

REPUBLIC OF SOUTH AFRICA

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# NUCLEAR ENERGY BILL

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*(As amended by the Portfolio Committee on Minerals and Energy (National Assembly))*

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(MINISTER OF MINERALS AND ENERGY)

[B 10B—99]

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REPUBLIEK VAN SUID-AFRIKA

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# WETSONTWERP OP KERNENERGIE

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*(Soos goedgekeur deur die Portefeuljekomitee oor Minerale en Energie (Nasionale Vergadering))*

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## CHAPTER V

### 51-61 GENERAL PROVISIONS

#### CHAPTER I

#### INTRODUCTORY PROVISIONS

##### Definitions

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**1. In this Act, unless the context indicates otherwise—**

- (i) “Atomic Energy Corporation” means the Atomic Energy Corporation, Ltd contemplated in section 4(1) of the Nuclear Energy Act, 1993 (Act No. 131 of 1993);
- (ii) “Board” means the Board of Directors of the Corporation as provided for in section 16; 10
- (iii) “chief executive officer” means the chief executive officer of the Corporation contemplated in section 22;
- (iv) “Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973);
- (v) “Corporation” means the South African Nuclear Energy Corporation, Limited, established by section 3; 15
- (vi) “Department” means the Department of Minerals and Energy;
- (vii) “director” means a member of the Board;
- (viii) “Director-General” means the Director-General of the Department of Minerals and Energy; 20
- (ix) “disposed of” used in the context of safeguards means sell, exchange, donate, distribute, lend or in any other manner transfer and “disposal of” has a corresponding meaning;
- (x) “enrich” means to increase the ratio of an isotopic constituent of an element to the remaining isotopic constituents of that element relative to the naturally occurring ratio, and “enrichment” has a corresponding meaning; 25
- (xi) “inspector” means a person appointed in terms of section 53(1);
- (xii) “institutional obligations” means the obligations of the Republic in terms of international agreements or in the national or public interest concerning matters arising from or otherwise involving the use of nuclear energy, such as— 30
  - (a) the decommissioning and decontamination of past strategic nuclear facilities;
  - (b) the management of nuclear waste disposal on a national basis;
  - (c) the application of radiation technology for medical or scientific purposes; 35
  - (d) the operation of the SAFARI nuclear reactor;
  - (e) the operation of the Atomic Energy Corporation’s site at Pelindaba and accompanying services;
  - (f) the implementation and execution of the safeguards function with the International Atomic Energy Agency, the Nuclear Non-Proliferation Treaty, the African Co-operative Agreement, the Treaty of Pelindaba or any other treaty, agreement or protocol. 40
- (xiii) “invention” means an invention as defined in section 2 of the Patents Act, 1978, (Act No. 57 of 1978); 45
- (xiv) “ionizing radiation” means electromagnetic or corpuscular emission emitted from radioactive material and capable of producing ions, directly or indirectly, while passing through matter;
- (xv) “Minister” means the Minister of Minerals and Energy;
- (xvi) “nuclear energy” means all the energy released by a nuclear fission or nuclear fusion process; 50
- (xvii) “nuclear fuel” means any material capable of undergoing a nuclear fission or nuclear fusion process on its own or in combination with some other material and which is produced in a nuclear fuel assembly or other configuration;
- (xviii) “nuclear installation” means a nuclear installation as defined in section 1 of the National Nuclear Regulator Act, 1999; 55
- (xix) “nuclear material” means source material and special nuclear material;

- (xx) “Nuclear Non-Proliferation Treaty” means the Treaty on the Non-Proliferation of Nuclear Weapons acceded to by the Republic on 10 July 1991;
- (xxi) “nuclear-related equipment and material” means equipment and material declared under section 2(f) to be nuclear-related equipment and material;
- (xxii) “plant” includes any machinery, equipment or device, whether attached to the ground or not; 5
- (xxiii) “prescribed” means prescribed by regulation;
- (xxiv) “previous Act” means the Nuclear Energy Act, 1993 (Act No. 131 of 1993);
- (xxv) “process”, when used as a verb in relation to source material, special nuclear material and restricted material, means to extract or recover such a material or to concentrate, refine or convert it in any manner without enriching it, and “processing” has a corresponding meaning; 10
- (xxvi) “radioactive material” means any substance consisting of, or containing, any radioactive nuclide, whether natural or artificial;
- (xxvii) “radioactive nuclide” means an unstable atomic nucleus which decays spontaneously with the accompanying emission of ionizing radiation; 15
- (xxviii) “radioactive waste” means any radioactive material destined to be disposed of as waste material;
- (xxix) “regulation” means any regulation in force under section 54;
- (xxx) “reprocess” means to extract or separate, from source material or special nuclear material that has been subjected to radiation, the constituents that have undergone transmutations as a result of the radiation, or the constituents that have not undergone those transmutations and are re-usable; 20
- (xxxi) “restricted act or activity” means any of the acts or activities mentioned in—  
  - (a) paragraphs (c) to (u) of section 34(1); and 25
  - (b) section 35(1);
- (xxxii) “restricted material” means beryllium and zirconium and any other substance declared under section 2(a) to be restricted material;
- (xxxiii) “restricted matter” means any or all of the following, namely—  
  - (a) source material; 30
  - (b) special nuclear material;
  - (c) restricted material;
  - (d) uranium hexafluoride (UF<sub>6</sub>);
  - (e) nuclear fuel; and
  - (f) nuclear-related equipment and material; 35
- (xxxiv) “SAFARI nuclear reactor” means the South African Fundamental Atomic Research Installation located at the Atomic Energy Corporation’s Pelindaba site, in North West Province;
- (xxxv) “Safeguards Agreement” means the comprehensive safeguards agreement entered into on 16 September 1991 between the Republic and the International Atomic Energy Agency with regard to the application of safeguards for the purposes of the Nuclear Non-Proliferation Treaty pursuant to the Republic’s accession to that Treaty on 10 July 1991; 40
- (xxxvi) “site” means a site as defined in section 1 of the National Nuclear Regulator Act, 1999, for which a nuclear authorisation as defined in that Act is required; 45
- (xxxvii) “source material” means any material declared under section 2(b) to be source material;
- (xxxviii) “special nuclear material” means any material declared under section 2(c) to be special nuclear material;
- (xxxix) “specified date” means the date referred to in section 61; 50
- (xl) “storage facility” means a facility for the acceptance, handling and treatment of irradiated fuel and the storage thereof;
- (xli) “subsidiary company” means a “subsidiary company” contemplated in section 1 of the Companies Act, 1973 (Act No. 61 of 1973), and which has been established by the Corporation, either alone or in association with any other person; 55
- (xlii) “this Act” includes any regulations; and
- (xliii) “waste disposal facility” means a facility for the acceptance, handling, storage and treatment of radioactive waste and irradiated fuel and the disposal of radioactive waste. 60

**Declarations, determinations and exemptions relating to material, substances, equipment and premises, etc**

2. The Minister, by notice in the *Gazette*, may—
- (a) declare any substance with a degree of purity as specified in the notice, to be restricted material for the purposes of this Act; 5
  - (b) declare any substance containing uranium or thorium with concentration and mass limits higher than those specified in the notice, to be source material for the purposes of this Act;
  - (c) declare any of the following with concentration and mass levels higher than those specified in the notice, to be special nuclear material for the purposes of this Act, namely— 10
    - (i) plutonium-239;
    - (ii) uranium-233;
    - (iii) uranium enriched in its 235 or 233 isotope;
    - (iv) transuranium elements; or 15
    - (v) any composition of any of the materials referred to in subparagraphs (i), (ii), (iii) and (iv), or any composition of those materials and any other substance or substances;
  - (d) declare any facility, installation, plant or structure designed or adapted for or involved with any process within the nuclear fuel cycle involving radioactive material, to be a nuclear installation for the purposes of this Act; 20
  - (e) exempt any radioactive material from the provisions of this Act;
  - (f) for the purposes of this Act, declare equipment and material specially designed or prepared for the processing, use or production of nuclear material, to be nuclear-related equipment and material; 25
  - (g) determine the levels of specific activity and total activity of radioactive material below which the provisions of this Act do not apply.

**CHAPTER II**

**THE SOUTH AFRICAN NUCLEAR ENERGY CORPORATION, LIMITED**

**Establishment of South African Nuclear Energy Corporation, Limited 30**

3. (1) There is hereby established a nuclear energy corporation for the Republic which will be a juristic person.
- (2) Despite the provisions of the Companies Act or any other law, that corporation, with effect from the specified date, will be a public company incorporated in accordance with section 4. 35
- (3) The main objects of that corporation and, accordingly, those of that company, are to perform the functions mentioned in section 13.

**Incorporation of South African Nuclear Energy Corporation, Limited**

4. (1) The Minister must take all the steps that are necessary for the formation and incorporation of that corporation as a public company with a share capital within the meaning of the Companies Act, subject to section 3, this section and section 5. 40
- (2) Despite the provisions of the Companies Act, the State will be the only member and shareholder of that company upon its incorporation.
- (3) Despite the provisions of the Companies Act—
- (a) the Minister, who represents the State, will sign the memorandum of association, articles of association and all other documents necessary in connection with the formation and incorporation of the company; 45
  - (b) the Registrar of Companies must register the memorandum of association and articles of association as signed by the Minister, and incorporate the company as a public company under the name “The South African Nuclear Energy Corporation Limited”, with the State as its only member and shareholder, and issue to the company a certificate to commence business with effect from the date of the company’s incorporation. 50
- (4) (a) The State’s rights as member and shareholder of the Corporation are to be exercised by the Minister. 55

(b) The relationship between the Corporation and the Minister representing the State as the only member and shareholder, may be closer defined in an agreement entered into by the Corporation and the Minister for that purpose, subject to this Act.

#### **Corporation's memorandum and articles of association**

5. (1) The memorandum of association and articles of association of the Corporation must be so drawn up that the contents thereof are consistent with this Act. 5

(2) Despite the Companies Act, an amendment of the memorandum of association or articles of association affecting any arrangement made by any provision of this Act will not be operative or have any legal force unless and until the relevant provision of this Act has been amended accordingly and that amendment has come into effect. 10

#### **Application of Companies Act to Corporation**

6. (1) The provisions of the Companies Act, which are not in conflict with this Act, apply to the Corporation, subject to subsection (2).

(2) A provision of the Companies Act will not apply to the Corporation in the following circumstances, namely, where— 15

- (a) because of any special or contrary arrangement made by this Act, such a provision is clearly inappropriate or incapable of being applied; or
- (b) the Minister of Trade and Industry has issued a declaration under section 7(3) with regard to the provision.

#### **Certain provisions of Companies Act may be declared not applicable to Corporation** 20

7. (1) The Minister, after consultation with the Corporation, may from time to time, as and when considered necessary, request the Minister of Trade and Industry to declare any particular provision of the Companies Act, not to be applicable to the Corporation.

