

REPUBLIC OF SOUTH AFRICA

NATIONAL NUCLEAR REGULATOR AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No. 49026 of
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(The English text is the official text of the Bill)

(MINISTER OF MINERAL RESOURCES AND ENERGY)

[B 25—2023]

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- (b) a nuclear site licence;
- (c) a nuclear vessels licence;
- (d) a certificate of registration;
- (e) a certificate of exemption;
- (f) an authorisation to manufacture; or
- (g) any other written permission granted by the Regulator;
- ‘authorisation holder’** means the holder of an authorisation, granted by the Regulator;
- ‘authorisation to manufacture’** means a written permission to manufacture component parts important to nuclear or radiation safety;”;
- (c) by the insertion after the definition of “chief executive officer” of the following definition:
- “ **‘clearance’** means the removal of regulatory control over radio-active material or radio-active objects within authorised activities;”;
- (d) by the substitution for the definition of “closure” of the following definition:
- “ **‘closure’** means the completion of all technical and administrative operations after the **[emplacement] disposal** of **[spent fuel or] radioactive waste** in a disposal facility;”;
- (e) by the insertion after the definition of “closure” of the following definitions:
- “ **‘Compensation for Occupational Injuries and Diseases Act’** means Compensation for Occupational Injuries and Diseases Act, 1993 (Act No.130 of 1993);
- ‘cosmic radiation’** means radiation that originates in outer space, and which is composed of subatomic particles and rays of energy such as gamma rays and X-rays;
- ‘decommissioning’** means all processes, including decontamination and dismantling, leading to the release or partial release of a facility other than that part of a disposal facility in which radioactive waste has been emplaced from regulatory control;
- ‘discharges’** means planned and controlled releases into the environment, as a legitimate practice, within limits authorised by the regulator, of liquid or gaseous radioactive material that originates from regulated nuclear facilities during normal operation;
- ‘disposal’** means the emplacement of radioactive waste in a disposal facility without the intention of retrieval;
- ‘dose’** means a measure of the energy deposited by radiation in a target;
- ‘dosimetry services provider’** means a body or an individual service provider providing services related to calibration, reading or interpretation of individual monitoring devices, conducting measurement of radioactivity in the human body or in biological samples, and assessment of doses;”;
- (f) by the deletion of the definition of “Council for Nuclear Safety”;
- (g) by the insertion after the definition of “enrich” of the following definitions:
- “ **‘exemption’** means the determination by the Regulator that a source, facility or activity is not subject to some or all aspects of regulatory control, on the basis that the exposure (including potential exposure) due to the source, facility or activity is too small to warrant the application of those aspects, or that this is the optimum option for protection irrespective of the actual level of the doses or risks;
- ‘facility’** means nuclear facility, irradiation facility, some mining and raw material processing facilities such as uranium mines, radioactive waste management facility, and any other places where radioactive material is produced, processed, used, handled, stored or disposed of, on such a scale that protection and safety is required;”;
- (h) by the substitution for the definition of “ionizing radiation” of the following definition:
- “ **‘ionizing radiation’** means **[electromagnetic or corpuscular emission emitted from radioactive material and capable of producing ions, directly or indirectly while passing through matter] radiation capable of producing ion pairs in biological materials;**”;
- (i) by the substitution for the definition of “Minister” of the following definition:
- “ **‘Minister’** means the Minister responsible [of] for [Minerals] Mineral Resources and Energy;”;

- (j) by the insertion after the definition of “Minister” of the following definitions:
 “**‘National Dose Register’** means centralised radiation dose record system that contains the dose records of individuals who are monitored for occupational exposures to ionizing radiation;”;
- (k) by the deletion of the definition of “nuclear authorisation”; 5
- (l) by the substitution for the definition of “nuclear damage” of the following definition:
 “**‘nuclear damage’** means—
 (a) any injury to or the death or any sickness or disease of a person; **[or]**
 (b) other damage, including any damage to or any loss of use of property or damage to the environment;
 (c) economic loss arising from loss or damage referred to in (a) or (b) above;
 (d) the cost of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken; 15
 (e) loss of income, deriving from an economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment;
 (f) the costs of preventive measures, and further loss or damage caused by such measures; 20
 (g) any other economic loss, other than any caused by the impairment of the environment,
 which arises out of, or results from, or is attributable to, the ionizing radiation associated with a nuclear **[installation]** facility, nuclear vessel or **[action]** activity;”;
- (m) by the deletion of the definitions of “nuclear energy” and “nuclear incident”; 25
- (n) by the insertion after the definition of “nuclear damage” of the following definition:
 “**‘nuclear facility’** means any facility within the nuclear fuel cycle, other than the mining and processing of ore, including but not limited to a—
 (a) nuclear power plant;
 (b) research reactor;
 (c) fuel fabrication plant; 35
 (d) nuclear reprocessing facility;
 (e) uranium, thorium, or plutonium refinement or conversion facility;
 (f) uranium enrichment facility;
 (g) nuclear reactor, including a nuclear fission reactor or any other facility intended to create nuclear fusion; 40
 (h) spent nuclear fuel storage facility;
 (i) storage facility for enriched uranium processing;
 (j) facility specifically designed to handle, treat, condition, temporarily store or permanently dispose of any radioactive material which is intended to be disposed of as waste material, other than a facility which only handles radioactive waste resulting directly from the mining and processing of ore; or 45
 (k) any facility, installation, plant or structure declared to be a nuclear facility in terms of section 2(3);”;
- (o) by the deletion of the definition of “nuclear installation”; 50
- (p) by the substitution of the definition of “nuclear installation licence” of the following definition:
 “**‘nuclear [installation] licence’** means a licence referred to in section 21(1);”;
- (q) by the insertion after the definition of “nuclear licence” of the following definitions: 55
 “**‘nuclear material’** means plutonium-239, uranium-233, or uranium enriched in the isotopes uranium-233 or uranium-235, or any other material determined to be nuclear material in terms of the Nuclear Energy Act, 1999 (Act No. 46 of 1999); 60
 “**‘nuclear or radiation accident’** means any unintended event, including but not limited to, operating errors, equipment failures, unauthorised acts or malicious acts, the safety significance of which

exceeds the levels prescribed in the safety and related security standards contemplated in section 36;

‘nuclear or radiation incident’ means any unintended event, including but not limited to, operating errors, equipment failures, initiating events, accident precursors, near misses, other mishaps, unauthorised acts or malicious acts, the safety significance of which exceeds the levels prescribed in the safety and related security standards contemplated in section 36;

‘nuclear or radiological emergency’ means a non-routine situation, involving radiation, which necessitates the taking of prompt response actions, to prevent or mitigate potential nuclear damage;

‘nuclear site licence’ means a licence referred to in section 21(2);”;

(r) by the deletion of the definition of “nuclear reprocessing facility”;

(s) by the substitution for the definition of “period of responsibility” of the following definition:

“**‘period of responsibility’**, in relation to [the holder of a nuclear] an authorisation holder, means the period beginning on the date of [the grant] coming into force of the relevant [nuclear installation licence or certificate of registration or, in the case of a nuclear vessel, when it enters South Africa’s territorial waters,] authorisation and ending on the date on whichever of the following dates is the earlier, namely—

(a) the date on which the Regulator gives notice in writing to the authorisation holder that in its opinion the risk of nuclear damage from—

(i) anything on the site, or at or in the nuclear [installation] facility, in question;

(ii) any act performed in regard to the nuclear [installation] facility or site in question;

(iii) any [action] activity described in section 2(1)(c), as the case may be,

no longer exceeds the safety standards contemplated in section 36;

(b) the date on which [a nuclear] an authorisation in respect of the nuclear [installation] facility, site or [action] activity in question is granted to some other person;

(c) in the case of a nuclear vessel, the date on which the nuclear vessel leaves South Africa’s territorial waters;”;

(t) by the insertion after the definition of “plant” of the following definition:

“**‘pre-construction activities’** means the preparation of a site for the construction of a nuclear facility including initial earthworks and site levelling, preparation of construction roads, borrow areas, security infrastructure, dewatering, building of diaphragm wall and excavation and clearance of bedrock;”;

(u) by the insertion after the definition of “prescribed” of the following definitions:

“**‘Public Finance Management Act’** means Public Finance Management Act, 1999 (Act No.1 of 1999);

‘radiation’ means ionizing radiation or non-ionizing radiation;”;

(v) by the substitution for the definition of “radioactive material” of the following definition:

“**‘radio-active material’** means any substance consisting of, or containing[,], any [radio-active nuclide] radionuclide, whether natural or artificial [, including, but not limited to, radio-active waste and spent nuclear fuel];”;

(w) by the deletion of the definition of “radio-active nuclide”.

(x) by the insertion after the definition of “radio-active material” of the following definitions:

“**‘radionuclide’** means any unstable atomic nucleus which decays spontaneously with the accompanying emission of ionizing radiation;

‘radio-active waste’ means material that contains or is contaminated with radio-active material at a concentration or activities greater than the prescribed clearance level and for which no further use is foreseen;”;

- (y) by the substitution for the definition of “radioactivity” of the following definition:
 “**‘radioactivity’** means the [**measure of a quantity of radioactive materials**] phenomenon whereby atoms undergo spontaneous random disintegration, usually accompanied by the emission of radiation;” 5
- (z) by the substitution for the definition of “site” of the following definition:
 “**‘site’** means [**a site on which—**
 (a) **a nuclear installation is situated or is being constructed; or**
 (b) **any action which is capable of causing nuclear damage, is carried out**] a defined geographical area that contains an authorised or proposed facility, activity or source over which the authorisation holder or applicant exercises direct authority;” 10
- (za) by the insertion after the definition of “site” of the following definitions:
 “**‘site evaluation’** means the analysing of those factors that could affect nuclear or radiation safety of a facility or activity on that site; 15
‘source’ means anything that may cause radiation exposure including emission of ionizing radiation, or by releasing radioactive substances or material, and which can be treated as a single entity for protection and safety purposes;”.

