



PROJECT 25

REPORT

**STATUTORY LAW REVISION:
LEGISLATION ADMINISTERED BY THE
DEPARTMENT OF ENERGY**

OCTOBER 2011

**TO MR JT RADEBE MP, MINISTER OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**

I am honoured to submit to you in terms of section 7(1) of the South African Law Reform Commission Act, 1973 (Act 19 of 1973) (as amended), for your consideration, the South African Law Reform Commission's Report on statutory law revision: the review of legislation administered by the Department of Energy (project 25).

A handwritten signature in black ink, appearing to read 'Y Mokgoro', is centered on the page. The signature is fluid and cursive, with a prominent initial 'Y'.

MADAM JUSTICE Y MOKGORO
CHAIRPERSON: SOUTH AFRICAN LAW REFORM COMMISSION
22 October 2011

Introduction

The South African Law Reform Commission Act, 1973 (Act 19 of 1973) established the South African Law Reform Commission (SALRC).

The members of the SALRC who approved this report in October 2011 were –

The Honourable Madam Justice Yvonne Mokgoro (Chairperson)
The Honourable Mr Justice Willie Seriti (Vice Chairperson)
Professor Cathi Albertyn
The Honourable Mr Justice Dennis Davis
Ms Thuli Madonsela (Full-time Commissioner until her appointment as Public Protector in October 2009)
Advocate Thembeke Ngcukaitobi
Advocate Dumisa Ntsebeza SC
Professor PJ Schwikkard
Advocate Mahlape Sello

Mr. Michael Palumbo was the Secretary of the SALRC when this report was written. The project leader responsible for this investigation was Advocate Dumisa B Ntsebeza, SC. The researcher was Mr Pierre van Wyk.

On 31 July 2008 Ms BS Mabandla, MP, the then Minister of Justice and Constitutional Development appointed the following advisory committee members who assisted the SALRC in this review:

Professor Elmarie van der Schyff of the North-West University;
Professor Oladejo Justus Olowu of the North-West University;
Ms Pumza Mnonopi of the University of Fort Hare; and
Mr Chris Stevens, attorney and director at Werksmans Attorneys.

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Summary of findings and recommendations

1. The SALRC is mandated with the task of reviewing the South African statute book with a view to identifying and recommending for repeal or amendment legislation or provisions in legislation that are inconsistent with the equality clause in the Constitution, redundant or obsolete.
2. Pursuant to this mandate, after having reviewed the 33 statutes administered by the Department of Energy, the SALRC recommends that:
 - (a) The 12 statutes set out in Schedule 1 of the Energy Laws Repeal and Related Matters Bill be amended for the reasons set out in Chapter 2 of this Report to the extent outlined in the said Schedule; and
 - (b) The four statutes set out in Schedule 2 to the Bill be repealed, namely
 - (i) The Electricity Amendment Act 58 of 1989;
 - (ii) The Coal Resources Act Repeal Act 6 of 1992;
 - (iii) The Nuclear Energy Act 131 of 1993; and
 - (iv) The Electricity Amendment Act 46 of 1994.

Bibliography

Albertyn Cathi “*Summary of Equality jurisprudence and Guidelines for assessing the SA Statute Book for Constitutionality against section 9 of the 1996 Constitution*”, prepared specifically for the SALRC in February 2006 available upon request from pvanwyk@justice.gov.za

Centre for Applied Legal Studies of the University of the Witwatersrand, Law and Transformation Programme “Feasibility and Implementation Study on the Revision of the Statute Book” prepared for the South African Law Reform Commission and the German Agency for Technical Co-operation (Deutsche Gesellschaft für Technische Zusammenarbeit GmbH) April 2001 available upon request from pvanwyk@justice.gov.za

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CHAPTER 1

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A INTRODUCTION

1 The objects of the South African Law Reform Commission

1.1 The objects of the SA Law Reform Commission (SALRC) are set out in the South African Law Reform Commission Act, 1973 (Act 19 of 1973), as follows: to do research with reference to all branches of the law of the Republic, and to study and to investigate all such branches of the law in order to make recommendations for the development, improvement, modernization or reform thereof, including:

- (a) the repeal of obsolete or unnecessary provisions;
- (b) the removal of anomalies;
- (c) the bringing about of uniformity in the law in force in the various parts of the Republic; and
- (d) the consolidation or codification of any branch of the law.

1.2 Thus the SALRC is an advisory statutory body whose aim is the renewal and improvement of the law of South Africa on a continual basis.

2 History of the investigation

1.3 Shortly after its establishment in 1973, the SALRC began revising all pre-Union legislation, as part of its Project 7. This investigation resulted in the repeal of approximately 1 200 laws, ordinances, and proclamations of the former colonies and republics. In 1981 the SALRC finalised a report on the repeal of post-Union statutes as part of its Project 25 on statute law, which aims to establish a permanently simplified, coherent, and generally accessible statute book. This report resulted in Parliament adopting the Repeal of Laws Act, 1981 (Act 94 of 1981), which repealed approximately 790 post-Union statutes.

1.4 Immediately after the advent of constitutional democracy in South Africa in 1994, the legislation enacted prior to that year remained in force. Numerous pre-1994 provisions do not comply with the country's new Constitution, a discrepancy exacerbated by the fact that some of those provisions were enacted to promote and sustain the policy of apartheid.

1.5 In 2003, Cabinet approved that the Minister of Justice and Constitutional Development should coordinate and mandate the SALRC to review provisions in the legislative framework that

would result in discrimination, as defined by section 9 of the Constitution. Section 9 prohibits unfair discrimination on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, or birth.

1.6 In 2004 the SALRC included in its law reform programme an investigation on statutory law to revise all statutes from 1910 to date. Whereas previous investigations had focused on identifying obsolete and redundant provisions for repeal, the current investigation emphasizes compliance with the Constitution. Redundant and obsolete provisions that are identified in the course of this investigation are also recommended for repeal, but the constitutional inquiry has focused mainly on identifying statutory provisions that blatantly violate the provisions of section 9 (the Equality Clause) of the Constitution.

1.7 A 2004 provisional audit by the SALRC of national legislation that has remained on the statute book since 1910 established that roughly 2 800 individual statutes exist, comprising principal Acts, amendment Acts, private Acts, additional or supplementary Acts, and partially repealed Acts. A substantial number of Acts on the statute book no longer serve any useful purpose and many others have retained unconstitutional provisions. This situation has already resulted in expensive and sometimes protracted litigation.

B WHAT IS STATUTORY LAW REVISION?

1.8 Statutory law revision ordinarily focuses on the identification and repeal of statutes that are no longer useful in practice. As the Law Reform Commission for England and Wales explains, the purpose of statute revision is to modernise and simplify statutes that need updating, and to reduce the size of the statute book to the benefit of legal professionals and other people who use it.¹ Revision lessens the chance of people being misled by redundant laws that still appear in the statute book and seem to be relevant or “live”. If statutory provisions appear in the statute book and are referred to in legal textbooks, readers may reasonably assume they still serve a purpose.

1.9 As is the case in other jurisdictions (and will be evident in this review), once legislation is deemed no longer to apply, the question arises whether it should remain in the statute book or

¹ See the *Background Notes on Statute Law Repeals* compiled by the Law Commission for England and Wales, par 1 accessed from http://lawcommission.justice.gov.uk/docs/background_notes.pdf on 20 February 2009.

be repealed.² Usually such legislation no longer has any legal effect and is considered obsolete, redundant, or spent. A statutory provision may be identified for repeal because the grounds for which it was passed have lapsed or are presently remedied by another measure or provision.

1.10 In the context of this investigation, the statutory law revision primarily targets statutory provisions that are obviously at odds with the Constitution, particularly section 9.

1.11 The Law Commission for England and Wales lists the following guidelines for identifying statutory provisions that are candidates for repeal:³

- (a) references to bodies, organisations, etc. that have been dissolved or wound up or which have otherwise ceased to serve any purpose;
- (b) references to issues that are no longer relevant as a result of changes in social or economic conditions (e.g. legislation about tithes or tin mines);
- (c) references to Acts that have been superseded by more modern (or EU) legislation or by international Convention;
- (d) references to statutory provisions (i.e. sections, schedules, orders, etc.) that have been repealed;
- (e) repealing provisions e.g. "Section 33 is repealed/shall cease to have effect";
- (f) commencement provisions once the whole of an Act is in force;
- (g) transitional or savings provisions that are spent;
- (h) provisions that are self-evidently spent - e.g. a one-off statutory obligation to do something becomes spent once the required act has duly been done;
- (i) powers that have never been exercised over a period of many years or where any previous exercise is now spent.

² See the *Background Notes on Statute Law Repeals* compiled by the Law Commission for England and Wales, par 6 accessed from http://lawcommission.justice.gov.uk/docs/background_notes.pdf on 20 February 2009.

³ See the *Background Notes on Statute Law Repeals* compiled by the Law Commission for England and Wales, par 7 accessed from http://lawcommission.justice.gov.uk/docs/background_notes.pdf on 20 February 2009.

1.12 The Law Commission of India notes that in England the terms “expired”, “spent”, “repealed in general terms”, “virtually repealed”, “superseded”, and “obsolete” were defined in memoranda to Statute Law Revision Bills as follows:⁴

- Expired – that is, enactments which having been originally limited to endure only for a specified period by a distinct provision, have not been either perpetuated or kept in force by continuance, or which have merely had as their object the continuance of previous temporary enactments for periods now gone by effluxion of time
- Spent – that is, enactments spent or exhausted in operation by the accomplishment of the purposes for which they were passed, either at the moment of their first taking effect or on the happening of some event or on the doing of some act authorised or required
- Repealed in general terms – that is, repealed by the operation of an enactment expressed only in general terms, as distinguished from an enactment specifying the Acts which it is to operate
- Virtually repealed – where an earlier enactment is inconsistent with, or is rendered nugatory by, a later one
- Superseded – where a later enactment effects the same purposes as an earlier one by repetition of its terms or otherwise
- Obsolete – where the state of things contemplated by the enactment has ceased to exist, or the enactment is of such a nature as to be no longer capable of being put in force, regard being had to the alteration of political or social circumstances.

1.13 Statutory provisions usually become redundant as time passes.⁵ Generally, the redundancy of legislation is not signalled by a single occurrence; rather, legislation is often simply overtaken by social and economic changes. Inevitably some provisions fade away more quickly than others. Relatively short-lived provisions include commencement and transitional provisions and those that confer powers to be exercised during the period between the passing of legislation and its implementation (in some jurisdictions known as “pump-priming” provisions).

⁴ Law Commission of India *Ninety-Sixth Report on Repeal of Certain Obsolete Central Acts* March 1984; p 3 of Chapter 2 (p 6 of 21) accessed from <http://lawcommissionofindia.nic.in/51-100/Report96.pdf> on 20 February 2009.

⁵ *Background Notes on Statute Law Repeals* compiled by the Law Commission for England and Wales, par 9 and 10 accessed from http://lawcommission.justice.gov.uk/docs/background_notes.pdf on 20 February 2009.

Provisions that provide for delegated legislation-making powers might also become unnecessary over time, or a committee or board established by a statute might no longer be required.

1.14 Substantial revision of statutory law is possible in South Africa because of the general savings provisions of section 12(2) of the South African Interpretation Act. The South African Interpretation Act, 1957 (Act 33 of 1957) mirrors section 16(1) of the Interpretation Act of 1978 of England and Wales.⁶ Section 12(2) of the South African Interpretation Act provides that where a law repeals any other law, then unless the contrary intention appears, the repeal shall not:

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any law so repealed or anything duly done or suffered under the law so repealed; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, forfeiture or punishment as is in this subsection mentioned,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing law had not been passed.

1.15 The methodology adopted in this investigation is to review the statute book by Department – the SALRC identifies a Department, reviews the national legislation administered by that Department for constitutionality and redundancy, sets out the preliminary findings and proposals in a consultation paper and consults with that Department to verify the SALRC's preliminary findings and proposals. The next step that the SALRC undertakes is the development of a discussion paper in respect of the legislation of each Department, and upon its approval by the SALRC, it is published for general information and comments. Finally, the

⁶ *Background Notes on Statute Law Repeals* compiled by the Law Commission for England and Wales, par 8 accessed from http://lawcommission.justice.gov.uk/docs/background_notes.pdf on 20 February 2009.

SALRC develops a report in respect of each Department that reflects the comments on the discussion paper and contains a draft Bill proposing amending legislation.

C THE INITIAL INVESTIGATION

1.16 In the early 2000s, the SALRC and the German Agency for Technical Cooperation commissioned the Centre for Applied Legal Studies at the University of the Witwatersrand to conduct a preliminary study on law reform. The study examined the feasibility, scope, and operational structure of revising the South African statute book for constitutionality, redundancy, and obsolescence. The Centre for Applied Legal Studies pursued four main avenues of research in this study, which was conducted in 2001 and submitted to the SALRC in April 2001.⁷ These four steps are outlined here.

