

To: The Director-General
Department of Electricity and Energy

Attention: Mr Zukile Zibi

By email: Zukile.Zibi@dee.gov.za

18 June 2026

RE: COMMENTS ON THE NUCLEAR ENERGY AMENDMENT BILL, 2025

1. INTRODUCTION

These comments are submitted on behalf of:

- The Southern African Faith Communities' Environment Institute (SAFCEI). SAFCEI is a registered non-profit organisation established by multi-faith environmental and social justice advocates to (among other things) confront environmental and socio-economic injustices, and to support and encourage faith leaders and their communities in Southern Africa to take action on eco-justice, sustainable living and climate change issues; and
- Earthlife Africa – Johannesburg (ELA-JHB). ELA-JHB is a non-governmental non-profit voluntary association established by environmental and social justice advocates to mobilise civil society around environmental issues in relation to people, and includes a Sustainable Energy and Climate Change Project that works to promote local and global environmental and social justice on sustainable energy and climate change issues. ELA-JHB is an autonomous branch of Earthlife Africa.

These comments are made in response to the Honourable Minister Ramokgopa's public invitation to interested persons and organisations to submit written comments on the proposed Nuclear Energy Amendment Bill (the Bill).¹

¹ See GN 7508 of 22 May 2026.

It is noted that the Bill includes a number of routine amendments updating the Nuclear Energy Act, 1999 (NEA), including updating names, cross-references and definitions to match newer laws (for example, updating the definition of Minister to mean the Minister responsible for Electricity and Energy, and recognising NECSA as a public entity under current financial rules). The Bill also includes various sensible improvements, including (but not necessarily limited to): giving the Minister the express power to suspend, amend or revoke authorisations (new section 35A); and alignment with international instruments (recognising the Additional Protocol and updating the Act's treaty framework to reflect current non-proliferation practice).

The Bill also includes various proposed amendments relating primarily to nuclear-non-proliferation and the Minister's responsibilities regarding various nuclear-related matters. These comments focus mostly on these amendments.

2. NUCLEAR NON-PROLIFERATION

2.1. Minister's responsibilities concerning the Republic's international obligations with regard to nuclear non-proliferation

It is noted that various minor amendments to the existing section 33 are proposed by the Bill, as well as a national register of persons authorised to carry out activities under the NEA (new section 33(6)).

Recommendation: Proposed new section 33(6) is a useful accountability tool. To improve transparency and accountability, SAFCEI and ELA-JHB recommend that the provision be revised to make this national register of persons publicly accessible.

2.2. Bringing treaties into domestic law by proclamation (new section 33A)

The Bill's new section 33A(1) and (2) seeks to empower the President by proclamation to:

- add to the NEA any Schedule that includes provisions of an international nuclear non-proliferation convention, treaty or agreement that falls within the scope of the NEA and which has been entered into or ratified by the government;
- amend the Schedule to give effect to any amendment of or addition to an international nuclear non-proliferation convention, treaty or agreement that has been ratified by the government; and
- substitute for any nuclear non-proliferation convention, treaty or agreement appearing in the Schedule of a new convention, treaty or agreement that has been entered into or ratified by the government.

In doing so, the proposed amendment seeks to give the nuclear non-proliferation convention, treaty or agreement, the amendment thereof or the addition thereto

domestic legal effect (new section 33A(3)).

The only check is that the Minister must table the proclamation in Parliament within 14 days (new section 33A(4)).

The Constitution separates when an international agreement binds the Republic internationally (section 231(2) and (3)), and when it becomes law inside the country (section 231(4)). The latter provides that any international agreement becomes law in the Republic when it is enacted into law by national legislation (save for self-executing provisions that have been approved by Parliament).

The Bill's proposed section 33A attaches only an after-the-fact 'tabling in Parliament' check — the device that section 231(3) reserves for international agreements of a technical or administrative nature — to what is in substance the domestic law-making function the Constitution places with Parliament under section 231(4). It applies the weaker safeguard to the stronger function, and allows no public input.

Recommendation: SAFCEI and ELA-JHB recommend that proposed section 33A be revised to require parliamentary approval of the proclamation, which would preserve the flexibility to update commitments quickly while ensuring proper Parliamentary oversight. The burden this adds is modest: where the scheduled instrument is one requiring parliamentary approval under section 231(2) to bind the Republic, Parliament will already have engaged with it; and where the instrument is of a technical or administrative nature that binds under section 231(3) on tabling alone, the case for Parliamentary approval of the incorporating proclamation is, if anything, stronger — without it, the instrument would acquire the force of domestic law without having received substantive parliamentary scrutiny.

2.3. Restricted activities

Under the current NEA, section 34 is the main authorisation provision for acquisition or possession of, and certain activities relating to, nuclear material, restricted material and nuclear-related equipment and material.

The Bill seeks to reorganise this: section 34 becomes a single consolidated list of 'restricted acts and activities' that are prohibited without authorisation, and section 35 becomes the procedure for applying for that authorisation.

