



Wes-Kaapse Provinsiale Parlement
Western Cape Provincial Parliament
IPalamente yePhondo IeNtshona Koloni

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Datum
Date
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18 March 2024

Verwysing
Reference
Isalathiso

11/1/3

NEGOTIATING MANDATE

To: Hon Hon Mr KM Mmoiemang , MP
Chairperson: Select Committee on Transport, Public Service
& Administration, Public Works & Infrastructure

Name of Bill: Railway Safety Bill

Number of Bill: [B 7B - 2021]

Date of deliberation: 11 March 2024

Vote of Legislature: The Standing Committee on Mobility, having considered the subject of the Railway Safety Bill [B 7B–2021] (NCOP) referred to the Committee in accordance with Standing Rule 217, confers on the Western Cape’s delegation in the NCOP the authority to support the Bill. The Committee further proposes the following:

Date: 18 March 2024

MR D AMERICA, MPP
Chairperson: standing committee on Mobility



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Reference number: WCPP 11/4/22

COMMITTEE REPORT

(Negotiating mandate stage) Report of the Standing Committee on Mobility on the Railway Safety Bill [B 7B–2021] (NCOP), dated 11 March 2024, as follows:

The Standing Committee on Mobility, having considered the subject of the Railway Safety Bill [B 7B–2021] (NCOP) referred to the Committee in accordance with Standing Rule 217, confers on the Western Cape’s delegation in the NCOP the authority to support the Bill. The Committee further proposes the following:

<u>Comments on specific provisions</u>		
Clause	Comment	Recommendation
Preamble: Prime responsibility of railway operators	<p>The preamble refers to “<i>the prime responsibility and accountability of railway operators in ensuring the safety of railway operations</i>”.</p> <p>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.</p>	<p>Please refer to the earlier comments on roles and responsibilities in the rail environment.</p> <p>It is recommended that the preamble be aligned with said comments.</p>
Clause 1 Definitions	<p>““network” means a system of railway infrastructure elements, including track, civil infrastructure, train control and signalling systems and electric traction infrastructure, which constitutes running lines and any part of a railway yard, marshalling yard, siding, freight terminal, depot or station on which those elements are situated;”</p>	<p>The definition should remain as flexible as possible, as there are a multitude of ways and manners in which a rail network is able to communicate within itself – depending on the standards adopted by that particular network owner. As such, the Committee suggests the following amendment: “network” means a system of railway infrastructure elements, including track, civil infrastructure, train control</p>

		and signalling <u>and communication systems (...)</u> ".
Clause 1: Definitions Insert new definition: 'Republic'	The term 'Republic' is used throughout the Bill (e.g. clause 3(d) and (f)), however, it is not defined.	It is recommended that the term 'Republic' be defined in the Bill.
Clause 1 Definitions	<p>""station"" means a facility for passengers to enter or exit a train, including a railway passenger terminal and a passenger halt, and may include—</p> <p>(a) passenger modal transfer and commercial activities forming part of the facility; (...)"</p>	<p>We believe that it is safe to assume that the larger Transport Planning profession has adopted the philosophy to ensure that, where opportunities allow, intermodal transfers should be planned for appropriately. As such, the Committee suggests the following amendment:</p> <p>"a) passenger <u>intermodal transfer</u> and commercial activities forming part of the facility;"</p>
Clause 1: Definitions "operator"	The definition of "operator" includes the term "concessionaire", but this is not defined in the Bill.	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.
Clause 1: Definitions "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.	It is recommended that the term be extended to include persons with short-term impairments.
Clause 1: Definitions "technologies"	The definition of "technologies" is vague.	It is recommended that the definition be expanded to clarify what is intended.
Clause 3: Objects of Act	In clause 3 there is no mention of safety mechanisms or methods that are to be applied to ensure safety of commuters and the safeguarding of the rail infrastructure. Insertion of further provisions in clause 3 to address and emphasise the need for safer and well protected rail infrastructure is necessary.	It is recommended that a new paragraph (g) be inserted that states the following: " <i>ensure the safety of rail passengers and rail infrastructure through the deployment of security at key infrastructure to combat vandalism and theft of property, and safety from harm to the person or property of commuters and staff</i> ".
Clause 4: Exemption from Act	The clause allows for exemption, upon application from compliance with any provision in the Act other than section	Provide for the criteria for exemption applications.