Amendment of section 2 of Act 47 of 1999 20

2. Section 2 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:
 “**Application of Act, [and] declaration of nuclear [installation] facility**”;
- (b) by the substitution for subsection (1) of the following subsection: 25
 “(1) Subject to subsection (2), this Act applies to—
 (a) the [**siting**] site evaluation, design, manufacturing of component parts, construction, operation, extended shutdown, decontamination, decommissioning and closure of any nuclear [**installation**] facility; 30
 (b) vessels propelled by nuclear power or having radio-active material on board which is capable of causing nuclear damage; [**and**]
 [(c) **any action which is capable of causing nuclear damage.**]
 (c) radiation sources including devices in which they are incorporated; 35
 (d) the decontamination, decommissioning and closure of any of the Republic’s National Defence Force facilities, equipment, machinery or scrap, including remediation or rehabilitation of land, which is designated for release for civilian use;
 (e) exposure of aircrew to cosmic radiation; and
 (f) any other activities involving radiation conducted in the Republic which are capable of causing nuclear damage.” 40
- (c) by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:
 “(a) exposure to cosmic radiation at ground level or to potassium-40 in the body or any other radio-active material or [**actions**] activities not amenable to regulatory control as determined by the Minister, [**after consultation with**], on recommendation by the board and by notice in the *Gazette*; 45
 (b) subject to section 41(4), any [**action**] activity where the radioactivity concentrations of individual radio-active nuclides, or the total radioactivity content, are below the exclusion levels provided for in the safety standards contemplated in section 36;” 50
- (d) by the deletion of paragraphs (c) and (d);

- (e) by the insertion after paragraph (d) of the following paragraph:
 “(e) naval vessels of a foreign state that are invited into the Republic through diplomatic channels; and
 (f) nuclear security matters undertaken in accordance with sections 33, 34 and 35 of the Nuclear Energy Act, 1999 (Act No. 46 of 1999)”;
- (f) by the substitution for subsection (3) of the following subsection:
 “(3) For the purposes of this Act, the Minister may, **[after consultation with]** on the recommendation of the board and by the notice in the *Gazette*, declare any facility, **[installation,]** plant or structure, including a mine or ore-processing facility, to be a nuclear **[installation]** facility.”.

Substitution of section 3 of Act 47 of 1999

3. The following section is hereby substituted for section 3 of the principal Act:
 “(1) A juristic person known as the National Nuclear Regulator is hereby established, comprising of a board, a chief executive officer and staff.
 (2) The Regulator is a schedule 3A public entity in terms of the Public Finance Management Act.”.

Amendment of section 5 of Act 47 of 1999

4. Section 5 of the principal Act is hereby amended—
- (a) by the substitution for paragraphs (a) and (b) of the following paragraphs:
 “(a) provide for the protection of persons, property and the environment against **[nuclear damage]** the harmful effects of radiation associated with nuclear facilities and activities through the establishment of safety and related security standards and regulatory practices;
 (b) exercise regulatory control related to safety **[over—**
 (i) **the siting, design, construction, operation, manufacture of component parts, and decontamination, decommissioning and closure of nuclear installations; and**
 (ii) **vessels propelled by nuclear power or having radioactive material on board which is capable of causing nuclear damage,]** and related security over activities contemplated in section 2(1) of this Act, through the granting of **[nuclear]** authorisations;”;
- (b) by the deletion of paragraph (c);
- (c) by the substitution for paragraphs (d), (e) and (f) of the following paragraphs:
 “(d) **[provide assurance of]** enforce compliance with the conditions of **[nuclear]** authorisations **[through the implementation of a system of compliance inspections];**
 (e) fulfil national obligations in respect of international legal instruments concerning nuclear safety; **[and]**
 (f) ensure that **[provisions]** requirements for nuclear and radiation emergency **[planning]** preparedness and response are in place[.]; and”;
- (d) by the insertion after paragraph (f) of the following paragraph:
 “(g) disseminate objective scientific, technical, and regulatory information concerning the activities of the Regulator and the effects on the environment and on the health and safety of persons, property and the environment from facilities and activities using radiation and nuclear technology.”.

Amendment of section 6 of Act 47 of 1999

5. Section 6 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:
 “(a) ensure the effective monitoring and control of the nuclear or radiation hazard;”.

Amendment of section 7 of Act 47 of 1999

6. Section 7 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraphs (a), (b), (c), (d) and (e) of the following paragraphs:
- “(a) grant **[or]**, amend, refuse, suspend or revoke **[nuclear]** authorisations, subject to the provisions of this Act; 5
- (b) hire, purchase or otherwise acquire any movable and immovable property **[and]** or proprietary right, and rent or dispose of property so acquired, **[but may not acquire or dispose of immovable property without the prior approval of the Minister, granted with the agreement of the Minister of Finance]** subject to the provisions of the Public Finance Management Act; 10
- (c) collaborate with any other body or institution or establish and control facilities for the collection and dissemination of scientific and technical information, in connection with any matter regarding **[nuclear energy falling within the objects of the Regulator]** radiation safety and related security as contemplated in section 2 of this Act; 15
- (d) collaborate with any educational, scientific or other body **[, a government]** or institution in connection with the provision of instruction for, or the training of, persons required by the Regulator; 20
- (e) provide, on such conditions as the Regulator **[thinks]** deems fit, financial or other assistance in connection with the training of persons in so far as in the board’s opinion it is necessary to ensure that a sufficient number of trained persons are available to enable the Regulator to perform its functions;” 25
- (b) by the substitution in subsection (1) for paragraphs (g), (h), (i) and (j) of the following paragraphs:
- “(g) advise the Minister on matters associated with any **[action]** facility, activity or condition which— 30
- (i) is capable of causing nuclear damage;
- (ii) the Minister refers to the Regulator; or
- (iii) the Regulator **[thinks]** deems necessary to advise the Minister on;
- (h) **[for purposes of this Act,]** act as the national competent authority 35 in connection with the International Atomic Energy Agency’s Regulations for the Safe Transport of Radio-active Material;
- (i) conclude contracts, enter into agreements or perform any act **[, whether in the Republic or elsewhere,]** whereby its objects are carried into effect or which is calculated, directly or indirectly, to enhance the value of the services which the Regulator renders towards the achievement of its objects or which may be prescribed; 40
- (j) produce and submit to the Minister an annual public report on the health and safety related to workers, the public and the environment associated with all sites including, but not limited to, the prescribed contents **[.]** and the reporting requirements in terms of the Public Finance Management Act;” 45
- (c) by the insertion in subsection (1) after paragraph (j) of the following paragraphs:
- “(k) issue directives, notices, guidance and position papers necessary for the implementation of this Act; 50
- (l) inspect, monitor, assess the activities of applicants for authorisations and authorisation holders for the purpose of verifying compliance with the provisions of this Act, applicable to regulations and the conditions of authorisations; 55
- (m) implement enforcement measures in the event of non-compliance or violation of the provisions of this Act, applicable regulations and the conditions of authorisations;
- (n) recommend regulations prescribing safety and related security standards as well as regulatory practices as contemplated in section 2(1) of this Act; 60

- (o) establish and maintain a national register of persons authorised to carry out activities under this Act;
 - (p) establish and maintain a national dose register;
 - (q) establish and maintain a national register of radiation sources as contemplated in paragraph 2(1)(c);
 - (r) conduct relevant research, establish and maintain nuclear safety and security research programmes for regulatory development to provide the Regulator with scientific, technical and other advice and information, as contemplated in section 2(1) of this Act;
 - (s) make such arrangements as the Regulator may consider appropriate for relevant social, economic and environmental information to be collected from a holder of an authorisation and make such information available to the Department for the purpose of undertaking impact assessment for the implementation of the Act.”;
- (d) by the substitution for subsection (2) of the following subsection:
- “(2) The Minister must table in Parliament the annual public report submitted to him or her in terms of subsection (1)(j) [**within 14 days after it is so submitted if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ordinary session.**]”; and
- (e) by the deletion of subsection (3).

Amendment of section 8 of Act 47 of 1999

7. Section 8 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) The Regulator is governed and controlled, in accordance with this Act, by a [**Board of Directors**] board.”;
- (b) by the substitution in subsection (4)(a) for subparagraphs (iv), (v) and (vi) of the following subparagraphs:
 - “(iv) an official from the [**Department of Minerals**] department responsible for Mineral Resources and Energy;
 - “(v) an official from the [**Department of Environmental Affairs and Tourism**] department responsible for the Environment; and
 - “(vi) not more than seven other directors; [**and**].”;
- (c) by the substitution in subsection (4) for paragraph (b) of the following paragraph:

“(b) the chief executive officer [.,] and”;
- (d) by the insertion in subsection (4) after paragraph (b) of the following paragraph:

“(c) the chief financial officer.”;
- (e) by the substitution in subsection (7) for paragraphs (b); (c) and (d) of the following paragraphs:
 - “(b) a panel, appointed by the Minister [, **which may include representatives of the relevant committees of Parliament**], must compile a short-list of not more than 20 candidates from the persons [**so**] nominated;
 - “(c) in addition to persons contemplated in subsection 4(a)(iv) and (v), the Minister must, from the short-list so compiled [**and from other persons nominated as contemplated in paragraph (a)**], appoint persons to the relevant positions on the board; and
 - “(d) the Minister [**may,**] must for a director appointed in terms of subsection 4(a)(i) to (v), appoint a suitably qualified alternate director to act in the place of that director during his or her absence.”;
- (g) by the substitution in subsection (8) for paragraph (e) of the following paragraph:

“(e) is [**a holder of a nuclear**] an authorisation holder or an employee of such holder.”;
- (h) by the substitution for subsection (12) of the following subsection:

“(12)(a) The chairperson of the board holds office for a period specified in the letter of appointment but not exceeding [**three**] five years and may be re-appointed upon expiry of that term of office.

- (b) A director referred to in subsection (4)(a) holds office for a period specified in the letter of appointment but not exceeding **[three]** five years and may be re-appointed upon expiry of that term of office.”;
- (h) by the deletion of subsection (13)(b);
- (i) by the deletion of subsection (14); and
- (j) by the insertion after subsection 14 of the following subsections:
- “(15) The board is the accounting authority of the Regulator.
- (16) The members of the board must, when viewed collectively—
- (a) be persons who are suited to serve on the board by virtue of their qualifications, expertise and experience in the fields of nuclear science, technology and engineering, finance, risk, corporate governance, law and strategic leadership;
- (b) be persons who are committed to fairness and accountability on the part of those holding public office; and
- (c) be persons who are committed to the objects and principles as enunciated in the Charter and Code of Conduct of the Regulator.”.

Amendment of section 9 of Act 47 of 1999

8. Section 9 of the principal Act is hereby amended by the substitution for the heading of the following heading:

“**Vacation of office [of board members] by director**”.

Amendment of section 12 of Act 47 of 1999

9. Section 12 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) appoint as members of any such committee such persons, including directors of the board, staff of the Regulator, **[the holders of nuclear authorisations]** authorisation holders and employees of such holders, as the board considers appropriate.”.

Amendment of section 14 of Act 47 of 1999

10. Section 14 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to subsections (2), (3), (4) and (5), the board may, by resolution, delegate any power, and assign any duty, conferred or imposed on it by the operation of section 8(1) or (2) or conferred or imposed on it elsewhere by this Act, to its chairperson, **[or a]** committee of the board, director of the board or chief executive officer.”.

Amendment of section 15 of Act 47 of 1999

11. Section 15 of the principal Act is hereby amended—

(a) by the substitution for subsections (1) of the following subsection:

“(1) The Minister must, **[after consultation with]** on recommendation of the board, from a list of not less than three persons so nominated, appoint a person with suitable qualifications as chief executive officer of the Regulator.”;

(b) by the substitution for subsections (3) and (4) of the following subsections:

“(3) A chief executive officer holds office for a period not exceeding **[three]** five years as specified in the letter of appointment and may be re-appointed upon expiry of that term of office.