The list of controlled activities is widened, expressly capturing exports of any source material, special nuclear material or restricted material or goods and nuclear-related equipment and material from the Republic; as well as engaging in brokering, transit and trans-shipment of source, special nuclear or restricted material or goods (the latter defined as including any technology, data, technical assistance, services, software, processes, activities, items, components, equipment, assemblies or systems associated with nuclear material regardless of whether they are produced domestically or imported into the Republic). The Bill is thus more comprehensive in what it seeks to control.

Section 34(1) of the current NEA requires written authorisation for (among other things) the acquisition or possession of, and certain activities relating to, nuclear material, restricted material and nuclear-related equipment and material. No person may produce nuclear energy without such written authorisation.

The existing section 34(2) provides that the Minister ‘may after consultation with’ the Council for the Non-Proliferation of Weapons of Mass Destruction (on any matter affecting the proliferation of weapons of mass destruction) grant the required authorisation.

The Bill’s proposed new section 35(2) uses materially the same wording, while adding that the Minister may refuse authorisation.

However, while the current NEA’s section 34(3) obliging the Minister to inform the applicant in writing and provide reasons for refusing an authorisation is retained (in proposed section 35(6)), neither the old nor the new regime make provision for public consultation, or for the Minister to give the public notice of and reasons for any decision to grant authorisation. The Nuclear Non-Proliferation Regulations, 2023, which implement the authorisation regime, prescribe a purely bilateral process between applicant and the Department: applications are acknowledged and processed internally, authorisations ‘may be granted subject to any conditions’ that the Minister may set, and nothing is published or opened to comment.

Recommendation: SAFCEI and ELA-JHB recommend that the Bill be revised to provide for notification of Interested and Affected Parties (I&APs) and the public of proposed section 34(1) authorisations, a reasonable opportunity to comment on the proposed authorisation decision, and notification of the decision.

2.4. The safeguards carve-out (new section 35(5)).

Section 35 of the current NEA deals with exportation of source, special nuclear or restricted material or nuclear-related equipment and material, also requiring the written authorisation of the Minister. Section 35(2) provides that the Minister may, having consulted with the Council for the Non-Proliferation of Weapons of Mass Destruction (on any matter affecting the proliferation of weapons of mass destruction) and having duly taken into account the provisions of the Nuclear Non-proliferation Treaty, the Safeguards Agreement and the Republic's obligations under any other treaty or international agreement with another state, grant authorisation.

The current NEA's section 35(3) and the Bill's new section 35(4) provide that where the source material, special nuclear material, restricted material or nuclear-related equipment and material is to be exported:

- (a) to a nuclear weapons state, the authorisation at all times must be made subject to the condition that the material and equipment concerned may be used for peaceful purposes only; and
- (b) to a non-nuclear weapons state, the authorisation at all times must be made subject to the condition that the material and equipment concerned are subject to comprehensive international safeguards at all times.

However, the Bill's new section 35(5) seeks to provide that the Minister, despite subsection (4)(b), may 'in exceptional circumstances' as prescribed by regulation, and on written justification, **exempt** the requirement of comprehensive international safeguards and grant authorisation for export to a non-nuclear weapons state 'subject to the applicant demonstrating compliance to other suitable types of safeguards'.

The 'comprehensive international safeguards' are not clearly specified, while in respect of an exemption decision for export to a non-nuclear state the 'other suitable safeguards' are undefined and left to the Minister's judgment. More fundamentally, the exemption appears to sit in tension with South Africa's non-proliferation commitments. Article III(2) of the Nuclear Non-Proliferation Treaty obliges South Africa not to export source or special fissionable material to a non-nuclear-weapon State unless that material is subject to IAEA safeguards, and the Nuclear Suppliers Group (of which South Africa is a participant) applies comprehensive, full-scope safeguards as a condition of supply to such States. An exemption permitting export against 'other suitable types of safeguards' that fall short of these standards could risk placing South Africa in breach of those commitments. The exemptions for which INFCIRC/153 itself provides do not assist here: those are narrow, quantified exemptions granted by or arranged with the IAEA within a comprehensive safeguards system, and the State's basic undertaking against diversion persists. In contrast, the proposed section 35(5) appears to be an open-ended, unilateral

waiver of the supply condition itself, decided domestically and outside any IAEA process. Additionally, no provision is made for notifying I&APs and the public of such authorisations or exemptions, no opportunity is provided for public comment prior to such decisions being made, and no provision is made for the ‘other suitable safeguards’ included in any exemption decision to be made public.

