

REPUBLIC OF SOUTH AFRICA

MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL

(As amended by the Portfolio Committee on Mineral and Energy)
(The English text is the official text of the Bill)

(MINISTER OF MINERALS AND ENERGY)

[B 10B—2007]

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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.

BILL

To amend the Mineral and Petroleum Resources Development Act, 2002, so as to remove ambiguities in certain definitions; to review mine closure requirements; to add functions to the Regional Mining Development and Environmental Committee; to amend the transitional arrangements so as to further afford statutory protection to certain existing old order rights; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 28 of 2002

1. Section 1 of the Mineral and Petroleum Resources Development Act, 2002 (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the substitution in the definition of “broad based economic empowerment” for subparagraph (vi) of paragraph (b) of the following subparagraph:

“(vi) the socio-economic development of communities, immediately hosting, affected by **[the of]** supplying labour to the operations; and ”; 10

(b) by the substitution for the definition of “community” of the following definition:

“ ‘community’, means a group of historically disadvantaged persons with interest or rights in a particular area of land on which the members have or exercise communally rights in terms of an agreement, custom or law: Provided that where as a consequence of the provisions of this Act, negotiations or consultations with the community is required, the community shall include the members or part of the community directly affected by mining on land occupied by such members or part of the community; ”. 15 20

(c) by the insertion after the definition of “contractual royalties” of the following definitions:

“ ‘Council for Geoscience’ means the Council established by section 2 of the Geoscience Act, 1993 (Act No. 100 of 1993); ‘cumulative impact’, in relation to the environmental impact assessment of a proposed prospecting, mining, reconnaissance, exploration or production operation or related activity, means the impact of an operation or activity that in itself may not be significant but may become significant 25

- when added to the existing and potential impacts eventuating from similar or diverse activities or undertakings in the area;”;
- (d) by the substitution for the definition of “day” of the following definition:
- “‘day’ means a calendar day excluding a Saturday, Sunday or public holiday and when any particular number of days are prescribed for the performance of any act, those days must be reckoned by excluding the first and including the last day[, **unless the last day falls on a Saturday, a Sunday or any public holiday, in which case the number of days must be reckoned by excluding the first day and also any such Saturday, Sunday or public holiday**];”;
- (e) by the insertion after the definition of “Director-General” of the following definition:
- “‘effective date’ means the date on which the relevant permit is issued or the relevant right is executed;”.
- (f) by the deletion of the definition of “exclusionary act”.
- (g) by the substitution for the definition of “financial provision” of the following definition:
- “‘financial provision’ means [**the insurance, bank**] a financial guarantee, trust fund, [**or**] cash deposit to a trust fund controlled by the Minister, or any other method approved by the Director-General, that applicants for or holders of a right or permit must provide in terms of [**sections**] section 41 [and 89] guaranteeing the availability of sufficient funds [**to undertake the agreed work programmes**] [**and**], to manage, rehabilitate [**the**] and remedy environmental impacts that result from prospecting, mining, reconnaissance, exploration or production areas, as the case may be;”;
- (h) by the substitution in the definition of “historically disadvantaged person” for paragraph (c) of the following paragraph:
- “(c) [**any**] a juristic person, other than an association, [**in**] which—
- (i) is managed and controlled by persons contemplated in paragraph (a) who, as a single entity or as a group, own and control a majority of the issued share capital or members’ interest, and are able to control a majority of the members’ votes; or
- (ii) is a subsidiary of a juristic person contemplated in subparagraph (i);”;
- (i) by the substitution for the definition of “mine” of the following definition:
- “‘mine’ means, when—
- (a) used as a noun—
- (i) any excavation in the earth, including any portion under the sea or under other water or in any residue deposit, as well as any borehole made for the purpose of searching for or winning a mineral;
- (ii) any place where a mineral resource is being extracted, including the mining area and all buildings, structures, machinery, residue stockpiles, access roads or objects situated on such area and which are used or intended to be used in connection with searching for, winning or extracting or processing such mineral resource; and
- (b) used as a verb, any operation or activity in the mining of any mineral, in or under the earth, water or any residue deposit, whether by underground or open working or otherwise in, on or under the relevant mining area;”;
- (j) by the insertion after the definition of “mineral” of the following definition:
- “‘Mineral and Petroleum Titles Registration Office’ means the Mineral and Petroleum Titles Registration Office established by section 2 of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967);”;
- (k) by the substitution for the definition of “mining area” of the following definition:
- “‘mining area’—
- (a) in relation to a mining right or a mining permit, means the area in which the extraction of any mineral has been authorised and for which that right or permit is granted;

- (b) in relation to any environmental, health, social or labour matter and any residual, latent or other impact thereof, includes—
 - (i) any land or surface adjacent or non-adjacent to the area referred to in paragraph (a) but upon which related or incidental activities or operations are being undertaken; 5
 - (ii) any surface of land on which a road, railway line, power line, pipe line, cableway or conveyor belt is located, under the control of the holder of a mining right or a mining permit and which such holder is entitled to use in connection with the operations performed or to be performed under such right or permit; and 10
 - (c) includes all buildings, structures, machinery, residue stock-piles or objects situated on or in the area referred to in paragraph (b).”; 15
- (l) by the deletion of the definition of “Mining Titles Office”; 15
- (m) by the substitution for the definition of “reconnaissance operation” of the following definition:
 - “ ‘reconnaissance operation’ means any operation carried out for or in connection with the search for a mineral or petroleum by geological, geophysical and photogeological surveys and includes any remote sensing techniques, acquisition and processing of new seismic data but does not include any prospecting or exploration operation other than acquisition and processing of new seismic data;”; 20
- (n) by the insertion after the definition of “Regional Mining Development and Environmental Committee” of the following definition: 25
 - “ ‘Registrar’ means the registrar defined in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937).”; 25
- (o) by the substitution for the definition of “residue deposit” of the following definition:
 - “ ‘residue deposit’ means any residue stockpile remaining at the termination, cancellation or expiry of a prospecting right, mining right, mining permit, exploration right, **[or]** production right **[;]** , or old order right.” 30
- (p) by the substitution for the definition of “residue stockpile” of the following definition: 35
 - “ ‘residue stockpile’ means any debris, discard, tailings, slimes, screening, slurry, waste rock, foundry sand, beneficiation plant waste, ash or any other product derived from or incidental to a mining operation and which is stockpiled, stored or accumulated for potential re-use, or which is disposed of, by the holder of a mining right, mining permit, **[or]** production right or old order right;”. 40
- (q) by the insertion after the definition of “top soil” of the following definition:
 - “ ‘waste’ means any unwanted substance, whether solid, liquid or gaseous other than residue deposits or stockpiles, which is discharged, emitted or deposited on a prospecting, mining, exploration or production area.”. 45

Amendment of section 2 of Act 28 of 2002

2. Section 2 of the principal Act is hereby amended by the substitution for paragraphs (d) and (e) of the following paragraphs:

- “(d) substantially and meaningfully expand opportunities for historically disadvantaged persons, including women[,] and communities to enter into and actively participate in the mineral and petroleum industries and to benefit from the exploitation of the nation’s mineral and petroleum resources;” 50
- “(e) promote economic growth and mineral and petroleum resources development in the Republic, particularly development of downstream industries through provision of feedstocks, and development of mining and petroleum inputs industries;”. 55

Amendment of section 3 of Act 28 of 2002

3. Section 3 of the principal Act is hereby amended by the deletion in subsection (2) of paragraph (b).

Amendment of section 4 of Act 28 of 2002

4. Section 4 of the principal Act is hereby amended by the addition of the following subsection: 5

“(3) The provisions of the National Environmental Management Act, 1998 (Act No. 107 of 1998), relating to environmental authorisations and any other related matters, shall not apply to activities of holders regulated in terms of this Act.”.

Amendment of section 5 of Act 28 of 2002

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5. Section 5 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) A prospecting right, mining right, exploration right or production right granted in terms of this Act and registered in terms of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967), is a limited real right 15
in respect of the mineral or petroleum and the land to which such right relates.”;

(b) by the insertion in subsection 3 after paragraph (c) of the following paragraph:

“(cA) subject to section 59B of the Diamonds Act, 1986 (Act No. 56 of 1986), dispose of any diamond found during the course of mining 20
operations;”; and

(c) by the deletion of subsection (4).