(2) The request must be fully motivated, and the necessary particulars about the request, together with the motivation therefor, must be made known by the Registrar of Companies by notice in the *Gazette*. In that notice that Registrar must also invite interested persons who may have any objections to such a declaration, to submit their objections and representations to a person named in the notice, or, if sent by post, to place that person in possession of their objections and representations, not later than 21 days after the date of the notice. 25 30

(3) After having considered the objections and representations received within the 21 day period, the Minister of Trade and Industry may, by notice in the *Gazette*, declare the whole or any part of any provision of the Companies Act about which the abovementioned request was made, not to be applicable to the Corporation with effect from a date stated in that notice, if satisfied on reasonable grounds that the non-application of that provision to the Corporation— 35

- (a) will contribute to its efficiency or will reduce the Corporation's operating costs; and
- (b) will not reduce or limit the Corporation's accountability as a public institution or detract from the requirements of transparency as regards its functioning and operations; and
- (c) will not be prejudicial to the rights, interests or claims of the Corporation's creditors or employees or to the rights or interests of any other interested parties. 40 45

#### **Corporation successor to property, assets and liabilities of Atomic Energy Corporation**

8. (1) On the specified date, the Corporation will become entitled to and have claim to any money which, immediately before that date, stood to the credit of the Atomic Energy Corporation. 50

(2) On the specified date, the following will pass to and vest in the Corporation:

- (a) All immovable property registered in the name of the Atomic Energy Corporation and consisting of land, and any servitudes or other real rights with regard to land;

- (b) land and any servitudes or other real rights with regard to land (including any right to use land temporarily) acquired by the Atomic Energy Corporation in terms of the previous Act for the purposes of or in connection with the functions, business or operations of the Atomic Energy Corporation;
  - (c) any other assets of which the Atomic Energy Corporation is the owner, immediately before the specified date, for the purposes of or in terms of the previous Act; and 5
  - (d) any liabilities which were incurred by the Atomic Energy Corporation in terms of the previous Act or pursuant to its operations and activities thereunder, which are still outstanding immediately before the specified date. 10
- (3) The Registrar of Deeds concerned must make the entries and endorsements that may be necessary to give effect to subsection (2) in or on any relevant register, title deed or any other document that is filed or on record in the Deeds Registry or has been submitted to that Registrar, and no office fees or other money will be payable with regard to such an entry or endorsement. 15

#### **Transfer of shares by Minister**

9. (1) Despite any provisions of a law to the contrary, the Minister may transfer so much of the State's shares in a subsidiary company contemplated in section 14(1)(a)(i) as the Cabinet approves to such transferees in such manner and on such terms and conditions as the Cabinet approves. 20
- (2) The proceeds of any transfer in terms of subsection (1) may be used wholly or partially for such purpose as the Cabinet approves, but all proceeds not so used within the period determined by the Cabinet must be paid into the National Revenue Fund.

#### **State's financial interest in Corporation**

10. (1) In exchange for the nett value of the assets passing to and vesting in the Corporation in terms of section 8, the State, by virtue of having been the sole shareholder in the Atomic Energy Corporation, will hold fully paid-up shares in the Corporation— 25
- (a) for an amount equal to the nett value of the assets so invested in the Corporation; or 30
  - (b) for an amount equal to a percentage, specified in the agreement, of the nett value of the assets so invested, subject to subsection (2).
- (2) (a) If the amount for which shares in the Corporation are to be held by the State in terms of subsection (1), is less than the nett value of the assets so passing to and vesting in the Corporation, the Corporation will be indebted to the State for an amount equal to the difference between the nett value of those assets and the value of the shares to be so held. The amount of that difference will be regarded and treated as a loan granted to the Corporation by the State. 35
- (b) The terms and conditions of that loan must be set out in the agreement mentioned in subsection (1). In that agreement provision may be made that the Corporation issues the State with debentures for the whole or any part of the amount of the loan. 40
- (3) For the purposes of this section, any reference to the nett value of the assets invested in the Corporation, however expressed, must be understood to mean all the money mentioned in subsection (1) of section 8 *plus* the value of all the movable, immovable and other property passing to the Corporation in terms of subsection (2)(a), (b) and (c) of that section, an amount representing the sum of all the liabilities passing to the Corporation in terms of subsection (2)(d) of that section. 45
- (4) Where the value of any assets consisting of immovable property is to be determined for the purposes of this section, regard must be had to the criteria mentioned in sections 12(1) and (5)(b), (c), (d), (e), (f) and (h) of the Expropriation Act, 1975 (Act No. 63 of 1975). 50

#### **Financial year**

11. The Corporation's financial year will be from 1 April in any year to 31 March in the following year, both days included. However, the first financial year will run from the specified date to 31 March in the following year, both days included. 55



## **Judicial management and liquidation**

**12.** Despite the provisions of any other law, the Corporation may not be placed under judicial management or in liquidation except if authorised by an Act of Parliament adopted specially for that purpose.

## **Main functions of Corporation**

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**13.** The main functions of the Corporation are—

- (a) to undertake and promote research and development in the field of nuclear energy and radiation sciences and technology and, subject to the Safeguards Agreement, to make these generally available;
- (b) to process source material, special nuclear material and restricted material and to reprocess and enrich source material and nuclear material; and 10
- (c) to co-operate with any person or institution in matters falling within these functions subject to the approval of the Minister.

## **Ancillary powers and functions of Corporation**

**14.** (1) In connection with its main functions, the Corporation may— 15

- (a) for the purpose of developing or in any manner exploiting any invention or technological expertise, subject to the approval of the Minister granted with the agreement of the Minister of Finance—
  - (i) establish a subsidiary company in terms of the Companies Act or in association with any person so establish a company, or acquire an interest in or control over a company; 20
  - (ii) purchase or otherwise acquire immovable property and encumber or dispose thereof;
  - (iii) purchase, erect, or cause to be erected, any buildings, installations, works or plants; 25
- (b) establish and manage facilities for collecting and disseminating information regarding activities falling within the scope of the Corporation's functions and powers;
- (c) utilise or let buildings, works or plants for the benefit of the Corporation or such a subsidiary company; 30
- (d) purchase, hire or otherwise acquire, or hold, movable property, and let, pledge, encumber or dispose of such property of which it is the owner;
- (e) hire services or let its own services or make them otherwise available;
- (f) conclude agreements with producers for the production and delivery of any quantities of source material that may be required from time to time by the Corporation or any subsidiary company of the Corporation; 35
- (g) cede or assign to any person any or all of the rights or obligations of the Corporation in terms of any contract relating to the sale or supply of source material, subject to this Act;
- (h) promote the prospection for and mining of source material and restricted material; 40
- (i) undertake, cause to be undertaken or promote the development of nuclear technology, nuclear-related technology and know-how, and nuclear research;
- (j) manufacture or otherwise produce, acquire or possess uranium hexafluoride (UF<sub>6</sub>), or dispose thereof, subject to section 34; 45
- (k) acquire, possess, utilise, dispose of or process source material, special nuclear material and restricted material, and enrich and reprocess source material and special nuclear material subject to section 34;
- (l) manufacture, acquire or possess nuclear fuel and dispose thereof subject to section 34; 50
- (m) import into or export from the Republic any source material, special nuclear material, restricted material and nuclear related equipment and material and technology, subject to section 34 or 35;
- (n) store irradiated fuel and operate facilities for that purpose, subject to section 34; 55
- (o) undertake the transportation of source material, special nuclear material, nuclear fuel, irradiated nuclear fuel, radioactive material and radioactive waste or cause it to be undertaken, subject to section 34;
- (p) make any arrangements that the Minister considers necessary for the stockpiling of strategic raw materials, materials and equipment; 60



- (q) with the written permission of the Minister, sell or in any other manner make available to any person, for use on such conditions approved by the Minister, any patent, licence, concession, or right of manufacture or any other right conferring the power to use any information, expertise, process or technology which has been developed by the Corporation or a subsidiary company and which is the Corporation's property; 5
- (r) co-operate with any educational, scientific or other institution or body with a view to such an institution or body providing instruction to, or training of, persons required by the Corporation, and if considered necessary by the Corporation, provide financial or other assistance to such an institution or body in connection with the instruction or training of those persons; 10
- (s) award a bursary or loan to any suitable person for study in any scientific or technical field relevant to the Corporation's activities;
- (t) acquire patents, licences, concessions, rights of manufacture or other similar rights conferring the power to use any technology, process, expertise or information and use, exercise, develop or grant licences in respect of such rights, concessions, technology, processes, expertise or information, or otherwise exploit it beneficially; 15
- (u) perform any other function or exercise any other power assigned or delegated by the Minister in terms of section 55 of this Act. 20
- (2) In order to create and utilise viable business opportunities in commerce and industry, the Corporation may—
  - (a) produce and otherwise acquire reports, computer software and other intellectual property and dispose thereof;
  - (b) manufacture and sell instruments, equipment and similar products; 25
  - (c) process and sell minerals;
  - (d) produce and process metals, chemicals and related products;
  - (e) with the permission of the Minister, and subject to this Act—
    - (i) sell or otherwise commercially exploit those metals, chemicals and related products; and 30
    - (ii) for reward render to any person or institution any service falling within the ambit of the Corporation's functions.
- (3) The Corporation may, at the request or with the written permission of the Minister, undertake the development, transfer or exploitation of nuclear technology or nuclear-related technology on behalf of or in collaboration with any person, or institution in, or any government or administration of, any other country or territory. 35
- (4) The Corporation may—
  - (a) provide collateral security, including guarantees, to a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), in respect of a loan granted by the financial institution to any employee of the Corporation in order to acquire, improve or enlarge immovable property for the purposes of occupation; 40
  - (b) build, cause to be built, buy or hire dwelling houses, flats or flat buildings for occupation by the Corporation's employees, and may sell or let such houses or flats to its employees or, if no longer reasonably required, otherwise alienate or let, or otherwise deal with, such houses, flats or flat buildings; 45
  - (c) establish, erect, operate or carry on sports and recreational facilities, social clubs, social and health services, restaurants, hostels and study bursary schemes for the benefit of the Corporation's employees, or any other similar undertakings or schemes which in the opinion of the chief executive officer may be beneficial to those employees. 50

## Loans

**15.** (1) The Corporation, with the written permission of the Minister granted with the agreement of the Minister of Finance, may raise loans to finance any expenditure that may be incurred by the Corporation during any financial year in connection with its functions, business and operations in terms of this Act. 55

(2) The permission may be granted subject to any conditions determined by the Minister acting with the agreement of the Minister of Finance.

(3) The State, represented by the Minister acting with the agreement of the Minister of Finance, may guarantee any loan raised by the Corporation in terms of subsection (1).

(4) The Corporation with the agreement of the Minister so acting, may issue debentures in respect of a loan so raised. 5

### **Control and management of affairs of Corporation**

**16.** (1) (a) The Corporation is governed and controlled, in accordance with this Act, by a Board of Directors.

(b) The Board must ensure that the goals of this Act are actively pursued, and must exercise general control over the performance of the Corporation's functions. 10

(c) The Board represents the Corporation, and all acts performed by the Board or on its authority will be the acts of the Corporation.

(2) The Board consists of—

(a) a chairperson, appointed by the Minister; 15

(b) not fewer than five and not more than seven suitably qualified directors appointed by the Minister;

(c) the chief executive officer, who is a member of the Board by virtue of holding the office;

(d) an official of the Department, designated by the Minister; and 20

(e) an official of the Department of Foreign Affairs designated by the Minister after consultation with the Minister of Foreign Affairs.

(3) A person will be disqualified from being appointed or designated or remaining a director—

(a) if not a South African citizen who is permanently resident in the Republic; 25

(b) upon being declared insolvent or the person's estate having been handed over to creditors;

(c) upon being convicted of an offence and sentenced to imprisonment without the option of a fine;

(d) upon having been nominated— 30

(i) as a candidate in any election of members of Parliament or a provincial legislature in terms of the Electoral Act, 1998 (Act No. 73 of 1998);

(ii) to fill a vacant seat in Parliament or a provincial legislature;

(e) if appointed to any other public office under the State;

(f) if disqualified on any other grounds in terms of the Companies Act from being a director of a company. 35

(4) The Minister may, for a director appointed in terms of subsection (2)(d) and (e), appoint a suitably qualified alternate director to act in the place of that director during his or her absence.

(5) (a) The chairperson of the Board holds office for a period specified in the person's letter of appointment but not exceeding three years, and may be reappointed upon expiry of that term of office. 40

(b) A director mentioned in subsection (2)(b) holds office for a period specified in the person's letter of appointment but not exceeding three years, and may be reappointed upon expiry of that term of office. 45

(6) (a) Any director mentioned in subsection (2)(a) or (b), will be appointed on the terms and conditions, including terms and conditions relating to the remuneration and allowances payable, as the Minister may determine with the agreement of the Minister of Finance.

