision-making body has not been identified and elaborate where necessary.  Further, ensure that the appeal authorities/bodies are not conflicted or *functus officio*. | Delete the word “board”. |
|  | **32 (5)** | The clause mentions that section 33 should not be interpreted to prevent a safety permit holder from applying for an amendment to the conditions of the relevant safety permit, but there are no clauses that describe the process that permit holders should follow in applying for an amendment to safety permits.  Suggestion / Recommendation  Include clauses on the process that permit holders should follow in applying for amendments to safety permits or reference legislation that might address this matter. | Disagree.  The regulations, determinations and guidelines which are published by the Regulator provide the required clarity. Operational matters cannot be included into the Bill. |
|  | **33 (2)** | The circumstances in which a permit may be revoked or suspended are the same.  Thus, it is unclear when a permit should be revoked i.e. when the matter would be considered serious enough to warrant a permit being revoked, compared to when it should only be suspended. This should be clarified.  Suggestion / Recommendation  It is recommended that the clause be revised to provide clarity on this issue. | Comments noted but not accepted: The conditions may be different according to the specific safety related issues/threats which may not be pre-empted. Clause 33 (3) gives further guidance in this regard.  Discretion of RSR. |
|  | **33 (6)** | The words “by operation of law” are unnecessary.  Suggestion / Recommendation  Delete the words “by operation of law”. | Disagree. |
|  | **34 (2)** | Suggestion / Recommendation  It is recommended that the draft policy be published for public comment. | Should be 35(2). |
|  | **35**  **General** | Consider whether there are opportunities to use the Sector Education and Training Authority accreditation process for the registration of training institutions. Transport Education Training Authority already has rail-related training programmes that could be leveraged. This could save resources and reduce the Regulator’s workload. | Disagree. |
|  | **35 (2) (e)** | The purpose for the service providers mentioned in the clause and the services they will provide are not clear. Are these service providers the parties registered to provide the training services, or are they parties providing other services required by the institutions?  Suggestion / Recommendation  Amend the clause so that the purpose of the service providers, and the type of services they will provide, are clear. | Comments noted and will be considered. Consider inserting the word “training” before the word “services. |
|  | **36 (1)** | It is unclear whether the intention is for the railway safety standards to be contained in regulations, as the clause states that the Minister must prescribe same. The word “prescribed” is defined as “prescribed by **regulation**” (emphasis added).  Suggestion / Recommendation  Revise clause 36 so that it is clear what is intended.  The drafter could, perhaps, use alternative wording such as ‘issue’, as opposed to “prescribe” (i.e. the Minister may issue railway safety standards). | Disagree. |
|  | **36 (2) (a)** | The Bill does not explain what is meant by ‘railway environment’. This should be clarified.  Suggestion / Recommendation  It is recommended that the Bill be amended to clarify this term. | The comments are noted but not accepted: The use of the phrase “environment” is consistent with the literal meaning and the context where it is used. |
|  | **36 (3) (a)** | Explanatory memoranda normally accompany Draft Bills and Bills. They do not normally accompany subordinate legislation or instruments.  Further, if the intention is that the standards will be in the form of Regulations, then the Regulations must be published by the Minister and not the Regulator.  Suggestion / Recommendation  Delete the reference to the explanatory memorandum.  Further, if the intention is that the standards will be in the form of Regulations, then it is recommended that clause 35 be clarified to state that the Regulations must be published by Minister for public comment. | Might be helpful to provide background. |
|  | **36 (5)** | It is unclear what the difference is between a railway safety standard and a railway safety specification (if any).  Suggestion / Recommendation  Revise the clause to clarify the meanings of both terms. | Comments noted and will be considered. To remove the word “standard” before the word “specification”. |
|  | **37 (3)** | It may be prudent to publish determinations in the Government Gazette as well, in order to reach a wider audience.  Suggestion / Recommendation  Revise the clause in order to include publication in the Government Gazette. | Comments is noted and accepted. |
|  | **38 (1)** | The difference between a consultative forum and a regional consultative forum is not clear.  It is recommended that the Bill be amended to improve clarity on the difference between a consultative forum and a regional consultative forum. This will make it easier for readers to understand when the Regulator may establish these structures. | Comments are noted and will be considered.  Reference to be made only to consultative forum. |
