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GOVERNMENT NOTICE

DEPARTMENT OF LABOUR

No. 536

23 April 2004

UNEMPLOYMENT INSURANCE AMENDMENT ACT, 2003

REGULATIONS

PUBLICATIONS OF REGULATIONS IN TERMS OF SECTION 54 OF THE UNEMPLOYMENT INSURANCE ACT, 2001

Under section 54 of the Unemployment Insurance Act, 2001 (Act No. 63 of 2001), I MEMBATHISI MPHUMZI SHEPHERD MDLADLANA, Minister of Labour, hereby publish Regulations and forms in the Government Gazette which will come into operation with effect from 1 May 2004.

31704/2004/04/06



MINISTER OF LABOUR

DEPARTMENT OF LABOUR**UNEMPLOYMENT INSURANCE ACT, 2001 (ACT NO 63 OF 2001)****AMENDMENT OF UNEMPLOYMENT INSURANCE ACT REGULATIONS**

The Minister of Labour Membathisi Mphumzi Shepherd Mdladlana makes the regulations in the Schedule under Section 54 of the Unemployment Insurance Act, 2001 (Act 63 of 2001)

SCHEDULE**DEFINITION**

1. In this Schedule the regulations means the Unemployment Insurance Fund Regulations published in Government Notice No. 7317 dated 28 March 2002 as amended by Government Notice No. _____.

Application of this Act (Section 3(1)(b) of the U I Amendment Act)

2. (1) An employee who enters into an employment contract with an employer for the sole purpose of entering a learnership agreement as contemplated in section 18(2) of the Skills Development Act, 1998 (Act No 97 of 1998) is excluded from contributing to the Fund. However, employees who enter into a learnership agreement in terms of section 18(1) of the Skills Development Act, 1998, are liable to contribute to the Fund in terms of Unemployment Insurance Act.

Application of this Act (Section 3(1)(e) of the U I Amendment Act)

3. (1) Monthly pension from the State refers to a grant given to the aged by the State in terms of the Social Assistance Act 59 (Act 59 of 1992) as amended.

Amendment of regulation 8 of the Regulations.

4. Regulation 8(1) of the Regulations is hereby amended by the substitution of subregulation 1 with the following subregulation:

- (1) An appeal against a decision of the Commissioner or a claims officer in terms of section 37(1) must be made by submitting a completed UI 12 by hand or registered post to the Regional Appeals Committee at the respective Labour Centres of the Department of Labour.

Amendment of regulation 8(3) of the Regulations

5. Regulation 8(3) of the Regulation is hereby amended by insertion in subregulation 8(3) of the word "Regional" to read as follows:

The Regional Appeals Committee may require the appellant to submit any further information that it considers necessary to deal with the appeal.

Amendment of regulation 9 of the Regulations.

6. Regulation 9 of the Regulations is amended by the substitution of subregulation 1 with the following subregulation:
 - (1) A person who is dissatisfied with the decision of the Regional Appeals Committee may refer the matter to the National Appeals Committee for final decision in terms of section 37(2) by submitting a completed UI 13 to 94 Church Street, Pretoria, 0001, or registered post to Unemployment Insurance Fund, Pretoria, 0052 or by telefax to (012) 337-1893.
7. Regulation 9 is hereby amended by the deletion of subregulation 2.
8. Regulation 9(3) is hereby amended by deleting the word "CCMA" and substitute by the word National Appeals Committee.
9. Regulation 9 is hereby amended by the deletion of subregulation 4.
10. Regulation 9 is hereby amended by the deletion of subregulation 5.

Right to benefits (Section 12(1A) of the U I Amendment Act.)

11. (1) A domestic worker employed in more than one household can be paid benefits if the total income earned from all households falls below the benefit level that the person would have received if wholly unemployed. The term wholly unemployed refers to a domestic employee who is no longer employed by any household.
 - (2) A domestic worker will not be regarded as being wholly unemployed whilst in continued employment with an employer other than a household.
 - (3) An employee who remains in employment in a household shall not be regarded as being wholly unemployed, notwithstanding the fact that they loose employment with an employer other than the household.
 - (4) Only employment lost in the last six months from the date preceding the date of application will be considered when determining if the employee is wholly unemployed or not.

Right to Unemployment Benefits (Section 16(1)(a)(iv) of the U I Amendment Act

12. (1) The date of termination of employment will be the date of death of the employer.
 - (2) The amount of benefits paid shall be determined by the last declaration of the employer and in the absence of the declaration the claims officer shall determine the benefits based on the available documentary proof submitted to the claims officer.

COMMENCEMENT

13. These regulations shall come into operation on 1 May 2004.

UI 12

NOTICE OF APPEAL AGAINST A DECISION OF THE COMMISSIONER OR A CLAIMS OFFICER*Application in terms of section 37(1) read with regulation 8(1)*

A person entitled to benefits in terms of the Act may appeal against a decision of the Commissioner to suspend that person's rights to benefits, or a decision of a claims officer relating to the payment or non payment of benefits. This Notice of appeal must be sent to the Regional Appeal Committee, where an application was lodged.

1. Personal details

- 1.1 Name _____
- 1.2 ID number _____
- 1.3 Passport number _____
- 1.4 Residential address _____
- 1.5 Postal address _____
- 1.6 E-mail address _____
- 1.7 Tel number (include the code) _____
- 1.8 Cell number _____

2. Employer details

2. Name of employer (prior to unemployment) _____
- 2.2 UIF reference number _____
- 2.3 Physical address _____
- 2.4 Postal address _____
- 2.5 E-mail address _____
- 2.6 Tel number _____
- 2.7 Fax number _____

3. Decision appealed against

- 3.1 What decision are you appealing against?

- 3.2 Which region made the decision?

- 3.3 When was the decision made?

UI 12

3.4 When were you notified about the decision?

3.5 Why are you appealing against the decision

3.6 In what respects do you think the decision is incorrect or unfair?

3.7 What outcome do you seek from this Regional appeal?

Signature _____ Date _____

For official purposes

On the _____-the Regional Appeal Committee decided that the appeal was

Successful

Unsuccessful because _____

Signature of chairperson _____ Date _____

**UNEMPLOYMENT INSURANCE AMENDMENT ACT 32 OF 2003
REFERRAL OF DISPUTE TO NATIONAL APPEAL COMMITTEE**

Application in terms of section 37(2) read with regulation 9(1)

A person who is dissatisfied with the decision of the Regional Appeal Committee may refer a dispute to the National Appeals Committee within 30 days of receiving notification of the decision.

The decision by the National Appeals Committee is final, subject to judicial review.

1. Personal details

- 1.1 Surname _____
- 1.2 First Name _____
- 1.3 ID number _____
- 1.4 Passport number _____
- 1.5 UIF number (Employers reference No) _____
- 1.6 Residential address _____
- 1.7 Postal address _____
- 1.8 E-mail address _____
- 1.9 Tel number (include the code) _____
- 1.10 Fax number (include the code) _____
- 1.11 Cell number _____

2. Dispute details

2.1.1 What is the nature of the dispute (i.e. what is the dispute about?)

UI 13

2.2 What factors do you think the Regional Appeal Committee failed to consider?

2.3 What other information do you want to draw to the National Appeal Committee's attention?

2.4 What outcome do you seek from the National Appeal Committee?

3. Documents to attach to this form:

3.1 Your Notice of appeal against a decision of the Commissioner or a claims officer.

3.2 The decision from the Regional Appeal Committee.

3.3 Use additional pages if required.

SIGNATURE _____ **DATE** _____

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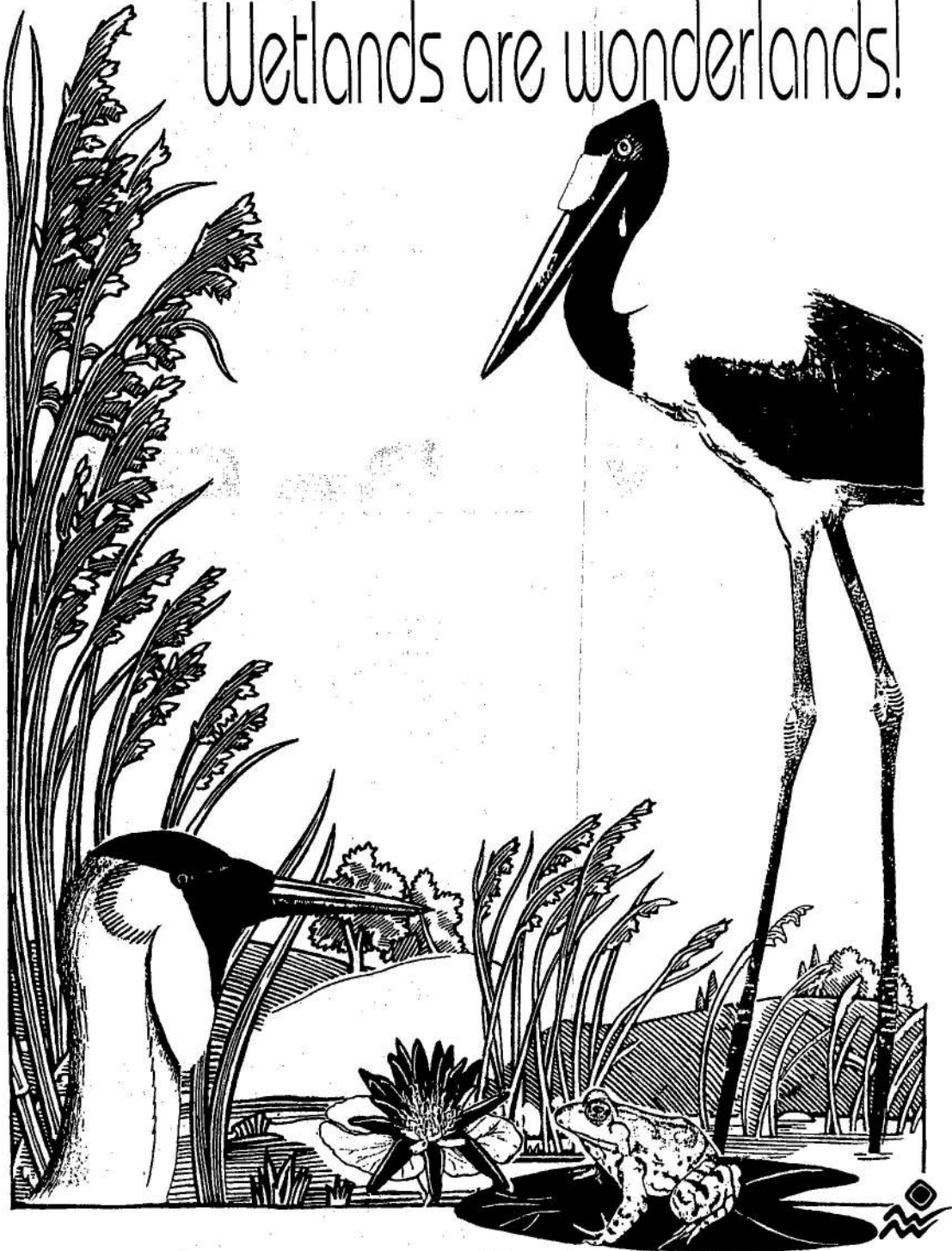
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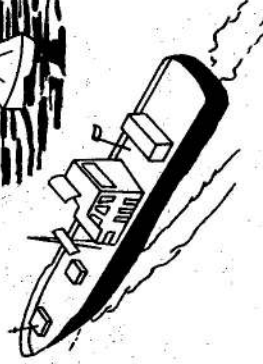
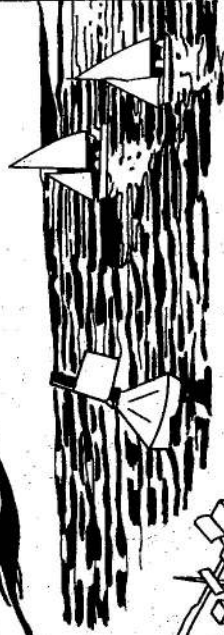
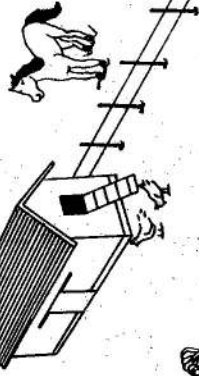
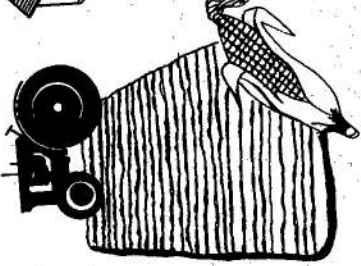
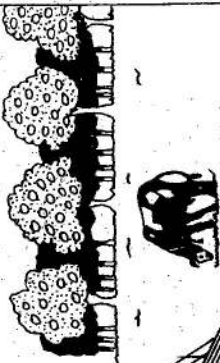
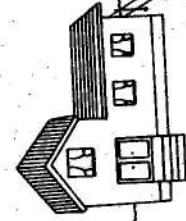
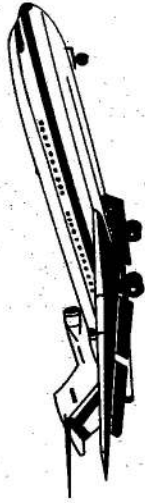
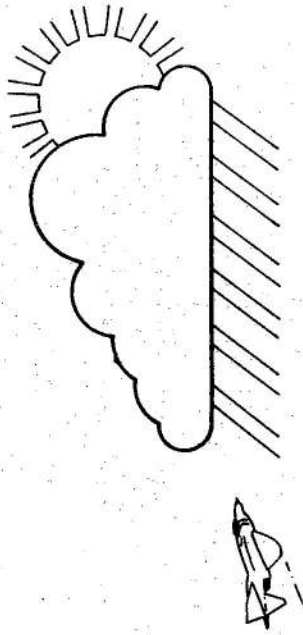
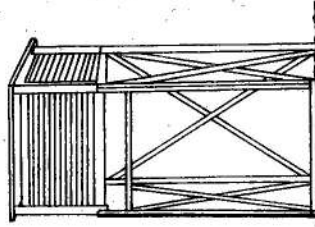
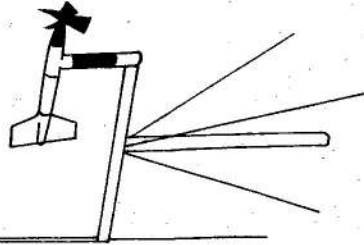
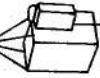
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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 20 April 2004.)