(b) Those terms and conditions must be stipulated in such a director's letter of appointment. 50

(7) The Minister must designate one of the directors as deputy chairperson.

(8) If any appointed or designated director dies or vacates office, the Minister, subject to subsection (2), may appoint or designate another person as director. The person so appointed or designated will serve for the unexpired portion of the predecessor's term of office. 55

(9) (a) Despite the preceding provisions of this section, the persons who, immediately before the specified date, served as members of the board of directors of the Atomic Energy Corporation in terms of the previous Act, will, as from the specified date until the day immediately before the Corporation's Board, duly constituted in accordance with subsection (2), meets for the first time, act as the directors of the Corporation's Board. 5

(b) The meetings of those acting directors will be held at the times and places determined by their chairperson.

#### **Vacation of office**

17. (1) The Minister may at any time discharge a director from office—

(a) if the director repeatedly has failed to perform the duties of that office efficiently; 10

(b) if, because of any physical or mental illness or disability, the director has become incapable of performing the functions of that office or performing them efficiently; or

(c) for misconduct. 15

(2) A director vacates office—

(a) upon becoming disqualified in terms of section 16(3);

(b) when discharged in terms of subsection (1);

(c) upon having been absent from three consecutive meetings of the Board without the chairperson's permission, unless the Board has condoned the absence on good reasons advanced; and 20

(d) when the person's resignation as a director takes effect.

#### **Meetings of Board**

18. (1) The first meeting of the first Board constituted under section 16, must be held at the time and place determined by the Minister. All meetings thereafter will be held at the times and places that the Board determines. 25

(2) The chairperson may at any time call a special meeting of the Board to be held at a time and place as determined by the chairperson.

(3) All directors must be notified in writing of any meeting mentioned in subsection (1) or (2). 30

(4) A majority of the total number of directors forms a quorum at any meeting of the Board.

(5) Subject to subsection (4), a decision agreed on by a majority of the directors present at a meeting of the Board is a decision of the Board, and in the event of an equality of votes on any matter, the chairperson of the relevant meeting, has a casting vote in addition to a deliberative vote. 35

(6) A decision taken by the Board or an act performed under its authority, is not invalid merely because—

(a) there is a vacancy in the Board; or

(b) any person not entitled to do so, sat as a director at the time that decision was taken, 40

if that decision was taken or that act was authorised by the required majority of directors present at the meeting who were entitled to sit as directors.

(7) In the case where the chairperson is absent or incapacitated or for any reason unable to act, or when the office of chairperson is vacant, the deputy chairperson will perform the functions of the chairperson. However, if the deputy chairperson is also absent or incapacitated or for any reason unable to act, or where the office of the deputy chairperson is vacant, the remaining directors must designate one from their number to act as chairperson. 45

(8) The Board must hold at least one meeting every three months. 50

#### **Committees of Board**

19. (1) The Board may from time to time appoint one or more committees to assist the Board in performing its functions.

(2) A committee may consist of one or more members, and may be a standing committee or an *ad hoc* committee appointed for a particular task and period only. A committee must at all times have at least one director as member. 55

- (3) If such a committee has two or more members, the Board must designate one of them as the committee's chairperson, who must be a director of the Board.
- (4) The Corporation may pay a member of a committee who is not in the full-time service of the State or an employee of the Corporation, the remuneration and allowances determined by the Minister with the agreement of the Minister of Finance. 5
- (5) A member of a committee holds office at the Boards' pleasure.
- (6) The Board may fill a vacancy in any committee.

#### **Board and committees to keep minutes**

- 20.** (1) The Board and any committee must have minutes prepared and kept of the proceedings of their respective meetings and must have copies of the minutes circulated 10 to their respective members.
- (2) The minutes so prepared, when confirmed at a next meeting and signed by the person who chairs that meeting, will, in the absence of proof of error therein, be regarded and treated as a true and correct record of the proceedings and matters that they purport to minute and will be sufficient evidence of those proceedings and matters at any 15 proceedings before a court of law or any tribunal or commission of inquiry.

#### **Delegation and assignment of powers and functions by Board**

- 21.** (1) (a) Subject to subsections (2), (3) and (4), the Board, by special resolution, may delegate any of the powers and assign any of the functions or duties conferred or imposed on it by the operation of section 16(1) or conferred or imposed on it elsewhere 20 by this Act, to its chairperson, any other appointed director, the chief executive officer or any committee of the Board.
- (b) However, the Board will not be divested of any power nor be relieved of any function or duty it may have delegated or assigned.
- (2) The delegation or assignment— 25
- (a) may be made on and subject to any conditions determined by the Board;
  - (b) may, subject to subsection (4), be given together with the power to subdelegate or further assign, on and subject to any conditions so determined (if any);
  - (c) must be communicated to the delegatee or assignee in writing. The written 30 communication must contain full particulars of the matters being delegated or assigned and of the conditions determined under paragraph (a), if any, and, where the power of subdelegation or further assignment is conferred, must state that fact as well as any conditions determined under paragraph (b), if any.
- (3) The Board, by special resolution, may at any time— 35
- (a) amend or revoke a delegation or assignment made under subsection (1);
  - (b) withdraw any decision made by the delegatee or assignee with regard to a delegated or assigned matter, and decide the matter itself. However, a decision made by a delegatee or assignee may not be withdrawn where it confers a right or entitlement on any third party. 40
- (4) The Minister, may by notice in the *Gazette*, from time to time—
- (a) prohibit the delegation by the Board of any particular power or its assignment of any particular function or duty, whether generally or in the circumstances specified in the notice;
  - (b) limit the circumstances in which any particular power, function or duty of the 45 Board may be delegated or assigned (as the case may be);
  - (c) prescribe conditions for the delegation of any particular power or assignment of any particular function or duty;
  - (d) in relation to any power, function or duty of the Board specified in the notice, prohibit subdelegation or further assignment (as the case may be), in the event 50 of the Board's delegation of that power or assignment of that function or duty.

## **Chief executive officer**

**22.** (1) The Minister must after consultation with the board appoint a suitable person as chief executive officer of the Corporation.

(2) A person will be disqualified from being appointed or remaining a chief executive officer if subject to any of the disqualifications mentioned in paragraphs (a) to (f) of section 16(3). 5

(3) The chief executive officer holds office for a period specified in the letter of appointment but not exceeding three years, and may be reappointed upon expiry of that term of office.

(4) The Minister may at any time remove the chief executive officer from office— 10

(a) if the chief executive officer repeatedly has failed to perform the duties of office efficiently;

(b) if, because of any physical or mental illness or disability, the chief executive officer has become incapable of performing the functions of that office or performing them efficiently; or 15

(c) for misconduct.

(5) (a) The person who, immediately before the specified date was the chief executive officer of the Atomic Energy Corporation by virtue of appointment in that office under section 11 of the previous Act, will from the specified date until the date on which the appointment of the Corporation's first chief executive officer under subsection (1) of this section takes effect, act as, and perform the functions imposed by or in terms of this Act on, the Corporation's chief executive officer. 20

(b) A person so acting is not precluded from being appointed as the Corporation's chief executive officer under this section.

## **General management of Corporation**

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**23.** (1) The Corporation's day to day business and operations will be under the general management of the chief executive officer, subject to the general or specific directions and instructions, if any, that the Board may issue from time to time.

(2) The chief executive officer must—

(a) ensure that the functions of the Corporation in terms of this Act are complied with; 30

(b) report to the Board on the proper performance and functioning of the Corporation;

(c) compile a report on the activities of the Corporation for each financial year and submit the report to the Board for approval; 35

(d) each financial year, after consulting the Board furnish the Minister with a plan of action for the activities of the Corporation.

(3) The chief executive officer is the accounting officer of the Board charged with the responsibility of accounting for all money received, payments made and assets of the Corporation. 40

(4) The chief executive officer must exercise all the powers and perform all the duties conferred or imposed on the accounting officer by—

(a) this Act, the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992), or any other law;

(b) the Board. 45

(5) (a) Whenever, due to absence or for any other reason, the chief executive officer is temporarily unable to perform the functions of that office, or when that office is vacant, the Board may designate an employee of the Corporation to act as chief executive officer until the incumbent of that office resumes the functions of chief executive officer, or, as the case may be, the vacancy is filled by the Minister through the appointment of another person as chief executive officer under section 22. 50

(c) While so acting, the designated employee will be competent to exercise and perform all the powers, functions and duties of the chief executive officer in terms of this Act.

## **Delegations and assignments by chief executive officer**

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**24.** (1) The chief executive officer may delegate any of the powers, and assign any



of the functions or duties attached to that office, to any employee of the Corporation.

(2) Section 21(1)(b), (2)(a) and (c), (3) and (4) will apply, reading in the changes necessary in the context, to any delegation or assignment in terms of this section.

## **Staff of Corporation**

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**25.** (1) Subject to the general or special directions of the Board, if any, the chief executive officer may appoint the staff for the Corporation that may be necessary to perform the work arising from or connected with the Corporation's functions, business and operations in terms of this Act.

(2) (a) The terms and conditions of service of the Corporation's staff, and their remuneration, allowances, subsidies and other service benefits will be as determined by the Board.

(b) That remuneration and those allowances, subsidies and other benefits must be determined in accordance with a system approved by the Minister with the agreement of the Minister of Finance.

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(3) (a) The persons who, immediately before the specified date, were employees of the Atomic Energy Corporation appointed in terms of section 13(1) of the previous Act, or deemed by section 13(2) of that Act to have been so appointed, will from the specified date be deemed to be staff members of the Corporation who have been appointed in terms of subsection (1) of this section.

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(b) The terms and conditions of service, salary or pay, allowances, subsidies and service benefits that were applicable to those employees immediately before the specified date, will, with effect from the specified date, continue to apply until redetermined by the Board under subsection (2).

(c) The terms and conditions of service, salary or pay, allowances, subsidies and service benefits so redetermined, may not be less than those applicable before the redetermination.

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(d) Those employees' respective periods of pensionable service with the Atomic Energy Corporation and (where applicable) with its predecessor in terms of any law will be regarded and treated as pensionable service for the purposes of membership of any pension fund or scheme of which they are or may become members after the specified date.

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(e) The leave which has been accumulated by each of those employees while in the service of the Atomic Energy Corporation, will be regarded and treated as if it were leave accumulated by such an employee in the service of the Corporation.

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(4) Subject to subsection (5), the Corporation is deemed to be an associated institution for the purposes of the Associated Institutions Pension Fund Act, 1963 (Act No. 41 of 1963).

(5) The Corporation, with the approval of the Minister granted with the agreement of the Minister of Finance, may establish, and manage and administer, any pension or provident fund or medical scheme for the benefit of its employees or have such a scheme or fund managed and administered by any other body or person.

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## **Finances of Corporation**

**26.** (1) The Corporation will be funded and provided with capital from—

(a) the capital invested in or lent to the Corporation as contemplated in section 10;

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(b) money appropriated by Parliament for that purpose;

(c) income derived from the sale or other commercial exploitation of its products, technology, services or expertise in terms of this Act;

(d) loans raised by the Corporation in terms of section 15;

(e) the proceeds of any sale of assets authorised in terms of this Act;

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(f) income or interest earned on the Corporation's cash balances or on money invested by it; and

(g) money received by way of grant, contribution, donation or inheritance from any source inside or outside the Republic. However, money from abroad may be received only with the Minister's approval.

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(2) Money that in terms of subsection (1) are the funds of the Corporation, will be utilised to meet the expenditure incurred by the Corporation in connection with its functioning, business and operations in terms of this Act.

(3) (a) Those money may be so utilised only as provided for in a statement of the



Corporation's estimated income and expenditure contemplated in subsection (4), that has been approved by the Minister.