Insertion of 5A in Act 28 of 2002

6. The following section is hereby inserted in the principal Act after section 5:

“Prohibition relating to illegal operations

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5A. No person may prospect for or remove, mine, conduct technical co-operation operations, reconnaissance operations, explore for and produce any mineral or petroleum or commence with any work incidental thereto on any area without—

(a) an approved environmental management programme or approved environmental management plan, as the case may be; 30

(b) a reconnaissance permission, prospecting right, permission to remove, mining right, mining permit, retention permit, technical co-operation permit, reconnaissance permit, exploration right or production right, as the case may be; and 35

(c) notifying and consulting in a prescribed manner with the landowner or lawful occupier of the land in question.”.

Amendment of section 10 of Act 28 of 2002

7. Section 10 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph: 40

“(a) make known that an application for a prospecting right, mining right or mining permit has been [received] accepted in respect of the land in question; and”.

Amendment of section 11 of Act 28 of 2002

8. Section 11 of the principal Act is hereby amended— 45

(a) by the substitution for subsection (1) of the following subsection:

“(1) A prospecting right or mining right or an interest in any such right, or [a controlling] any interest in a company or close corporation, may not be ceded, transferred, let, sublet, assigned, alienated or otherwise disposed of without [the] prior written [consent] approval of 50

the Minister, except in the case of change of controlling interest in listed companies.”;

- (b) by the substitution for subsection (4) of the following subsection:

“(4) Any transfer, cession, letting, subletting, alienation, encumbrance by mortgage or variation of a prospecting right or mining right, as the case may be, contemplated in this section must be lodged for registration at the **[Mining Titles Office]** Mineral and Petroleum Titles Registration Office within **[30]** 60 days of the relevant **[action]** transaction.”; and

- (c) by the addition of the following subsection:

“(5) The Minister must cancel the cession, transfer, letting, subletting, assignment, alienation or disposal of prospecting or mining right or an interest in any such right if such cession, transfer, letting, subletting, assignment, alienation or disposal was done without prior written approval of the Minister as contemplated in subsection (1).”.

Amendment of section 13 of Act 28 of 2002

9. Section 13 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) together with the prescribed non-refundable application fee.”; and

- (b) by the substitution for subsection (3) of the following subsection:

“(3) If the application does not comply with the requirements of this section, the Regional Manager must notify the applicant in writing **[of that fact]** within **[14]** 10 days of the receipt of the application **[and return the application to the applicant]**.”.

Amendment of section 14 of Act 28 of 2002

10. Section 14 of the principal Act is hereby amended—

- (a) by the substitution for subsection (3) of the following subsection—

“(3) If the Minister refuses to grant a reconnaissance permission, the Minister must, within 30 days of the decision, **[in writing]** notify the applicant **[of the]** in writing of such decision.”; and

- (b) by the substitution for subsection (4) of the following subsection:

“(4) The reconnaissance permission is valid for **[two years]** one year and is not renewable.”.

Amendment of section 15 of Act 28 of 2002

11. Section 15 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) A reconnaissance permission issued in terms of section 14 entitles the holder[, **on production of the reconnaissance permission and after consulting the land owner or lawful occupier thereof,**] to enter the land **[concerned]** in question for the purposes of conducting reconnaissance operations.”; and

- (b) by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:

“(a) conduct any prospecting or mining operations for any mineral in or on the land in question; or

(b) any exclusive right to apply for or be granted a prospecting right **[or]**, mining right or mining permit in respect of the land to which such reconnaissance permission relates.”.

Amendment of section 16 of Act 28 of 2002

12. Section 16 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“The Regional Manager must, within 10 days of receipt of the application, accept an application for a prospecting right if—”

- (b) by the substitution for subsection (3) of the following subsection:

- “(3) If the application does not comply with the requirements of this section, the Regional Manager must notify the applicant in writing **[of that fact]** within **[14] 10** days of receipt of the application **[and return the application to the applicant].”;**
- (c) by the substitution for subsection (4) of the following subsection: 5
 “(4) If the Regional Manager accepts the application, the Regional Manager must, within 10 days from the date of acceptance, notify the applicant in writing, to—
 (a) consult, in the prescribed manner with the landowner, lawful occupier and any other interested or affected party and include the result of such consultation in the environmental management plan; and
 (b) submit an environmental management plan within 40 days from the date of the notice.”. 10
- (d) by the substitution for subsection (5) of the following subsection: 15
 “(5) The Regional Manager must, within 10 days of receipt of the reports and results of the consultation contemplated in subsection (4) and section 40, forward the application to the Minister for consideration.” and.
- (e) by the deletion of subsection 6. 20

Amendment of section 17 of Act 28 of 2002

13. Section 17 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 25
 “[**Subject to subsection (4), the**] The Minister must within 30 days of receipt of the application from the Regional Manager, grant a prospecting right if—”;
- (b) by the addition to subsection (1) of the following paragraph: 30
 “(f) in respect of prescribed minerals, the applicant has given effect to the objects referred to in section 2(d).”;
- (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 35
 “The Minister must, within 30 days of receipt of the application from the Regional Manager, refuse to grant a prospecting right if—”.
- (d) by the substitution in subsection (2) for paragraph (b) of the following paragraph: 40
 “(b) the granting of such right will [—
 (i) **result in an exclusionary act;**
 (ii) **prevent fair competition; or**
 (iii) **result in the concentration of the mineral resources in question under the control of the applicant.]**
result in the concentration of the mineral resources in question under the control of the applicant and or their associated companies with the possible limitation of equitable access to mineral resources.”.
- (e) by the insertion after subsection (4) of the following subsection: 45
 “(4A) If the application relates to land occupied by a community, the Minister may impose such conditions as are necessary to promote the rights and interests of the community, including conditions requiring the participation of the community.”.
- (f) by the substitution for subsection (5) of the following subsection: 50
 “(5) A prospecting right granted in terms of subsection (1) comes into effect on the effective date.”.

Amendment of section 19 of Act 28 of 2002

14. Section 19 of the principal Act is hereby amended—
- (a) by the substitution in subsection (2) for paragraphs (a) and (g) of the following paragraphs: 55
 “(a) lodge such right for registration at the **[Mining Titles Office within 30 days of the date on which the right—**
 (i) **becomes effective in terms of section 23(5); or**

- (ii) **is renewed in terms of section 24(3)];**
Mineral and Petroleum Titles Registration Office within 60 days
after the right has become effective.”;
- (g) subject to section 20 and in terms of any relevant law, pay the State royalties in respect of any mineral removed and disposed of during the course of prospecting operations. 5
- (b) by the addition to subsection (2) of the following paragraph:
“(h) submit progress reports and data of prospecting operations to the
Regional Manager within 30 days from the date of the submission
thereof to the Council of Geoscience.”. 10

Amendment of section 20 of Act 28 of 2002

15. Section 20 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) The holder of a prospecting right must obtain the Minister’s written permission to remove and dispose for such holder’s own account of diamonds and bulk samples of any other minerals found by such holder in the course of prospecting operations **[conducted pursuant to such prospecting right]**.”. 15

Amendment of section 21 of Act 28 of 2002

16. Section 21 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
“(a) keep proper records, at [its] the registered office or place of business of the holder, of reconnaissance or prospecting operations and the results and expenditure connected therewith, as well as borehole core data and core-log data, where appropriate; and 25
- (b) by the insertion after subsection (1) of the following subsections:
“(1A) The Regional Manager must, submit progress reports and data contemplated in subsection (1)(b) within 30 days from the date of receipt thereof to the Council for Geoscience.
(1B) The Council for Geoscience must advise the Minister on all prospecting information as contemplated in this section.”. 30
- (c) by the substitution for subsection (2) of the following subsection:
“(2) No person may dispose of or destroy any record, borehole core data or core-log data contemplated in subsection (1)(a) except in accordance with the written directions of the relevant Regional Manager in consultation with the Council for Geoscience.”. 35

Amendment of section 22 of Act 28 of 2002

17. Section 22 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
“The Regional Manager must, within 10 days of receipt of the application, accept the application for a mining right if—”. 40
- (b) by the substitution for subsection (3) of the following subsection:
“(3) If the application does not comply with the requirements of this section, the Regional Manager must notify the applicant in writing [of that fact] within [14] 10 days of the receipt of the application [and return the application to the applicant].”; 45
- (c) by the substitution for subsection 4 of the following subsection:
“(4) If the Regional Manager accept the application, the Regional Manager must, within 10 days of the receipt of the application, notify the applicant in writing, to—
 - (a) consult, in the prescribed manner with the landowner, lawful occupier and any interested and affected party and include the result of the consultation in the environmental management plan; and
 - (b) submit an environmental management plan, within 180 days from the date of the notice.”. 50
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- (d) by the substitution for subsection (5) of the following subsection:
“(5) The Regional Manager must, within 10 days of receipt of the reports and results of the consultation contemplated in subsection (4) and section 40, forward the application to the Minister for consideration.”.