<p>4(1)</p>	<p>4.</p> <p>The clause is problematic in that it is not definitive and prescriptive on what could qualify as criteria for an exemption application. Criteria that are descriptive as to what qualifies as exemption from compliance reduces unnecessary applications. Some of these may be frivolous and create an unnecessary administrative burden around the processing of exemption applications.</p>	
<p>Clause 4: Exemption from Act</p> <p>4(4) and 4(6)</p>	<p>A specified time period should replace the reference to “reasonable time”, to ensure greater certainty in the provisions.</p>	<p>Insert a specific time frame, that may be extended by the Minister.</p>
<p>Clause 4: Exemption from Act</p> <p>4(5)</p>	<p>It should be mandatory for the Minister to publish the application for public comment in the <i>Government Gazette</i>, and for the applicant to respond to comments received on the application.</p>	<p>Change the word “may” to ‘must’ (i.e. ‘the Minister must...’).</p>
<p>Clause 4: Exemption from Act</p> <p>4(9)</p>	<p>The clause lacks transparency as to the considerations or factors that the Minister would take into account in the decision to suspend, withdraw or amend an exemption.</p> <p>The phrase “good grounds” is vague and open to interpretation.</p>	<p>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).</p>
<p>Clause 7: Functions and powers of Regulator</p>	<p>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.</p> <p>The functions and powers of the Regulator need to be extended to expressly include provisions that directly address the interventions that are necessary to combat issues of vandalism and destruction of property.</p>	<p>Amend the clause to address the interventions that are necessary to combat issues of vandalism and destruction of property.</p> <p>Further, 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—</p> <ol style="list-style-type: none"> 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

		<p>South African public transport system, a report should be provided on actual specific rolling stock availability at monthly intervals specifying the number of full train sets and all variations thereof; and</p> <p>4. 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.</p>
<p>Clause 7: Functions and powers of Regulator</p> <p>7(1)(b)</p>	<p>It is unclear why the words “<i>if necessary</i>” were inserted.</p> <p>The Regulator should be required to provide the relevant information and advice from time to time.</p>	<p>Reconsider the use of the words “<i>if necessary</i>”.</p>
<p>Clause 8(3)</p> <p>International Co-operation</p>	<p>“(3) Unless the international agreement provides otherwise, the Regulator must report, within five months after the end of its financial year as contemplated in section 28, to the Minister on the performance of any of its functions under subsection (1).”</p>	<p>The Committee would propose 3 months after Financial Year (FY) end. We believe that this lag time between reviewing previous FY targets may be too long as any amendments and adjustments to be adopted within the new FY may be too late to be accommodated by the RSR.</p> <p>Therefore, this may place them at a disadvantage in reporting on progress made as a result of the Minister’s recommendations/response to the RSR Annual Report.</p>
<p>Clause 9: Board of Regulator</p> <p>9(2)</p>	<p>The words “as far as possible” suggest that the Regulator need not achieve its objectives.</p>	<p>Delete the words “as far as possible”.</p>
<p>Clause 9: Board of Regulator</p> <p>9(4)</p>	<p>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.</p>	<p>Elaborate on the applicable standards of ethics.</p>
<p>Clause 9: Board of Regulator</p> <p>9(5)(a)(i)</p>	<p>The term “railway environment” is generally used to refer to the operational conditions and not the business / industry sector as intended in this clause.</p>	<p>It is recommended that the term “railway environment” be changed to ‘railway sector’.</p>
<p>Clause 10: Composition of board</p>	<p>The composition of the board should also include a member that has extensive experience, demonstrable</p>	<p>It is recommended that the clause be amended accordingly.</p>