|  | **38 (3)** | It is unclear what types of matters the forum may consider; the clause only refers to “any matter placed on the agenda by the Regulator”, which is vague.  Suggestion / Recommendation  It is recommended that detail be provided on the types of matters that the Regulator may refer to the forum for consideration. | Comments noted but not accepted. The suggestion will be very limiting and therefore not accepted.  It is consultative. |
|  | **38 (6)** | Subject to the comment on clause 38 (1) above, which forum (consultative forum or regional consultative forum) may, with the concurrence of the Regulator, establish forums at local level?  Suggestion / Recommendation  Specify whether the consultative forum, the regional consultative forum, or both may establish forums at local level. | Reference to be made only to consultative forum. |
|  | **41 (1)** | It is unclear whether the intention is also to provide for provincial officers.  Suggestion / Recommendation  It is recommended that this matter be clarified. | Outside the scope of the Bill. |
|  | **42 (2)** | It may be useful to have a general protocol, which can then be adapted into a specific protocol to be concluded with an operator.  Suggestion / Recommendation  Please consider including a provision to this effect. | Comment not accepted. It is over regulation. |
|  | **43 (1)** | The phrase “any premises of the railway safety permit holder other than a private residence” is very wide.  While it does not include private residences, it includes other premises “of” the railway safety permit holder. This could be interpreted as including other premises which do not relate to the railway safety permit or the railway safety environment.  The clause should clearly state that only regulated premises are contemplated in this clause and not any other premises.  Please refer to Gaertner and Others v Minister of Finance and Others (CCT 56/13) [2013] ZACC 38 and Estate Agency Affairs Board v Auction Alliance (Pty) LTD and Others [2014] ZACC 3 (Auction Alliance judgment) for principles relating to warrantless searches.  Suggestion / Recommendation  It is recommended that the clause be revised a set out in the column to the left.  Further, clause 43 should be reconsidered to ensure that there is consistency with applicable case law on warrantless searches. | Agree.  “of” could be changed to “owned or operated by”  The work of the inspector is only limited to railway operations. |
|  | **44**  **General** | Please refer to the above references to case law.  Suggestion / Recommendation  Clause 44 should be reconsidered to ensure that there is consistency with applicable case law on searches under the authority of a warrant. | Comments noted. |
|  | **44 (1)** | The clause refers to “…an offence is being or has been committed in terms of this Act”. it is assumed that reference is being made to an offence contemplated in the Act.  The use of the phrase “in terms [of] this Act” is not correct. An offence is not committed ‘in terms of’ an Act.  Suggestion / Recommendation  Reconsider the clause in light of the comments. | Agree. |
|  | **44 (9)** | This clause is broad and open to interpretation. It would be prudent to provide guidance to the police officer in order to ensure that constitutional rights are respected and protected.  Suggestion / Recommendation  It is recommended that the clause be revised in light of the comments. | Disagree. |
|  | **45 (1)** | Consider whether the binary classification (male/female) of gender could cause complications in cases where certain people do not identify as belonging to one of these classes.  Suggestion / Recommendation  It is recommended that the clause be revised to make provision for cases in which certain people may not identify as male or female. | Disagree. |
|  | **47 (1)** | It is unclear what is meant by “condition”.  Suggestion / Recommendation  It is recommended that the clause be revised to clarify what type of condition is envisaged.  The meaning of the term “activity” is unclear.  Suggestion / Recommendation  It is recommended that the clause be revised to provide clarity on the meaning of this term. Alternatively, a definition could be inserted in the Bill.  The term “reasonable” (i.e. “reasonable opportunity”) differs between circumstances. A minimum period, which can be extended, should be prescribed for greater clarity.  Suggestion / Recommendation  It is recommended that the term “reasonable opportunity” be replaced with a prescribed minimum number of days that can be extended by the railway safety inspector. | Comments are noted but not accepted, the words have literal meaning in the context. |
|  | **48 (2) (b)** | It is not clear what is meant by “infrastructure which has a direct or indirect bearing on the railway occurrence.” It is recommended that the wording be clarified, so that it is certain what is intended.  Referring to infrastructure that has an “indirect bearing on [a] railway occurrence” is very wide and open to interpretation and this could lead to unintended consequences. This phrase should be narrowed.  Suggestion / Recommendation  Revise the clause in line with the comments in the column to the left. | Disagree. It is a legal requirement not to tamper with the scene of the occurrence. |
