**Report of the Standing Committee on Appropriations on the Eskom Debt Relief Bill [B5 – 2023] (National Assembly – Section 77), Dated 28 April 2023**

Having considered the Eskom Debt Relief Bill [B5 – 2023], referred to in terms of Section 13 of the Money Bills Amendment Procedure and Related Matters Act, 2009 (Act No. 9 of 2009) (as amended by the Money Bills Amendments Procedure and Related Matters Amendment Act, 2018 (Act No. 13 of 2018), the Standing Committee on Appropriations reports as follows:

1. **Introduction**

Section 213(2) of the Constitution of the Republic of South Africa, provides that money may be withdrawn from the National Revenue Fund only (a) in terms of an appropriation by an Act of Parliament; or (b) as a direct charge against the National Revenue Fund, when it is provided for in the Constitution or an Act of Parliament.

The 2023 Eskom Debt Relief Bill (hereafter referred to as the Bill) provides for a direct charge against the National Revenue Fund for debt relief for Eskom Holdings SOC Limited (Eskom) and to provide for matters incidental thereto. The Standing Committee on Appropriations, hereinafter referred to as the Committee, is established in terms of section 4(3) of the Money Bills Amendment Procedure and Related Matters Act, 2009 (as amended), and herein referred to as the Act.

The Bill was tabled in Parliament by the Minister of Finance on 22 February 2023 during the presentation of the 2023 national budget and was referred to the Committee for consideration and report to the National Assembly as prescribed in section 13 of the Act. In processing the Bill, section 4 (4) (c) of the Act also requires the Committees on Appropriations of both Houses to consult with the Financial and Fiscal Commission. In addition to National Treasury briefing the Committee on the Bill and consulting with the FFC, the Parliamentary Budget Office and Eskom Holdings SOC Ltd were also invited to comment on the Bill.

The Act also requires the Committee on Appropriations to conduct public hearings on the Bill and for the Committee to report to the House on the comments and amendments to the Bill. In compliance with the requirements of the Act, advertisements were published in print media as well as on Parliaments website and social media platforms, inviting the general public and interested parties to comment on the Bill. The public hearings on the Bill were held on 26 April 2023 via the Zoom virtual meeting platform. In response and in line with the requirements of the Act, written and oral submissions were received for consideration from the following stakeholders and interested parties:

* Minerals Council of South Africa;
* Nedbank;
* Congress of South African Trade Unions; and
* Adv B Cronin.

Dear South Africa, a network of online platforms designed to facilitate and encourage the public to participate in government decision-making processes or policy formulation also ran a poll on the Bill.

1. **Background to the Bill**

Eskom Holdings SOC Ltd (Eskom) is a state-owned company (SOC) as defined in the Companies Act, 2008 (Act No.71 of 2008) and is wholly owned by the South African Government, with the Minister of the Department of Public Enterprises (DPE) as the shareholder representative. Eskom is South Africa’s primary electricity supplier that generates, transmits and distributes electricity to local industrial, mining, commercial, agricultural, redistributor (metropolitan and other municipalities) and residential customers and to international customers in Southern Africa. Eskom also purchases electricity from independent power producers (IPPs) and international suppliers in Southern Africa. In recent years, Eskom has been experiencing serious financial and operational challenges, caused to a large extent by governance failures and malfeasance that the entity has been experiencing over time. As a consequence of these challenges, Eskom has been unable to fulfil its mandate of providing electricity as required, resulting in persistent hours of load shedding, negatively affecting the South African economy and the livelihoods of South Africans.

In his 2019 Budget speech, the Minister of Finance announced proposed allocations of R23 billion annually over the medium term to support Eskom during its reconfiguration and restructuring. In total, Eskom was to receive a total allocation of R230 billion over a period of 10 years (R23 billion per annum). On 31 March 2019 Eskom experienced challenges in drawing its intended facilities and could not honour its obligations. Failure to meet its obligations could have had negative consequences for Eskom and the entire debt portfolio of government as a significant portion of Eskom debt is government guaranteed. Consequently, the Minister of Finance intervened by invoking section 16 of the Public Finance Management Act (PFMA), 1999 (Act No. 1 of 1999) and approved R17.6 billion for Eskom, which was the maximum allowable amount. This accelerated part of the R23 billion allocation announced in the 2019 Budget.

