

OUTA

ORGANISATION UNDOING TAX ABUSE

13 October 2023

OUTA submission on the National Nuclear Regulator Amendment Bill [B25 – 2023]

**Submitted to the Portfolio Committee on
Mineral Resources and Energy**

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Table of Contents

INTRODUCTION	3
THE INTERNATIONAL ATOMIC ENERGY AGENCY’S RECOMMENDATIONS.....	4
REPORT OF THE NUCLEAR NEW BUILD PROGRAMME PROCUREMENT OF SIXTEEN (16) SERVICE PROVIDERS	6
CONCLUSION	7

INTRODUCTION

1. The Organisation Undoing Tax Abuse (“OUTA”) hereby makes its submission in response to a call for public comment on the National Nuclear Regulator Amendment Bill (“the Bill”) by the Parliamentary Portfolio Committee on Mineral Resources and Energy. It should be noted that OUTA previously made a similar submission on 20 September 2021 to the Minister of Mineral Resources and Energy on the Draft National Nuclear Regulator Amendment Bill.¹
2. OUTA is a proudly South African non-profit civil action organisation, comprising of and supported by people who are passionate about improving the prosperity of our nation. We envision a prosperous country, with an organised, engaged, and empowered civil society that ensures responsible use of tax revenues.
3. Part and parcel to OUTA’s mission is the challenging of legislation and regulatory environment, this includes participating and engaging with government on various levels such as engagement with the Parliament of the Republic of South Africa and participation in public consultation/ comment processes.
4. It is imperative that the legislative framework and governance structures around nuclear energy are able to withstand political interference and uphold the independence of all regulatory bodies, inclusive of the National Nuclear Regulator of South Africa (“NNR”).
5. OUTA does not wish to nit-pick deficiencies in the current and proposed legislative framework in the Bill, or attempt to identify where government dropped the ball, but rather to illuminate tangible issues which are within Parliament’s powers to address, albeit much later than the public may have wished for. As per the parliamentary report on the South African government’s oversight and accountability model, public interaction (participation in parliamentary processes and bodies) is one of the cornerstones of accountability, which is why we trust that proper consideration will be given to all public comments received.

¹ See <https://www.ouata.co.za/web/content/200542> for OUTA’s submission dated 20 September 2021.

6. We submit that the Bill may pass constitutional muster but lacks substance in addressing the independence of the NNR through proper consideration and implementation of recommendations made by the International Atomic Energy Agency (“IAEA”).

THE INTERNATIONAL ATOMIC ENERGY AGENCY’S RECOMMENDATIONS

7. South Africa is a member state of the IAEA. South Africa also ratified the 1996 Convention on Nuclear Safety. The former conducted visits to South Africa which will be dealt with below.
8. Although the IAEA is not the South African government and any recommendations made by it are not necessarily binding in the absence of international agreements as per section 231 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”), their findings is of utmost importance and made in the public’s interest.
9. We submit that Parliament ought to explain why the IAEA’s recommendations had not been implemented and how the Portfolio Committee are going to ensure neutrality and/ or independence of the NNR board. We submit that a golden opportunity has been missed to address the independence on the NNR through the current legislative process of the Bill.
10. Between 30 January and 8 February 2013 (“the 2013 mission”), the IAEA visited South Africa with the aim to share lessons from the Fukushima disaster. Additionally, the aim of the IAEA’s mission was to minimise the risks and mitigate factors that may lead to a nuclear disaster. The main objectives of the 2013 mission included:²
 - 10.1. Evaluation of the development status of the 19 infrastructure issues described in the Milestones in the Development of a National Infrastructure for Nuclear Power, IAEA Nuclear Energy Series No. NG-G-3.1, applying the holistic approach described in the Evaluation of the Status of National Infrastructure Development, IAEA Nuclear Energy Series No. NG-T-3.2.

² See *Mission Report on The Integrated Nuclear Infrastructure Review (INIR)*, 30 January to 8 February 2013, p 6.