(4) The Minister may, after consultation with the board and at any time [discharge] remove the chief executive officer from office—”;

(c) by the deletion of subsection (5);

(d) by the deletion of subsection 6(c);

(e) by the substitution in subsection (6) for paragraph (d) of the following paragraph:

“(d) complete a report on the activities of the Regulator for each financial year in accordance with the **[Reporting by Public**

- Entities Act, 1992 (Act No. 93 of 1992),] Public Finance Management Act and submit the report to the board for approval;”;**
- (f) by substitution in subsection (9) for paragraph (a) of the following paragraph:
“(a) this Act, the **[Reporting by Public Entities Act, 1992,] Public Finance Management Act**, or any other law;”;
- (g) by the substitution in subsection (10) for the following subsection:
“(10) If the chief executive officer is for any reason unable to perform any of his or her functions, the chairperson of the board must appoint **[an employee] a staff member** of the Regulator to act as chief executive officer until the chief executive officer is able to resume those functions.”; and
- (h) by the deletion of subsection (11).

Amendment of section 16 of Act 47 of 1999

12. Section 16 of the principal Act is hereby amended by the deletion of subsections (3), (4) and (6).

Amendment of section 17 of Act 47 of 1999

13. Section 17 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
“(b) fees paid to the Regulator in terms of section 28[;] and fines levied in terms of section 52; and
- (b) by the deletion of subsection (7).

Substitution of section 18 of Act 47 of 1999

14. The following section is hereby substituted for section 18 of the principal Act:

“18. The Regulator’s financial year is from 1 April in any year to 31 March in the following year [, but the first financial year is from the specified date to 31 March in the following year], in accordance with the Public Finance Management Act.”.

Amendment of heading of Chapter 3 of Act 47 of 1999

15. The following heading is hereby substituted for the heading of Chapter 3 of the Principal Act:
“AUTHORISATIONS”.

Amendment of section 20 of Act 47 of 1999

16. Section 20 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:
“Restrictions on certain [actions] activities”;
- (b) by the substitution for subsections (1), (2) and (3) of the following subsections:
“(1) No person may site, construct, operate, decontaminate or decommission a nuclear facility, except under the authority of a nuclear licence.
- (2) No person may perform any pre-construction activities without prior written permission of the Regulator.
- (3) No person may manufacture or cause to be manufactured component parts relating to nuclear safety as prescribed in the regulations except under the authority of an authorisation to manufacture or a nuclear licence.”; and

(c) by the insertion after subsection (3) of the following subsections:

- “(4) No vessel, which is propelled by nuclear power or which has on board any fissile material or uranium hexafluoride may—
- (a) anchor or sojourn in the territorial waters of the Republic; or
- (b) enter or leave any port of the Republic,
- except under the authority of a nuclear vessel licence. 5
- (5) No vessel which has on board any radio-active material capable of causing nuclear damage may—
- (a) anchor or sojourn in the territorial waters of the Republic; or
- (b) enter or leave any port of the Republic,
- except under the authority of a certificate of registration. 10
- (6) Notwithstanding the provisions of subsection (4) or (5), an authorisation holder, with a condition or conditions permitting such holder to transport radio-active materials, may cause such materials to be transported by a vessel under the authority of such authorisation without a nuclear vessel licence or a certificate of registration. 15
- (7) No person may carry out any activity contemplated in section 2(1) except under an authorisation issued by the Regulator.
- (8) No radio-actively contaminated facility, equipment, machinery, scrap or land belonging to or in the control of the Republic’s Defence Force may be released for civilian use, without the prior written permission of the Regulator. 20
- (9) No person may undertake any technical service prescribed except under the authority of an authorisation issued by the Regulator.”. 25

Substitution of section 21 of Act 47 of 1999

25

17. The following section is hereby substituted for section 21 of the principal Act:

“Application for nuclear licence, nuclear site licence, nuclear vessel licence or regulatory evaluation of design

- (1) Any person wishing to construct, operate, decontaminate, or decommission a nuclear facility must apply in the prescribed form and manner to the chief executive officer for a nuclear licence and must furnish such information as the board requires. 30
- (2) Any person wishing to obtain regulatory approval of site evaluation must apply in the prescribed form and manner to the chief executive officer for a nuclear site licence and must furnish such information as the board requires. 35
- (3) Any person wishing to obtain regulatory evaluation of a design of a nuclear facility must apply in the prescribed form and manner to the chief executive officer and must furnish such information as the board requires. 40
- (4) Any person, other than persons mentioned in section 20(5) and (6), wishing to—
- (a) anchor or sojourn in the territorial waters of the Republic; or
- (b) enter any port in the Republic, with a vessel which is propelled by nuclear power or which has on board any fissile material or uranium hexafluoride, must apply to the chief executive officer for a nuclear vessel licence and must furnish such information as the board requires. 45
- (5) The chief executive officer must direct the applicant for a nuclear licence, nuclear site licence or nuclear vessel licence to—
- (a) serve a copy of the application upon—
- (i) every municipality affected by the application; and 50
- (ii) such other person the chief executive officer may determine; and
- (b) publish a copy of the application in the *Gazette* and two newspapers circulating in the area of every such municipality within 30 days.
- (6)(a) A person who may be affected by the granting of a nuclear licence, nuclear site licence or nuclear vessel licence pursuant to an application in terms of subsection (1), (2) or (4), may make written representations to the board, relating to protection of persons, property, and the environment against nuclear or radiological damage connected with the application, 55

within 90 days of the date of publication in the *Gazette* contemplated in subsection (5)(b).

(b) If the board is of the opinion that further public representation is necessary, it must arrange for hearings relating to protection of persons, property and the environment against nuclear or radiological damage.

(7) Subject to the board's approval, the chief executive officer may—

(a) refuse an application for a nuclear licence, nuclear site licence or nuclear vessel licence and must provide the applicant in writing with the reasons for the refusal; or

(b) grant an application for a nuclear licence, nuclear site licence or nuclear vessel licence subject to such conditions as may be determined in terms of section 23.

(8) In consideration of an application under section 20(1), the chief executive officer may conduct an examination in respect of the applicant concerned.

(9) An authorisation under this section shall be valid for the period stipulated in the conditions of authorisation.

(10) The authorisation may be renewed on the application in the prescribed form and manner before the prescribed time.”.

Amendment of section 22 of Act 47 of 1999

18. Section 22 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

“Application for certificate of registration, [or] exemption, [for certain actions] authorisation to design or authorisation to manufacture”

(b) by the substitution for subsections (1), (2) and (3) of the following subsections:

“(1) Any person wishing to engage in any **[action described in section 2(1)(c) may]** activity, not contemplated in section 21(1), (2), (3) or (4), must apply in the prescribed **[format]** form and manner to the chief executive officer for a certificate of registration **[or a]**, certificate of exemption, authorisation to design or authorisation to manufacture and must furnish such information as the board requires.

(2) The chief executive officer **[may]** must direct that the applicant for a certificate of registration, certificate of exemption, authorisation to design or authorisation to manufacture—

(3) The chief executive officer may, with the approval of the board—

(a) refuse to grant an application for a certificate of exemption **[or a]**, certificate of registration, authorisation to design or authorisation to manufacture made in terms of subsection (1) and must provide the applicant in writing with the reasons for the refusal; or

(b) issue—

(i) a certificate of registration, authorisation to design or authorisation to manufacture subject to such conditions as may be determined in terms of section 23; or

(ii) a certificate of exemption if satisfied that the **[action] activity** in question complies with the exemption criteria specified in the safety standard contemplated in section 36.”; and

(c) by the insertion of subsections (4) and (5):

“(4) In consideration of an application under subsection (1), the chief executive officer may conduct an examination in respect of the applicant.

(5) An authorisation under this section shall be valid for the period as prescribed in the conditions of authorisation and such authorisation may be renewed on application within the prescribed time or such later time as the board may allow, in the prescribed form and manner.”.

Substitution of section 23 of Act 47 of 1999

19. The following section is hereby substituted for section 23 of the principal Act:

“Conditions relating to [nuclear installation licence, nuclear vessel licence or certificate of registration] authorisation

23. (1) The chief executive officer may establish standard conditions applicable to one or more categories of **[certificates of registration] authorisations**. 5

(2) The chief executive officer may, subject to subsection (3), impose any condition in **[a nuclear installation or vessel licence or certificate of registration] an authorisation** which— 10

(a) is necessary to ensure the protection of persons, property and the environment against nuclear damage; or

(b) provides for the rehabilitation of the site.

(3) The chief executive officer—

(a) may, subject to paragraph (c), amend any condition in **[a nuclear installation or vessel licence or certificate of registration] an authorisation**; 15

(b) must notify the person in writing to whom the **[nuclear installation or vessel licence or certificate of registration] authorisation** was issued of such amendment, timeframe within which such amendments come into operation and the reasons therefore; and 20

(c) must submit to the board any amendments made to **[a nuclear] an authorisation** as contemplated in paragraph (a) for ratification at the first meeting of the board following the amendments.”.

Amendment of section 24 of Act 47 of 1999

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20. Section 24 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) Any provision included in an agreement referred to in subsection (1)(c) which could be included in terms of subsection (1)(a) or (b) as a condition of a nuclear vessel licence, is considered to be a condition of that licence or approval, even if it is not expressly embodied in the relevant licence as a condition thereof.”; and 30

(b) by the substitution for subsection (6) of the following subsection:

“(6) The chief executive officer must exercise the powers conferred by this section on behalf of the board and subject to the Minister’s directions in terms of subsection (1)(a)(ii).”. 35

Substitution of section 25 of Act 47 of 1999

21. The following section is hereby substituted for section 25 of the principal Act:

“Transfer of authorisation

25. (1) An authorisation is not transferrable. 40

(2) An authorisation holder may not transfer responsibility for authorised activities to another person or entity without the written approval of the chief executive officer.

(3) A person or entity to whom the responsibility for previously authorised activities is to be transferred must apply to the Regulator as prescribed.”. 45

Substitution of section 26 of Act 47 of 1999

22. The following section is hereby substituted for section 26 of the principal Act:

“Responsibilities of authorisation holders

26. (1) An authorisation holder must—

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| (a) | at all times, display copies of that authorisation at such places and in such languages and form as determined by the chief executive officer to ensure public access to the conditions specified in the authorisation; | 5 |
| (b) | establish and maintain the competencies as prescribed; | |
| (c) | provide training and information to staff; | |
| (d) | establish procedures and arrangements to maintain safety and security under all conditions; as contemplated in section 2(1) of this Act; | 10 |
| (e) | verify appropriateness of design and the adequacy of the quality of activities and facilities and of their associated equipment; | |
| (f) | ensure the safe and secure control of all radio-active material that is used, produced, stored or transported; | 15 |
| (g) | ensure the safe and secure control of all radio-active waste that is generated; | |
| (h) | implement a self-inspection programme to ensure compliance with all conditions of the authorisation; and | |
| (i) | provide information as required by the chief executive officer. | 20 |

(2) An authorisation holder of a nuclear licence must establish a public safety information forum as prescribed in order to inform the persons living in the municipal area(s) in respect of which an emergency plan has been established in terms of section 38(1) on nuclear safety and radiation safety matters.