Additionally, through the Special Appropriations Act, 2019 (Act No. 25 of 2019), a total amount of amount of R59 billion was appropriated out of the National Revenue Fund for the requirements of the Department of Public Enterprises to assist Eskom with its financial obligations and to provide for matters connected therewith, of which—

1. R26 billion was appropriated for the 2019/2020 financial year; and
2. R33 billion was appropriated for the 2020/2021 financial year.

These funds were appropriated and were to be transferred to Eskom in each of the financial year to assist the entity in fulfilling its financial obligations. During the presentation of the 2022 Medium Term Budget Policy Statement (MTBPS), the Minister of Finance announced that government was planning to take a significant portion of Eskom Debt to ensure financially sustainability of the utility.

Government has been considering various measures to address Eskom’s unsustainable R423 billion debt burden. The overall objective of government is to strengthen the utility’s balance sheet, enabling it to restructure and undertake the investment and maintenance needed to support the security of electricity supply. Government is of the view that resolving Eskom’s unsustainable debt burden will unlock investment and restores South Africa’s fiscal credibility. All these considerations, with other factors have given rise to the proposed government intervention on the risky Eskom debt through the tabling of the Eskom Debt Relief Bill [B5 – 2023] in Parliament. There are several reasons advanced by government as to why this is a reasonable and justifiable solution in dealing with Eskom debt, namely;

* National Treasury has submitted to Parliament that government’s 2019 solution for Eskom’s stranded debt (R230 billion over 10 years) does not sufficiently address Eskom’s underlying solvency or liquidity challenges. However, government is of the view that an optimally designed debt solution, with conditions, can be leveraged to support the structural reform of the electricity sector that will enhance SA’s long-term growth prospects;
* The Eskom R350 billion in government guaranteed debt, which is at risk of default (a contingent liability and added to the sovereign debt by Moody’s and the IMF), raises the South African’s risk premium and therefore cost of borrowing; and
* Dealing with Eskom’s debt will enable much-needed investment in critical transmission and other infrastructure and allows Eskom to prioritise critical maintenance on its existing fleet.

In the Budget Review 2023, the Minister of Finance announced a debt relief package to Eskom amounting to R254 billion over the next three years. This arrangement, which is subject to strict conditions, was intended to relieve extreme pressure on the utility’s balance sheet, enabling it to undertake the necessary maintenance and investment.

1. **Provisions of the Bill**

The Bill proposes the allocation of funds for the requirements of Eskom as direct charges against the National Revenue Fund and attributed to the vote of the National Treasury (Vote 10), totalling R254 billion for the 2023 Medium Term Expenditure Framework (MTEF) in two categories, namely;

1. The Eskom Debt Relief Bill attributes to the Vote of the National Treasury as a loan with conditions to Eskom:
* A proposed allocation of R78 billion for the 2023/24 financial year;
* A proposed allocation of R66 billion for the 2024/25 financial year; and
* A proposed allocation of R40 billion for the 2025/26 financial year.
1. In addition, for the 2025/26 financial year, the Bill proposes a R70 billion Eskom debt takeover by government as a direct charge against the National Revenue Fund, as determined by the Minister of Finance.
2. **Key features of the Bill**

The key features of the Bill are as follows:

1. The Bill proposes that National Treasury advance the amounts envisaged as a loan to Eskom on the dates determined by the Minister of Finance;
2. The Bill enables the Minister to impose conditions for the conversion of a portion or portions of the amount of the loan for each financial year into ordinary shares issued by Eskom to the State;
3. The Bill proposes advances to Eskom of R78 billion in 2023/24, R66 billion in 2024/25 and R40 billion in 2025/26. These advances will cover capital and interest payments as they fall due and may only be used for that purpose;
4. These amounts will be financed through the R66 billion Medium Term Expenditure Framework (MTEF) baseline provision that was in the 2022 MTBPS, and R118 billion in additional borrowing over the MTEF period ahead;
5. Over-and-above this, for 2025/26, the Bill proposes a debt take-over by government of R70 billion of Eskom’s loan portfolio; and
6. The Bill requires that National Treasury, in its quarterly reports to the relevant Parliamentary Committees, report on Eskom’s compliance with the conditions and disclose the amounts of the conversion.
7. **Proposed conditions attached to the Bill**

