

REPUBLIC OF SOUTH AFRICA

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# NATIONAL RADIOACTIVE WASTE DISPOSAL INSTITUTE BILL

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*(As amended by the Portfolio Committee on Minerals and Energy, after consideration of  
the National Radioactive Waste Management Agency Bill (National Assembly))  
(The English text is the official text of the Bill)*

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(MINISTER OF MINERALS AND ENERGY)

[B 41B—2008]

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# BILL

**To provide for the establishment of a National Radioactive Waste Disposal Institute in order to manage radioactive waste disposal on a national basis; to provide for its functions and for the manner in which it is to be managed; to regulate its staff matters; and to provide for matters connected therewith.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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### CHAPTER 1

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#### INTERPRETATION

##### Definitions

1. In this Act, unless the context indicates otherwise—
- “**authorised waste disposal facility**” means permitted in writing under the National Nuclear Regulator Act, 1999 (Act No. 47 of 1999); 20
- “**board**” means the board of the Institute referred to in section 7(1);
- “**Chief Executive Officer**” means the person appointed as such in terms of section 16(1);
- “**closed radioactive waste disposal facility**” means the completion of all operations after the emplacement of radioactive waste in a disposal facility; 25
- “**Department**” means the Department of Minerals and Energy;
- “**director**” means a director of the board;
- “**Director-General**” means the Director-General of the Department;
- “**financial year**”, in relation to the Institute, means the period contemplated in section 20(3); 30
- “**Institute**” means the National Radioactive Waste Disposal Institute established by section 3;
- “**Minister**” means the Minister of Minerals and Energy;
- “**prescribed**” means prescribed by regulation;
- “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999); 35
- “**radioactive material**” means any substance consisting of, or containing, any radioactive nuclide, whether natural or artificial, including, but not limited to, radioactive waste;
- “**radioactive nuclide**” means any unstable atomic nucleus which decays spontaneously with the accompanying emission of ionising radiation; 40
- “**radioactive waste**” means any radioactive material destined to be disposed of as waste material, and “**nuclear waste**” has a similar meaning;
- “**radioactive waste disposal certificate**” means a certificate contemplated in section 23; 45
- “**South African Nuclear Energy Corporation**” means the Corporation established in terms of the Nuclear Energy Act, 1999 (Act No. 46 of 1999);
- “**specified date**” means the date contemplated in section 31;
- “**this Act**” includes any regulations made in terms of section 29;
- “**waste disposal facility**” means a facility for the acceptance, handling, storage, 50 treatment and disposal of radioactive waste.

## Application of Act

2. This Act applies to all radioactive waste in the Republic destined to be disposed of in an authorised waste disposal facility.

## CHAPTER 2

### NATIONAL RADIOACTIVE WASTE DISPOSAL INSTITUTE 5

#### Establishment of National Radioactive Waste Disposal Institute

3. A juristic person known as the National Radioactive Waste Disposal Institute is hereby established.

#### State's interest in Institute

4. The Institute is wholly owned by the State. 10

#### Functions of Institute

5. The Institute must—
- (a) perform any function that may be assigned to it by the Minister in terms of section 55(2) of the Nuclear Energy Act, 1999, (Act No. 46 of 1999), in relation to radioactive waste disposal; 15
  - (b) design and implement disposal solutions for all classes of radioactive waste;
  - (c) develop radioactive waste acceptance and disposal criteria in compliance with applicable regulatory health safety environmental requirements and any other technical and operational requirements;
  - (d) assess and inspect the acceptability of radioactive waste for disposal and issue radioactive waste disposal certificates; 20
  - (e) manage, operate and monitor operational radioactive waste disposal facilities, including related storage and predisposal management of radioactive waste at disposal sites;
  - (f) manage and monitor closed radioactive waste disposal facilities; 25
  - (g) investigate the need for any new radioactive waste disposal facilities and site, design and construct such new facilities as may be required;
  - (h) conduct research and develop plans for the long-term management of radioactive waste storage and disposal;
  - (i) maintain a national radioactive waste database and publish a report on the inventory and location of all radioactive waste in the Republic at a frequency determined by the board; 30
  - (j) manage the disposal of any ownerless radioactive waste on behalf of the State, including the development of radioactive waste management plans for such waste; 35
  - (k) assist generators of small quantities of radioactive waste in all technical aspects related to the disposal of such waste;
  - (l) implement any assignments or directives from the Minister regarding radioactive waste disposal;
  - (m) provide information on all aspects of radioactive waste disposal to the public in general, living in the vicinity of radioactive waste disposal facilities; 40
  - (n) co-operate with any person or institution on matters relating to the performance of any duty contemplated in this section falling within these functions; and
  - (o) perform any other function necessary to achieve the objects of this Act. 45

