

52.4 Section 6(1)(b): change to read "... movable, immovable property and proprietary right; ....".

52.5 Section 8(1) and 8(1) (a): replace "member" with "director"

52.6 Section 13: Insert new subsection 13(5) and change present (5) to (6): "(5) Any pension, provident or preservation fund established by the Council for Nuclear Safety in terms of the provisions of the previous Act will be deemed to be a fund of the Regulator which is bound by the rules of such fund."

52.7 Section 27(1): add after (6) "and notwithstanding the provisions contained in any other rule of law" ..

52.8 Section 27(8): add at end of sentence "during his or her period of responsibility"

52.9 Section 27(9): add "unauthorised" after "that"

52.10 Section 27(10): replace "radioactivity" with "radioactive material"

52.11 Section 41(2) (a): add in front of sentence "be lodged"

52.12 Section 46(2)(a): add "nuclear" in front of "site" (twice)

## 53 CNS ANNOTATED COMMENTS NOT ACCEPTED

**53.1 Issue:** Section 1 The definition of "nuclear incident" is not required as all references thereto in the NNR Bill are adequately covered under the definition of "nuclear accident".

**DME position** Nuclear incident is required as can be seen from the definition which differs from that of a nuclear accident. A "nuclear incident" indicates a lower level of occurrence which is needed to indicate when things are starting to go wrong ~ an "accident" occurs.

**Proposal.** No amendment

**53.2 Issue:** Decontamination should not be singled out as a specific activity as it constitutes an integral part of the operation of the decommissioning process.

**DME position:** Decontamination is not necessarily done only as a routine operation or during decommissioning. After an accidental spill decontamination will be required for which special safety submission to the regulator may be required prior to work. Decontamination should therefore be specifically specified.

**Proposal:** No amendment.

13  
**53.3 Issue:** The term "human activity" could lead to ambiguities regarding certain activities which may be performed mechanically.

**DME position:** Even mechanical activities are overseen by human operators in nuclear installations. DME considers "human activity" appropriate and see no justification for removing it.

**Proposal:** No amendment.

**53.4 Issue:** Section 7(2) Appointment of a DME representative on the Board should be deleted.

**DME position:** It would be advantageous for the DME and the council to have a departmental representative on the Board

**Proposal:** No amendment.

**53.5 Issue:** Section 12(3) Term of office of the CEO should be five rather than 3 years

**DME position:** Three years gives better flexibility to the Minister and there is no limitation on the reappointment of the CEO.

**Proposal:** No amendment.

**53.6 Issue:** Section 14 and 25. License fees should be reserved for nuclear regulation and not appropriate from the state revenue fund for any other purposes.

**DME position:** Paying of Licence fees into the coffers of the regulator could be considered conflict of interest. Government policy in terms of the proposed Treasury Control Bill indicates that monies must be paid into the national revenue fund.

**Proposal:** No amendment.

**53.7 Issue:** Section 18. Nuclear authorisations should be categorised according to its particular risks rather than activities involved.

**DME position:** Argument not clear. Section 17 clearly indicates the categories for authorisation which are based on risk.

**Proposal:** No amendments.

**53.8 Issue:** Section 25(1) Tariff of fees is considered more appropriate rather than fees.

**DME position:** No justification is given for this it may not be appropriate depending

on how the Minister determines fees payable.

**Proposal :** No amendment.

**53.9 Issue:** Section 26. Financial security should not be limited to nuclear installations and vessels but also to certificate of registration.

**DME position:** This arrangement is part of differentiation between different nuclear authorisations on a risk basis. Nuclear installations could potentially have catastrophic accidents with major financial implications requiring special financial security arrangements as opposed to activities for which certificates of registration are issued.