<p>10(1)</p>	<p>knowledge, and acumen in the field of policing, security or law enforcement. A board member with such experience may be essential in addressing and attending to factors related to criminality associated with the general destruction of rail infrastructure, and safety of persons from criminal acts of violence or theft.</p>	
<p>Clause 10: Composition of board 10(1)(e)</p>	<p>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).</p> <p>The word ‘or’ should be used instead of “and”.</p>	<p>Replace the word “and” with ‘or’.</p> <p>Further, the drafter could consider listing each field in a separate paragraph.</p>
<p>Clause 10: Composition of board 10(2)</p>	<p>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 role over Transnet.</p>	<p>It is recommended that representation from the Department of Public Enterprises be included on the board of the Regulator.</p>
<p>Clause 10: Composition of board 10(4)</p>	<p>The only executive member of the board is the CEO, which automatically makes the majority of the members non-executive.</p>	<p>It is recommended that this clause be deleted, as it appears to be redundant.</p>
<p>Clause 10(1)(d) Composition of Board</p>	<p><i>“The board consists of not less than seven and not more than 13 members who collectively have extensive experience in, and demonstrate knowledge of and acumen in, one or more of the following: (...) (d) corporate management;”</i></p>	<p>The Committee recommends that the term “corporate management” be replaced by “corporate governance”.</p> <p>“Management” deals with the process of leading, administering and directing a company, while “governance” refers to the system of rules, practices, and processes by which a company is directed and controlled, and involves balancing the interests of a company's many stakeholders, shareholders, senior management, customers, suppliers, lenders, the government, and the community. Therefore, it encompasses practically every sphere of management.</p>
<p>Clause 10(3) Composition of Board</p>	<p>“The board must be broadly representative with regard to race, gender and disability.”</p>	<p>The term “must” may set limiting criteria to achieve the best possible candidates as expressed in 10(1). It may be in the RSR’s favour to ensure that the criteria as outlined within section 10(1) be satisfied, and then utilise section 10(3) as an eliminating factor to elevate persons identified within section 10(3), if all things were equal.</p>

<p>Clause 11: Appointment of board members</p> <p>11(3)</p>	<p>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.</p>	<p>Amend the clause so that the Minister has a choice to appoint potential candidates or not and is not obligated to appoint them.</p>
<p>Clause 11: Appointment of board members</p> <p>11(4)</p>	<p>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.</p>	<p>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).</p>
	<p>N/A</p>	<p>In order to reach a wider audience, it is recommended that the Notice be published in the <i>Government Gazette</i> as well.</p>
<p>Clause 12: Chairperson and deputy chairperson of board</p> <p>12(1)</p>	<p>It is unclear whether 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.</p>	<p>Reconsider the wording and revise to clarify the intention.</p>
<p>Clause 12: Chairperson and deputy chairperson of board</p> <p>12(4)(a)</p>	<p>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?</p>	<p>Reconsider the use of the word “vacant” with regard to clause 12(4)(a).</p>
<p>Clause 12: Chairperson and deputy chairperson of board</p> <p>12(5)</p>	<p>A notice period for the chairperson or deputy chairperson to vacate his or her office is not included.</p>	<p>It is recommended that a specific notice period be inserted for the chairperson or deputy chairperson wishing to vacate his or her office.</p>
<p>Clause 13: Term of office and conditions of service of board members</p> <p>13(1)(d)</p>	<p>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.</p> <p>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.</p>	<p>Review the intended meaning of executive and non-executive board members and ensure that this is reflected throughout the Bill, where applicable.</p>
<p>Clause 14: Functions of board</p>	<p>In addition to the functions of the board, the board should develop strategies and plans to secure the rail infrastructure and promote the safety of rail commuters.</p>	<p>It is recommended that clause 14 be amended to provide for the functions mentioned in the column to the left.</p>

