PARLIAMENT OF THE PROVINCE OF THE WESTERN CAPE

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ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

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TUESDAY, 19 MARCH 2024

ANNOUNCEMENT

The Speaker:

Referral of document to committee in terms of section 52 of the Financial Management of Parliament and Provincial Legislatures Act, 2009 (Act 10 of 2009), as amended:

Parliamentary Oversight Committee

Western Cape Provincial Parliament – In-year Monitoring Report as at 29 February 2024.

TABLING

The Speaker:

Tabling of document in terms of section 52 of the Financial Management of Parliament and Provincial Legislatures Act, 2009 (Act 10 of 2009), as amended:

Western Cape Provincial Parliament – In-year Monitoring Report as at 29 February 2024.

Copies attached.

COMMITTEE REPORTS

1. (*Final mandate stage*) Report of the Standing Committee on Infrastructure on the Housing Consumer Protection Bill [B 10D-2021] (NCOP), dated 18 March 2024, as follows:

The Standing Committee on Infrastructure, having considered the subject of the Housing Consumer Protection Bill [B 10D-2021] (NCOP) referred to the Committee in terms of Standing rule 217, recommends that the House confers on the Western Cape's delegation in the NCOP the authority to support the Bill.

2. ***(Negotiating mandate stage)*** **Report of the Standing Committee on Finance, Economic Opportunities and Tourism on the National Small Enterprise Amendment Bill [B 16B - 2023] (NCOP)(S76), dated 15 March 2024, as follows:**

The Standing Committee on Finance, Economic Opportunities and Tourism having considered the subject of the National Small Enterprise Amendment Bill [B 16B - 2023] (NCOP)(S76) referred to it in terms of Standing Rule 217, confers on the Western Cape's delegation in the NCOP the authority to support the Bill, subject to the consideration of the concerns, and the implementation of the proposed amendments, outlined below.

The National Council of Provinces is requested to note the following:

1. General Comments

- The overall objectives of the Bill are supported, which provide affordable and effective access to justice for small enterprises and improve the ecosystem for their development and growth. However, it is recommended that certain provisions require greater clarity and limitations on the powers of the Minister, especially concerning the declaration of 'unfair trading practices'.

- The Committee acknowledges the valuable inputs from various stakeholders, including the City of Cape Town, the Western Cape Government, Mr. Kennedy Ramatsoa, and George Municipality. These inputs have been crucial in shaping the considerations and proposed amendments to the Bill.

- The Committee notes that small enterprises are the backbone of our economy, but they are also the space with the least amount of capital investment. Small enterprises are important for the creation of jobs, particularly in a country such as South Africa with high unemployment rates. This piece of legislation should have made significant strides in attempting to achieve a stimulus for smaller enterprises. The Bill should also be protecting small enterprises, so they are allowed to flourish and play a bigger role in the country's economy.

2. Procedural concerns

2.1 <u>Language and Drafting Errors:</u>

- The Bill contains various errors that require attention. These include the outdated use of "hereby," particularly in the proposed section 17D(1). Additionally, vague wording in certain provisions, such as the proposed section 17Y, poses risks of unintended consequences. Notably, terms like "unambiguous business contract" and "reasonable payment date" in section 17Y(2) require refinement to ensure clarity and effective implementation. It is recommended to review and refine the language within section 17Y, specifically addressing the precision of these terms and assessing compatibility with existing legislation to prevent overlap and enhance the efficacy of unfair trading practices provisions.

- During the public participation process, there were concerns about the language in which the Bill was presented. The Bill should be presented in the language that the members of the public understand.

2.2 <u>Socio-Economic Impact Assessment System Report (SEIAS):</u>

- Risk Assessment Completeness: The final SEIAS document, dated 17 April 2023, addresses operational and funding risks but lacks a comprehensive assessment of external economic factors. This includes market dynamics, global economic trends, and unforeseen disruptions like pandemics, which could significantly affect the initiatives. A more detailed investigation of these external risks and their impact on proposed measures is necessary for a well-rounded risk assessment.

- Evaluation of Alternatives: While the SEIAS outlines alternative solutions, such as extending the Small Enterprise Development Agency's mandate or equipping local municipalities for support, the depth of evaluation on these alternatives is limited. A comparative analysis exploring the viability, potential outcomes, and drawbacks of these alternatives versus proposed measures would provide a clearer understanding of their relative merits.
- Financial Sustainability: Although the document presents costs associated with the proposal, including setup and operational requirements, a critical evaluation of long-term financial sustainability is absent. This includes exploring diverse funding sources, cost-effectiveness over time, potential for self-sustainability, and strategies for financial resilience in various economic scenarios. An in-depth financial analysis is needed for a sustainable approach, considering the dependency on government funding.

2.3 Insufficient Time Provided for the Legislative Process:

- The turnaround time for the processing of this Bill was very short, given the importance of its content, which put the entire value chain under pressure to process the Bill adequately. The NCOP must be aware that logistics around public participation, such as requesting advertising and securing venues for public hearings, require time. The Committee was, therefore, given a very short time to request information from interested stakeholders.