Recommendation: SAFCEI and ELA-JHB recommend that :

- the ‘comprehensive international safeguards’ referred to in new section 35(4)(b) be clearly specified (e.g. by specifying that these safeguards require that the source material, special nuclear material, restricted material or nuclear-related equipment and material exported is subject, in the recipient non-nuclear-weapon State, to a comprehensive safeguards agreement with the International Atomic Energy Agency (of the type contemplated in IAEA document INFCIRC/153), consistent with the safeguards required by Article III of the Nuclear Non-Proliferation Treaty and with the full-scope safeguards condition of supply applied by the Nuclear Suppliers Group). The Republic’s own Safeguards Agreement — defined in the current NEA as meaning *‘the comprehensive safeguards agreement entered into on 16 September 1991 between the Republic and the International Atomic Energy Agency with regard to the application of safeguards for the purposes of the Nuclear Non-Proliferation Treaty pursuant to the Republic’s accession to that Treaty on 10 July 1991’* — is an example of such a comprehensive safeguards agreement. The condition in proposed new section 35(4)(b) should be framed by reference to the safeguards applying to the material in the destination State, rather than to South Africa’s own agreement;
- in respect of new section 35(5) exemptions, provision be made for prior notice of a proposed exemption decision be given—and an opportunity to comment thereon be afforded—to the public, and for any ‘other suitable types of safeguards’ included in an exemption decision to be publicly reported, and that any such ‘other suitable types of safeguards’ ensure, at a minimum, that the exported material remains subject to IAEA safeguards in the

recipient State, consistent with Article III(2) of the Nuclear Non-Proliferation Treaty; and

- any amendment to the NEA introducing a new section 35(5) power be accompanied by appropriate amendments to the existing Nuclear Non-Proliferation Regulations, 2023 (which currently govern export authorisations) aligning it with the amended provisions.

3. MINISTER'S RESPONSIBILITIES REGARDING SOURCE MATERIAL, SPECIAL NUCLEAR MATERIAL, RESTRICTED MATERIAL, RADIOACTIVE WASTE, IRRADIATED FUEL AND NUCLEAR RELATED MATTERS

Chapter IV of the existing NEA deals with various issues, including the acquisition of source material and special nuclear material by the State, authority over the management of radioactive waste and storage of irradiated nuclear fuel, discarding of radioactive waste and storage of irradiated nuclear fuel, reporting of information on occurrence of source material etc. These provisions remain substantially unchanged, save for the insertion of a new section 50A.

3.1. Advisory Committees

New section 50A of the Bill seeks to empower the Minister to set up advisory committees on nuclear matters, drawn from 'the Department or any other person' with relevant knowledge and expertise. As drafted, the membership is open-ended and likely to be filled by officials and technical specialists. No specific requirement is made to appoint a member/s representing civil society and community organisations.

Recommendation: Because nuclear decisions may have significant public, environmental and safety implications, SAFCEI and ELA-JHB recommend that proposed section 50A(1)(b) be revised to require that advisory committees set up by the Minister include a representative/s of recognised civil-society and community organisations alongside the technical members the provision expressly provides for. It is submitted that this would be a relatively modest change that would meaningfully widen the perspectives informing the Ministerial decision-making.

4. PUBLIC PARTICIPATION AND TRANSPARENCY

A recurring weakness is that the Bill expands discretionary power without building in tools that would provide for public participation and improve transparency. The founding

values of the Constitution include accountability, responsiveness and openness²).

While in law the Promotion of Administrative Justice Act, 2000 (PAJA) already provides similar protections, in practice these protections are not always given effect to by decision-makers. I&APs and the public would not necessarily be aware of the intention to exercise the discretionary powers, and even if they did become aware those I&APs and the public would bear the burden of having to enforce their rights (if necessary, through expensive and time-consuming litigation).

SAFCEI and ELA-JHB submit that for decisions with broad public and non-proliferation significance, those duties are better written into the NEA itself, so that public participation and transparency is the default and does not have to be invoked on a case-by-case basis. Building them in also reduces the risk of later PAJA challenges by getting the process right at the outset.

Recommendation: SAFCEI and ELA-JHB recommend that the following additions (aligned with relevant provisions of the PAJA³) be included in the Bill to address the abovementioned weakness:

- **Prior Notification**
Publishing notice that significant authorisations (and any section 35(5) safeguards exemption applications) are being considered, so the public is aware that a decision is pending.
- **Opportunity to comment**
A notice-and-comment step for significant authorisation and exemption decisions, so affected members of the public can make representations before the decision is final.
- **Notification**
Publishing notice that significant authorisations (and any section 35(5) safeguards exemption) have been granted, so the public knows a decision has been taken.
- **Reasons for approvals**
Requiring brief written reasons for significant grants to be provided to applicants and the public, not only for refusals, closing the asymmetry noted above.

² Section 1 of the SA Constitution.

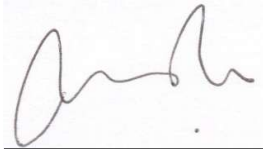
³ See for example sections 3, 4 and 5 of PAJA.

5. IMPLICATIONS FOR EXISTING SUBORDINATE LEGISLATION

The Nuclear Non-Proliferation Regulations, 2023 — the rules that operate the authorisation regime day-to-day — are made under sections 34(2) and 35(2) of the current Act, the very provisions the Bill restructures. If those sections are renumbered or replaced without a clear savings provision, the Regulations are left pointing at sections that no longer exist, which risks a gap in the regime.

Recommendation: SAFCEI and ELA-JHB recommend that the Bill include an express transitional clause confirming that the 2023 Regulations remain in force until replaced, and that references in them to the old section numbers be read as references to the new provisions.

Yours faithfully



Adrian Leonard Pole