(3) The responsibility for ensuring safety and security of any facility or activity involving ionizing radiation rests with the authorisation holder.”.

Insertion of section 26A in Act 47 of 1999

23. The following section is hereby inserted after section 26 of the principal Act:

“Financial responsibilities of applicants for and holders of authorisations

26A. (1) An applicant for, or an authorisation holder for construction, operation of a nuclear facility or undertaking an activity shall ensure that adequate financial resources will be available, and shall provide such financial resources, when needed to cover costs associated with safe rehabilitation, or decommissioning, including the management of resulting waste.

(2) The financial resources to be made available for rehabilitation, or decommissioning activities shall be—

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|-----|---|----|
| (a) | commensurate with an activity or facility specific cost estimate; | 35 |
| (b) | changed if the cost estimate increases or decreases; and | |
| (c) | reviewed as part of the periodic review of the rehabilitation, or decommissioning plan. | 40 |

(3) For existing activities and facilities for which financial resources for rehabilitation, or decommissioning are not available, provisions for adequate financial resources shall be required within a set time frame as may be determined by the Regulator or prior to authorisation renewal or extension, whichever is applicable.”.

Substitution of section 27 of Act 47 of 1999

24. The following section is hereby substituted for section 27 of the principal Act:

“Suspension, modification, revocation or surrender of an authorisation

27. (1) An authorisation issued pursuant to the provisions of this Act may be suspended, modified, or revoked by the Regulator— 5

(a) in the event of a violation of its conditions;

(b) when the conditions under which it was authorised are no longer met; or

(c) in any circumstance where the Regulator determines that continued activity under the authorisation would pose an unacceptable risk to the safety or security of persons, property and the environment. 10

(2) An authorisation holder may surrender that authorisation.

(3) If an authorisation has been revoked or surrendered the authorisation holder concerned must—

(a) if so directed by the chief executive officer, deliver to the person appointed by the chief executive officer, or account for, such authorisation; and 15

(b) for the duration of his or her period of responsibility, display, or cause to be displayed, on the relevant site or the vessel in respect of which authorisation has been granted, such notices as directed by the chief executive officer. 20

(4) On revocation or surrendering of an authorisation, or at any time during the period of responsibility of the authorisation holder, the chief executive officer, in writing, may give any direction to the person liable for nuclear damage in terms of section 30, which the chief executive officer believes is necessary to prevent nuclear damage which— 25

(a) may be caused by anything which is being done, may be done or was done; or

(b) is or was present, 30

at or in the relevant nuclear facility or site.

(5) The Regulator shall make publicly available a statement providing information on the procedures and requirements for suspension, modification, renewal, revocation or surrender of authorisations.”.

Substitution of section 28 of Act 47 of 1999

25. The following section is hereby substituted for section 28 of the principal Act: 35

“Fees for [nuclear authorisation] authorisations

28. The Minister may, on the recommendation of the board [**and**], in consultation with the Minister of Finance and by notice in the *Gazette*, determine the fees payable to the Regulator in respect of—

(a) any application for the granting of [**a nuclear**] an authorisation; 40

(b) an annual [**nuclear**] authorisation fee[.]; and

(c) any work the Regulator may be required to undertake pursuant to the receipt of a notification in terms of sections 20(2) and (3).”.

Substitution of section 29 of Act 47 of 1999

26. The following section is hereby substituted for section 29 of the principal Act: 45

“Financial security by holder of nuclear [installation] licence

29. (1) The Minister must, on the recommendation of the board, in consultation with the Minister of Finance and by notice in the *Gazette*, categorise the various [**nuclear installations**] facilities in the Republic, based on the potential consequences of a nuclear or radiation accident. 50

(2) The Minister must, on the recommendation of the board, **[and]** in consultation with the Minister of Finance and by notice in the *Gazette*, determine—

- (a) the level of financial security to be provided by holders of nuclear **[installation]** licences in respect of each of those categories; and 5
- (b) the manner in which that financial security is to be provided, in order for the holder of a nuclear **[installation]** licence to fulfil any liability which may be incurred in terms of section 30.

(3) Despite subsection (2), the Minister may, after consultation with the board, for so long as the holder of a nuclear **[installation]** licence may be liable for nuclear damage—

- (a) increase or decrease the level of financial security to be provided by that holder as determined in terms of subsection (2);
- (b) if financial security has not been required in terms of subsection (2) require that holder to provide financial security; 15
- [(c) discharge that holder from the requirement to provide financial security;]**
- (d) amend the manner in which that holder must provide financial security.

(4) If— 20

- (a) nuclear damage occurs and compensation is claimed as a result thereof; or
- (b) the Minister is satisfied that such compensation is likely to be so claimed,

the Minister may require the holder of the nuclear **[installation]** licence in question to give additional financial security in respect of those claims or possible claims, to an amount which the Minister, after consultation with the board, determines. 25

(5) The holder of a nuclear **[installation]** licence must annually provide proof to the Regulator that any claim for compensation to an amount contemplated in section 30(2), can be met.”. 30

Substitution of section 30 of Act 47 of 1999

27. The following section is hereby substituted for section 30 of the principal Act:

“Strict liability of holder of nuclear **[installation] licence for nuclear damage 35**

(1) Subject to subsections (2), (3), (5) and (6), only a holder of a nuclear **[installation]** licence is, whether or not there is intent or negligence on the part of the holder, liable for all nuclear damage caused by or resulting from the relevant nuclear **[installation]** facility during the holders period of responsibility— 40

- (a) by anything being present or which is done at or in the nuclear **[installation]** facility or by any radio-active material or material contaminated with radioactivity which has been discharged or released, in any form, from the nuclear **[installation]** facility; or
- (b) by any radio-active material or material contaminated with radioactivity which is subject to the nuclear **[installation]** licence, while in the possession or under the control of the holder of that licence during the conveyance thereof from the nuclear **[installation]** facility, to any other place in the Republic or in the territorial waters of the Republic from or to any place in or outside the Republic. 50

(2) The liability for nuclear damage by any holder of a nuclear **[installation]** licence is limited, for each nuclear or radiation accident, to the amounts determined in terms of section 29(2).

(3) The liability contemplated in subsection (1)(b) ends upon the relevant material coming onto another site in respect of which a nuclear licence has been granted. 55

(4) For the purposes of subsection (1) radio-active material or material contaminated with radioactivity which is being conveyed on behalf of the

holder of a nuclear **[installation]** licence is regarded to be in the possession or under the control of the holder of that licence.

(5) Nothing in this section precludes a person from claiming a benefit in terms of the Compensation for Occupational Injuries and Diseases Act [, **1993 (Act No. 130 of 1993)**], but such person may not benefit both in terms of this Act and the Compensation for Occupational Injuries and Diseases Act [, **1993**].

(6) The holder of a nuclear **[installation]** licence is not liable to a person for any nuclear damage—

- (a) to the extent to which such nuclear damage is attributable to the presence of that person or any property of that person at or in the nuclear **[installation]** facility or on the site in respect of which the nuclear **[installation]** licence has been granted, without the permission of the holder of that licence or of a person acting on behalf of that holder; or
- (b) if that person intentionally caused, or intentionally contributed to, such damage.

(7) The holder of a nuclear **[installation]** licence retains any contractual right of recourse or contribution which the holder has against any person in respect of any nuclear damage for which that holder is liable in terms of subsection (1).

(8) Any person who, without a nuclear **[installation]** licence, carries out an **[action]** activity, for which such a licence is required, is, whether or not there is intent or negligence on the part of that person, liable for all nuclear damage.

(9) Nothing in this section affects any right, which any person has in terms of any contract of employment, to benefits more favourable than those to which that person may be entitled in terms of this section.”.

Substitution of section 32 of Act 47 of 1999

28. The following section is hereby substituted for section 32 of the principal Act:

“Liability of holder of certificate of registration for nuclear damage

(1) The liability of a holder of a certificate of registration, for any nuclear damage caused by or resulting from any **[action]** activity carried out by virtue of that certificate during his or her period of responsibility, must be determined in accordance with—

- (a) the common law; or
- (b) the Compensation for Occupational Injuries and Diseases Act[, **1993 (Act No. 130 of 1993)**], as the case may be.”.

Amendment of section 33 of Act 47 of 1999

29. Section 33 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
 - “(a) the total amount of claims for compensation against a holder of a nuclear **[installation]** licence; or”;
- (b) by the substitution for subsection (3) of the following subsection:
 - “(3) If on receipt of that notice, the Minister is satisfied that the total amount of claims for compensation against a holder of a nuclear **[installation]** licence that is unpaid, and of such claims as are likely to be made thereafter, will exceed the amount of security given by that holder in terms of section 29 in respect of such claims, the Minister must—”; and
- (d) by the substitution for subsection (6) of the following subsection:
 - “(6) The giving of additional security by a holder of a nuclear **[installation]** licence in terms of section 29(4) does not affect the application of this section.”.

Amendment of section 34 of Act 47 of 1999

30. Section 34 of the principal Act is hereby amended—
- (a) by the substitution in subsection (2) for paragraph (a) of the following paragraph: 5
 “(a) the identity of **[the holder of]** the **[nuclear]** authorisation holder concerned; and”;
- (b) by the substitution for subsection (3) of the following subsection: 10
 “(3) The running of the period of two years referred to in subsection (2) is suspended from the date negotiations regarding a settlement by or on behalf of the claimant and the relevant **[holder of the nuclear]** authorisation holder are commenced in writing until the date any party notifies the other party that the negotiations are terminated.”; and
- (c) by the insertion after subsection (3) of the following subsection: 15
 “(4) A claimant may amend the claim to take into account any aggravation of the damage, even after the expiration of the prescription period, provided that a final judgment has not been entered.”.

Amendment of section 35 of Act 47 of 1999

31. Section 35 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading: 20
 “**Compensation for injuries of [Regulator’s employees] Regulator staff**”; and
- (b) by the substitution for subsection (2) of the following subsection: 25
 “(2) Nothing in this section precludes **[an employee]** a staff member of the Regulator from claiming a benefit in terms of the Compensation for Occupational Injuries and Diseases Act, 1993 (**Act No. 130 of 1993**), but such **[employee] staff member** may not benefit both in terms of this Act and the Compensation for Occupational Injuries and Diseases Act, 1993.”.