The proposed conditions of the Bill as determined by the Minister of Finance are as follows:

1. Eskom’s capital expenditure is restricted to transmission and distribution. The only capital expenditure that may be undertaken for generation relates to minimum emissions standards, flue-gas desulfurisation and required maintenance. No other greenfield generation projects will be allowed during the debt-relief period.
2. Eskom may not use proceeds from the sale of non-core assets for capital and operating needs. All proceeds from the sale of non-core assets, including the Eskom Finance Corporation and any property sales, will be used for the debt-relief arrangement.
3. No new borrowing will be allowed until the end of the debt-relief period, unless written permission is granted by the Minister of Finance.
4. Eskom’s guarantee framework agreement for the R350 billion facility (which expires at the end of March 2023) will reduce in line with National Treasury recommendations.
5. Positive equity balances in Eskom’s derivative contracts (swaps/hedges) cannot be used to structure new debt or loan agreements without the approval of the National Treasury. Nor can any such balance be used as “margin financing” for another derivative contract or derivative overlays.
6. The debt relief can only be used to settle debt and interest payments.
7. Eskom may not implement remuneration adjustments that negatively affect its overall financial position and sustainability
8. **Comments and hearings on Bill with identified stakeholders**

The sections below provide an overview of the submissions made by the identified stakeholders on the Bill.

* 1. **Financial and Fiscal Commission**

The Financial and Fiscal Commission (FFC) submitted that a consolidated budget deficit of 4 per cent of gross domestic product (GDP) was projected in 2023/24, narrowing to 3.2 per cent of GDP in the 2025/26 financial year. It stated that various pressures over the 2023 MTEF period will impact the fiscal position and stated that the poor and inefficient financial performance of State-Owned Entities (SOEs) continued to put pressure on public expenditure. SOEs continued to face considerable hurdles in fulfilling their developmental mandates. The FFC put forward that the challenges that SOEs encounter entailed, among other things, the following:

* lack of clarity in objectives,
* multiplicity of mandates within SOE business models,
* improper costing of mandates,
* complex and decentralised oversight model, governance interference manifested in political appointments of boards and senior management,
* non-adherence to international best practices in corporate governance dictates,
* severe breaches of procurement policies, and
* weaknesses in oversight by line ministries and SOEs boards.

The FFC submitted that SOEs reflect weak financial performance with most of them experiencing sharp declines in the value of their assets. This constituted a fiscal risk for government as the SOEs required fiscal transfers to cover their losses and recapitalise their balance sheets. The FFC continued that government debt was projected to increase due to the Eskom debt-relief arrangement. As a result of the Eskom debt relief and increasing market lending rates, debt-service costs would increase from R307.2 billion in 2022/23 to R397.1 billion in 2025/26.

The FFC submitted that whereas government guarantees to public institutions were forecasted to decelerate by R81.4 billion to R478.5 billion by 31 March 2023, the guarantee exposure will accelerate by approximately R800 million and reach R396.1 billion. It emphasised that government exposure to SOEs remained very high, particularly to Eskom. Government’s exposure to Eskom increased from R298 billion in 2020/21 to R337 billion in 2022/23. The total government guarantee exposure was forecasted to increase from R385 billion in 2020/21 to R396 billion in 2022/23.

In conclusion, the FFC noted that in 2019, the government made a R23 billion provisional allocation per year to Eskom in order to service its debts and meet its redemption requirements. In addition, a special appropriation with conditions amounting to R59 billion was allocated to assist Eskom with its financial obligations over the medium term. These experiences raised doubts that adopting the same approach address the structural issues at Eskom would yield a different outcome through the Bill. To this end, the FFC made the following recommendations:

* That corporate and fiscal governance be improved through reforms that would enable SOE management boards the operational autonomy they require to make profit-maximising decisions and eliminating political interference to enhance operational transparency.
* That explicit and progressive guidance to SOEs on expected rates of return and the distribution or reinvestment of profits be established.
* That a decisive judgement be made for SOEs to deliver on return-to-investment effectively and efficiently. Failing which, dysfunctional SOEs should be restructured, sold off or shut down.
	1. **Parliamentary Budget Office**

