



# civilian secretariat for police service

Department:  
Civilian Secretariat for Police Service  
**REPUBLIC OF SOUTH AFRICA**

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Ms T Joemat-Petterson MP  
Chairperson: Portfolio Committee on Police  
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Dear Honourable Chairperson

## **WRITTEN RESPONSE TO THE PORTFOLIO COMMITTEE ON POLICE ON PUBLIC SUBMISSION BY THE FISH HOEK VALLEY RATEPAYERS AND RESIDENT ASSOCIATION ON THE PROTECTION OF CONSTITUTIONAL DEMOCRACY AGAINST TERRORIST AND RELATED ACTIVITIES AMENDMENT BILL, 2022 (“POCDATARA BILL”)**

On 13 October 2022, the Secretariat of the Portfolio Committee on Police forwarded to the Civilian Secretariat for Police Service (“CSPS”), a written public submission on the POCDATARA Bill, by the Fish Hoek Valley Ratepayers and Resident Association (“Commentator”).

The CSPS hereby submits its written response to the submission:

### **Comment 1:**

Refers to section 1(a) (vi) and (ff) in the principal Act under the definition of “terrorist activity”:

“**terrorist activity**” means any act –

...

(vi) is designed or calculated to cause serious interference with or serious disruption of an essential service, facility or system, or the delivery of any such service, facility or system, whether public or private...

...

(ff) an essential or critical infrastructure **[facility]**...”

The Commentator is of the opinion that Municipal Mayors in terms of their work in relation to sewage treatment or water plants, Labour Unions in unsupported strike action disrupting essential services and even the President or Health Minister in declaring a State of Disaster during the Covid Lockdowns, would be seen as committing terrorist activities that would cause major economic loss.

### **Response:**

Section 1(3) of the principal Act stipulates as follows:

*“For the purposes of paragraph (a) (vi) and (vii) of the definition of **'terrorist activity'**, any act which is committed in pursuance of any advocacy, protest, dissent or industrial action and which does not **intend** the harm contemplated in paragraph (a) (i) to (v) of that definition, **shall not be regarded as a terrorist activity within the meaning of that definition.**”*

The examples mentioned by the Commentator will therefore not fall within the ambit of the definition of terrorist activity, because it lacks the intent to cause harm. When one combines the activities and the intent in the examples mentioned by the Commentator, it falls outside the ambit of the Act. Terrorism is an ever evolving crime and our definitions have to be wide enough to cover future activities.

### **Comment 2:**

Refers to clause 2(b) that seeks the substitution of section 3(1)(c) in the principal Act and insertion of the words **“joining, supporting or in any other manner”** in the section. These words should be defined.

### **Response:**

The insertion of the words “**joining, supporting or in any other manner**” into section 3(1)(c) of the principal Act, is illustrated hereunder:

### **“3 Offences associated or connected with terrorist activities**

(1) Any person who-

(a)...;

(b)...; or

(c) makes himself or herself available,

for the benefit of, at the direction of, or in association with any entity engaging in a terrorist activity, and who knows or ought reasonably to have known or suspected, that such act was done for the purpose of **joining, supporting or in any other manner** enhancing the ability of such entity to engage in a terrorist activity, is guilty of the offence associated with a terrorist activity.”

The concepts of joining and supporting an entity engaging in terrorist activity, were inserted to strengthen the section and the words must be understood in line with their ordinary meaning and need not be defined in the legislation.

### **Comment 3:**

The insertion of section 3 (3) by clause 2(f) and inclusion of “other lethal device” by implication means that training in the use handguns and rifles, may be seen as terrorist activities.

### **Response:**

The use of the words “**lethal device**” should be understood in the context of section 3(2) of the principal Act:

*“(2) Any person who-*

*(a) provides or offers to provide any weapon to any other person for use by or for the benefit of an entity;*

*(b) solicits support for or gives support to an entity;*

*(c) provides, receives or participates in training or instruction, or recruits an entity to receive training or instruction;*

(d) recruits any entity;

(e) collects or makes a document; or

(f) possesses a thing,

**connected with the engagement in a terrorist activity, and who knows or ought reasonably to have known or suspected that such weapons, soliciting, training, recruitment, document or thing is so connected, is guilty of an offence connected with terrorist activities.”**

Lawful possession of firearms in terms of the Firearms Control Act, will not constitute an offence connected with terrorist activities in terms of POCDATARAA, unless **connected with the engagement in a terrorist activity, and it can be proven that the person knew or ought reasonably to have known or suspected that such firearms are so connected.**

#### **Comment 4:**

Section 5 of the principal Act should not lead to a person acting in self-defence to be labeled a terrorist.

#### **Response:**

The comments fail to appreciate the fact that the activity must be accompanied by the necessary terrorist intent as defined. No prosecution under Chapter 2 of the Principal Act may be instituted without the written authority of the National Director.

#### **Comment 5:**

The Bill's amendment of section 23 in relation to Freezing Orders is troublesome and the conditions under which the High Court can assume control over property must be specified.

#### **Response:**

The High Court may make an order under section 23 only if the state's application shows that the conditions that are described in subsection 23(2), are met. The grounds for making a freezing order are therefore clear. The terms of such an order are also clear and provided for in subsection 23(1). The condition for any further orders that the High Court may make relating to the control of, and care for, property that is subject to the freezing order, is that such orders are strictly limited to what is appropriate for the proper, fair and effective execution of the freezing order. These are spelt out in detail in subsection 23(4). No further

conditions are therefore required to assist the Court in making an order that strikes a balance between the objectives of freezing property that is implicated in the financing of terrorist activities or organisations and fairness to whomever may have an interest in property that is subject to a freezing order.

**Comment 6:**

The insertion of section 24B is problematic as the demand for a decryption key for detecting any crime falls on the side of discovery and poor investigative work. There is an invasion of privacy.

**Response:**

Section 24B is in the process of being revisited.

Kind regards

A handwritten signature in black ink, appearing to read 'T L Ramaru', with a large, stylized flourish at the end.

**MR T L RAMARU**

**ACTING SECRETARY FOR POLICE SERVICE**

**DATE: 20 OCTOBER 2022**