Amendment of section 36 of Act 47 of 1999

32. Section 36 of the principal Act is hereby amended— 30
- (a) by the substitution for the heading of the following heading:
 “**Regulatory practices, safety, and related security standards**”; and
- (b) by the substitution for subsection (1) of the following subsection: 35
 “(1) The Minister must, on the recommendation of the board, make regulations regarding **[safety standards and]** regulatory practices, safety, and related security standards.”.

Amendment of section 37 of Act 47 of 1999

33. Section 37 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading: 40
 “**Duties regarding nuclear or radiation accidents and incidents**”; and
- (b) by the substitution for subsection (1) of the following subsection: 45
 “(1) If a nuclear or radiation accident occurs in connection with a **[nuclear installation]** facility, nuclear vessel or **[action]** an activity, the **[holder of the nuclear]** authorisation holder in question must immediately report it to the Regulator and to any other person described in that **[nuclear]** authorisation.”;
- (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 50
 “(2) When the occurrence of a nuclear or radiation accident is so reported to the Regulator, it must—”;
- (d) by the substitution in subsection (2) for paragraphs (b) and (c) of the following paragraphs: 55
 “(b) in such manner as it **[thinks]** deems fit, define particulars of the period during which and the area within which, in its opinion, the risk of nuclear damage connected with the accident exceeds the safety standards and regulatory practices contemplated in section 36;

- (c) direct the **[holder of the nuclear]** authorisation holder in question to obtain the names, addresses and identification numbers of all persons who were during that period within that area; and”;
- (e) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words: 5
 “(4) The right of any person to claim compensation from **[a holder of a nuclear]** the authorisation holder in terms of section 30 is not prejudiced by—”;
- (f) by the substitution for subsection (5) of the following subsection: 10
 “(5) If a nuclear or radiation incident occurs on a site, the **[holder of the nuclear]** authorisation holder in question must report it to the Regulator within the period stipulated in that authorisation.”; and
- (g) by the insertion after subsection (5) of the following subsection: 15
 “(6) The Regulator must act as an adviser to emergency response organisations and Government organs, other than an authorisation holder in terms of the Act, in case of a nuclear or radiological emergency.”.

Amendment of section 38 of Act 47 of 1999

34. Section 38 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading: 20
 “**Emergency [planning] preparedness and emergency response**”;
- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 25
 “(1) Where the possibility exists that a nuclear or radiation accident or nuclear or radiation incident affecting the public may occur, the Regulator must direct the relevant **[holder of a nuclear]** authorisation holder, other than a holder of a certificate of exemption, to—”;
- (c) by the substitution in subsection (1) for paragraph (b) of the following paragraph: 30
 “(b) cover the costs for the establishment, implementation and management of such emergency plan insofar as it relates to the relevant nuclear **[installation]** facility or any **[action]** activity contemplated in section 2(1) [(c)] (f); and”;
- (d) by the substitution for subsection (2) of the following subsection: 35
 “(2) The Regulator must ensure that such emergency plan is effective for the protection of persons should a nuclear or radiation accident or nuclear or radiation incident occurs.”;
- (e) by the substitution for subsections (3) and (4) of the following subsections: 40
 “(3) When a nuclear or radiation accident or nuclear or radiation incident occurs, **[the holder of a nuclear]** an authorisation holder, other than a holder of a certificate of exemption, in question, must implement the emergency plan as approved by the Regulator.
 (4) The Minister may, on recommendation of the board and **[in]** after consultation with the relevant municipalities, make regulations on the development surrounding any nuclear **[installation]** facility to ensure the effective implementation of any applicable emergency plan.”; and 45
- (f) by the insertion after subsection (4) of the following subsections: 50
 “(5) The Regulator shall set out in detail the factors that shall be taken into account in the preparation of emergency plans and the issues to be included in emergency plans, including—
 (a) an assessment of the nature, likelihood and potential magnitude of resulting damage, including the population and territory at risk from an accident, malicious act or incident; and
 (b) the results of any accident analyses and any lessons learned from experience or incidents and accidents that have occurred in connection with similar activities. 55
 (6) Preparation of emergency plans for facilities or activities shall be coordinated with all relevant emergency intervention or response organisations, including the local, provincial and national authorities.
 (7) Emergency plans shall be periodically reviewed, updated and tested. 60

(8) The Regulator shall, by conditions in an authorisation, establish a requirement that on-site and off-site emergency plans be prepared and approved for any facility or activity that could give rise to a need for emergency intervention.

(9) A national emergency plan for responding to potential nuclear or radiological emergencies shall—

(a) take into account the provisions of national disaster management emergency response plan or programme established in terms of the provisions of the Disaster Management Act, 2002 (Act No. 57 of 2002); and

(b) include an allocation of responsibilities and actions among the relevant state departments and non-governmental organisations, including arrangements for communication and public information.

(10) Implementation of the emergency plan referred to subsection (9) shall be coordinated with the local, provincial and national authorities involved in the implementation of disaster management in terms of the Disaster Management Act, 2002.

(11) In the event of a nuclear or radiological emergency that poses a risk that radio-active contamination could spread beyond the boundaries of the Republic, the Government of the Republic shall immediately notify the International Atomic Energy Agency and the relevant authorities of any State which is or may be physically affected.

(12) The Regulator shall serve as the point of contact for providing any information or assistance regarding nuclear or radiological emergencies under the terms of relevant international instruments, including the Convention on Early Notification of a Nuclear Accident and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency.”.

Amendment of section 39 of Act 47 of 1999

35. Section 39 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

“**Record of nuclear [installations] facilities**”;

(b) by the substitution in subsection (1) for paragraph (c) of the following paragraphs:

“(c) where applicable, diagrams showing the position and limits, of a nuclear [installations] facility in respect of which [a nuclear installation licence] an authorisation has been granted.”; and

(c) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) which has been or is present, at or in any nuclear [installation] facility in respect of which [a nuclear installation licence] an authorisation is no longer in force, is within safety standards contemplated in section 36, it may remove the particulars in connection therewith from that record.”.

Substitution of section 40 of Act 47 of 1999

36. The following section is hereby substituted for section 40 of the principal Act:

“**Record of nuclear or radiation accidents and nuclear or radiation incidents [and access thereto]**

40. The Regulator must—

(a) keep and maintain a record of the details of every nuclear or radiation accident and nuclear or radiation incident;

(b) store that record safely;

(c) retain that record for 40 years from the date of the nuclear or radiation accident or nuclear or radiation incident; and

(d) on the request of any person, make that record available to that person.”.

Amendment of section 41 of Act 47 of 1999

37. Section 41 of the principal Act is hereby amended—

- (a) by the substitution in subsection (4)(a) for subparagraphs (i), (ii), (iii) and (iv) of the following subparagraphs:
- “(i) any **[nuclear installation]** facility or site in respect of which an application for **[a nuclear installation licence]** an authorisation has been made or such **[a licence]** an authorisation has been granted; 5
 - (ii) any place which the inspector on reasonable grounds suspects to be a site on which there is a nuclear **[installation]** facility or activity;
 - (iii) any place where parts of a nuclear **[installation]** facility are present or manufactured; 10
 - (iv) any place where radio-active material is kept or is present, and in respect of which an application for **[a nuclear]** an authorisation has been made or **[a nuclear]** an authorisation has been granted;”;
- (b) by the substitution in subsection (4) for paragraphs (b), (c), (d), (e) and (f) of the following paragraphs:
- “(b) carry out inspections and use any applicable equipment during such inspections at any of the **[nuclear installations]** facilities, sites or places referred to in paragraph (a) and conduct such investigations as are necessary for the purpose of monitoring or enforcing compliance with this Act; 20
 - (c) if necessary for the purposes of monitoring or enforcing compliance with this Act, direct **[in writing]** the holder of or the applicant for **[a nuclear]** an authorisation, or any other person having any power or duty in connection with or on the relevant **[nuclear installation]** facility, site or place referred to in paragraph (a), to— 25
 - (i) allow the inspector to take away for investigation the articles or objects pointed out by the inspector;
 - (ii) allow the inspecting of the documents specified by the inspector, and to make copies thereof; 30
 - (iii) furnish to the inspector information which is under his or her control;
 - (d) after signing for any object or document, or copies thereof, remove it for investigation or evidence purposes;
 - (e) if any **[action]** activity contemplated in section 20, or any condition associated with such **[action]** activity, does not comply with the requirements laid down in the **[nuclear]** authorisation, or with the safety and related security standards contemplated in section **[32]** 36, direct any person in **[control]** charge of the **[action]** activity— 35
 - (i) to discontinue such **[action]** activity or immediately rectify such condition; 40
 - (ii) to rehabilitate the relevant site or other place to a condition that complies with the requirements laid down in the **[nuclear]** authorisation or with the safety and related security standards contemplated in section 36; 45
 - (iii) to prohibit workers who do not meet the applicable requirements from engaging in the activity; or
 - (iv) to safely and securely store any nuclear or radio-active material originating from a suspended activity.
 - (f) if any **[action]** activity contemplated in section 2(2)(b), or any condition associated with such **[action]** activity, does not comply with the exemption criteria specified in the safety and security standards contemplated in section 36, direct the person in **[control]** charge of the **[action]** activity— 50
 - (i) to discontinue such **[action]** activity or immediately rectify such condition; 55
 - (ii) to rehabilitate the site or other place to a condition that complies with the exemption criteria provided for in the safety standards contemplated in section 36; **[or]**
 - (iii) to apply for a certificate of registration; 60
 - (iv) to prohibit workers who do not meet the applicable requirements from engaging in the activity; or

- (v) to safely and securely store any nuclear or radio-active material originating from a suspended activity.”;
- (c) by the substitution for subsection (5) of the following subsection:
 “(5) An inspector authorised thereto in writing by the Regulator has, in respect of any vessel and subject to the terms of any agreement referred to in section 24(1)(c), has the same powers conferred upon an inspector in respect of **[nuclear installations]** facilities, sites and other places contemplated in this section.”; and
- (d) by the insertion after subsection (5) of the following subsections:
 “(6) A decision taken by an inspector shall continue in force until—
 (a) withdrawn by the inspector;
 (b) reversed or modified by the Regulator; or
 (c) altered through an appeal or judicial review decision pursuant to Chapter 6 of this Act.”.

Repeal of section 45 of Act 47 of 1999 15

38. Section 45 of the principal Act is hereby repealed.

Substitution of section 46 of Act 47 of 1999

39. The following section is hereby substituted for section 46 of the principal Act:

“Appeal to High Court against [Minister’s] board’s decision and notice to Minister 20

(1) Any person adversely affected by a decision of the **[Minister] board, [either in terms of section 45(3) or]** in the exercise of any power in terms of this Act, may appeal against that decision to the High Court.

(2) Such appeal must—

- (a) be lodged **[within 60]** without unreasonable delays and no later than 180 days **[from]** after the date on which the decision was made known by the **[Minister] board** or such later date as the High Court permits; and
- (b) set out the grounds for the appeal.