#### Powers of Institute

6. (1) Subject to the approval of the board and any applicable provisions of the Public Finance Management Act, the Institute may—
- (a) purchase or otherwise acquire immovable property and encumber or dispose of such property; 50
  - (b) purchase, erect or cause to be erected, any buildings, installations, or plants;

- (c) establish and manage facilities for collecting and disseminating information regarding activities falling within the scope of the Institute's functions and powers;
  - (d) utilise buildings or plants for the benefit of the Institute;
  - (e) purchase, hire or otherwise acquire, or hold movable property and let, pledge, encumber or dispose of such property of which it is the owner; 5
  - (f) hire services or let its own services or make them otherwise available;
  - (g) sell or in any other manner make available to any person, for use, any patent, licence, concession or right of manufacture or any other right conferring the power to use any information, expertise, process or technology which has been developed by the Institute and which is the Institute's property; 10
  - (h) co-operate with any educational, scientific or other institution or body with a view to such an institution or body providing instruction to or training of persons required by the Institute, and if considered necessary by the Institute, provide financial or other assistance to such an institution or body in connection with the instruction or training of those persons; 15
  - (i) award a bursary or loan to any suitable person for study in any scientific or technical field relevant to the Institute's activities; and
  - (j) acquire patents, licences, concessions, rights of manufacture or other similar rights conferring the power to use any technology, process, expertise or information and use, exercise, develop or grant licences in respect of such rights, concessions, technology, processes, expertise or information, or otherwise exploit it beneficially. 20
- (2) The Institute may, at the request or with the written permission of the Minister, undertake the development, transfer or exploitation of radioactive waste management technology on behalf of or in collaboration with any person or institution in or any government or administration of any other country or territory. 25
- (3) The Institute may, subject to approval by the board—
- (a) build, cause to be built, buy or hire dwelling houses, flats or buildings for occupation by the Institute's employees, and may sell or let such houses, flats or buildings to its employees or, if no longer reasonably required, alienate or let or otherwise dispose of such houses, flats or buildings; 30
  - (b) establish, erect, operate or carry on sports and recreational facilities, social clubs, social and health services, restaurants, hostels and study bursary schemes for the benefit of the Institute's employees, or any other similar undertakings or schemes. 35

### **Board of Institute**

7. (1) The Institute is governed and controlled, in accordance with this Act, by a board of directors.
- (2) The board consists of— 40
- (a) an official of the Department designated by the Minister;
  - (b) an official nominated by the Department of Environmental Affairs and Tourism and appointed by the Minister;
  - (c) an official nominated by the Department of Water Affairs and Forestry and appointed by the Minister; 45
  - (d) an official nominated by the Department of Health and appointed by the Minister;
  - (e) not more than five other directors;
  - (f) the Chief Executive Officer of the Institute; and
  - (g) the Chief Financial Officer of the Institute. 50
- (3) The board is responsible for the general management and control of the Institute, and must ensure that the functions of the Institute referred to in section 5 are carried out.
- (4) The board represents the Institute and all acts performed by the board are the acts of the Institute.
- (5) The Minister must, from among the directors of the board referred to in subsection (2)(e), appoint a chairperson and a deputy chairperson. 55
- (6) The directors contemplated in subsection (2)(e) are appointed by the Minister, on the basis of their qualifications and knowledge.
- (7) Before appointing the directors of the board referred to in subsection (2)(e) the Minister must— 60