**Proposal:** No amendment.

**53.10 Issue:** Section 27(5) SLA to comment - seems like the same wording.

53.11 Issue: Section 44 Schedule 1 being considered by SLA.

## NUCLEAR ENERGY BILL ISSUES

(AEC)

**1 Issue:** Delegation by the Minister with regard to various responsibilities presently executed by the AEC in terms of the Nuclear Energy Act and which could also affect commercial matters. Various sections affected are 13(2)(e); 13(3); 13(l)(a)(i); 13(1)(q); 14; 26(3); 34; 45; 46. Various existing powers should be delegated to the AEC board of Directors before the new Bill is enacted or alternatively a specific transition period should be specified to allow for the phasing in of responsibilities.(+BSA)

**DME position:** The Bill should make provision for delegation by the Minister to the Corporation. It is agreed that operational arrangements should be put in place for the transitional period. However, this should not be specified in the Bill.

**Proposal:** Section 55 to be amended by the insertion of a new subsection (2) to read: "(2) The Minister may delegate any institutional obligation to the Corporation or any statutory, or other, body which has the capacity to fulfil the Republic's responsibilities with regard thereto, on its behalf". Subsections (2), (3) and (4) to be renumbered.

**2 Issue:** The Bill does not clearly provide for the separation of the AEC into two separate and independent organisations (commercial and institutional) (DACTS) (+BSA).

**DME position:** The Energy Policy White Paper agrees with this but states that "Government will consider the proposals that the AEC be restructured in such a way



that it is divided into two separate and independent organisations, one dealing with commercial activities and the other dealing with institutional responsibilities on behalf of the state". The matter must therefore still be investigated. The SLA has also advised that further legislation may be necessary to achieve these objectives. However, certain amendments can be made to address the issue and empower the corporation to spin off commercial activities.

**Proposal:** The following amendments should be made:

Section 12 should be amended to read as follows:

"(a) to undertake and promote research and development in the field of nuclear energy and radiation sciences and technology, and, subject to the Safeguards agreement, to make these generally available;

(b) to process source material, special nuclear material and restricted material and to reprocess and enrich source material and nuclear material;

(c) to co-operate with any person or institution in matters falling within these functions, subject to the approval of the Minister"

Section 13(1) (a) (i): "subsidiary" should be deleted

Section 13(2) should be amended to read: "In order to create and utilise viable business opportunities in commerce and industry, the Corporation, subject to approval by the Minister, may establish separate companies in order to-

**3 Issue:** The current auditing procedure of externally audited financial reports being submitted to the Auditor-General should be retained. The Auditor-General's office does not carry out a formal audit of the AEC at present.

**DME position:** Section 26(4) makes provision for the reporting by Public Entities Act and 26(3) should therefore be deleted.

**Proposal:** Section 26(3) should be deleted.

**4 Issue:** The Bill should make provision for the Minister to appoint an agency responsible for safeguards.

**DME position:** Addressed in paragraph 1 above, whereby the Minister may delegate.

**Proposal:** The amendment of Section 55 as proposed in paragraph 1 to be supported.

(Eskom)

**5 Issue:** Possible conflict with Council for Non-Proliferation of Weapons of

## Mass Destruction.

**DME position:** DME consulted with the Department of Trade and Industry and the Council for Non-Proliferation of Weapons of Mass Destruction.

**Proposal:** The following amendments should be made:

- The inclusion of definition: "proliferation means the proliferation of weapons of mass destruction"
- Add Section 33(2)(e) to read "The Minister must consult with the South African Council for the Non-Proliferation of Weapons of Mass Destruction on any decision taken under Subsection (1) that may have a proliferation implication."
- Section 34: Include between "Minister" and "may" in 34 (2) (a): " , having consulted with the South African Council for the Non-Proliferation of Weapons of Mass Destruction on any issues that may have a proliferation implication
- Section 35: Include between "having" and "duly" in 35 (2): " consulted with the South African Council for the Non-Proliferation of Weapons of Mass Destruction on any issues that may have a proliferation implication and

**6 Issue:** Possible conflict between clause 33(1) of the NE Bill and section 5 of the NonProliferation of Weapons of Mass Destruction Act 87 of 1993.

The SLA has prepared the following amendments to address the inconsistencies:

### NEW CLAUSE

1. That the following be a new clause:

Amendment of 87 Act of 1993

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

### NEW SCHEDULE

- 1 That the following be a new schedule:

### SCHEDULE.

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

(Section 50)

Amendment of section 1 of Act 87 of 1993.