ACT

To amend the South African Qualifications Authority Act, 1995, so as to effect textual corrections; to make provision for an increase in the number of members of the Authority nominated by the organised teaching profession; and to provide for the extension of the term of office of members of the Authority; to amend the South African Schools Act, 1996, so as to provide for the prohibition of the payment of unauthorised remuneration to a state employee employed in terms of the Employment of Educators Act, 1998, or the Public Service Act, 1994, by a governing body; to amend the Employment of Educators Act, 1998, so as to effect textual corrections; and to provide for an appeal by the employer against the finding of the presiding officer of a disciplinary hearing; to amend the General and Further Education and Training Quality Assurance Act, 2001, so as to extend the definition of “Council”; and to provide for matters connected therewith.

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

Amendment of section 4 of Act 58 of 1995, as substituted by section 1 of Act 53 of 2000

1. Section 4 of the South African Qualifications Authority Act, 1995, is hereby amended by—

- (a) the substitution for subsection (1) of the following subsection:
“(1) The Authority shall consist of a chairperson who shall be appointed in terms of subsection (2), such members as shall be appointed in terms of subsections (3) and (4), and an executive officer who shall be appointed in terms of subsection [(7)] (8).”;
- (b) the substitution in subsection (3) for paragraph (n) of the following paragraph:
“(n) [two] three members nominated by the organised teaching profession;”;
- (c) the addition of the following subsection:
“(9) Despite subsection (6), the Minister may extend the term of office of any member of the Authority, but the extension may not exceed a period of two years.”.

Insertion of section 38A in Act 84 of 1996

2. The South African Schools Act, 1996, is hereby amended by the insertion after section 38 of the following section:

ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.
- _____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

(Engelse teks deur die President geteken.)
(Goedgekeur op 20 April 2004.)

WET

Om die Wet op die Suid-Afrikaanse Kwalifikasie-owerheid, 1995, te wysig ten einde verbeteringe in die teks aan te bring; voorsiening te maak vir 'n verhoging in die getal lede van die Owerheid wat deur die georganiseerde onderwysberoep genomineer is; en voorsiening te maak vir die verlenging van die ampstermyn van lede van die Owerheid; om die Suid-Afrikaanse Skolewet, 1996, te wysig ten einde voorsiening te maak vir 'n verbod op die betaling deur 'n beheerliggaam van enige ongemagtigde besoldiging aan 'n staatswerknemer wat ingevolge die Wet op die Indiensneming van Opvoeders, 1998, of die Staatsdienswet, 1994, in diens is; om die Wet op die Indiensneming van Opvoeders, 1998, te wysig ten einde verbeteringe in die teks aan te bring; en voorsiening te maak vir 'n appèl deur die werkgewer teen die bevinding van die voorsittende beampte van 'n tugverhoor; om die Wet op Gehalteversekering vir Algemene en Verdere Onderwys en Opleiding, 2001, te wysig ten einde die omskrywing van "Raad" uit te brei; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 4 van Wet 58 van 1995, soos vervang by artikel 1 van Wet 53 van 2000

- 5 1. Artikel 4 van die Wet op die Suid-Afrikaanse Kwalifikasie-owerheid, 1995, word hierby gewysig deur—
- (a) subartikel (1) deur die volgende subartikel te vervang:
- “(1) Die Owerheid bestaan uit 'n voorsitter wat ingevolge subartikel
 (2) aangestel is, die lede wat ingevolge subartikels (3) en (4) aangestel is,
10 en 'n uitvoerende beampte wat ingevolge subartikel [(7)] (8) aangestel is.”;
- (b) paragraaf (n) van subartikel (3) deur die volgende paragraaf te vervang:
- “(n) [twee] drie lede deur die georganiseerde onderwysberoep genomi-
 neer;”; en
- 15 (c) die volgende subartikel by te voeg:
- “(9) Ondanks subartikel (6) kan die Minister die ampstermyn van enige lid van die Owerheid verleng, maar die verlenging mag nie 'n tydperk van twee jaar oorskry nie.”

Invoeging van artikel 38A in Wet 84 van 1996

- 20 2. Die Suid-Afrikaanse Skolewet, 1996, word hierby gewysig deur die volgende artikel na artikel 38 in te voeg:

“Prohibition of payment of unauthorised remuneration, or giving of financial benefit or benefit in kind to certain employees

- 38A.** (1) Subject to subsection (2), a governing body may not pay or give to a state employee employed in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998), or the Public Service Act, 1994 (Proclamation No. 103 of 1994), any unauthorised— 5
- (a) remuneration;
 - (b) other financial benefit; or
 - (c) benefit in kind.
- (2) A governing body may apply to the employer for approval to pay a state employee any payment contemplated in subsection (1). 10
- (3) Such application must be lodged in writing in the office of the employer and must state—
- (a) full details of the nature and extent of the payment;
 - (b) the process and resources that will be used to compensate or remunerate the state employee; and 15
 - (c) the extent of compliance with section 20(5) to (9).
- (4) The governing body must make the application contemplated in subsection (2) at least four months prior to the finalisation of the school’s budget. 20
- (5) Despite subsection (1), a governing body may pay travel and subsistence expenses relating to official school activities but such expenses may not be greater than those that would be payable to a public servant in similar circumstances.
- (6) An employer must not unreasonably refuse an application contemplated in subsection (2). 25
- (7) In considering the application, the employer must take into account—
- (a) the implications for the employer in terms of the employment contract and labour law;
 - (b) whether the service concerned in the application will interfere with the normal service delivery of the employee; 30
 - (c) whether the service concerned in the application has already been paid for by the employer; and
 - (d) whether the additional remuneration, other benefits or benefits in kind support the core activities and functions of the school. 35
- (8) The payment contemplated in subsection (1) must be reflected in the school’s budget, as presented to the general meeting of parents as contemplated in section 38(2).
- (9) If a governing body pays remuneration or gives any financial benefit or benefit in kind contemplated in subsection (1) to an employee without prior approval of the employer, the amount of money paid or benefit given must be recovered by the employer on behalf of the school from members of the governing body who took that decision, excluding a member of the governing body who is a minor. 40
- (10) A governing body may appeal to the Member of the Executive Council against— 45
- (a) the refusal by the employer of an application contemplated in subsection (2); or
 - (b) the failure of the employer to provide a decision on an application contemplated in subsection (2) within three months after the lodging of the application in the office of the employer.” 50

Amendment of section 8 of Act 76 of 1998, as amended by section 16 of Act 48 of 1999 and section 11 of Act 50 of 2002

3. Section 8 of the Employment of Educators Act, 1998 (hereinafter referred to as the “Educators Act”), is hereby amended by the substitution for subsection (7) of the following subsection: 55

“Verbod op betaling van ongemagtigde besoldiging, of gee van finansiële voordeel of goederevoordeel aan sekere werknemers

38A. (1) Behoudens subartikel (2) mag 'n beheerliggaam nie aan 'n staatswerknemer wat ingevolge die Wet op die Indiensneming van Opvoeders, 1998 (Wet No. 76 van 1998), of die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994), in diens is, enige ongemagtigde—

- (a) besoldiging;
- (b) ander finansiële voordeel; of
- (c) goederevoordeel, betaal of gee nie.

(2) 'n Beheerliggaam kan by die werkgever aansoek doen om goedkeuring om aan 'n staatswerknemer enige betaling in subartikel (1) beoog, te betaal.

(3) Sodanige aansoek moet skriftelik by die kantoor van die werkgever ingedien word en moet—

- (a) volle besonderhede van die aard en omvang van die betaling vermeld;
- (b) die proses en hulpbronne vermeld wat gebruik sal word om die staatswerknemer te vergoed of te besoldig; en
- (c) die mate vermeld waarin daar aan artikel 20(5) tot (9) voldoen is.

(4) Die beheerliggaam moet die aansoek in subartikel (2) beoog, indien minstens vier maande voordat die skool se begroting afgehandel word.

(5) Ondanks subartikel (1) kan 'n beheerliggaam reis- en verblyf-uitgawes wat met amptelike skoolbedrywighede verband hou, betaal, maar sodanige uitgawes mag nie groter wees as dié wat onder soortgelyke omstandighede aan 'n staatsamptenaar betaalbaar sou wees nie.

(6) 'n Werkgever mag nie op onredelike wyse 'n aansoek in subartikel (2) beoog, weier nie.

(7) Wanneer die aansoek oorweeg word, moet die werkgever onder meer—

- (a) die implikasies vir die werkgever ingevolge die dienskontrak en arbeidswetgewing;
- (b) of die diens wat in die aansoek ter sprake is, met die normale dienslewering van die werknemer sal inmeng;
- (c) of die werkgever al reeds betaal het vir die diens wat in die aansoek ter sprake is; en
- (d) of die bykomende vergoeding, ander voordele of goederevoordele die kernbedrywighede en -werksaamhede van die skool ondersteun, in ag neem

(8) Die betaling in subartikel (1) beoog, moet weerspieël word in die skool se begroting, soos dit voorgelê is aan die algemene vergadering van ouers in artikel 38(2) beoog.

(9) Indien 'n beheerliggaam sonder vooraf goedkeuring van die werkgever aan 'n werknemer enige besoldiging of finansiële voordeel of goederevoordeel in subartikel (1) beoog, betaal of gee, moet die werkgever namens die skool die bedrag geld wat betaal is of die voordeel wat gegee is, verhaal van die lede van die beheerliggaam wat daardie besluit geneem het om die besoldiging te betaal of die voordeel te gee, uitgesonderd 'n lid van die beheerliggaam wat 'n minderjarige is.

(10) 'n Beheerliggaam kan by die Lid van die Uitvoerende Raad appèl aanteken teen —

- (a) die werkgever se weiering van die aansoek in subartikel (2) beoog; of
- (b) die versuim van die werkgever om binne drie maande na die indiening van 'n aansoek in subartikel (2) beoog by die kantoor van die werkgever 'n besluit te verskaf oor die aansoek.”

55 Wysiging van artikel 8 van Wet 76 van 1998, soos gewysig by artikel 16 van Wet 48 van 1999 en artikel 11 van Wet 50 van 2002

3. Artikel 8 van die Wet op die Indiensneming van Opvoeders, 1998 (hierna die “Opvoederswet” genoem), word hierby gewysig deur subartikel (7) deur die volgende subartikel te vervang:

“(7) Despite section 6(3)(a) and subsection (2), in the case of an educator who has been awarded a bursary by the employer to follow a course approved by the employer, the employer may transfer such an educator, with his or her consent, to any suitable post on the educator establishment of a public school, a further education and training institution or an adult basic education and training centre.”. 5

Amendment of section 25 of Act 76 of 1998, as substituted by section 12 of Act 53 of 2000

4. Section 25 of the Educators Act, 1998, is hereby amended by the substitution for subsections (2) and (3) of the following subsections:

“(2) An educator or an employer has a right to appeal to the Minister or the Member of the Executive Council, as the case may be, against the finding by the presiding officer of a disciplinary hearing [**that the educator has committed misconduct, as contemplated in section 17 or 18**], and against the sanction imposed in terms of section 18(3)(e) to (i). 10

(3) In lodging an appeal, the educator or employer must comply with the procedure laid down in Schedule 2.”. 15

Amendment of section 34 of Act 76 of 1998

5. The following section is hereby substituted for section 34 of the Educators Act, 1998:

“Offences and penalties 20

34. Any person who—

- (a) has been duly summoned under [section 21(3)(a)] item 7(12) of Schedule 2 and who fails without sufficient cause—
- (i) to attend at the time and place specified in the summons; or
 - (ii) to remain in attendance until excused by the disciplinary tribunal from further attendance; 25
- (b) has been called upon in terms of [section 21(3)(b)] item 7(12) of Schedule 2 and who refuses to be sworn or to affirm as a witness; or
- (c) fails without sufficient cause—
- (i) to answer fully and satisfactorily any question lawfully put to that person under [section 21(3)(c)] item 7(12) of Schedule 2; or 30
 - (ii) to produce any book, document or object in that person’s possession or custody or under that person’s control which that person was required to produce in terms of the said [section 21(3)(c)] item 7(12) of Schedule 2, 35

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months or both [such] a fine and such imprisonment.”.

Amendment of item 9 of Schedule 2 to Act 76 of 1998 40

6. Item 9 of Schedule 2 to the Educators Act, 1998, is hereby amended by the substitution for sub-items (1), (2) and (4) of the following sub-items respectively:

“(1) An educator or an employer may appeal against a finding or sanction by making an application in accordance with Form E attached to this Schedule. 45

(2) The educator or the employer must, within five working days of receiving notice of the final outcome of a disciplinary hearing, submit the appeal form to the Member of the Executive Council or the Minister, as the case may be.

(4) If the Member of the Executive Council or the Minister, as the case may be, chooses to allow further representations by the educator, [or] his or her representative or an employer, he or she must notify the educator or employer respectively of the date, time and place where such representations must be made.”. 50

“(7) Ondanks artikel 6(3)(a) en subartikel (2) kan die werkgewer, in die geval van ’n opvoeder aan wie ’n beurs deur die werkgewer toegeken is om ’n kursus te volg wat die werkgewer goedgekeur het, so ’n opvoeder, met die instemming van die opvoeder, verplaas na enige geskikte pos op die opvoederdiensstaat van ’n openbare skool, inrigting vir verdere onderwys en opleiding of sentrum vir basiese verdere onderwys en opleiding vir volwassenes.”.

Wysiging van artikel 25 van Wet 76 van 1998, soos vervang by artikel 12 van Wet 53 van 2000

4. Artikel 25 van die Opvoederswet, 1998, word hierby gewysig deur subartikels (2) en (3) deur die volgende subartikels te vervang:

“(2) ’n Opvoeder of ’n werkgewer het die reg om by die Minister of die Lid van die Uitvoerende Raad, na gelang van die geval, appèl aan te teken teen die bevinding van die voorsittende beampte van ’n tugverhoor [**dat die opvoeder wangedrag gepleeg het, soos in subartikels 17 en 18 beoog**], en teen die sanksie wat ingevolge artikel 18(3)(e) tot (i) opgelê is.

(3) By die aantekening van appèl moet die opvoeder of werkgewer voldoen aan die prosedures soos in Bylae 2 neergelê.”.