- 10.2. Identification of the areas in Phase 2 needing further actions to reach respective milestones in the building of national infrastructure in South Africa; and
- 10.3. To provide recommendations and suggestions to South Africa regarding infrastructure development which can be used in preparation of an Action Plan to address areas for further improvement in Phase 2 and the subsequent phases.
11. The IAEA concluded that South Africa has (as at the time of the mission) “...strengths in several nuclear infrastructure areas supporting both the existing and the new build programme, e.g. regulatory self-assessment, safeguards and security working level documents, management system, environmental impact assessment, grid development and stakeholder involvement” and “...strong support is evident from the Government of South Africa for the nuclear power expansion programme and it has made significant progress in establishing the necessary infrastructure.”
12. However, certain recommendations were made that required actioning by the South African Government. Notwithstanding, little regard have been given to the IAEA’s recommendations in relation to the independence of the NNR as the country’s nuclear regulator.
13. The legislative framework governing nuclear energy and governance was reviewed as governed by the Nuclear Energy Act, 1999 (“NEA”) and the National Nuclear Regulator Act, 1999 (“NNRA”).
14. Firstly, the IAEA recommended that amendments to these acts be introduced and promulgated as soon as possible. In relation to the proposed amendments, the IAEA noted in its conclusion as follows:

“The Minister of Energy and the National Nuclear Regulator (NNR) are identified in the two Acts as having regulatory functions over nuclear activities. Considering that the Minister of Energy is also in charge of the promotion of nuclear energy and given that the Minister appoints the NNR Board and CEO, approves NNR’s budget and promulgates regulations, the INIR team is of the view that the separation between the regulatory functions and the

promotional activities is not adequate, thus calling into question the effective independence of the NNR.

Although safety principles are addressed in promulgated regulations, the Acts of Parliament do not adequately address a number of issues such as the Fundamental Safety Principles and, in particular, the prime responsibility for safety of the licence holder, decommissioning, nuclear security and some aspects of civil liability for nuclear damage.

South Africa has a clear understanding of these issues, which are to be addressed by the current legislative revision that will allow its legislative framework to be in line with the relevant international legal instruments.”

15. We are cognisant of the fact that the Minister of Mineral Resources and Energy has ultimate oversight responsibility and has no control over the day-to-day management of the NNR but, practice, the lines of independence become blurry when the Minister appoints and disposes of the NNR board members. At the same time, the Minister is a proponent of nuclear energy (this cannot be denied), and his bias toward nuclear energy is tied to the office of the Ministry by virtue of his responsibilities akin to the portfolio (i.e. new generation capacity in terms of section 34 of the Electricity Regulation Act; role in the formulation of the Integrated Resource Plan).
16. We believe that true independence of the NNR can be achieved if the power and functions of the Minister (of Mineral Resources and Energy) in terms of the NNR Act is transferred to the Minister of Forestry, Fisheries and the Environment, whose portfolio does not create a conflict to promote a particular technology above another.

REPORT OF THE NUCLEAR NEW BUILD PROGRAMME PROCUREMENT OF SIXTEEN (16) SERVICE PROVIDERS

17. In 2013, Nathan Gift Nhlapo Incorporated (“NGN”) was instructed by the then Department of Energy to conduct a feasibility study on “...*the Effective Independence of the NNR*”. OUTA was unable to establish whether any report to this effect had been published or not. However, the commissioning thereof cost approximately R 496,960.00 and date of completion was supposedly 21 October 2013.

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18. According to a presentation made to the Portfolio Committee by the Department of Energy on or about 29 November 2016, the objective of the NGN feasibility study was to “...address the independence of the NNR based on the IAEA Integrated Nuclear Infrastructure Review (INIR) mission recommendations.”
19. The output of the feasibility study was amongst others: “Effective separation of the NNR from Minister of DoE and migration to a DEA that is not responsible for promotion of nuclear”. This output however is yet to be implemented.
20. We submit that the commissioning of services by NGN, amounts to wastage of financial resources, especially where little to no regard is given to its findings and recommendations.
21. We therefore propose that a proper inquiry be launched into the whereabouts of the NGN report and that its findings be subjected to meaningful debate and proper consideration.

CONCLUSION

22. We submit that the Bill in its current form is a move in the right direction but does little to ensure, enforce and promote the independence of the NNR.
23. It is therefore recommended that the recommendations made by the IAEA be properly considered and/ or implemented to the extent that it promotes the independence of the NNR.
24. It is further recommended that the NGN report be obtained and properly considered and/ or implemented to the extent that it promotes the independence of the NNR.
25. It is further recommended that the powers and functions conferred to the Minister of Mineral Resources and Energy in terms of the NNRA be transferred to the Minister of Forestry, Fisheries and the Environment.