Clause 15: Disqualification from appointment as board member 15(f)	It is unclear what would constitute an “immediate family member”.	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” ...’.
Clause 16: Termination of board membership 16(3)	N/A	It is recommended that the word “that” (i.e. “that termination”) be replaced with word ‘the’ (i.e. ‘the termination’).
Clause 17: Meetings of board	Board meetings should be held at least once every quarter.	Revise the clause accordingly.
Clause 18: Committees of board 18(1)(b)	It is unclear what is meant by “appropriate persons”.	It is recommended that the clause stipulates the particular criteria for skills or expertise that the persons must possess.
Clause 21: Dissolution of board	Clause 11(5) of the Bill requires the Minister to inform Parliament of the appointment of a board within 30 days from the date of appointment. In contrast, clause 21 contains no obligation on the Minister to also inform Parliament of the dissolution of the board. The lack of a subclause in clause 21 requiring the Minister to inform Parliament of the dissolution of the board takes away or diminishes the oversight role envisioned in clause 11(5) of the Bill.	To sustain the oversight role played by Parliament in the appointment of a board, as contemplated in clause 11(5), it is proposed that such oversight role should also play a role in the dissolution of the board by the Minister. It is proposed that a subclause be inserted in clause 21 to provide for the Minister to inform Parliament when intending to dissolve the board.
Clause 21: Dissolution of board 21(3)(a)	It is unclear who may be appointed as an administrator.	It is recommended that the Bill be revised to clarify this issue.
Clause 22: Chief executive officer 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.	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.
Clause 22: Chief executive officer	The phrase “the due process of the law” is vague.	Delete the words “due process of the law” and stipulate the applicable procedure.

22(4)		
Clause 23: Functions of CEO 23(5)(a)	<p>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.</p>	<p>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.</p>
Clause 23: Functions of CEO 23(8)	<p>The phrase “all strategic documents or policies” is vague.</p>	<p>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.</p>
Clause 25: Limitation of liability	<p>It is of great concern that in terms of clause 25 of the Bill, the State and other associated entities are not liable for any loss, damage, or failure to exercise any power or perform any function in terms of the Bill. The existence of such a provision in this Bill does not further any serious aims to transform and ensure accountability on the side of the State.</p> <p>No measures are in place in the Bill to hold the Regulator accountable for its actions 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.</p> <p>Regulation comes at a cost to society; therefore, the Regulator should be held liable for its actions and add value to railway safety.</p> <p>The clause indemnifies the State against any liabilities. The section defeats any intended progress as acts of maladministration, mismanagement and incompetence cannot result in any legal consequences against the State. The clause may result in litigation against the State, as it cannot be acceptable that the State would implement legislation, expect compliance from citizens, yet absolve itself from any liability.</p> <p>The fact that the clause contains the expression “performance of any function, <u>in good faith</u>” does not assist, as the determination as to whether something is done in “good faith” or not is subjective and may be subject to a long enquiry or determination. The employees of the Regulator should be in a position to perform their duties with due diligence and not be “cushioned” against liability claims through unjust sections of the law.</p>	<p>Government needs to commit to principles of accountability and responsiveness. Clause 25 does not inspire confidence in the entire aim and purpose of the Act. It cannot be that the Bill requires of citizens to be compliant with the law and face consequences thereof for failure to adhere to the law, yet the government through enactment of clause 25 is able to absolve itself from any consequences.</p> <p>In the circumstances, it is recommended that clause 25 be deleted. Further, it is recommended that the Bill be amended to provide for accountability of the Regulator.</p> <p>Should it be decided to retain the clause, then it is important that it be made clear that the intention is not to absolve negligence or gross negligence.</p> <p>Provision could also be made for penalties that are applicable to the Regulator and its staff for not performing their duties according to predetermined standards.</p>