1. A series of interviews was conducted with key role-players drawn from the three governmental tiers, Chapter 9 institutions, the legal profession, academia, and civil society. These interviews revealed a high level of support for a law reform project.
2. All Constitutional Court judgments up to 2001 were analysed. The results were compiled as schedules summarising the nature and outcome of these cases, and the statutes impugned. The three most problematic categories of legislative provisions were identified, and the Constitutional Court's jurisprudence in each category was analysed. The three most problematic categories were reverse onus provisions, discriminatory provisions, and provisions that infringe on the separation of powers. Guidelines summarising the Constitutional Court's jurisprudence were compiled for each category.
3. Sixteen randomly-selected national statutes were tested against the guidelines. The results were compared with the results of a control audit that tested the same statutes against the entire Bill of Rights, excluding socio-economic rights. Comparison of the outcomes showed that a targeted revision of the statute book in accordance with the guidelines had produced highly effective results.
4. A survey of law reform in five other countries (United Kingdom, Germany, Norway, Switzerland, and France) was conducted. Apart from France, all these countries had conducted or were conducting statutory revision exercises. The motivation for the revision and the outcomes of the exercises differed by country.

⁷ "Feasibility and Implementation Study on the Revision of the Statute Book" prepared by the Law and Transformation Programme of the Centre for Applied Legal Studies of the University of the Witwatersrand April 2001 available upon request from pvanwyk@justice.gov.za.

1.17 The SALRC finalised the following Reports, proposing reform of discriminatory areas of the law or the repeal of specific discriminatory provisions –

- (a) the Recognition of Customary Marriages (August 1998);
- (b) the Review of the Marriage Act 25 of 1961 (May 2001);
- (c) the Application of the Bill of Rights to Criminal Procedure, Criminal Law, the Law of Evidence and Sentencing (May 2001);
- (d) Traditional Courts (January 2003);
- (e) the Recognition of Muslim marriages (July 2003);
- (f) the Repeal of the Black Administration Act 38 of 1927 (March 2004);
- (g) Customary Law of Succession (March 2004); and
- (h) Domestic Partnerships (March 2006).

D SCOPE OF THE PROJECT

1.18 The constitutional validity aspect of this project focuses on statutes or provisions in statutes that are clearly inconsistent with the right to equality entrenched in section 9 of the Constitution. In practical terms this means that this leg of the investigation is limited to those statutes or provisions in statutes that:

- Differentiate between people or categories of people, and which are not rationally connected to a legitimate government purpose; or
- unfairly discriminate against people or categories of people on one or more grounds listed in section 9(3) of the Constitution; or
- unfairly discriminate on grounds which impair or have the potential to impair a person's fundamental human dignity as a human being.

1.19 Consequently, a law or a provision in a law which appears, on the face of it, to be neutral and non-discriminatory but which has or could have discriminatory effect or consequences has been left to the judicial process. This investigation focuses on the constitutionality of provisions in statutes of South African law, with special attention paid to consonance with section 9 of the Constitution. The investigation also attends to obsolescence or redundancy of provisions. In 2003, Cabinet directed that the highest priority be given to reviewing provisions that would result in discrimination as defined in section 9 of the Constitution, which prohibits unfair discrimination on the basis of race, gender, sex, pregnancy, marital status, ethnic and social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, or birth. The

SALRC agreed that the project should proceed by scrutinising and revising national legislation that discriminates unfairly.⁸ However, as explained in the preceding sections of this chapter, even the section 9 inquiry was limited because it dealt primarily with statutory provisions that were blatantly in conflict with section 9 of the Constitution. This delimitation arose mainly from considerations of time and capacity. Nonetheless, during the investigation some other anomalies and obvious inconsistencies with the Constitution were identified, and recommendations have been made on how to address them.

E CONSULTATION WITH STAKEHOLDERS

1.20 In 2004, Cabinet endorsed the proposal that government departments should be requested to participate in and contribute to this investigation. In certain instances, legal researchers cannot decide whether to recommend a provision for repeal unless they have access to factual information that might be considered “inside” knowledge – of the type usually accessible within a specific department or organisation. Examples include savings or transitional provisions that are instituted to preserve the status quo until an office-holder ceases to hold office or until a loan has been repaid. In such cases, the consultation paper drafted by the SALRC invited the department or organisation being consulted to supply the necessary information. The aim of the publication of discussion papers in this investigation is likewise to determine whether departments and stakeholders agree with and support the proposed findings and legislative amendment or repeal proposals. The SALRC relies on the assistance of departments and stakeholders. This will ensure that all relevant provisions are identified during this review, and dealt with responsively and without creating unintended negative consequences.

1.21 The SALRC submitted its Consultation Paper containing preliminary findings and proposals to the Department of Energy in October 2009 for its consideration. The purpose of the Consultation Paper was to consult with the Department of Energy on the preliminary findings and proposals made in the Consultation Paper and for the Department to confirm that it had no objection to the provisionally proposed repeals and amendments. The SALRC liaised with the former DME in the phases of the investigation leading to the development of the Consultation

⁸ Cathi Albertyn prepared a document titled “Summary of Equality Jurisprudence and Guidelines for Assessing the SA Statute Book for Constitutionality against Section 9 of the 1996 Constitution”, specifically for the SALRC in February 2006 available upon request from pvanwyk@justice.gov.za.

Paper. During February 2010 the Department of Energy submitted its comments to the SALRC on the preliminary findings and proposals contained in the Consultation Paper.

1.22 The Commission considered a draft Discussion Paper at its meeting on 14 August 2010 and approved the publication of its Discussion Paper for general information and comments. The SALRC published Discussion Paper 116 on 25 August 2010. The closing date for comments was 30 November 2010. On 3 December 2010 the SALRC issued a media statement announcing an extension of the closing date for comments until 31 January 2011 due to the limited response received from stakeholders by the closing date. On 2 September 2011 the SALRC received the final comments from stakeholders in regard to Discussion Paper 116.

1.23 The SALRC acknowledges the valuable assistance it received, particularly from officials in the Legal Services section of the former DME and the newly established Department of Energy. The SALRC also acknowledges the valuable comments it received from the stakeholders on the preliminary findings and proposals contained in Discussion Paper 116. The assistance and comments enabled the SALRC to develop its final recommendations in respect of the legislation administered by the Department of Energy.

1.24 On 22 October 2011 the Commission considered and approved the submission of this Report to the Minister of Justice and Constitutional Development for referral to the Minister of Energy to consider the promotion of the recommendations made in this Report.

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A INTRODUCTION

2.1 On 10 May 2009 President Jacob Zuma announced the appointment of the new Cabinet. The new Cabinet necessitated the establishment, reorganisation, and renaming of some of the national departments to support Ministers in the execution of their mandates. In his statement, the President emphasized the importance of the type of structure that would best serve government's goals. 'We wanted a structure that would enable us to achieve visible and tangible socio-economic development within the next five years. It should be a structure which would enable us to effectively implement our policies . . .'. President Zuma said. This is the approach that the former Department of Minerals and Energy indicated that it has adopted in its process of establishing the two Departments of Mineral Resources, and of Energy, mandated with the mining, minerals and energy portfolios.

2.2 The split of the Department of Minerals and Energy into the two departments necessitates legislative amendments not only to the legislation administered by the two departments but also to ancillary legislation.⁹ This paper contains proposals in this regard. In its review of the legislation concerned the advisory committee also noted references in legislation to the former Department of Minerals and Energy Affairs. Amending clauses are therefore also proposed in the Bill, attached to this paper, in order to substitute these references.

2.3 The mission of the Department of Energy is to regulate and transform the energy sector for the provision of secure, sustainable and affordable energy. As South Africa's economy continues to grow, energy is increasingly becoming a key focus. The Electricity and Nuclear Branch is responsible for electricity and nuclear-energy affairs. The Hydrocarbons and Energy Planning Branch is responsible for coal, gas, liquid fuels, energy efficiency, renewable energy and energy planning, including the energy database.

2.4 The Minister of Energy has oversight over five state owned entities, namely the Electricity Distribution Industry Holdings, the National Nuclear Regulator, the National Energy Regulator of South Africa (NERSA), the Nuclear Energy Corporation of South Africa and the Central Energy

⁹ See Proclamation 44 of 2009 of 1 July 2009 published in *Government Gazette* No 32367 about the transfer of administration and powers and functions entrusted by legislation to certain Cabinet members in terms of section 97 of the Constitution. See also Proclamation 48 of 2009 of 7 July 2009 published in *Government Gazette* No 32387 which in terms of section 7(5)(a) of the Public Service Act, 1994 amended Schedule 1 to the said Act with respect to national departments and the heads thereof.

Fund. The purpose of these entities is to provide related services in support of the Department's mandate through funded and non-funded statutory bodies and organizations. The enabling legislation requires the Minister to appoint members of the boards of the state owned entities reporting to the Minister of Energy. All board members, with the exclusion of Chief Executive Officers, are non-executive. The Department is represented on all of these boards, with the exception of NERSA. The boards are ultimately accountable and responsible for the performance of the entities. They give strategic directions to the entity in line with their mandate.

2.5 The strategic plan of the Department of Energy seeks to deliver results along eight strategic objectives that include promoting energy security through reliable, clean, and affordable sources; universal access to energy sources, transformation of the energy sector, and strengthening the operations and management of the Department:

- (a) Ensure energy security: Creating and maintaining a balance between energy supply and energy demand, develop strategic partnerships, improve co-ordination in the sector and ensure reliable delivery and logistics;
- (b) Achieve universal access and transform the energy sector: Diversify energy mix, improve access and connectivity, provision of quality and affordable energy, promote safe use of energy and transform the energy sector;
- (c) Regulate the energy sector: Develop effective legislation, policies and guidelines, encourage investment in the energy sector, ensure compliance with legislation;
- (d) Effective and efficient service delivery: Understand stakeholder needs and improve turn - around times;
- (e) Optimal utilisation of energy resources: Develop enabling policies, encourage energy efficient technologies;
- (f) Ensure sustainable development: Promote clean energy alternatives, encourage economic development, promote job creation;
- (g) Enhance Department of Energy culture systems and people: Attract, develop and retain appropriate skills, promote good organizational culture, make the Department an employer of choice; and
- (h) Promote corporate governance: Optimal utilisation of resources, manage budget effectively, implement fraud and risk management, and ensure compliance with relevant prescripts.

2.6 The purpose of the previous Department of Minerals and Energy (DME) was to ensure the optimal utilisation and safe exploitation of mineral and energy resources and the rehabilitation of the surface.¹⁰ To this end, the DME was responsible for the following:

- (a) To direct and administer regional offices on economic growth and development;
- (b) To formulate and promote mineral-related policies that will encourage investment into the mining and mineral industry, thus making South Africa attractive to investors;
- (c) To regulate hydrocarbon energy carriers and ensure energy planning;

¹⁰ See the website at <http://www.dme.gov.za> for information in general about the former Department of Minerals and Energy accessed on 29 July 2010 and <http://www.energy.gov.za> for information about the newly established Department of Energy accessed on 29 July 2010.

- (d) To manage the electricity sector and the nuclear industry;
- (e) To ensure the safe mining of minerals under healthy working conditions;
- (f) To ensure the co-ordination of the national rural development strategy;
- (g) To ensure overall co-ordination of HIV/AIDS and other programmes and projects in the department as well as in the mining and energy industries;
- (h) To ensure alignment of departmental policies and programmes with the National Economic and Development Strategy; and
- (i) To co-ordinate the implementation of gender empowerment in the mineral and energy sectors.

2.7 The DME administered 58 statutes. The SALRC developed two separate consultation papers to deal with the minerals resources and the energy related legislation respectively. This Report evaluates the 33 energy related statutes administered by the Department of Energy. The SALRC, after conducting an investigation to determine whether any of these statutes or provisions therein may be repealed as a result of redundancy, obsolescence or infringing section 9 of the Constitution, has identified four statutes that should be repealed wholly and 12 statutes that should be amended. The recommended repeal and amendment of these statutes is set out in Schedules 1 and 2 of the draft Bill attached as annexure A to this Report. The discussion which follows below provides the motivation for these recommendations and why these statutes and or provisions were selected for repeal or amendment.

2.8 Considering the limited review mandate of the SALRC it needs to be made clear that this Report forms part of a narrowly focused and text-based statutory review as is outlined above. The Department of Minerals and Energy participated in the SALRC audit of legislation, which commenced in 2004. During October and November 2008 the Department of Minerals and Energy also updated the list of primary legislation that formed the focus of this review and submitted that list to the SALRC. In June 2009 the Department also provided an updated list of principal statutes administered by the new Department of Energy to the SALRC. In its comments to the SALRC in February 2010 the Department of Energy noted additional statutes administered by it and made proposals about them which are reflected in the discussion below.

2.9 Where a statute presently administered by the Department of Energy seems to be free from any provisions that contradict or violates section 9 of the Constitution, it is not to say that the execution of such statute necessarily is in line with the protection afforded by the section 9 equality clause. Therefore, this Report does not reflect on any consequential and/or operational effects of the execution of powers in terms of the legislation reviewed. Without exception, the statutes that were scrutinised were found to be in accordance with section 9 of the Constitution.

2.10 This review of the legislation in this Report does not deal with the statutes in a chronological order as *per* the number and year of each Act, but according to two themes. The

SALRC considers that this approach enhances the clarity of the provisional proposals made. The advisory committee identified five themes in the mineral resources and energy related legislation, namely theme 1: mines and minerals; theme 2: energy, nuclear and electricity; theme 3: petroleum, oil and gas; theme 4: geoscience, diamonds and precious metals; and theme 5: ancillary legislation. This Report deals with the two energy themes, namely nuclear and electricity; and petroleum, oil and gas. The themes overlap in respect of the State Oil Fund Act and the Central Energy Fund Act. A separate Consultation Paper, Discussion Paper 124¹¹ and the Report (the latter having been considered by the Commission on 3 December 2011) deal with the mineral resources related legislation.

