

RAILWAY SAFETY BILL

Presentation to the Select Committee on Transport

15 NOVEMBER 2023



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Background



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- ❑ National Railway Safety Regulator Act , 2002(Act No.16 of 2002) NRSR Act – current legislation regulating railway safety in the country.
- ❑ The legislation was promulgated in 2002 and amended in 2009.
- ❑ It is the founding Act which led to the establishment of the RSR as an independent entity to oversee railway safety in the country.
- ❑ The Department conducted a Railway Safety Regulatory gap analysis study in 2014/15 financial year which highlighted legislative gaps such as; lack of clarity on the role of the various players within the rail safety environment, duplication between the powers of the CEO and the Board, RSR funding challenges, absence of framework regulating licensing of Safety Critical Grade (SCG) employees, lack of proper appeal mechanism & independence in occurrence investigations.

Background



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- ❑ The Railway Safety Bill , 2021(Bill) seeks to repeal the NRSR Act.
- ❑ The Bill seeks to improve the regulatory framework regulating safety in the Republic of South Africa in order to improve safety for passenger and freight.

Problem Statement



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- ❑ The railway environment have gone through some development over the past decade due to major railway investments.
- ❑ The new initiatives present different dynamics in regulating safety. The RSR and rail operators have to therefore play a crucial role in ensuring safety.
- ❑ According to the SoS Report majority of railway accidents are due to human error.

Objectives of the Bill



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- The Bill retains a number of elements in the NRSR act, providing clarity on several issues and introduces new concepts to enhance railway safety.
- Recognise operators role in managing and implementing safety measures.
- Promotion of railway safety in the country through an improved regulatory framework.
- The Draft Bill's objective is on safety as an outcome so as to provide safe railway operations amongst the role players.
- The Bill seeks to promote rail as a preferred mode of transport and to positively contribute to the country economy.

Approach



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- ❑ focus on railway safety.
- ❑ new Act to be flexible, provide an enabling framework.
- ❑ striving for clear and precise language.
- ❑ plain English.
- ❑ complies with new DPSA's Guide for the Appointment of Persons to Boards and Chief Executive Officers of State and State Controlled Institutions.

Objects of Act



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- ❑ Enables operators to undertake safe railway operations.
 - ❑ Facilitate a modern, flexible and efficient regulatory regime that ensures the continuing enhancement of safe railway operations.
 - ❑ Encourage the collaboration and participation of interested and affected parties in improving safety.
 - ❑ Promote the harmonisation of the railway safety regime of the Republic with the objectives and requirements for safe railways operations of the SADC.
 - ❑ Ensure coherent governance of railway safety for the Republic as a whole.

Application



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- ❑ general application unchanged
- ❑ clarity on concurrent applicable legislation
- ❑ provision for exemptions :
 - total Act or individual provisions
 - regulations
 - transparent process to follow

Governance



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- ❑ RSR continues as established.
- ❑ objects and functions listed, largely unchanged with better clarity.
- ❑ Functions and Powers of the RSR are divided into mandatory functions and discretionary powers.
- ❑ Administer and implement any international agreement the Republic may enter into in respect of railway safety.
- ❑ governance aligned with DPSA guide.

Board



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- ❑ nomination process, with Minister appointing between 7 and 13 members, majority serve as independent non-executive members.
 - ❑ term of office: non-executive members serve for a maximum. three year term, which is renewable, for a maximum of two consecutive terms.
 - ❑ at least one-third of non-executive members must retire annually.
 - ❑ disqualification criteria extended.

Board (cont)



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- ❑ Minister after consultation with Cabinet appoints a chief executive officer from a list of at least two candidates recommended by board.
- ❑ stronger Ministerial oversight, extended dismissal provisions.
- ❑ if AG has for two successive years qualified audit report or noted. matters of emphasis or has declined to express an opinion, board may be dissolved.
- ❑ Minister may upon good cause shown dissolve the board and appoint an administrator to take over the functions of the board.

Board (cont)



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- ❑ board annually concludes performance agreement, including provisions for board evaluation and board performance targets.
 - ❑ board member must upon appointment or as often as Minister requires submit a declaration to him or her to the effect that the board member is not disqualified.
 - ❑ process for recusal in case of potential conflict of interest.
 - ❑ board functions listed.

Board (cont)



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- ❑ administrative arrangements largely left to Board to decide.
 - ❑ board committees.
 - ❑ no person other than a board member or a person rendering secretarial services to the board may be present during a board meeting unless he or she was invited by the board to attend a specific part of the meeting and for a specific purpose.
 - ❑ board approves senior appointments to be made by CEO.

RSR funds



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Funds consist of -

- ❑ money appropriated by Parliament;
- ❑ Fees specified in terms of Section 66;
- ❑ levies to be adopted in financial legislation by Parliament;
- ❑ any other fees or sources of income provided for in other legislation.