- (a) through the media and by notice in the *Gazette*, invite nominations of suitable persons from members of the public as candidates for the relevant positions on the board;
- (b) appoint a panel to compile a shortlist of not more than 15 candidates from the persons so nominated in terms of paragraph (a). 5
- (8) The Minister may, for a director appointed in terms of subsection (2)(a), (b), (c) or (d), appoint a suitably qualified alternate director to act in that director's place during his or her absence.
- (9) If a director dies or vacates office, the Minister may, subject to subsection (8), appoint another person as a director, who serves for the unexpired portion of the predecessor's term of office. 10
- (10) If the board, in any particular case, fails to perform any function imposed on it in terms of this Act, the Minister may, in writing, order the board to perform such function.
- (11) The board must ensure that any order issued under subsection (10) is complied with. 15
- (12) If the board fails to comply with an order contemplated in subsection (10), the Minister may dissolve the board.
- (13) When the Minister dissolves the board in terms of subsection (12), the Minister may appoint an interim body for the continued governance and control of the affairs of the Institute, on such conditions as the Minister may determine, until a new board is appointed. 20
- (14) Within 30 days of appointment of a person as a director of the board, he or she must submit to the Minister and the board a written statement in which he or she declares whether or not she has any interest contemplated in subsection 16.
- (15) If any director of the board acquires or contemplates acquiring an interest which could possibly be an interest contemplated in subsection (16), he or she must immediately and in writing declare that fact to the Minister and the board. 25
- (16) A director of the board may not take part in the discussion of any matter before the board in which that director or his or her spouse, life partner, family member, business partner or associate or employer, other than the State, has a direct or indirect financial interest. 30

### **Disqualification from directorship**

- 8.** A person is disqualified from being appointed or remaining a director of the board if he or she—
- (a) is not a South African citizen; 35
- (b) is declared insolvent or is an unrehabilitated insolvent;
- (c) is or has been convicted of fraud, theft, forgery or uttering a forged document or any offence involving dishonesty and sentenced to imprisonment without the option of a fine;
- (d) becomes a member of Parliament, a provincial legislature, a Municipal Council, the Cabinet or the Executive Council of a province; and 40
- (e) is an employee of, or adviser to, any organisation that possesses or produces radioactive waste that may be disposed of by the Institute.

### **Term of office of directors of board**

- 9.** (1) The directors of the board hold office for a period specified in the letter of appointment, but not exceeding three years, and may be reappointed upon expiry of that term of office. 45
- (2) A director of the board may not serve more than two consecutive terms.

### **Removal from office and vacation of office of directors of board**

- 10.** (1) Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the Minister may remove a director of the board from office, if such director—
- (a) has repeatedly failed to perform his or her functions efficiently;
- (b) because of any physical or mental illness or disability, has become incapable of performing his or her functions efficiently; or
- (c) has been absent from three consecutive meetings of the board without the consent of the chairperson of the board, except on good cause shown; or 55
- (d) for misconduct.

- (2) A director of the board must vacate office when he or she—
- (a) is disqualified in terms of section 8;
  - (b) is removed from office in terms of subsection (1); or
  - (c) resigns as a director of the board.

### **Remuneration of directors and committee directors** 5

**11.** A director of the board, other than the chief executive officer or a person who is in the full-time employ of the State, is appointed on such terms and conditions, including those relating to the remuneration and allowances, as the Minister may determine with the concurrence with the Minister of Finance.

### **Meetings of board** 10

**12.** (1) The first meeting of the board is held at the time and place determined by the Minister, and thereafter meetings are held at such time and place as determined by the board.

(2) The chairperson or, in his or her absence, the deputy chairperson, may, at any time, call a special meeting of the board to be held at the time and place determined by the chairperson or the deputy chairperson. 15

(3) All directors of the board must be notified, in writing, of every meeting of the board.