2.11 The Minister of the Department of Energy commented in general on the Consultation Paper as follows:

I am pleased to note that no provisions in any of the legislation administered by the Department of Energy were identified as inconsistent with the equality clause in the Constitution. The statutes proposed for repeal or amendments were accordingly selected as a result of redundancy or obsolescence.

I have carefully examined the two statutes selected for repeal and the 11 statutes that are proposed for amendment. My Department concurs with the repeal of the Acts as proposed in Schedule 2 of the Energy Laws Repeal and related Matters Bill, and by and large concurs with the relevant amendments to the Acts proposed in Schedule 1 of the Bill.

2.12 Commenting on Discussion Paper 116 Shell South Africa Marketing/Shell South Africa Refining notes that it is in essence in agreement with the amendments as proposed in the Discussion Paper. It notes that the amendments are mainly administrative in nature and that most, if not all of the amendments, relate to amending incorrect references to other statutes and or outdated legislation and to correct departmental references resulting from changes within government. Shell notes that they would have liked to see an evaluation of the relevance of some pieces of legislation especially where there are areas of overlap and possible ambiguity and or risk of conflicting jurisdiction with other legislation enacted by other government departments. The SALRC notes the comment but needs to emphasise that its current review is limited to redundancy and compliance with the equality provisions of the Constitution. The SALRC advised Shell to bring this matter to the attention of the DOE.

2.13 ESKOM notes in its comments on Discussion Paper 116 that its servitudes are valid for a period of 99 years from the date of registration, some of which will start prescribing soon and

¹¹ See <http://www.justice.gov.za/salrc/dpapers.htm>

that something needs to be done to extend their lifetime. ESKOM remarks that since the prescripts are interpreted differently at present, load-shedding should be clearly and expressly allowed in the regulations to allow for load-shedding under constraint conditions. As theft of electricity was a crime under the Electricity Act of 1987 the crime should be reintroduced with higher deterring and prescribed minimum sentences for repeat offenders. Illegal or unauthorised connection to or interference with the electricity support network should also be criminalised and thereby the scope to reduce electricity theft be widened. The recent dramatic increase in theft of electricity cable and equipment resulting in unnecessary interference and disruption of electricity supply should be clearly criminalized as well and provision made for fines and imprisonment of offenders. The SALRC pointed out to ESKOM that their suggestions do not fall within the scope of this review and suggested that they be brought to the attention of the Department of Energy.

B Review of legislation

1 Theme 1 – Energy, Nuclear and Electricity

(a) Central Energy Fund Act 38 of 1977

2.14 The Central Energy Fund Act was originally the State Oil Fund Act. In 1985, the short title of the Act was changed to that of the Central Energy Fund Act. The Central Energy Fund Act provides for the payment of certain moneys into the Central Energy Fund and for the utilization and investment thereof. It provides for the imposition of a levy on fuel and for utilization and investment thereof. It provides for the control of the affairs of the Central Energy Fund (Proprietary) Limited by a board of directors, for the keeping of records of all transactions entered into for account of the CEF or the Equalization Fund and of certain other transactions. It provides for the investigation, examination and auditing of the books, accounts and statements kept and prepared in connection with the said transactions, and for the submission to Parliament of a report relating to the said investigation, examination and auditing. It also provides for matters connected with the Act.

2.15 There are 17 references to the Department or Minister of Mineral and Energy Affairs in this Act.¹² It is proposed that this Act be amended to reflect the new portfolio, namely that of the

¹² In sections 1(1)(c); 1(2)(a); 1(2)(b); 1(4)(a); 1(4)(b); 1(4)(c); 1A(1); 1A(3A)(b); 1A(3A)(c); 1A(4)(a)(ii); 1A(4)(a)(iv); 1A(4)(b); 1A(5); 1B(b); 1D(1); 1D(3); 1E(6).

Minister of Energy. It is therefore proposed that the Act be amended by the substitution of every reference in this Act to the 'Minister of Mineral and Energy Affairs' or 'Department of Mineral and Energy Affairs' with a reference to the 'Minister of Energy' and 'Department of Energy' whichever term is applicable.

(b) State Oil Fund Amendment Act 30 of 1979

2.16 This Act amended the State Oil Fund Act 38 of 1977. It provided for a levy on fuel and for incidental matters. Certain provisions of this Act are still in force and incorporated in the principal Act. In this sense, the Act is not obsolete or redundant. It is proposed that the State Oil Fund Amendment Act 30 of 1979 be retained on the statute book.

(c) Second State Oil Fund Amendment Act 74 of 1979

2.17 This Act effected further amendments to the State Oil Fund Act 38 van 1977. It provided further for the imposition of a levy on certain petroleum products. It made new provision for the issue of certain guarantees by the then Minister of Economic Affairs and validated certain levies imposed retrospectively. It repealed certain provisions, and provided for incidental matters. Certain provisions of this Act are still in force. In this sense, the Act is not obsolete or redundant. It is proposed that the Second State Oil Fund Amendment Act 74 of 1979 be retained on the statute book.

(d) State Oil Fund Amendment Act 68 of 1980

2.18 This Act further amended the State Oil Fund Act 38 of 1977. It provided for the levy that may be imposed on petroleum products may differ according to the purpose for which such products are used. It made provision for the exemption from such levy of certain petroleum products manufactured for use outside the Republic, and provided for incidental matters. Certain provisions of this Act are still in force having been incorporated in the principal Act. In this sense, it is not obsolete or redundant. It is proposed that the Second State Oil Fund Amendment Act 68 of 1980 be retained on the statute book.

(e) State Oil Fund Amendment Act 73 of 1984

2.19 This Act effected additional amendments to the State Oil Fund Act of 1977. It made other provision in respect of the amount to be paid into the State Oil Fund as a charge to the State Revenue Fund. It further regulated the utilisation and disposal of moneys in the State Oil Fund. It

made further provision for moneys to be paid into the Equalization Fund and for the investment of those moneys. It replaced the expression 'Economic Affairs', wherever it occurred in the principal Act with the expression 'Mineral and Energy Affairs', and provided for matters connected therewith. This Act is not obsolete or redundant. It is proposed that the Act should be retained on the statute book.

(f) State Oil Fund Amendment Act 46 of 1985

2.20 This Act amended the State Oil Fund Act 38 of 1977, to change the names of the company SOF (Proprietary) Limited and the State Oil Fund to CEF (Proprietary) Limited and the Central Energy Fund, respectively. It provided for the appointment of a board of directors to manage and control the affairs of CEF (Proprietary) Limited. It entrusted CEF (Proprietary) Limited with the control of the Central Energy Fund, the Equalization Fund and the SFF Association. It determined the share capital of CEF (Proprietary) Limited and the SFF Association and regulated the taking up of shares in the said companies. It provided for accountability in respect of money in the Central Energy Fund and the Equalization Fund as well as in respect of all other money entrusted to CEF (Proprietary) Limited and the SFF Association. It provided for the investigation, examination and auditing of the books, accounts and statements kept and prepared in connection with the transactions entered into by CEF (Proprietary) Limited and the SFF Association. It provided for the submission to Parliament of a report relating to the said investigation, examination and auditing, and provided for matters connected therewith. Most of the provisions of this Amendment Act are still in force and therefore the Act has not become obsolete or redundant. It is proposed that the State Oil Fund Amendment Act 46 of 1985 be retained on the statute book.

(g) Central Energy Fund Amendment Act 55 of 1988

2.21 This Act amended the Central Energy Fund Act 38 of 1977. It substituted the expression 'Minister of Economic Affairs and Technology' for the expression 'Minister of Mineral and Energy Affairs'. It provided for the appointment of a member of the personnel of the National Energy Council to the board of directors of CEF (Proprietary) Limited. It made further provision in connection with the levy for the benefit of the Central Energy Fund, and provided for matters connected with the principal Act. As the principal Act is still in force and not all of the amendments provided for by this Act are superseded by further amendments, it has not become obsolete or redundant. It is proposed that the Act be retained on the statute book.

(h) Central Energy Fund Amendment Act 29 of 1992

2.22 This Act amended the Central Energy Fund Act 38 of 1977. It provided that a second officer in the Department of Mineral and Energy Affairs may be appointed to the board of directors of CEF (Proprietary) Limited. It provided also that a levy may be imposed on fuel as from a date preceding the date of the notice. It further provided that certain moneys obtained by CEF (Proprietary) Limited, and moneys obtained by agreement with the government of a foreign State, be paid into the Equalization Fund, and for the further utilization of moneys paid into the Equalization Fund. It also provided for matters connected with the Act. As the principal Act is still in force and not all of the amendments provided for by this amendment Act are superseded by further amendments, it has not become obsolete or redundant. It is therefore proposed that the Act be retained on the statute book.

(i) Central Energy Fund Amendment Act 48 of 1994

2.23 This Act amended the Central Energy Fund Act 38 of 1977 to further regulate the auditing of the accounts of CEF (Proprietary) Limited and SFF Association, and provided for matters connected therewith. As the principal Act is still in force and none of the amendments provided for by this Act are superseded by further amendments, it has not become obsolete or redundant. It is proposed that the Act be retained on the statute book.

(j) Electricity Act 41 of 1987

2.24 The purpose of this Act was to provide for the continued existence of the Electricity Control Regulator and for control of the generation and supply of electricity; and for matters connected therewith. The whole of this Act has been repealed by the Electricity Regulation Act 4 of 2006 with the exception of section 5B. The purpose of the Electricity Regulation Act was to establish a national regulatory framework for the electricity supply industry; to make the National Energy Regulator of South Africa the custodian and enforcer of the national electricity regulatory framework; to provide for licences and registration as the manner in which generation, transmission, distribution, reticulation, trading and the import and export of electricity are regulated; to regulate the reticulation of electricity by municipalities; and to provide for matters connected therewith. Section 5B of the Electricity Act contains provisions on the funds of the regulator. It is therefore an important provision. The savings provision provided, amongst other things, that any licence granted under the provisions of the principal Act prior to such commencement shall be deemed to be a temporary licence issued by the National Electricity Regulator. The savings provisions also provided for deemed licences. These licences were valid

for a maximum period of six months from the date of commencement of the Amendment Act. It also provided that these licences would lapse three months after the date of commencement of the amendment Act if the undertaker concerned had not, within that time, applied for a new licence under the provisions of the principal Act. Section 12(2) of the National Energy Regulator Act 40 of 2004 provides that for the purpose of regulation of the electricity industry, the funds of the Energy Regulator consist of: (a) money appropriated by Parliament; (b) funds collected under section 5B of the Electricity Act; and (c) levies imposed by or under separate legislation. It needs to be noted that Proclamation 44 of 2009 does not list this statute as being administered by the Department of Energy.

2.25 In its Consultation Paper the SALRC requested the Department of Energy to confirm its responsibility for administering this Act. The SALRC also proposed that section 5B of the Electricity Act 41 of 1987 be retained although it suggested that the Department of Energy consider consolidating the applicable legislation governing the funding of the Energy Regulator, that is section 12(2) of the National Energy Regulator Act 40 of 2004 and section 5B of the Electricity Act.

2.26 The Department of Energy confirmed that it is still responsible for the Act as section 5B is still in operation.

(k) Electricity Amendment Act 58 of 1989

2.27 This Act amended the Electricity Act 41 of 1987. This amendment Act provided for a levy on electricity; altered the circumstances in which a licence would not be required for the generation of electricity; provided for the transfer of servitudes on the transfer of undertakings; and provided for incidental matters. With the exception of section 5B the whole of the principal Act was repealed. The provisions of the amendment Act therefore seems to have become obsolete. It is therefore proposed that the Electricity Amendment Act 58 of 1989 be repealed. The Department of Energy confirms that it supports the repeal.

(l) Electricity Amendment Act 46 of 1994

2.28 This Act amended the Electricity Act 41 of 1987. It deleted the definition of "board" and substituted definitions such as 'local authority' and 'Minister'; it provided for the continued existence of the Electricity Control Board as the National Electricity Regulator; applied certain provisions of the Act to other institutions and bodies; and provided for matters connected

therewith. With the exception of section 5B the whole of the principal Act was repealed. The provisions of the Act therefore became obsolete. The SALRC requested the Department of Energy to confirm whether the Electricity Amendment Act 46 of 1994 should remain on the statute book (maybe for purposes of legal certainty) or should be repealed. The Department of Energy confirms that it supports the repeal of the Act. The SALRC therefore recommends the repeal of the amendment Act.

(m) Electricity Amendment Act 60 of 1995

2.29 This Act amended the Electricity Act 41 of 1987. The amendment Act declared the National Electricity Regulator a juristic person; it made provision for the appointment, conditions of employment and functions of the chief executive officer and employees of the said National Electricity Regulator; made provision for the funding and accountability of and reporting by the National Electricity Regulator; and make provision for matters in connection therewith. Section 5B was inserted into the Electricity Act 41 of 1987 by this amendment Act. With the exception of section 5B the whole of the principal Act was subsequently repealed. For the sake of legal certainty the SALRC recommends that the Electricity Amendment Act 60 of 1995 be retained.

(n) Abolition of the National Energy Council Act 95 of 1991

2.30 This Act provided for the abolition of the National Energy Council; for the transfer of powers, assets, liabilities, rights, duties, obligations and staff of the Council to the Minister of Mineral and Energy Affairs; and for matters incidental thereto. The council was abolished with effect from 1 April 1991 and all the assets, liabilities, rights, duties and obligations of the council vested, with effect from 1 April 1991, in the Minister. It seems that this Act can be repealed the purpose for which the Act was passed has been accomplished already in 1991, namely the abolition of the National Energy Council. The SALRC requested the Department of Energy to confirm whether there are reasons why the Act be retained on the statute book. The SALRC noted that if there was still a need to retain the Act then the definition of Minister which still refers to the Minister of Mineral and Energy Affairs, should then be substituted with a reference to Energy, and the reference in section 8(1)(a) to the Department of Mineral and Energy Affairs should be substituted with a reference to the Department of Energy.