[(3) The appeal must be proceeded with as if it were an appeal from a Magistrate’s Court to a High Court.] 30

(4) The board must notify the Minister, within 10 days of any appeal lodged in terms of section 46.”.

Amendment of section 47 of Act 47 of 1999

40. Section 47 of the principal Act is hereby amended by the insertion after subsection (4) of the following subsection: 35

“(5) The Minister must, on the recommendation of the board and in consultation with the Minister of Finance, by notice in the *Gazette* prescribe—

- (a) a schedule of the types of administrative fines to be imposed by the Regulator; and
- (b) the form and manner that the Regulator manages and issues such administrative fines.”.

Amendment of section 48 of Act 47 of 1999

41. Section 48 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 45

“(1) Subject to subsection (2), the Minister may delegate any power and assign any duty conferred or imposed upon the Minister in terms of this Act to the Director-General~~[: Minerals]~~ of the department responsible for Mineral Resources and Energy.”.

Amendment of section 49 of Act 47 of 1999

42. Section 49 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) If the Minister and the board fail to resolve their disagreement, the Minister makes the final decision, **[in] after** consultation with the relevant Minister.”. 5

Amendment of section 51 of Act 47 of 1999

43. Section 51 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:

“(a) no person may disclose to any other person or publish any information which relates to any nuclear **[installation] facility** or site or vessel or **[action] activity** described in section 2(1)(c) in respect of which **[a nuclear] an** authorisation has been issued or is to be issued and not yet public knowledge if the disclosure of that information is likely to jeopardise the physical security arrangements in respect of such **[installation] facility**, site, vessel or **[action] activity** as required by the Regulator for the protection of persons or the security of the Republic; 10 15

(b) no person may be in possession of any documents if not authorised and such possession is likely to jeopardise the physical security arrangements in respect of such **[installation] facility**, site, vessel or **[action] activity** as required by the Regulator for the protection of persons or the security of the Republic;”; and 20

(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 25

“(3) No member of the board or a committee of the board or **[an employee] staff member** of the Regulator may disclose any information obtained by him or her in the performance of his or her functions in terms of this Act except—”.

Amendment of section 52 of Act 47 of 1999 30

44. Section 52 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) fails to comply with a directive **[contemplated in section 41(4)] issued by the Regulator;**”; 35

(b) by the substitution for subsection (2) of the following subsection:

“(2) Any person who contravenes or fails to comply with any other provision of this Act or any condition, notice, order, instruction, directive, prohibition, authorisation, permission, exemption, certificate or document determined, given, issued, promulgated or granted in terms of this Act is, if any such contravention or failure is not declared an offence in terms of subsection (1), is guilty of an offence.”; 40

(c) by the substitution in subsection (3) for paragraph (c) of the following paragraph:

“(c) in the case of an offence referred to in subsection 51(1)(g), to a fine or to imprisonment for a period not exceeding three years[.]; or”; 45

(d) by the insertion after paragraph (c) of the following paragraph:

“(d) Notwithstanding the provisions of paragraph (a), a person convicted of a failure to pay an administrative fine is liable on conviction to a fine or to imprisonment for a period not exceeding three months.”; and 50

(e) by the insertion after subsection 3 of the following subsections:

“(4) If a person has failed to comply with an administrative fine as prescribed in section 47, the Regulator may cause to be delivered, by hand, to that person (hereinafter referred to as “the infringer”) a non-compliance notice which must contain the particulars contemplated in subsection (5). 55

- (5) A notice referred to in subsection (4) must—
- (a) specify the name and address of the infringer;
 - (b) specify the particulars of the alleged offence;
 - (c) specify corrective and preventive measures to be implemented by the infringer;
 - (d) specify the amount of the administrative fine payable;
 - (e) inform the infringer that, not later than 30 days after the date of service of the non-compliance notice, the infringer may—
 - (i) pay the administrative fine;
 - (ii) make arrangements with the Regulator to pay the administrative fine in instalments; and
 - (f) state that a failure to comply with the requirements of the notice within the time permitted, will result in the administrative fine becoming recoverable as contemplated in subsection (6).
- (6) If the infringer fails to comply with the requirements of a notice, the Regulator may file with the clerk or registrar of any competent court a statement certified by it as correct, setting forth the amount of the administrative fine payable by the infringer, and such statement thereupon has all the effects of a civil judgement lawfully given in that court in favour of the Regulator for a liquid debt in the amount specified in the statement.
- (7) An administrative fine imposed in terms of this section does not constitute a previous conviction as contemplated in Chapter 27 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).”.

Short title and commencement

45. This Act is called the National Nuclear Regulator Amendment Act, 2023 and comes into operation on a date determined by the President by Proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL NUCLEAR REGULATOR AMENDMENT BILL, 2023

1. PURPOSE OF THE AMENDMENT BILL

The National Nuclear Regulator Amendment Bill, 2023 (the “Bill”), proposes to amend the National Nuclear Regulator Act, 1999 (Act No. 47 of 1999) (the “Act”) to align the Act with current international regulatory best practices. Alignment is necessary because South Africa is one of the founding members of the International Atomic Energy Agency (IAEA) and is a signatory to various international conventions governing nuclear safety which have been promulgated under the auspices of the IAEA. The IAEA has promulgated revised international regulatory best practices which require that the Act be amended to ensure alignment with the IAEA international standards.

2. OBJECTS OF BILL

The Bill introduces the amendments as follows:

- 2.1 **Clause 1** seeks to amend section 1 of the Act by the insertion of new definitions, amendment of certain definitions and the deletion of obsolete definitions in order to align with the IAEA international best practices. The IAEA, in strengthening of the nuclear safety regulatory framework, has introduced new concepts and definitions which replaces the ones that were previously used. Key concepts in the nuclear safety environment such as “nuclear installation” and “action” were replaced by new concepts such as “nuclear facility” and “activity”. Certain concepts like “nuclear damage” were redefined to expand their scope.
- 2.2. **Clause 2** seeks to amend section 2 of the Act that provide for the application of the Act. Since the promulgation of the Act 24 years ago, there has been developments in the nuclear safety regulated environment which have rendered the National Nuclear Regulator (“Regulator”) unable to exercise regulatory oversight because some of these areas of development are not within the scope of application of the Act. Consequently, the Regulator’s mandate to perform its function efficiently and effectively has been negatively limited. Therefore, there is a need to extend the scope of application.

Amendment to section 2(1)(a)

- 2.2.1 The application of the Act does not extend to the following activities “site evaluation”, “manufacturing of component parts” and “extended shutdown”. Absence of inclusion of these activities in the Act resulted in the Regulator not being able to exercise regulatory oversight over these activities through the issuing of authorisations. The proposed amendments to section 2(1)(a) are to expand the scope of the application of the Act to cover “site evaluation”, “manufacturing of component parts” and “extended shutdown”.

Insertion of section 2(1)(d)

- 2.2.2 A radiation source is a radionuclide that emits significant amount of ionising radiation which can pose health risks if left unattended. The provision of section 2(2)(c) of the Act exclude radiation sources from the application of the Act and consider these as Group IV hazardous substances to be managed under the Hazardous Substances Act, 1973 (Act No. 15 of 1973).
- 2.2.3 Radiation sources existing within facilities regulated by the Regulator are accounted for under authorisation issued to such facility by the Regulator, similarly radiation sources existing within facilities regulated under the Hazardous Substances Act are equally covered. Radiation source that poses sufficient radiological hazard to warrant

regulatory control are those that are not under regulatory control because they have never been so, or because they have been abandoned, lost, misplaced, stolen, or otherwise transferred without proper authorisation.

- 2.2.4 The IAEA best practices recommend that national nuclear law should contain provisions to deal with unregulated sources. To enable and empower the Regulator to exercise regulatory oversight over radiation sources, the Bill proposes the deletion of section 2(2)(c) and the insertion of section 2(1)(d).
- 2.2.5 The proposed insertion of a new section 2(1)(d) and the deletion of section 2(2)(c) is intended to provide a legislative basis for the Regulator to regulate radiation sources.

Insertion of section 2(1)(e)

- 2.2.6 The South African National Defence Force has land, facilities, equipment, and machinery (“property”) that it uses for conducting its operations. Some of property get exposed to radiation contamination during their usage. When the South African National Defence Force releases this property from military use to civilian use, such property has been found to be radioactively contaminated whilst used for civilian purposes.
- 2.2.7 The existing regulatory gap is that the Regulator does not exercise regulatory oversight to provide nuclear safety assurance that property designated for release by the South African National Defence Force is properly decontaminated, including remediation or rehabilitation of land, and safe for civilian use.
- 2.2.8 The proposed insertion of a new section 2(1)(e) is intended to empower the Regulator to exercise regulatory oversight to provide nuclear safety assurance that property of the South African National Defence Force designated to be released for civilian will not cause radiation harm.

Insertion of section 2(1)(f)

- 2.2.9 The Regulator is mandated in terms of the Act as the sole regulator for the protection of persons, property and the environment against radiation hazards. In 2014 the IAEA published the *General Safety Requirements Part 3: Radiation Protection and Safety of Radiation Sources: International Basic Standards* (the IAEA standard). This IAEA standard recommends that national authorities regulate radiation doses received by aircrew through the establishment of a framework and methodology for assessment and recording doses received. The IAEA standard states that “*Radiation doses received by frequent flyers and couriers are excluded from the requirements in that they are considered not to be amenable to control.*”
- 2.2.10 Currently in South Africa, the exposure of aircrew on flights operating above 49 000 is being regulated under the Civil Aviation Act, 2009 (Act No. 13 of 2009) regime in line with the International Civil Aviation Organisation (ICAO) guidelines, whilst for flights operating below 49 000 feet the occupational exposure to cosmic radiation of aircrew remains unregulated. The amendments to the Act, among other things, intend to enable the Regulator to wholistically regulate occupational exposure of aircrew to cosmic radiation.
- 2.2.11 This is limited to aircrew as it is common practice in international regulatory space that an activity that will not be practically possible for

a regulatory body to regulate, monitor and enforce non-compliance with is considered not to be amenable to regulatory control.

- 2.2.12 The proposed insertion of a new section 2(1)(f) is intended to empower the Regulator to exercise regulatory oversight over occupational exposure of aircrew to cosmic radiation flying below 49 000 feet.

Deletion of section 2(2)(c)

- 2.2.13 In light of the insertion of section 2(1)(d) which enables the Regulator to exercise regulatory oversight over radiation sources, the proposed deletion of section 2(2)(c) is intended to provide certainty that the Regulator has powers to regulate radiation sources.