Amendment of section 23 of Act 28 of 2002

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18. Section 23 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (e) of the following paragraph:
“(e) the applicant has provided [financially and otherwise] for the prescribed social and labour plan;”; 10
- (b) by the insertion after subsection (2) of the following subsection:
“(2A) If the application relates to land occupied by a community, the Minister may impose such conditions as are necessary to promote the rights and interests of the community, including conditions requiring the participation of the community.”. 15
- (c) by the substitution for subsection (5) of the following subsection:
“(5) A mining right granted in terms of subsection (1) comes into effect on the effective date.”.

Amendment of section 24 of Act 28 of 2002

19. Section 24 of the principal Act is hereby amended— 20

- (a) by the substitution for subsection (4) of the following subsection:
“(4) A mining right may be renewed for further periods, each of which may not exceed 30 years at a time.”.

Amendment of section 25 of Act 28 of 2002

20. Section 25 of the principal Act is hereby amended— 25

- (a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
“(a) lodge such right for registration at the [Mining Titles Office within 30 days of the date on which the right—
(i) becomes effective in terms of section 23(5); or 30
(ii) is renewed in terms of section 24(3)];
Mineral and Petroleum Titles Registration Office within 60 days and the right has become effective.”; and
- (b) by the substitution in subsection (2) for paragraph (g) of the following paragraph: 35
“(g) in terms of any relevant law, pay the State royalties; and”.

Amendment of section 26 of Act 28 of 2002

21. Section 26 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
“(1) The Minister may initiate or [prescribe incentives to] promote the beneficiation of minerals in the Republic.”; 40
- (b) by the insertion after subsection (2) of the following subsection:
“(2A) In promoting beneficiation, the Minister may prescribe the levels required for beneficiation.”; and

Amendment of section 27 of Act 28 of 2002

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22. Section 27 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
“(b) the mining area in question does not exceed [1.5] 5.0 hectares in extent;”; 50
- (b) by the addition to subsection (3) of the following paragraph:
“(c) the granting of a permit will not result in the applicant being granted more than one mining permit on the same or adjacent land.”;

- (c) by the substitution for subsection (4) of the following subsection:
 “(4) If the application does not comply with the requirements of this section, the Regional Manager must notify the applicant in writing **[of that fact]** within **[14] 10** days of the receipt of the application **[and return the application to the applicant]**.”; 5
- (d) by the substitution for subsection (5) of the following subsection:
 “(5) If the Regional Manager accepts the application, the Regional Manager must, within 10 days of the receipt of the application, notify the applicant in writing, to—
 (a) consult, in the prescribed manner, with the landowner, lawful occupier and any interested and affected party and include the result of the consultation in the environmental management plan; and 10
 (b) submit an environmental management plan, within 40 days from the date of the notice.”.
- (e) by the substitution in subsection (6) for paragraph (b) of the following paragraph:
 “(b) **[the applicant has submitted]** the environmental management plan has been approved.”.
- (f) by the addition to subsection (6) of the following paragraph:
 “(c) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996).”; 20
- (g) by the substitution in subsection (7) for paragraph (c) of the following paragraph:
 “(c) in terms of any relevant law, must pay the State royalties;”; and
- (h) by the addition to subsection (7) of the following paragraph: 25
 “(e) must submit the mining permit for recording at the Mineral and Petroleum Titles Registration Office within 60 days after the permit has been issued.”.

Amendment of section 28 of Act 28 of 2002

23. Section 28 of the principal Act is hereby amended— 30
- (a) by the substitution for subsection (1) of the following subsection:
 “(1) The holder of a mining right or mining permit must, at **[its]** the registered office or place of business of such holder, keep proper records of mining activities and proper financial records in connection with the mining activities”; and 35
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 “The holder of a mining right or mining permit, or the manager of any mineral processing plant operating separately from a mine, must submit to the Director-General—”. 40

Amendment of section 30 of Act 28 of 2002

24. Section 30 of the principal Act is hereby amended—
- (a) by the substitution for subsection (3) of the following subsection;
 “(3) Any person submitting information or data in terms of **[section 21]** sections 28 or 29 must inform the Regional Manager concerned and indicate which information and data must be treated as confidential and may not be disclosed.”; and 45
- (b) by the addition of the following subsection:
 “(5) Any data, information or reports lodged with the Council for Geoscience in terms of section 21 will be kept confidential until such time as the right, permit or permission has lapsed, is cancelled or terminated, or the area to which such right, permit or permission relates has been abandoned or relinquished.”. 50

Amendment of section 31 of Act 28 of 2002

25. Section 31 of the principal Act is hereby amended by the substitution in subsection (1) for paragraphs (a), (b) and (c), respectively, of the following paragraphs: 55

- “(a) **[must]** lodge the application at the office of the Regional Manager in whose region the land is situated;
- (b) **[must]** lodge the application in the prescribed manner;
- (c) **[must]** lodge the application together with the prescribed non-refundable application fee;”.

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Amendment of section 33 of Act 28 of 2002

26. Section 33 of the principal Act is hereby amended by the substitution for paragraph (c) of the following paragraph:

- “(c) the granting of such right will [—
 - (i) **result in an exclusionary act;**
 - (ii) **prevent fair competition; or**
 - (iii) **result in the concentration of the mineral resources in question under the control of the applicant.]**
 result in the concentration of the mineral resources in question under the control of the applicant and or their associated companies with the possible limitation of equitable access to mineral resources.”.

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Amendment of section 35 of Act 28 of 2002

27. Section 35 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2)(b) for subparagraph (i) of the following subparagraph:
 - “(i) the prevailing market conditions, the effect thereof and the need to hold such retention permit **[over]** in respect of the mineral and land in question; and”; and
- (b) by the addition to subsection (2) of the following paragraph:
 - “(c) submit the retention permit for recording at the Mineral and Petroleum Titles Registration Office within 60 days after the permit has been issued.”.

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Amendment of section 37 of Act 28 of 2002

28. Section 37 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

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- “(a) apply to all prospecting and mining operations, as the case may be, and any matter or activity relating to such operation; and”.

Amendment of section 38 of Act 28 of 2002

29. Section 38 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

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“(1) The holder of a **[reconnaissance permission,]** prospecting right, mining right, mining permit **[or]**, retention permit, reconnaissance permit, exploration right, production right or right to conduct related operations or activities—

- (a) must at all times give effect to the general objectives of integrated environmental management laid down in **[Chapter 5]** section 23 of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
- (b) must **[consider,]** investigate, assess and communicate the impact of his or her prospecting **[or]**, mining, reconnaissance, exploration or production operations and related activities on the environment **[as contemplated in terms of section 24(7) of the National Environmental Management Act, 1998 (Act No. 107 of 1998)]**;
- (c) must manage all environmental impacts—
 - (i) in accordance with his or her environmental management plan or approved environmental management programme, where appropriate; and
 - (ii) as an integral part of the reconnaissance, prospecting **[or]**, mining, exploration or production operation, unless the Minister directs otherwise;

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- (cA) must monitor and audit compliance with the requirements of the environmental management plan.
- (d) must as far as it is reasonably practicable, rehabilitate the environment affected by the prospecting or mining operations to its natural or predetermined state or to a land use which conforms to the generally accepted principle of sustainable development; and 5
- (e) is responsible for any environmental damage, pollution, pumping and treatment of extraneous water or ecological degradation as a result of his or her [reconnaissance] prospecting or mining operations or related mining activities and which may occur inside and outside the boundaries of the prospecting or mining area to which such right[,] or permit [or permission] relates.” 10

Amendment of section 40 of Act 28 of 2002

30. Section 40 of the principal Act is hereby amended—
- (a) by the substitution for subsection 2 of the following subsection: 15
“(2) Any State department consulted in terms of subsection (1) must submit comments within 40 days from the date on which the Minister informs such State department, in writing, to do so.”; and
- (b) by the addition of the following subsection: 20
“(3) If any State department contemplated in subsection (1) objects to the contents of any environmental report or plan, the Minister must refer the objections to the Regional Mining Development and Environmental Committee for consideration and recommendation.”.
- (c) by the addition of the following subsection: 25
“(4) The Regional Mining Development and Environmental Committee must, within 45 days after the date of receiving such an objection, consider and make recommendations to the Minister for final decision.”.