(4) A majority of directors of the board forms a quorum at any meeting of the board.

(5) Subject to subsection (4), a decision of the majority of the directors present at a meeting of the board constitutes a decision of the board and, in the event of an equality of votes on any matter, the person presiding at such meeting has a casting vote in addition to a deliberative vote. 20

(6) No decision taken by the board or an act performed under its authority, is invalid merely by reason of— 25

(a) a vacancy on the board; or

(b) the fact that any person not entitled to do so, sat as a director at the time that such decision was taken, if that decision was taken or that act was authorised by the required majority of directors present at the meeting who were entitled to sit as directors. 30

(7) If the chairperson is for any reason unable to act, or the office of chairperson is vacant, the deputy chairperson must act as chairperson.

(8) If both the chairperson and the deputy chairperson are for any reason unable to act, or both the offices of chairperson and deputy chairperson are vacant, the board must designate any other director to act as chairperson. 35

### **Minutes of board meetings**

**13.** (1) The board must cause minutes of its meetings to be kept and must circulate copies of the minutes to its directors.

(2) Such minutes, when signed at a next meeting by the person who chairs that meeting, are, in the absence of proof of error therein, regarded as a true and correct record of the proceedings and are *prima facie* evidence of those proceedings before a court of law, tribunal or commission of inquiry. 40

### **Committees of board**

**14.** (1) The board may—

(a) establish such committees as it considers necessary, to assist it in the performance of its functions in terms of this Act; and 45

(b) appoint as members of any such committee persons, including directors of the board and staff of the Institute, as the board considers appropriate.

(2) Members of a committee who are not in the full-time employ of the Institute or other organs of state, are appointed on such terms and conditions, including those relating to the remuneration and allowances, as the Minister may determine with the concurrence of the Minister of Finance. 50

### Delegation and assignment by board

- 15.** (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 this Act, to its chairperson or a committee of the board.
- (2) The board is not divested of any power or relieved of any duty it so delegated or assigned. 5
- (3) A delegation or an assignment—
- (a) may be made subject to such conditions as may be determined by the board;
  - (b) may be given together with the power to subdelegate or further assign, subject to such conditions as may be determined by the board; 10
  - (c) must be communicated to the delegatee or assignee in writing.
- (4) The written communication in terms of subsection (3)(c)—
- (a) must contain full particulars of the matters being delegated or assigned and of the conditions determined in terms of subsection (3)(a); and
  - (b) if the power of subdelegation or further assignment is conferred, must state 15 that fact and any conditions determined in terms of subsection (3)(b).
- (5) The board may, by resolution—
- (a) amend or revoke a delegation or assignment made in terms of subsection (1);
  - (b) withdraw any decision, other than a decision which confers a right or entitlement on any third party, made by the delegatee or assignee with regard 20 to a delegated or assigned matter, and decide the matter itself.
- (6) The Minister may, by notice in the *Gazette*—
- (a) prohibit the delegation by the board of any particular power or its assignment of any particular duty, whether generally or in the circumstances specified in the notice; 25
  - (b) limit the circumstances in which any particular power or duty of the board may be delegated, subdelegated, assigned or further assigned;
  - (c) prescribe conditions for the delegation of any particular power or assignment of any particular duty.

### Chief Executive Officer of Institute 30

- 16.** (1) The Minister must, after consultation with the board, appoint a suitably qualified as chief executive officer of the Institute.
- (2) A person is disqualified from being appointed or remaining Chief Executive Officer if he or she is subject to any of the disqualifications mentioned in section 8.
- (3) A Chief Executive Officer holds office for a period not exceeding three years and 35 may be reappointed upon expiry of that term of office.
- (4) Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the Minister may at any time remove the Chief Executive Officer from office, if the Chief Executive Officer—
- (a) has repeatedly failed to perform the functions of office efficiently; 40
  - (b) because of any physical or mental illness or disability, has become incapable of performing the functions of that office efficiently; or
  - (c) is found guilty of misconduct or any offence involving dishonesty.
- (5) (a) Whenever, due to absence or for any other reason, the chief executive officer is temporarily unable to perform the functions of that office, or when that office is 45 vacant, the Board may designate a suitably qualified employee of the Institute to act as chief executive officer until the incumbent of that office resumes the functions of chief executive officer or, as the case may be, the vacancy is filled by the Minister through the appointment of a chief executive officer under subsection (1).
- (b) While so acting, the designated employee is competent to exercise, and perform 50 all, the functions of the chief executive officer in terms of this Act.