Wysiging van artikel 34 van Wet 76 van 1998

5. Artikel 34 van die Opvoederswet, 1998, word hierby deur die volgende artikel 20 vervang:

“Misdrywe en strawwe

34. ’n Persoon wat—

- (a) behoorlik kragtens [artikel 21(3)(a)] item 7(12) van Bylae 2 gedagvaar is en wat sonder voldoende rede in gebreke bly—
- (i) om te verskyn op die tyd en plek in die dagvaarding vermeld; of
- (ii) om teenwoordig te bly totdat daardie persoon deur die dissiplinêre tribunaal van verdere bywoning onthef word;
- (b) ingevolge [artikel 21(3)(b)] item 7(12) van Bylae 2 opgeroep is en wat weier om as getuie beëdig te word of te bevestig; of
- (c) sonder voldoende rede in gebreke bly—
- (i) om ’n vraag wat wettig kragtens [artikel 21(3)(c)] item 7(12) van Bylae 2 aan daardie persoon gestel word volledig en bevredigend te beantwoord; of
- (ii) om ’n boek, stuk of voorwerp in daardie persoon se besit of bewaring of onder daardie persoon se beheer oor te lê wat daardie persoon ingevolge genoemde [artikel 21(3)(c)] item 7(12) van Bylae 2 verplig was om oor te lê,
- is aan ’n misdryf skuldig en by skuldigbevinding strafbaar met ’n boete of met gevangenisstraf vir ’n tydperk van hoogstens ses maande of met sowel daardie boete as daardie gevangenisstraf.”.

Wysiging van item 9 van Bylae 2 by Wet 76 van 1998

6. Item 9 van Bylae 2 by die Opvoederswet, 1998, word hierby gewysig deur subitems (1), (2) en (4) deur die volgende subitems te vervang:

“(1) ’n Opvoeder of ’n werkgewer kan teen ’n bevinding of ’n sanksie appèl aantekening deur aansoek te doen in ooreenstemming met Vorm E aangeheg by hierdie Bylae.

(2) Die opvoeder of die werkgewer moet binne vyf werkdade nadat die kennisgewing van die finale uitslag van ’n tugverhoor ontvang is, die appèlvorm voorlê aan die Lid van die Uitvoerende Raad of aan die Minister [**voorlê**], na gelang van die geval.

(4) Indien die Lid van die Uitvoerende Raad of die Minister, na gelang van die geval, verkies om verdere verhoor deur die opvoeder, [of] sy of haar verteenwoordiger of ’n werkgewer toe te laat, moet hy of sy die opvoeder of werkgewer onderskeidelik in kennis stel van die datum, tyd en plek waar die verhoor voorgelê moet word.”.

Substitution of Form E of Schedule 2 to Act 76 of 1998

7. Schedule 2 to the Educators Act, 1998, is hereby amended by the substitution for Form E of the following form:

“FORM E**NOTICE OF APPEAL**

5

[DATE]

[NAME OF APPEAL AUTHORITY]

I,, [NAME OF EMPLOYEE OR EMPLOYER] hereby appeal against the FINDINGS and/or SANCTION that have been imposed in terms of the Disciplinary Code and Procedure on [DATE] at [PLACE]. 10

I attach a copy of the final outcome of the disciplinary enquiry. [THE APPEAL REQUEST IS NOT VALID UNLESS THIS DOCUMENT IS ATTACHED]

My reasons for appeal are: 15

The desired outcome of the appeal is:

I wish/do not wish [CHOOSE ONE] to provide additional evidence not available at the time of the disciplinary proceedings.

SIGNATURE OF EMPLOYEE OR EMPLOYER 20

DATE

[PERSAL NO.]

[PERSONAL DETAILS OF THE EMPLOYEE]

NB: Educators or employers may only appeal against the finding or sanction or both the finding and resultant sanction of— 25

1. suspension without pay for a period not exceeding three months;
2. demotion;
3. a fine;
4. a combination of the above sanctions together with warnings; or
5. dismissal.”. 30

Amendment of section 1 of Act 58 of 2001

8. Section 1 of the General and Further Education and Training Quality Assurance Act, 2001 (hereinafter referred to as the “Quality Assurance Act”), is hereby amended by the substitution for the definition of “Council” of the following definition:

“ ‘Council’ means Umalusi, the Council for General and Further Education and Training Quality Assurance [Council], established by section 4;” 35

Vervanging van Vorm E van Bylae 2 by Wet 76 van 1998

7. Bylae 2 by die Opvoederswet, 1998, word hierby gewysig deur Vorm E deur die volgende vorm te vervang:

“VORM E**5 KENNISGEWING VAN APPEL****[DATUM]****[NAAM VAN APPEL-OWERHEID]**

10 Ek,, **[NAAM VAN WERKNEMER OF WERKGEWER]**
teken hiermee appel aan teen die BEVINDINGS en/of die SANKSIE
wat opgelê is ingevolge die Tugkode en -prosedure
op **[DATUM]** te **[PLEK]**.

[EK] Ek heg 'n afskrif van die finale uitslag van die tugondersoek aan.
**[DIE AANSOEK OM APPEL IS ONGELDIG TENSY HIERDIE
DOKUMENT AANGEHEG WORD]**

15 My redes vir die appel is:

Die gewenste uitslag van die appel is:

Ek wil/wil nie **[KIES EEN]** bykomstige getuienis wat nie ten **[tye]**
tyde van die tugproses beskikbaar was nie, verskaf (nie).

HANDTEKENING VAN WERKNEMER OF WERKGEWER

20 **DATUM**

[PERSAL NO.]**[PERSOONLIKE BESONDERHEDE VAN DIE WERKNEMER]**

25 **LW:** Opvoeders of werkgewers kan **[slegs]** appel aanteken slegs teen die
bevinding of die sanksie of teen sowel die bevinding **[en]** as die
gevolglike sanksie van[:] —

- 30
1. skorsing sonder salaris vir 'n tydperk van hoogstens drie maande;
 2. verlaging in rang;
 3. 'n boete;
 4. 'n kombinasie van bogenoemde strafbepalings, met waarskuwings;
of
 5. ontslag.”.

Wysiging van artikel 1 van Wet 58 van 2001

8. Artikel 1 van die Wet op Gehalteversekering vir Algemene en Verdere Onderwys
en Opleiding, 2001, (hierna die “Wet op Gehalteversekering” genoem), word hierby
35 gewysig deur die omskrywing van “Raad” deur die volgende omskrywing te vervang:
“ ‘Raad’ Umalusi, die **[Gehalteversekeringsraad]** Raad op Gehalteversekering
vir Algemene en Verdere Onderwys en Opleiding, by artikel 4 ingestel;”.

Amendment of section 4 of Act 58 of 2001

9. The following section is hereby substituted for section 4 of the Quality Assurance Act, 2001:

“Establishment of Council

4. A juristic person to be known as Umalusi, the Council for General and Further Education and Training Quality Assurance [Council] is hereby established.” 5

Transitional arrangements

10. (1) The employer of a state employee may not for a period of one year after the commencement of this Act— 10

(a) institute proceedings to recover unauthorised remuneration, financial benefit or benefit in kind as contemplated in section 38A(9) of the South African Schools Act, 1996, if such unauthorised remuneration, financial benefit or benefit in kind was paid or given or committed to be paid or given before the commencement of this Act; or 15

(b) take disciplinary steps against any state employee who received any unauthorised remuneration, financial benefit or benefit in kind from a governing body.

(2) If a recurring payment or giving of remuneration, financial benefit or benefit in kind has come into existence between a state employee and a governing body prior to the commencement of this Act, such remuneration or benefits must be deemed to have been authorised by the employer for a period of one year after the commencement of this Act. 20

Short title

11. This Act is called the Education Laws Amendment Act, 2004.

Wysiging van artikel 4 van Wet 58 van 2001

9. Artikel 4 van die Wet op Gehalteversekering, 2001, word hierby gewysig deur artikel 4 deur die volgende artikel te vervang:

“Instelling van Raad

- 5 4. 'n Regspersoon wat as Umalusi, die [**Gehalteversekeringsraad**]
Raad op Gehalteversekering vir Algemene en Verdere Onderwys en
Opleiding, bekend staan, word hierby ingestel.”

Oorgangsreëlings

10. (1) Die werkgewer van 'n staatswerknemer mag vir 'n tydperk van een jaar na die inwerkingtreding van hierdie Wet—

- (a) nie geregtelike stappe doen om ongemagtigde besoldiging, finansiële voordeel of goederevoordeel, soos beoog in artikel 38A(9) van die Suid Afrikaanse Skolewet, 1996, te verhaal nie indien sodanige ongemagtigde besoldiging, finansiële voordeel of goederevoordeel voor die inwerkingtreding van hierdie
15 Wet betaal of gegee is of vir betaling of gee verbind is; of
(b) nie tugstappe doen nie teen 'n staatswerknemer wat ongemagtigde besoldiging, finansiële voordeel of goederevoordeel van 'n beheerliggaam ontvang het.

(2) Indien 'n herhalende betaling of gee van besoldiging, finansiële voordeel of
20 goederevoordeel voor die inwerkingtreding van hierdie Wet tussen 'n staatswerknemer en 'n beheerliggaam ontstaan het, word sodanige besoldiging of voordele vir 'n tydperk van een jaar na die inwerkingtreding van hierdie Wet geag deur die werkgewer gemagtig te wees.

Kort titel

- 25 11. Hierdie Wet heet die Wysigingswet op Onderwyswette, 2004.



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THE PRESIDENCY

No. 538 26 April 2004

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 58 of 2003: Petroleum Products Amendment Act, 2003.

DIE PRESIDENSIE

No. 538 26 April 2004

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 58 van 2003: Wysigingswet op Petroleumprodukte, 2003.



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

*(English text signed by the President.)
(Assented to 20 April 2004.)*

ACT

To amend the Petroleum Products Act so as to define certain expressions and to substitute or delete certain definitions; to provide for the licensing of persons involved in the manufacturing or sale of petroleum products; to promote the transformation of the South African petroleum and liquid fuels industry; to prohibit certain actions relating to petroleum products; to amend, substitute or repeal obsolete provisions; to provide for appeals and arbitrations; to authorise the Minister of Minerals and Energy to make specific regulations; to substitute the long title; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 120 of 1977, as amended by section 1 of Act 61 of 1985 and section 1 of Act 68 of 1991

1. Section 1 of the Petroleum Products Act, 1977, hereinafter referred to as the principal Act, is hereby amended—

- (a) by the insertion before the definition of “inspector” of the following definitions:
- “**‘bulk’** means a prescribed quantity of petroleum product;
- “**‘Charter’** means the Charter in Schedule 1;
- “**‘hold’**, when used in relation to land, means the owning of land for the purpose of establishing a site;”;
- (b) by the insertion after the definition of “inspector” of the following definitions:
- “**‘licence’** means a manufacturing, wholesale, site or retail licence;
- “**‘liquefied petroleum gas’** means a petroleum product which consists mainly of propane or butane or both and which can be stored as a liquid under relatively low pressure for use as a fuel;
- “**‘manufacture’** means the manufacture of petroleum products for commercial purposes, and includes the blending and re-refining of petroleum products, and **‘manufacturer’** shall be interpreted accordingly;”;
- (c) by the substitution for the definition of “Minister” of the following definition:
- “**‘Minister’** means the Minister of Minerals and Energy;”;
- (d) by the insertion after the definition of “outlet” of the following definition:
- “**‘paraffin’** means a liquid petroleum product that is a complex mixture of predominantly aliphatic hydrocarbons ranging from C9 to C16, used mainly for lighting, cooking and heating purposes, also known as kerosene;”;

ALGEMENE VERDUIDELIKENDE NOTA:

_____ Woorde met 'n volstreep daaronder, dui invoegings in
bestaande verordenings aan.

(Engelse teks deur die President geteken.)
(Goedgekeur op 20 April 2004.)

WET

Tot wysiging van die Wet op Petroleumprodukte ten einde sekere uitdrukkings te omskryf en sekere omskrywings te vervang of te skrap; voorsiening te maak vir die lisensiëring van persone betrokke by die vervaardiging of verkoop van petroleumprodukte; die transformasie van die Suid-Afrikaanse petroleum- en vloeibarebrandstofbedryf te bevorder; sekere handeling met betrekking tot petroleumprodukte te verbied; uitgediende bepalings te wysig, te vervang of te herroep; voorsiening te maak vir appèlle en arbitrasie; die Minister van Minerale en Energie te magtig om bepaalde regulasies uit te vaardig; die lang titel te vervang; en voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 120 van 1977, soos gewysig deur artikel 1 van Wet 61 van 1985 en artikel 1 van Wet 68 van 1991

1. Artikel 1 van die Wet op Petroleumprodukte, 1977, hierna die Hoofwet genoem, word hierby gewysig— 5

(a) deur die omskrywing van “diens” te skrap;

(b) deur die omskrywing van “hierdie Wet” deur die volgende omskrywing te vervang:

“ ‘hierdie Wet’ ook ’n regulasie, kennisgewing of lisensie uitgevaardig of verleen kragtens hierdie Wet;”;

(c) deur die volgende omskrywings voor die omskrywing van “hierdie Wet” in te voeg:

“ ‘besit’, met betrekking tot grond, om grond in eiendom te hê vir die doel van die oprigting van ’n perseel;

‘groot maat’ ’n voorgeskrewe hoeveelheid van ’n petroleumprodukt;

‘groothandel’ die koop en verkoop in groot maat van petroleumprodukte

deur ’n gelisensieerde groothandelaar aan of van ’n ander gelisensieerde

groothandelaar of van ’n gelisensieerde vervaardiger, of verkope aan ’n

gelisensieerde kleinhandelaar of eindverbruiker vir eie verbruik, en het

‘groothandelaar’ ’n ooreenstemmende betekenis;

‘groothandelslisensie’ ’n lisensie om die besigheid van ’n

groothandelaar te dryf;

‘Handves’ die Handves in Bylae 1;”;

(d) deur die volgende omskrywings na die omskrywing van “inspekteur” in te voeg:

“ ‘kleinhandel’ die verkoop op ’n perseel van petroleumprodukte aan ’n

eindverbruiker, en het ‘kleinhandelaar’ ’n ooreenstemmende betekenis;

‘kleinhandelslisensie’ ’n lisensie om die besigheid van ’n

kleinhandelaar te dryf;

30

- (e) by the insertion after the definition of “petroleum product” of the following definitions: 5
“‘prescribed’ means prescribed by regulation made by the Minister;
‘retail’ means the sale of petroleum products to an end-consumer at a site
and ‘retailer’ shall be interpreted accordingly;
‘retail licence’ means a licence to conduct the business of a retailer;”;
- (f) by the deletion of the definition of “service”;
- (g) by the insertion before the definition of “this Act” of the following definitions: 10
“‘site’ means premises on land zoned and approved by a competent
authority for the retailing of prescribed petroleum products;”
- (h) by the substitution for the definition of “this Act” of the following definition:
“ ‘this Act’ includes any regulation, notice and licence issued or given in
terms of this Act;”; and
- (i) by the deletion of the definition of “Treasury”; and 15
- (j) by the addition of the following definitions:
“ ‘wholesale’ means the purchase and sale in bulk of petroleum products
by a licensed wholesaler to or from another licensed wholesaler, or from
a licensed manufacturer, or sale to a licensed retailer or to an
end-consumer for own consumption and ‘wholesaler’ shall be inter-
preted accordingly;
‘wholesale licence’ means a licence to conduct the business of a
wholesaler.” 20

Amendment of section 2 of Act 120 of 1977, as amended by section 1 of Act 72 of 1979, section 2 of Act 61 of 1985, section 2 of Act 68 of 1991 and section 1 of Act 46 of 1993 25

2. Section 2 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1)(a) for the words preceding subparagraph (i) of the following words: 30
“(a) for the purposes of ensuring a saving in, and the efficient use of,
petroleum products, regulate in such manner as he or she may deem
fit, including the imposition upon any person of any duty in
connection therewith, or prohibit—”;
- (b) by the substitution for paragraph (c) of subsection (1) of the following paragraph: 35
“(c) prescribe the price, or a maximum or minimum price, or a
maximum and minimum price, at which any petroleum product may
be sold or bought by any person, and conditions under which the
selling or buying of petroleum products other than in accordance
with the prescribed, maximum or minimum price may take place;”;
 and 40
- (c) by the addition to subsection (1) of the following paragraphs:
“(f) oblige any person to publish the prices at which petroleum products
are available for sale including conditions relating to the frequency
of such publications, its content and structure, the method and
manner of its publication and the displaying thereof; 45
- (g) prescribe the quantities of crude oil or petroleum products to be
maintained by any person.”