|  | **51 (4)** | Inclusion of the word ‘may’ provide the investigator with a discretion on whether or not to submit interim reports to the Minister.  The Minister is not afforded the discretion to request interim reports from the investigator where the Minister deems it necessary, considering the circumstances of the railway occurrence. Provision should be made for such discretion.  Suggestion / Recommendation  It is recommended that the wording be revised to afford the Minister the discretion to request interim reports from the investigator, considering the circumstances of the railway occurrence. This should be in addition to the investigator being afforded the discretion to submit interim reports. | Disagree. |
|  | **51 (7) (a)** | In order to ensure that a wider audience is reached, the final report should be published in the Government Gazette.  Suggestion / Recommendation  It is recommended that the clause be aligned with the proposal in the column to the left. | Disagree. |
|  | **51 (7) (b)** | The need for the words “as far as may be practicable” is unclear. The Minister should give effect to the recommendations of the investigator.  Suggestion / Recommendation  Delete the words “as far as may be practicable”. | The investigator’s report are recommendations not binding directives, hence the usage of the phrase ‘as far as practically possible. |
|  | **51 (8) (c)** | This clause includes records or evidence relating “indirectly to the occurrence”. This is very wide and open to interpretation. The clause may thus have unintended consequences.  Suggestion / Recommendation  It is recommended that the scope of the clause be narrowed. | Disagree.  . |
|  | **52 (4)** | The words “must conduct an individual investigation” are confusing. While the intended meaning that the operators should conduct separate investigations, the phrase could be misinterpreted to mean that they should conduct one (combined) investigation.  Suggestion / Recommendation  Revise the wording to so that it is clear that the investigations are to be separate. | Agree.  To repeat sub (8). |
|  | **55**  **General** | In certain circumstances, it is unclear whether or not the intention is to refer to the board or the board appeals committee e.g. clause 55 (3).  Suggestion / Recommendation  Clause 55 should be reconsidered to ensure that the correct body is referred to. | Full board unless it is delegated. |
|  | **55 (3)** | This subsection does not make provision for instances of clause 54 (6) where the appeal was lodged directly with the board appeals committee. In such instances, there may not be any grounds of appeal, reasons for the decision of the CEO and the CEO’s reply to the grounds of appeal for the board to consider before a decision is made.  Suggestion / Recommendation  Reconsider the clause and amend as may be appropriate. | Comment are noted but not accepted. Clause 55 deals with appeals to the board appeals committee. |
|  | **55 (6)** | This clause suggests that the standing board appeals committee will be chaired by a member of the board and two other persons, which does not appear correct. The intended meaning seems to be that the appeals committee is chaired by a member of the board and that there are two other persons who are members of the appeals committee, and they are not co-chairs.  Suggestion / Recommendation  It is recommended that the clause be amended to show that only the member of the board will be the chairperson and the other two people on the appeals committee will be ordinary members (not co-chairs). | Agree to change the words. |
|  | **61 (1) (a)** | The phrase “any other place as a station” is not clear.  It is assumed that this refers to the designation of any other place as a station. However, this should be stated.  Suggestion / Recommendation  It is recommended that the clause be amended to make its meaning clear.  Further the word **“station”** should not be in bold. | Agree. |
|  | **61 (3)** | Regulations are made by the Minister. Thus, the Department should prepare the draft regulations and not the Regulator. The Department may, however, prepare the draft regulations in consultation with the Regulator.  Suggestion / Recommendation  Revise the clause accordingly. | The ultimate promulgator of the Regulations is the Minister. There is nothing wrong in the Bill indicating some of the paths s/he follows in getting the draft Regulations including using the RSR as one of the paths. |
|  | **61 (4) (a) (ii)** | In many instances, comments are submitted electronically. Thus, the reference to “address” is problematic.  Suggestion / Recommendation  Consider amending the clause to provide for electronic submission also. | Disagree. The address is not limited to physical address, and may also refer to electronic. |