- National Parliament must look at enhancing public participation in respect of the legislative process, to ensure proper consultation with members of the public that are impacted by the Bill.

3. Substantive concerns

3.1 Lack of Representation and Incentives:

- It is noted that small enterprises are not at all represented in bargaining councils, but they are bound by agreements reached at the national level. This makes it extremely difficult for small enterprises to grow and to employ more people.

- The Bill is silent on incentives for small enterprises. The Bill should have addressed and included some form of incentive for small enterprises to provide employment opportunities to the unemployed.

3.2 Governance and Oversight:

- Proposed section 11(2)(a) and 11(2)(c): The Bill must clearly define the process for appointing the Small Enterprise Development Finance Agency (SEDFA) board members, including specifics on remuneration, to prevent unilateral ministerial control and ensure parliamentary oversight.

- Proposed section 11(3): The criteria and scenarios necessitating a High Court order for appointing a director not recommended by the Board require clarification.

- Endorsement is given for establishing an Ombud with regional offices, provided employee compensation is budget-conscious and clear definitions of 'regional' offices are established. Provisions for interim Ombud leadership should limit appointments to 90 days to prevent potential misuse.

- Proposed sections 17G(7)(c), 17J, and 17M(1)(b)(ii): The Bill retains an advisory body working alongside the Ombud service. Both are crucial for a supportive business ecosystem yet require careful management of their broad discretionary powers to avoid abuse.

- The Bill must specify the required qualifications for the Ombud and Deputy Ombud, mandating a law degree and significant experience in relevant fields. Clear guidelines on their appointment, emphasising transparency and parliamentary consultation are essential.

3.3 Legal Framework Coherence:

- The Bill should not repeat constitutional rights, such as those in the proposed section 17Y(2) affirming small enterprises' right to trade and transact freely. Instead, it should focus on specific legal frameworks that uniquely empower and protect small enterprises.

- The terms related to 'adjudicate' and 'adjudication' in the Alternative Dispute Resolution (ADR) process require a clearer definition within the Bill. The proposed section 17G(1)(a) should be amended to ensure the language accurately reflects the Ombud's role in resolving disputes amicably, without formal court adjudication, thus removing any potential misunderstandings about their functions.

3.4 Institutional Integrity and Efficiency:

- The Committee has noted the potential issues with consolidating financial and non-financial support functions in the proposed section 9's establishment of the SEDFA. Clear distinctions between different support mechanisms are crucial to avoid overlapping roles and confusion.

- The Committee supports Chapter 3’s introduction, creating the Small Enterprise Ombud Service for efficient, fair, and economical adjudication of small enterprise complaints. The Committee particularly appreciates that Ombud's determinations will have the same legal weight as civil court judgments, aiding in enforceability and possibly reducing litigation costs and time. However, we suggest monitoring to ensure these determinations comply with procedural justice and do not burden the court system.

- There are concerns regarding the Ombud's role in capital acquisition decision-making as mentioned in the proposed section 17G(1)(d). It is recommended that the Ombud's role should be aligned with strategic oversight rather than executive functions. The Bill should be amended to specify that the Ombud approves strategic plans, including capital acquisitions, in line with the Agency's objectives.

- The proposed section 17M(1)(a) and (b) grants the Ombud adjudication powers for final complaint determinations. The Committee recommends amending the Bill to provide clear procedural steps for the Ombud, detailing whether these decisions will be based on oral hearings or document reviews, to ensure transparency and fairness.

3.5 Economic Inclusion and Support:

- The Committee emphasises the importance of the Agency in promoting economic inclusion. This includes both financial and non-financial support for small enterprises, with special attention to those in historically disadvantaged areas.

- The remuneration for both the Ombud and Deputy Ombud should align with civil service levels, not exceeding level 15/Deputy Director-General. This alignment ensures that pay is consistent with public service standards and maintains fiscal responsibility.

- The proposed section 15, especially subsection 15(4), requires setting clear service standards, including timeframes for the Agency to consider and provide financial or non-financial support. Additionally, Section 20 of the National Small Enterprise Act, 1996 (Act 102 of 1996), should be referred to for defining these service standards, ensuring the Agency upholds and reports on them effectively.

- Proposed section 13 should be expanded to include the Agency's role in fostering economic inclusion. This involves promoting the participation and development of small enterprises in areas that are historically disadvantaged or less formal, supporting a wider range of entrepreneurial activities and contributions.

3.6 Regulatory and Procedural Clarity:

- The Committee emphasises the importance of well-defined regulations and procedures in the context of case fee regulations, financial reporting, and staff remuneration.