Insertion of sections 2A, 2B, 2C, 2D, 2E and 2F in Act 120 of 1977

- 3. The following sections are hereby inserted in the principal Act after section 2:** 50

- 'lisensie' 'n vervaardigings-, groothandels-, perseel- of kleinhandelslisensie;';
- (e) deur die omskrywing van "Minister" deur die volgende omskrywing te vervang: 5
" 'Minister' die Minister van Minerale en Energie;";
- (f) deur die volgende omskrywings na die omskrywing van "Minister" in te voeg: 10
" 'paraffien' 'n vloeibare brandstofproduk wat 'n komplekse mengsel van oorwegend alifatiese koolwaterstowwe is wat wissel van C₉ tot C₁₆ en hoofsaaklik vir verligtings-, kook- en verhittingsdoeleindes gebruik word, en wat ook bekend staan as lampolie of kerosen;
'perseel' 'n perseel op grond wat deur 'n bevoegde owerheid gesoneer en goedgekeur is vir die verkoop in die kleinhandel van voorgeskrewe petroleumprodukte;";
- (g) deur die omskrywing van "Tesourie" te skrap; 15
- (h) deur die volgende omskrywings by te voeg: 20
" 'vervaardig' die vervaardiging van petroleumprodukte vir kommersiële doeleindes, en ook die vermenging en herraffinering van petroleumprodukte, en het 'vervaardiger' 'n ooreenstemmende betekenis;";
" 'vloeibare petroleumgas' 'n petroleumproduk wat uit hoofsaaklik propaan of butaan of albei bestaan en wat by betreklik lae druk geberg kan word as 'n vloeistof vir gebruik as brandstof;
'voorgeskrif' voorgeskryf by regulasie uitgevaardig deur die Minister, en het 'voorgeskrewe' 'n ooreenstemmende betekenis.'". 25

Wysiging van artikel 2 van Wet 120 van 1977, soos gewysig by artikel 1 van Wet 72 van 1979, artikel 2 van Wet 61 van 1985, artikel 2 van Wet 68 van 1991 en artikel 1 van Wet 46 van 1993

2. Artikel 2 van die Hoofwet word hierby gewysig—

- (a) deur paragraaf (a) van subartikel (1) deur die volgende paragraaf te vervang: 30
"(a) ten einde 'n besparing in en die doeltreffende gebruik van petroleumprodukte te verseker—
 (i) die gebruik van 'n petroleumproduk vir 'n doel vermeld in die regulasie of kennisgewing, na gelang van die geval, of vir die verrigting van 'n handeling aldus vermeld op 'n wyse aldus 35
 vermeld;
- (ii) die koop, verkoop, verskaffing, verkryging of besit van, beskikking oor, of opberging of vervoer of die herwinning en herraffinering van 'n petroleumproduk aldus vermeld, 40
 reël op 'n wyse wat hy of sy goetvind, met inbegrip van die oplegging van pligte in verband daarmee aan enigiemand, of verbied;";
- (b) deur paragraaf (c) van subartikel (1) deur die volgende paragraaf te vervang: 45
"(c) die prys, of 'n maksimum- of minimumprys, of 'n maksimum- en minimumprys, voorskryf waarteen enige petroleumproduk deur iemand verkoop of gekoop mag word, en die voorwaardes stel 45
waarop die koop of verkoop van petroleumprodukte anders as ooreenkomstig die voorgeskrewe, minimum- of maksimumprys mag geskied;";
- (c) deur die byvoeging by subartikel (1) van die volgende paragrawe: 50
"(f) enigiemand verplig om die pryse bekend te maak waarteen petroleumprodukte vir verkoop beskikbaar is, en voorwaardes stel met betrekking tot die frekwensie van sodanige bekendmakings, die inhoud en struktuur daarvan, die metode en wyse van bekendmaking daarvan, en die vertoon daarvan;
 (g) die hoeveelhede ruolie of petroleumprodukte voorskryf wat deur 55
iemand gehou moet word.'".

Invoeging van artikels 2A, 2B, 2C, 2D, 2E en 2F in Wet 120 van 1977

3. Die volgende artikels word hierby na artikel 2 in die Hoofwet ingevoeg:

“Prohibition of certain activities**2A. (1) A person may not—**

- (a) manufacture petroleum products without a manufacturing licence;
- (b) wholesale prescribed petroleum products without an applicable wholesale licence;
- (c) hold or develop a site without there being a site licence for that site;
- (d) retail prescribed petroleum products without an applicable retail licence,

issued by the Controller of Petroleum Products.

(2) (a) If a person engages in an activity in contravention of subsection (1) the Controller of Petroleum Products must by written notice direct that person to cease such activity forthwith.

(b) The Controller of Petroleum Products may allow a person to continue with an activity contemplated in paragraph (a) pending an application and the issuing of a licence if the cessation of such an activity is likely to lead to a material interruption in the supply of petroleum products.

(c) If an application contemplated in paragraph (b) is unsuccessful, the Controller of Petroleum Products must by written notice direct that person to cease such activity and, if applicable, to rectify any state of affairs resulting from that person’s activities within the period stipulated in the notice.

(3) If a person engages in an activity in contravention of a licence issued to that person, the Controller of Petroleum Products must by written notice direct that person to comply with the licence and, if applicable, to rectify any state of affairs resulting from such contravention within the period stipulated in the notice.

(4) Any person who has to apply for a licence in terms of subsection (1) must—

- (a) in the case of a manufacturing licence be the owner of the property concerned and if not the owner must have the written permission of the owner;
- (b) in the case of a site licence be the owner of the property concerned or in the case of publicly owned land have the written permission of the owner;
- (c) in the case of retail and wholesale licences be the owner of the business entity concerned;
- (d) do so in the form and manner prescribed.

(5) No person may make use of a business practice, method of trading, agreement, arrangement, scheme or understanding which is aimed at or would result in—

- (a) a licensed wholesaler holding a retail licence except for training purposes as prescribed, but excludes wholesalers and retailers of liquefied petroleum gas and paraffin;
- (b) self-service by consumers of prescribed petroleum products on the premises of a licensed retailer.

(6) A licensed manufacturer shall only sell petroleum products to a licensed wholesaler or a licensed retailer, or both, except for export purposes.

(7) A licensed retailer shall only purchase petroleum products from a licensed wholesaler or a licensed manufacturer, or both.

Licensing

2B. (1) The Controller of Petroleum Products must issue licences in accordance with the provisions of this Act.

(2) In considering the issuing of any licences in terms of this Act, the Controller of Petroleum Products shall give effect to the provisions of section 2C and the following objectives:

“Verbod op sekere aktiwiteite**2A. (1) Niemand mag—**

- (a) petroleumprodukte vervaardig sonder 'n vervaardigingslisensie nie; 5
 (b) voorgeskrewe petroleumprodukte in die groothandel verkoop sonder 'n groothandelslisensie nie;
 (c) 'n perseel besit of ontwikkel sonder dat daar 'n perseellisensie vir daardie perseel is nie;
 (d) voorgeskrewe petroleumprodukte in die kleinhandel verkoop sonder 'n toepaslike kleinhandelslisensie nie, 10

welke lisensie deur die Kontroleur van Petroleumprodukte verleen is.

(2)(a) Indien iemand 'n aktiwiteit in stryd met subartikel (1) verrig, moet die Kontroleur van Petroleumprodukte daardie persoon by skriftelike kennisgewing gelas om sodanige aktiwiteit onverwyld te staak.

(b) Die Kontroleur van Petroleumprodukte kan iemand toelaat om met 'n aktiwiteit beoog in paragraaf (a) voort te gaan hangende 'n aansoek om en die verlening van 'n lisensie indien die staking van daardie aktiwiteit waarskynlik sal lei tot 'n wesentlike onderbreking in die verskaffing van petroleumprodukte. 15

(c) Indien 'n aansoek beoog in paragraaf (b) nie suksesvol is nie, moet die Kontroleur van Petroleumprodukte die persoon by skriftelike kennisgewing gelas om die betrokke aktiwiteit te staak en, waar van toepassing, enige stand van sake wat ontstaan het uit daardie persoon se aktiwiteite, reg te stel binne die tydperk in die kennisgewing vermeld. 20

(3) Indien iemand 'n aktiwiteit verrig in stryd met 'n lisensie aan hom of haar verleen, moet die Kontroleur van Petroleumprodukte daardie persoon by skriftelike kennisgewing gelas om aan die lisensie te voldoen en, waar van toepassing, enige stand van sake wat ontstaan het uit sodanige nievoldoening, reg te stel binne die tydperk in die kennisgewing vermeld. 25

(4) Enigiemand wat ingevolge subartikel (1) om 'n lisensie aansoek moet doen, moet— 30

- (a) in die geval van 'n vervaardigingslisensie, die eienaar van die betrokke eiendom wees of, indien hy of sy nie die eienaar is nie, die skriftelike toestemming van die eienaar hê;
 (b) in die geval van 'n perseellisensie, die eienaar van die betrokke eiendom wees of, in die geval van grond wat openbare eiendom is, die skriftelike toestemming van die eienaar hê; 35
 (c) in die geval van 'n kleinhandels- of 'n groothandelslisensie, die eienaar van die betrokke sake-entiteit wees;
 (d) dit in die voorgeskrewe vorm en op die voorgeskrewe wyse doen. 40

(5) Niemand mag van 'n sakepraktyk, handelsmetode, ooreenkoms, reëling, skema of verstandhouding gebruik maak wat daarop gemik is of wat daartoe sal lei dat—

- (a) 'n gelisensieerde groothandelaar 'n kleinhandelslisensie hou nie, behalwe vir opleidingsdoeleindes soos voorgeskryf, uitgesonderd groot- en kleinhandelaars in vloeibare petroleumgas en paraffien; 45
 (b) selfbediening deur klante met betrekking tot voorgeskrewe petroleumprodukte op die perseel van 'n gelisensieerde kleinhandelaar plaasvind nie.

(6) 'n Gelisensieerde vervaardiger mag petroleumprodukte slegs aan 'n gelisensieerde groothandelaar of 'n gelisensieerde kleinhandelaar, of albei, verkoop, behalwe vir uitvoerdoeleindes. 50

(7) 'n Gelisensieerde kleinhandelaar mag petroleumprodukte slegs van 'n gelisensieerde groothandelaar of 'n gelisensieerde vervaardiger, of albei, koop. 55

Lisensiering

2B. (1) Die Kontroleur van Petroleumprodukte moet lisensies ooreenkomstig die bepalings van hierdie Wet verleen.

(2) Wanneer die Kontroleur van Petroleumprodukte die verlening van 'n lisensie kragtens hierdie Wet oorweeg, moet hy of sy voldoen aan die bepalings van artikel 2C en die volgende oogmerke: 60

- (a) Promoting an efficient manufacturing, wholesaling and retailing petroleum industry;
- (b) facilitating an environment conducive to efficient and commercially justifiable investment;
- (c) the creation of employment opportunities and the development of small businesses in the petroleum sector;
- (d) ensuring countrywide availability of petroleum products at competitive prices; and
- (e) promoting access to affordable petroleum products by low-income consumers for household use.
- (3) Any licence issued by the Controller of Petroleum Products remains valid for as long as—
- (a) the licensee complies with the conditions of the licence;
- (b) the licensed activity remains a going concern, excluding a site; and
- (c) in the case of a site, there is a corresponding valid retail licence.
- (4) The Controller of Petroleum Products must issue only one retail licence per site.
- (5) To ensure the continued operation of a licensed activity and the prevention of hardship the Controller of Petroleum Products may, upon application, issue a temporary licence which shall be valid for a period not longer than six months.
- (6) It shall be a condition of a manufacturing licence or a wholesale licence, as the case may be, that the licensee must purchase or sell, or purchase and sell, petroleum products—
- (a) manufactured from coal, natural gas or vegetable matter;
- (b) that meet prescribed specifications and standards where applicable; and
- (c) when such petroleum products are available in the Republic, before purchasing or selling, or purchasing and selling, petroleum products manufactured from other raw materials.

Transformation of South African petroleum and liquid fuels industry

2C. (1) In considering licence applications in terms of this Act, the Controller of Petroleum Products shall—

- (a) promote the advancement of historically disadvantaged South Africans; and
- (b) give effect to the Charter.

(2) The Controller of Petroleum Products may require any category of licence holder to furnish information, as prescribed, in respect of the implementation of the Charter.

Transitional licensing provisions

2D. (1) For the purposes of this section—
‘hold’ means to own or lease land, or to possess an option to purchase or lease land, that has been zoned and approved by appropriate authorities for use as a site; and

‘process of developing’ means the construction of, or the completion of the infrastructure necessary to use such land as a site within a period of 12 months from the date of commencement of the Petroleum Products Amendment Act, 2003.

(2) Any person who, at the time of commencement of the Petroleum Products Amendment Act, 2003—

- (a) holds and is in the process of developing a site; or
- (b) manufactures or wholesales petroleum products, or retails prescribed petroleum products;

shall, subject to subsection (3), be deemed to be the holder of a licence for that activity.