<p>Clause 30: Safety permits</p> <p>30(4)(d)</p>	<p>The application should be published in various media in order to ensure that it reaches a wider audience.</p>	<p>It is recommended that the application be published in the <i>Government Gazette</i>, in two local newspapers, and any other media which the Regulator considers appropriate in the circumstances.</p>
<p>Clause 31 Conditions of Safety Permit</p>	<p>n/a</p>	<p>There needs to be a condition set that provides that the permit application must be reviewed by the Rail Authority/Infrastructure Owner to validate or support the conditions of the permit application. This section reads as though the condition of the permit is only validated and managed between the RSR and the applicant. Whereas it would be imperative for the Rail Authority/Infrastructure Owner to be part and party to the conditions of the permit or application. Either as commenting party or a reviewer – to assist in ensuring that monitoring and evaluation processes are undertaken against the permit. Additionally, the amendments of conditions to any safety permit should be communicated to the Rail Authority/Infrastructure Owner to ensure that as/if they monitor, operators maintain the conditions of their permits.</p>
<p>Clause 31: Conditions of safety permit</p> <p>31(3)(b)</p>	<p>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?</p>	<p>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.</p>
<p>Clause 32: Amendment of conditions of safety permit</p> <p>32(4)</p>	<p>It is unclear whether the initial decision is taken by the board or the Regulator.</p> <p>It is important to know who the initial decision maker is so that the appropriate appeal authority / body can be identified.</p>	<p>Reconsider clauses where the initial decision-making body has not been identified and elaborate where necessary.</p> <p>Further, ensure that the appeal authorities / bodies are not conflicted or <i>functus officio</i>.</p>

<p>Clause 32: Amendment of conditions of safety permit</p> <p>32(5)</p>	<p>The clause mentions that section 32 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.</p>	<p>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.</p>
<p>Clause 33: Surrender, suspension and revocation of safety permit</p> <p>33(2)</p>	<p>The circumstances in which a permit may be revoked or suspended are the same.</p> <p>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.</p>	<p>It is recommended that the clause be revised to provide clarity on this issue.</p>
<p>Clause 33: Surrender, suspension and revocation of safety permit</p> <p>33(6)</p>	<p>The words “<i>by operation of law</i>” are unnecessary.</p>	<p>Delete the words “<i>by operation of law</i>”.</p>
<p>Clause 35: Evaluation and registration of training institutions</p> <p>General</p>	<p>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.</p>	<p>N/A</p>
<p>Clause 35: Evaluation and registration of training institutions</p> <p>35(2)</p>	<p>N/A</p>	<p>It is recommended that the draft policy be published for public comment.</p>
<p>Clause 36: Railway safety standards</p> <p>36(1)</p>	<p>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 “<i>prescribed by <u>regulation</u></i>” (emphasis added)).</p>	<p>Revise clause 36 so that it is clear what is intended.</p> <p>The drafter could, perhaps, use alternative wording such as ‘issue’, as opposed to “<i>prescribe</i>” (i.e. the Minister may issue railway safety standards).</p>
<p>Clause 36: Railway safety standards</p> <p>36(2)(a)</p>	<p>The Bill does not explain what is meant by ‘railway environment’. This should be clarified.</p>	<p>It is recommended that the Bill be amended to clarify this term.</p>