2.31 In its Consultation Paper the SALRC requested the Department of Energy to confirm whether the Abolition of the National Energy Council Act 95 of 1991 is spent and it therefore has accomplished its purpose. If this is the case, the SALRC provisionally proposed that the Act

should be repealed. If the Act were to be still operational, the retention of the Act would be necessary.

2.32 The Department of Energy comments that the Act needs to be retained. The Department notes that notwithstanding the abolishment of the National Energy Council and the transfer of powers, assets, liabilities, rights, duties, obligations and staff of that Council to the Minister of Mineral and Energy Affairs, the Act also *inter alia* authorises the Minister to deal with patents vested in the Minister and to assume responsibility for the administration or exercise of powers and rights conferred or duties imposed by any law on the abolished National Energy Council. The Act further amended the Central Energy Fund Act 38 of 1977. Therefore, the Act, in their opinion, has not been spent.

2.33 The Department recommends that the definition of 'Minister' should be substituted to refer to the 'Minister of Energy' and that section 8(1)(a) that refers to the 'Department of Mineral and Energy Affairs' should be amended to refer to the 'Department of Energy'. The SALRC supports these amendments and consequently recommends these two amendments.

(o) Nuclear Energy Act 131 of 1993

2.34 The purpose of the Nuclear Energy Act was to provide for the continued existence of the Atomic Energy Corporation of South Africa Limited, and the Council for Nuclear Safety, and for the management thereof. The Act determined the objects, powers and functions of that Corporation and that Council. It provided for the implementation of the Nuclear Non-proliferation Treaty and the Safeguards agreement. It also regulated the licensing of nuclear activities. It amended the Hazardous Substances Act of 1973, to amend the definition of 'Group IV hazardous substance'; and provided for matters connected therewith. The definitions contained in section 1 only has limited application as it was repealed in so far as it relates to anything in sections 2 and 3 or in Chapters II, III, IV, V and VI of the Act. Section 56 of the Nuclear Energy Act 46 of 1999 provides for certain offences and penalties.¹³ The Consultation Paper noted that

¹³ Section 56(1) provides for the offences and section 56(2) for the penalties:

- (1) A person is guilty of an offence upon-
 - (a) failing to discharge any duty or obligation imposed on the person by or in terms of section 33 (3);
 - (b) publishing, making known or disclosing any information in contravention of section 33 (4) or 31;

the question arises whether section 82¹⁴ of the Nuclear Energy Act of 1993 and particularly sections 82(1)(a); 82(1)(b); 82(1)(c)(ii); 82(1)(d); 82(1)(e) and 82(2) are not obsolete after the

- (c)(i) failing to furnish a return in compliance with a direction given under section 36 (1); or
- (ii) furnishing a false, incorrect or inaccurate return in response to a direction, knowing or believing the return not to be true, correct or accurate; or
- (iii) negligently furnishing an incorrect or inaccurate return in response to such a direction; or
- (iv) when questioned by an inspector in terms of subsection (2) (f) of section 38, knowingly furnishes an answer or makes a statement that is false or misleading or furnishes an answer or makes a statement not knowing or believing it to be true;
- (d) performing or carrying out any restricted act or activity without an authorisation required in terms of section 34 or 35 (as the case may be), or in contravention of the relevant authorisation or any condition imposed in respect thereof under section 34 or 35 (as the case may be);
- (e) being in possession of restricted matter in contravention of section 34 (1) (a) or (b);
- (f) failing to submit a report in compliance with section 47;
- (g) obstructing or hindering any inspector in performing or carrying out any function or duty in terms of this Act or refusing or failing to comply with any question or comply with any demand or direction lawfully put, made or given by an inspector in terms of this Act;
- (h) performing any act prohibited under section 34A.

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82. Offences and penalties.—(1) Any person who—

- (a) (i) contravenes or fails to comply with any provision of section 20 (3) or 31 (1);
 - (ii) after the serving on him of any notice contemplated in section 23 (1), without reasonable cause refuses to furnish the AEC with the return mentioned in such notice to the AEC in accordance with the instructions of such notice, or who deliberately or negligently furnishes an inaccurate return;
 - (b) hinders an authorized person referred to in section 24 (1) or an inspector referred to in [section 67](#) in the performance of his functions or the carrying out of his duties under any provision of this Act, or fails to comply with any order given to him by such authorized person or inspector under any provision of this Act;
 - (c) (i) contravenes or fails to comply with a provision of [section 69](#);
 - (ii) contravenes or fails to comply with a provision of [section 81](#);
- in a place envisaged in [section 71 \(1\)](#) is in possession of an object contemplated in [section 71 \(2\) \(b\) \(ii\)](#) without lawful reason;

adoption of section 56 the Nuclear Energy Act 46 of 1999? However, Juta's Statutes of South Africa does not list the provisions of the Nuclear Energy Act of 1993 as an operative statute. Juta's Statutes of South Africa indicates that the provisions of the Nuclear Energy Act of 1993 applied prior to its repeal by Acts 46 and 47 of 1999.¹⁵ LexisNexis however still lists the

- (d) (i) contravenes or fails to comply with a provision of [section 21](#), [22](#) or [26](#) or of a condition imposed on him under section 21 (2), 22 (2) or 26 (2);
- (ii) contravenes a provision of [section 25](#), or refuses or fails to comply with a direction contemplated in [section 60](#);
- (e) (i) contravenes or fails to comply with a provision of [section 51](#) or of a condition imposed on him in terms of [section 54](#);
- (ii) as a master of any vessel referred to in section 52 (1) contravenes or fails to comply with any provision of that section or a condition imposed on him under [section 55](#),

shall be guilty of an offence, and liable on conviction—

- (aa) in the case of an offence referred to in [paragraph \(a\)](#), to a fine or to imprisonment for a period not exceeding five years;
- (bb) in the case of an offence referred to in [paragraph \(b\)](#), to a fine or to imprisonment for a period not exceeding three years;
- (cc) in the case of an offence referred to in [paragraph \(c\)](#), to a fine or to imprisonment for a period not exceeding seven years;
- (dd) in the case of an offence referred to in [paragraph \(d\)](#), to a fine or to imprisonment for a period not exceeding 10 years;
- (ee) in the case of an offence referred to in [paragraph \(e\)](#), to a fine or to imprisonment for a period not exceeding 10 years; or
- (ff) in the case of any conviction of an offence in terms of any provision of this Act for which no penalty is expressly determined, to a fine or to imprisonment for a period not exceeding six months.

(2) Any person who is guilty of an offence by virtue of a contravention of [section 21](#) or [26](#), shall be deemed to have committed such offence in the Republic, and may be charged in any appropriate court in the Republic designated by the Minister or his assignee.

(3) Any person who contravenes or fails to comply with a provision of this Act or any condition, notice, order, instruction, prohibition, authorization, permission, exemption, certificate or document determined, given, issued, promulgated or granted by or under this Act by the Minister, the council, the Board of Directors, the executive officer or the chief executive officer shall, if any such contravention or failure is not declared an offence elsewhere, be guilty of an offence.

¹⁵ Juta explains in its Prelex (repealed and amended wording) part that the Nuclear Energy Act 46 of 1999 repealed the following provisions of Act 131 of 1993 with effect from 24 February 2000:

- (a) Sections 2 and 3, and Chapters II, III and IV;

definitions (section 1) and sections 68 to 86 of the 1993 Act. LexisNexis' listing of these provisions creates the impression that these sections remain operative. The SALRC requested the Department of Energy to assist in resolving this issue and particularly whether the sections listed by LexisNexis are correctly reflected as being operative and whether there is a need to retain these sections on the statute book, including the penalty provisions of section 82. The Consultation Paper noted if there was still a need to retain Act 131 of 1993 then the definition of 'Minister' needs to be amended to substitute the definition of 'Minister' with the following definition, namely 'Minister' means the Minister of Energy. The Act presently refers to the Minister of Minerals and Energy Affairs.

2.35 In its comments on the Consultation Paper the Department of Energy states that it should be noted that the administration of the Nuclear Energy Act 131 of 1993 was assigned to the Minister of Energy by Proclamation No 44 published in Government Gazette No 32367 on 1 July 2009. The Department proposed that the Act be repealed to clarify that there are no provisions still in operation in the Act.

(p) Nuclear Energy Act 46 of 1999

2.36 The purpose of this Act was to provide for the establishment of the South African Nuclear Energy Corporation Limited, a public company wholly owned by the State (the 'Corporation'). The Act defines the Corporation's functions, powers, and its financial and operational accountability, and provides for its governance and management by a board of directors and a chief executive officer. The Act provides for responsibilities for the implementation and application of the Safeguards Agreement and additional protocols entered into by the Republic and the International Atomic Energy Agency in support of the Nuclear Non-Proliferation Treaty

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- (b) section 1, in so far as it relates to anything in any of those sections or in any of those Chapters; and
 - (c) the provisions of Chapter VII, in so far as they relate to the Atomic Energy Corporation.

Juta's Prelex further indicates that the National Nuclear Regulator Act 47 of 1999 repealed the following provisions of this Act with effect from 24 February 2000:

- (a) Chapters V and VI;
- (b) section 1, in so far as it relates to anything in any of these Chapters; and
- (c) the provisions of Chapter VII, in so far as they relate to the Council for Nuclear Safety.

acceded to by the Republic. It regulates the acquisition and possession of nuclear fuel, certain nuclear and related material and certain related equipment, as well as the importation and exportation of, and certain other acts and activities relating to, that fuel, material and equipment in order to comply with the international obligations of the Republic. It prescribes measures regarding the discarding of radioactive waste and the storage of irradiated nuclear fuel, and provided for incidental matters.

2.37 The Act contains references to the former Department of Minerals and Energy. The Act defines Minister to mean the Minister of Minerals and Energy. It defines 'Director-General' as meaning the Director-General of the Department of Minerals and Energy. The Act defines 'Department' to mean the Department of Minerals and Energy. Section 3 establishes a nuclear energy corporation. Section 16 provides that a Board of Directors governs and controls the South African Nuclear Energy Corporation. Section 16(2) deals with the composition of the Board. Section 16(2)(e) provides that an official of the Department of Foreign Affairs designated by the Minister after consultation with the Minister of Foreign Affairs will also form part of the Board. It is proposed that the outdated references to the Department and Minister of Foreign Affairs be replaced with references to the Department and Minister of International Relations and Cooperation, respectively.

2.38 Section 42(2) amended section 36(2)¹⁶ and 36(3),¹⁷ of the Patents Act 57 of 1978 for purposes of the Nuclear Energy Act. These sections refer to the Minister of Minerals and Energy. Section 42(2) also amended sections 79(1),¹⁸ 79(2),¹⁹ 79(3),²⁰ 79(4),²¹ 79(5),²² and

¹⁶ 'Provided that, in the case of an invention mentioned in paragraph (b) (ii), the disclaimer shall be determined in consultation with the Minister of Minerals and Energy'.

¹⁷ "(3) The registrar shall not dispose of any application for a patent in respect of an invention mentioned in subsection (2) (b), unless he or she has informed the Minister of Minerals and Energy . . ."

¹⁸ Section 79(7) reads as follows for purposes of the Nuclear Energy Act:

- (a) The Minister of Defence may by notice in writing to the registrar direct that any invention of the nature mentioned in subsection (1) (a) and in respect of which a direction of secrecy had been issued in terms of subsection (3), need no longer be kept secret.
- (b) The proprietor of an invention relating to the production or use of nuclear energy or the production, processing or use of nuclear material or restricted matter as defined in section 1 of the Nuclear Energy Act, 1999, shall, if called upon to do so by the Minister of Minerals and Energy, assign the invention or the patent obtained or to be obtained for the invention, to the Minister of Minerals and Energy on behalf of the State- . . .

79(7)²³ of the Patents Act 57 of 1978. Sections 79(1) to (7) contain references to the Minister of Defence and Minister of Minerals and Energy for purposes of the Nuclear Energy Act. Section 80²⁴ refers to the Ministers of Defence and Minerals and Energy. Sections 41(5), 42(3), and 42(4) refer to the 'Minister of Defence'. This expression should be replaced with a reference to

¹⁹ Subsection (2) provides that the assignment and any agreements therein contained shall be valid and effectual and may be enforced by appropriate proceedings in the name of the Minister of Defence'. For the purposes of the Nuclear Energy Act 46 of 1999 subsection (2) has been amended by the addition of the words "or the Minister of Minerals and Energy (as the case may be)".

²⁰ Subsection (3) provides that where an invention has been so assigned, the Minister of Defence may, by notice in writing to the registrar, direct that the invention and the manner in which it is to be performed shall be kept secret. For the purposes of the Nuclear Energy Act this provision reads as follows: 'Where an invention has been so assigned –

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

²¹ Subsection (4) provides that every application, specification, amendment of specification or drawing received at the patent office relating to any invention in respect of which notice in terms of subsection (3) has been given, shall be sealed up by the registrar and the contents of such application, specification, drawing or other document shall not be divulged without the written permission of the Minister of Defence. Subsection (4) has been amended by the addition of the words 'or the Minister of Minerals and Energy (as the case may be)' by s. 42 (1) of Act 46 of 1999.