### Functions of Chief Executive Officer

- 17.** (1) The Chief Executive Officer is responsible for the day-to-day business of the Institute, subject to the directions or instructions, if any, that the board may issue from 55 time to time.
- (2) The Chief Executive Officer must—
- (a) ensure that the functions of the Institute in terms of this Act are performed;



(b) report to the board on the proper performance and functioning of the Institute;  
and

(c) compile a report on the activities of the Institute for each financial year in accordance with the Public Finance Management Act and submit the report to the board for approval. 5

(3) The board must forward the report referred to in subsection (2)(c), as approved by it, to the Minister within three months of the end of the financial year concerned.

(4) The board is the accounting officer of the Institute, charged with the responsibility of accounting for all money received, payments made and assets of the Institute.

(5) The Chief Executive Officer must exercise all the powers and perform all the duties conferred or imposed on the accounting officer by— 10

(a) this Act and Public Finance Management Act;

(b) the board.

### **Delegations and assignments by Chief Executive Officer**

**18.** (1) The chief executive officer may delegate any of the powers, and assign any of the duties, attached to that office, to any employee of the Institute. 15

(2) Section 15(2), (3) and (4) applies, reading in the changes necessary in the context, to any delegation or assignment in terms of this section.

### **Organisational structure and staff of Institute**

**19.** (1) The board must determine the organisational structure of the Institute and may revise the structure as may be necessary from time to time. 20

(2) Subject to the directions of the board, the chief executive officer may appoint the staff for the Institute that may be necessary to perform the work arising from or connected with the Institute's functions, business and operations in terms of this Act.

(3) (a) The terms and conditions of service of the Institute's staff, and their remuneration, allowances, subsidies and other service benefits, are determined by the board. 25

(b) The remuneration, allowances, subsidies and other benefits contemplated in paragraph (a) must be determined in accordance with a system approved by the Minister with the concurrence of the Minister of Finance. 30

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

(5) The Institute may, with the approval of the Minister granted with the concurrence of the Minister of Finance, establish, manage and administer any pension or provident fund or medical scheme for the benefit of its employees or have such a scheme or fund managed and administered by any other body or person. 35

### **Financial management of Institute**

**20.** (1) The Institute is a Schedule 3 public entity in terms of the Public Finance Management Act and is subject to the applicable provisions of that Act. 40

(2) The Institute may accumulate surplus funds.

(3) The Institute's financial year is from 1 April in any year to 31 March in the following year, both days included, but the first financial year will run from the specified date to 31 March in the following year, both days included.

### **Funds of Institute** 45

**21.** (1) The funds of the Institute consist of—

(a) money received from waste generators on a cost recovery basis for services rendered in terms of this Act;

(b) money appropriated by Parliament;

(c) money transferred to the Institute from the Radioactive Waste Management Fund that must be established by an Act of Parliament; 50

(d) money received for services rendered or derived from the sale or exploitation of its products, technology or other assets;

(e) income or interest earned on the Institute's cash balances or on money invested; 55

- (f) loans raised by the Institute in accordance with the Public Finance Management Act; and
- (g) donations or contributions received from any source by the Institute, with the approval of the Minister.
- (2) The Chief Executive Officer must— 5
  - (a) open an account in the name of the Institute with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990); and
  - (b) deposit therein all money received in terms of subsection (1).
- (3) The Chief Executive Officer may, on behalf of the Institute, invest any money received in terms of subsection (1), which is not required for immediate use— 10
  - (a) with the approval of the Minister and the board, with the Public Investment Commissioners referred to in section 2 of the Public Investment Corporation Act, 2004 (Act No. 23 of 2004); or
  - (b) with such other institution as the board and the Minister determine.
- (4) The Institute may not incur any expenditure in excess of budgetary provisions approved by the board. 15
- (5) The Auditor-General must audit the Institute.
- (6) Expenses for the establishment and initial operation of the Institute must be defrayed from money appropriated by Parliament to the Department.