(b) Money received by way of grant, contribution, donation or inheritance in terms of subsection (1)(g), must be utilised in accordance with the conditions (if any) imposed by the grantor, contributor, donor or testator concerned.

(4) (a) The Board must in each financial year, at a time determined by the Minister, submit to the Minister for approval a statement of the Corporation's estimated income and expenditure for the next financial year. However, the Board may at any time during the course of a financial year concerned, submit a supplementary statement of estimated income and expenditure of the Corporation for that financial year, to the Minister for approval.

(b) The Minister may grant the approval of the statement referred to in subsection (4)(a), with the agreement of the Minister of Finance.

(c) The Corporation may not incur any expenditure in excess of the total amount approved under paragraph (b).

(5) The Board may establish a reserve fund for any purpose that is connected with the Corporation's functions under this Act and has been approved by the Minister, and may allocate to the reserve fund the money that may be made available for that purpose in the statement of estimated income and expenditure (including any supplementary statement) approved under subsection (4)(b).

(6) (a) The chief executive officer, subject to the conditions set by the Board, must open an account in the name of the Corporation with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990), and deposit therein all money contemplated in section (1).

(b) The money of the Corporation that are not required for immediate use or as a reasonable working balance, may be invested with the Corporation for Public Deposits established by section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984).

#### **Accounting and auditing**

27. The Corporation is deemed to be a listed entity as defined in section 1 of the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992).

#### **Rights to discoveries, inventions and improvements made by Corporation's employees and certain other persons**

28. (1) Subject to the provisions of subsections (4) and (5), the rights in all discoveries, inventions and improvements made by employees of the Corporation in the course of their work as its employees, will vest in the Corporation which, with the Minister's permission, may make any such discovery, invention or improvement available for use in the public interest, subject to any conditions and the payment of any fees and royalties that may be determined by the Corporation and approved by the Minister.

(2) The Corporation may, for such a discovery, invention or improvement, pay out of its funds to the employee concerned any bonus, reward or other financial benefit that the Board may determine.

(3) (a) The chief executive officer, on the instruction of the Board, may apply on behalf of the Corporation for a patent in terms of the Patents Act, 1978 (Act No. 57 of 1978), for any invention or improvement referred to in subsection (1).

(b) The chief executive officer may direct the registrar of patents to keep secret any such invention and the manner in which it is to be applied.

(4) The rights in respect of any discovery, invention or improvement made by employees of the Corporation in the course of any work done by them as in that capacity on behalf of or for the benefit of another person or institution, will vest in the Corporation unless otherwise agreed between the Corporation and the person or institution concerned.

(5) The rights in respect of any discovery, invention or improvement made in the course of work or during a special investigation done or carried out by any other person or institution on behalf of or for the benefit of the Corporation, will vest in the Corporation or in the other person or institution, or in the Corporation and the person or institution jointly, as may be agreed in writing by the parties beforehand, and the party or parties whom the rights in such an invention or improvement are vested, may apply for a patent for the invention or improvement.

**Provisions with regard to security of Corporation's installations, sites and premises, etc**

**29.** (1) The installations, sites, premises and land belonging to or under the control of the Corporation, on which any of its business, operations and activities in terms of this Act are conducted or performed or any records in connection therewith are kept, stored or to be found, are restricted areas. 5

(2) In view thereof, the Corporation, subject to subsection (3), may make any arrangements it considers reasonably necessary for the proper protection of—

- (a) those installations, sites, premises and land (hereinafter called high security areas); 10
- (b) the persons employed or present at or in the high security areas;
- (c) all property of the Corporation, whether of a physical or intellectual nature, at or in the high security areas; and
- (d) the records and information of the Corporation that are kept, stored or to be found thereat or therein, irrespective of the manner in which or the medium on or by means of which the records and information are kept, stored or recorded. 15

(3) No person will be allowed to enter or be present in a high security area unless the person has consented to any search that may be conducted in terms of subsection (4)(a).

(4) Any person authorised thereto in writing by the chief executive officer, may—

- (a) search any person or vehicle about to enter or leave any high security area, and may open and inspect any container or parcel and inspect any object, device, article, item or thing (including any material or substance) which is in the possession of such a person or is on or in that vehicle; 20
- (b) search any person present or any vehicle found in the high security area if there are reasonable grounds to suspect that any person or anything in the person's possession or in or on the vehicle, constitutes a threat to or endangers the lives or physical integrity of persons or the physical safety of property; 25
- (c) seize or attach any object, device, article, item or thing (including any material or substance) in the possession of a person mentioned in paragraph (a) or (b) or found on or in such a vehicle— 30
  - (i) if such an object, device, article, item or thing belongs to the Corporation or is subject to its control and is not in the lawful possession of the person or lawfully being conveyed in or on the vehicle for the purpose of performing any function or work of the Corporation; or
  - (ii) if, in the opinion of the authorised person, it constitutes a threat or danger of the nature contemplated in paragraph (b), or may be used by the person from whom it was taken or any other person for the purposes of a threat or danger of that nature; 35
- (d) arrest any person found in unlawful possession of restricted matter or anything else contemplated in paragraph (c)(i), or any person mentioned in paragraph (b). 40

**Exemption from duties and fees**

**30.** The Corporation, but not its subsidiary companies, is exempt from the payment of any duty or fee which, were it not for the provisions of this section, would have been payable by it to the State in terms of any law, except the Customs and Excise Act, 1964 (Act No. 91 of 1964), or the Value Added Tax Act, 1991 (Act No. 105 of 1991), in respect of an act or transaction to which the Corporation is a party, or any document connected with such an act or transaction. 45

**Disclosure of confidential information concerning Corporation's activities**

**31.** (1) Subject to subsection (2), no information concerning any operation, transaction, project, work or activity of the Corporation in connection with restricted matter or any restricted act or activity which is not yet public knowledge, may be 50

published or made known or be transmitted or otherwise disclosed, except with the written permission of the chief executive officer acting on the authority of the Board, by any—

- (a) employee or former employee of the Corporation or of a subsidiary company;
- (b) any person who is or was involved in the business, operations or activities of the Corporation or subsidiary company in the capacity of agent, contractor or consultant or in any similar or related capacity, as well as the employee, partner or associate of such a person. 5
- (2) Subsection (1) does not preclude the disclosure of information—
  - (a) in so far as may be necessary for the exercise of any power or performance of any function or duty of the Corporation in terms of this Act or for the performance of any work in connection therewith, or 10
  - (b) on the order of a competent court of law.

**Minister may authorise performance of Corporation's functions by other person or body in certain circumstances** 15

**32.** (1) If, in any particular case, the Corporation should fail, in relation to any matter or matters, to perform any function imposed on the Corporation in terms of this Act in circumstances where, in law, it is under a duty to perform that function, the Minister, by notice in writing to the Board, may order the Corporation to perform the function concerned, which must be specified in the notice. 20

(2) The Board and the chief executive officer must ensure that any lawful order issued under subsection (1) is complied with.

(3) If the Corporation should fail to comply with such an order, the Minister, in writing, may authorise any person or other body that is competent and has the necessary capacity for that purpose, to perform that function in relation to the particular matter or matters (as the case may be). 25

(4) The Minister may recover from the Corporation the costs of having such a function performed by a person or body so authorised.

**CHAPTER III**

**NUCLEAR NON-PROLIFERATION** 30

**Minister's responsibilities concerning Republic's international obligations with regard to nuclear non-proliferation**

**33.** (1) The Minister acts as the national authority of the Republic for the purposes of the implementation and application of the Safeguards Agreement and any additional protocols in order to timeously detect and identify nuclear material intended to be used for peaceful nuclear activities and deter the diversion of such nuclear material to the manufacture of nuclear weapons or other nuclear explosive devices or for use in connection with any other purpose that is unknown. 35

(2) In order to fulfill the responsibilities referred to in subsection (1)—

- (a) the Minister must liaise with the International Atomic Energy Agency on an ongoing basis as regards— 40
  - (i) negotiations on subsidiary arrangements under the Safeguards Agreement;
  - (ii) the furnishing and updating of information regarding the design of nuclear installations and sites; 45
  - (iii) the furnishing of reports required by or in terms of the Safeguards Agreement and the subsidiary arrangements thereunder;
  - (iv) requests for exemption from or termination of safeguards relating to nuclear material;
  - (v) the provision of facilities and support to the inspectors of the International Atomic Energy Agency; 50
  - (vi) the selection of inspectors nominated in respect of the Republic by the International Atomic Energy Agency;

- (vii) the accompaniment of that Agency's inspectors during inspections;
  - (viii) the handling of importation into, and exportation from, the Republic of equipment and samples;
  - (b) the Minister may issue instructions—
    - (i) concerning the measuring methods and systems with regard to nuclear material; 5
    - (ii) on the procedures for the handling of shipper-receiver differences in respect of nuclear material;
    - (iii) requiring and otherwise relating to the undertaking of periodic physical stocktaking of nuclear material; 10
    - (iv) on the operation of accounting systems in relation to any materials;
    - (v) relating to the keeping of records and reporting on nuclear material;
    - (vi) relating to the furnishing of information regarding the design, and changes to the design of nuclear installations and sites;
    - (vii) on the provision of information about the importation into, and exportation from, the Republic of nuclear material and nuclear-related equipment and material; 15
    - (viii) about applications for the exemption from or termination of requirements or safeguards in relation to nuclear material;
    - (ix) about the physical protection of nuclear material; 20
  - (c) the Minister may—
    - (i) have the arrangement and verification undertaken of the physical inventory of any nuclear material in the Republic;
    - (ii) have inspections and investigations undertaken in accordance with and subject to sections 37, 38 and 39; 25
    - (iii) cause the measuring methods and systems employed by any person or body with regard to nuclear material to be verified;
    - (iv) have samples taken of and analysis undertaken of any product, article, object or thing subject to section 38;
    - (v) have independent measurements of nuclear material taken; 30
  - (d) the Minister may apply any measures he or she considers necessary for the containment and surveillance of nuclear material;
  - (e) the Minister must consult with the South African Council for the Non-Proliferation of Weapons of Mass Destruction, established by section 4 of the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993), on any matter affecting the proliferation of weapons of mass destruction. 35
- (3) Any person in possession of, using, handling or processing nuclear material must—
- (a) keep the prescribed records; 40
  - (b) submit the prescribed reports to the Minister at the times or intervals or on the occurrence of any event as prescribed;
  - (c) perform the prescribed measurements on nuclear material and maintain the prescribed measuring control programmes;
  - (d) in the prescribed manner provide the Minister with information regarding the design of any nuclear installation and site concerned and all changes effected to the design thereof; 45
  - (e) periodically undertake the physical stocktaking of nuclear material in the manner and at the times as prescribed;
  - (f) in the prescribed manner give prior notice of the importation or exportation of nuclear material and nuclear-related equipment and material; 50
  - (g) implement and maintain the prescribed physical protective measures in respect of nuclear material;
  - (h) without delay report to the Minister any loss of nuclear material in excess of the prescribed limits; 55
  - (i) periodically, at the times and in the manner as prescribed, provide the Minister with schedules of planned activities;
  - (j) allow the designated officials of the International Atomic Energy Agency and any inspectors appointed under section 53 to carry out, without hindrance, inspections at any nuclear installation or site with a view to monitoring compliance with the provisions of this Chapter. 60
- (4) (a) All information furnished or disclosed by any person in compliance or supposed compliance with this section, as well as all accompanying information

contained in the communication or presentation of the first-mentioned information, is highly confidential and may not be published or otherwise made known or disclosed by the Minister or any official of the State while serving as such except—

- (i) in so far as may be necessary for or in connection with the exercise of any power or performance of any function or duty of the Minister, in terms of this Act, or for the performance of any work in connection therewith; or 5
- (ii) on the order of a competent court of law.
- (b) “Accompanying information”, for the purposes of paragraph (a), means any information whatsoever which does not have to be furnished or disclosed to the Minister in terms of this section, whether derived directly from any express statement made in the communication or presentation or indirectly, by implication or inference, having regard to the context of the communication or presentation and, amongst others, to— 10
  - (i) surrounding facts or circumstances;
  - (ii) particular personal knowledge;
  - (iii) the manner or medium of communication or presentation. 15
- (5) All fees that from time to time, are due to the International Atomic Energy Agency by the Republic, must be paid by the Minister on behalf of the Republic.