²² Subsection (5) provides that the patent for any such invention may be made out in the name of the proprietor and sealed, but such patent shall be delivered to the Minister of Defence and not to such proprietor and shall be the property of the State, and no proceedings shall lie for the revocation of the patent. Subsection (5) was amended by the addition after the words 'Minister of Defence', wherever they occur in subsections (4), (5) and (6), of the words 'or Minister of Minerals and Energy (as the case may be)';

²³ (b) When the circumstances mentioned in subsection (1) (b) no longer exist in relation to an invention of the nature mentioned in that subsection, the Minister of Minerals and Energy may by notice in writing to the registrar direct that the invention concerned need no longer be kept secret.

²⁴ Subsection (1A) was inserted into the Patents Act. It provides that the Minister shall, in the case of an invention relating to the production or use of nuclear energy, or the production, processing or use of nuclear material or restricted matter as defined in section 1 of the Nuclear Energy Act, 1999, make such an order if requested thereto in writing by the Minister of Minerals and Energy on the grounds that disclosure or publication of such an application, specification, drawing or other document-

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

the 'Minister of Defence and Military Veterans' in these sections. Sections 45(2) and 46(3) refer to the Minister of Environmental Affairs and Tourism and the Minister of Water Affairs and Forestry. These two portfolios became Water and Environmental Affairs, and Agriculture, Forestry and Fisheries, respectively. Section 55 also refers to the now outdated Director-General of the Department of Minerals and Energy.²⁵

2.39 As the Nuclear Energy Act 46 of 1999 is operative, it is proposed that it be retained but that the Act be amended and updated in accordance with the recent split of the previous DME into the Departments of Energy and Mineral Resources to refer throughout the Act to the Department and the Minister of Energy. It is also recommended that the departmental name changes that occurred as regards certain departments, as indicated in the previous paragraph, be reflected by legislative amendments made to the Nuclear Energy Act.

(q) National Nuclear Regulator Act 47 of 1999

2.40 This Act provides for the establishment of a National Nuclear Regulator in order to regulate nuclear activities, for its objects and functions, for the manner in which it is managed and for its staff matters. The Act also provides for safety standards and regulatory practices, for protection of persons, property and the environment against nuclear damage, and provides for matters connected therewith. The Act defines 'Minister' to mean the Minister of Minerals and Energy. Section 8(4) makes provision for the board of the Regulator to consist of a number of directors appointed by the Minister one of which is an official from the Department. The Act refers to the former Department Minerals and Energy. This reference is now obsolete and should be a reference to the Department of Energy as well. Section 48 provides that the Minister may delegate any power and assign any duty conferred or imposed upon the Minister in terms of the Act to the Director-General: Minerals and Energy. This reference should also be to the Director-General: Energy.

2.41 Commenting on Discussion Paper 116 the National Nuclear Regulator notes that section 8(14) of the National Nuclear Regulator Act 47 of 1999 provides for transitional arrangements which enabled persons who served as members of the then council of the Council for Nuclear Safety in terms of the old Nuclear Energy Act, 1993 to act as directors of the Regulator's board

²⁵ The Minister may delegate any power and assign any function conferred or imposed upon the Minister in terms of this Act, except the power to make regulations, to the Director-General of the Department of Minerals and Energy, who may subdelegate or reassign any delegated power or assigned function in the circumstances and manner as prescribed.

until the Regulator's board was constituted in terms of the National Nuclear Regulator Act, 1999 and met for the first time and for the chairperson of that council to act as chairperson of the Regulator's board. This provision has been fulfilled and is now spent and should be repealed. Section 15(5), like the provisions of section 8(14), provides for transitional arrangements which enabled the executive officer of the then Council for Nuclear Safety to act as the chief executive officer of the Regulator until the Regulator's first chief executive officer was appointed. This provision has been fulfilled and is now spent and should be repealed. Section 15(6) (d) provides for the chief executive officer to complete a report on the activities of the Regulator for each financial year in accordance with the Reporting by Public Entities Act, 1992 and submit the report to the board for approval. Section 15(9) (a) provides for the chief executive officer to exercise all the powers and perform all the duties conferred or imposed on the accounting officer by the NNR Act, the Reporting by Public Entities Act or any other law. The Act refers to a repealed statute, ie the Public Entities Act, 1992, which has been superseded by a more modern statute. This reference is now obsolete and should be a reference to the Public Finance Management Act, 1999 (Act No.1 of 1999).

2.42 The National Nuclear Regulator comments further that section 16(3), like the provisions of sections 8(14) and 15(5), provides for transitional arrangements which enabled employees of the then Council for Nuclear Safety to become employees of the Regulator whilst retaining their previous employment benefits. This provision has been fulfilled and the purpose for which this provision was enacted is currently being met by alternative means. This provision should be repealed. Section 16(6) provides for transitional arrangements which deem any pension fund or provident fund established by the Council for Nuclear Safety to be a fund established for the benefit of the staff of the Regulator. This provision has been fulfilled and the purpose for which this provision was enacted is currently being met by alternative means. This provision is spent and should be repealed. Section 17(4) (a) provides that the chief executive officer may, on behalf of the Regulator, invest any funds of the Regulator which are not required for immediate use, with the approval of the Minister, with the Public Investment Commissioners referred to in section 2 of the Public Investment Commissioners Act, 1984. The Act refers to a repealed statute, ie the Public Entities Act, 1992, which has been superseded by a more modern statute. This reference is now obsolete and should be a reference to the Public Investment Corporation Act, 2004 (Act No. 23 of 2004).

2.43 The SALRC supports the proposals made by the National Nuclear Regulator and recommends the amendment of the sections as proposed by the National Nuclear Regulator.

(r) National Energy Regulator Act 40 of 2004

2.44 The aim of this Act is to establish a single regulator (the National Energy Regulator of South Africa, NERSA) to regulate the electricity, piped-gas and petroleum pipeline industries; and to provide for matters connected therewith. The memorandum on the objects of the National Energy Regulator Bill explained that the Bill established a single energy regulator for the electricity, piped-gas and petroleum pipeline industries, and repealed only those sections of the Electricity Act, the Gas Act and the Petroleum Pipelines Act that pertain to the establishment of the associated regulators or authorities. The Bill also amended the Electricity Act, the Gas Act and the Petroleum Pipelines Act to redefine the associated regulators or authorities to mean the Energy Regulator established by the Bill. Other sections of the Electricity Act, the Gas Act and the Petroleum Pipelines Act remain unchanged.

2.45 Outdated provisions in this Act are the definitions of Department that means the Department of Minerals and Energy, and Minister which means the Minister of Minerals and Energy. The SALRC proposes that these outdated definitions should be amended to refer to the new portfolio and Department of Energy. No provisions that infringe the constitutional equality provisions have been identified in this Act. As the National Energy Regulator Act 40 of 2004 remains operative, it was proposed that it be retained.

2.46 NERSA concurs with the amendments proposed to this Act by the SALRC. NERSA further proposes the amendment of section 4(1)(a) of the Act by the substitution for paragraph (a) by the following: 'undertake the functions set out in section 4 of the Gas Act'. The DOE concurs with this proposal. NERSA proposes also an amendment of section 4(1)(b) by the substitution for paragraph (b) of the following: 'undertake the functions set out in section 4 of the Petroleum Pipelines Act'. The DOE also concurs with this proposal. NERSA further proposes the amendment of section 4(1)(c) of this Act by the substitution for paragraph (c) of the following: 'undertake the functions set out in section 4 of the Electricity Regulation Act'. The SALRC supports and recommends these amendments to section 4(1) as proposed by NERSA. NERSA also proposes the insertion of a definition of 'Electricity Regulation Act' into the Act. The DOE concurs with NERSA's proposals. The Electrify Act, Gas Act, Gas Regulator Levies Act, and Petroleum Pipelines Act are defined in section 1 of the National Energy Regulator Act 40 of 2004²⁶ but the Electricity Regulation Act not. The SALRC therefore supports the inclusion of a definition defining 'Electricity Regulation Act' in the National Energy Regulator Act.

²⁶ "Electricity Act" means the Electricity Act, 1987 (Act No. 41 of 1987); "Energy Regulator" means the National Energy Regulator established by section 3; "Gas Act" means the Gas Act, 2001 (Act

2.47 Section 4(1)(c) provided originally that with effect from a date determined by the Minister by notice in the *Gazette*, (which was determined as being 17 July 2006) the Energy Regulator will undertake the functions of the National Electricity Regulator as set out in section 4 of the Electricity Act and section 4(2) provided that the date contemplated in subsection 4(1)(c) must be after 31 May 2005. Section 4(1)(c) now provides that the Energy Regulator must undertake the functions set out in section 4 of the Electricity Regulation Act, 2006. NERSA proposes the deletion of section 4(2) of the Act. The DOE points out that this section has already been deleted by Act 4 of 2006. NERSA also proposes the deletion of section 15 (the amendment and repeal section and the Schedule in terms of section 15), and suggests the reenactment of those repealed provisions in the respective Acts. The DOE notes that it does not concur with this proposal. The DOE states that it would, however, appreciate the SALRC's advice on whether the retention of section 15 and the Schedule would provide legal certainty and whether any proposed repeal thereof would impact on the effective date on which NERSA assumed these functions in terms of section 4 of the National Energy Regulator Act. The SALRC is of the view that section 15 and the Schedule to the Act should be retained for purposes of legal certainty as the Schedule provided the mechanism for setting the effective date for NERSA to assume its functions.

2.48 NERSA states that consequential amendments must be effected in this Act, if any changes are made to the title of the Gas Regulator Levies Act (as proposed by NERSA). The DOE agrees that consequential changes in other legislation must be made if the title of any legislation is amended. In this case the DOE does **not** concur with the change proposed by NERSA to the title of the Gas Regulator Levies Act, 2002 as the definition of 'gas' is redefined in the DOE's draft Gas Amendment Bill to extend beyond 'piped' gas only. The SALRC supports the DOE.

2.49 NERSA proposes the amendment of section 16(2) which sets out the transitional provisions on decisions taken by the National Electricity Regulator prior to the date contemplated in section 4(1)(c). NERSA suggests the deletion of the words 'date contemplated in section 4(1)(c)' and their replacement by 'establishment of the National Energy Regulator'. The DOE notes that this proposed amendment is **not** acceptable. It is the DOE's understanding that NERSA was established prior to it taking over the functions of the National Electricity Regulator, and that the decisions of the latter have to be protected until the effective date on which NERSA

No. 48 of 2001); "Gas Regulator Levies Act" means the Gas Regulator Levies Act, 2002 (Act No. 75 of 2002); "Petroleum Pipelines Act" means the Petroleum Pipelines Act, 2003 (Act No. 60 of 2003).

overtook the functions of the National Electricity Regulator in terms of section 4(1)(c). The SALRC agrees with the DOE that the wording of section 16(2) should remain unchanged for the reasons stated by the DOE.

2.50 NERSA also proposes the insertion of the word 'Regulation' in section 7(1)(d) of the Act to read '(d) materially fails to perform any duty imposed on him or her in terms of this Act, the Electricity Regulation Act, 2006, the Gas Act or the Petroleum Pipelines Act;'. The SALRC agrees with the DOE that this amendment has already been effected by Act 4 of 2006.

(s) Electricity Regulation Act 4 of 2006

2.51 The aim of the Act was to establish a national regulatory framework for the electricity supply industry and to make the National Energy Regulator the custodian and enforcer of the national electricity regulatory framework. The Act provides for licenses and registration as the manner in which generation, transmission, distribution, trading and the import and export of electricity are regulated. It also regulates the reticulation of electricity by municipalities and provides for matters connected therewith. The Act has repealed the whole of the Electricity Act 41 of 1987 with the exception of Section 5B. The Act contains the following outdated references, namely Minister means the Minister of Minerals and Energy, and section 27(g) refers to the former Department of Provincial and Local Government, presently the Department of Cooperative Governance and Traditional Affairs. No provisions, which infringe the constitutional equality provisions, have been identified in this Act. Apart from the recommended substitution of the outdated references to 'Minister of Minerals and Energy' and 'Department of Provincial and Local Government' with 'Minister of Energy' and the 'Department of Cooperative Governance and Traditional Affairs' respectively, it is proposed that the Electricity Regulation Act 4 of 2006 be retained as the Act still remains operative.

2.52 NERSA appears to concur with the amendments proposed to the Act by the SALRC. NERSA proposes the deletion of the amendments effected in Schedule 1 to this Act as regards amendments made to the National Energy Regulator Act of 2004, and proposed that the same amendments be reenacted in Act 40 of 2004. The DOE remarks that it does not understand the rationale for this proposal and in their view it is unnecessarily confusing and will impact on the effective date on which NERSA undertook the functions of the National Electricity Regulator. The SALRC also does not support NERSA's suggestion. The DOE notes the general comment by NERSA that an amended version of the Act incorporating changes made in Amendment Acts

was not gazetted. DOE states that this is not a legal requirement and that it would be an expensive exercise.

(t) Electricity Regulation Amendment Act 28 of 2007

2.53 The purpose of this Act was to amend the Electricity Regulation Act, 2006. It inserted the definitions of 'Municipal Finance Management Act', 'Municipal Structures Act', 'Municipal Systems Act', 'municipality'; 'reticulation', 'service delivery agreement' and 'service provider' into the Act. It made certain textual corrections in the Act to replace the term 'conimencing' with the word 'commencing' in section 19(4). The Act inserted a new Chapter dealing with electricity reticulation by municipalities. It also extended the Minister's powers to make regulations and provided for matters connected therewith. As the principal Act is still in force it is proposed, for the sake of legal certainty, that the Act be retained. The amendment Act has not become obsolete or redundant.