The Parliamentary Budget Office (PBO) in its submission gave an overview of the Bill as well as the conditions attached thereto by the Minister of Finance. It submitted that the financial position of major state‐owned companies remained under pressure and the materialisation of contingent liabilities at SOEs could increase funding needs and associated costs. The PBO continued that continuous delays and underspending on infrastructure projects hampered capital investment. In the 2020/21, most SOEs deferred capital investment projects in order to preserve cash so as to meet short-term obligations. This resulted in a 6.2 per cent decline in SOE consolidated asset base.

The PBO submitted that the energy crisis caused by Eskom and Transnet’s operational and financial weaknesses remained a risk to economic growth and revenue generation. The PBO viewed the Bill as a step in the right direction in addressing Eskom’s crises, however, more needed to be done in terms of incapacity and corruption, developing sectorial plans and reconfiguring how SOEs operate in South Africa.

The PBO made reference to the International Monetary Fund’s caution to South Africa in terms of the SOEs as follows:

* Economic growth was hampered by a lower productivity and investments on inefficient SOEs.
* Inefficient SOEs placed a heavy burden on the fiscus as public resources were diverted away from other social and infrastructure expenditure priorities.
* Improving spending efficiency would facilitate fiscal adjustment and reduce the negative short-term effects of fiscal consolidation on growth and it will maximize the return on capital and social spending in the long run.
* High public debt resulted in limited fiscal space to respond to adverse shocks including materialization of contingent liabilities.

The PBO submitted that the different Ministers responsible for electricity or energy should consider making joint public statements or account together to Parliament and/or the public with regard to short and medium term plans. By doing this, a perception of mixed messages by Ministers and confusion by the public can be avoided. The PBO agreed with the Minister of Electricity, that the problems of Eskom went beyond finances, and these had major implications for the economy. Therefore, the Bill, which focused on placing Eskom on a better financial position over the next 3 years, may be an insufficient approach at this stage. The PBO continued that Eskom’s challenges and its implications for the broader economy must be addressed now, citing the declaration of the state of disaster which has been since been withdrawn to deal with this exact risk.

The PBO also agreed with the Minister of Electricity about the need for the government to use fiscus to help Eskom improve the availability of electricity and to reduce and stop load shedding. It did not agree with the approach by National Treasury which focussed more on Eskom’s finances while trying to maintain their fiscal consolidation stance and achieving a budget surplus over the MTEF. The PBO cautioned that this approach would place the whole economy’s performance, which is forecast to be very poor over the MTEF, at further risk.

* 1. **Eskom Holdings SOC Ltd**

Eskom Holdings SOC Ltd in its submission gave an overview on the Bill focusing on the conditions as prescribed by the Minister of Finance. It further gave the assurance that it would comply with all the conditions and stated that the passing of the Bill would be of benefit to Eskom as follows:

* Strengthening of the balance sheet and financial position by reducing debt and increasing equity;
* Improving liquidity, avoid rolling debt or borrowing to settle debt;
* Allowing for long-term planning;
* Utilisation of cash from operations for investment in infrastructure and outages;
* Eskom’s status as a going concern to be supported;
* Positive feedback from rating agencies like Standard & Poor; and
* Improving generation outage planning by allowing for ordering of long lead items upfront.

In conclusion, Eskom emphasised on risks and challenges posed by the ever growing municipal debt which exceeded R58 billion.

1. **Public Submission on the Bill**

The section below provides an overview of the submission that was made in response of the advertisement that was published in print media, Parliament’s website and social media platforms.

* 1. **Minerals Council South Africa**

The Minerals Council South Africa (MCSA) submitted that since 2007 the South African economy has been growing less than population growth. This meant that the standard of living of the majority of South Africans has been declining, chiefly on account of inadequate electricity and double-digit tariff escalations. Instead of improving, the situation has gotten worse because of government’s refusal to completely liberalise the energy supply industry. Eskom continued to operate as a virtual monopoly. This has resulted in SA not taking full advantage of the most recent commodity boom which was driven by pent-up demand resulting from the Covid-19 pandemic.