<p>Clause 36: Railway safety standards</p> <p>36(3)(a)</p>	<p>Explanatory memoranda normally accompany Draft Bills and Bills. They do not normally accompany subordinate legislation or instruments.</p> <p>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.</p>	<p>Delete the reference to the explanatory memorandum.</p> <p>Further, if the intention is that the standards will be in the form of Regulations, then it is recommended that clause 36 be clarified to state that the Regulations must be published by the Minister for public comment.</p>
<p>Clause 36: Railway safety standards</p> <p>36(5)</p>	<p>It is unclear what the difference is between a railway safety standard and a railway safety specification (if any).</p>	<p>Revise the clause to clarify the meanings of both terms.</p>
<p>Clause 38: Consultative forum</p> <p>38(3)</p>	<p>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.</p>	<p>It is recommended that detail be provided on the types of matters that the Regulator may refer to the forum for consideration.</p>
<p>Clause 38(4) Consultative Forum</p>	<p>“(4) Any stakeholder may be a member of a forum contemplated in subsection (1) and participation in its activities is voluntary.”</p>	<p>It would be prudent to establish mandated stakeholders to be members of the consultative forum to ensure commitment towards rail reform and safety.</p>
<p>Clause 38: Consultative forum</p> <p>38(6)</p>	<p>Specify levels at which consultative forums may be established.</p>	<p>Establish forums at provincial level as may be necessary.</p>
<p>Clause 41: Railway safety inspector</p> <p>General</p>	<p>There are no specifications and details as to whether the railway safety inspector will operate similar to a sub-directorate with regional offices, and be able to appoint subordinates to fulfil the role of railway safety inspector.</p> <p>Details are lacking as to the functional and administrative requirements of the “Office” of the railway safety inspector. Clarity needs to be provided as to how the railway safety inspector is to cover all the areas, if the legislation does not provide for the administrative operations of the railway safety inspector.</p>	<p>It is recommended that the clause be amended to clarify this matter.</p>
<p>Clause 42: Powers and duties of railway safety inspector</p> <p>42(2)</p>	<p>It may be useful to have a general protocol, which can then be adapted into a specific protocol to be concluded with an operator.</p>	<p>Please consider including a provision to this effect.</p>
<p>Clause 43: Routine compliance inspection</p>	<p>The phrase “any premises of the railway safety permit holder other than a private residence” is very wide.</p>	<p>It is recommended that the clause be revised as set out in the column to the</p>

<p>43(1)</p>	<p>While it does not include private residences, it includes other premises “of” the railway safety permit holder. This could potentially be interpreted as including other premises which do not relate to the railway safety permit or the railway safety environment.</p> <p>The clause should clearly state that only regulated premises are contemplated in this clause and not any other premises.</p> <p>Please refer to <i>Gaertner and Others v Minister of Finance and Others</i> (CCT 56/13) [2013] ZACC 38 and <i>Estate Agency Affairs Board v Auction Alliance (Pty) Ltd and Others</i> [2014] ZACC 3 (Auction Alliance judgment) for principles relating to warrantless searches.</p>	<p>left.</p> <p>Further, clause 43 should be reconsidered to ensure that there is consistency with applicable case law on warrantless searches.</p>
<p>Clause 44: Enforcement inspection: General</p>	<p>Please refer to the above references to case law.</p>	<p>Clause 44 should be reconsidered to ensure that there is consistency with applicable case law on searches under the authority of a warrant.</p>
<p>Clause 44: Enforcement inspection</p> <p>44(1)</p>	<p>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.</p> <p>The use of the phrase “in terms [of] this Act” is not correct. An offence is not committed ‘in terms of’ an Act.</p>	<p>Reconsider the clause in light of the comments.</p>
<p>Clause 44: Enforcement inspection</p> <p>44(9)</p>	<p>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.</p>	<p>It is recommended that the clause be revised in light of the comments.</p>
<p>Clause 45: Formalities of inspection</p> <p>45(1)</p>	<p>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.</p>	<p>It is recommended that the clause be revised to make provision for cases in which certain people may not identify as male or female.</p>
<p>Clause 45: Formalities of inspection</p> <p>45(3)(a) and (b)</p>	<p>The Bill in terms of section 41(3)(b) confers on the railway safety inspector the powers of a peace officer by the Criminal Procedure Act, 1977 (Act 51 of 1977). If the railway safety inspector enjoys powers similar to a peace officer, it means as per section 45(3) (a) and (b) that there is no justification why statements obtained by the railway safety inspector are not given under oath and in confidence, in certain instances. The statements obtained in terms of section 45(3) (a) and (b) are not given under oath and may be subject to evidential discrepancies and credibility</p>	<p>It is recommended that the clause be deleted.</p>

	problems when tested before a court of law.	
Clause 47: Powers of railway safety inspector to deal with unsafe conditions 47(1)	It is unclear what is meant by “condition”.	It is recommended that the clause be revised to clarify what type of condition is envisaged.
	The meaning of the term “activity” is unclear.	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.	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.
Clause 48: Railway occurrence 48(2)(b)	<p>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.</p> <p>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.</p>	Revise the clause in line with the comments in the column to the left.
Clause 51: Major investigation 51(4)	<p>Inclusion of the word ‘may’ provides the investigator with a discretion on whether or not to submit interim reports to the Minister.</p> <p>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.</p>	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.