### **Judicial management and liquidation** 20

- 22. (1) Despite any other law, the Institute may not be placed under judicial management or in liquidation, except if authorised by an Act of Parliament adopted specially for that purpose.
- (2) The Institute may be disestablished by an Act of Parliament.

## **CHAPTER 3** 25

### **DISPOSAL APPLICATION**

#### **Application for radioactive waste disposal certificate**

- 23. (1) Any person who has to dispose of radioactive waste must apply to the chief executive officer for a radioactive waste disposal certificate in the prescribed format and must furnish such information as the board may require. 30
- (2) The Chief Executive Officer must assess the information for compliance with the radioactive waste acceptance and disposal criteria contemplated in section 5(c) and, subject to the board's approval, must—
  - (a) refuse an application for a radioactive waste disposal certificate and furnish the applicant in writing with the reasons for the refusal, in accordance with the Promotion of Administrative Justice Act; or 35
  - (b) grant an application for a radioactive waste disposal certificate subject to such conditions as may be determined in terms of section 24.

#### **Conditions relating to radioactive waste disposal certificate**

- 24. (1) The Chief Executive Officer may, subject to subsection (2), impose any condition in a radioactive waste disposal certificate which is necessary to ensure compliance with the radioactive waste acceptance and disposal criteria contemplated in section 5(c). 40
- (2) The Chief Executive Officer—
  - (a) may, subject to paragraph (c), amend any condition in an existing radioactive waste disposal certificate; 45
  - (b) must notify the person in writing to whom the radioactive waste disposal certificate was issued of such amendment and the reasons therefor; and
  - (c) must submit to the board any amendments made to a radioactive waste disposal certificate in terms of paragraph (a) for ratification at the first meeting of the board following submission of the amendments. 50

## Generators of radioactive waste

**25.** (1) The generators of radioactive waste are responsible for technical, financial and administrative management of such waste within the national regulatory framework at their premises and when such waste is transported to an authorised waste disposal facility. 5

(2) The generators of radioactive waste must—

- (a) develop and implement site-specific waste management plans based on national policy;
- (b) provide all relevant information on radioactive waste as required by the chief executive officer; 10
- (c) demonstrate compliance with any conditions of a radioactive waste disposal certificate;
- (d) provide site access to staff of the Institute for inspection against any conditions of the radioactive waste disposal certificate.

(3) The generators of radioactive waste remain responsible for all liabilities in connection with such radioactive waste under their control until such time as the radioactive waste has been received and accepted in writing by the Institute, following an inspection, at which time liability shall pass to the Institute. 15

## CHAPTER 4

### GENERAL 20

#### Provisions with regard to security of Institute's installations, sites, premises and land

**26.** (1) The installations, sites, premises and land belonging to or under the control of the Institute, on which any of its business, operations and activities in terms of this Act are conducted or performed or any records in connection therewith are kept, stored or to be found, are restricted areas. 25

(2) The Institute, subject to subsection (3), may make any arrangements it considers reasonably necessary for the proper protection of—

- (a) installations, sites, premises and land contemplated in subsection (1) (hereinafter called high security areas); 30
- (b) the persons employed or present at or in the high security areas;
- (c) all property of the Institute, whether of a physical or intellectual nature, at or in the high security areas; and
- (d) the records and information of the Institute, or in the Institute's possession, that are kept, stored or to be found therein, irrespective of the manner in which or the medium on or by means of which the records and information are kept, stored or recorded. 35