(u) National Energy Act 34 of 2008

2.54 The purpose of the National Energy Act is to ensure that diverse energy resources are available, in sustainable quantities and at affordable prices, to the South African economy in support of economic growth and poverty alleviation, taking into account environmental management requirements and interactions amongst economic sectors. It provides for energy planning, increased generation and consumption of renewable energies, contingency energy supply, holding of strategic energy feedstocks and carriers, adequate investment in, appropriate upkeep and access to energy infrastructure. It provides measures for the furnishing of certain data and information regarding energy demand, supply and generation; to establish an institution to be responsible for promotion of efficient generation and consumption of energy and energy research; and to provide for all matters connected therewith.

2.55 'Department' is defined in the Act to mean the Department of Minerals and Energy, and 'Minister' to mean the Minister of Minerals and Energy. It is proposed that the definitions of 'Department' and 'Minister' in the Act be substituted to refer to the Department and Minister of Energy. Section 4 provides that the Minister may, after consultation with the Minister of Trade and Industry, the Minister of Labour and the Minister of Environmental Affairs and Tourism, adopt measures not contemplated in any other legislation, to minimise the negative safety, health and environmental impacts of energy carriers. The SALRC recommends that the reference to the Minister of Environmental Affairs and Tourism be substituted with a reference to the Minister of Water and Environmental Affairs. Section 8 provides for the establishment of the

South African National Energy Development Institute. Section 8(2)(c) provides for the appointment of representatives from the Departments of Minerals and Energy, Trade and Industry, Science and Technology, Environmental Affairs and Tourism and Transport. The SALRC recommends that the references in this subsection to the Department of Minerals and Energy, and the Department of Environmental Affairs and Tourism be substituted with references to the Department of Energy and Department of Water and Environmental Affairs respectively.

(v) National Radioactive Waste Disposal Institute Act 53 of 2008

2.56 The purpose of the National Radioactive Waste Disposal Institute Act is to provide for the establishment of a National Radioactive Waste Disposal Institute in order to manage radioactive waste disposal on a national basis. The Act provides for the functions and for the manner in which the Institute is managed, it regulates the staff matters of the Institute and provides for matters connected therewith.

2.57 The Department of Energy notes outdated references in the Act that should be updated. The Act defines Department to mean the Department of Minerals and Energy and Minister to mean the Minister of Minerals and Energy. Section 7 provides for the board of the Institute. Section 7(2)(b) provides for the appointment to the Board by the Minister of an official nominated by the Department of Environmental Affairs and Tourism. The SALRC recommends that the reference to the Department of Environmental Affairs and Tourism be substituted with a reference to the Department of Water and Environmental Affairs. Section 7(2)(c) provides for the appointment by the Minister of an official nominated by the Department of Water Affairs and Forestry. The SALRC also recommends that the reference to the Department of Water Affairs and Forestry be substituted with a reference to the Department of Water and Environmental Affairs.

2. Theme 2 - Petroleum, Oil and Gas

(a) Petroleum Products Act 120 of 1977

2.58 The purpose of the Act is to provide for measures in the saving of petroleum products and an economy in the cost of distribution thereof. It also provides for the maintenance and control of a price for petroleum products, for the furnishing of certain information regarding petroleum products, and for the rendering of services of a particular kind, or services of a particular

standard, in connection with petroleum products. It provides for the licensing of persons involved in the manufacturing and sale of certain petroleum products. It promotes the transformation of the South African petroleum and liquid fuels industry. It provides for the promulgation of regulations relating to such licences, and provides for matters incidental thereto. The Act contains an outdated definition of 'Minister' that means the Minister of Minerals and Energy. The SALRC recommends that the definition be amended to define Minister as the Minister of Energy. No provisions, which infringe the constitutional equality provisions, have been identified in this Act. Since the Petroleum Products Act 120 of 1977 is operative, it is proposed that the Act be retained.

(b) Petroleum Products Amendment Act 72 of 1979

2.59 This Act amended the Petroleum Products Act 120 of 1977 to extend certain control of petroleum products. It prohibited the publication of certain information regarding petroleum products. It regulated afresh certain presumptions with reference to criminal proceedings under the principal Act. It further regulated the disposal of certain moneys, and provided for matters incidental thereto. Since the principal Act is still in force, the SALRC recommends that for legal certainty the amendment Act be retained.

(c) Petroleum Products Amendment Act 61 of 1985

2.60 This Act amended the Petroleum Products Act 120 of 1977. It amended the definition of 'Minister', and it further regulated the powers of the Minister, and persons authorised by him, with regard to petroleum products. It also created certain offences. It provided for the extension of jurisdiction in respect of certain offences, and provided for incidental matters. For the sake of legal certainty, since the principal Act is still in force, the SALRC recommends that the amendment Act be retained.

(d) Petroleum Products Amendment Act 68 of 1991

2.61 This Act amended the Petroleum Products Act 102 of 1977. It amended the definition of 'Minister'; it further regulated the power of the Minister to prescribe the price at which petroleum products may be sold, rectified or deleted certain outdated references, and provided for incidental matters. Since the principal Act is still in force, the SALRC recommends that the amendment Act be retained.

(e) Petroleum Products Amendment Act 46 of 1993

2.62 This Act amended the Petroleum Products Act 102 of 1977. It extended the power of the Minister to make regulations, and provided for matters connected therewith. Since the principal Act is still in force, the SALRC recommends that the Petroleum Products Amendment Act 46 of 1993 be retained.

(f) Petroleum Products Amendment Act 58 of 2003

2.63 This Act amended the Petroleum Products Act 102 of 1977. It defined certain expressions and substituted or deleted certain definitions. It provided for the licensing of persons involved in the manufacturing or sale of petroleum products. It also promoted the transformation of the South African petroleum and liquid fuels industry. It prohibited certain actions relating to petroleum products. It amended, substituted or repealed obsolete provisions. It provided for appeals and arbitrations and authorised the Minister of Minerals and Energy to make specific regulations. It substituted the long title, and provided for matters connected therewith. Since the principal Act is still in force, the SALRC recommends that the amendment Act be retained.

(g) Petroleum Products Amendment Act 2 of 2005

2.64 This Act amended the Petroleum Products Act 72 of 1979. It effected certain technical amendments; to deleted a condition regarding the purchase and sale of certain petroleum products; to adjusted the provision dealing with the system for the allocation of certain licences; it extended the power of the Minister of Minerals and Energy to make regulations, and provided for matters connected therewith. Since the principal Act of 1977 is still in force, the SALRC recommends that the Petroleum Products Amendment Act of 2005 be retained.

(h) Liquid Fuel and Oil Act Repeal Act 20 of 1993

2.65 This Act repealed the Liquid Fuel and Oil Act, 49 of 1947 and the Liquid Fuel and Oil Amendment Act 17 of 1960. It is clear that this Act has achieved its purpose. The repeal of this Act would merely mean the replacement on the statute book of the 1993 repeal Act consisting of two sections with another repeal Act. It is therefore questionable whether the repeal of the 1993 Act would serve any purpose. For the sake of legal certainty, the SALRC recommends that the Act be retained.

(i) Gas Act 48 of 2001

2.66 The Gas Act provides for the orderly development of the piped gas industry. It established a national regulatory framework in relation thereto and establishes a National Gas Regulator as the custodian and enforcer of the national regulatory framework. It also provided for matters connected therewith. The Act defines 'Chief Executive Office' as meaning a person appointed in terms of section 11(1) of the Gas Act. Section 15 of the National Energy Regulator Act 40 of 2004 repealed, however, section 11(1) of the Gas Act. Section 5(3) of the National Energy Regulator Act provides that the Minister must designate one of the full-time members as the Chief Executive Officer of the Energy Regulator. It also contains transitional provisions that states, amongst others, in section 16(1)(a) that the person who immediately before the commencement of the National Energy Regulator Act held the office of chief executive officer of the National Electricity Regulator is deemed to be the chief executive officer of the Energy Regulator. The National Energy Regulator Act also amended the definition of 'Gas Regulator' in the Gas Act. The amendment provided that the 'Gas Regulator' means the National Energy Regulator established by section 3 of the National Energy Regulator Act, 2004. The Gas Act defined 'Gas Regulator' as the National Gas Regulator established by section 3 of the Gas Act. The National Energy Regulator Act also provides that the Energy Regulator must undertake, among others, the functions of the Gas Regulator as set out in section 4 of the Gas Act.

2.67 In view of the amendments made by the National Energy Regulator Act, the definition of 'Chief Executive Officer' should be deleted in the Gas Act. The Gas Act further defines the 'Minister' as the Minister of Minerals and Energy and the 'Department' as the Department of Minerals and Energy. These two definitions should now refer to the Minister of Energy and the Department of Energy. The Gas Act also defines 'mine' to mean mine as defined in the Minerals Act, 1991 (Act No. 31 of 1991). However, the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) repealed the Minerals Act of 1991. The DOE advises that it is in the process of finalising the Gas Amendment Bill and that it will amend the definition of 'mine' to correspond with the definition of 'mine' in section 102 the Mine Health and Safety Act, 1996,²⁷ as

²⁷ "mine' means, when-

(a) used as a noun-

- (i) any borehole, or excavation, in any tailings or in the earth, including the portion of the earth that is under the sea or other water, made for the purpose of searching for or winning a mineral, whether it is being worked or not; or
- (ii) any other place where a mineral deposit is being exploited, including the mining area and all buildings, structures, machinery, mine dumps, access roads or objects

opposed to the definition in the MPRDA as proposed by the SALRC in Discussion Paper 116. The SALRC supports the DOE's proposed amendment of the definition.

2.68 NERSA appears to concur with the amendments proposed to this Act by the SALRC. The DOE explains that in finalising the Gas Amendment Bill it considered the comments received from NERSA. NERSA proposes that sections 3 and 5 to 14 which were deleted in the Gas Act by the National Energy Regulator Act 40 of 2004 ought to be removed for completeness in the Gas Act and that this will require the renumbering of the Gas Act. Subject to advice from the SALRC, the DOE has no objection to this. The SALRC is of the view that for reasons of legal certainty the Act ought not be renumbered since renumbering of the Act would fail to indicate to users of the Act that sections 3 and 5 to 14 existed originally in the Act.

2.69 NERSA indicates that if this proposal about the renumbering is supported, and all references to the 'Gas Regulator' are substituted with the term 'Regulator' then the Schedule to the National Energy Regulator Act 40 of 2004 relating to repeal and amendment of sections of this Act is no longer relevant and must be repealed. DOE notes this comment, but indicates that it would appreciate the SALRC's advice on whether the retention thereof would provide legal certainty and whether any proposed repeal would impact on the effective date on which NERSA assumed the functions of section 4 of the Gas Act (which was subsequently determined as 17 July 2006). The SALRC is of the view that the Schedule to the National Energy Regulator Act ought to be retained for purposes of legal certainty particularly as the Schedule provides the mechanism for the National Regulator overtaking the functions as Regulator from the date subsequently determined (17 July 2007).

(j) Gas Regulator Levies Act 75 of 2002

2.70 The Gas Regulator Levies Act provides for the imposition of levies by the National Gas Regulator and to provide for matters connected therewith. We noted in the preceding paragraphs that the National Energy Regulator Act of 2004 effected a number of changes

situated on or in that area that are used or intended to be used in connection with searching, winning, exploiting or processing of a mineral, or for health and safety purposes. But, if two or more excavations, boreholes or places are being worked in conjunction with one another, they are deemed to comprise one mine, unless the Chief Inspector of Mines notifies their employer in writing that those excavations, boreholes or places comprise two or more mines; or

(iii) a works; and

(b) used as a verb, the making of any excavation or borehole referred to in paragraph (a) (i), or the exploitation of any mineral deposit in any other manner, for the purpose of winning a mineral, including prospecting in connection with the winning of a mineral;”

regarding the regulation of the piped gas industry. A question arises regarding the correct wording of the Act. In the LexisNexis publication of the Act, the definition section lists two definitions for 'Gas Regulator'. The first definition provides that 'Gas Regulator' means the National Energy Regulator established by section 3 of the National Energy Regulator Act, 2004. The second definition provides that 'Gas Regulator' means the National Gas Regulator established by section 3 of the Gas Act. However, section 15 of the National Energy Regulator Act 40 of 2004 repealed section 3 of the Gas Act. According to Juta's Statutes of South Africa the Gas Regulator Levies Act presently provides that 'Gas Regulator' means the National Energy Regulator established by section 3 of the National Energy Regulator Act, 2004. The SALRC suggests that the Department of Energy brings this inconsistency to the attention of LexisNexis.

2.71 The Gas Regulator Levies Act defines the term 'Minister' as the Minister of Minerals and Energy. The Act provides in section 3(3)(a) that the Gas Regulator must submit the budget of estimated revenue and expenditure and a business plan to the Minister at least six months before the start of the financial year of the Department of Minerals and Energy, or such other period as the Minister and the Gas Regulator may agree upon. These references should be to Minister and the Department of Energy.