Safety Permits



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- ❑ An operator who intends to undertake or operates any railway or railway operation must apply to the Regulator, in the prescribed manner.
- ❑ **The categories of person :**
 - a) Concessionaire;
 - b) Operates, construct, maintains or manages railway
 - c) Conducts or undertakes railway operations on behalf of another person who owns, finances and controls the relevant assets

Safety Permits (cont)



- ❑ The holder of a safety permit must annually pay the safety permit fee in respect of every type of railway or railway operation authorised in that safety permit irrespective of the period of validity of that safety permit.

- ❑ The Regulator must, after considering an application notify the applicant in writing of the outcome of his/her application, and if the application is approved, the Regulator must in that notice specify:
 - the period of validity of the safety permit (3 – 5 years);
 - the types of railways operations authorised by or under that safety permit.

Safety Permits(Cont)



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- ❑ process for consideration.
 - ❑ non-transferable.
 - ❑ re-application at least three months prior to the expiry of current safety permit.
 - ❑ standard and permit-specific conditions.
 - ❑ surrender, suspension and revocation of safety permit.

Safety critical grade Framework



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- ❑ RSR **oversees** the management and execution of the prescribed framework for safety critical grade positions by evaluating and registering training institutions who provide training and licensing safety critical grade employees.
- ❑ RSR collaborates on curricula.
- ❑ RSR to establish and maintain database of safety critical license holders.
- ❑ no person may perform work in a safety critical grade position, unless he or she is in possession of a relevant safety critical grade license granted by the Regulator.

Railway Safety Standards



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- ❑ Minister may, by notice in the Gazette prescribe railway safety standards applicable to any railway or railway operation.
- ❑ The Regulator or an operator may propose railway safety standards for safe railway operations to the Minister.
- ❑ Process prior to proposing any railway safety standards, the Regulator must by notice in the Gazette, cause the draft railway safety standards to be published for public comments.

Safety Management System



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- ❑ The Board must determine the form and content of the safety management system required for different categories of permits.
- ❑ The Board must evaluate the efficacy of the safety management systems and safety management system report.
- ❑ The Regulator must publish any determination on the safety management system in the Gazette and on its website.

Enforcement



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- ❑ appointment of inspectors.
- ❑ specific powers for routine inspections, enforcement inspections.
- ❑ powers to deal immediately with unsafe situations.
- ❑ appeal procedures clarified.

Rail occurrences



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The Minister may prescribe a railway accident or incident as railway occurrence.

Immediately after a railway occurrence, operator must –

- ❑ secure the scene of the railway occurrence;
- ❑ prevent the movement or removal of rolling stock or infrastructure;
- ❑ record the names of all persons who may provide evidence.

Minister by regulation determines the attributes of –

- ❑ a major investigation, conducted by independent investigator appointed by Minister and reporting to Minister;
- ❑ a standard investigation, conducted by operator(s) itself/themselves, to be submitted to RSR;
- ❑ own internal investigations possible, subject to restrictions.

commissions of inquiry in extreme cases.

Appeals



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- ❑ Appeal to CEO against decision of railway safety inspector or other RSR employee.
 - ❑ Appeal to Board Appeals Committee against decision of CEO.
 - ❑ Appeal to Transport Appeal Tribunal against decision of board.

Regulations



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- ❑ general power with process prescribed, with Minister taking into account –
 - ❑ impact of such regulations on rail operations.
 - ❑ the burden created on operators and if applicable, persons in safety critical grade positions, in respect of compliance costs.
 - ❑ the balance between the need for safe rail operations and the economic viability of new measures to achieve safe rail operations.
 - ❑ whether the measures should apply to both traditional rail operations as well as rapid rail operations.

Regulations (cont)



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- ❑ regulations regarding design, construction, alteration and new operations.
- ❑ regulations regarding infrastructure or activity affecting safe railway operations.
- ❑ regulations regarding assessment and information.
- ❑ regulations regarding rail occurrences.
- ❑ regulations regarding fees.
- ❑ regulations regarding compliance notices and penalties, with penalties to be paid to national revenue fund.
- ❑ regulations regarding safety critical grades and training institutions.

Consultations



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Consultations on the Draft Railway Safety Bill was held with the following key stakeholders:

- ❑ Organised Labour
- ❑ Railway Safety Regulator
- ❑ Department of Public Enterprises
- ❑ National Treasury
- ❑ All Provincial Departments of Transport
- ❑ Local municipalities and Metros
- ❑ Railway Operators
- ❑ Heritage Railway Association of South Africa
- ❑ Transport Education & Training Authority (TETA)
- ❑ Transnet /School of Rail
- ❑ Office of the State Law Adviser

Consultations (cont)



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- ❑ Department of Planning, Monitoring & Evaluation (SEIAS Assessment)
 - ❑ African Rail Industry Association
 - ❑ NEDLAC
 - ❑ Department of Tourism

Conclusion



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- ❑ Once promulgated, the Act will lead to a significant safety improvement in the railway environment. Even though there will be minor costs related to the implementation of the Act, the benefits to be derived will far outweigh the costs.
- ❑ Risks related to the implementation of the Act will be addressed through measures such as the roll-out of national awareness session on the new legislation and Change Management Awareness to get a buy-in from the operators and the relevant stakeholders.



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Thank you