(3) No person may enter or be present in a high security area unless that person has consented to a search that may be conducted as contemplated in terms of subsection (4)(a). 40

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

- (a) search any person or vehicle about to enter or leave any high security area, and may open and inspect any container or parcel and inspect any object, device, article, item or thing (including any material or substance) which is in the possession of such a person or is on or in that vehicle; 45
- (b) search any person present or any vehicle found in the high security area if there are reasonable grounds to suspect that any person or anything in the person's possession or in or on the vehicle, constitutes a threat to or endangers the lives or physical integrity of persons or the physical safety of property;
- (c) seize or attach any object, device, article, item or thing (including any material or substance) in the possession of a person mentioned in paragraph (a) or (b) or found on or in such a vehicle— 50
  - (i) if such an object, device, article, item or thing belongs to the Institute or is subject to its control and is not in the lawful possession of the person or lawfully being conveyed in or on the vehicle for the purpose of performing any function or work of the Institute; or 55
  - (ii) if, in the opinion of the authorised person, it constitutes a threat or danger of the nature contemplated in paragraph (b), or may be used by the

- person from whom it was taken or any other person for the purposes of a threat or danger of that nature; and
- (d) arrest any person found in unlawful possession of anything contemplated in paragraph (c)(i), or any person contemplated in paragraph (b).

### Reproduction of documents by Institute 5

27. (1) The Institute may—
- (a) reproduce or cause to be reproduced documents in its possession or under its control by—
- (i) microfilming;
- (ii) electronic means; or 10
- (iii) any other process which in its opinion reproduces such a document in a durable and accurate manner; and
- (b) keep or cause to be kept the reproduction instead of the original document in question.
- (2) For the purposes of this Act— 15
- (a) any reproduction referred to in subsection (1) is regarded to be the relevant original document; and
- (b) a copy obtained by means of that reproduction and certified by the Chief Executive Officer or an officer authorised by the Chief Executive Officer as a true copy, is *prima facie* evidence of the contents of the original document in any court of law, any tribunal or a commission of inquiry. 20

### Delegations and assignments by Minister

28. (1) The Minister may delegate any power and assign any duty conferred or imposed upon the Minister in terms of this Act, except the power to make regulations, to the Director-General, who may subdelegate or reassign any delegated power or any assigned duty in such circumstances and such manner as may be prescribed. 25
- (2) A delegation or assignment under subsection (1) must be in writing and may be subject to any conditions or limitations determined by the Minister.
- (3) The Minister will not be divested of any power nor be relieved of any duty that the Minister may have delegated or assigned. 30
- (4) The Minister may at any time—
- (a) amend or revoke a delegation or assignment made under subsection (1);
- (b) withdraw any decision made by the delegatee or assignee with regard to a delegated or assigned matter, and decide the matter himself or herself.
- (5) Despite subsection (4)(b) a decision made by a delegatee or assignee may not be withdrawn where it confers a right or entitlement on any third party. 35

### Regulations

29. (1) The Minister may make regulations regarding—
- (a) anything which in terms of this Act may be or must be prescribed; or
- (b) any ancillary or incidental administrative or procedural matter that it is, necessary to prescribe for the proper implementation or administration of this Act. 40
- (2) Before any regulations are made in terms of subsection (1), the Minister must—
- (a) by notice in the *Gazette*, invite the public to comment on the proposed regulations; and
- (b) consider such comment. 45

### Transitional provisions

30. (1) With effect from the specified date—
- (a) all assets, rights, liabilities, obligations, licences and authorisations of the South African Nuclear Energy Corporation regarding the Vaalputs National Radioactive Waste Disposal Facility vest in the Institute; and 50
- (b) the persons who immediately before the specified date were employees of the South African Nuclear Energy Corporation at the Vaalputs National Radioactive Waste Disposal Facility, appointed in terms of section 25 of the Nuclear Energy Act, 1999 (Act No. 46 of 1999), must be deemed to be employees of the Institute appointed in terms of section 19(2). 55

(2) The terms and conditions of service, salary or pay, allowances, subsidies and service benefits that were applicable to the employees contemplated in subsection (1)(b) must continue to apply until re-determined by the Board under section 19(3).