**Authorisations required for acquisition or possession of, and certain activities relating to, nuclear material, restricted material and nuclear-related equipment and material** 20

**34.** (1) Except with the written authorisation of the Minister, no person, institution, organisation or body may—

- (a) be in possession of any source material, except where—
  - (i) the possession has resulted from prospecting, reclamation or mining operations lawfully undertaken by the person, institution, organisation or body; or 25
  - (ii) the possession is on behalf of anyone who had acquired possession of the source material in the manner mentioned in subparagraph (i); or
  - (iii) the person, institution, organisation or body has lawfully acquired the source material in any other manner; 30
- (b) be in possession of the following, namely—
  - (i) special nuclear material;
  - (ii) restricted material;
  - (iii) uranium hexafluoride (UF<sub>6</sub>);
  - (iv) nuclear fuel; 35
  - (v) nuclear-related equipment and material;
- (c) acquire, use or dispose of any source material;
- (d) import any source material into the Republic;
- (e) process, enrich or reprocess any source material;
- (f) acquire any special nuclear material; 40
- (g) import any special nuclear material into the Republic;
- (h) use or dispose of any special nuclear material;
- (i) process, enrich or reprocess any special nuclear material;
- (j) acquire any restricted material;
- (k) import any restricted material into the Republic; 45
- (l) use or dispose of any restricted material;
- (m) produce nuclear energy;
- (n) manufacture or otherwise produce or acquire, or dispose of, uranium hexafluoride (UF<sub>6</sub>);
- (o) import uranium hexafluoride (UF<sub>6</sub>) into the Republic; 50
- (p) manufacture, or acquire, or dispose of, nuclear fuel;
- (q) import nuclear fuel into the Republic;
- (r) manufacture or otherwise produce, import, acquire use or dispose of nuclear-related equipment and material;
- (s) dispose of, store or reprocess any radioactive waste or irradiated fuel (when the latter is external to the spent fuel pool); 55
- (t) transport any of the abovementioned materials;
- (u) dispose of any technology related to any of the abovementioned materials or equipment.



(2) (a) The Minister may after consultation with the South African Council for the Non-Proliferation of Weapons of Mass Destruction on any matter affecting the proliferation of weapons of mass destruction grant any authorisation required by subsection (1), after application made to the Minister in the prescribed manner for that purpose. 5

(b) The authorisation may be granted subject to any conditions (if any) that the Minister may determine.

(3) Where an application for such an authorisation has been refused the Minister, in writing, must inform the applicant accordingly, stating the reasons for the refusal.

#### **Exportation of source, special nuclear or restricted material or nuclear-related equipment and material 10**

**35.** (1) No person may export any source material, special nuclear material or restricted material or any nuclear-related equipment and material from the Republic except with the written authorisation of the Minister.

(2) The Minister, having consulted with the South African Council for the Non-Proliferation of Weapons of Mass Destruction on any matter affecting the proliferation of weapons of mass destruction and duly taken into account the provisions of the Nuclear Non-proliferation Treaty, the Safeguards Agreement and the Republic's obligations under any other treaty or international agreement with another state, may grant any authorisation required by subsection (1) after application made to the Minister in the manner as prescribed for that purpose. 15 20

(3) The authorisation may be granted subject to any conditions (if any) that the Minister may impose. However, where the source material, special nuclear material, restricted material or nuclear-related equipment and material is to be exported—

(a) to a nuclear weapons state, the authorisation at all times must be made subject to the condition that the material and equipment concerned may be used for peaceful purposes only; 25

(b) to a non-nuclear weapons state, the authorisation at all times must be made subject to the condition that the material and equipment concerned will be subject to comprehensive international safeguards at all times. 30

(4) Where an application for such an authorisation has been refused, the Minister must in writing inform the applicant accordingly, stating the reason for the refusal.

#### **Furnishing of information and reports**

**36.** (1) The Minister, in writing, may direct any person to whom authorisation was granted under section 34 or 35, to furnish to the Minister a return concerning— 35

(a) any source material, restricted material or special nuclear material acquired by, in the possession of, or under the control of that person;

(b) any nuclear-related equipment or material acquired by, in the possession of, or under the control of that person;

(c) any other information in that person's possession relating to any work carried out by, on behalf of or under the direction of that person in connection with the production, use, processing, enrichment or reprocessing of source material, restricted material, special nuclear material or nuclear energy, or in connection with research with regard to matters connected therewith. 40

(2) The return to be so furnished, must contain the particulars and be accompanied by the plans, drawings and other documents specified in the direction. 45

#### **Inspector may enter upon or enter premises to monitor compliance with Act with regard to restricted matter and restricted acts and activities**

**37.** (1) An inspector appointed in terms of section 53 may at any reasonable time, without a warrant, enter upon or enter any land, premises, place or means of conveyance at, on or in which restricted matter is kept or to be found or at, on, in, from where or by means of which any restricted act or activity is performed or carried out, with a view to performing thereat, thereon or therein, any inspection or investigation necessary or expedient for monitoring compliance with— 50



- (a) the terms of the Minister's authorisation for possessing the restricted matter or performing or carrying out the restricted acts or activity, and compliance with the provisions of this Act relating to restricted matter or restricted acts or activities;
  - (b) the conditions imposed by the Minister under section 34 or 35 (as the case may be) in respect of that authorisation; 5
  - (c) any other relevant requirement imposed by or in terms of this Act with regard to restricted matter or restricted acts or activities.
- (2) An inspector acting under subsection (1) may not search the land, premises, place or means of conveyance except on the authority of a warrant issued under section 40. 10

#### **Inspectors, powers of search, seizure, etc**

**38.** (1) An inspector acting on the authority of a warrant issued under section 40, may enter upon or enter any land, premises, place or means of conveyance—

- (a) at, on or in which there is to be found or on reasonable grounds is expected to be found, any restricted matter the possession of which is unlawful in terms of section 34, or anything reasonably suspected of being such restricted matter; 15
- (b) at, on, in, from or by means of which, any restricted act or activity on reasonable grounds is suspected to be or to have been performed or carried out without the necessary authorisation in terms of section 34 or 35 (as the case may be), 20

and inspect and search the land, premises, place or means of conveyance and any person thereat, thereon or therein, for restricted matter or evidence relating to possession of restricted matter or a restricted act or activity, and for any other evidence relating to the contravention of section 34 or 35 in relation to the restricted matter or restricted act or activity. For the purposes of entering and searching a means of conveyance, any inspector who is assisted by a police official may stop the means of conveyance, whether public or private, if necessary by force, wherever found. 25

(2) An inspector who has gained access to any land, premises, place or means of conveyance on the authority of a warrant, may—

- (a) take any steps that may be reasonably necessary to terminate the unlawful performance or carrying out of a restricted act or activity at, on, in, from or by means of the land, premises, place or means of conveyance and to prevent the recurrence of such an act or activity. Those steps may include any of the steps contemplated in paragraphs (b), (c) and (d) but do not include the destruction or alienation of restricted matter unless authorised thereto by a court of law; 30
- (b) seize and detain, and, where applicable, remove for detention, restricted matter found at, on or in the land, premises, place or means of conveyance; 35
- (c) bar or restrict access to the land or premises, place or any part thereof, or seal off or seal the premises, place or means of conveyance;
- (d) seize and detain, and, where applicable, remove for detention, any tools or equipment used or suspected on reasonable grounds to have been used to perform or carry out a restricted act or activity; 40
- (e) in any manner reasonably appropriate, take samples of any mineral, material or substance found on, under, or in the land, premises, place or means of conveyance for the purpose of analysis or conducting any test or investigation in respect thereof, and remove, and retain without compensation, any sample so taken; and 45
- (f) question any person at, on or in the land, premises, place or means of conveyance who may furnish any information about restricted matter or a restricted act or activity, and demand and procure from that person any book, document, plan, sketch or other record of whatever nature that may be relevant to the acquisition or possession of the restricted matter, or to the performance or carrying out of the restricted act or activity, and make copies or extracts from such a book, document, plan, sketch or other record. 50

(3) An inspector who, without a warrant, has entered upon or entered any land, premises, place or means of conveyance in terms of section 37 and who, in the course of carrying out or conducting any inspection or investigation thereat, thereon or therein in terms of that section—

- (a) is satisfied on reasonable grounds that an offence in terms of section 56, based on the unlawful possession of restricted matter or the performance or carrying out of any restricted act or activity without the Minister's authorisation in terms of section 34 or 35 or on the breach of any term of, or condition imposed in respect of, such an authorisation, has been committed at, on, in, from or by means of the land, premises, place or means of conveyance, may, in so far as may be appropriate and reasonably necessary in the circumstances, exercise any of the powers contemplated in paragraphs (a) to (f) of subsection (2) in accordance with the provisions of those paragraphs, but excluding the power in terms of paragraph (e) of that subsection to take a sample of any mineral, material or substance from below the surface of land. However, such a sample may be taken from below the surface of land—
- (i) with the consent of the owner or person in control of the land, premises or place concerned; or
  - (ii) on the authority of a warrant issued under section 40;

- (b) suspects, on reasonable grounds, that such an offence has been committed at, on, in, from or by means of the land, premises, place or means of conveyance, may bar or restrict access to the land, premises or place or any part thereof, or seal off or seal the premises, place or means of conveyance pending the issuing of a warrant in terms of section 40 that authorises the inspector to search the land, premises, place or means of conveyance or any person thereat, thereon or therein. Upon the issue of the warrant, the inspector also may, in so far as may be appropriate and reasonably necessary in the circumstances, exercise any of the powers contemplated in paragraphs (a) to (f) of subsection (2), in accordance with the provisions of those paragraphs.

(4) (a) Despite the preceding provisions of this section, an inspector may, during the day and after having furnished proof of identity, without a warrant enter or enter upon any land, premises, place or means of conveyance in the circumstances mentioned in paragraph (a) or (b) of subsection (1) and exercise thereat, thereon or therein the power of search contemplated in that subsection and any of the powers contemplated in paragraphs (a) to (f) of subsection (2), in accordance with the provisions of subsection (1) or those paragraphs (as the case may be), if the person who is competent to consent to the entry and to the search gives that consent, subject to paragraph (b) of this subsection.

(b) The powers mentioned in paragraphs (a) to (f) of subsection (2) may be exercised only if the inspector, when requesting that person for consent, informs that person of the nature and extent of the powers contemplated in those paragraphs.

(5) An answer given or statement made by any person to an inspector exercising the power contemplated in subsection (2)(f) or given or made to any inspector exercising that power by virtue of subsection (3) or (4), if self-incriminating, will not be admissible as evidence against that person in criminal proceedings instituted in any court against that person, except in criminal proceedings where that person is tried for an offence contemplated in section 56(1)(c)(iv), and then only to the extent that such an answer or statement is relevant to those proceedings.

#### **Inspectors acting under section 37 or 38 entitled to information concerning safety, and to be accompanied**

**39.** (1) (a) Before carrying out or conducting any inspection or investigation under section 37 or conducting any search under section 38, the inspector concerned must consult with a knowledgeable person employed or performing duties at or in connection with the land, premises or place, or any part thereof, where the inspection is to be carried out or the investigation or search is to be conducted, with a view to determining whether the carrying out or conducting of the inspection, investigation or search at the relevant venue will or is likely to endanger or be harmful to the health of a person or will or is likely to result in the injury of any person or damage to any property.

(b) Where the inspector and the person so consulted, hold different views on the matter, the inspector may refer the matter to the Minister for a decision.