2.72 NERSA proposes the substitution of the definition and term 'Gas Regulator' for the word and definition 'Regulator' wherever it appears in the Act (including headings of sections). The DOE concurs with this proposal. NERSA further proposes the deletion of the words 'National Gas' in the long title of the Act which provides: 'To provide for the imposition of levies by the National Gas Regulator; and to provide for matters connected therewith'. DOE concurs with this suggestion. The SALRC supports the substitution of the word 'Gas Regulator' for the word 'Regulator' wherever it appears in the Act, including in the headings to sections and the long title of the Act, except in the short title of the Act. NERSA also proposes the amendment of the title of the Act and the short title (section 7) to read 'Piped Gas Levies Act'. The DOE explains that given the intention of the DOE to extend the scope of the Gas Act, 2001 beyond piped gas, the DOE does not concur with this proposal. The SALRC supports the DOE for the reason stated by the DOE why the short title of the Act ought not to be amended.

(k) Petroleum Pipelines Act 60 of 2003

2.73 This Act provides for a national regulatory framework for petroleum pipelines, to establish a Petroleum Pipelines Regulatory Authority as the custodian and the enforcer of the national regulatory framework and to provide for matters connected therewith. In the definition section

‘Chief Executive Officer’ is defined as the person appointed in terms of section 11(1) of the Act. Section 15 of the National Energy Regulator Act 40 of 2004 repealed sections 3 and 5 to 14 – including section 11(1) – of the Petroleum Pipelines Act. The definition of ‘Chief Executive Officer’ is therefore obsolete and should be deleted. The Act also defines Minister as the Minister of Minerals and Energy. The SALRC recommends that this definition should be amended to refer to the ‘Minister of Energy’.

2.74 NERSA appears to concur with the amendments proposed to this Act by the SALRC. NERSA proposes the deletion of the words ‘to establish a Petroleum Pipelines Regulatory Authority as the custodian and enforcer of the national regulatory framework’ in the long title of the Act. The DOE concurs with this input. NERSA wishes to introduce the term ‘Regulator’ in reference to itself and use this term consistently in the various Acts applicable to NERSA. It thus recommends the substitution for the definition and term ‘Authority’ wherever it appears in the Act (including headings) for the definition and term ‘Regulator’. The DOE concurs with this proposal. The SALRC recommends that all the references in the Act to the ‘Authority’ be replaced with the word ‘Regulator’ throughout the Act, including the long title and the headings to the sections.

2.75 NERSA further proposes that the sections deleted in this Act by the National Energy Regulator Act 40 of 2004, namely sections 3 and 5 to 14, be removed for completeness sake and that it will require the renumbering of the Petroleum Pipelines Act. Subject to advice from the SALRC, the DOE has no objection to this. The SALRC is of the view that the Act ought not to be renumbered as it might lead to legal uncertainty. NERSA further indicates that if the proposals are supported, then the Schedule to the National Energy Regulator Act 40 of 2004 relating to repeal and amendment of sections of the Act Petroleum Pipelines is no longer relevant and must be repealed. The DOE notes this comment, but indicates that it would appreciate the SALRC’s advice on whether the retention thereof would provide legal certainty and whether any proposed repeal would impact on the effective date on which NERSA assumed the functions of section 4 of the Petroleum Pipelines Act. The SALRC does not support the deletion of the amendments in the Schedule to the National Energy Regulator Act as it might lead to legal uncertainty.

2.76 The heading to Chapter 2 of the Petroleum Pipelines Act is ‘Authority and members’. The only remaining section in Chapter 2 is now section 54 which deals with the powers and duties of the authority. NERSA proposes the substitution of the heading in Chapter 2 for the following heading: ‘Powers and Duties of the Regulator’. The DOE supports this proposal, subject to acceptance of the renumbering of the Act. The SALRC is of the view that since only the powers

and duties of the regulator remain in this Chapter, therefore the heading to Chapter 2 should be amended as suggested by NERSA.

(I) Petroleum Pipelines Levies Act 28 of 2004

2.77 The Petroleum Pipelines Levies Act provides for the imposition of levies by the Petroleum Pipelines Regulatory Authority and to provide for matters connected therewith. The Act defines Authority, to mean the Authority established by section 3 of the Petroleum Pipelines Act. There are also numerous references throughout the Act to the Authority. As we noted in the preceding discussion, the National Energy Regulator Act 40 of 2004 repealed section 3 of the Petroleum Pipelines Act. Section 4(1) of the National Energy Regulator Act provides that the Energy Regulator must undertake, amongst others, the functions of the Petroleum Pipelines Regulatory Authority as set out in section 4 of the Petroleum Pipelines Act.²⁸ The National Energy Regulator Act defines the term Energy Regulator to mean the National Energy Regulator established by section 3 of the National Energy Regulator Act. The definition of *Authority* should therefore refer to the Energy Regulator established by the National Energy Regulator Act of 2004. The Act also refers to the 'Minister' as the Minister of Minerals and Energy. This definition should now refer to the Minister of Energy.

2.78 NERSA proposes the substitution of the words 'Petroleum Pipelines Regulatory Authority' for the word 'Regulator' in the long title of the Act. The DOE supports this proposal. NERSA wishes to introduce the term 'Regulator' in reference to itself and use this term consistently in the various Acts applicable to NERSA. It thus recommends the substitution for the definition and term 'Authority' wherever it appears in the Act (including headings) for the definition and term 'Regulator'. The DOE concurs with this proposal. DOE notes that the definition of 'Authority' is

²⁸ The powers and functions of the Authority are to: (a) issue licences for the construction and conversion of petroleum pipelines, loading facilities and storage facilities; and the operation of petroleum pipelines, loading facilities and storage facilities; (b) gather and store information relating to the construction, conversion and operation of petroleum pipelines, loading facilities and storage facilities; (c) undertake investigations and enquiries into the activities of licensees; (d) act as mediator or arbitrator; (e) consult, where necessary, with Government Departments and other bodies and institutions; (f) set or approve tariffs and charges in the manner prescribed by regulation; (g) monitor and take appropriate action, if necessary, to ensure that access to petroleum pipelines, loading facilities and storage facilities is provided in a non-discriminatory, fair and transparent manner; (h) expropriate land or any right in or any right in respect of land, necessary for the exercise of a licensee's rights; (i) promote competition in the petroleum pipeline industry; (j) take decisions that are not at variance with published Government policy; (k) perform any activity incidental to the performance of its duties; (l) make rules in accordance with section 33 (3); and (m) exercise any power or perform any duty conferred or imposed on it under any law.

obsolete and that 'Regulator' must be defined as 'the National Energy Regulator established by section 3 of the National Energy Regulator Act, 2004 (Act 40 of 2004)'.

2.79 The SALRC agrees with the DOE that the definition of 'Authority' is obsolete and that 'Regulator' must be defined in the Act as 'the National Energy Regulator established by section 3 of the National Energy Regulator Act, 2004 (Act 40 of 2004)'. Hence the SALRC recommends that all references in the Act to the 'Authority', including in the long title of the Act, should be amended to refer to the 'Regulator'.

(m) The Coal Act Repeal Act 124 of 1991 and the Coal Resources Act Repeal Act 6 of 1992

2.80 Finally, the Consultation Paper noted that the question arises whether the two following Acts do not also form part of the sphere of responsibility of the Department of Energy, namely the Coal Act Repeal Act 124 of 1991 and the Coal Resources Act Repeal Act 6 of 1992. As its name indicates, the Coal Act Repeal Act 124 of 1991 provided for the repeal of the Coal Act of 1983. It provided for the payment of levies and fines due at the repeal of the Act, and for the disposal of moneys not yet utilised. It also amended the Central Energy Fund Act, 1977, so as to delete references therein to the first-mentioned Act; and provided for matters connected therewith. The Coal Resources Act Repeal Act 6 of 1992 repealed the Coal Resources Act of 1985. It amended the Price Control Act, 1964, to delete a reference therein to the first-mentioned Act; and provided for matters connected therewith. The Consultation Paper pointed out that the SALRC would appreciate confirmation from the Department of Energy whether these two Acts form part of its responsibility and if they do not, which Department takes responsibility presently for their administration.

2.81 The Department of Energy commented that the Department accepts responsibility for the Coal Act Repeal Act 124 of 1991, as it relates to its functional area of responsibility. Apart from establishing legal certainty, the Coal Act Repeal Act, 1991 amended certain sections of the Central Energy Fund Act 38 of 1977 which is administered by the Department. The Department proposes that the SALRC consider the repeal of the Coal Resources Act Repeal Act 6 of 1992, as it appears to be obsolete. The SALRC supports this proposal and recommends the repeal of the Coal Resources Act Repeal Act.

ANNEXURES

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Annexure A

ENERGY LAWS REPEAL AND RELATED MATTERS BILL

GENERAL EXPLANATORY NOTE:

[] Unless otherwise indicated words in bold type in square brackets indicate omissions from existing enactments.

_____ Unless otherwise indicated words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend and repeal certain laws of the Republic pertaining to energy related matters containing obsolete provisions

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:

Amendment of laws

1. The laws specified in Schedule 1 are hereby amended to the extent set out in the third column of the Schedule.

Repeal of laws

2. The laws specified in Schedule 2 are hereby repealed.

Short title and commencement

3. This Act is called the Energy Laws Repeal and Related Matters Act, 201... and comes into operation on a date determined by the President by proclamation in the *Gazette*.

SCHEDULE 1

(Section 1)

No. and year of law	Title	Extent of amendment
Act 38 of 1977	Central Energy Fund Act	1. The amendment of the Act by the substitution for the expression "Mineral and Energy Affairs" of the expression " <u>Energy</u> " wherever it occurs, in sections 1(1)(c); 1(2)(a); 1(2)(b); 1(4)(a); 1(4)(b); 1(4)(c); 1A(1);

		1A(3A)(b); 1A(3A)(c); 1A(4)(a)(ii); 1A(4)(a)(iv); 1A(4)(b); 1A(5); 1B(b); 1D(1); 1D(3); and 1E(6).
120 of 1977	Petroleum Products Act	1. The amendment of section 1 by the substitution for the definition of “Minister” of the following definition: “Minister’ means the Minister of [Minerals and Energy Affairs] .”
Act 46 of 1999	Nuclear Energy Act	1. The amendment of section 1 by the substitution for the definition – (a) of “Department” of the following definition: “Department’ means the Department of [Minerals and Energy] ,” (b) of “Director-General” of the following definition: “Director-General’ means the Director-General of the Department of [Minerals and Energy] ,”; and (c): of “Minister” of the following definition: “Minister’ means the Minister of [Minerals and Energy] .” 2. The amendment of section 16 by the substitution for paragraph (e) of subsection 2 of the following paragraph: “(e) an official of the Department of [Foreign Affairs International Relations and Cooperation] designated by the Minister after consultation with the Minister of [Foreign Affairs International Relations and Cooperation] . 3. The amendment of the Act by the substitution for the expression “Minister of Minerals and Energy” of the expression “ <u>Minister of Energy</u> ” wherever it occurs, in section 42(2), 42(3), and 42(4). 4. The amendment of the Act by the substitution for the expression “Minister of Defence” of the expression “ <u>Minister of Defence and Military Veterans</u> ” wherever it occurs in sections 41(5); 42(3) and 42(4). 5. The amendment of the Act by the substitution in sections 45(2) and 46(3) for the expression “Minister of Environmental Affairs and Tourism and the Minister of Water Affairs and Forestry” of the expression “ <u>Minister of Water and Environmental Affairs</u> ”, wherever it occurs. 6. The amendment of the Act by the substitution in section 55 for the expression “Director-General of the Department of Minerals and Energy” of the expression “ <u>Director-General of the Department of Energy</u> ”.
Act 47 of 1999	National Nuclear Regulator Act	1. The amendment of section 1 by the substitution for the definition of “Minister” of the following definition: “Minister’ means the Minister of [Minerals and Energy Affairs] .” 2. The amendment of section 8 of the Act by the substitution in subsection (4) in paragraph (a) for subparagraphs (iv) and (v) of the following