The MCSA continued that four indicators relating to Eskom’s balance sheet, i.e. tariffs, operational efficiencies, disposal of non-core assets, and capital investment and maintenance requirements, made it clear that the utility’s finances were in a precarious position. Three of these points to the extent to which Eskom relied on government support and debt while the other shows the state utility’s inability to collect revenues. The MCSA gave an analysis of the four indicators to demonstrate the urgency and need for a long term solution to Eskom’s financial position. The MCSA made the following recommendations:

1. The ‘old’ coal power plants must be sold or concessioned to the private sector. The private sector will be in a position to recapitalise these and raise each plant’s energy availability factor. Government, as the sole shareholder, and with various competing economic and social objectives, would better use the billions of Rand wasted on Eskom to invest in education, health and the safety of its citizens. It can also use such resources to invest in sectors of the economy where there are actual market failures. In short, because of competing economic and social objectives, governments eventually run out of money to recapitalise enterprises in which it is the sole shareholder.
2. In the event that government is not in a position to sell the coal power stations to private companies, the MCSA recommends that a public-private partnership (PPP) model be pursued. This approach will relieve the fiscus of resources government needs to invest elsewhere in the economy.
3. The unbundling of Eskom into three entities, namely, generation, transmission and some parts of distribution will not solve the country’s electricity woes as these will still be wholly owned by government. As for generation, as stated above, the coal-fired power plants must be sold or concessioned to the private sector at reasonable terms allowing them to recapitalise the plants without the use of public funds. Similarly, the transmission side of the business must also be concessioned to independent private players for a period of at least 15 to 20 years.
4. The Just Energy Transition from coal to clean energy sources must be well managed. Anecdotal evidence suggests that a major reason some of the coal-powered power plants are not performing was due to low staff morale. This is because employees have been told that the plants they work in will be decommissioned. The national and social/labour narrative surrounding the Just Energy Transition needs to be well managed to ensure worker productivity and optimism about the future.
5. Mitigating or even punitive measures for non-payment by municipalities should be firmly established to ensure that municipalities service their debt with Eskom. The potential writing-off of municipal debts owed to Eskom presents a moral hazard which will most likely escalate the problem in future and it creates a bad precedent. When economic agents (municipalities) know that they can take a risk and another party (government) will bear the consequences/costs, they are likely to take an even greater risk in future.
	1. **Congress of South African Trade Unions**

The Congress of South African Trade Unions (COSATU) welcomed the Bill and submitted that it has long championed the need for government to take over Eskom’s unsustainable debt levels to enable the power utility to be stabilized and rebuilt in order to play its role in the economy. COSATU put forward that the debt relief will help Eskom to shift its resources to ramping up its maintenance programme. This according to COSATU, was the fastest way to eliminating load shedding and thus easing the burden on workers, families, businesses, the economy and the fiscus.

Whilst welcoming the objectives of the Bill, COSATU expressed the following concerns about the Bill and also put forward proposals:

**Debt Relief Conditions**

COSATU expressed concerns about the prohibition of Eskom to invest in new generation capacity as the fundamental reason for load shedding was the power generation stations nearing the end of the lifespan. COSATU proposed the following with regard to the conditions attached to the Bill:

* That the prohibition on Eskom investing in new generation capacity to be removed from the Eskom Debt Relief package.
* That the clause seeking to pre-empt and undermine the collective bargaining processes at Eskom to be removed from the Eskom Debt Relief package.

**Municipal debt owed to Eskom**

COSATU highlighted the need to address the growing levels of monies owed to Eskom by municipalities which stood at about R57 billion and rising. COSATU made the following proposals:

* That all customers be moved to prepaid electricity to end the rising levels of debt owed to Eskom and to ensure that it has the necessary cash flow to be operational.
* That government should determine which debt is not recoverable and which is recoverable. That which is recoverable, must be pursued, even legally.
* That a new municipal funding model be developed as the current model was collapsing and this had a spill over effect on the ability of municipalities to pay Eskom.
* That law enforcement agencies be actively deployed to support Eskom to deal with illegal electricity connections.
* That the Department of Cooperative Governance and Traditional Affairs should undertake interventions to ensure that all indigent households are registered for and do receive their allocation of free electricity and that the number of free kilowatts be increased appropriately.