(2) In undertaking any inspection or investigation under section 37 or any search under section 38(1), or exercising any power under section 38(2), (3) or (4), an inspector who considers it necessary, may—

- (a) be accompanied and assisted by any person that the inspector regards suitable for that purpose;
- (b) bring onto or into the land, premises, place or means of conveyance on or in which—
  - (i) the inspection or investigation is to be carried out or conducted, any apparatus, equipment, machinery and tools required for the purposes of the inspection or investigation; or
  - (ii) the search is to be conducted, any apparatus, equipment, machinery and tools required for the purpose or for performing any act mentioned in section 38(2).

(3) Where the inspection, investigation or search is to be carried out or conducted on or in any land, premises or place, the vehicles necessary for the conveyance of the apparatus, equipment, machinery or tools concerned must, if required and where possible, be allowed onto or into the land, premises or place concerned.

#### **Provisions regarding issuing and execution of warrants**

**40.** (1) Any warrant required in terms of section 38 may be issued in chambers by any judge of the High Court or by a magistrate who has jurisdiction in the area in which—

- (a) the land, premises or place where the search is to be undertaken, is situated;
- (b) the means of conveyance to be searched, is to be found; or
- (c) the land from under the surface of which a sample is to be taken, is situated.

(2) A warrant contemplated in section 38(1) or (3)(b) will be issued only if it appears to the judge or magistrate from information on oath or affirmation that there are reasonable grounds for believing that—

- (a) restricted matter, the possession of which is unlawful in terms of section 34, is to be found on or in the land, premises, place or means of conveyance for which the search warrant is required; or
- (b) a restricted act or activity is being, has been or is likely to be performed or carried out thereat, thereon, therein or therefrom; or
- (c) an offence in terms of section 56 based on the unlawful possession of restricted matter or the performance or carrying out of any restricted act or activity without the Minister's authorisation, in terms of section 34 or 35, is being or has been committed at, on, in, from or by means of the land, place, premises or means of conveyance concerned.

(3) The inspector applying for the warrant must indicate whether the search of any person will be or is likely to be necessary. No person may be searched unless it is expressly authorised in the warrant.

(4) The entry upon or entry onto or into the land, premises, place or means of conveyance specified in a warrant issued under subsection (2) and, where authorised by that warrant, the search of any person thereat, thereon or therein, must be conducted with strict regard to decency and order, including the individual's—

- (a) right to respect for and protection of personal dignity;
- (b) right to freedom and security of person; and
- (c) right to personal privacy.

(5) An inspector who, on the authority of a warrant issued under subsection (2), may enter upon or enter, and search, any land, premises, place or means of conveyance and, where applicable, search any person thereat, thereon or therein, may use the force that may be reasonably necessary to overcome any resistance to the entry and search.

(6) A warrant contemplated in section 38(3)(a) will be issued only if it appears to the judge or magistrate from information on oath or affirmation that there are reasonable grounds for believing that—

- (a) an offence contemplated in subsection (2)(c) has been committed; and

- (b) the sample to be taken from under the surface of the land concerned is likely to afford or corroborate evidence relating to that offence.
- (7) A warrant in terms of this section may be issued on any day and remains in force until the occurrence of any of the following events (whichever occurs first):
  - (a) The warrant has been executed; or 5
  - (b) it is cancelled by the judge or magistrate who issued it, or, if not available, by any other judge, or by any other magistrate with like authority (as the case may be); or
  - (c) the expiry of three months from the day of its issue; or
  - (d) the purpose for which the warrant was issued, no longer exists. 10
- (8) A warrant issued in terms of this section may be executed by day only, unless the person who has issued the warrant has authorised the execution thereof by night.
- (9) An inspector executing a warrant in terms of this section, must immediately before commencing with the execution thereof—
  - (a) furnish proof of identity to the person in control of the land, premises, place or means of conveyance to be entered upon or entered, if that person is present, and hand to that person a copy of the warrant, or, if that person is not present, affix a copy of the warrant to a prominent spot at, on or to the land, premises, place or means of conveyance; and 15
  - (b) at the request of that person, furnish to that person particulars regarding the inspector's authority to execute the warrant. For that purpose, production of the inspector's certificate of appointment issued under subsection 53(2), may be demanded. 20

**Disposal of patents for inventions with regard to nuclear energy, nuclear material and restricted matter** 25

- 41.** (1) Despite anything to the contrary in the Patents Act, 1978, or any other law, any person who, in terms of section 25 of that Act, lodges with the registrar of patents an application for a patent in respect of an invention with regard to the production or use of nuclear energy, or the production, processing or use of nuclear material or restricted matter, must— 30
- (a) immediately notify the Minister in writing of that application; and
  - (b) furnish the Minister with a copy of the specification relating to the invention; and
  - (c) provide the Minister with any other information regarding the invention that the Minister may require. 35
- (2) The Minister must treat all information furnished or provided in terms of subsection (1) as highly confidential, and it may not be disclosed or used except as provided in this section.
- (3) The registrar of patents must—
- (a) allow any person authorised thereto in writing by the Minister, to inspect any application for a patent mentioned in subsection (1) and any specification or other document accompanying or relevant to the application; 40
  - (b) postpone acceptance of the application for a period of three months as from the date on which it was submitted to the patents office, which period may be extended for a further three months at the written request of the Minister; 45
  - (c) at the written request of, and until otherwise directed by, the Minister, withhold acceptance or sealing of the application, keep its specification secret and notify the applicant to that effect.
- (4) The communication of an invention to the Minister in terms of subsection (1) or to such an authorised person, or anything done by that person in connection with the invention for the purposes of an inspection contemplated in subsection (3)(a), will not be regarded as publication or use of the invention that may prejudice the granting or validity of any patent for the invention. 50
- (5) If satisfied on reasonable grounds, from all the available information relevant to the invention, that the granting of a patent for the invention— 55
- (a) will be against the interests of the security of the Republic, the Minister, who

- must act in consultation with the Minister of Defence, must give the registrar of patents written notice thereof and in the notice direct that registrar to refuse the granting of the patent, and thereupon that registrar will—
- (i) refuse to grant the patent;
  - (ii) in writing notify the applicant for the patent of the refusal; and
  - (iii) keep secret the specification and any other documents relating to the invention, as well as the manner in which it is to be performed or applied; or
- (b) will be contrary to the Republic's obligations in terms of the Nuclear Non-Proliferation Treaty or the Safeguards Agreement, or in terms of any other agreement of that kind between the Republic (including its national agency) and any other state or any international or multi-national nuclear agency or institution, the Minister must give the registrar of patents written notice thereof, and in the notice—
- (i) direct that registrar to refuse the granting of the patent, whereupon that registrar must act in accordance with subparagraphs (i), (ii) and (iii) of paragraph (a); or
  - (ii) direct that the patent may only be granted on the condition that the claims in the specification of the invention must, with regard to the invention, contain the disclaimer mentioned in the direction; or
- (c) will not have any of the consequences mentioned in paragraphs (a) and (b), the Minister (who must act in consultation with the Minister of Defence with regard to the consequence contemplated in paragraph (a)), must in writing inform the registrar of patents to that effect and withdraw any direction issued under subsection (3)(b) or (c).
- (6) The Minister may not take any action in terms of subsection (5)(a) or (b) unless—
- (a) the Minister, by written notice, has informed the applicant for a patent with regard to the invention concerned, of the proposed action and given the applicant sufficient opportunity to show cause why the proposed action should not be taken, and to make written or oral representations in that regard; and
  - (b) the Minister has duly considered the applicant's response and representations (if any).
- (7) Upon the withdrawal of a direction issued under subsection (3)(b) or (c) (in this subsection called a suspending direction), or when a direction is issued under subsection (5)(b)(ii)—
- (a) any steps in connection with the application for a patent taken in terms of the Patents Act, 1978, before the date on which a suspending direction was issued, may be continued as if they had not been interrupted by the suspending direction;
  - (b) any period that has lapsed after that date but before the date of withdrawal of the suspending direction or the date on which the direction mentioned in subsection (5)(b)(ii) was issued, as the case may be, will not be taken into account in calculating any period prescribed by or in terms of the Patents Act, 1978.
- (8) A patent granted, contrary to the provisions of this section, with regard to an invention mentioned in subsection (1), will have no legal force or effect whatsoever.

**Application, in appropriate circumstances, of section 36, 79 or 80 of Patents Act, 1978, to invention contemplated in section 41 of this Act**

42. (1) The provisions of section 41 of this Act do not prevent sections 36(2) or (3), 79 and 80 of the Patents Act, 1978, from being applied in appropriate circumstances with regard to any invention, relating to the production or use of nuclear energy or the production, processing or use of nuclear material or restricted matter, in respect of which application for a patent has been made in terms of section 25 of the Patents Act, 1978, nor, where applicable, with regard to any patent granted in respect of such an invention.
- (2) For that purpose, section 36 of the Patents Act, 1978, is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection:



- “(2) If, where an application for a patent is made, it appears to the registrar that the invention in respect of which the application is made—
- (a) might be used in any manner contrary to law; or
  - (b) where it relates to the production or use of nuclear energy or to the production, processing or use of nuclear material or restricted matter as defined in section 1 of the Nuclear Energy Act, 1999, might be used for a purpose or in a manner—
    - (i) that will be harmful to or endanger the security of the Republic; or
    - (ii) that is not permissible in terms of the Nuclear Non-Proliferation Treaty or the Safeguards Agreement or in terms of any other agreement of that kind between the Republic (including its national agency with regard to nuclear matters) and any other state or any international or multinational nuclear agency or institution.
 the registrar may refuse the application unless the specification is amended by the addition of such disclaimer in respect of that invention, or such other reference to the illegality, harmfulness, endangerment or unlawfulness thereof, as the registrar may determine: Provided that, in the case of an invention mentioned in paragraph (b)(ii), the disclaimer shall be determined in consultation with the Minister of Minerals and Energy.”; and
- (b) by the addition of the following subsection:
- “(3) The registrar shall not dispose of any application for a patent in respect of an invention mentioned in subsection (2)(b), unless he or she has informed the Minister of Minerals and Energy thereof in writing with a view to enabling that Minister, if considered necessary, to take action in terms of section 41 of the Nuclear Energy Act, 1999, or make representations or take appropriate steps for the purposes of subsection (2) of this section or section 79 of this Act, and has given that Minister sufficient opportunity to do so.”.
- (3) For the purpose of applying section 79 of the Patents Act, 1978, to such an invention, that section is hereby amended—
- (a) in subsection (1), by the addition of the following paragraph after the existing provisions (which become paragraph (a)):
 

“(b) The proprietor of an invention relating to the production or use of nuclear energy or the production, processing or use of nuclear material or restricted matter as defined in section 1 of the Nuclear Energy Act, 1999, shall, if called upon to do so by the Minister of Minerals and Energy, assign the invention or the patent obtained or to be obtained for the invention, to the Minister of Minerals and Energy on behalf of the State—

    - (i) if the interests of the security of the Republic so require. However, such an assignment may be made only at the request of the Minister of Defence;
    - (ii) if the commercial exploitation of the invention is not permissible in terms of the Nuclear Non-Proliferation Treaty or the Safeguards Agreement as defined in section 1 of the Nuclear Energy Act, 1999, or in terms of any other agreement of that kind between the Republic (including its national agency with regard to nuclear matters) and any other state or any international or multi-national nuclear agency or institution.”;
  - (b) in subsection (2), by the addition after the words “Minister of Defence” of the words “or the Minister of Minerals and Energy (as the case may be)”;
  - (c) by the substitution for subsection (3) of the following subsection:
 

“(3) Where an invention has been so assigned—

    - (a) the Minister of Defence may, in respect of an invention contemplated in subsection (1)(a), by notice in writing to the registrar direct that the invention and the manner in which it is to be performed, shall be kept secret;
    - (b) the Minister of Minerals and Energy shall, in respect of an invention contemplated in paragraph (b)(i) or (ii) of subsection (1), by notice in



writing to the registrar direct that the invention and the manner in which it is to be performed, shall be kept secret.”;

- (d) by the addition after the words “Minister of Defence”, wherever they occur in subsections (4), (5) and (6), of the words “or Minister of Minerals and Energy (as the case may be)”;

- (e) by the substitution for subsection (7) of the following subsection:

“(7) (a) The Minister of Defence may by notice in writing to the registrar direct that any invention of the nature mentioned in subsection (1)(a) and in respect of which a direction of secrecy had been issued in terms of subsection (3), need no longer be kept secret.