- (a) Die bevordering van 'n doeltreffende vervaardigings-, groothandels- en kleinhandelspetroleumbedryf;
- (b) die fasilitering van 'n omgewing wat bevorderlik is vir doeltreffende en kommersieel regverdigbare investering;
- (c) die skep van werksgeleenthede en die ontwikkeling van kleinsake in die petroleumsektor; 5
- (d) die versekering dat petroleumprodukte landswyd teen mededingende pryse beskikbaar is; en
- (e) die bevordering van toegang tot bekostigbare petroleumprodukte vir huishoudelike gebruik deur lae-inkomsteverbruikers. 10
- (3) 'n Lisensie verleen deur die Kontroleur van Petroleumprodukte bly geldig vir so lank as wat—
- (a) die lisensiehouer aan die voorwaardes van die lisensie voldoen;
- (b) die gelisensieerde aktiwiteit 'n lopende saak bly, met uitsondering van 'n perseel; en 15
- (c) in die geval van 'n perseel, daar 'n ooreenstemmende geldige kleinhandelslisensie is.
- (4) Die Kontroleur van Petroleumprodukte mag slegs een kleinhandelslisensie per perseel verleen.
- (5) Ten einde die voortsetting van 'n gelisensieerde aktiwiteit te verseker en ontbering te voorkom, kan die Kontroleur van Petroleumprodukte op aansoek 'n tydelike lisensie verleen, wat vir 'n tydperk van hoogstens ses maande geldig is. 20
- (6) Dit moet 'n voorwaarde wees van 'n vervaardigingslisensie of 'n groothandelslisensie, na gelang van die geval, dat die lisensiehouer petroleumprodukte moet koop of verkoop, of koop en verkoop— 25
- (a) wat uit steenkool, aardgas of plantmateriaal vervaardig is;
- (b) wat voldoen aan die voorgeskrewe spesifikasies en standaarde, waar van toepassing; en
- (c) wanneer sodanige petroleumprodukte in die Republiek beskikbaar is, 30
- voordat hy of sy petroleumprodukte wat uit ander grondstowwe vervaardig is, koop of verkoop, of koop en verkoop.

Transformasie van die Suid-Afrikaanse petroleum- en vloeibare-brandstofbedryf

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- 2C.** (1) Wanneer die Kontroleur van Petroleumprodukte 'n aansoek om 'n lisensie kragtens hierdie Wet oorweeg, moet hy of sy—
- (a) die vooruitgang van histories benadeelde Suid-Afrikaners bevorder; en
- (b) uitvoering gee aan die Handves. 40
- (2) Die Kontroleur van Petroleumprodukte kan van enige kategorie lisensiehouer vereis om sodanige inligting as wat voorgeskryf word, te verstrek met betrekking tot die toepassing van die Handves.

Oorgangsbepalings met betrekking tot lisensiëring

- 2D.** (1) Vir doeleindes van hierdie artikel beteken— 45
- 'besit' om grond in eiendom te hê of te huur, of om 'n opsie op die koop of huur van grond te hou, wat deur die gepaste owerhede vir gebruik as 'n perseel gesoneer en goedgekeur is; en
- 'proses van ontwikkeling' die konstruksie of die voltooiing van die infrastruktuur wat nodig is om sodanige grond as 'n perseel te gebruik binne 'n tydperk van 12 maande vanaf die datum van inwerkingtreding van die Wysigingswet op Petroleumprodukte, 2003. 50
- (2) Iemand wat ten tyde van die inwerkingtreding van die Wysigingswet op Petroleumprodukte, 2003—
- (a) 'n perseel besit of in die proses van ontwikkeling daarvan is; of 55
- (b) petroleumprodukte vervaardig of in die groothandel verkoop of voorgeskrewe petroleumprodukte in die kleinhandel verkoop, word, behoudens subartikel (3), geag die houer van 'n lisensie vir daardie aktiwiteit te wees. 60

(3) (a) Any person referred to in subsection (2) shall, within a period of six months from the date of commencement of this section, apply for a manufacturing, wholesale, site or retail licence, as the case may be.

(b) Subsection (2) shall cease to apply if the person fails to apply for a licence within the period contemplated in paragraph (a).

(4) (a) An applicant contemplated in subsection (3) shall, on application, be entitled to be issued with a licence for the operation of the activity concerned if the applicant is in compliance with all national, provincial and local government legal requirements, that are in force immediately prior to the commencement of this Act for the operation of the activity concerned.

(b) Such applicant shall be subject to the general conditions of a licence set out in this Act, but not to any financial security requirement prescribed by regulation.

System for allocation of licences

2E. (1) The Minister must prescribe a system for the allocation of site and their corresponding retail licences and the supply of prescribed petroleum products to such licensees, by which the Controller of Petroleum Products

shall be bound: Provided that the Controller of Petroleum Products shall only be bound by the provisions of such a system for the period set out in that regulation or any amendment thereto or any substitution thereof which period may not exceed 10 years from the date of commencement of that regulation.

(2) The Minister shall prior to promulgating a system contemplated in subsection (1) invite public comment thereon by publishing it in the *Gazette* and duly considering such comments.

(3) A system contemplated in subsection (1)—

- (a) must intend to transform the retail sector into one that has the optimum number of efficient sites;
- (b) must intend to achieve an equilibrium amongst all participants in the petroleum products industry within the constraints of this Act;
- (c) must be based on the objectives referred to in section 2B(2) and 2C;
- (d) must promote efficient investment in the retail sector and the productive use of retail facilities—

- (i) by limiting the total number of site and corresponding retail licences in any period;

- (ii) by linking the total number of site and corresponding retail licences in any period, to the total mass or volume of prescribed petroleum products sold by licensed retailers; and

- (iii) by other appropriate means;

- (e) must allow licensed wholesalers to trade with each other any contractual rights and obligations they may have, to supply licensed retailers with prescribed petroleum products;

- (f) may specify that petroleum products which—

- (i) are manufactured from coal, natural gas or vegetable matter, when available in the Republic;

- (ii) meet prescribed specifications and standards, where applicable,

must be supplied to a licensed retailer before the supply of prescribed petroleum products manufactured from other raw materials may be supplied.

(3)(a) Iemand beoog in subartikel (2) moet, binne 'n tydperk van ses maande vanaf die datum van inwerkingtreding van hierdie artikel, aansoek doen om 'n vervaardigings-, groothandels-, perseel- of kleinhandels-lisensie, na gelang van die geval.

(b) Subartikel (2) hou op om van krag te wees indien die persoon versuim om binne die tydperk beoog in paragraaf (a) om 'n lisensie aansoek te doen.

(4)(a) 'n Aansoeker beoog in subartikel (3) is op aansoek daarop geregtig dat 'n lisensie vir die verrigting van die betrokke aktiwiteit aan hom of haar verleen word, mits hy of sy voldoen aan al die regsvereistes van die nasionale, provinsiale of plaaslike owerheid wat op die betrokke aktiwiteit van toepassing is en van krag is onmiddellik voor die inwerkingtreding van hierdie Wet.

(b) Sodanige aansoeker is onderworpe aan die algemene voorwaardes van 'n lisensie in hierdie Wet uiteengesit, maar nie aan 'n vereiste met betrekking tot finansiële sekuriteit voorgeskryf by regulasie nie.

Stelsel vir verlening van lisensies

2E. (1) Die Minister moet 'n stelsel, wat vir die Kontroleur van Petroleumprodukte bindend is, voorskryf vir die verlening van 'n perseel- en die gepaardgaande kleinhandelslisensie en vir die verskaffing van voorgeskrewe petroleumprodukte aan die houers van sodanige lisensies: Met dien verstande dat die Kontroleur van Petroleumprodukte deur die bepalings van sodanige stelsel gebind word slegs vir die tydperk vermeld in die betrokke regulasie of enige wysiging of vervanging daarvan, welke tydperk nie 10 jaar vanaf die inwerkingtreding van daardie regulasie mag oorskry nie.

(2) Die Minister moet voor die afkondiging van 'n stelsel beoog in subartikel (1) openbare kommentaar daarop aanvra deur dit in die *Staatskoerant* te publiseer en moet sodanige kommentaar behoorlik oorweeg.

(3) 'n Stelsel beoog in subartikel (1)—

- (a) moet daarop gemik wees om die kleinhandelsektor te transformeer tot een wat die optimale aantal doeltreffende persele het;
- (b) moet daarop gemik wees om 'n ewewig tussen alle deelnemers aan die petroleumproduktebedryf te bewerkstellig binne die beperkinge van hierdie Wet;
- (c) moet berus op die oogmerke genoem in artikels 2B(2) en 2C;
- (d) moet doeltreffende investering in die kleinhandelsektor en die produktiewe aanwending van kleinhandelsfasiliteite bevorder—
 - (i) deur die aantal perseel- en gepaardgaande kleinhandels-lisensies in enige tydperk te beperk;
 - (ii) deur die aantal perseel- en gepaardgaande kleinhandels-lisensies in enige tydperk te koppel aan die totale massa of volume van die voorgeskrewe petroleumprodukte wat deur gelisensieerde kleinhandelaars verkoop is; en
 - (iii) op ander gepaste maniere;
- (e) moet gelisensieerde groothandelaars toelaat om enige kontraktuele regte en verpligtinge wat hulle het om voorgeskrewe petroleumprodukte aan gelisensieerde kleinhandelaars te verskaf, aan mekaar te verhandel;
- (f) kan spesifiseer dat petroleumprodukte wat—
 - (i) uit steenkool, aardgas of plantmateriaal vervaardig word, wanneer in die Republiek beskikbaar;
 - (ii) voldoen aan die voorgeskrewe spesifikasies en standaarde waar toepaslik,
 aan 'n gelisensieerde kleinhandelaar verskaf moet word voordat voorgeskrewe petroleumprodukte wat uit ander grondstowwe vervaardig is, verskaf mag word;

- (g) may link the issuing of a new site licence and the corresponding retail licence to the termination or transfer of ownership of one or more existing site licences and the corresponding retail licences;
- (h) may link the issuing of a new retail licence to the transfer from a licensed wholesaler of contractual rights enjoyed by that wholesaler in respect of one or more licensed retailers, to another licensed wholesaler. 5

(4) The Minister shall from time to time review the efficacy of the system contemplated in subsection (1) against the objectives of this Act and may amend the system in an appropriate manner and the provisions of subsection (2) shall *mutatis mutandis* apply. 10

(5) Nothing contained in subsections (1), (2) or (3) absolves any person from the obligation to apply for and hold a licence in terms of this Act.

System for allocation of licences for liquefied petroleum gas and paraffin

2F. (1) For the purposes of this section 'retail' means the sale of liquefied petroleum gas or paraffin to an end-consumer and 'retailer' shall be interpreted accordingly. 15

(2) The Minister may by regulation, prescribe licensing systems for the wholesaling and retailing of liquefied petroleum gas or paraffin, or both, by which the Controller of Petroleum Products shall be bound. 20

(3) A system contemplated in subsection (2) must—

(a) be based on the objectives referred to in sections 2B(2) and 2C;

(b) be targeted at poverty alleviation for low income households;

(4) The Minister shall prior to promulgating a system contemplated in subsection (2) invite public comment thereon by publishing it in the *Gazette* and duly consider such comments. 25

(5) A system contemplated in subsection (2) may in designated areas, restrict the retail of liquefied petroleum gas or paraffin to one or more retailers.

(6) The Minister shall from time to time review the efficacy of a system contemplated in subsection (2) against the objectives of this Act and may amend the system in an appropriate manner and the provisions of subsection (4) shall *mutatis mutandis* apply." 30

Amendment of section 3 of Act 120 of 1977

4. Section 3 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 35

"(1) The Minister—

(a) shall, subject to the laws governing the public service, appoint any person in the public service as Controller of Petroleum Products and may appoint persons in the public service as regional controllers of petroleum products or as inspectors for the Republic or any part thereof; 40

(b) may on such conditions and at such remuneration as he or she may in consultation with the Minister of Finance determine, appoint or authorise any other person or person belonging to any other category of persons to act as regional controller of petroleum products or as inspector for the Republic or any part thereof." 45

Repeal of section 4A of Act 120 of 1977

5. Section 4A of the principal Act is hereby repealed.

Repeal of section 4B of Act 120 of 1977

6. Section 4B of the principal Act is hereby repealed. 50

- (g) kan die verlening van 'n nuwe perseellisensie en die gepaardgaande kleinhandel-lisensie koppel aan die beëindiging of oordrag van eienaarskap van een of meer bestaande perseellisensies en die gepaardgaande kleinhandel-lisensies;
- (h) kan die verlening van 'n nuwe kleinhandel-lisensie koppel aan die oordrag van kontraktuele regte wat 'n gelisensieerde groothandelaar ten opsigte van een of meer gelisensieerde kleinhandelaar het, deur daardie groothandelaar aan 'n ander gelisensieerde groothandelaar.
- (4) Die Minister moet van tyd tot tyd die doelmatigheid van die stelsel beoog in subartikel (1) weer aan die hand van die oogmerke van hierdie Wet oorweeg en kan die stelsel op gepaste wyse wysig, en die bepalings van subartikel (2) is *mutatis mutandis* van toepassing.
- (5) Niks vervat in subartikels (1), (2) en (3) stel enigiemand vry van die verpligting om ingevolge hierdie Wet aansoek om 'n lisensie te doen en sodanige lisensie te hou nie.

Stelsel vir verlening van lisensies vir vloeibare petroleumgas en paraffien

- 2F.** (1) Vir doeleindes van hierdie artikel beteken 'kleinhandel' die verkoop van vloeibare petroleumgas of paraffien aan 'n eindverbruiker en het 'kleinhandelaar' 'n ooreenstemmende betekenis.
- (2) Die Minister kan by regulasie lisensieringstelsels voorskryf vir die verkoop in die groothandel en in die kleinhandel van vloeibare petroleumgas of paraffien of albei, wat vir die Kontroleur van Petroleumprodukte bindend is.
- (3) 'n Stelsel beoog in subartikel (2) moet—
- (a) berus op die oogmerke genoem in artikel 2B(2) en 2C;
- (b) gemik wees op armoedeverligting by lae-inkomstehuishoudings.
- (4) Die Minister moet voor die afkondiging van 'n stelsel beoog in subartikel (2) openbare kommentaar daarop aanvra deur dit in die *Staatskoerant* te publiseer en moet sodanige kommentaar behoorlik oorweeg.
- (5) 'n Stelsel beoog in subartikel (2) kan in aangewese gebiede die verkoop in die kleinhandel van vloeibare petroleumgas of paraffien tot een of meer kleinhandelaars beperk.
- (6) Die Minister moet van tyd tot tyd die doelmatigheid van die stelsel beoog in subartikel (2) weer aan die hand van die oogmerke van hierdie Wet oorweeg en kan die stelsel op gepaste wyse wysig, en die bepalings van subartikel (2) is *mutatis mutandis* van toepassing.”