1. Section 1 of the Non-Proliferation of Weapons of Mass Destruction Act is hereby amended by -

- (a) deletion of the definition of 'Atomic Energy Corporation' and
- (b) the insertion after the definition of 'sample' of the following definition:  
"South African Nuclear Energy Corporation" means the South African Nuclear Energy Corporation, Limited, established by section 3 of the Nuclear Energy Act, 1999."

Amendment of section 4 of Act 87 of 1993.

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

Substitution of section 5 of Act 87 of 1993.

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

"5 Objects of Council.

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

**Substitution for "Minister of State Expenditure" in Act 87 of 1993.**

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

7 **Issue:** Section 33: Safeguards are vested in the Minister, which could be considered a conflict of interest and should therefore be delegated.

**DME position:** The amendment proposed in paragraph 1 for Section 55 provides for Ministerial delegation of this activity.

**Proposal:** Amendment of Section 55 to be supported (see paragraph 1).

**8** **Issue:** Sections 33-43 on nuclear non-proliferation: It is essential that a more efficient process be established to issue Ministerial Authorisations timeously. The Minister should delegate this function properly to effect this. (+BSA; NUFCOR).

**DME position:** DME accepts the critique which is an operational problem and which should not be specifically addressed in the Bill. Whilst the present legislation does not allow Ministerial delegation the new Bill makes provision to address this problem Section 55).

**Proposal:** Amendment of Section 55 to be supported (see paragraph 1).

**9** **Issue:** "There are elements in section 34 which do not have a safeguards context, e.g. low level radioactive waste" and this section should be limited to the purposes contemplated under section 33.

**DME position:** There appears to be a misinterpretation. Section 34 does not refer to low level waste. The elements in section 34 are all in the context of safeguards as indicated by the heading, e.g. "nuclear material, restricted material, and nuclear-related equipment and material" as defined.

**Proposal:** No amendment.

**10** **Issue:** Eskom proposed that the Minister mandates Eskom to investigate and develop a spent fuel disposal facility and to fund the project.

**DME position:** DME agrees with the sentiments expressed by some members of the PPC that this would be a conflict of interest. However, DMF considers Eskom to be a main party in investigations to spent fuel disposal and funding thereof.

**Proposal:** No amendment.

**11** **Issue:** Regulations issued by the Minister in terms of Sections 45 and 54 should be subject to public comment before final establishment.

**DME position:** This proposal is consistent with the objective of transparency and is supported by DME.

**Proposal:** Section 45 should be amended by adding the following additional wording as subsection (4):

"(4) before regulations contemplated in subsection (2) are finally established, the Minister must -

- (a) by notice in the *Gazette*, invite the public to comment on the proposed regulations; and
- (b) consider that comment in consultation with the Minister of Environmental



Affairs and Tourism and the Minister of Water Affairs and Forestry, before final establishment."

Section 54 should be amended with the additional wording as follows:

"(4) before regulations contemplated in subsection (1) are finally established, the Minister must -

- (c) by notice in the *Gazette*, invite the public to comment on the proposed regulations; and
- (d) consider that comment before final establishment."

**(EA)**

**12 Issue:** Section 19 on minutes of board: Provision should be made for minutes to be made public.

**DME position:** The right of access to information is under consideration by the SLA with regard to the implications of the new right of access to information, which will take effect on 4/3/2000.

**Proposal:** Consider SLA position.

**2 Issue:** "Funding for the corporation should be made available to the public, and that the Corporation must make its books available for public scrutiny" and "financial statements, annual; reports, audited reports regarding business must be made available to the public on request"

**DME position:** The AEC issues an annual financial public report as required by Section 26, in terms of the Reporting by Public Entities Act.

**Proposal:** No amendment.

**3 Issue:** "Section 29 entrenches the secrecy that has prevailed ..... must allow for public access to information regarding activities..

**DME position:** Section 29 appropriately makes provision for physical security which is standard practice at a nuclear site.

**Proposal:** No amendment.

**4 Issue:** Section 32 should make provision for penalties should the Corporation fail to perform any function.

**DME position:** Subsection (4) makes provision for the Minister to recover costs. This is considered adequate penalty. Clearly the Minister will have to consider other steps to rectify failures to perform any functions imposed. Such steps should however not be specified in the Bill.