(b) When the circumstances mentioned in subsection (1)(b) no longer exist in relation to an invention of the nature mentioned in that subsection, the Minister of Minerals and Energy may by notice in writing to the registrar direct that the invention concerned need no longer be kept secret.

(c) Where a direction of secrecy no longer applies, the specifications, drawings and other documents relating to the invention concerned will be open to inspection by the public, and may be published, in all respects as if such a direction had not been issued.”.

- (4) For the purpose of applying section 80 of the Patents Act, 1978, to an invention relating to the production or use of nuclear energy or the production, processing or use of nuclear material or restricted matter, that section is hereby amended by the insertion of the following subsection after subsection (1):

“(1A) The Minister shall, in the case of an invention relating to the production or use of nuclear energy, or the production, processing or use of nuclear material or restricted matter as defined in section 1 of the Nuclear Energy Act, 1999, make such an order if requested thereto in writing by the Minister of Minerals and Energy on the grounds that disclosure or publication of such an application, specification, drawing or other document—

- (a) will or is likely to be harmful to or endanger the security of the Republic. However, the Minister of Minerals and Energy may make such a request only at the instance of the Minister of Defence;
- (b) is not permissible, or will constitute a breach of the Republic’s obligations, in terms of the Nuclear Non-Proliferation Treaty or the Safeguards Agreement as defined in section 1 of the Nuclear Energy Act, 1999, or any other agreement of that kind between the Republic (including its national agency with regard to nuclear matters) and any other state or any international or multinational nuclear agency or institution.”

#### **Prohibition of applications by South African subjects for certain patents in other countries**

43. (1) Except with the written consent of the Minister, a person who is a South African citizen or is resident in the Republic, and a juristic person that is registered in the Republic, may not apply in any other country for a patent for an invention with regard to the production or use of nuclear energy or the production, processing or use of nuclear material or restricted matter.

(2) The Minister’s consent under subsection (1), may be given on any conditions considered fit. However, consent may not be given in any case where the granting of a patent for the invention concerned, would have been refused, or made subject to a disclaimer, in terms of section 41 of this Act or section 36(2) of the Patents Act, 1978, had the application for the patent concerned been made in the Republic in terms of section 25(1) of the Patents Act, 1978.

(3) The consent must be given or refused within three months from the date on which the application therefor was lodged with the Minister.

## CHAPTER IV

### MINISTER'S RESPONSIBILITIES REGARDING SOURCE MATERIAL, SPECIAL NUCLEAR MATERIAL, RESTRICTED MATERIAL, RADIOACTIVE WASTE AND IRRADIATED FUEL

#### Acquisition by State of source material and special nuclear material 5

**44.** (1) The Minister, with due regard to the requirements and provisions of the Safeguards Agreement, may acquire or cause to be acquired by purchase, lease or expropriation any source material (whether mined only or processed) and any special nuclear material whenever, in the Minister's opinion, the national interest so requires.

(2) The overall control of all source material and special nuclear material acquired by the State under subsection (1), vests in the Minister. 10

(3) As consideration for any source material or special nuclear material expropriated under subsection (1), the Minister must pay to the person from whom it was expropriated, the compensation that may be agreed upon by that person and the Minister acting with the concurrence of the Minister of Finance, or, failing such an agreement, that may be determined by arbitration. 15

(4) Sections 7, 8 and 9 of the Expropriation Act, 1975 (Act No. 63 of 1975), will apply, with the necessary changes, in respect of any expropriation under subsection (1).

#### Authority over management of radioactive waste, and storage of irradiated nuclear fuel 20

**45.** (1) The authority over the management and discarding of radioactive waste and the storage of irradiated nuclear fuel vests in the Minister.

(2) The Minister, in consultation with the Minister of Environmental Affairs and Tourism and the Minister of Water Affairs and Forestry, may make regulations prescribing the manner of management, storage and discarding of radioactive waste and irradiated nuclear fuel. 25

(3) The Minister must perform that function with due regard to the provisions of the National Nuclear Regulator Act, 1999.

#### Discarding of radioactive waste and storage of irradiated nuclear fuel

**46.** (1) Except where authorised by a ministerial authority issued under the Hazardous Substances Act, 1973 (Act No. 15 of 1973), no person may, without the written permission of the Minister, discard radioactive waste in any manner or cause it to be so discarded. 30

(2) Except with the written permission of the Minister, no person may store any irradiated nuclear fuel or cause it to be stored. 35

(3) A permission in terms of subsection (1) or (2) may be granted subject to any conditions that the Minister, in concurrence with the Minister of Environmental Affairs and Tourism and the Minister of Water Affairs and Forestry, deem fit to impose. The conditions so imposed will be additional to any conditions contained in a nuclear authorisation as defined in section 1 of the National Nuclear Regulator Act, 1999. 40

#### Reporting of information on occurrence of source material

**47.** (1) Any person who, by virtue of information obtained in the course of any prospecting or mining operations or carrying out any scientific investigation or chemical or metallurgical process, or otherwise, has reason to believe that any source material is present at any place, must, within 30 days after having developed the belief, submit to the Minister or any person designated by the Minister for that purpose, a written report on the matter, containing full particulars of the grounds on which the belief is based and of the place where the material may be present. 45

(2) Despite anything to the contrary contained in any other law, the Minister will have access to and be entitled to the use of all information with regard to mineral values that is in the possession of any person, and such a person must make that information available to the Minister if requested by the Minister to do so. However— 50

- (a) no information made available under this subsection may be disclosed to anyone except the Director-General, if necessary, for the performance of any function or work entrusted to the latter in terms of this Act, except with the written permission of the person who made the information available to the Minister under this subsection; and 5
- (b) the State may use the information only for feasibility and other studies with regard to source material reserves in the Republic, or matters incidental thereto.

**Provision of certain restricted matter for research, development and training purposes** 10

- 48.** (1) The Minister, having regard to the national interest and public safety, may make available for nuclear research, the development of nuclear technology and the training of persons, any nuclear material, radioactive material and nuclear-related equipment and material of any kind or quantity that may be required.
- (2) In making any nuclear material, radioactive material, or nuclear-related equipment and material so available, the Minister may impose any conditions considered fit. 15

**This Chapter not applicable to certain substances and certain radioactive material**

- 49.** This Chapter does not apply with regard to—
- (a) Group IV hazardous substances as defined in section 1 of the Hazardous Substances Act, 1973, subject to section 46(1); 20
  - (b) radioactive material with a specific activity and a total activity below the levels determined in terms of section 2(g);
  - (c) radioactive material exempted in terms of section 2(e).

**Responsibility for institutional obligations of Republic** 25

- 50.** The responsibility for the Republic's institutional nuclear obligations vests in the Minister.

**CHAPTER V**

**GENERAL PROVISIONS**

**Non-disclosure of Minister's reasons for decisions adversely affecting persons, permissible where security of Republic is involved** 30

- 51.** (1) Whenever, in exercising any power or performing any function under this Act which affects or is likely to affect any person, or in proposing to do so, the Minister is satisfied on reasonable grounds that disclosure of the reasons for exercising or performing the power or function or proposing to do so will endanger or be harmful to the security of the Republic, the Minister need not disclose those reasons. 35
- (2) (a) Subsection (1) does not preclude any High Court from enquiring into and deciding on the validity of any non-disclosure purporting to be justified in terms of subsection (1).
- (b) The court conducting such an enquiry may at any time on application by the Minister or of its own accord, order that the proceedings before it be conducted *in camera* if the interests of the security of the State so require. For that purpose the court must assess the matters raised and the evidence, statements and addresses that have been or may be tendered, made or given, as well as other developments in the matter, on an ongoing basis for potential danger or harm to the security of the Republic. 40 45

**Court proceedings and arbitration proceedings arising from this Act may be held *in camera***

- 52.** (1) In the case of any civil or criminal proceedings before a court of law, or any proceedings before an arbitration tribunal, arising from the application or administration

of this Act, the court or arbitral tribunal (as the case may be) may direct that the proceedings before it be held *in camera* if the interest of the security of the Republic so require.

(2) For that purpose, the court or tribunal (as the case may be) must assess the matters raised and the evidence, statements and addresses that have been or may be tendered, made or given in the proceedings concerned, as well as other developments in the proceedings, on an ongoing basis for potential danger or harm to the security of the Republic. 5

### **Appointment of inspectors**

**53.** (1) The Minister must appoint suitably qualified persons who are fit and proper persons as inspectors for the purposes of this Act. 10

(2) The Minister must issue a certificate of appointment for every person appointed under subsection (1).

(3) The Minister must have inspections undertaken subject to sections 37, 38 and 39.

(4) The Minister must prescribe the qualifications of inspectors. 15

### **Regulations**

**54.** (1) The Minister may make regulations not inconsistent with this Act, with regard to anything which in terms of this Act, may or must be prescribed or provided for or governed or otherwise dealt with by regulation.

(2) In any regulations made under subsection (1), provision may be made— 20

(a) that the contravention of or failure to comply with any particular provisions thereof, will be an offence; and

(b) that a person convicted of such an offence will be punishable with a term of imprisonment not longer than the period specified in the regulations or with a fine, but no term of imprisonment in excess of 12 months may be so specified. 25

(3) The regulations made under the provisions of section 77 of the previous Act and in force immediately before the specified date, in so far as they relate to matters which, in terms of this Act, may or must be prescribed, provided for, governed or otherwise dealt with by regulation, remain in force and continue to apply to those matters—

(a) despite the repeal of those provisions by this Act; 30

(b) in so far as they are not inconsistent with this Act; and

(c) until they are amended, substituted or repealed under this section.

(4) Before any regulations are made in terms of subsection (1), the Minister must—

(a) by notice in the *Gazette*, invite the public to comment on the proposed regulations; and 35

(b) consider that comment.

### **Delegations and assignments by Minister**

**55.** (1) The Minister may delegate any power and assign any function conferred or imposed upon the Minister in terms of this Act, except the power to make regulations, to the Director-General of the Department of Minerals and Energy, who may subdelegate or reassign any delegated power or assigned function in the circumstances and manner as prescribed. 40

(2) The Minister may assign any institutional obligation to the Corporation or any statutory or other body, which has the capacity to fulfil the Republic's responsibilities with regard thereto. 45

(3) A delegation or assignment under subsection (1) or (2) must be in writing and may be subject to any conditions or limitations determined by the Minister.

(4) The Minister will not be divested of any power nor be relieved of any function or duty that the Minister may have delegated or assigned.

(5) The Minister may at any time— 50

(a) amend or revoke a delegation or assignment made under subsection (1) or (2);

(b) withdraw any decision made by the delegatee or assignee with regard to a delegated or assigned matter, and decide the matter himself or herself.

However, a decision made by a delegatee or assignee may not be withdrawn where it confers a right or entitlement on any third party.