Wysiging van artikel 3 van Wet 120 van 1977

4. Artikel 3 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Die Minister—

- (a) moet behoudens die wette wat die staatsdiens reël, iemand in die staatsdiens as Kontroleur van Petroleumprodukte aanstel en kan persone in die staatsdiens as streekkontroleurs van petroleumprodukte of as inspekteurs vir die Republiek of enige deel daarvan aanstel;
- (b) kan, op sodanige voorwaardes en teen die vergoeding wat hy of sy in oorleg met die Minister van Finansies bepaal, enige ander persoon of 'n persoon wat tot 'n ander kategorie persone behoort, aanstel of magtig om as streekkontroleur van petroleumprodukte of as inspekteur vir die Republiek of enige deel daarvan op te tree.”

Herroeping van artikel 4A van Wet 120 van 1977

5. Artikel 4A van die Hoofwet word hierby herroep.

Herroeping van artikel 4B van Wet 120 van 1977

6. Artikel 4B van die Hoofwet word hierby herroep.

Repeal of section 5 of Act 120 of 1977

7. Section 5 of the principal Act is hereby repealed.

Repeal of section 7 of Act 120 of 1977

8. Section 7 of the principal Act is hereby repealed.

Repeal of section 8 of Act 120 of 1977

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9. Section 8 of the principal Act is hereby repealed.

Repeal of section 10 of Act 120 of 1977

10. Section 10 of the principal Act is hereby repealed.

Repeal of section 11 of Act 120 of 1977

11. Section 11 of the principal Act is hereby repealed.

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Substitution of section 12 of Act 120 of 1977, as amended by section 5 of Act 72 of 1979 and section 8 of Act 61 of 1985

12. The following section is hereby substituted for section 12 of the principal Act:

“Offences and Penalties

12. (1) Any person who contravenes a provision of this Act, shall be guilty of an offence and be liable on conviction to a fine not exceeding R1 000 000,00, or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment: Provided that if a directive issued in terms of section 2A(2)(c) or (3) is complied with within the period specified therein, the person concerned shall be absolved from criminal liability.

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(2) The Minister may by notice in the *Gazette* amend the amount referred to in subsection (1) in order to counter the effect of inflation.”

Substitution of section 12A of Act 120 of 1977, as inserted by section 9 of Act 61 of 1991

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13. The following sections are hereby substituted for section 12A of the principal Act:

“Appeal

12A. (1) Any person directly affected by a decision of the Controller of Petroleum Products may, notwithstanding any other rights that such a person may have, appeal to the Minister against such decision.

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(2) An appeal in terms of paragraph (a) shall be lodged within 60 days after such decision has been made known to the affected person and shall be accompanied by—

(a) a written explanation setting out the nature of the appeal;

(b) any documentary evidence upon which the appeal is based.

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(3) The Minister shall consider the appeal, and shall give his or her decision thereon, together with written reasons therefor, within the period specified in the regulations.

Arbitration

12B. (1) The Controller of Petroleum Products may on request by a licensed retailer alleging an unfair or unreasonable contractual practice by

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Herroeping van artikel 5 van Wet 120 van 1977

7. Artikel 5 van die Hoofwet word hierby herroep.

Herroeping van artikel 7 van Wet 120 van 1977

8. Artikel 7 van die Hoofwet word hierby herroep.

Herroeping van artikel 8 van Wet 120 van 1977

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9. Artikel 8 van die Hoofwet word hierby herroep.

Herroeping van artikel 10 van Wet 120 van 1977

10. Artikel 10 van die Hoofwet word hierby herroep.

Herroeping van artikel 11 van Wet 120 van 1977

11. Artikel 11 van die Hoofwet word hierby herroep.

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Vervanging van artikel 12 van Wet 120 van 1977, soos gewysig deur artikel 5 van Wet 72 van 1979 en artikel 8 van Wet 61 van 1985

12. Artikel 12 van die Hoofwet word hierby deur die volgende artikel vervang:

“Misdrywe en strawwe

12. (1) Iemand wat 'n bepaling van hierdie Wet oortree, is skuldig aan 'n misdryf en by skuldigebevinding strafbaar met 'n boete van hoogstens R1 000 000 of met gevangenisstraf vir 'n tydperk van hoogstens 10 jaar, of met sowel sodanige boete as sodanige gevangenisstraf: Met dien verstande dat indien 'n lasgewing kragtens artikel 2A(2)(c) of (3) uitgereik, nagekom word binne die tydperk daarin vermeld, die betrokke persoon vrygestel word van strafregtelike aanspreeklikheid.

(2) Die Minister kan by kennisgewing in die *Staatskoerant* die bedrag vermeld in subartikel (1) wysig ten einde die uitwerking van inflasie teen te werk.”

Wysiging van artikel 12A van Wet 120 van 1977, soos ingevoeg by artikel 9 van Wet 61 van 1991

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13. Artikel 12A van die Hoofwet word hierby deur die volgende artikels vervang:

“Appèl

12A. (1) Iemand wat regstreeks deur 'n besluit van die Kontroleur van Petroleumprodukte geraak word, het, benewens enige ander regte wat daardie persoon het, die reg om na die Minister te appelleer teen sodanige besluit.

(2) 'n Appèl kragtens paragraaf (a) moet binne 60 dae nadat die betrokke besluit aan die geaffekteerde persoon bekendgemaak is, aangeteken word en moet vergesel gaan van—

(a) 'n skriftelike verduideliking wat die aard van die appèl uiteensit;

(b) enige dokumentêre bewyse waarop die appèl berus.

(3) Die Minister moet die appèl oorweeg en moet, binne die tydperk in die regulasies vermeld, sy of haar beslissing daarvoor gee, tesame met skriftelike redes daarvoor.

Arbitrasie

12B. (1) Die Kontroleur van Petroleumprodukte kan, op versoek van 'n gelisensieerde kleinhandelaar wat beweer dat 'n groothandelaar 'n onbillike of onredelike kontraktuele praktyk begaan, of omgekeerd, by

a licensed wholesaler, or *vice versa*, require, by notice in writing to the parties concerned, that the parties submit the matter to arbitration.

(2) An arbitration contemplated in subsection (1) shall be heard—

- (a) by an arbitrator chosen by the parties concerned; and
- (b) in accordance with the rules agreed between the parties.

(3) If the parties fail to reach an agreement regarding the arbitrator, or the applicable rules, within 14 days of receipt of the notice contemplated in subsection (1)—

- (a) the Controller of Petroleum Products must upon notification of such failure, appoint a suitable person to act as arbitrator; and
- (b) the arbitrator must determine the applicable rules.

(4) An arbitrator contemplated in subsection (2) or (3)—

- (a) shall determine whether the alleged contractual practices concerned are unfair or unreasonable and, if so, shall make such award as he or she deems necessary to correct such practice; and
- (b) shall determine whether the allegations giving rise to the arbitration were frivolous or capricious and, if so, shall make such award as he or she deems necessary to compensate any party affected by such allegations;

(5) Any award made by an arbitrator contemplated in this section shall be final and binding upon the parties concerned and may, at the arbitrator's discretion, include any order as to costs to be borne by one or more of the parties concerned.

Regulations

12C. (1) The Minister may, without derogating from his or her general regulatory powers, make regulations—

- (a) regarding manufacturing, wholesale, site or retail licences, including—
 - (i) the form and manner in which an application for a licence or an amendment to an already issued licence shall be made;
 - (ii) procedures to be applied in the evaluation of an application for a licence, and the period within which it shall be considered;
 - (iii) the monies payable for licences;
 - (iv) the form of a licence;
 - (v) conditions of licence which may be imposed by the Controller of Petroleum Products in respect of a particular licence or a category of licences, including—
 - (aa) the rights, duties and obligations of licensees in the manufacture, handling, storage, packaging, dispensing and sale of petroleum products;
 - (bb) conditions relating to the advancement of historically disadvantaged South Africans;
 - (cc) the number of retail licences that may be held by a licensed wholesaler for retail training purposes;
 - (vi) the obligation of a licence holder to keep records and to furnish particular information to the Controller of Petroleum Products, and the frequency of furnishing such information;
 - (vii) the transfer of ownership of licences, excluding the price of the licensed property;
 - (viii) the termination of a licence and the procedures relating to such termination;
- (b) prohibiting a business practice which conflicts with the objectives referred to in sections 2B(2) and 2C;

kennisgewing aan die betrokke partye vereis dat hulle die aangeleentheid na arbitrasie verwys.

(2) Die arbitrasie beoog in subartikel (1) word aangehoor—

- (a) deur 'n arbiter gekies deur die betrokke partye; en
- (b) ooreenkomstig die reëls waarop die partye ooreenkom.

(3) Indien die partye versuim om binne 14 dae ná ontvangs van die kennisgewing beoog in subartikel (1) ooreenkoms rakende die arbiter of die toepaslike reëls te bereik—

(a) moet die Kontroleur van Petroleumprodukte, nadat hy of sy van sodanige versuim in kennis gestel is, 'n geskikte persoon aanstel om as arbiter op te tree; en

(b) moet die arbiter die toepaslike reëls bepaal.

(4) 'n Arbiter bedoel in subartikel (2) of (3)—

(a) moet vasstel of die betrokke beweerde kontraktuele praktyk onbillik of onredelik is en, indien wel, sodanige arbitrasietoekenning doen as wat hy of sy nodig ag om die betrokke praktyk reg te stel; en

(b) moet bepaal of die bewerings wat tot die arbitrasie gelei het, beuselagtig of willekeurig is en, indien wel, sodanige arbitrasietoekenning doen as wat hy of sy nodig ag om 'n party wat deur die beweringe geraak is, te vergoed.

(5) 'n Arbitrasietoekenning gedoen deur 'n arbiter bedoel in hierdie artikel is finaal en bindend vir die betrokke partye en kan, na goedduke van die arbiter, 'n bevel insluit met betrekking tot die koste wat deur een of meer van die betrokke partye gedra moet word.

Regulasies

12C. (1) Die Minister kan, sonder afbreuk aan sy of haar algemene regulerende bevoegdhede, regulasies uitvaardig—

(a) betreffende vervaardigings-, groothandels-, perseel- en kleinhandelslisensies, met inbegrip van—

(i) die vorm waarin en die wyse waarop aansoek om 'n lisensie of die wysiging van 'n reeds verleende lisensie gedoen moet word;

(ii) die prosedures wat gevolg moet word by die evaluering van 'n aansoek om 'n lisensie en die tydperk waarbinne die aansoek oorweeg moet word;

(iii) die gelde betaalbaar vir lisensies;

(iv) die vorm van 'n lisensie;

(v) die lisensievoorwaardes wat die Kontroleur van Petroleumprodukte kan stel ten opsigte van 'n bepaalde lisensie of kategorie lisensies, met inbegrip van—

(aa) die regte, pligte en verpligtinge van lisensiehouers ten opsigte van die vervaardiging, hantering, berging, verpakking, toedeling en verkoop van petroleumprodukte;

(bb) toestande vir die vooruitgang van histories benadeelde Suid-Afrikaners;

(cc) die aantal kleinhandelslisensies wat deur 'n gelisensieerde groothandelaar vir doeleindes van kleinhandelsopleiding gehou mag word;

(vi) 'n lisensiehouer se verpligting om rekords te hou en bepaalde inligting aan die Kontroleur van Petroleumprodukte te verstrek, en hoe gereeld sodanige inligting verstrek moet word;

(vii) die oordrag van eienaarskap van lisensies, uitgesonderd die prys van die gelisensieerde eiendom;

(viii) die intrekking van 'n lisensie en die prosedures met betrekking tot sodanige intrekking;

(b) wat 'n sakepraktyk verbied wat in stryd is met die oogmerke vermeld in artikels 2B(2) en 2C;

- (c) regarding the records and information to be kept by the Controller of Petroleum Products, and the furnishing thereof to third parties in accordance with the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);
- (d) regarding the continuity of supply of petroleum products by licensees under normal operating conditions, and in cases of potential or actual emergency, including an amendment to a licence; 5
- (e) regarding the specifications and standards of petroleum products;
- (f) regarding the prohibition of the blending or mixing of different petroleum products or the blending or mixing of petroleum products with other substances which will lead to deviation from prescribed petroleum product specifications or standards or for the purpose of avoiding the payment of any tax, duty or levy; 10
- (g) regarding the rehabilitation of land used in connection with a licensed activity by the licensee concerned, including the lodging of financial security for rehabilitation purposes and the composition and amount of such security; and 15
- (h) the period within which a decision on an appeal should be given.
- (2) The Minister shall, except in an emergency, prior to promulgating any regulation contemplated in subsection (1)(e)— 20
- (a) invite public comment thereon by publishing in the *Gazette* the full particulars of the specification or standard;
- (b) allow a period of not less than two months after the date of publication of such *Gazette* for the submission of public comment; and 25
- (c) duly consider such comments.”

Substitution of long title of Act 120 of 1977

14. The following long title is hereby substituted for the long title of the principal Act: 30
- “To provide for measures in the saving of petroleum products and an economy in the cost of distribution thereof, and for the maintenance and control of a price therefor, 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; to provide for the licensing of persons involved in the manufacturing and sale of certain petroleum products; to promote the transformation of the South African petroleum and liquid fuels industry; to provide for the promulgation of regulations relating to such licences; and to provide for matters incidental thereto.” 35

Short title

15. This Act is called the Petroleum Products Amendment Act, 2003, and comes into operation on a date to be fixed by the President by Proclamation in the *Gazette*. 40

- (c) betreffende die rekords en inligting wat deur die Kontroleur van Petroleumprodukte gehou moet word, en die verstrekking van sodanige inligting aan derde partye ooreenkomstig die Wet op Bevordering van Toegang tot Inligting, 2000 (Wet No. 2 van 2000);
- (d) betreffende die volgehoue verskaffing van petroleumprodukte deur lisensiehouers in normale bedryfstoele en in gevalle van potensiele of werklike noodtoestande, met inbegrip van die wysiging van 'n lisensie; 5
- (e) betreffende die spesifikasies en standarde van petroleumprodukte;
- (f) betreffende die verbod op die meng of vermenging van verskillende petroleumprodukte of die meng of vermenging van petroleumprodukte met ander stowwe wat sal lei tot 'n afwyking van voorgeskrewe petroleumprodukspesifikasies of -standarde, of met die doel om die betaling van enige belasting, reg of heffing te vermy; 10
- (g) betreffende die rehabilitering van grond wat deur die betrokke lisensiehouer in verband met 'n gelisensieerde aktiwiteit gebruik is, met inbegrip van die verskaffing van finansiële sekuriteit vir rehabilitasiedoeleindes en die samestelling en bedrag van sodanige sekuriteit; en 15
- (h) betreffende die tydperk waarbinne 'n beslissing oor 'n appèl gelewer moet word. 20
- (2) Die Minister moet, behalwe in 'n noodtoestand, voordat hy of sy 'n regulasie beoog in subartikel (1)(e) afkondig—
- (a) openbare kommentaar daarop aanvra deur die volle besonderhede van die spesifikasie of standaard in die *Staatskoerant* te publiseer; 25
- (b) 'n tydperk van minstens twee maande ná die datum van publikasie van sodanige *Staatskoerant* toelaat vir die indiening van openbare kommentaar; en
- (c) sodanige kommentaar behoorlik oorweeg.”.