**Electricity Tariffs**

COSATU submitted that the approved 18.65 per cent and 12.75 per cent tariff hikes in 2023 and 2024 respectively, will be a further blow to an already battered economy, workers and companies. It further said that Eskom’s cost reflective argument was a deflection of its failure to abide by the prescripts of the PFMA and to manage the utility in a climate free of endemic corruption and wasteful expenditure. Reference was also made to the construction of the Medupi and Kusile power stations that the initially budget was overshot by more than 100 per cent yet these stations still struggled to provide electricity. To this end, COSATU proposed that National Treasury should work with Eskom to identify all financial leakages, develop a mitigation plan and to report quarterly to the nation on progress made in this regard.

**Additional support required by Eskom**

The following proposals were made regarding the support required by Eskom:

* That the enforcement of the scrap metals export ban and measures to regulate the informal traders be escalated.
* Deployment of specialized support from the South African Police Service, Special Investigating Unit, National Prosecuting Authority (NPA) and State Security Agency to uproot corruption and criminality at Eskom.
* Prioritisation of cases affecting Eskom by the NPA and the judiciary.
* Active enforcement of the penalties provided for in the Criminal Matters Amendment Act (cable theft) and Auditing Amendment Act (holding offending officials personally financially liable).
	1. **Nedbank**

Nedbank submitted that the purpose of the envisaged debt relief (which will be provided in a form a loan and converted into equity once certain conditions are met) was not clearly stated in the Bill. The understanding was that the proceeds of the debt relief was intended to repay/prepay the Eskom debt but that was not contemplated in the Bill. Furthermore, the purpose of the loan was to assist Eskom to be able to spend on transmission and distribution, however that was also not captured in the Bill. Accordingly, Nedbank suggested that it be clarified that the borrowing for new transmission or strengthening of the existing transmission to be allowed when conditions were finalised.

Nedbank made reference to recent briefing by National Treasury to Parliament and stated that Eskom may not borrow for three years and must fund repair and refurbishment of the power stations (including existing life extension of Koeberg) from its own tariffs. However, it was not clear in the Bill if Eskom would still be allowed to borrow more money for capital expenditure and its operational requirements unless it was intended to be part of the convention conditions.

In terms of clause 2(2)(a) of Bill, Nedbank also made reference to the fact that the intention was to provide the debt relief in the form of a loan. To this end it proposed that the financial and liquidity/solvency impact on Eskom ‘s balance sheet (i.e. additional loans) be assessed and to also ensure that it will not result in breach of any financial covenants in Eskom’s existing loan arrangements. Nedbank further requested that further consideration be given to subordinating these loans in favour of the existing loans with external lenders.

With regard to clause 2(2)(b) of Bill, Nedbank proposed that the conditions for the conversion be agreed with Eskom to ensure that these conditions are achievable, to avoid a situation where Eskom was not able to meet the prescribed conditions despite their reasonable endeavours. It appeared that the Minister of Finance will have sole discretion to determine conditions to determine the conversion of a portion or portions of the loan. Nedbank was of the view that certain criteria should be taken into consideration when making such a determination and proposed the provision be amended as follows:

*The Minister must consider the factors as prescribed when determining the conditions for the conversion of a portion or portions of the amount of the loan for each financial year into ordinary shares issued by Eskom to the State.*

Nedbank continued that as per the criteria mentioned in the above proposal that the Bill should allow the Minister of Finance some discretion to amend or waive any of the conditions as required and that consideration should be given to adding the following conditions:

* priority spend over transmission and distribution.
* long term strategy on Eskom’s future borrowings to ensure that the Eskom’s debt always remain managed

With regard to clause 2(3) of Bill, Nedbank proposed that the details of debt takeover arrangement be clarified in the Bill. It stated that it was not clear if the Borrower would remain the Borrower under the loan agreement or if government contemplated being the direct Borrower. Nedbank submitted that the impact of the contractual loan arrangements with the Lenders (if any) should be assessed including if the Lenders’ consent was to be required.