Amendment of section 41 of Act 28 of 2002

31. Section 41 of the principal Act is hereby amended— 30
- (a) by the substitution for subsections (1) and (2), respectively, of the following subsections: 35
- (1) An applicant for a prospecting right, mining right or mining permit must, before the Minister approves the environmental management plan or environmental management programme in terms of section 39(4), make the prescribed financial provision for the rehabilitation **[or]** and management of **[negative]** environmental impacts.
- (2) If the holder of a prospecting right, mining right or mining permit fails to rehabilitate or manage, or is unable to undertake such rehabilitation or to manage any **[negative]** impact on the environment, the Minister may, upon written notice to such holder, use all or part of the financial provision contemplated in subsection (1) to rehabilitate or manage the **[negative]** environmental impact in question.”; 40
- (b) by the substitution for subsection (3) of the following subsection: 45
“(3) The holder of a prospecting right, mining right or mining permit must annually assess his or her environmental liability and **[increase]** adjust his or her financial provision to the satisfaction of the Minister.”;
- (c) by the substitution for subsection (4) of the following subsection: 50
“(4) (a) If the Minister is not satisfied with the assessment and financial provision contemplated in this section, the Minister may appoint an independent assessor to conduct the assessment and determine the financial provision.
- (b) Any costs in respect of such assessment must be borne by the holder of the prospecting right, mining right or mining permit.”;
- (d) by the addition of the following subsection: 55
“(6) The Insolvency Act, 1936 (Act No. 24 of 1936), does not apply to any form of financial provision contemplated in subsection (1) and all amounts arising from that provision.”.

Amendment of section 42 of Act 28 of 2002

32. Section 42 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) Residue stockpiles **[and]**, residue deposits and other waste must be—
 (a) managed in the prescribed manner on any site or facility demarcated 5
for that purpose in the environmental management plan or
environmental management programme in question[.], as the case
may be;
 (b) monitored in the prescribed manner for compliance with, and 10
adequacy of, the requirements in the approved environmental
management plan; and
 (c) decommissioned and closed as prescribed.”.

Insertion of section 42A in Act 28 of 2002

33. The principal Act is hereby amended by the insertion of the following section:

“Monitoring and performance assessments 15

42A. As part of the general terms and conditions for a prospecting right, mining right and mining permit, the holder of such right or permit must conduct monitoring and performance assessments of the approved environmental management programmes or environmental management plan, as prescribed. 20

Amendment of section 43 of Act 28 of 2002

34. Section 43 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 “(1) The holder of a prospecting right, mining right, retention right or mining permit, or previous holder of an old order right or previous owner 25
of works that has ceased to exist, remains responsible for any
environmental liability, pollution, [or] ecological degradation, the
pumping and treatment of extraneous water, and the management and
sustainable closure thereof, until the Minister has issued [an] a closure
certificate to the holder concerned.”; 30
- (b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
 “The holder of a prospecting right, mining right, retention permit or mining permit or the person contemplated in subsection (2), as the case may be, must apply for **[an]** a closure certificate upon—”; 35
- (c) by the substitution for subsection (4) of the following subsection:
 “(4) An application for **[an]** a closure certificate must be made to the Regional Manager in whose region the land in question is situated within 180 days of the occurrence of the lapsing, abandonment, cancellation, cessation, relinquishment or completion contemplated in subsection (3) 40
 and must be accompanied by the **[prescribed environmental risk report]** environmental plans and reports as prescribed.”;
- (d) by the substitution for subsection (5) of the following subsection:
 “(5) No closure certificate may be issued unless the Chief Inspector and **[the Department of Water Affairs and Forestry]** each government 45
department charged with the administration of any law which relates to
any matter affecting the environment have confirmed in writing that the
provisions pertaining to health and safety and management of potential
environmental impacts, pollution to water resources and the pumping
and treatment of extraneous water have been addressed.”; 50
- (e) by the insertion after subsection (5) of the following subsection:
 “(5A) Confirmation from the Chief Inspector and each government department contemplated in subsection (e), must be received within 60 days from the date on which the Minister informs such Chief Inspector or government department, in writing, to do so.”. 55

(f) by the addition of the following subsections after subsection (6):

“(7) The holder of any permit or right granted in terms of this Act must plan for, manage and implement procedures and requirements on mine closure as prescribed.

(8) The Minister may identify areas by notice in the *Gazette*, where mines are interconnected or their impacts are integrated which results in a cumulative impact.

(9) The Minister may publish by notice in the *Gazette*, strategies to facilitate mine closure where mines are interconnected, have an integrated impact or pose a cumulative impact.

(10) The holder of a prospecting right, mining right, retention permit or mining permit or the holder of a previous old order right, or the previous owner of works operating within an area identified in subsection (8), must amend the standard environmental management plan or environmental management plan accordingly or submit a closure plan, subject to the approval of the Minister, which is aligned with closure strategies contemplated in subsection (9).

(11) In relation to mines with an interconnected or integrated impact, the Minister may determine the apportionment of liability for mine closure as prescribed.

(12) No closure certificate may be issued unless—

(a) the Council for Geoscience has confirmed in writing that complete and correct prospecting reports in terms of section 21(1) have been submitted to the Council for Geoscience; or

(b) the complete and correct records, borehole core data or core-log data that the Council for Geoscience may deem relevant, have been lodged with the Council for Geoscience; or

(c) in the case of the holder of a mining permit or mining right, the complete and correct surface and the relevant underground geological plans have been lodged with the Council for Geoscience.”.

Amendment of section 44 of Act 28 of 2002

35. Section 44 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“When a prospecting right, mining right, retention permit or mining permit lapses, is cancelled or is abandoned or when any prospecting or mining operation **[comes to an end]** ceases, the holder of any such right or permit may not demolish or remove any building, structure or object—”; and

(b) by the substitution for subsection (2) of the following subsection:

“(2) The provision of subsection (1) does not apply to **[bona fide]** mining equipment[,], which may be removed lawfully.”.

Amendment of section 46 of Act 28 of 2002

36. Section 46 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If the Minister **[directs that measures contemplated in section 45 must be taken to prevent pollution or ecological degradation of the environment or to rehabilitate dangerous occurrences but]** establishes that the holder of **[the relevant]** a reconnaissance permission, prospecting right, mining right, retention permit or mining permit “or previous holders of old order rights or previous owners of works”, as the case may be, or his or her successor in title, is deceased or cannot be traced or, in the case of a juristic person, has ceased to exist, has been liquidated or cannot be traced, the Minister may instruct the Regional Manager concerned to take the necessary measures to prevent **[further]** pollution or environmental degradation or to make the area safe.”.

Amendment of section 47 of Act 28 of 2002

37. Section 47 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Subject to subsections (2), (3) and (4), the Minister may cancel or suspend any reconnaissance permission, prospecting right, mining right, mining permit **[or]**, retention permit or holders of old order rights, if the holder thereof—”.
- (b) by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) has submitted inaccurate, false, fraudulent, incorrect or misleading information for purposes of the application or in connection with any matter required to be submitted under this Act.”.
- (c) by the addition in subsection (1) of the following paragraph:

(e) has conducted the transactions mentioned in section 11(1) before obtaining the necessary prior written approval of the Minister.”.

Amendment of section 49 of Act 28 of 2002

38. Section 49 of the principal Act is hereby amended —

- (a) by the substitution for subsection (1) of the following subsection:

“(1) Subject to subsection (2), the Minister may, after inviting representations from relevant stakeholders, from time to time by notice in the *Gazette*, and having regard to the national interest and the need to promote the sustainable development of the nation’s mineral resources—
 (a) prohibit or restrict the granting of any reconnaissance permission, prospecting right, mining right or mining permit in respect of land identified by the Minister for such period and on such terms and conditions as the Minister may determine;
 (b) restrict the granting of any reconnaissance permission, reconnaissance permit, prospecting right, mining right or mining permit in respect of a specific mineral or mining permit in respect of a specific mineral or minerals or class of minerals identified by the Minister for such period and on such terms and conditions as the Minister may determine.”.
- (b) by the addition of the following subsection after subsection (3):

“(4) Subject to subsection (2)(b), the Minister may by notice in the *Gazette* invite applications for a prospecting right, mining right or mining permit in respect of any mineral or land, and may specify in such notice the period within which an application may be lodged and the terms and conditions subject to which such right or permit may be granted.”.