- The current requirement for financial reporting within three months after the fiscal year's end, as per the proposed section 17Q(3), should be revised. The Committee recommends aligning this timeframe with the two months mandated for national departments under the Public Finance Management Act, 1999 (Act 1 of 1999) (the PFMA). This change aims to enhance consistency and accountability in government financial practices.

- The Committee proposes amendments to Chapter 3A, specifically section 17S(1)(b), to provide detailed guidelines on the types of case fees the Small Enterprise Ombud may impose. Such clarity will ensure transparency in fee structuring and prevent financial barriers for small enterprises seeking assistance.

- Referring to section 17N(4)(a), it's recommended that staff remuneration within the Ombud Service be capped at the level of a Chief Director or level 14. This policy would uphold fiscal responsibility and align with existing public service pay scales, ensuring fair and sustainable compensation practices.

3.7 Compliance and Reporting:

- Proposed section 17Q(3) should be amended to align the financial reporting deadline with the PFMA. This alignment would reduce the current three-month period to two months, enhancing accountability and uniformity across government financial practices.

- For Chapter 3A, especially proposed section 17S(1)(b), the Committee recommends that the Bill should include comprehensive guidance on the types of case fees chargeable by the Small Enterprise Ombud. Clear fee structures are crucial to maintain transparency and to ensure that small enterprises are not financially hindered from seeking necessary assistance.

3.8 Dispute Resolution and Adjudication:

- Noting the proposed sections 17M(1)(a) and (b), the Committee recognises the adjudicatory authority granted to the Ombud for resolving complaints. However, it calls for amendments to provide explicit procedural details, including whether determinations will be made following hearings or based on documentary evidence. The aim is to ensure that the Ombud's adjudication process is both transparent and fair.
- The Committee proposes revising sections 17G(7)(a) to (c) to specify timeframes for actions taken by the Ombud. The current vague wording allows too much discretion, leading to potential delays. A more structured approach, possibly including regulatory timeframes set by the Minister, is recommended for accountability and efficiency.

- The overlapping jurisdiction of the Small Enterprise Ombud Service with other Ombud Services, as outlined in the proposed sections 17I and 17J, requires addressing. The Committee suggests that the Bill integrate other ombud services and appeal mechanisms into its scope. This integration would mean the Small Enterprise Ombud would consider complaints only after other internal redress mechanisms have been exhausted, especially in scenarios where an appeal is court applicable.

- The proposed section 17M(1)(b)(i) raises concerns about the lack of clarity in determining fair compensation. The Committee recommends that the Bill be revised to establish a well-defined framework or guidelines for the Ombud's decision-making process in this regard. Such guidelines are essential to ensure equitable and methodologically sound compensation determinations.

3.9 Wide Discretionary Powers:

- The Bill contains numerous provisions that afford the Ombud and other parties very wide discretionary powers without substantive guidance as to how they should exercise the discretion. See, for example, the proposed sections 17G(7)*(c)*, 17J, 17M(1)*(b)*(ii).

- Where legislation provides for discretionary powers for a decision-maker, these should be appropriately guided to assist the decision-maker with its functions and to mitigate the risk of abuse of power. Please refer to the principles in Dawood v Minister of Home Affairs; Shalabi v Minister of Home Affairs; Thomas v Minister of Home Affairs 2000 3 SA 936 (CC).

- To the extent that the Bill provides for wide discretionary powers, it is recommended that it be revised to provide guidance to the decision-maker (to the extent that guidance is not provided) to assist with the exercise of discretion.

3.10 Stakeholder Engagement and Accessibility:

- On Clause 5 and the proposed section 17W, the Committee notes the critical importance of comprehensive stakeholder education and awareness of the Ombud's

nature and services. It is recommended that this section be elaborated to ensure a targeted and inclusive educational strategy. Emphasis should be placed on reaching unrepresented small businesses, particularly those in rural, township, and remote areas, who are often less informed about available support mechanisms. This could involve a detailed framework for educational outreach to ensure equitable access to Ombud services across all segments of the business community.

3.11 Inter-Agency and Provincial Collaboration:

- The Bill needs to clearly define “unfair trading practices” to avoid excessive regulation and to provide clear guidelines for the protection of small business growth. Moreover, the Ombud and Minister must collaborate with the Department of Public Service and Administration when establishing national or regional offices, ensuring appropriate resource allocation. The Committee acknowledges the goal of safeguarding small businesses against unfair trading practices as outlined in the proposed section 17Y. However, concerns about jurisdictional overreach into the realms of the Department of Trade, Industry and Competition (DTIC) and the Competition Commission have been raised. Since these entities are already equipped to handle such claims, the Bill should distinguish the roles clearly to prevent redundancy and conflict. The Committee supports the idea that the Small Enterprise Ombud should assist the Competition Commission with inquiries related to small businesses, rather than acting independently on unfair trading practices. This strategy would make better use of existing resources and reinforce support systems for small businesses without encroaching on the mandates of the DTIC and Competition Commission.