Vervanging van lang titel van Wet 120 van 1977

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14. Die lang titel van die Hoofwet word hierby deur die volgende lang titel vervang:

“Om voorsiening te maak vir maatreëls vir besparing op petroleumprodukte en die verspreidingskoste daarvan, en vir die handhawing van en beheer oor 'n prys daarvoor; vir die verstrekking van sekere inligting aangaande petroleumprodukte; vir die lewering van dienste van 'n bepaalde soort, of dienste van 'n bepaalde gehalte, in verband met petroleumprodukte; vir die lisensiëring van persone betrokke by die vervaardiging en verkoop van sekere petroleumprodukte; vir die bevordering van die transformasie van die Suid-Afrikaanse petroleum- en vloeibarebrandstofbedryf; vir die afkondiging van regulasies betreffende sodanige lisensies; en vir aangeleenthede wat daarmee in verband staan.”.

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Kort titel

15. Hierdie Wet heet die Wysigingswet op Petroleumprodukte, 2003, en tree in werking op 'n datum wat die President by proklamasie in die *Staatskoerant* bepaal.

Schedule 1

Charter

For the South African Petroleum and Liquid Fuels Industry on Empowering Historically Disadvantaged South Africans in the Petroleum and Liquid Fuels Industry

Preamble

Mindful of:

- the imperatives of redressing historical, social and economic inequalities as stated by the Constitution of the Republic of South Africa, inter alia Section 9 on Equality (and unfair discrimination) in the Bill of Rights, and section 217.2 on procurement where the "organs of state" may implement a "procurement policy providing for categories of preference in the allocation of contracts and the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination";
- the policy objective stated in the Energy Policy White Paper to achieve "sustainable presence, ownership or control by historically disadvantaged South Africans of a quarter of all facets of the liquid fuels industry, or plans to achieve this";
- the Black Economic Empowerment Commission's definition of empowerment as "an integrated strategy aimed at substantially increasing black participation at all levels of the population";

And noting:

- the enactment of the Preferential Procurement Framework Act (No 5 of 2000)
- the Employment Equity Act (No 55 of 1998)
- the Competition Act (No 89 of 1998) (Also ref. to the Amendment Act No 35 of 1999 and subsequent amendments)
- the Skills development Act (No 97 of 1998)

the signatories have developed this Charter to provide a framework for progressing the empowerment of historically disadvantaged South Africans in the liquid fuels industry.

Scope of Application

This Charter applies to the privately owned parts of the industry and to all parts of the value chain, inter alia:

- Exploration and production of oil
- Liquid fuels pipelines, single buoy moorings (SBMs), depots and storage tanks
- Oil refining and synthetic fuel manufacturing plants, including lubricants
- Transport, including road haulage and coastal shipping
- Trading, including import and export
- Wholesale and retail assets/infrastructure.

Interpretation

For the purposes of interpreting the White Paper on Energy Policy, the following terms apply:

- The term *historically disadvantaged South Africans (HDSA)* refers to all persons and groups who have been discriminated against on the basis of race, gender and/or disability.
- *HDSA companies* are those companies that are owned or controlled by historically disadvantaged South Africans which operate on a basis to meet all aspects of this Charter. These companies, which operate within and supply the industry, submit affidavits to Government reconfirming their ownership status in December of each year. Government publishes this list annually.
- *Ownership* refers to equity participation and the ability to exercise rights and obligations that accrue under such ownership.
- *Control* of a business entity can be achieved in a number of ways: (a) a majority shareholding position i.e. 50% + 1 share; (b) an effective controlling shareholding; (c) a majority of a board of directors; and/or (d) a shareholders agreement.

Bylae 1**Handves vir die Suid-Afrikaanse petroleum- en vloeibarebrandstofbedryf oor die bemagtiging van histories benadeelde Suid-Afrikaners in die petroleum- en vloeibarebrandstofbedryf****Aanhef** 5*Gedagtig aan—*

- die dringendheid daarvan om historiese, maatskaplike en ekonomiese ongelykhede reg te stel soos verklaar deur die Grondwet van die Republiek van Suid-Afrika, onder meer in artikel 9 oor gelykheid (en onbillike diskriminasie) in die Handves van Regte en artikel 217(2) oor verkryging, waarkragtens “staatsorgane” ’n verkrygingsbeleid mag toepas “wat voorsiening maak vir voorkeurkategorieë by die toekenning van kontrakte en die beskerming of vooruitgang van persone, of kategorieë persone, wat deur onbillike diskriminasie benadeel is”; 10
- die beleidsoogmerk gestel in die Witskrif oor Energiebeleid dat volhoubare teenwoordigheid, eienaarskap en beheer deur histories benadeelde Suid-Afrikaners in ’n kwart van alle fasette van die vloeibarebrandstofbedryf, of planne ter verwesenliking daarvan, behaal moet word; 15
- die Kommissie vir Swart Ekonomiese Bemagtiging se definisie van bemagtiging as ’n geïntegreerde strategie gemik op die wesenlike vergroting van swart deelname op alle vlakke van die bevolking; 20

En met inagneming van—

- die verordening van die Wet op die Raamwerk vir Voorkeurverkrygingsbeleid, 2000 (Wet No. 5 van 2000);
- die “Employment Equity Act, 1998” (Wet No. 55 van 1998); 25
- die Wet op Mededinging, 1998 (Wet No. 89 van 1998) (ook met verwysing na die Wysigingswet op Mededinging, 1999 (Wet No. 35 van 1999), en latere wysigings);
- die “Skills Development Act, 1998” (Wet No. 97 van 1998)

het die ondertekenaars hierdie Handves ontwikkel ten einde ’n raamwerk op te stel ter bevordering van die bemagtiging van histories benadeelde Suid-Afrikaners in die vloeibarebrandstofbedryf. 30

Toepassingsbestek

Hierdie Handves is van toepassing op die dele van die bedryf in private eienaarskap en op alle dele van die waardeketting, insluitende— 35

- eksplorاسie en die produksie van olie;
- vloeibarebrandstof-pypleidings, enkelboei-aanlêplekke, depots en opgaartenks;
- aanlegte vir olieraffinerings en sintetiesebrandstofvervaardiging, met inbegrip van smeermiddels; 40
- vervoer, met inbegrip van padvervoer en kusskeepvaart;
- handel, met inbegrip van invoer en uitvoer;
- groothandels- en kleinhandelsbates en -infrastruktuur.

Uitleg

Vir doeleindes van die uitleg van die Witskrif oor Energiebeleid geld die volgende terme: 45

- Die term *histories benadeelde Suid-Afrikaners (HBSA)* het betrekking op alle persone en groepe teen wie op grond van ras, geslag en/of gestremdheid gediskrimineer is.
- *HBSA-maatskappye* is maatskappye wat die eiendom is van of beheer word deur histories benadeelde Suid-Afrikaners en wat op so ’n wyse funksioneer dat dit in alle opsigte aan hierdie Handves voldoen. 50

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- *Sustainability* refers to:
 - medium to long-term viability and adaptability through a presence across all facets of the liquid fuels value chain;
 - ventures with prospects of long-term profitability; and
 - requisite levels of skills and access to technology.
- *A quarter of all facets of the liquid fuels industry, or plans to achieve this*
 The 25% ownership and control of all facets of the industry that the parties to this Charter are seeking to bring about over a ten-year period means HDSAs owning in total, by the end of that period, not less than 25% of the aggregate value of the equity of the various entities that hold the operating assets of the South African oil industry. The parties to the Charter agree that the measurement of the extent of the achievement of this target of 25% of the aggregate value of the equity will be based on the asset values per the audited accounts of the entities concerned.

Supportive Culture

The success of this programme depends on the disposition of those who have responsibility for managing the process.

Member companies and Government therefore undertake to appoint to such positions managers who will understand the spirit and background under which these policies were conceived in order to create a supportive and enabling environment for business success. It is noted that the process that gave rise to this Charter has increased the understanding and cooperation between established industry players and HDSA companies.

Companies undertake to foster a supportive culture with regard to all aspects of this Charter when dealing with HDSAs. Companies subscribe to incorporating and driving a process of transformation and a change of culture in their statements of business principles.

Capacity Building

The South African labour market does not produce enough of the skills required by the petroleum industry, especially the HDSA oil companies. Organized industry and government work together in addressing this skills gap:

- In its bilateral relations with relevant countries, Government endeavours to secure training opportunities for HDSA companies' staff, as well as exchange opportunities with oil companies operating outside of South Africa.
- Industry undertakes to build the skills of its employees and report on progress annually in an agreed format.
- The industry, through the standing consultative arrangements, interfaces with statutory bodies such as SETA (Sectoral Education and Training Authority) in the development of skills development strategies.

Employment Equity

Companies publish their employment equity targets and achievements and subscribe to the following:

- South African subsidiaries of multinational companies and South African companies focus their overseas placement and/or training programmes on historically disadvantaged South Africans;
- Identifying a talent pool and fast-tracking it;
- Ensuring inclusiveness of gender;
- Implementing mentorship programmes; and
- Setting and publishing "stretch" (i.e. demanding) targets and their achievement.

It is noted that the Capacity Building efforts referred to above will assist in this process.

Private Sector Procurement

Participants in the industry subscribe to and adopt supportive procurement policies to facilitate and leverage the growth of HDSA companies. Such policies include criteria that favour HDSA companies, all else being equal.

- *Eienaarskap* het betrekking op aandeelhoudersbelang en die vermoë om regte uit te oefen en verpligtinge na te kom wat ontstaan uit hoofde van sodanige eienaarskap.
- *Beheer* oor 'n besigheidsentiteit kan op 'n aantal maniere verkry word: (a) 'n posisie van meerderheidsaandeelhouding, dit wil sê 50% + 1 aandeel; (b) 'n 5 effektief beherende aandeelhouding; (c) 'n meerderheid in die direksie; en/of (d) 'n aandeelhoudersooreenkoms.
- *Volhoubaarheid* het betrekking op—
 - medium- tot langtermynlewensvatbaarheid en -aanpasbaarheid deur 'n teenwoordigheid oor alle fasette van die vloeibarebrandstofwaardeketting heen; 10
 - ondernemings met die vooruitsig van langtermynwingsgewendheid; en
 - die vereiste vlakke van vaardigheid en toegang tot tegnologie.
- 'n *Kwart van alle fasette van die vloeibarebrandstofbedryf, of planne ter verwesenliking daarvan*: Die 25% eienaarskap van en beheer oor alle fasette van die bedryf wat die partye by hierdie Handves oor 'n tienjaartydperk wil bewerkstellig, beteken dat histories benadeelde Suid-Afrikaners teen die einde van daardie tydperk minstens 25% van die totale waarde van die ekwiteit moet besit van die onderskeie entiteite wat die bedryfsbates van die Suid-Afrikaanse oliebedryf besit. Die partye by die Handves kom ooreen dat 20 die mate waarin hierdie doelwit van 25% van die totale waarde van die ekwiteit bereik is, bepaal sal word op grond van die batewaardes volgens die geouditeerde rekeninge van die betrokke entiteite.

Kultuur van ondersteuning

Die sukses van hierdie program hang af van die ingesteldheid van diegene wat verantwoordelik is vir die bestuur van die proses. 25

Lidmaatskappye en die Regering onderneem dus om bestuurders in daardie poste aan te stel wat die gees en agtergrond verstaan waarin hierdie beleid ontstaan het, ten einde 'n ondersteunende en instaatstellende omgewing vir sukses te skep. Daar word aangeteken dat die proses wat tot hierdie Handves gelei het, begrip en samewerking 30 tussen gevestigde rolspelers in die bedryf en HBSA-maatskappye vergroot het.

Die maatskappye onderneem om in hulle omgang met HBSA-maatskappye 'n kultuur van ondersteuning te vestig met betrekking tot alle aspekte van hierdie Handves. Die maatskappye gaan akkoord om 'n proses van transformasie en 'n kultuurverandering in hulle verklarings van sakebeginsels te inkorporeer en aan te dryf. 35

Vermoëbou

Die Suid-Afrikaanse arbeidsmark lewer nie genoeg van die vaardighede op wat deur die petroleumbedryf, en veral die HBSA-maatskappye, benodig word nie. Die georganiseerde nywerheid en die Regering werk saam om hierdie vaardigheidsgaping te 40 verklein:

- Die Regering poog om in sy bilaterale betrekkinge met die betrokke lande opleidingsgeleentheid te verkry vir die personeel van HBSA-maatskappye, asook uitruilgeleentheid met maatskappye wat buite Suid-Afrika funksioneer.
- Die bedryf onderneem om die vaardighede van sy werknemers uit te bou en jaarliks in 'n ooreengekome vorm verslag te doen oor die vordering daarmee. 45
- Die bedryf skakel, deur middel van die vaste oorlegplegende middele, met statutêre liggame soos die SETA (sektorale onderwys- en opleidingsgesag) in die opstel van vaardighedsontwikkelingstrategieë.

Diensbillikheid

Die maatskappye publiseer hulle diensbillikheidsteikens en -prestasies en onderskryf 50 die volgende:

- Suid-Afrikaanse filiale van multinasionale maatskappye en Suid-Afrikaanse maatskappye konsentreer hulle buitelandse plasings en/of opleidingsprogramme op histories benadeelde Suid-Afrikaners;
- identifiseer 'n talentpoel en tref versnelde bevorderingsmaatreëls daarvoor; 55
- verseker geslagsinklusiwiteit;
- stel mentorskapsprogramme in; en
- stel spesiale uitdagende doelwitte en maak dit en die bereiking daarvan bekend.

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- Scope: the scope of procurement shall include supplies (e.g. crude), products and all other goods and services.
- HDSA companies are accorded preferred supplier status as far as possible.
- List of suppliers: it is envisaged that information on all HDSA companies wishing to participate in the industry will be collected and published. All participants in the industry will assist in compiling such a list that will inter alia be published by Government on the Internet and updated regularly.
- All participants shall continue to deploy every effort to ensure that vessels used in the transportation of supplies or products shall meet all prescribed health, safety and environmental standards.

Public Sector Procurement

Government will engage with State Tender authorities to draw their attention to the White Paper milestones with respect to economic empowerment of historically disadvantaged South Africans, with the aim of giving effect to supportive procurement policies within this sector.