|  | **61 (5) (c)** | “Traditional railway operations” and  “rapid rail operations” are used for the first time in this section, but are not defined or clarified anywhere, which could result in inconsistent interpretation of the intended meaning of these.  Suggestion / Recommendation  Revise the clause for the sake of clarity, as this will ensure consistency in interpretation. | Disagree. |
|  | **62 (1)** | The phrase “new operations” appears misplaced and unnecessary in this clause.  Suggestion / Recommendation  Exclude the phrase “the design, construction, and alteration of railway or railway operations”, noting that design and construction typically refer to new operations, while alterations typically refer to existing operations.  Some of the matters in respect of which the Minister may make regulations are too broad. Clarity should be provided on the scope of some of the broad regulations. For example, “operations” and “commissioning”.  Suggestion / Recommendation  It is recommended that the clause be revised accordingly. | Disagree. |
|  | **66** | The Bill states that the Minister may determine permit fees in consultation with the Minister of Finance on an annual basis.  It is recommended that the proposed fees be published for public comment. This will allow for the public and railway operators to be involved in the process of determining the fees. This will then mitigate against the risk of fees being determined on an arbitrary basis.  It is also recommended that there should be a weighing up of the cost of regulating the railway operators against the costs prevented (accidents) as a result of regulating railway operators.  Suggestion / Recommendation  It is recommended that the proposed fees be published for public comment. This will ensure transparency and accuracy in determining fees.  Further, a broad objective framework to determine permit fees should be included in the Bill. | The comments are noted but not accepted. Consultations do take place in this process and details are addressed in the applicable regulations. |
| **COMMISSION FOR GENDER EQUALITY** | **Clause** | **Comment** | **DOT Response/Action** |
|  | **General** | Factors to be considered in the development, adoption, and acceptance of standards in the Railway Safety Bill.  It is recognised that safe railways are fundamental to the safety of all persons. It is submitted that women, children, elderly persons, LGBTIQA+ and persons with disability are vulnerable in society including at the railway environment. Such vulnerability is often due to lack of consideration of their safety, needs and challenges. Addressing the abovementioned vulnerable daily needs and challenges will ensure that their vulnerability is minimised or erased and therefore they are treated equally and benefit equally.  To this end, standards in the Railway Safety Bill need to be gender sensitive and recognise for example safety in the railway environment needs to be considered psychological harm that women in general are subjected to at the railway environment. This often take place when they are subjected to all forms of harassment including sexual harassment and other forms of discrimination.  Against this backdrop, the development of any standard developed, adopted, or accepted in terms of these Railway Safety Bill, should not only be based on consolidated results of science, technology, engineering, and experience with the view to promote optimum safety but should encapsulate a gender element with the view of promoting gender equality and safety at the Railway. That should also be fair and not discriminatory to anyone regarding their gender, sex, sexual orientation, race, marital status, and other grounds which are unfair. | Agree, to be left to the board. Not for the Bill. |
|  | **General** | The role of the Board of the Regulator  It is recognised that the Railway sector is predominately male dominated as such, the sector neglects to prioritise and appreciate the challenges experienced by women commuters. The Employment Equity Manager of railway must ensure that the sector is not male dominated, the EE Manager must ensure everyone is well represented at the railway environment regardless of gender, sex, race, sexual orientation, marital status, disability, and other grounds.  To this end, the Commission recommends that the Board and the Regulator must go through a gender sensitive training to enable them to develop and accept standards that seek to promote safety and interest of women, children, elderly persons, persons with disabilities and LGBTIQA+. Such training must be made mandatory in the Regulations.  The Commission notes that the Regulations in the Railway Safety Bill do not make it mandatory that standards be developed and accepted. To achieve safe railway operations, it is recommended that the Railway Safety Bill makes it mandatory for the Board and Regulators to develop gender sensitive provisions. In terms of section 6 of the Railway Safety Bill the object of the Regulator is to promote, regulate and report on safe railway and railway operations through the appropriate and timely application of support, monitoring and enforcement instruments provided for in this Act. | Agree, to be left to the board. Not for the Bill. |