(3) The terms and conditions of service, salary or pay, allowances, subsidies and service benefits so re-determined, must not be less than those applicable to the employees before the re-determination. 5

(4) The employees' respective periods of pensionable service with the South African Nuclear Energy Corporation and, where applicable, with its predecessor in terms of any law, must be regarded and treated as pensionable service for the purposes of membership of any pension fund or scheme of which they are or may become members after the specified date. 10

(5) Any leave which has been accumulated by an employee while in the service of the South African Nuclear Energy Corporation, must be regarded and treated as if it were leave accumulated by such an employee in the service of the Institute.

(6) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of employer must be regarded as having taken place when the employees contemplated in subsection (1) take up employment at the Institute. 15

(7) Despite the provisions of subsection (1)(a), contracts entered into by the South African Nuclear Energy Corporation for the receipt of radioactive waste at the Vaalputs National Radioactive Waste Disposal Facility will become null and void 30 days after the specified date where after the acceptance of radioactive waste will be subject to the provisions of sections 23, 24, and 25 of this Act. 20

(8) Despite the provisions of subsection (1)(a), the South African Nuclear Energy Corporation must continue to maintain the nuclear installation licence of the Vaalputs National Radioactive Waste Disposal Facility by providing where necessary services to the Institute using the existing government budget allocations until such time as the Institute is in a position to take over the functions to the satisfaction of the National Nuclear Regulator. 25

(9) The Registrar of Deeds must make the necessary entries or endorsements for the transfer of any property contemplated in subsection (1)(a). 30

#### **Short title and commencement**

**31.** This Act is called the National Radioactive Waste Disposal Institute Act, 2008, and comes into operation on a date specified by the President by proclamation in the *Gazette*.

## **MEMORANDUM ON THE OBJECTS OF THE NATIONAL RADIOACTIVE WASTE DISPOSAL INSTITUTE BILL, 2008**

### **1. OBJECTS OF BILL**

The purpose of the National Radioactive Waste Disposal Institute Bill is to provide for the establishment of a National Radioactive Waste Management Institute. This Institute will manage radioactive waste on a national basis. This is in line with international developments, where many countries have independent agencies handling radioactive waste management and research into high-level waste management.

Dealing with used fuel and radioactive waste is a long-term issue which requires focused attention of a dedicated organisation. The establishment of the Institute will leave the operators/generators to focus on their core business, be it medical isotope production, nuclear research and development or electricity generation. The generators will, however, remain financially responsible for the disposal of the waste.

The Institute, once formed, will be the only organisation to handle radioactive waste disposal and onsite-predisposal management and storage. This Institute will also be responsible for managing ownerless radioactive waste on behalf of the State.

It is international best practice to separate activities related to the generation and disposal of radioactive waste. This provides the necessary assurance, checks and balances so that radioactive waste is being dealt with in a consistent manner in the country and that there is no danger of generators cutting spending for the management of radioactive waste when companies have financial difficulties.

### **2. FINANCIAL IMPLICATIONS**

Expenses for the establishment and initial operation of the Institute will be defrayed from money appropriated by Parliament to the Department until such time as the Radioactive Waste Management Fund has been established by an Act of Parliament. A business plan with the set-up costs will be submitted via the normal budgeting process once the Bill has been enacted.

Once the Fund has been established, generators of radioactive waste will pay the Institute for operational expenses and also contribute to the Radioactive Waste Management Fund (once established) as determined by the "polluter pays principle" for long-term management issues.

### **3. CONSULTATION PROCESS**

There are ongoing interactions between the Department of Minerals and Energy and the Department of Environmental Affairs and Tourism.

### **4. PARLIAMENTARY PROCEDURE**

4.1 The State Law Advisers and the Department of Minerals and Energy are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

4.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.