**Proposal:** No amendment.

**5 Issue:** Section 34(s): The provision should not exclude irradiated fuel when external to the spent fuel pool.

**DME position:** Storage of irradiated fuel in the spent fuel pool is a regular routine operation for Koeberg and SAFARI reactors and it should not be necessary to obtain the Minister's authorisation each time, especially as the Minister has already given authorisation to possess the nuclear fuel in terms of 34(b) (iv).

**Proposal:** No amendment

**6 Issue:** Section 42(2): Substitution clause 2(b) (i) should not be limited to the "security of the Republic" but should also make provision for "materials that will be harmful or endanger the safety, health and wellbeing of any citizens of the Republic" and similar for Sections 42(3) and 42(4).

**DME position:** The purpose of this section relates to nuclear weapons non-proliferation and not the safety of persons. The safety of persons is addressed by the Nuclear Regulator Bill.

**Proposal:** No amendment

**7 Issue:** The proposed legislation did not cover other sources of radiation such as radiation from cellphones, computers or power lines.

**DME position:** Electronic product radiation (as defined) is regulated by the Department of Health in terms of the Hazardous Substances Act.

**Proposal:** No amendment.

(INE)

**8 Issue:** The definition of radioactive material should be amended to reflect quantitative and qualitative aspects.

**DME position:** As all materials contain radioactivity it would be incorrect to apply quantitative or qualitative values to the definition of "radioactive material".

**Proposal:** No amendment.

**9 Issue:** Definition (xxxii): Restricted materials beryllium and zirconium are used in industry and quantitative and qualitative values should be specified.

**DME position:** Beryllium and zirconium are restricted materials "for purposes of this Act" as given in 2(a). There is therefore no conflict if these materials are used in industry in applications falling outside the Nuclear Energy Bill.

**Proposal:** No amendment

**FINAL OUTSTANDING ISSUES TO BE DISCUSSED REGARDING THE NATIONAL NUCLEAR REGULATOR BILL FOR THE PARLIAMENTARY PORTFOLIO COMMITTEE ON MINERALS AND ENERGY ON 3 MARCH 1999**

**1. Section 1.**

Include new definition as follows:

"organ of state" means an organ of state as defined in the Constitution.

**2. Subsection 2(2)(h) and the Schedule 1 to the Act**

In Subsection 2(2)(b) delete reference to Schedule 1 and add "standards as contemplated in section 32".

**3. New Section 6.**

Add a new section 6 as follows.

**5. Co-operative Governance**

(1) All organs of state with responsibility for the monitoring and control of radioactive material or exposure to ionising radiation must co-operate with one another in order to:

- (a) ensure the effective monitoring and control of the nuclear hazard
- (b) co-ordinate their functions and activities
- (c) minimise the duplication of procedures and functions
- (d) promote consistency in the exercise of their functions
- (e) give effect to the principle of co-operative government in Chapter 3 of the Constitution.

(2) The Regulator must establish in consultation with the relevant organ of state mechanisms and procedures to give effect to the co-operation referred to in subsection

(1).

**4 Amendment of 7(5)(f)[par 2, p3]**

"7(5)(f) a holder of a nuclear authorisation or an employee of the holder of a nuclear authorisation other than an employee appointed by the Minister in terms of sub-section (4)(f)."

"7(4)(f) one representative nominated by organised labour in the nuclear industry appointed by the Minister [par 30, p11]

Wording to be finalised by SLA.

**5. Transparent process of appointing Board Members and the separation of Chairperson and CEO roles.**

**CLAUSE 7**

7(4) The board consists of-

- (a) a chairperson appointed by the Minister;
- (b) a deputy chairperson appointed by the Minister;
- (c) not more than five suitably qualified directors appointed by the Minister;
- (d) an official of the Department of Minerals and Energy appointed by the Minister;
- (e) one representative from affected communities appointed by the Minister;
- (f) one representative nominated by organised labour in the nuclear industry appointed by the Minister; and
- (g) the chief executive officer, by virtue of his or her office.