|  | **General** | Procedure for the acceptance or adoption of Railway Safety Bill  The Commission welcomes the procedure outlined to acceptance, adopt the Railway Safety Bill, particularly the technical Committee. Whilst the provisions proposes that the technical Committee may appoint subcommittees or working groups comprising experts in the field to be covered by the Railway Safety Bill.  It is however, suggested that diversified technical Committees and/or experts in the field would priorities issues that concern women, persons with disabilities, elderly persons and LGBTIQA+ persons. In this regard, the composition of technical committees and experts must consider gender, race, and sex. | Agree, to be left to the board. Not for the Bill. |
|  | **General** | Responsibility, review, and amendment of Railway Safety Bill  The commission welcomes this clause as it will ensure that the developed provisions are at par with the developments in the country. It is however recommended that there must be a time frame for the review and amendment process. A time frame will serve as a guideline to the railway, and it will also ensure that provisions developed by the railway are reviewed and amended timeously without any unnecessary delays. | Agree, to be left to the board. Not for the Bill. |
|  | **General** | Evacuation procedures  The Commission welcomes the requirement that the Plan must address emergency evacuation procedures for the safety of persons including persons with special needs. The Commission submits that the plan must specifically and intentionally outline how children, pregnant women, elderly persons, persons with disabilities are to be evacuated. Such a procedure must be communicated to all persons (including commuters and staff). It is therefore recommended that awareness campaigns be conducted to sensitive persons of challenges encountered by pregnant women, elderly persons, and persons with disabilities at the railway environment. | Agree, to be left to the board. Not for the Bill. |
|  | **Conclusion** | The Commission supports the national Railway Safety Bill, in so far as they seek to promote safe railway operations. Overall, the Commission asserts that the gender element to the development of the local and national Railway Safety Bill would not only enhance safe railway operations but promote an inclusive environment that caters for the needs of all persons irrespective of their sex and gender.  The railway must also consider their Employment Equity Plan when deploying new candidates to avoid the railway from been a male dominated environment and it must also ensure that everyone regardless of their sex, race, any form of disability or gender is well represented at the workplace. | Agree, to be left to the board. Not for the Bill. |
| **BOMBELA OPERATING COMPANY** | **Clause of the Bill** | **Comment** | **Response** |
|  | **Safety Permits** | Under the new bill, combined or grouped categories of railway operations that require safety permits have been removed  The committee is requested to confirm whether this means that BOC will now be required to obtain permits for each category of railway operations?  BOC proposal:  The committee to consider the inclusion of combined or grouped categories of railway operations | See” operator proposal”. |
|  | **Public Participation** | Under the new bill, the safety permit renewal process will be subjected to public participation  The concern is that this expectation will create an administrative burden as well as financial consequences for BOC. This is in terms of identifying, registering and gathering including consolidating views of the interested parties.  BOC proposal:  That the committee considers only new applications for public participation and exempt renewals of safety permits.  That permits be valid for a longer period. In this regard, a minimum of 5 years is suggested. | Not supported. |
|  | **Training for safety critical grades** | Under the new bill, there are new training requirements for safety critical grades. However, the committee is requested to clarify the following:  Will BOC staff based in CoT, CoJ, and CoE have easy access to training institutions?  What will the costs of training safety critical grades be?  How will training institutions be chosen, authorized, or accredited to provide training?  BOC proposal:  That the requirements and associated timelines be specified for operators who want to be registered as training institutions. | Disagree. To be provided for in regulation and policy. |
|  | **Licencing for Safety Critical Grades** | Under the new bill, there are new requirements for licensing of the safety critical grades by the RSR. However, the committee is requested to clarify the following:  Who bears the liability for a safety critical grade that does not obtain the required license and cannot be accommodated in other activities of the operator?  What will the costs of licensing safety critical grades be?  What will the validity period for safety critical grades licenses be?  What will be the procedure for renewing licenses? | Comments noted but not accepted. These are operational issues. |