Insertion of new section 2(2)(e)

- 2.2.14 The South African Government and the South African National Defence Force occasionally, through the Defence Act, 2002 (Act No. 42 of 2002) and diplomatic channels, invites foreign military countries to visit South Africa for various reasons. When such countries' naval forces visit, the provisions of section 2(1)(b) of the Act, which applies to "*vessels propelled by nuclear power or having radio-active material on board which is capable of causing nuclear damage*", read together with section 20(2) which reads that "*no vessel which is propelled by nuclear power or which has on board any radio-active material capable of causing nuclear damage may anchor or sojourn in the territorial waters of the Republic; or enter any port of the Republic, except under the authority of a nuclear vessel licence*", requires that such naval vessels must apply for and obtain a nuclear vessel license from the Regulator before they can come into the territorial waters of South Africa.
- 2.2.15 The application processes for a nuclear vessel licence requires publication of the details of the vessel and that the Regulators' inspectors must conduct inspections of the vessel. Due to the secrecy associated with military operations and the impossibility of foreign forces disclosing details of the naval vessels, it has practically proven to be impossible for the Regulator to implement and enforce the provisions of section 20(2) over foreign naval vessels.
- 2.2.16 The proposed insertion of a new section 2(2)(e) is intended to exclude the application of the Act to naval vessels of a foreign state that are visiting South Africa.

Insertion of new section 2(2)(f)

- 2.2.17 The IAEA best practices recommends that the national nuclear law should empower a nuclear regulatory body to exercise regulatory powers over the nuclear safety, security, and safeguards in a single law. The Act expressly provides for nuclear safety aspects only.
- 2.2.18 South Africa's legislative framework provides for nuclear security and safeguards aspects under the Nuclear Energy Act, 1999 (Act No. 46 of 1999) (hereinafter referred to as the "Nuclear Energy Act") and make the Minister of Mineral Resources and Energy ("the Minister") the regulatory authority over these aspects. However, the Regulator exercises safety regulation oversight over the nuclear security and safeguards aspects.
- 2.2.19 This exercise of safety regulation over nuclear security and safeguards aspects by the Regulator has resulted in occasions where there is confusion as to the precise role of the Regulator with regards to the application of the provisions of the Nuclear Energy Act, which

bestows upon the Minister certain regulatory powers over nuclear security and safeguards matters. Despite the IAEA's recommendations, the South African government's approach was to separate the safety regulation aspects from the nuclear security and safeguards aspects with the Regulator exercising nuclear safety assurance over all these aspects.

- 2.2.20 The administration of all other aspects of nuclear security and safeguards remain under the authority of the Minister under the Nuclear Energy Act. The Act is silent on this distinction, and this has resulted in misinterpretations wherein the Regulator has been viewed as having the powers to exercise authority over matters that are the preserve of the Minister under the Nuclear Energy Act. Even though some of the proposed amendment in this Bill contains insertions of "security", clarity in this regard is required to be provided that such "security" is limited to the safety aspects thereof and not the administration of nuclear security activities falling under the Nuclear Energy Act.
- 2.2.21 The proposed insertion of a new section 2(2)(f) is intended to exclude the application of the Act to nuclear security matters that are covered by sections 33, 34 and 35 of the Nuclear Energy Act.

Amendment of section 2(3)

- 2.2.22 The current section 2(3) of the Act provides the Minister with a discretion to make a declaration of what could constitute a nuclear facility after consultation with the Regulator. This means that the Minister may do so without the agreement of the Regulator.
- 2.2.23 It has been recognised that the Regulator, due to its functions under section 7(1)(g) to "*advise the Minister on matters associated with any action or condition which is capable of causing nuclear damage; the Minister refers to the Regulator; or the Regulator thinks necessary to advise the Minister on*", and its technical competencies, is best placed to advise the Minister as to which facilities and under what conditions can such facilities be considered nuclear facilities. It is proposed that the Regulator should make recommendations to the Minister on which facilities may be declared nuclear facilities.
- 2.2.24 The proposed amendment to section 2(3) is intended to empower the Regulator to recommend to the Minister actions to be taken.
- 2.3 **Clause 3** seeks to amend section 3 of the Act that provide for the establishment of the National Nuclear Regulator. The proposed insertion of a new section 3(2) is intended to state the current position as carried out in practice. The Regulator has been operating and reporting on its activities as a Schedule 3A entity under the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999) ("Public Finance Management Act") since its establishment.
- 2.4. **Clause 4** seeks to amend section 5 of the Act that provide for the objects of the Regulator. The lack of alignment of the Act with developments in the nuclear safety regulated environment has rendered the Regulator unable to exercise its regulatory oversight efficiently and effectively. The proposed amendments and insertions to section 5 are intended to empower and strengthen the Regulator to undertake its mandate efficiently and effectively.
- 2.5 **Clause 5** seeks to amend section 6 of the Act that provide for co-operative governance. The proposed amendment is intended to include radiation hazards. All organs of state, in terms of which functions in respect of the monitoring and control of radio-active material or exposure to ionising

radiation are given, must cooperate with one another to ensure the effective monitoring and control of radiation hazards in addition to nuclear hazards.

- 2.6 **Clause 6** seeks to amend section 7 of the Act that provide for the functions of the Regulator. In consideration of the objectives to empower and strengthen the Regulator to undertake its mandate efficiently and effectively, and in ensuring that the Act implements IAEA best practices, the proposed amendment to section 7 expands the administrative tools which the Regulator may use in the management of authorisations, strengthens the powers of the Regulator by extending the statutory functions of the Regulator and aligns the functions of the Regulator in terms of its obligations under the Public Finance Management Act.
- 2.7 **Clause 7** seeks to amend section 8 of the Act that provide for the control and management of the affairs of the Regulator. The challenges experienced by the Regulator in the implementation of its mandate has been impacted by the period of appointment of a member of the board which is three years. This has been considered to be a limited period for the implementation of the strategy of the Regulator. In line with the prevailing practices the period of appointment of members of the board is generally for a five-year period. Recent developments have been that Chief Financial Officers of entities are included in the membership of board of Directors and legislation provides for the suitability of members appointed to the board. The current Act does not cater for these developments. The proposed amendments are intended to align the current Act with these practices. Subsection (14) provide for transitional arrangements and the action has now been fulfilled and this subsection is now redundant.
- 2.8 **Clause 8** seeks to amend section 9 of the Act that provide for the vacation of office of board members. The heading is amended to substitute the words “of board members” with “by director” since the content of this section refers to only the director.
- 2.9 **Clause 9** seeks to amend section 12 of the Act that provide for the committees of the board. This is a consequential amendment to align the Bill with current terminology i.e. authorisation holder.
- 2.10 **Clause 10** seeks to amend section 14 of the Act that provide for delegation and assignment by the board. The proposed amendment to section 14(1) provides for the delegation or assignment of powers or duties to also be made to include a director or the chief executive officer.
- 2.11 **Clause 11** seeks to amend section 15 of the Act that provide for the chief executive officer of the Regulator. The proposed amendments are intended to clarify the process for the nomination, appointment and removal of the chief executive officer and align period of appointment with that of the board. Section 15(5) is a transitional provision and is redundant therefore it is deleted. Section 15(6)(c) is deleted because in terms of sections 7(1)(a) and 8(3) the authority to grant or amend nuclear authorisation vests with the board and it is important to remove any confusion about where this authority vest. The proposed amendment to sections 15(6)(d) and 15(9)(a) are consequential amendments as a result of the Regulator being subject to the Public Finance Management Act and the repeal of the Reporting by Public Entities Act, 1992.
- The proposed amendment to section 15(10) is a consequential amendment since the Act refers to staff of the Regulator and to ensure the consistent use of terminology and remove reference to the term “employees”.
- 2.12 **Clause 12** seeks to amend section 16 of the Act that provide for matters relating to the staff of the Regulator. The Bill proposes the deletion of section 16(3), (4) and (6) as these subsections are considered redundant since these provisions were transitional matters that have been fulfilled.

- 2.13 **Clause 13** seeks to amend section 17 of the Act that provide for the funds of the Regulator. The proposed amendment to section 17(1)(b) is intended to increase the scope of financial sources for the Regulator.

The proposed deletion of section 17(7) is intended to eliminate duplication since financial reporting is regulated under the Public Finance Management Act.

- 2.14 **Clause 14** seeks to amend section 18 of the Act that provides for the financial year of the Regulator. This is a consequential amendment which aligns the financial year with the Public Finance Management Act.
- 2.15 **Clause 15** seeks to amend the heading of Chapter 3 to “Authorisations” as this is a consequential amendment.
- 2.16 **Clause 16** seeks to amend section 20 of the Act that provides for restrictions on certain actions. In empowering and strengthening the Regulator to undertake its mandate efficiently and effectively, the activities over which the Regulator has to exercise regulatory control over have been expanded and thereby providing clarity with regards to the scope and extent of application of the Act. The proposed amendment to section 20 expands the scope of activities which cannot be undertaken without obtaining authorisation from the Regulator.
- 2.17 **Clause 17** seeks to amend section 21 of the Act that provides for application for nuclear installation or vessel licence. The proposed amendments to sections 21 are intended to define and clarify the processes to be adhered to when applying for an authorisation from the Regulator. The amendments also include consequential amendments to align the terminology.
- 2.18 **Clause 18** seeks to amend section 22 of the Act that provides for application for a certificate of registration or exemption for certain actions. The term “actions” has been substituted with “activities” throughout the Bill. These amendments are mostly consequential amendments. The insertion of subsection (4) gives the chief executive officer the power to conduct and examination of the applicant and the insertion of subsection (5) provide for the time period of validity for an authorisation and that such authorisation may be renewed.
- 2.19 **Clause 19** seeks to amend section 23 of the Act that provides for conditions relating to nuclear installation licence, nuclear vessel licence or certificate of registration and are consequential amendments.
- 2.20 **Clause 20** seeks to amend section 24 of the Act that provides for special conditions relating to nuclear vessel licence and are consequential amendments.
- 2.21 **Clause 21** seeks to amend section 25 of the Act that provides for prohibition on transfer of nuclear authorisations. The Act prohibits the transfer of a license. The proposed amendment is intended to enable the transfer of responsibility for an authorised activity subject to written approval from the chief executive officer.
- 2.22 **Clause 22** seeks to amend section 26 of the Act that provides for responsibilities of holders of nuclear authorisations. In line with IAEA best practices the proposed amendments are intended to extend and clarify the responsibilities of the holder of authorisation.
- 2.23 **Clause 23** seeks to insert section 26A that are intended to make provisions for authorisation holders to set aside financial resources for rehabilitation, remediation, or decommissioning activities in line with IAEA best practices.
- 2.24 **Clause 24** seeks to amend section 27 of the Act that provide for revocation and surrender of nuclear authorisation. The proposed amendments are

intended to clarify circumstances under which an authorisation may be suspended, modified, revoked or surrendered.