**(4A)**

- (a) For the purposes of appointing the directors of the Board referred to in subsection (4), the Minister must appoint a panel which must compile a shortlist of candidates.
- (b) The panel must compile the shortlist after following a transparent and competitive nomination process.
- (c) The directors of the Board referred to in subsection (4) must be appointed by the Minister after consultation with the relevant committee of the National Assembly and after consideration of the shortlist of candidates.

(4) A person is disqualified from being appointed or remaining a director if he or she

is-

- (a) Not a South African citizen;
- (b) Declared insolvent;
- (c) Convicted of an offence and sentenced to imprisonment without the option of fine;
- (d) Nominated .....
- (e) Designated ..... ; or
- (f) a holder of a nuclear authorisation or an employee of the holder of a nuclear authorisation other than an employee appointed by the Minister in terms of subsection (4)(f).
- (g) chief executive officer, by virtue of his or her office, who may not be appointed as chairperson or deputy chairperson.

**6 Section 6(j) Format of public annual report**

Amend section 6(j) to read: "produce and submit to the Minister an annual public report in the form prescribed, which the Minister must table in Parliament, on the health and safety related to the workers, the public and the environment associated with all nuclear sites."

**7. New Section 35 Whistle-Blowers**

**Insert Section 35 New.**

**"Representations in connection with Nuclear Authorisations**

Notwithstanding the provisions of any other law, no person is civilly or criminally liable or may be dismissed, disciplined, prejudiced or harassed on account of having disclosed any information, if the person in good faith reasonably believed at the time

of the disclosure that he or she was disclosing evidence of any contravention of this Act and the disclosure was made to the Regulator or Minister."

**8. Include new definition of "human activity"**

(ix) Human activity means any activity involving the possession, storage or disposal of radioactive material, or any activity performed by a human being or mechanical operation initiated by a human being.

**9. Amend Section 2(2)(b) to read:**

"Any activity involving occupational exposure to naturally occurring radioactive materials where the radioactivity concentration of individual radioactive nuclides do not exceed the standards contemplated in section 32."

**10. Section 23(4)**

Public Information

Add new sub-section 23(4) to read as follows: "The holder of a nuclear installation license must establish a Public Safety Information Forum as prescribed in order to inform the public living in the vicinity of the nuclear site."

**11. Section 26.**

**Issue:** Financial security should not be limited to nuclear installations and vessels but also to certificate of registration. CNS considers that financial security should be provided for certificates of registration even if there are no possibility for catastrophic accidents and to provide for financial security if a person may claim damages up to 30 years after possible exposure.

**DME position:** This arrangement is part of differentiation between different nuclear authorisations on a risk basis. Nuclear installations could potentially have catastrophic accidents with major financial implications requiring special financial security arrangements as opposed to activities for which certificates of registration are issued. This is a very complicated matter which must be further investigated in the longer term. The 4 categories of a nuclear authorisation makes provision for a risk-based tiered system.

**Proposal:** No amendment.

**12. Section 27(1)**

To be amended to read as follows: add after (6) 'and notwithstanding the provisions contained in any other Act or rule of law

**13. Section 27(3)(b)**

Amend by adding at the end of the sentence the following: Where such material is a group 4 hazardous substance as defined in the Hazardous Substances Act (1973).

**14. Section 27(5)**

Revised subsection 27(5) as follows:

If any person entitled to a benefit in terms of this section would also be entitled to any benefit in respect of the same injury, disease or disablement in terms of the

compensation for Occupational Injuries and Diseases Act (Act No 130 of 1993). The amount of compensation payable by the holder of a nuclear installation license to that person must be determined in terms of that Act [entitlement to a benefit in terms of this act shall lapse]

**15. Section 31**

Delete sub-section (2) of this section as proposed by the CNS.

**16. Section 32**

**Proposal:** Amend 32(1) by the deletion of "based on and not more restrictive than" and subsections 32(1)(a) and (b).

Yaq. B. I. Sespi, Chief Executive Officer

08 February 2008

Bochollo Committee  
Representation to the National Constitutional Delegation

FAMILY AND COMMUNITY  
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