Amendment of section 52 of Act 28 of 2002

39. Section 52 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The holder of a mining right must, after consultation with any registered trade union or affected employees or their nominated representatives where there is no such trade union, notify the **[Board]** Minister in the prescribed manner—”.

(b) by the addition of the following subsection after subsection (3):

“(4) The holder of a mining right remains responsible for the implementation of the processes provided for in the Labour Relations Act, 1995, pertaining to the management of downscaling and retrenchment, until the Minister has issued a closure certificate to the holder concerned.”. 5

Amendment of section 53 of Act 28 of 2002

40. Section 53 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Despite subsection (1) the Minister may **[of his or her own volition]** cause an investigation to be conducted if it is alleged that a person intends to use the surface of any land in any way that could result in the mining of mineral resources being detrimentally affected;”. 10

Amendment of heading to section 56 of Act 28 of 2002

41. Section 56 of the principal Act is hereby amended by the substitution for the heading of the following heading: 15

“Lapsing of right, permit[,] and permission [and licence]”

Amendment of section 56 of Act 28 of 2002

42. Section 56 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words: 20

“Any right, permit[,] or permission **[or licence]** granted or issued in terms of this Act shall lapse, whenever—”. 20

Amendment of heading to Chapter 5 of Act 28 of 2002

43. Chapter 5 of the principal Act is hereby amended by the substitution for the heading of the following heading: 25

“MINERALS AND [MINING DEVELOPMENT] PETROLEUM BOARD”.

Amendment of section 57 of Act 28 of 2002

44. The following section is hereby substituted for section 57 of the principal Act:

“Establishment of Minerals and [Mining Development] Petroleum Board 30

57. The Minerals and [Mining Development] Petroleum Board is hereby established.”.

Amendment of section 58 of Act 28 of 2002

45. Section 58 of the principal Act is hereby amended by the substitution in subsection (1)(a) for subparagraphs (ii), (iii) and (iv) of the following subparagraphs: 35

- “(ii) the sustainable development of the nation’s mineral and petroleum resources;
- (iii) the transformation and downscaling of the minerals and **[mining industry]** petroleum industries, and; 40
- (iv) **[dispute resolution]** objections referred to the Minister by the Board.”. 40

Amendment of section 59 of Act 28 of 2002

46. Section 59 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The Board consists of no fewer than **[14]** 17 and no more than **[18]** 20 members, and must reflect the gender and racial composition in the Republic.”; and

(b) by the addition to subsection (2) of the following paragraph after paragraph (h):

“(i) at least one person from a designated agency.”.

Amendment of section 61 of Act 28 of 2002

47. Section 61 of the principal Act is hereby amended by the deletion in subsection (2)(a) of subparagraph (i).

Amendment of section 63 of Act 28 of 2002

48. Section 63 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The Chairperson or, in the absence of the Chairperson, the Minister must convene **[meetings]** the first meeting of the Board.”; and

(b) by the substitution for subsection (4) of the following subsection:

“(4) If both the chairperson and deputy chairperson are absent from a meeting the attending members must nominate one of their **[number]** members as acting chairperson for that meeting.”.

Amendment of section 69 of Act 28 of 2002

49. Section 69 of the principal Act is hereby amended by the substitution for paragraph (a) in subsection (2) of the following paragraph:

(a) For the purpose of this Chapter, section 9, 10, 11, 12, 21, [23,] 26, 29, 30, [34, 35, 36,] 37, 38, 39, 40, 41, 42, 42A, 43, 44, 45, 46, 47, 48, 49, 50, 51 **[and]**, 52, 53, 54, 55 56, 64 and Chapter 7 and Scheduled II apply with the necessary changes.

Amendment of section 71 of Act 28 of 2002

50. Section 71 of the principal Act is hereby amended by the substitution for paragraph (i) of the following paragraph:

“(i) review and make recommendations to the Minister with regard to the acceptance of environmental reports and plans and the conditions of environmental authorisations **[the approval of environmental plans, environmental management programmes, development programmes]** and amendments thereto; and”.

Amendment of section 73 of Act 28 of 2002

51. Section 73 of the principal Act is hereby amended by the deletion of subsection (3).

Amendment of section 74 of Act 28 of 2002

52. Section 74 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“The designated agency must, within 10 days of the receipt of the application, accept an application for a reconnaissance permit if—”.

- (b) by the addition to subsection (2) of the following paragraph:
 - “(c) no prior application for an exploration right, production right, or technical co-operation permit has been accepted for the same mineral, land and area.”;
- (c) by the substitution for subsection (3) of the following subsection: 5
 - “(3) If the application does not comply with the requirements of this section, the designated agency must notify the applicant [**of that fact**] in writing within “[14] 10” days of the receipt of the application and provide reasons [**and return the application to the applicant**].”; and
- (d) by the substitution for subsection (4) of the following subsection: 10
 - “(4) If the designated agency accept the application, the designated agency must, within 10 days of the receipt of the application, notify the applicant in writing to, notice—
 - (a) consult, in prescribed manner, with the landowner, lawful occupier and any interested and affected party and include the result of the consultation in the environmental management plan; and 15
 - (b) submit an environmental management plan, within 40 days from the date of the notice.”.

Amendment of section 75 of Act 28 of 2002

53. Section 75 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph: 20
- “(a) the applicant has access to financial resources and has the technical ability to conduct the proposed reconnaissance [**survey**] operation;”.

Amendment of section 76 of Act 28 of 2002

54. Section 76 of the principal Act is hereby amended— 25
- (a) by the deletion in subsection (2) of the word “and” at the end of paragraph (a), the addition of the word “and” at the end of paragraph (b).
 - (b) by the addition to subsection (2) of the following paragraph:
 - “(c) no prior application for an exploration right, production right, or technical co-operation permit has been accepted for the same mineral, land and area.”; and 30
 - (c) by the substitution for subsection (3) of the following subsection:
 - “(3) If the application does not comply with the requirements of this section, the designated agency must notify the applicant [**of that fact**] in writing within 14 days of the receipt of the application [**and return the application to the applicant**].”. 35

Amendment of section 78 of Act 28 of 2002

55. Section 78 of the principal Act is hereby amended by the addition to subsection (2) of the following paragraph:
- “(c) submit a technical co-operation permit for recording in the Mineral and Petroleum Titles Registration Office.” 40

Amendment of section 79 of Act 28 of 2002

56. Section 79 of the principal Act is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection:
 - “(2) The designated agency must, within 10 days of the receipt of the application, accept an application for an exploration right if— 45
 - (a) the requirements contemplated in subsection (1) met; and
 - (b) no other person holds a technical co-operation permit exploration right or production right for petroleum over [**any part of**] the same land and area applied for 50
 - (b) by the addition to subsection (2) of the following paragraph:
 - “(c) no prior application for a technical co-operation permit, exploration right or production right over the same mineral, land and area applied for has been accepted.”;

- (c) by the substitution for subsection (3) of the following subsection:
 “(3) If the application does not comply with the requirements of this section, the designated agency must notify the applicant **[of that fact]** in writing within [14] 10 days of the receipt of the application **[and return the application to the applicant]**.”; 5
- (d) by the substitution for subsection (4) of the following subsection:
 “(4) If the designated agency accept the application, the designated agency must, within 10 days of the receipt of the application, notify the applicant in writing to, notice—
 (a) consult, in prescribed manner, with the landowner, lawful occupier and any interested and affected party and include the result of the consultation in the environmental management plan; and 10
 (b) submit an environmental management plan, within 40 days from the date of the notice.”.
- (e) by the substitution in subsection (4) for paragraph (a) of the following paragraph: 15
 “(a) to notify in writing and consult with any affected party; and” and
- (f) by the substitution for subsection (5) of the following subsection:
 “(5) Any technical co-operation permit in respect of which an application for an exploration right has been lodged in terms of subsection (1) shall, notwithstanding its expiry date, remain in force until such **[application]** right has been granted or refused.”. 20