* 1. **Adv B Cronin**

Adv B Cronin made reference to the authority of the Minister of Finance to impose conditions on Eskom and submitted that the envisaged section 2(b) in the Bill was excessively broad in its framing and threatened to undermine the lawfulness of the entire proposed statute. Parliament when granting this power was duty bound to ensure that the authority granted was not excessively broad in its discretion or unfettered. Adv Cronin continued that previously the Constitutional Court has held that it was not sufficient to assess the potential abuse of broad discretionary powers after the fact and that Parliament was actively duty bound to reduce this risk when passing legislative provisions into law.

In the judgement of Dawood v Minister of Home Affairs 2000 (3) SA 936 (CC) the Constitutional Court held that excessively broad authority should not only be tested after the fact, but that Parliament must consider appropriate guidance in the drafting of legislation. 11. In the judgement of Janse van Rensburg v Minister of Trade and Industry NO 2001 (1) SA 29 (CC), which criticised unfettered and unguided administrative powers, the Constitutional Court expressly recognised that in the absence of legislative guidance contributed to the unjustifiable limitation of rights in that case.

In light of the above, Adv B Cronin suggested that clause 2(b) of the Bill be amended as follows:

* By setting appropriate guidelines for the use of the power to impose conditions;
* the Bill is, correctly, to be tagged as a section 77 money Bill in terms of the Constitution and was therefore limited in its scope to issues of money and ancillary matters. Therefore, such conditions must be limited to monetary matters and cannot be centred on non-financial considerations; and
* The conditions should rationally be connected to the central purpose of the envisaged statute which was ostensibly the reduction of debt in Eskom.
	1. **Dear South Africa**

Dear South Africa, is a network of online platforms designed to facilitate and encourage the public to participate in government decision-making processes or policy formulation. The non-profit organisation hosted a project on its mobile and online platforms for the public to comment on the Bill (see <https://dearsouthafrica.co.za/eskom-debt-relief/>). A total of 9298 comments were received of which by the set closing of 21 April 2023. The table below provides summary of the comments received before the closing date.

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| --- | --- | --- | --- |
| **Response** | **Number**  | **Percentage**  | **Common theme around response** |
| Yes I do support the Bill | 115 | 1.25% | The participants were mostly concerned over the consequences of a failing national electricity producer, dire consequences for the South African economy, load shedding for many years to come, and a concern over inconsistent renewables. Further comments are raised over concerns surrounding much-needed maintenance to eliminate breakdowns. |
| No I do not support the Bill | 8799 | 95.61% | Participants raised concerns over corruption, mismanagement, constant bailouts, a lack of convictions, and political interference. Solutions include a strong call for privatisation, a reduction of employees, employment of skilled individuals and recovery of Municipal debt. |
| Not fully support the Bill | 289 | 3.14% | Most of the participants are in favour of Eskom receiving debt relief, however, major concerns are raised surrounding the elimination of corruption, mismanagement, recovery of stolen funds, transparency, accountability and a change in “non-payment” culture. |

1. **Committee Findings and Observations**

Having considered all the submissions made by the above stakeholders on the Eskom Debt Relief Bill [B5 – 2023], the Standing Committee on Appropriations made the following findings and observations:

