

Date: 19 June 2008

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Parliamentary Ad hoc Committee on Intelligence (National Assembly)
Committee Secretary: Ms Ntombekhaya Mbuqe

Our reference: COM0006

Per email: nmbuqe@parliament.gov.za

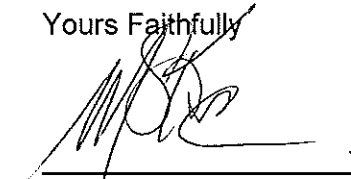
Dear Ms Mbuqe

ESKOM'S COMMENTARY ON THE PROTECTION OF INFORMATION BILL, 2008

We thank you for granting us an opportunity to comment on the abovementioned Protection of Information Bill, 2008 as part of the consultation process being driven by the National Intelligence Agency.

Herewith please find our comments.

Yours Faithfully



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(Paralegal)

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Eskom Holdings Limited Reg No 2002/015527/06



PROTECTION OF INFORMATION BILL, 2008

COMMENTS BY ESKOM

19 JUNE 2008

COMMENTS BY ESKOM ON THE BILL

PUBLISHED FOR GENERAL COMMENT IN THE GOVERNMENT GAZETTE – NOTICE 30885 OF 18 MARCH 2008 (“BILL”)

1. Ad Section 1 , “Head of organ of state”, (d)

We suggest that the word “owner “ should be deleted and substituted with “Chief Executive Officer “ so as to allow for the effective application of the act and avoiding all the red tape of obtaining delegated authority to exercise such rights.

2. Ad Page 4

Correct the spelling of the word ‘Protection’.

3. Ad Section 5. (1)

We propose that the words “or received by organs of state” is too wide. We need clarity on whether is it intended to include private information received by the employees of an organ state via email as well.

We recommend that the wording be drafted in such a manner to specifically exclude private information received by employees of an organ of state.

4. Ad Section 4 (b)

Its not clear from the reading of this provision whether the words “ intellectual knowledge “ is referring to trade secrets and know how . We would require clarity.

5. Ad Section 6(3)

The words "material and documented " is not clear. We need clarity as to the difference between material and documented form.

6. Ad Section 9 (2)

The words 'Minister may make.....' in the sentence is not appropriately worded.

We recommend it should read 'Minister may set out.....'

7. Ad Section 10 (1)

The words 'loss and destruction' in the sentence is not clear. We require clarity on whether the word "loss" is also referring to divulging or unauthorised disclosure of information?

8. Ad Section 20 (1)

We note the clause is limiting the interest only to that of the state. Should it not be extended to include interest of the organs of state.

9. Ad clause Section 21 (3)

For purposes of clarity , 'Senior members' should be defined in the bill .

10. Ad Section 26 (a)

The words '*classified* in terms of this Bill', should it not read 'reclassified'?

11. Ad Section 34 (5)

It is not clear what format must be used in the reporting to ensure consistency?

Will the information be audited to ensure compliance and quality?

12. Ad Section 57(8)

Delete the words "shall be" as it is repeated twice in the sentence .

GENERAL COMMENTS:

Chapter 1 – Definitions and Interpretation:

Classification Authority – How will the delegations work in Eskom as a Parastatal?

Declassification Authority – How will the delegations work in Eskom as a Parastatal?

Designation Authority – more clarity required in the description.

Designated Information – more clarity required in the description.

Chapter 4 – Protection of valuable information:

Must Eskom comply with the National Archives and Records Service of South Africa Act of 1996?

Chapter 6 – Classification Levels :

The MISS has four classification levels and the Bill states only three. How will this be addressed?

Is it assumed that information that does not fall within these classification levels will be regarded as public information?

Chapter 7 – Designation of Information:

Should designated information be regarded as spoken or verbal communication?

Chapter 14 – Miscellaneous - Regulations 59 (d)

Will the regulations determine how Eskom manages its Security Function.

CONCLUSION

Eskom would like to extend its appreciation to the National Intelligence Agency of for the opportunity to influence the provisions of the Bill. We trust that our comments have been constructive and that they are of assistance in finalising the Bill. In the event that further clarification or information is required, Eskom would be more than happy to provide same.