- 2.25 **Clause 25** seeks to amend section 28 of the Act that provides for fees for nuclear authorisation. The amendments are mainly consequential save for the insertion of paragraph (c) which includes any work the Regulator may be required to undertake.
- 2.26 **Clause 26** seeks to amend section 29 of the Act that provides for financial security by a holder of nuclear installation licence and are consequential amendments.
- 2.27 **Clause 27** seeks to amend section 30 of the Act that provides for strict liability of a holder of nuclear installation licence for nuclear damage and are mostly consequential amendments save for the insertion of subsection (3) which provides for when the liability will end.
- 2.28 **Clause 28** seeks to amend section 32 of the Act that provides for liability of a holder of a certificate of registration for nuclear damage and are consequential amendments.
- 2.29 **Clause 29** seeks to amend section 33 of the Act that provides for claims for compensation in excess of maximum liability and are consequential amendments.
- 2.30 **Clause 30** seeks to amend section 34 of the Act that provides for prescription of actions. The proposed insertion of subsection (4) is intended to ensure that the effects of nuclear damage that becomes evident after the expiration of the prescribed period or after the claims have been lodged but compensation has not been determined by the court are provided for. This is in consideration of the fact that effects of nuclear damage may become evident after a prolonged period after exposure. The remainder of the amendments are consequential amendments.
- 2.31 **Clause 31** seeks to amend section 35 of the Act that provides for compensation for injuries of Regulator's employees and are mainly consequential amendments to substitute "employees" with "staff".
- 2.32 **Clause 32** seeks to amend section 36 of the Act that provides for safety standards and regulatory practices. The proposed amendment is to introduce the concept of nuclear security. The heading of section 36 has been amended to cater for safety and related nuclear security standards.
- 2.33 **Clause 33** seeks to amend section 37 of the Act that provides for duties regarding nuclear accidents or incidents and are mainly consequential amendments. The proposed insertion of subsection (6) is intended to set out the responsibility of the Regulator during emergency situations. The remaining amendments are mainly consequential amendments.
- 2.34 **Clause 34** seeks to amend section 38 of the Act that provides for emergency planning. In line with IAEA best practice the term "emergency planning" is proposed to be replaced with the term "emergency preparedness and response". The proposed amendments to section 38 are intended to extend the role of the Regulator in emergency planning to emergency preparedness and response. The proposed insertions are intended to set out the factors to be taken into account for the preparations of emergency plan, coordination amongst the relevant organisations, the requirement to review the plan and keep it updated, requirements for on-site and off-site emergency plans, as well as the consideration of provisions in the Disaster Management Act, 2002 (Act No. 57 of 2002) as well as the respective roles of the Regulator and the Government of South Africa with respect to notification of accidents to the IAEA.

- 2.35 **Clause 35** seeks to amend section 39 of the Act that provides for record of nuclear installations and are consequential amendments.
- 2.36 **Clause 36** seeks to amend section 40 of the Act that provides for record of nuclear accidents and incidents and access thereto. The proposed amendments are intended to expand the regulatory scope of the Regulator to cater for radiation accidents and incidents and effect consequential amendments to the heading.
- 2.37 **Clause 37** seeks to amend section 41 of the Act that provides for appointment and powers of inspectors. These amendments are mostly consequential amendments intended to align the Bill with the new definitions in line with the amendments wherein concepts and definitions of “nuclear installation” “action” and “nuclear authorisation” have been substituted with the terms “nuclear facility”, “activity” and “authorisation”, respectively. The proposed insertions of subparagraphs(4) (e) (iii); (iv) and subparagraphs 4 (f) (iv); (v) and subsection (6), respectively, are intended to provide clarity that the powers of inspector must cover prohibiting workers from being exposed, to ensure that radioactive material is safely and securely stored when an activity is suspended and provides for the validity of a decision of an inspector.
- 2.38 **Clause 38** seeks to repeal section 45 of the Act that provides for appeal to the Minister against the boards’ decision. The proposed deletion of section 45 is intended to remove the Minister from the internal appeal processes of the Regulator.
- 2.39 **Clause 39** seeks to amend section 46 that provides for appeals to the High Court against the Ministers’ decision. The proposed amendment to section 46 is to align this section with the amendments made to section 45 and increase the appeal period to 180 days. The proposed amendments are intended to outline the processes to be adhered to when lodging an appeal against the decision of the board. The heading has been amended to provide for appeals against the board’s decision and notice to the Minister. Further, the insertion of subsection (4) is introduced to ensure that the Minister is informed of any appeals against the board or the chief executive officer’s decisions.
- 2.40 **Clause 40** seeks to amend section 47 of the Act that provides for Regulations. Subsections (5) and (6) are inserted to prescribe how to issue, manage and schedule administrative fines to be imposed by the Regulator to licence holders. The current provisions of the Act in section 52 provides only for criminalisation for non-compliances with the Act. This position is an outdated position that does not align with IAEA international best practices which recommends that national nuclear legislation should empower the Regulator to have powers to enforce a system of administrative fines in addition to criminalising certain aspects of non-compliances with the provisions of the national nuclear law. In line with best practices, the Regulator implements a graded approach system which informs it as to the severity of non-compliances to be able to determine non-compliances which require administrative sanctions from those that require the strongest form of sanction in the form of attracting criminalisation. The Bill proposes the introduction of a new section 47(5) to enable the Minister to prescribe, on the recommendation of the Board and in consultation with the Minister of Finance, a schedule of the types of administrative fines to be imposed by the Regulator and the form and manner that the Regulator manages and issues such administrative fines. The proposed insertion of section 47(5) is an amendment intended to empower the Regulator to recommend administrative fines to be imposed by the Regulator.
- 2.41 **Clause 41** seeks to amend section 48 of the Act that provides for delegations and assignment by Minister and are consequential amendments.
- 2.42 **Clause 42** seeks to amend section 49 of the Act that provides for disagreement between the Minister and the board. The Minister has the overall executive

responsibility of ensuring the implementation of the objectives of the Act. There have been occasions where certain provisions of the Act which provided for their implementation “in consultation” with other entities were not being able to be implemented because such other entities have refused to grant their agreement. Various Court decisions have also affirmed that where the legislative provisions require certain actions to be taken by the Regulator or Minister “in consultation” with some other entity and such entity has not provided their concurrence, the Regulator or Minister cannot implement those provisions of legislation. This has led to unintended consequences where the Regulator or Minister has been rendered unable to carry out their responsibilities in terms of legislation. Court judgments have affirmed that the meaning of “after consultation” in legislation implies that the Regulator or Minister may proceed to implement their action after consultations even though agreement was not reached, provided they can demonstrate that meaningful consultations took place.

The proposed amendment to section 49(2) is intended to empower the Minister to take a final decision after consultations with the necessary parties.

2.43 **Clause 43** seeks to amend section 51 of the Act that provides for disclosure of information and are mainly consequential amendments.

2.44 **Clause 44** seeks to amend section 52 of the Act that provides for offences and penalties. The amendments are mostly consequential amendments as a result of the inclusion of administrative fines.

2.45 **Clause 45** provides for the short title and commencement of the Act.

3. CONSULTATIONS

The amendments proposed by this Bill were published in the *Government Gazette* No. 44749 of 22 June 2021 for public comments. Comments by interested and affected parties were considered. A series of consultations was undertaken with industry and other key sector stakeholders. Accordingly, the general public and institutions at large have been consulted in preparing the Bill.

4. FINANCIAL IMPLICATIONS FOR THE STATE

There are no financial implications for the State.

5. PARLIAMENTARY PROCEDURE

5.1 The State law Adviser considered the tagging of the Bill after a careful consideration of the constitutional provisions and relevant case law. The tagging of ordinary Bills is dealt with in sections 75 and 76 of the Constitution. In the matter of *Tongoane and Others v National Minister for Agriculture and Land Affairs and Others 2010 (8) BCLR 741 (CC)* (the “Tongoane case”), the Constitutional Court determined the proper test for the tagging of the Communal Land Rights Bill (previously B67-2003, and now Act No. 11 of 2004) (“CLARA”), after the High Court held that, in classifying the CLARA for the purposes of “tagging”, Parliament had applied the incorrect test, namely, the “pith and substance” test, instead of the “substantial measure” test suggested by the Constitutional Court in the matter of *Ex parte the President: In re Constitutionality of the Liquor Bill 2000 (1) BCLR 1 (CC)* (the “Liquor Bill case”). The High Court, however, refused to declare the CLARA invalid for failure to enact it in accordance with the correct procedure.

- 5.2 The Constitutional Court concluded that there is a difference between determining whether the National Assembly or National Council of Provinces (“NCOP”) has the competence to legislate in a particular field, and determining how a Bill ought properly to be tagged and ultimately enacted. These are two different processes for which two different tests are to be applied. Ngcobo CJ reaffirmed the decision of the Constitutional Court in the Liquor Bill case, at paragraphs 63 to 64 that the statement: “ any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4”, formulates the test for determining the procedure to be followed in enacting a Bill. Ngcobo CJ further, at paragraph 58, states the following:

“What matters for the purposes of tagging is not the substance or the true purpose and effect of the Bill, rather, what matters is whether the provisions of the Bill “in substantial measure fall within a functional area listed in Schedule 4”.

- 5.3 This statement refers to the test to be adopted when tagging Bills. This test for classification or tagging is different from that used by this Court to characterise a Bill in order to determine legislative competence. This *“involves the determination of the subject-matter or the substance of the legislation, its essence, or true purpose and effect, that is, what the [legislation] is about”*. (Our emphasis.)
- 5.4 The Constitutional Court thus held that “the test for tagging must be informed by its purpose. Tagging is not concerned with determining the sphere of government that has the competence to legislate on a matter. Nor is the process concerned with preventing interference in the legislative competence of another sphere of government. The process is concerned with the question of how a Bill must be considered by the provinces and in the NCOP. The question of how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more it affects the interests, concerns and capacities of the provinces, the more say the provinces should have on its content.” Ngcobo CJ, at paragraphs 69 and 70, concisely dealt with the tagging question as follows:

“The tagging of Bills before Parliament must be informed by the need to ensure that provinces fully and effectively exercise their appropriate role in the process of considering national legislation that substantially affects them. Paying less attention to the provisions of a Bill once its substance, or purpose and effect, has been identified undermines the role that provinces should play in the enactment of national legislation affecting them.

60. To apply the “pith and substance” test to the tagging question, therefore undermines the constitutional role of the provinces in legislation in which they should have a meaningful say, and disregards the breadth of the legislative provisions that section 76(3) requires to be enacted in accordance with the section 76 procedure.” (Our emphasis.)

- 5.5 The Nuclear National Regulator is not specifically listed under either Schedule 4 or 5 of the Constitution. It must be noted that this Bill seeks to amend the Nuclear National Regulator Act and the Nuclear National Regulator is a national public entity therefore the proposed amendments relate to the functions of the public entity. The Bill must be tagged as a section 75 Bill. Furthermore, it does not contain any provisions that affect the provinces since it regulates the business of the public entity only.
- 5.6 We are further of the view that it is not necessary to refer the Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a)(i) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), as the Bill does not contain any provisions which directly affect traditional or Khoi-San communities or provisions which pertain to customary law or customs of traditional or Khoi-San communities.