Amendment of section 80 of Act 28 of 2002

57. Section 80 of the principal Act is hereby amended—
- (a) by the insertion in subsection (1) after paragraph (c) of the following paragraph: 25
 “(cA) exploration right will not result in unacceptable pollution, ecological degradation or damage to the environment;”.
- (b) by the substitution for subsection (2) of the following subsection;
 “(2) The Minister may, having regard to the type of petroleum resource concerned and the [after taking into account the need for the] extent of the exploration [the] project, request that the applicant gives effect to section 2(d).”; 30
- (c) by the addition of the following subsection after subsection (5):
 “(6) The granting of an exploration right in terms of subsection (1) becomes effective on the date on which—
 (a) the environmental authorisation is issued; and
 (b) the right is executed.” 35

Amendment of section 81 of Act 28 of 2002

58. Section 81 of the principal Act is hereby amended— 40
- (a) by the substitution in subsection (2) for paragraph (c) of the following paragraph:
 “(c) be accompanied by a report reflecting the extent of compliance with the requirements of the **[approved]** standard environmental management [programme] plan, the rehabilitation to be completed and the estimated cost thereof and the conditions of the environmental authorisation; and”; 45
- (b) by the substitution in subsection (3) for paragraph (c) of the following paragraph:
 “(c) requirements of the **[approved]** standard environmental management [programme] plan and the conditions of the environmental authorisation.” 50

Amendment of section 82 of Act 28 of 2002

59. Section 82 of the principal Act is hereby amended in subsection (2) for paragraph (a) of the following paragraph: 55

- “(a) lodge such right for registration at the **[Mining Titles Office] Mineral and Petroleum Titles Registration Office** **[within 30 days of the date on which the right—**
 (i) **become effective; or**
 (ii) **is renewed in terms of section 81(3);]**”.

5

Amendment of section 83 of Act 28 of 2002

60. Section 83 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 “The designated agency must, within 10 days of the receipt of the application, accept an application for an exploration right if—
 (a) the requirements contemplated in sub-section (1) are met; and
 (b) no other person holds a technical co-operation permit, exploration right or production right for petroleum over **[any part of] the same land and area applied for.**”;
- (b) by the addition in subsection (2) of the following paragraph:
 “(c) no prior application for a technical co-operation permit, exploration right or production right over the same mineral, land and area applied for has been accepted.”;
- (c) by the substitution for subsection (3) of the following subsection:
 “(3) If the application does not comply with the requirements of this section, the designated agency must notify the applicant **[of that fact]** in writing within **[14] 10** days of the receipt of the application **[and return the application to the applicant].**”; and
- (d) by the substitution for subsection (4) of the following subsection:
 “(4) If the designated agency accept the application, the designated agency must, within 10 days of the receipt of the application, notify the applicant in writing to, notice—
 (a) consult, in prescribed manner, with the landowner, lawful occupier and any interested and affected party and include the result of the consultation in the environmental management plan; and
 (b) submit an environmental management plan, within 40 days from the date of the notice.”.

Amendment of section 84 of Act 28 of 2002

61. Section 84 of the principal Act hereby amended —

- (a) by the substitution in subsection (1) for paragraph (i) of the following paragraph:
 “(i) the granting of such right will further the object referred to in section 2(d) and (f) and in accordance with the Charter contemplated in section 100 and the prescribed **[land] social** and labour plan.”;
- (b) by the substitution for subsection (3) of the following subsection:
 “(3) If the Minister refuses to grant a production right, the Minister must, within 30 days of the decision, **[in writing]** notify the applicant in writing of [the] such decision [and the reasons therefor];”; and
- (c) by the substitution for subsection (5) of the following subsection:
 “(5) A production right granted in terms of subsection (1) comes into effect on the effective date.”.

Amendment of section 85 of Act 28 of 2002

62. Section 85 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

- “(5) A production right in respect of which an application for renewal has been lodged, shall **[dispute]** despite its expiry date, **[remains]** remain in force until such time as such application has been granted or refused.”.

Amendment of section 86 of Act 28 of 2002

63. Section 86 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for paragraphs (a), (c), (d) and (e) of the following paragraphs:
 - “(a) lodge such right for registration at the [Mining Titles Office] 5
[within 30 days of the date on which the right—
 - (i) become effective; or
 - (ii) is renewed in terms of section 85(3);] Mineral and 10
Petroleum Titles Registration Office within 60 days after the
right has become effective;
 - (c) comply with the terms and conditions of the production right, the
relevant provisions of this Act and [only] any other law;
 - (d) “comply with the requirements of the approved environmental
management programme and the prescribed social and labour plan;
 - (e) in terms of any relevant law, pay the State royalties; and”;
- (b) by the deletion in subsection (2) of paragraph (g). 15

Amendment of section 88 of Act 28 of 2002

64. Section 88 of the principal Act is hereby amended by the insertion, after subsection (1) of the following subsection:

- “(1A) The designated agency must submit progress reports and data as 20
contemplated in subsection (1)(b) within 30 days from the date of submission
thereof to the Council for Geoscience.”.

Amendment of section 92 of Act 28 of 2002

65. Section 92 of the principal Act is hereby amended—

- (a) by the substitution for the words preceding paragraph (a) of the following 25
words:
 - “Any authorised person may [during office hours], without a
warrant—”;
- (b) by the substitution for paragraph (b) of the following paragraph:
 - “(b) require the holder of the right, permit or permission [or] in question 30
or the person in charge of such area or place or any person carrying
out or in charge of the carrying out such activities, process or
operations to produce any book, record, statement or other
document including electronic documents, information or data
relating to matters dealt with in this Act for inspection, or for the 35
purpose of obtaining copies thereof or extracts therefrom.”.

Amendment of section 93 of Act 28 of 2002

66. Section 93 of the principal Act is hereby amended by the substitution in subsection (1)(b) for the words preceding subparagraph (i) of the following words:

- “any term or condition of any right, permit or permission or any other law 40
granted or issued or any environmental management programme or environ-
mental management plan approved in terms of this Act, has occurred or is
occurring on the relevant reconnaissance, exploration, production, prospect-
ing mining or retention area or place where prospecting operations or mining
operations or processing operations are being conducted, such a person 45
may—.

Amendment of section 96 of Act 28 of 2002

67. Section 96 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) Any person whose rights or legitimate expectations have been 50
materially and adversely affected or who is aggrieved by any adminis-
trative decision in terms of this Act may appeal within 30 days of
becoming aware of such decision in the prescribed manner to—

- (a) the Director-General, if it is an administrative decision taken by a Regional Manager or **[an officer]** any officer to whom the power has been delegated or a duty has been assigned by or under this Act; or
- (b) the Minister, if it is an administrative decision taken by the Director-General or the designated agency.”; and 5
- (b) by the substitution for subsection (2) of the following subsection:
 - “(2) (a) An appeal in terms of subsection (1) does not suspend the administrative decision, unless it is suspended by the Director-General or the Minister, as the case may be.
 - (b) Any subsequent application in terms of this Act must be suspended pending the finalisation of the appeal referred to in paragraph (a).”.

Amendment of section 98 of Act 28 of 2002

- 68.** Section 98 of the principal Act is hereby amended—
- (a) by the substitution in paragraph (a) for subparagraphs (i), (iii) and (iv) of the following subparagraphs: 15
 - “(i) section 5(4) **[, 20(2), 19]** or 28
 - (iii) section 35 or 38(1)(c);
 - (iv) section 42(1) **[or], (2) or (3)**”; and
 - (b) by the substitution for paragraph (c) of the following paragraph: 20
 - “(c) fails to **[provide a written notice or consult with]** obtain approval from the Minister in terms of section 26(3).”.

Amendment of section 100 of Act 28 of 2002

- 69.** Section 100 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph: 25
- “(a) To ensure the attainment of the Government’s objectives of redressing historical, social and economic inequalities as stated in the Constitution, the Minister must within six months from the date on which this Act takes effect develop a broad-based socio-economic empowerment Charter that will set the framework, targets and time-table for effecting the entry into and active participation of historically disadvantaged South Africans **[into]** in the mining industry, and allow such South Africans to benefit from the exploitation of the mining and mineral resources and the beneficiation of such mineral resources.”.