		<p>subparagraphs:</p> <p>“(iv) an official from the Department of [Minerals and] Energy;</p> <p>(v) an official from the Department of <u>Water and Environmental Affairs</u> [and Tourism]; and”.</p> <p>3. The deletion of subsection (14) of section 8:</p> <p>“[(14) Despite the preceding provisions of this section-</p> <p>(a) the persons who, immediately before the specified date, served as members of the council of the Council for Nuclear Safety in terms of the previous Act, must act as the directors of the Regulator’s board from the specified date until the day immediately before the Regulator’s board, constituted in accordance with subsection (4), meets for the first time; and</p> <p>(b) the chairperson of that council must act as chairperson of that board for the period contemplated in paragraph (a) and must determine the times, places of its meetings.]”.</p> <p>4. The following section is substituted for section 15:</p> <p>15 Chief executive officer of Regulator</p> <p>(1) The Minister must, after consultation with the board, appoint a person with suitable qualifications as chief executive officer of the Regulator.</p> <p>(2) A person is disqualified from being appointed or remaining a chief executive officer if subject to any of the disqualifications mentioned in section 8 (8).</p> <p>(3) A chief executive officer holds office for a period not exceeding three years as specified in the letter of appointment and may be reappointed upon expiry of that term of office.</p> <p>(4) The Minister may at any time discharge the chief executive officer from office-</p> <p>(a) if the chief executive officer has repeatedly failed to perform the duties of office efficiently;</p> <p>(b) if, because of any physical or mental illness or disability, the chief executive officer has become incapable of performing the functions of that office or performing them efficiently; or</p> <p>(c) for misconduct.</p> <p>[(5) (a) The person who, immediately before the specified date was the executive officer of the Council for Nuclear Safety by virtue of</p>
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		<p>appointment to that office in terms of section 44 of the previous Act, must, from the specified date until the date on which the appointment of the Regulator's first chief executive officer in terms of subsection (1) of this section takes effect, act as the Regulator's chief executive officer.</p> <p>(b) A person so acting is not precluded from being appointed as the Regulator's chief executive officer in terms of subsection (1).]"</p> <p>(6) The chief executive officer must-</p> <ul style="list-style-type: none"> (a) ensure that the functions of the Regulator in terms of this Act are performed; (b) report to the board on the proper functioning of the Regulator; (c) issue a nuclear authorisation in accordance with this Act; (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)] <u>Public Finance Management Act, 1999 (Act No. 1 of 1999)</u>, and submit the report to the board for approval; (e) each financial year, after consultation with the board and with the approval of the Minister, publish and distribute a plan of action for the activities of the Regulator. <p>(7) The board must forward the report mentioned in subsection (6)(d), as approved by it, to the Minister within three months of the end of the financial year concerned.</p> <p>(8) The chief executive officer is the accounting officer of the board charged with the responsibility of accounting for all money received and payments made by, and the assets of, the Regulator.</p> <p>(9) The chief executive officer must exercise all the powers and perform all the duties conferred or imposed on the accounting officer by-</p> <ul style="list-style-type: none"> (a) this Act, the [Reporting by Public Entities Act, 1992] <u>Public Finance Management Act, 1999</u>, or any other law; (b) the board. <p>(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 of the Regulator to act as chief executive officer until the chief executive officer is able to resume those functions.</p> <p>(11) An acting chief executive officer has all the</p>
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		<p>powers and must perform all the duties of the chief executive officer.”.</p> <p>6. The amendment of section 16 by the deletion of subsections (3) and (6).</p> <p>7. The following subparagraph is substituted for subparagraph (a) of subsection (4) of section 17:</p> <p>“(a) with the approval of the Minister, with the Public Investment [Commissioners] Corporation referred to in section 2 of the [Public Investment Commissioners Act, 1984 (Act No. 45 of 1984)] <u>Public Investment Corporation Act, 2004 (Act No.23 of 2004)</u>; or”.</p> <p>8. The following subsection is hereby substituted for subsection (1) of section 48:</p> <p>“(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 and] Energy.”.</p>
<p>Act 48 of 2001</p>	<p>Gas Act</p>	<p>1. 1. The substitution for the long title of the Act of the following long title:</p> <p>To promote the orderly development of the piped gas industry; to establish a national regulatory framework; to establish [a National Gas] <u>the National Energy Regulator</u> as the custodian and enforcer of the national regulatory framework; and to provide for matters connected therewith.</p> <p>2. The amendment of section 1 by –</p> <p>(a) the deletion of the following definition:</p> <p>“‘Chief Executive Officer’ means the person appointed in terms of section 11 (1);”;</p> <p>(b) by the substitution for the definition of “Department” of the following definition:</p> <p>“‘Department’ means the Department of [Minerals and] Energy.”;</p> <p>(c) by the substitution for the definition of “mine” of the following definition:</p> <p>“‘mine’ means “mine” as defined in <u>section 102 of the [Minerals Act, 1991 (Act No. 31 of 1991)]</u> <u>Mine Health and Safety Act, 1996 (Act 29 of 1996)</u>.”; and</p> <p>(d) by the substitution for the definition of “Minister” of the following definition:</p> <p>“‘Minister’ means the Minister of [Minerals and] Energy.”.</p> <p>3. The amendment of the Act by the substitution for the</p>

		expression “Gas Regulator” wherever it occurs in the Act of the word “Regulator”.
Act 75 of 2002	Gas Regulator Levies Act	<p>1. The substitution for the long title of the Act of the following long title:</p> <p>To provide for the imposition of levies by the National [Gas] <u>Energy</u> Regulator; and to provide for matters connected therewith.</p> <p>2. The amendment of section 1 by the substitution for the definition of “Minister” of the following definition:</p> <p>“Minister’ means the Minister of [Minerals and] Energy</p> <p>3. The amendment of section 3 by the substitution in paragraph (a) of subsection (3) for the words “Department of Minerals and Energy” with the words “Department of Energy”.</p> <p>4. The amendment of the Act by the substitution for the expression “Gas Regulator” wherever it occurs in the Act, except in section 7, of the word “Regulator”.</p>
Act 60 of 2003	Petroleum Pipelines Act	<p>1. The substitution for the long title of the Act of the following long title:</p> <p>“To establish a national regulatory framework for petroleum pipelines; to establish [a Petroleum Pipelines Regulatory Authority] <u>the National Energy Regulator</u> as the custodian and enforcer of the national regulatory framework; and to provide for matters connected therewith.</p> <p>2. The amendment of section 1 by –</p> <p>(a) the deletion of the following definition:</p> <p>“Chief Executive Officer’ means the person appointed in terms of section 11 (1);” and</p> <p>(b) the substitution for the definition of “Minister” of the following definition:</p> <p>“Minister’ means the Minister of [Minerals and] Energy;”</p> <p>3. The amendment of the Act by the substitution for the word “Authority” wherever it occurs in the Act of the word “Regulator”.</p> <p>4. The following heading is substituted for the heading to Chapter 2:</p> <p>[Authority and members] <u>Powers and Duties of the Regulator</u></p>
Act 28 of 2004	Petroleum Pipelines Levies Act	<p>1. The substitution for the long title of the Act of the following long title:</p>

		<p>To provide for the imposition of levies by the [Petroleum Pipelines Regulatory Authority] <u>the National Energy Regulator</u>; and to provide for matters connected therewith.</p> <p>2. The amendment of section 1 by –</p> <p>(a) the substitution for the definition of “Authority” of the following definition:</p> <p>“[‘Authority’] ‘Regulator’ means the [Authority] Regulator established by section 3 of the [Petroleum Pipelines Act] <u>National Energy Regulator Act, 2004 (Act 40 of 2004)</u>”; and</p> <p>(b) the substitution for the definition of “Minister” of the following definition:</p> <p>“‘Minister’ means the Minister of [Minerals and] Energy”.</p> <p>3. The amendment of section 3 by the substitution in paragraph (a) of subsection (3) for the words “Department of Minerals and Energy” with the words “Department of Energy”.</p> <p>4. The amendment of the Act by the substitution for the word “Authority” wherever it occurs in the Act except in the definition “Authority” in section 1, of the word “Regulator”.</p>
<p>Act 40 of 2004</p>	<p>National Energy Regulator Act</p>	<p>1. The amendment of section 1 by –</p> <p>(a) the substitution for the definition of “Department” of the following definition:</p> <p>“‘Department’ means the Department of [Minerals and] Energy”;</p> <p>(b) the insertion after the definition of ‘Electricity Act’ of the following definition:</p> <p><u>“‘Electricity Regulation Act’ means the Electricity Regulation Act, 2006 (Act 4 of 2006)</u>”; and</p> <p>(c) the substitution for the definition of “Minister” of the following definition:</p> <p>“‘Minister’ means the Minister of [Minerals and] Energy”; and</p> <p>2. The substitution for subsection (1) of section 4 of the following subsection:</p> <p>3.</p> <p>“(1) The Energy Regulator must-</p> <p>(a) undertake the functions [of the Gas Regulator as] set out in section 4 of the Gas Act;</p> <p>(b) undertake the functions [of the Petroleum Pipelines Regulatory Authority as] set out in section 4 of the Petroleum Pipelines</p>

		Act; and (c) undertake the functions set out in section 4 of the Electricity Regulation Act[, 2006].”.
Act 4 of 2006	Electricity Regulation Act	1. The amendment of section 1 by the substitution for the definition of “Minister” of the following definition: “Minister’ means the Minister of [Minerals and] Energy [Affairs]; ”. 2. The amendment of section 27 by the substitution for paragraph (g) of the following paragraph: “(g) regularly reporting and providing information to the Department of [Provincial and Local Government] Cooperative Governance and Traditional Affairs , the National Treasury, the Regulator and customers;”.
Act 34 of 2008	National Energy Act	1. The amendment of section 1 by the substitution for the definition – (a) of “Department” of the following definition: “‘Department’ means the Department of [Minerals and] Energy; ”; and (b) of “Minister” of the following definition: “‘Minister’ means the Minister of [Minerals and] Energy; ”. 2. The substitution for section 4 of the following section: “4. The Minister may, after consultation with the Minister of Trade and Industry, the Minister of Labour, and the Minister of <u>Water and Environmental Affairs</u> [and Tourism] , adopt measures not contemplated in any other legislation, to minimize the negative safety, health and environmental impacts of energy carriers”. 3. The amendment of section 8 by substitution for paragraph (c) of subsection (2) of the following paragraph: “(c) representatives from the Departments of [Minerals and] Energy , Trade and Industry, Science and Technology, Environmental Affairs [and Tourism] and Transport; and”.
Act 53 of 2008	National Radioactive Waste Disposal Institute Act	1. The amendment of section 1 by the substitution for the definition – (a) of “Department” of the following definition: “‘Department’ means the Department of [Minerals and] Energy; ”; and (b) of “Minister” of the following definition:

		<p>“Minister” means the Minister of [Minerals and Energy];</p> <p>2. The amendment of section 7 by the substitution for paragraphs (b) and (c) of subsection (2) of the following paragraphs:</p> <p>“(b) an official nominated by the Department of Environmental Affairs [and Tourism] and appointed by the Minister;</p> <p>(c) an official nominated by the Department of Water Affairs [and Forestry] and appointed by the Minister;</p>
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SCHEDULE 2

(Section 2(a))

Item	No. and year of law	Title or subject of law
1.	58 of 1989	Electricity Amendment Act 58 of 1989
2.	6 of 1992	Coal Resources Act Repeal Act 6 of 1992
3.	131 of 1993	Nuclear Energy Act 131 of 1993
4.	46 of 1994	Electricity Amendment Act 46 of 1994

ANNEXURE B

ENERGY RELATED LEGISLATION ADMINISTERED BY THE DEPARTMENT OF ENERGY:²⁹

1. Central Energy Fund Act, 1977 (Act No. 38 of 1977)
2. Petroleum Products Act, 1977 (Act No. 120 of 1977)
3. Petroleum Products Amendment Act, 1979 (Act No. 72 of 1979)
4. Second State Oil Fund Amendment Act, 1979 (Act No.74 of 1979)
5. State Oil Fund Amendment Act, 1980 (Act No.68 of 1980)
6. State Oil Fund Amendment Act, 1984 (Act No.73 of 1984)
7. State Oil Fund Amendment Act, 1985 (Act No.46 of 1985)
8. Petroleum Products Amendment Act, 1985 (Act No.61 of 1985)
9. Electricity Act, 1987 (Act No.41 of 1987) ³⁰
10. Central Energy Fund Amendment Act, 1988 (Act No.55 of 1988)
11. Electricity Amendment Act, 1989 (Act No.58 of 1989)
12. Petroleum Products Amendment Act, 1991 (Act No.68 of 1991)
13. Abolition of the National Energy Council Act, 1991 (Act No.95 of 1991)
14. Central Energy Fund Amendment Act, (Act No.29 of 1992)
15. Liquid Fuel and Oil Act Repeal Act, 1992 (Act No.20 of 1993)
16. Petroleum Products Amendment Act, 1993 (Act No.46 of 1993)
17. Nuclear Energy Act, 1993 (Act No. 131 of 1993)
18. Electricity Amendment Act, 1994 (Act No.46 of 1994)

²⁹ Proclamation 44 of 2009 published on 1 July 2009 in Government *Gazette* No 32367 lists the principal statutes administered by the respective government departments.

³⁰ Proclamation 44 of 2009 does not list this statute as being administered by the Department of Energy.

19. Central Energy Fund Amendment Act, 1994 (Act No.48 of 1994)
20. Electricity Amendment Act, 1995 (Act No.60 of 1995)
21. Nuclear Energy Act, 1999 (Act No. 46 of 1999)
22. National Nuclear Regulator Act, 1999 (Act No. 47 of 1999)
23. Gas Act, 2001 (Act No. 48 of 2001)
24. Gas Regulator Levies Act, 2002 (Act No. 75 of 2002)
25. Petroleum Products Amendment Act, 2003 (Act No.58 of 2003)
26. Petroleum Pipelines Act, 2003 (Act No. 60 of 2003)
27. Petroleum Pipelines Levies Act, 2004 (Act No. 28 of 2004)
28. National Energy Regulator Act, 2004 (Act No. 40 of 2004)
29. Petroleum Products Amendment Act, 2005 (Act No. 2 of 2005)
30. Electricity Regulation Act, 2006 (Act No. 4 of 2006)
31. Electricity Regulation Amendment Act, 2007 (Act No. 28 of 2007)
32. National Energy Act, 2008 (Act No. 34 of 2008)
33. National Radioactive Waste Disposal Institute Act, 2008 (Act 53 of 2008) ³¹

³¹ Proclamation 44 of 2009 does not list this statute as being administered by the Department of Energy.

ANNEXURE C

STAKEHOLDERS WHO COMMENTED ON DISCUSSION PAPER 116

- 1. ESKOM: GENERAL MANAGER LEGAL**
- 2. SHELL SOUTH AFRICA MARKETING/SHELL SOUTH AFRICA REFINING**
- 3. THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA (NERSA)**
- 4. THE NATIONAL NUCLEAR REGULATOR**
- 5. THE DEPARTMENT OF ENERGY: HEAD OF LEGAL SERVICES**