- The involvement and insight of provincial governments are crucial for effectively supporting small businesses, especially since issues and needs often emerge at the regional level. It is noted that amendments made to the Bill suggest increased engagement with provincial authorities, aiming for better alignment and coordination across governmental levels. However, these amendments do not fully empower provinces to significantly impact the administration of the Act. The Committee suggests revising these amendments to strengthen the role and influence of provincial authorities, ensuring they can meaningfully contribute to and shape the support framework for small enterprises within their respective regions. This enhancement is vital for a more decentralised and responsive approach to small business support, tailored to the diverse needs and contexts of different provinces.

3.12 Transparency and Accountability:

- The Committee observes that the current language seems to restrict accountability mainly to larger entities, potentially sidelining small and medium enterprises. The recommendation is to revise the Bill to incorporate more inclusive language. This change will broaden the accountability scope, encompassing all levels of trade and enterprise, thus fostering a more equitable and inclusive business environment.

- The Committee identifies a lack of clarity regarding the range of "appropriate" recommendations the Ombud is authorised to make. To ensure effective and consistent decision-making, it is essential to refine this clause to define the scope and nature of such recommendations more precisely. This revision aims to guide the Ombud’s decision-making process effectively and to minimise the risk of arbitrary or inconsistent interpretations. The goal is to establish a framework that

balances flexibility with the need for clear guidelines, ensuring that the Ombud's actions are both effective and accountable.

3.13 Documentation and Record-Keeping:

- The Committee emphasizes the need for the Ombud's record-keeping practices to be in strict accordance with the Promotion of Access to Information Act, 2000 (Act 2 of 2000) (PAIA). It calls for a thorough review of the relevant clause to prevent any conflicts with PAIA's rules governing access to public and private records. Ensuring that the Ombud's discretion in releasing records adheres to legal standards for information access and confidentiality is crucial. This alignment is not just a matter of legal compliance but also a way to maintain transparency and trust in the Ombud's operations.

4. Recommendations for Amendments Based on Stakeholder Input:

4.1 The Office of the Small Enterprise Ombud Service: The functions, staffing, and funding of the Ombud service should be established to ensure an equitable trading environment (Clause 5, section 17(F)(1) and (2)).

4.2 Financial and Non-Financial Support for Small Enterprises: SEDFA's design and implementation of support programmes should enhance the economic contributions of small enterprises and avoid overlapping support structures (Clause 4, section 11(2)(a)).

4.3 Environmental and Cooperative Development: Proposals for ECG monitoring of big businesses and support for cooperatives (General Comments by Mr. Kennedy Ramatsoa) should be included to foster collective strength and environmental responsibility.

4.4 Inter-Agency Collaboration: The recommendation from George Municipality on promoting inter-agency coordination (Promotion of inter-agency coordination and collaboration) must be integrated for the effectiveness of shared efforts.

4.5 Wide Discretionary Powers: It is recommended that it be revised to guide the decision-maker (to the extent that guidance is not provided) to assist with the exercise of discretion.

4.6 Role of Provinces: The active participation of provincial authorities should be provided to give effect to the Bill's implementation.

4.7 Spatial Approach to Business Support: The Committee considers the input on Clause 4 concerning the substitution of Chapter 3 of the principal Act, specifically referring to proposed section 13(b). There is a recommendation that while the standard national delivery network is uniformly applied, it should incorporate a spatial focus to ensure that the Agency's delivery meets the diverse needs of all businesses seeking support. The Agency's functions, as outlined in proposed section 13, must consider the geographic and spatial characteristics of businesses, ensuring that support is not only equitable but also contextually relevant to the prevailing circumstances in each locale. This tailored approach is crucial to avoid undermining the Agency's ability to deliver effective services that are responsive to the unique needs of businesses in varied environments.

4.8 Composition of Board and Ministerial Powers: The Committee notes the amendments made to Clause 4, particularly the changes to proposed section 16, which now includes wording to ensure representation of all nine provinces.

However, concerns persist regarding the lack of specificity in the personnel composition of the Board. The Committee echoes the need for greater detail in the Bill about the Board's composition, recommending a prescriptive approach that ensures a balance of skills, such as a requisite number of senior enterprise development and enterprise finance specialists. Furthermore, apprehensions regarding the Minister's power, as granted in the proposed section 11(3), to seek a High Court order to appoint a director not recommended by the Board, are substantial and remain unaddressed. The Committee advises that this provision be reconsidered to prevent potential circumvention of the Board's recommendations, thereby ensuring that Board appointments are made transparently and based on merit.

4.9 Promotion of Inter-Agency Coordination*:* Relating to Clause 5 and the proposed section 17X, the Committee emphasises the importance of explicitly defining the scope and nature of inter-agency coordination and collaboration. It is imperative that the Bill clearly outlines how different agencies and departments will work together, ensuring the inter-agency efforts are synergistic and aligned with the principles and objectives of the Bill. This would facilitate the creation of a coherent framework for various institutions listed within the Bill to operate collaboratively, ultimately strengthening the support ecosystem for small enterprises.