Substitution of section 101 of Act 28 of 2002

- 70.** The following section is hereby substituted for section 101 of the principal Act:

“Appointment of contractor” 35

101. If the holder of a right, permit or permission appoints any person or employs a contractor to perform any work within the boundaries of the reconnaissance, mining, prospecting, exploration, production or retention area, as the case may be, such holder remains responsible for compliance with this Act.”. 40

Substitution of section 102 of Act 28 of 2002

- 71.** The following section is hereby substituted for section 102 of the principal Act:

“Amendment of rights, permits, programmes and plans

102. (1) A reconnaissance permission, prospecting right, mining right, mining permit, retention permit, technical corporation permit, reconnaissance permit, exploration right, **[and]** production right, prospecting work programme[;], exploration work programme, production work programme, environmental management programme and environmental management plan may not be amended or varied **[(including by extension of the area covered by it or by the additional of minerals or a shares or seams,** 50

mineralized bodies or strata, which are not at the time the subject thereof] without the written consent of the Minister.”.

“(2) The amendment or variation referred to in subsection (1), shall not be made if the effect of such amendment or variation is to—

- (a) extend an area or portion of an area, or
- (b) add a share or shares of the mineralized body, unless the omission of such area or share was a result of the administrative error.”.

Amendment of section 103 of Act 28 of 2002

72. Section 103 of the principal Act is hereby amended by the substitution in subsection (4) for paragraph (b) of the following paragraph:

“(b) withdraw or amend any decision made by a person exercising a power or performing a duty delegated or assigned in terms of subsection (1), (2) or (3), as the case may be: Provided that no existing rights of any person shall be affected by such withdrawal and amending of a decision.”.

Amendment of section 104 of Act 28 of 2002

73. Section 104 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

“(1) Any community who wishes to obtain the preferent right to prospect or mine in respect of any mineral and land which is registered or to be registered in the name of the community concerned, must in terms of section 16 or 22 lodge such application to the Minister.

(2) The Minister must grant such preferent right if **[the community can prove that—]** the provisions of sections 17 or 23 have been complied with: Provided that—

- (a) the right shall be used to contribute towards the development and the social upliftment of the community;
- (b) the community submits a development plan, indicating the manner in which such right is going to be exercised;
- (c) the envisaged benefits of the prospecting or mining project will accrue to the community in question; and
- [(d) the community has access to technical and financial resources to exercise such right.]**
- (e) section 23(1)(e) and (h) is not applicable.

Amendment of section 105 of Act 28 of 2002

74. Section 105 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person who has applied for a right, permit or permission in terms of this Act must notify the Regional Manager if the landowner or lawful occupier of the land concerned—

- (a) cannot be readily traced; or
- (b) is deceased and no successor in title can be readily traced.”.

Amendment of section 107 of Act 28 of 2002

75. Section 107 of the principal Act is hereby amended—

(a) by the insertion after subparagraph (iv) of the following subparagraphs:

- (ivA) the management and control of residue stock piles, residue deposits and other waste on a prospecting, mining, exploration and production area;
- (ivB) the procedures for consultation with land owners, lawful occupiers and other interested or affected parties;”.

(b) by the insertion in subsection (1)(a) after subparagraph (vi) of the following subparagraphs:

“(viA) mine closure requirements and procedures, the apportionment of liability for mine closure and the sustainable closure of mines with an interconnected or integrated impact resulting in a cumulative impact;

- (viB) the procedures and requirements for environmental management plans, scoping reports, environmental impact assessment reports and environmental management programmes;”.
- (c) by the substitution in subsection (1) for paragraph (g) of the following paragraph: 5
- “(g) the form, conditions, issuing, renewal, abandonment, suspension or cancellation of any environmental management [programme] plan, permit, licence, certificate, permission, receipt or other document which may or have to be issued, granted, approved, required or renewed in terms of this Act;”.

Amendment of item 1 of Schedule II to Act 28 of 2002

76. Item 1 of Schedule II to the principal Act is hereby amended—

- (a) by the substitution for the definition of ‘old order mining right’ of the following definition: 15
- “‘old order mining right’ means any mining lease, mynpachten, consent to mine, permission to mine, claim licence, mining authorisation or right listed in Table 2 to this Schedule in force immediately before the date on which this Act took effect and in respect of which mining operations are being conducted;”;
- (b) by the substitution for the definition of ‘OP26 mining lease’ of the following definition: 20
- “‘OP26 mining lease’ means [the] any mining lease granted [to **Moss gas (Pty) Ltd** under] in terms of clause 22 of [the **OP26 prospecting lease**] prospecting lease OP26 or the portions held under Deed of Cession 1/1996, registered in terms of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967);”;
- (c) by the substitution for the definition of ‘OP26 sublease’ of the following definition: 25
- “‘OP26 sublease’ means those parts of the OP26 mining lease which are held under Cessions 1/1999 and 1/2002, registered as such at the Mineral and Petroleum Titles Registration Office on 8 September 1999 and 30 September 2002, respectively;”;
- (d) by the substitution for the definition of ‘OP26 right’ of the following definition: 30
- “‘OP26 right’ means prospecting lease OP26 and the portions ceded under Deed of Cession 1/1996, registered in terms of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967), or an OP26 sublease or OP26 mining lease;”.

Amendment of item 3 of Schedule II to Act 28 of 2002

77. Item 3 of Schedule II to the principal Act is hereby amended by the substitution for subitem (4) of the following subitem: 40

- “(4) If the environmental management programme does not meet [with] the requirements of this Act, the Regional Manager in whose region the land to which the environmental management programme relates is situated must direct the holder concerned to submit the outstanding information.”.

Amendment of item 4 of Schedule II to Act 28 of 2002

78. Item 4 of Schedule II to the principal Act is hereby amended—

- (a) by the substitution for subitem (5) of the following subitem: 50
- “(5) The holder must lodge the right converted under subitem (3) within 90 days from the date on which he or she received notice of conversion at the [Mining Titles Office] Mineral and Petroleum Titles Registration Office for deregistration and simultaneously at the Deeds office or the [Mining Titles Office] Mineral and Petroleum Titles Registration Office for registration of the OP26 sub-lease as the case may be.”; and 55

(b) by the substitution for subitem (6) of the following subitem:

“(6) The registration contemplated in subitem (5) must occur within six months from the date on which the sublease has been converted and must be done at the same time as the deregistration of the sublease at the **[Mining Titles Office]** Mineral and Petroleum Titles Registration Office.”.

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Amendment of item 5 of Schedule II to Act 28 of 2002

79. Item 5 of Schedule II to the principal Act is hereby amended—

(a) by the substitution for subitem (5) of the following subitem:

“(5) The holder must lodge the right converted under subitem (3) within 90 days from the date on which he or she received notice of conversion at the **[Mining Titles Office]** Mineral and Petroleum Titles Registration Office for registration and simultaneously at the Deeds office or **[for]** the **[Mining Titles Office]** Mineral and Petroleum Titles Registration Office for deregistration of OP26 lease, as the case may be.”; and

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(b) by the substitution for subitem (7) of the following subitem:

“(7) Upon the conversion of the lease and the registration of the production right into which it was converted, the **[sublease]** lease ceases to exist.”.

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Amendment of item 6 of Schedule II to Act 28 of 2002

80. Item 6 of Schedule II to the principal Act is hereby amended by the substitution for subitem (5) of the following subitem:

“(5) The holder must lodge the right converted under subitem (3) within 90 days from the date on which he or she received notice of conversion at the **[Mining Titles Office]** Mineral and Petroleum Titles Registration Office for registration and simultaneously at the Deeds Office or **[it]** the **[Mining Titles Office]** Mineral and Petroleum Titles Registration Office for deregistration of the old order prospecting right, as the case may be.”.

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Amendment of item 7 of Schedule II to Act 28 of 2002

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81. Item 7 of Schedule II to the principal Act is hereby amended—

(a) by the substitution for subitem (1) of the following subitem:

“(1) Subject to subitems (2) and (8), any old order mining right which was in force immediately before this Act took effect continues to be in force for a period not exceeding five years from the date on which this Act took effect or the period for which it was granted, whichever period is the shortest, subject to the terms and conditions under which it was granted or issued or was deemed to have been granted or issued.”;

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(b) by the substitution in subitem (2) for paragraphs (g) and (k) of the following paragraphs:

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“(g) information as to whether or not the old order mining right is encumbered by any mortgage bond or other right registered at the Deeds Office or **[Mining Titles Office]** Mineral and Petroleum Titles Registration Office;

(k) **[an undertaking that, and]** documentary proof of the manner in which[,] the holder will give effect to the object referred to in section 2(d) and 2(f).”; and

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(c) by the insertion after subitem 3 of the following subitems:

“3A. If the applicant does not comply with the requirements of sub-item (2) and (3), the Regional Manager must in writing request the applicant to comply within 60 days of such request.

