

BACK TO BASICS

TOWARDS A SAFER TOMORROW



CRIMINAL MATTERS AMENDMENT ACT 18 OF 2015

#CrimeMustFall



INTRODUCTION

- With ever increasing theft and vandalism of infrastructure belonging to private entities, government organs or State Owned Entities (SOEs), must conduct a crime threat analysis to assist in the prevention and combating of these activities
- This is important, not only from the perspective of the South African Police Service, but also on the part of the victims of these crimes.
- This discussion will focus on the legal aspects relating to the reactive steps necessary to assist in curbing the rising crime threat.



CRIMES: VANDALISM AND THEFT

- **Common law**

The South African common law has, at its core, certain property related common law crimes that are committed when infrastructure is stolen or vandalised:

- Theft: Unlawful and intentional appropriation of movable corporeal property belonging to another.
- Receipt of stolen goods: Unlawful receipt of stolen goods, knowing that it is stolen.
- Fraud: Unlawful and intentional making of a misrepresentation that causes actual or potential prejudice to another.
- Malicious injury to property: Unlawful and intentional injury (damage) to the movable property of another.



INTRODUCTION

- **Statutory law:**

The most established statutory provisions relating to theft of infrastructure are sections 36 and 37 of the General Law Amendment Act No. 62 of 1955:

- Section 36: The offence is committed by a person who is found in possession of property in regard to which there is a reasonable suspicion that the property is stolen and who cannot give a satisfactory account of the possession.
- Section 37: The offence is committed by a person who receives property that is stolen and who, at the time of receipt of the property, had no reasonable cause to believe that the person disposing of the property was authorised to do so by the owner.



INTRODUCTION

- The Criminal Matters Amendment Act No. 18 of 2015 (“CMA Act”) came into operation on 1 June 2016. The purpose of the CMA Act is to create a new dispensation for essential infrastructure-related offences. The CMA Act —
- creates a new offence relating to essential infrastructure
- regulates bail in respect of essential infrastructure-related offences; and
- regulates minimum sentences in the case of essential infrastructure-related offences.



INTRODUCTION

- The CMA Act seeks to address the rise in crimes affecting service delivery the public - theft of cable, water meters, bridge railings, manhole covers etc.
- Preamble to the CMA
 - importance of essential infrastructure in providing basic services
 - unacceptably high incidence of crime relating to essential infrastructure which poses a risk to the public safety, electricity supply, communications and transportation
 - negative impact of these types of offences on our economy and peace and stability in the country



SECTION 3 – NEW OFFENCE

The CMA Act - relevant portion reads as follows:

3. (1) Any person who unlawfully and intentionally—

(a) tampers with, damages or destroys essential infrastructure; or

(b) colludes with or assists another person in the commission, performance or carrying out of an activity referred to in paragraph (a),

and who knows or ought reasonably to have known or suspected that it is essential infrastructure, is guilty of an offence..



SECTION 3 – NEW OFFENCE

- Section 3 also provides that an offender may be sentenced to imprisonment for a period of up to 30 years or, in the case of a company, a fine not exceeding R100 million.
- Note that “tamper” is defined = “**tamper**” includes to alter, cut, disturb, interfere with, interrupt, manipulate, obstruct, remove or uproot by any means, method or device, and “**tampering**” shall be construed accordingly.



SECTION 3(2)

- To determine whether a person ought reasonably to have known or suspected that the item in question forms part of essential infrastructure, section 3(2) provides that a person ought reasonably to have known or suspected such fact if the conclusions that he or she ought to have reached are those which would have been reached by a reasonably diligent and vigilant person having both the general knowledge, skill, training and experience that may reasonably be expected of a person in his position; and the general knowledge, skill, training and experience that he in fact has.



SECTION 3(2)

- Therefore, an adult with the general knowledge of the average person in regard to the fact that communication services are reliant upon telephone cable, for instance, will not be able to argue that he or she had not known that the theft of cable, will affect the supply of communication services to the public. Such a person does not have to be an expert on the subject, he or she needs only to know what the average person with his or her general knowledge, training and experience, should have known or suspected. This conclusion will be reached even easier if the suspect is not a first offender of non-ferrous related offences or, for instance, a scrap metal dealer.



SECTION 3 – IMPORTANT DEFINITIONS

- “**essential infrastructure**” means “any installation, structure, facility or system, whether publicly or privately owned, the loss or damage of, or the tampering with, which may interfere with the provision or distribution of a basic service to the public”.
- “**basic service**” means “a service, provided by the public or private sector, relating to energy, transport, water, sanitation and communication, the interference with which may prejudice the livelihood, well-being, daily operations or economic activity of the public”.



BAIL

- The CMA Act adds several offences to Schedule 5 of the Criminal Procedure Act which influences the granting of bail to an offender. In essence, this means that an accused person will have to satisfy the court that his or her release is in the interests of justice.



BAIL: THEFT OF METAL

- *Theft of ferrous or non-ferrous metal which formed part of essential infrastructure, as defined in section 1 of the CMA –*
- *if it is alleged that the offence caused or has the potential to cause –*
 - *interference with or disruption of basic service, (s1 of the CMA) to the public; or*
 - *damage to such essential infrastructure; or*
- *if it is alleged that the offence was committed by or with the collusion or assistance of –*
 - *a law enforcement officer, (s51(8) of the Criminal Law Amendment Act 105 of 1997);*
 - *a security officer, (s1 of the PSIRA), required to protect and safeguard such essential infrastructure*
 - *an employee of, or contractor appointed by, the owner of such essential infrastructure; or*
 - *a group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy.*



BAIL: THEFT OF METAL (ctd)

- For the purpose of the offence in par. (a), the theft of ferrous or non-ferrous metals which formed part of an essential infrastructure should have caused interference with / disruption of a basic service to the public or caused damage to such essential infrastructure.
- This allegation must form part of the A1 statement. The complainant (Telkom, Transnet, Centlec, etc.) must indicate that a basic service to the public could have been or had been disrupted due to the theft of the metal which formed part of the essential infrastructure, or that damage could have been or had been caused to essential infrastructure due to such theft.



MINIMUM SENTENCES

- The CMA amends section 51 of the Criminal Law Amendment Act no. 105 of 1997 which provides for minimum sentences for certain listed offences.
- The minimum sentences are only of interest to the NPA and the judiciary and this presentation does not expand.



CONCLUSION

- The SAPS deploys resources according to a crime threat analysis and a crime pattern analysis
- It is therefore important to report every instance of vandalism to and theft of infrastructure to SAPS in order to inform the crime pattern analysis
- Major successes have been achieved with sentences under the Criminal Matters Amendment Act which will have a deterrent effect as these crimes are reported more often and offenders are punished accordingly

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Thank you

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