5. Additional Specific Amendments

5.1 National Review of Small Enterprises: The Bill should mandate the National Review of Small Enterprises to include reports on challenges faced by small businesses and potential solutions (National Review of Small Enterprises, proposed section 19). Clarity is needed concerning the mechanism and regularity of the National Review of Small Enterprises as per Clause 6, section 19 of the principal Act. It is recommended that the Bill specify whether the review is a standing requirement or if it is conducted at the behest of the Minister. To ensure a comprehensive and inclusive review process, the Bill must be amended to mandate scheduled consultations with relevant public and private sector stakeholders and ensure that the results of the national review are published and made accessible to the public. This will facilitate informed decision-making by government and private sector entities and foster a cooperative approach to addressing the needs of Small, Medium and Micro Enterprises (SMMEs) across South Africa.

5.2 Enhancement of Small Enterprise Competitiveness: The Bill should explicitly address the red tape challenges and other barriers to competitiveness as suggested by stakeholders, ensuring comprehensive support for small businesses. The Bill should clearly outline and reference red tape reduction and ease of doing business as part of the approaches to supporting businesses.

5.3 Language and drafting errors: To improve the text, it is recommended that the legislative drafter review the Bill using generally accepted Commonwealth legislative drafting practices, as well as enlist the support of a language practitioner familiar with these practices.

5.4 Structural Provisions for the Ombud Service*:* In alignment with the objectives of maintaining fiscal responsibility and avoiding wilful political neglect, the Bill should stipulate consultation requirements with the Department of Public Service and Administration and set defined service standards for the establishment of national and regional Ombud offices. It should also outline the process for the appointment of an acting Ombud, ensuring that temporary leadership is capable

and limited in duration to prevent prolonged periods of acting positions, which may hamper the effectiveness of the Office.

5.5 Consolidation of Functions and Clarity in Roles: It is recommended that the Bill ensures a clear separation between the indicators for financial and non-financial support to effectively monitor and evaluate the Agency's support to businesses. Additionally, the alignment with the principal Act should not impede the distinct functions that foster economic inclusion, particularly for small enterprises in historically disadvantaged and less formal areas, as outlined in the proposed section 10 of the Act. These provisions must be carefully crafted to ensure they complement rather than complicate the existing support framework for small enterprises.

6. Conclusion

The Committee's negotiating mandate, informed by the substantive stakeholder feedback, supports the National Small Enterprise Amendment Bill [B 16B - 2023] if amendments proposed in the negotiating mandate are made in the Bill.

However, the Committee also recommends that, in the next term, the National Parliament should seriously reconsider this piece of legislation and address any omissions found in this Bill as soon as possible.

3. (*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:

Comments on specific provisions		
Clause	**Comment**	**Recommendation**
Preamble: Prime responsibility of railway operators	The preamble refers to "*the prime responsibility and accountability of railway operators in ensuring the safety of railway operations*". The preamble does not specify the primary responsibility of the SAPS in terms of the safety of commuters on trains and stations and the primary responsibility of Transnet and PRASA as owners of property in the rail environment (fixed and rolling stock) to safeguard commuters	Please refer to the earlier comments on roles and responsibilities in the rail environment. It is recommended that the preamble be aligned with said comments.

	and their associated secondary responsibilities in terms of the safety of commuters.	
Clause 1 Definitions	‘‘‘‘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;”	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 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	‘‘‘‘station’’ means a facility for passengers to enter or exit a train, including a railway passenger terminal and a passenger halt, and may include— (a) passenger modal transfer and commercial activities forming part of the facility; (…)”	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: “a) passenger <u>intermodal transfer</u> and commercial activities forming part of the facility;”
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	It is recommended that the term be extended to include persons with short-term impairments.

	environment.	
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: "*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*".
Clause 4: Exemption from Act **4(1)**	The clause allows for exemption, upon application from compliance with any provision in the Act other than section 4. 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.	Provide for the criteria for exemption applications.
Clause 4: Exemption from Act **4(4) and 4(6)**	A specified time period should replace the reference to "*reasonable time*", to ensure greater certainty in the provisions.	Insert a specific time frame, that may be extended by the Minister.

Clause 4: Exemption from Act **4(5)**	It should be mandatory for the Minister to publish the application for public comment in the *Government Gazette*, and for the applicant to respond to comments received on the application.	Change the word "*may*" to 'must' (i.e. 'the Minister must…').
Clause 4: Exemption from Act **4(9)**	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. The phrase "*good grounds*" is vague and open to interpretation.	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)*.
Clause 7: Functions and powers of Regulator	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. 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.	Amend the clause to address the interventions that are necessary to combat issues of vandalism and destruction of property. 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— 1. with due regard for where rail services are provided in South Africa; the Regulator should be expected to have operational capacity in all the provinces of the country; 2. with a specific focus placed on the unique operational challenges placed on the operators of commuter rail (urban and long distance) and freight rail respectively; 3. in the case of commuter rail as the intended backbone of the South African public transport system, a report should be provided on actual specific rolling stock availability at monthly intervals specifying the number of full train sets and all variations thereof; and 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.
Clause 7: Functions and powers of Regulator	It is unclear why the words "*if necessary*" were inserted.	Reconsider the use of the words "*if necessary*".