* 1. The Committee notes and welcomes the Bill proposed loan advances to Eskom of R78 billion in 2023/24, R66 billion in 2024/25 and R40 billion in 2025/26, to cover capital and interest payments as they fall due. The Committee supports government’s objective of strengthening the utility’s balance sheet in order to enable it to restructure and undertake the investment and maintenance needed to support the security of electricity supply. The Committee is also of the view that resolving Eskom’s debt burden will unlock investment, restore South Africa’s fiscal credibility and increase the economic growth which South Africa needs.
	2. The Committee notes and welcomes the proposed R70 billion Eskom debt takeover by government as a direct charge against the National Revenue Fund. Furthermore, the Committee notes and welcomes the submission by the PBO that given the complexity of Eskom’s debt to many bondholders and numerous loan terms, maturities and conditions, the National Treasury should clarify the process by which the government will directly take over the R70 billion in 2025/26.
	3. The Committee notes the submission by COSATU that the Bill clause seeking to pre-empt and undermine the collective bargaining processes at Eskom to be removed from the Eskom Debt Relief package. While the condition that Eskom may not implement remuneration adjustments that negatively affect its overall financial position and sustainability may look reasonable, it has huge implications for collective bargaining. The Committee has always warned National Treasury about pre-empting the outcomes of salary negotiations outside the recognised bargaining forums, similarly to the issues surrounding the public sector wage bill.
	4. The Committee notes the concerns of the PBO that while the Bill is needed to avoid debt defaults by Eskom, it is being implemented in the absence of a larger government vision and plan not only for the future of Eskom but the South African electricity industry as a whole.
	5. The committee notes the submission by MCSA that the potential writing-off of municipal debts owed to Eskom presents a moral hazard which will most likely escalate the problem in future and it creates a bad precedent. However, the Committee welcomes the circular issued by National Treasury that compels municipalities to meet certain conditions before Eskom could write-off the debt owed by municipalities to Eskom. The Committee would like to encourage National Treasury, the Department of Cooperative Governance and the South African Local Government Association to ensure that municipalities who owe Eskom put in concrete plans and meet all the qualifying conditions as per the NT circular. This will allow municipalities to benefit from the Eskom debt write-offs, easing the financial pressures faced by these municipalities.
	6. The Committee notes and welcomes the submission by COSATU that before Eskom consider writing off municipal debt, that government should first determine which debt is not recoverable and which is recoverable and that which is recoverable, must be pursued, even legally. The Committee welcomes this proposal and is of the view that not all municipalities who owe Eskom are unable to settle their debt, but in some cases, it’s a matter of creditors priorities in municipalities.
	7. The Committee notes the proposal by MCSA that government must sell the old coal power plants or concession them to the private sector. The private sector will be in a position to recapitalise and raise each plant’s energy availability factor. However, the Committee is of the view that Eskom is critical for the developmental agenda of the democratic government. Privatising Eskom or its plants will not be in the best interest of the poor majority who are dependent on government for the provision of electricity, including the indigent households who get free electricity, and many poor households who pay subsidised electricity tariffs. The Committee asserts that the public good element in the supply of electricity to the poor and previously disadvantaged communities cannot be optimally provided by the private sector, who have profit maximisation objectives.
1. **Recommendations**

The Standing Committee on Appropriations, having considered the briefings and comments by invited stakeholders on the Eskom Debt Relief Bill [B5 - 2023], recommends as follows:

* 1. That the Minister of Finance ensures that National Treasury provide a comprehensive report on the process by which the government will directly take over the R70 billion in 2025/26.
	2. That the Minister of Finance and the Minister of the Department of Public Enterprises ensure that National Treasury and the Department of Public Enterprises develop time-bound and integrated plan to ensure that Eskom comply with all the set of conditions proposed in the Bill.
	3. The Minister of Finance ensures that National Treasury firstly determines which municipal debt is not recoverable and which is recoverable before Eskom could write-off any municipal debt, even after complying with the set conditions.
	4. The Committee does not agree with limiting Eskom to transmission and distribution only. This is tantamount to privatisation of generation making Eskom to be dependent on the private sector only. This will exclude Eskom generation from participating in the production of renewable and nuclear energy generation. The Committee therefore recommends that the condition limiting Eskom to only transmission and distribution be expunged.
	5. That the Minister of Finance furnish Parliament with quarterly reports on the compliance of Eskom to the conditions attached to the Bill.
	6. The primary purpose of the Bill is to ensure electricity security and the success of this debt relief package must be measured against this purpose. The Committee therefore recommends that the Minister of Finance and the Minister of Public Enterprises furnish Parliament with quarterly reports on the progress made in respect of the electricity availability by Eskom.
	7. That the Minister of Public Enterprises and the Eskom Board ensure that, in future, Chief Executive Officers with requisite qualifications, skills and expertise in the electricity engineering field be appointed in Eskom.
1. **Committee Recommendation on the Bill**

The Standing Committee on Appropriations, having considered the Eskom Debt Relief Bill [B5 - 2023] (National Assembly – Section 77); referred to it and classified by the Joint Tagging Mechanism; recommends that the Bill be adopted, without amendments.

1. **Conclusion**

The responses to the recommendations as set out in section 9 above by the relevant Executive Authorities must be sent to Parliament as well as the Committee within 60 days of the adoption of this report by the National Assembly.

Report to be considered.