### Offences and penalties

- 56.** (1) A person is guilty of an offence upon—
- (a) failing to discharge any duty or obligation imposed on the person by or in terms of section 33(3); 5
  - (b) publishing, making known or disclosing any information in contravention of section 33(4) or 31;
  - (c) (i) failing to furnish a return in compliance with a direction given under section 36(1); or 10
    - (ii) furnishing a false, incorrect or inaccurate return in response to a direction, knowing or believing the return not to be true, correct or accurate; or
    - (iii) negligently furnishing an incorrect or inaccurate return in response to such a direction; or 15
    - (iv) when questioned by an inspector in terms of subsection (2)(f) of section 38, knowingly furnishes an answer or makes a statement that is false or misleading or furnishes an answer or makes a statement not knowing or believing it to be true;
  - (d) performing or carrying out any restricted act or activity without an authorisation required in terms of section 34 or 35 (as the case may be), or in contravention of the relevant authorisation or any condition imposed in respect thereof under section 34 or 35 (as the case may be); 20
  - (e) being in possession of restricted matter in contravention of section 34(1)(a) or (b); 25
  - (f) failing to submit a report in compliance with section 47;
  - (g) obstructing or hindering any inspector in performing or carrying out any function or duty in terms of this Act or refusing or failing to comply with any question or comply with any demand or direction lawfully put, made or given by an inspector in terms of this Act. 30
- (2) A person is liable, on conviction of an offence in terms of—
- (a) subsection (1)(a), (b) or (c)(i), (ii) or (iv), to a fine or a term of imprisonment not longer than five years;
  - (b) subsection (1)(c)(iii), (f) or (g) to a fine or a term of imprisonment not longer than three years; 35
  - (c) subsection (1)(d) or (e), to a fine or a term of imprisonment not longer than 10 years.

### Legal succession to Atomic Energy Corporation

- 57.** (1) The Corporation will be substituted for the Atomic Energy Corporation in any contract or agreement entered into by the latter before the specified date, if the contract or agreement— 40
- (a) relates to any matter which, on the specified date, falls within the Corporation's competence in terms of this Act; and
  - (b) is still pending on the specified date, that is to say, where the term of the contract or agreement has not yet expired, or any obligation thereunder has not been fulfilled (whichever may be applicable). 45
- (2) As from the specified date, the Corporation—
- (a) will take over from the Atomic Energy Corporation the responsibility for all projects and work which had been commenced with before that date in terms of the previous Act— 50
    - (i) with regard to matters which, on the specified date, fall within the Corporation's competence in terms of this Act; and
    - (ii) which, on the specified date, have not been completed; and
  - (b) will be competent to continue with and to carry out those projects and that work or to have them carried out subject to the provisions of this Act and any agreements, contemplated in subsection (1), relating to the execution of the projects or the performance of the work by the other contracting party. 55
- (3) (a) The Corporation will be substituted for the Atomic Energy Corporation as party in any legal proceedings instituted by or against the Atomic Energy Corporation



before the specified date and still pending on that date, where the legal proceedings are founded on a cause of action relating to or arising from the exercise or performance of any power, function or duty of the Atomic Energy Corporation in terms of, or purportedly in terms of, the previous Act or from its business or operations thereunder, if, on the specified date, the Corporation would have been competent in terms of this Act to exercise or perform such a power, function or duty or to carry on or conduct any business or operations of a nature substantially the same as those relevant in the proceedings. 5

(b) Any legal proceedings founded on a cause of action which arose before the specified date, relates to or arises from the exercise or performance of any power, function or duty of the Atomic Energy Corporation in terms of the previous Act or from its business and operations thereunder and which is brought after the specified date, must be instituted by or against the Corporation if, on the specified date, the Corporation would have been competent in terms of this Act to exercise or perform such a power, function or duty or to carry on or conduct any business or operations of a nature substantially the same as those relevant to the proceedings. 10 15

(4) (a) The State, as represented by the Minister, will be substituted for the Atomic Energy Corporation in—

- (i) any contract or agreement entered into by the Atomic Energy Corporation before the specified date and still pending on that date, in any case where subsection (1) does not apply; 20
- (ii) any legal proceedings instituted by or against the Atomic Energy Corporation before the specified date and still pending on that date, where the legal proceedings are founded on a cause of action relating to or arising from the exercise or performance of any power, function or duty or the carrying on or conducting of any business or operations of the Atomic Energy Corporation, in any case where subsection (3)(a) does not apply. 25

(b) Any legal proceedings founded on such a cause of action that arose before the specified date and which are brought after the specified date, must be instituted by or against the State, as represented by the Minister, in any case where subsection (3)(b) does not apply. 30

(c) The Minister will—

- (i) take over from the Atomic Energy Corporation, with effect from the specified date, the responsibility for all projects and work commenced before the specified date but not yet completed by that date, in any case where subsection (2)(a) does not apply. 35
- (ii) be competent to continue with and carry out those projects and that work, subject to the provisions of this Act and any agreement referred to in subsection (2)(b).

**Amendment of section 1 of Act 15 of 1973, as amended by section 1 of Act 16 of 1976, section 1 of Act 31 of 1981, section 1 of Act 53 of 1991, section 1 of Act 53 of 1992 and section 84 of Act 131 of 1993** 40

58. Section 1 of the Hazardous Substances Act, 1973, is hereby amended by the substitution for the expression “Nuclear Energy Act, 1993”, where it occurs in the definition of “Group IV hazardous substance”, of the expression “Nuclear Energy Act, 1999”. 45

**Amendment of Act 87 of 1993**

59. The Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993), is amended as set out in the Schedule.

**Partial repeal of Act 131 of 1993, and savings** 50

60. (1) The following provisions of the Nuclear Energy Act, 1993 (Act No. 131 of 1993), are hereby repealed:

- (a) Sections 2 and 3, and Chapters II, III and IV; and
- (b) section 1, in so far as it relates to anything in any of those sections or in any of those Chapters; and 55



- (c) the provisions of Chapter VII, in so far as they relate to the Atomic Energy Corporation.
- (2) Despite any repeal effected by subsection (1), but subject to any specific transitional arrangements made elsewhere in this Act—
  - (a) any delegation or assignment made by the board of directors or chief executive officer of the Atomic Energy Corporation under section 14(2) or (3) of the previous Act, must be regarded and treated as having been made by the Corporation's Board of Directors or chief executive officer, respectively, under section 20 or 24 (as the case may be) of this Act, to a functionary under this Act corresponding to the relevant delegatee under the previous Act; 5 10
  - (b) any notice, declaration, determination, exemption, direction, instruction, authorisation, authority, consent, permission, report, return, submission, application, arrangement, measure, verification or measurement issued, given, made, granted, withdrawn, furnished, submitted or taken, and any other act or thing performed or done, under, in terms of or in compliance with the provisions of the previous Act, will be regarded and treated as having been issued, given, made, granted, withdrawn, furnished, submitted, taken, performed or done under, in terms of or in compliance with the corresponding provisions of this Act. 15

**Short title and commencement** 20

- 61.** (1) This Act is called the Nuclear Energy Act, 1999.
- (2) (a) Except for section 4, this Act comes into operation on a date specified by the President by proclamation in the *Gazette*.
  - (b) The date to be so specified, must be so determined by the President, after consultation with the Registrar of Companies, as to coincide with the incorporation of the South African Nuclear Energy Corporation Limited in accordance with section 4. 25
  - (3) Section 4 comes into operation on the date of the promulgation of this Act in the *Gazette*.

## SCHEDULE

### AMENDMENT OF NON-PROLIFERATION OF WEAPONS OF MASS DESTRUCTION ACT, 1993

(Section 59)

#### GENERAL EXPLANATORY NOTE: 5

[                      ] Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

#### Amendment of section 1 of Act 87 of 1993 10

1. Section 1 of the Non-Proliferation of Weapons of Mass Destruction Act, 1993, is hereby amended—

- (a) by the deletion of the definition of “Atomic Energy Corporation”; and
- (b) by the insertion after the definition of “sample” of the following definition: 15  
“ ‘South African Nuclear Energy Corporation’ means the South African Nuclear Energy Corporation, Limited, established by section 3 of the Nuclear Energy Act, 1999;”.

#### Amendment of section 4 of Act 87 of 1993

2. Section 4 of the Non-Proliferation of Weapons of Mass Destruction Act, 1993, is hereby amended by the substitution in paragraph (h) of subsection 2 for the words “Minister of Mineral and Energy Affairs” of the words “Minister of Minerals and Energy”. 20

#### Substitution of section 5 of Act 87 of 1993

3. The following section is hereby substituted for section 5 of the Non-Proliferation of Weapons of Mass Destruction Act: 25

##### “Objects of Council

5. The objects of the Council are, subject to the Import and Export Control Act, 1963 (Act No. 45 of 1963), the Armaments Development and Production Act, 1968 (Act No. 57 of 1968), and the Nuclear Energy Act, 1999, and in co-operation and consultation with Armscor and the Minister of Minerals and Energy (acting as the national authority with regard to the implementation of the Safeguards Agreement between the Republic and the International Atomic Energy Agency for the application of the safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons), to control, register and inspect controlled goods, and to verify the import, export, re-export, transit and end-use of controlled goods.”. 30 35

#### Substitution for “Minister of State Expenditure” in Act 87 of 1993

4. The Non-Proliferation of Weapons of Mass Destruction Act, 1993, is hereby amended by the substitution for the words “Minister of State Expenditure”, wherever they occur, of the words “Minister of Finance”. 40

## **MEMORANDUM ON THE OBJECTS OF THE NUCLEAR ENERGY BILL, 1999**

The main objects of the Nuclear Energy Bill are to establish the South African Nuclear Energy Corporation Ltd, to separate the functions of nuclear safety from those of development and application of nuclear technology, and to provide for more transparent and accountable governance of the South African nuclear industry.

### **BACKGROUND**

South Africa's nuclear industry gained momentum in its development with the passing of the Nuclear Energy Act, 1982 (Act No. 92 of 1982). Although the Act was aimed at developing the South African nuclear industry, a large part of its primary objectives was imbedded in the policies of the political order at the time. Since 1985 the Act has been amended four times. This culminated in its repealing and replacement by the present Nuclear Energy Act, 1993 (Act No. 131 of 1993).

The White Paper on Energy Policy for the Republic, issued by the Department of Minerals and Energy, provides for the continued development of the nuclear industry, albeit under a different governance regime.

The present Act does not adequately address issues of governance and accountability of management of the existing Atomic Energy Corporation (AEC) to government and the public. Also, the governance of the radioactive waste management issues needs to be put under the control of government, rather than that of an associated institution, due to public sensitivities around this matter. In addition, matters concerned with the development of the nuclear energy industry are presently contained in the same Act as with matters that relate to safety aspects of the nuclear industry. This aspect needs to be rectified.

To rectify the problem issues related to the South African nuclear industry the Nuclear Energy Bill was drafted in order to—

- (a) reformulate the governance regime of the AEC in such a way that a more transparent and accountable situation is established;
- (b) reorganise the mandate of the AEC's management and governing structures such as the Board of Directors, so that matters of a sensitive and national nature are placed under the control of the Minister of Minerals and Energy (e.g. transfer of nuclear technology at international level, import and export of nuclear materials, radioactive waste management and disposal) who may delegate those functions as appropriate;
- (c) reorganise the Board of Directors and management in such a manner that the task of restructuring may be executed and accomplished with ease, in line with the report "The System Wide Review of Public Sector Science, Engineering and Technology Institutions" of the Department of Arts, Culture, Science and Technology;
- (d) separate the legislation that governs the AEC and the Council for Nuclear Safety (CNS).

On the date of commencement of the Bill, if enacted, the AEC will be substituted by the South African Nuclear Energy Corporation (SANEC). Similarly, the CNS will be substituted by the National Nuclear Regulator at the date of commencement of the National Nuclear Regulator Bill, if enacted. The Nuclear Energy Bill should therefore be considered in conjunction with the National Nuclear Regulator Bill by Parliament.

The Department of Minerals and Energy and the State Law Advisers are of the opinion that the Bill should be dealt with by Parliament in accordance with section 75 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), since it contains no provision to which the procedures set out in section 74 or 76 of the Constitution apply.