7(1)*(b)*	The Regulator should be required to provide the relevant information and advice from time to time.	
Clause 8(3) International Co-operation	"(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)."	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. 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.
Clause 9: Board of Regulator **9(2)**	The words "as far as possible" suggest that the Regulator need not achieve its objectives.	Delete the words "as far as possible".
Clause 9: Board of Regulator **9(4)**	The words "highest applicable standards of ethics and governance" is vague. It is important for board members to understand what the standard of ethics entails.	Elaborate on the applicable standards of ethics.
Clause 9: Board of Regulator **9(5)*(a)*(i)**	The term ''railway environment'' is generally used to refer to the operational conditions and not the business / industry sector as intended in this clause.	It is recommended that the term ''railway environment'' be changed to 'railway sector'.
Clause 10: Composition of board **10(1)**	The composition of the board should also include a member that has extensive experience, demonstrable 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	It is recommended that the clause be amended accordingly.

	associated with the general destruction of rail infrastructure, and safety of persons from criminal acts of violence or theft.	
Clause 10: Composition of board **10(1)*(e)***	The use of the word "*and*" means that a person must have competence in all of the fields listed in clause 10(1)*(e)*. This is inconsistent with the introductory words in clause 10(1). The word 'or' should be used instead of "and".	Replace the word "and" with 'or'. Further, the drafter could consider listing each field in a separate paragraph.
Clause 10: Composition of board **10(2)**	It is noted that the Department of Public Enterprises is not included on the board of the Regulator, despite the department being a key stakeholder in the rail sector, considering its oversight role over Transnet.	It is recommended that representation from the Department of Public Enterprises be included on the board of the Regulator.
Clause 10: Composition of board **10(4)**	The only executive member of the board is the CEO, which automatically makes the majority of the members non-executive.	It is recommended that this clause be deleted, as it appears to be redundant.
Clause 10(1)(d) Composition of Board	*"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;"*	The Committee recommends that the term "corporate management" be replaced by "corporate governance". "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.
Clause 10(3) Composition of Board	"The board must be broadly representative with regard to race, gender and disability."	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.
Clause 11: Appointment of board members **11(3)**	The use of the word "must" could potentially create the impression that the Minister is under an obligation to appoint all potential candidates for board membership. This is presumably not the intention.	Amend the clause so that the Minister has a choice to appoint potential candidates or not and is not obligated to appoint them.
Clause 11: Appointment of board members **11(4)**	It is unclear whether the intention is for the 30 days to apply to the appointment of individual board members, or all the board members.	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).
	N/A	In order to reach a wider audience, it is recommended that the Notice be published in the *Government Gazette* as well.
Clause 12: Chairperson and deputy chairperson of board **12(1)**	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.	Reconsider the wording and revise to clarify the intention.
Clause 12: Chairperson and deputy chairperson of board **12(4)*(a)***	It is unclear what is intended by the term "vacant", as this implies that the person is no longer in that position. In this regard, is the intention to refer to temporary incapacity or unavailability?	Reconsider the use of the word "vacant" with regard to clause 12(4)*(a)*.
Clause 12: Chairperson and deputy chairperson of board **12(5)**	A notice period for the chairperson or deputy chairperson to vacate his or her office is not included.	It is recommended that a specific notice period be inserted for the chairperson or deputy chairperson wishing to vacate his or her office.
Clause 13: Term of office and conditions of service of	It appears that an executive board member is intended to refer to a member that is in the	Review the intended meaning of executive and non-executive board members and ensure that this is reflected throughout the Bill, where applicable.

board members **13(1)*(d)***	full-time employment of any organisation, which might be the reason why more than one executive board member is envisaged in clause 10. This meaning of executive board member seems inaccurate. A board member should be an executive member if he/she is employed by the Regulator, not by any other organisation. All other board members are non-executive, even if they are employed full-time by other organisations.	
Clause 14: Functions of board	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.	It is recommended that clause 14 be amended to provide for the functions mentioned in the column to the left.
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 **22(4)**	The phrase "the due process of the law" is vague.	Delete the words "due process of the law" and stipulate the applicable procedure.