Words underlined with a solid line indicate insertions in the Bill’s proposed text.

**[ ]** Words in bold type in square brackets indicate omissions from the Bill’s proposed text.

**Operator Proposal**

**Clause 1: Definitions:**

1. **“operator”** means a **[network operator, train operator or station operator or any combination thereof, but in the case of a person who is a concessionaire or who operates, constructs, maintains or manages a railway on behalf of another person who owns the relevant assets, that concessionaire or that person who so operates, constructs, maintains or manages that railway is, for purposes of this definition, regarded as being the network operator;]–**

(a) network operator,who is a person who is responsible and accountable for the operation, construction or maintenance of a railway, including —

1. the safety of a network or part thereof, including the proper design, construction, operation, maintenance and integrity of a network;
2. ensuring compliance of rolling stock with the applicable standards of a network; or
3. authorising and directing the safe and secure movement of rolling stock on a network;

(b) train operator, who is a person who is responsible and accountable for the —

1. safe movement of rolling stock on a network;
2. safety and integrity of rolling stock; and
3. safety of freight or persons being conveyed;

(c) station operator,who is a person in control of a station, and the management of a station,

(d) a combination of (a), (b) and (c),

or

(e) a person who, although not owning, financing or controlling the relevant network, train or station, as the case may be, is a concessionaire or a person who performs the functions contemplated in (a), (b) and (c) on behalf of the person who owns, finances or controls such network, train or station, in respect of the relevant assets, infrastructure or operations;

2. Delete definitions of **“network operator”, “train operator”** and **“station operator”.**

**Discussion:** This addresses the complaint that the definitions of “network operator”, “train operator” or “station operator” are only in this clause for definitions purposes, and it also addresses the issue of whether only the concessionaire or other agent must obtain safety permits, or the owner of the network, train or station as well, and prevents duplication in that the definition only applies in respect of relevant assets, infrastructure or operations. This means that if one Bombela company is responsible for the train and tracks and another Bombela company is responsible for stations, both of them are operators but only in respect of the assets, infrastructure or operations within their respective responsibilities.

Safety permit proposal

Clause 30(1)

**30.** (1) **[Any]** An operator or other person who **[wants]** intends to undertake or operates any railway or railway operation must apply to the Regulator, in the prescribed manner, for a safety permit, but in the case of a person who is contemplated in paragraph (e) of the definition of ”operator”, **[— *(a)* is a concessionaire; *(b)* operates, constructs, maintains or manages a railway; or *(c)* conducts or undertakes railway operations on behalf of another person who owns, finances or controls the relevant assets, that concessionaire or that person who so operates, constructs, maintains or manages that railway or who so conducts or undertakes such railway operations]** that person is, for purposes of this Chapter, regarded as being the applicant or safety permit  
holder**[, as the case may be]**.

Discussion

Given that the definition of “operator” is to be amended (see above), this subclause (1) can be simplified.