Access and Ownership of Joint Facilities

Access to large infrastructure for the movement and storage of crude oil and petroleum products, such as SBMs, pipelines and depots and storage tanks, is acknowledged as a critical weakness in the supply chain of emerging companies. In this regard owners of such facilities provide third parties with non-discriminatory access to uncommitted capacity. HDSA companies are to be given fair opportunity to acquire ownership in such facilities.

Refining Capacity

Access to refining capacity also represents a key weakness in HDSA companies' supply chain. Oil refiners and synthetic fuel manufacturers seriously consider:

- selling shares in their facilities to HDSA companies;
- making capacity available to HDSA companies (e.g. through toll refining agreements); and
- including HDSA companies as joint venture partners in any expansions or upgrades.

Retailing/Wholesaling

The parties agree to create fair opportunity for entry to the retail network and commercial sectors by HDSA companies.

State Assets

Government undertakes to deal with State assets in a manner that promotes the objectives of the White Paper on Energy Policy and this Charter.

Upstream

The activity of oil and gas exploration and production is acknowledged as a high-risk activity that provides limited opportunities for new entrants. Government continues to make licences subject to the following conditions:

- All licences for exploration and production in the country's offshore area reserve not less than 9% for buy-in.
- All licensees contribute funds toward the "Upstream Training Trust" to fund skills development at various levels. As discoveries are made, further skills development strategies are devised to empower historically disadvantaged South Africans in this sector.

Daar word aangeteken dat bogenoemde vermoëboumaatreëls hierdie proses sal aanhelp.

Privaatsektorverkryging

Deelnemers in die bedryf onderskryf en aanvaar ondersteunende verkrygingsbeleide ten einde die groei van HBSA-maatskappye te bevorder en 'n hupstoot te gee. Sulke beleide sluit kriteria in wat HBSA-maatskappye begunstig, as alle ander faktore gelyk is. 5

- Bestek: die bestek van verkryging sluit voorraad (byvoorbeeld ru-olie), produkte en alle ander goedere en dienste in.
- Aan HBSA-maatskappye word, sover moontlik, voorkeurverskafferstatus verleen. 10
- Verskafferslys: Daar word in die vooruitsig gestel dat inligting oor alle HBSA-maatskappye wat in die bedryf wil deel hê, ingesamel en gepubliseer word. Alle deelnemers aan die bedryf sal help met die opstel van so 'n lys, wat onder meer deur die Regering op die Internet gepubliseer en gereeld bygewerk sal word. 15
- Alle deelnemers moet voortgaan om alle pogings aan te wend om te verseker dat vaartuie wat gebruik word om voorrade of produkte te vervoer, voldoen aan alle voorgeskrewe gesondheids-, veiligheids- en omgewingstandaarde.

Openbaresektorverkryging 20

Die Regering sal met die staatstenderowerhede in gesprek tree om hulle aandag te vestig op die mylpale van die Witskrif met betrekking tot die ekonomiese bemagtiging van histories benadeelde Suid-Afrikaners ten einde ondersteunende verkrygingsbeleide in hierdie sektor te verwesenlik.

Toegang tot en eienaarskap van gesamentlike fasiliteite 25

Toegang tot groot infrastruktuur vir die vervoer en berging van ru-olie en petroleumprodukte, soos enkelboei-aanlêplekke, pyleidings, en depots en opgaartenks, word erken as 'n kritieke swakheid in die voorsieningskanaal van ontluikende maatskappye. In hierdie opsig moet die eienaars van sodanige fasiliteite nie-diskriminerende toegang tot onverbonde kapasiteit aan derde partye verleen. HBSA-maatskappye moet billike geleentheid gegee word om eienaarskap in sodanige fasiliteite te bekom. 30

Raffineringskapasiteit

Toegang tot raffineringskapasiteit verteenwoordig ook 'n sleutelwakheid in HBSA-maatskappye se voorsieningskanaal. Olieraffineerders en vervaardigers van sintetiese brandstof oorweeg ernstig om— 35

- aandele in hulle fasiliteite aan HBSA-maatskappye te verkoop;
- kapasiteit aan HBSA-maatskappye beskikbaar te stel (byvoorbeeld deur tolraffineerooreenkomste); en
- HBSA-maatskappye te betrek as vennote in gesamentlike ondernemings in enige uitbreidings of opgraderings. 40

Kleinhandel/groothandel

Die partye kom ooreen om billike geleentheid te skep vir toetrede deur HBSA-maatskappye tot die kleinhandelsnetwerk en kommersiële sektore.

Staatsbates 45

Die Regering onderneem om Staatsbates te hanteer op 'n wyse wat die oogmerke van die Witskrif oor Energiebeleid en hierdie Handves bevorder.

“Upstream Training Trust”

Daar word erken dat olie- en gaseksplorasië en -produksie 'n hoërisiko-aktiwiteit is wat beperkte geleenthede vir nuwe toetreders het. Die Regering gaan voort om lisensies aan die volgende voorwaardes onderworpe te maak: 50

- Alle lisensies vir eksplorasië en produksie binne die land se seegebied reserveer minstens 9% vir inkoop.

Act No. 58, 2003 PETROLEUM PRODUCTS AMENDMENT ACT, 2003**Financing**

Finance is a serious constraint for HDSA companies.

- Government assists industry in explaining the milestones in the White Paper on Energy Policy as well as explaining the needs and characteristics of the industry to financing institutions, both private and public.
- Companies investigate and implement internal and external financing mechanisms for giving HDSA companies access to equity ownership within the South African context.
- Companies to consider engaging HDSA companies in viable strategic partnerships.

Terms of Credit to HDSA Companies

Industry participants acknowledge that terms of credit are important to HDSA companies and agree to take this into account in bilateral activities.

Regulatory Framework and Industry Agreements

Government's regulatory framework and industry agreements strive to facilitate the objectives of this Charter.

Synfuels Supply

Parties to the Synfuels Supply agreements will strive to accommodate HDSA companies, which lack the facilities to comply fully with such agreements in the fairest way possible.

Consultation, Monitoring, Evaluation and Reporting

It is recognized that the achievement of the objectives set out herein entails an ongoing process. The Department of Minerals and Energy (DME) conducts an annual survey of the industry to evaluate progress in achieving the objectives of the White Paper. Companies submit such data as is required at the end of each year, including employment equity data, procurement targets, etc. The aggregated information is published and forms the basis of the annual forum.

Oil companies have taken major initiatives in this regard and have participated in a first survey earlier this year.

Parties hereto participate in an annual forum for the following purposes:

- Monitoring progress in the implementation of plans;
- Developing new strategies as needs are identified;
- Ongoing government/industry interaction in respect of these objectives;
- Developing strategies for intervention where hurdles are encountered;
- Exchanging experiences, problems and creative solutions;
- Arriving at joint decisions;
- Reviewing this Charter if required; and
- Giving notice of withdrawal.

- Alle lisensiehouers dra fondse by tot die “Upstream Training Trust” om vaardigheidsontwikkeling op verskillende vlakke te befonds. Na gelang ontdekkings gemaak word, word verdere vaardigheidsontwikkelingstrategieë ontwerp om histories benadeelde Suid-Afrikaners in hierdie sektor te bemagtig. 5

Finansiering

Finansies is 'n ernstige beperking vir HBSA-maatskappye.

- Die Regering help die bedryf om die mylpale in die Witskrif oor Energiebeleid, asook die behoeftes en kenmerke van die bedryf, aan sowel private as openbare finansieringsinstansies te verduidelik. 10
- Die maatskappye ondersoek interne en eksterne finansieringsmeganismes, en stel dit in werking, om aan HBSA-maatskappye toegang te verleen tot ekwiteitseienaarskap in die Suid-Afrikaanse konteks.
- Die maatskappye moet oorweeg om HBSA-maatskappye by lewensvatbare strategiese vennootskappe te betrek. 15

Kredietvoorwaardes vir HBSA-maatskappye

Die bedryfsdeelnemers erken dat kredietvoorwaardes belangrik is vir HBSA-maatskappye en kom ooreen om dit in ag te neem by bilaterale aktiwiteite.

Reguleringsraamwerk en bedryfsooreenkomste

Die Regering se reguleringsraamwerk en nywerheidsooreenkomste poog om die oogmerke van hierdie Handves te bevorder. 20

Verskaffing van sintetiese brandstowwe

Partye by die ooreenkomste rakende die verskaffing van sintetiese brandstowwe sal daarna streef om HBSA-maatskappye wat nie die fasiliteite het om ten volle aan sodanige ooreenkomste te voldoen nie, op die billikste wyse moontlik te akkommodeer. 25

Oorlegging, monitering, evaluering en verslagdoening

Daar word erken dat die bereiking van die oogmerke hierin uiteengesit, 'n deurlopende proses behels. Die Departement van Minerale en Energie doen jaarliks 'n opname in die bedryf om die vordering met die nastrewing van die oogmerke van die Witskrif te evalueer. Die maatskappye dien aan die einde van elke jaar sodanige data in as wat benodig word, met inbegrip van diensbillikheidsdata, verkrygingsdoelwitte, ensovoorts. Die saamgevoegde data word gepubliseer en maak die basis van die jaarlikse forum uit. 30

Oliemaatskappye het in hierdie verband groot inisiatiewe geneem en het vroeër vanjaar aan 'n eerste opname deelgeneem. 35


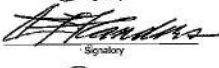


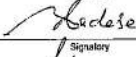



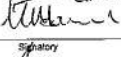


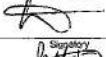

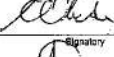

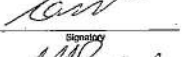

Die partye hierby neem aan 'n jaarlikse forum deel vir die volgende doeleindes:

- Om vordering met die inwerkingstelling van planne te moniteer;
- om nuwe strategieë te ontwikkel na gelang behoeftes geïdentifiseer word;
- om deurlopend wisselwerking te verseker tussen die owerheid en die bedryf ten opsigte van hierdie oogmerke; 40
- om strategieë vir tussenkoms te ontwikkel wanneer struikelblokke teëgekom word;
- om ondervinding, probleme en kreatiewe oplossings uit te ruil;
- om tot gesamentlike besluite te geraak;
- om hierdie Handves te hersien, indien nodig; en 45
- om kennis van onttrekking te gee.

Charter

For the South African Petroleum and Liquid Fuels Industry on Empowering Historically Disadvantaged South Africans in the Petroleum and Liquid Fuels Industry


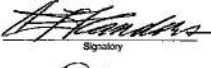

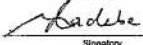
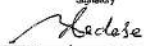

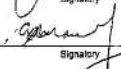

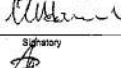

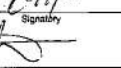




Signed November 2000

 Signatory	DCS. DME Designation
 Signatory	Chairman Caltex SA Designation
 Signatory	CEO Shell (SA) P/L Designation
 Signatory	SECRETARY-GENERAL AMEF Designation
 Signatory	CEO - EXEL Designation
 Signatory	CEO - FERGIE Designation
 Signatory	CEO - ENGEN Designation
 Signatory	BPS - A REO LTD Designation
 Signatory	TOMCO SOUTH AFRICA PM LTD Designation
 Signatory	AFRICOM CEO Designation
 Signatory	Worldbank Executive Manager Designation
 Signatory	Managing Director Cahelo Forestry Designation
 Signatory	CEO AMP Designation
 Signatory	General Manager Savaal Designation
 Signatory	Chairman AMEF Designation
 Signatory	Director SAVAAL Designation
 Signatory	CEO (Pty) Ltd Designation

Charter

For the South African Petroleum and Liquid Fuels Industry on Empowering Historically Disadvantaged South Africans in the Petroleum and Liquid Fuels Industry

Signed November 2000

 _____ Signatory	DES. DME _____ Designation
 _____ Signatory	Chairman Catalyst Oil (S.A.) _____ Designation
 _____ Signatory	CEO Shell (SA) P.L.C. _____ Designation
 _____ Signatory	SECRETARY-GENERAL AMEF _____ Designation
 _____ Signatory	CEO - ENEL _____ Designation
 _____ Signatory	CEO - TEPCO. _____ Designation
 _____ Signatory	CEO - ENGEN _____ Designation
 _____ Signatory	BPS - A (P) LTD _____ Designation
 _____ Signatory	TOTAL SOUTH AFRICA P.M. LTD _____ Designation
 _____ Signatory	AFRICAN CEO _____ Designation
 _____ Signatory	Worldwide Executive Manager _____ Designation
 _____ Signatory	Managing Director Cahills Farmer _____ Designation
 _____ Signatory	KEO AMP _____ Designation
 _____ Signatory	General Manager Savat _____ Designation
 _____ Signatory	Chairman AMEF _____ Designation
 _____ Signatory	DIRECTOR SAPIA _____ Designation
 _____ Signatory	CEO (P.L.C.) Maf _____ Designation

LIST OF COMPANIES THAT HAVE PARTICIPATED
IN THE BEE PROCESS

South African Petroleum Industry Association (SAPIA)

BP Southern Africa (Pty) Limited
Caltex Oil (SA) (Pty) Limited
Engen Petroleum Limited
Sasol Limited
Shell South Africa (Pty) Limited
Tepco Petroleum Company (Pty) Limited
Total South Africa (Pty) Limited

African Minerals and Energy Forum (AMEF)

Afric Oil (Pty) Limited
Exel Petroleum (Pty) Limited

Worldwide African Investment Holdings (Pty) Limited

Department of Minerals and Energy
Ministry of Minerals and Energy
Central Energy Fund

African Minerals Petroleum
African Minerals and Energy Corporation
Calulo Investment Holdings (Pty) Limited
Mandlakazi

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Lys maatskappye wat aan die SEB-proses deelgeneem het:

Suid-Afrikaanse Petroleumbedryfssosiasie (SAPIA)	
BP Suid-Afrika (Edms.) Bpk.	
Caltex Oil (Suid-Afrika) (Edms.) Bpk.	
Engen Petroleum Bpk.	5
Sasol Bpk.	
Shell Suid-Afrika (Edms.) Bpk.	
Tepco Petroleum Company (Edms.) Bpk.	
Total Suid-Afrika (Edms.) Bpk.	
African Minerals and Energy Forum (AMEF)	10
Afric Oil (Edms.) Bpk.	
Exel Petroleum (Edms.) Bpk.	
Worldwide African Investment Holdings (Edms.) Bpk.	
Departement van Minerale en Energie	
Ministerie van Minerale en Energie	15
Sentrale Energiefonds	
African Minerals Petroleum	
African Minerals and Energy Corporation	
Calulo Investment Holdings (Edms.) Bpk.	
Mandlakazi	20