Clause 23: Functions of CEO **23(5)*(a)***	It might not be necessary to restrict the acting CEO to an employee of the Regulator, in the event that there are situations in which no suitable candidate is found from the Regulator staff and an external person is required to act as the CEO.	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.
Clause 23: Functions of CEO **23(8)**	The phrase "all strategic documents or policies" is vague.	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.
Clause 25: Limitation of liability	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. 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. Regulation comes at a cost to society; therefore, the Regulator should be held liable for	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 form any consequences. 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. 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. 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.

	its actions and add value to railway safety. 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. 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.	
Clause 30: Safety permits **30(4)*(d)***	The application should be published in various media in order to ensure that it reaches a wider audience.	It is recommended that the application be published in the *Government Gazette*, in two local newspapers, and any other media which the Regulator considers appropriate in the circumstances.
Clause 31 Conditions of Safety Permit	*n/a*	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.
Clause 31: Conditions of safety permit **31(3)*(b)***	It is not clear why additional safety permit conditions must be unique to the person submitting the application. What will happen in the case of factors or conditions that affect two or more applicants and are, therefore, not unique to an applicant, but have impacts such as increased safety risks on all the affected operations?	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.
Clause 32: Amendment of conditions of safety permit **32(4)**	It is unclear whether the initial decision is taken by the board or the Regulator. It is important to know who the initial decision maker is so that the appropriate appeal authority / body can be identified.	Reconsider clauses where the initial decision-making body has not been identified and elaborate where necessary. Further, ensure that the appeal authorities / bodies are not conflicted or *functus officio*.
Clause 32: Amendment of conditions of safety permit **32(5)**	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	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.

	amendment to safety permits.	
Clause 33: Surrender, suspension and revocation of safety permit **33(2)**	The circumstances in which a permit may be revoked or suspended are the same. Thus, it is unclear when a permit should be revoked i.e. when the matter would be considered serious enough to warrant a permit being revoked, compared to when it should only be suspended. This should be clarified.	It is recommended that the clause be revised to provide clarity on this issue.
Clause 33: Surrender, suspension and revocation of safety permit **33(6)**	The words "*by operation of law*" are unnecessary.	Delete the words "*by operation of law*".
Clause 35: Evaluation and registration of training institutions **General**	Consider whether there are opportunities to use the Sector Education and Training Authority accreditation process for the registration of training institutions. Transport Education Training Authority already has rail-related training programmes that could be leveraged. This could save resources and reduce the Regulator's workload.	N/A
Clause 35: Evaluation and registration of training institutions **35(2)**	N/A	It is recommended that the draft policy be published for public comment.

Clause 36: Railway safety standards **36(1)**	It is unclear whether the intention is for the railway safety standards to be contained in regulations, as the clause states that the Minister must prescribe same. The word "prescribed" is defined as "*prescribed by* ***regulation***" (emphasis added)).	Revise clause 36 so that it is clear what is intended. The drafter could, perhaps, use alternative wording such as 'issue', as opposed to "*prescribe*" (i.e. the Minister may issue railway safety standards).
Clause 36: Railway safety standards **36(2)*(a)***	The Bill does not explain what is meant by 'railway environment'. This should be clarified.	It is recommended that the Bill be amended to clarify this term.
Clause 36: Railway safety standards **36(3)*(a)***	Explanatory memoranda normally accompany Draft Bills and Bills. They do not normally accompany subordinate legislation or instruments. Further, if the intention is that the standards will be in the form of Regulations, then the Regulations must be published by the Minister and not the Regulator.	Delete the reference to the explanatory memorandum. Further, if the intention is that the standards will be in the form of Regulations, then it is recommended that clause 36 be clarified to state that the Regulations must be published by the Minister for public comment.
Clause 36: Railway safety standards **36(5)**	It is unclear what the difference is between a railway safety standard and a railway safety specification (if any).	Revise the clause to clarify the meanings of both terms.
Clause 38: Consultative forum **38(3)**	It is unclear what types of matters the forum may consider; the clause only refers to "any matter placed on the agenda by the Regulator", which is vague.	It is recommended that detail be provided on the types of matters that the Regulator may refer to the forum for consideration.
Clause 38(4) Consultative Forum	"(4) Any stakeholder may be a member of a forum contemplated in subsection (1) and participation in its activities is voluntary."	It would be prudent to establish mandated stakeholders to be members of the consultative forum to ensure commitment towards rail reform and safety.

Clause 38: Consultative forum **38(6)**	Specify levels at which consultative forums may be established.	Establish forums at provincial level as may be necessary.
Clause 41: Railway safety inspector **General**	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. 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.	It is recommended that the clause be amended to clarify this matter.
Clause 42: Powers and duties of railway safety inspector **42(2)**	It may be useful to have a general protocol, which can then be adapted into a specific protocol to be concluded with an operator.	Please consider including a provision to this effect.
Clause 43: Routine compliance inspection **43(1)**	The phrase "any premises of the railway safety permit holder other than a private residence" is very wide. While it does not include private residences, it includes other premises "of" the railway safety permit holder. This could potentially be interpreted as including	It is recommended that the clause be revised as set out in the column to the left. Further, clause 43 should be reconsidered to ensure that there is consistency with applicable case law on warrantless searches.