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3B. If the applicant does not comply with subitem 3A, the Minister must refuse to convert the right and must notify the applicant in writing of the decision within 30 days with reasons.

3C. If the application relates to land occupied by a community, the Minister may impose such conditions as are necessary to promote the

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rights and interests of the community, including conditions requiring the participation of the community.”.

(d) by the substitution for subitem (5) of the following subitem:

“(5) The holder must lodge the right converted under subitem (3) within 90 days from the date on which he or she received notice of conversion at the **[Mining Titles Office]** Mineral and Petroleum Titles Registration Office for registration and simultaneously at the Deeds Office or **[for]** the **[Mining Titles Office]** Mineral and Petroleum Titles Registration Office for deregistration of the old order mining right, as the case may be.”.

Amendment of item 8 of Schedule II to Act 28 of 2002

82. Item 8 of Schedule II to the principal Act is hereby amended by the substitution for subitem (1) of the following subitem:

“(1) Any unused old order right which was in force immediately before this Act took effect, continues to be in force, subject to the terms and conditions under which it was granted, acquired or issued or was deemed to have been granted or issued, for a period not exceeding one year from the date on which this Act took effect, or for the period for which it was granted, acquired or issued or was deemed to have been granted or issued, whichever period is the shortest.”.

Amendment of Item 9 of Act 28 of 2002

83. Item 9 of the principal Act is hereby amended by the substitution for subitems (2), of the following subitem:

“(2) The holder, user or acquirer of any reservation, permission or right to use the surface of land contemplated in subitem (1) must **[register]** lodge for re-registration such reservation, permission or right in the **[Mining Titles Office]** Mineral and Petroleum Titles Registration Office within **[one year]** six years from the date on which Mineral and Petroleum Resources Development Act, 2005 took effect.”.

Amendment of Item 10 of Schedule II to Act 28 of 2002

84. Item 10 of Schedule II to of the principal Act is hereby amended—

(a) by the substitution for subitems (4) and (5) of the following subitems:

“(4) If the holder of an old order prospecting right or old order mining right or the owner of previous works ceases the relevant prospecting or mining operation works, the holder must apply for **[an]** a closure certificate in terms of section 43.

(5) **[Section]** Sections 38, 41(2) **[applies]** apply to a holder of an old order prospecting right **[or]** old order mining right or the owner of previous works.”; and

(b) by the insertion of the following subitem after subitem (4):

“(4A) If no application for a certificate contemplated in section 12 of the Minerals Act has been made, the holder referred to in that section, who remains liable for complying with the relevant provision of that Act, must apply for a closure certificate in terms of section 43.”.

Amendment of Item 12 of Schedule II to Act 28 of 2002

85. Item 12 of Schedule II to the principal Act is hereby amended—

(a) by the substitution for subitem (4) of the following subitem:

“(4) Any claim for compensation must be lodged with the Director-General and the Minister may prescribe—

- (a) the manner in which such claim may be lodged;
- (b) the procedure to be followed by the claimant and the Director-General in respect of such claim; and
- (c) the time when any legal proceedings may be instituted in respect of the determination or payment of compensation as contemplated in subitem (1).”;

- (b) by the addition of the following subitems after subitem (4):
- “(5) Despite the provisions of the Prescription Act, 1969 (Act No. 68 of 1969), prescription in respect of a claim for compensation shall only commence to run—
- (a) when the claimant has been informed in writing by the Director-General that he or she has denied the validity of the claim and the claimant has not appealed against such denial in terms of section 96; or
 - (b) where a claimant decides to appeal the denial of the Director-General in terms of section 96, when the claimant has been informed in writing by the Minister of the confirmation of the said denial; or
- (6) On the occurrence of any of the events described in subitems (5)(a) to (c)—
- (a) to the extent that they may be applicable, the provisions of sections 10(4), (5), (7) and (8), 14, 15, 19 and 21 of the Expropriation Act, 1975 (Act No. 63 of 1975), apply with the necessary changes to a claim made in terms of subitem (1); and
 - (b) the claimant may issue proceedings in a court of law for the determination and payment of compensation, but not before.
- (7) The provisions of this item do not apply to expropriation of property in terms of section 55 of the Act.”.

Amendment of Table 2 of Act 28 of 2002

86. Table 2 of the principal Act is hereby amended—
- (a) by the substitution for Category 3 of the following:

“A right to dig or to mine or [a] claim licence, a tributing agreement or a mynpachten referred to in section 47 of the Minerals Act and the common law mineral right attached thereto, together with a mining authorisation obtained in connection therewith under section 47(1)(e) in terms of section 9(1) of the Minerals Act.”; and
 - (b) by the substitution for Category 4 of the following:

“A right to dig or to mine referred to in section 47(5) of the Minerals Act or any right to dig or mine acquired under a tributing agreement as defined in section 1 of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967), or any sub-grant acquired by virtue of the first mentioned right and the common law mineral right attached thereto, together with a mining authorisation obtained in connection therewith in terms of section 9(1) of the Minerals Act.”.

Amendment of Table 3 of Act 28 of 2002

87. Table 3 of the principal Act is hereby amended by the substitution for Category 10 of the following:
- “A right to dig or to mine referred to in section 47(5) of the Minerals Act or any right to dig or mine acquired under a tributing agreement as defined in section 1 of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967), or any sub-grant acquired by virtue of the first mentioned right and the common law mineral right attached thereto, together with a mining authorisation obtained in connection therewith by virtue of section 47(1)(e) of the Minerals Act and in terms of section 9(1) of the Minerals Act.”.

Short title and commencement

88. (1) This Act is called the Mineral and Petroleum Resources Development Amendment Act, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.
- (2) Despite subsection (1), item 12 of Schedule II is deemed to have come into operation on 1 May 2004.

MEMORANDUM ON THE OBJECTS OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL, 2007

1. OBJECTS OF BILL

The main object of the Bill is to remove ambiguity that may exist in the principal Act by amending certain definitions, to promote and enhance co-operative governance between organs of state, to harmonise national norms and standards on environmental management in general and on environmental impact assessment (EIA) specifically with those in the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA), to confirm sound environmental management principles and to further protect certain existing rights.

The Bill seeks to amend the principal Act to facilitate the smooth implementation of the new minerals and mining dispensation by aligning it with sound administrative practices and the objects of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

The Bill furthermore harmonises national norms and standards on environmental management in general and on EIA specifically as being applied in terms of NEMA, 1998. The Bill therefore removes certain inconsistencies in the principal Act, such as the requirements for environmental management plans and environmental management programmes as the case may be. In accordance with acceptable environmental management principles, the Act is further amended so as to provide for the continuation of current departmental policy concerning the provision of financial guarantees. It also provides clarity on the financial instruments required for Trust Funds.

The Bill makes provision for addressing cumulative impacts emanating from mines and provides for appropriate closure procedures in this regard.

To facilitate co-operative governance, the Bill further confirms the separation of powers between the Minister of Minerals and Energy, who is authorised to levy certain fees in terms of the principal Act, and the Minister of Finance, who must determine state royalties in terms of another Act of Parliament.

The Bill further promotes co-operative governance in that it seeks to amend section 40 of the principal Act so that REMDEC will be able to make recommendations to the Minister on environmental objections received from other state departments.

The Transitional Chapter in the principal Act is amended to rectify certain omissions of existing old order rights, such as mynpachten and tributing agreements.

2. DEPARTMENTS/PARTIES CONSULTED

The following Departments and statutory bodies were consulted on the Bill:

National Treasury
Department of Land Affairs
Department of Environmental Affairs and Tourism
Department of Water Affairs

3. FINANCIAL IMPLICATION FOR STATE

In terms of the Bill, fees such as prospecting, retention and application fees will be payable to the State on commencement of this Bill, whereas royalties will be payable once a separate Act of Parliament has been promulgated.

4. PARLIAMENTARY PROCEDURE

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

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