<p>Clause 51: Major investigation</p> <p>51(7)(a)</p>	<p>In order to ensure that a wider audience is reached, the final report should be published in the <i>Government Gazette</i>.</p>	<p>It is recommended that the clause be aligned with the proposal in the column to the left.</p>
<p>Clause 51: Major investigation</p> <p>51(7)(b)</p>	<p>The need for the words “as far as may be practicable” is unclear. The Minister should give effect to the recommendations of the investigator.</p>	<p>Delete the words “as far as may be practicable”.</p>
<p>Clause 51: Major investigation</p> <p>51(8)(c)</p>	<p>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.</p>	<p>It is recommended that the scope of the clause be narrowed.</p>
<p>Clause 52: Standard investigation</p> <p>52(4)</p>	<p>The words “must conduct an individual investigation” are confusing. While the intended meaning is that the operators should conduct separate investigations, the phrase could be misinterpreted to mean that they should conduct one (combined) investigation.</p>	<p>Revise the wording to so that it is clear that the investigations are to be separate.</p>
<p>Clause 55: Appeal to board appeals committee</p> <p>General</p>	<p>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).</p>	<p>Clause 55 should be reconsidered to ensure that the correct body is referred to.</p>
<p>Clause 55: Appeal to board appeals committee</p> <p>55(3)</p>	<p>This subsection does not make provision for instances in 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.</p>	<p>Reconsider the clause and amend as may be appropriate.</p>
<p>Clause 55: Appeal to board appeals committee</p> <p>55(5)</p>	<p>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.</p>	<p>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).</p>
<p>Clause 61: Regulations and notices</p> <p>61(1)(a)</p>	<p>The phrase “any other place as a station” is not clear.</p> <p>It is assumed that this refers to the designation of any other place as a station. However, this should be stated.</p>	<p>It is recommended that the clause be amended to make its meaning clear.</p> <p>Further the word “station” should not be in bold.</p>
<p>Clause 61: Regulations and notices</p>	<p>In many instances, comments are submitted electronically. Thus, the reference to “address” is problematic.</p>	<p>Consider amending the clause to provide for electronic submission also.</p>

61(4)(a)(ii)		
Clause 61: Regulations and notices 61(5)(c)	“[T]raditional 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.	Revise the clause for the sake of clarity, as this will ensure consistency in interpretation.
Clause 62: Regulations regarding design, construction, alteration and new operations	The phrase “new operations” appears misplaced and unnecessary in this clause.	Exclude the phrase and leave “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.
62(1)	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”.	It is recommended that the clause be revised accordingly.
Clause 63 Regulations regarding infrastructure or activity affecting safe railway operations	“63. (1) Subject to subsection (2), the Minister may, after consultation with the members of the Executive Council responsible for transport in the various provinces, make regulations on the following matters (...)”	It is recommended that the Minister also be required to consult the regulated/managing authority for rail, in addition to MECs, as this function may be delegated to the most appropriate level of government, which may be a metro in some provinces.
Clause 66: Notice regarding fees	<p>The Bill states that the Minister may determine the permit fees in consultation with the Minister of Finance on an annual basis.</p> <p>Fees could potentially be arbitrarily determined, which could possibly be at greater cost to society than the main purpose of regulating the railways (preventing accidents). The determination of fees should also include consultation with railway operators.</p> <p>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.</p> <p>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.</p>	<p>Further requirements of consultation should be included that ensures transparency and accuracy in determining fees.</p> <p>It is thus recommended that the proposed fees be published for public comment.</p> <p>After determining fees, the cost of regulating the railway operators should be weighed against the costs prevented (accidents) as a result of regulating railway operators.</p> <p>Further, a broad objective framework to determine permit fees should be included in the Bill.</p>

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CHAIRPERSON: STANDING COMMITTEE ON MOBILITY
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