	other premises which do not relate to the railway safety permit or the railway safety environment. The clause should clearly state that only regulated premises are contemplated in this clause and not any other premises. Please refer to *Gaertner and Others v Minister of Finance and Others* (CCT 56/13) [2013] ZACC 38 and *Estate Agency Affairs Board v Auction Alliance (Pty) Ltd and Others* [2014] ZACC 3 (Auction Alliance judgment) for principles relating to warrantless searches.	
Clause 44: Enforcement inspection: General	Please refer to the above references to case law.	Clause 44 should be reconsidered to ensure that there is consistency with applicable case law on searches under the authority of a warrant.
Clause 44: Enforcement inspection **44(1)**	The clause refers to "…an offence is being or has been committed in terms of this Act". It is assumed that reference is being made to an offence contemplated in the Act. The use of the phrase "in terms [of] this Act" is not correct. An offence is not committed 'in terms of' an Act.	Reconsider the clause in light of the comments.
Clause 44: Enforcement inspection **44(9)**	This clause is broad and open to interpretation. It would be prudent to provide guidance to the police officer in order to ensure that constitutional rights are respected and protected.	It is recommended that the clause be revised in light of the comments.

Clause 45: Formalities of inspection **45(1)**	Consider whether the binary classification (male/female) of gender could cause complications in cases where certain people do not identify as belonging to one of these classes.	It is recommended that the clause be revised to make provision for cases in which certain people may not identify as male or female.
Clause 45: Formalities of inspection **45(3)*(a)* and *(b)***	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 problems when tested before a court of law.	It is recommended that the clause be deleted.
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,	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.

	should be prescribed for greater clarity.	
Clause 48: Railway occurrence **48(2)*(b)***	It is not clear what is meant by "infrastructure which has a direct or indirect bearing on the railway occurrence". It is recommended that the wording be clarified, so that it is certain what is intended. Referring to infrastructure that has an "indirect bearing on [a] railway occurrence" is very wide and open to interpretation and this could lead to unintended consequences. This phrase should be narrowed.	Revise the clause in line with the comments in the column to the left.
Clause 51: Major investigation **51(4)**	Inclusion of the word 'may' provides the investigator with a discretion on whether or not to submit interim reports to the Minister. The Minister is not afforded the discretion to request interim reports from the investigator where the Minister deems it necessary, considering the circumstances of the railway occurrence. Provision should be made for such discretion.	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.
Clause 51: Major investigation **51(7)*(a)***	In order to ensure that a wider audience is reached, the final report should be published in the *Government Gazette*.	It is recommended that the clause be aligned with the proposal in the column to the left.
Clause 51: Major investigation	The need for the words "as far as may be practicable" is unclear. The Minister should	Delete the words "as far as may be practicable".

51(7)*(b)*	give effect to the recommendations of the investigator.	
Clause 51: Major investigation **51(8)*(c)***	This clause includes records or evidence relating "indirectly to the occurrence". This is very wide and open to interpretation. The clause may thus have unintended consequences.	It is recommended that the scope of the clause be narrowed.
Clause 52: Standard investigation **52(4)**	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.	Revise the wording to so that it is clear that the investigations are to be separate.
Clause 55: Appeal to board appeals committee **General**	In certain circumstances, it is unclear whether or not the intention is to refer to the board or the board appeals committee e.g. clause 55(3).	Clause 55 should be reconsidered to ensure that the correct body is referred to.
Clause 55: Appeal to board appeals committee **55(3)**	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.	Reconsider the clause and amend as may be appropriate.
Clause 55: Appeal to board appeals committee	This clause suggests that the standing board appeals committee will be chaired by a member	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

55(5)	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.	co-chairs).
Clause 61: Regulations and notices **61(1)*(a)***	The phrase ‘‘any other place as a station’’ is not clear. It is assumed that this refers to the designation of any other place as a station. However, this should be stated.	It is recommended that the clause be amended to make its meaning clear. Further the word **“station”** should not be in bold.
Clause 61: Regulations and notices **61(4)*(a)*(ii)**	In many instances, comments are submitted electronically. Thus, the reference to “address” is problematic.	Consider amending the clause to provide for electronic submission also.
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 **62(1)**	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.
	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	It is recommended that the clause be revised accordingly.

	regulations. For example, “operations” and “commissioning”.	
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	The Bill states that the Minister may determine the permit fees in consultation with the Minister of Finance on an annual basis. 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. It is recommended that the proposed fees be published for public comment. This will allow for the public and railway operators to be involved in the process of determining the fees. This will then mitigate against the risk of fees being determined on an arbitrary basis. It is also recommended that there should be a weighing up of the cost of regulating the railway operators against the costs prevented (accidents) as a result of regulating railway operators.	Further requirements of consultation should be included that ensures transparency and accuracy in determining fees. It is thus recommended that the proposed fees be published for public comment. 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. Further, a broad objective framework to determine permit fees should be included in the Bill.
