

REPUBLIC OF SOUTH AFRICA

MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL

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

(MINISTER OF MINERALS AND ENERGY)

[B 10D—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 make the Minister the responsible authority for implementing environmental matters in terms of the National Environmental Management Act, 1998 and specific environmental legislation as it relates to prospecting, mining, exploration, production and related activities or activities incidental thereto on a prospecting, mining, exploration or production area; to align the Mineral and Petroleum Resources Development Act with the National Environmental Management Act, 1998 in order to provide for one environmental management system; to remove ambiguities in certain definitions; 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 Act (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion before the definition of “block” of the following definition: “ ‘beneficiation’, in relation to any mineral resource, means the following—

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| <p>(a) primary stage, which includes any process of the winning, recovering, extracting, concentrating, refining, calcining, classifying, crushing, screening, washing, reduction, smelting or gasification thereof;</p> <p>(b) secondary stage, which includes any action of converting a concentrate or mineral resource into an intermediate product;</p> <p>(c) tertiary stage, which includes any action of further converting that product into a refined product suitable for purchase by minerals-based industries and enterprises; and</p> <p>(d) final stage, which is the action of producing properly processed, cut, polished or manufactured products or articles from minerals accepted in the industry and trade as fully and finally processed or manufactured and value added products or articles;”;</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> |
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- (b) by the substitution in the definition of ‘broad based economic empowerment’ for sub-paragraph (b) (vi) of the following sub-paragraph—
 “(vi) the socio-economic development of communities immediately hosting, affected by ~~[the of]~~ supplying labour to operations; and” 5
- (c) 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 communal 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 affect by mining on land occupied by such members or part of the community;”;
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- (d) by the insertion before the definition of “day” of the following definition:
 “ ‘Council for Geoscience’ means the Council established by the Geoscience Act, 1993 (Act No. 100 of 1993);”;
- (e) 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,]**”;
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- (f) by the insertion after the definition of the “Director-General” of the following definition:
 “ ‘effective date’ means the date on which the relevant permit is issued or the relevant right is executed;”;
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- (g) by the insertion after the definition of environment of the following definitions:
 “ ‘environmental authorisation’ means an authorisation issued by the Minister in terms of the National Environmental Management Act, 1998, as it relates to prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area; ‘environmental reports’ mean reports required in terms of the National Environmental Management Act, 1998, in order to inform and support the environmental authorisation to be issued by the Minister;”;
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- (h) by the deletion of the definition of ‘environmental management plan’,
 (i) by the deletion of the definition of ‘environmental management programme’,
 (j) by the substitution for the definition of ‘exclusionary act’ of the following definition:
 “ ‘exclusionary act’ means any act or practice which impedes or prevents any person from entering into or actively participating in the mineral and [mining] petroleum industry, or entering into or actively participating in any market connected with [that] the mineral and petroleum industries [industry], or from making progress within such industry or market;”;
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- (k) by the deletion of the definition of “financial provision”;
 (l) by the substitution for paragraph (c) of the definition of ‘historically disadvantaged persons’ of the following paragraph:
 (c) **[any]** a juristic person, other than an association, **[in]** which—
 (i) is managed and controlled by a person contemplated in paragraph (a) and that the persons collectively or as a group own and control a majority of the issued share capital or members’ interest, and are able to control the majority of the members’ vote; or
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 (ii) is a subsidiary, as defined in section 1(e) of the Companies Act, 1973, as a juristic person who is a historically disadvantaged person by virtue of the provisions of paragraph (c)(i);”; 60

- (m) 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, whether being worked or not, made for the purpose of searching for or winning a mineral; 5
- (ii) any other 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 such searching, winning or extraction or processing of such mineral resource; and 10
- (b) used as a verb, in the mining of any mineral, in or under the earth, water or any residue deposit, whether by underground or open working or otherwise and includes any operation or activity incidental thereto, in, on or under the relevant mining area;” 15
- (n) by the substitution for the definition of ‘mining area’ of the following definition:
- “mining area; — 20
- (a) in relation to a mining right or a mining permit, means the area on 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 and labour matter and any residual, latent or other impact thereto, including— 25
- (i) **[adjacent surface of land or any non-adjacent surface land]** any land or surface adjacent or non-adjacent to the area as contemplated in subsection (i) but upon which related or incidental operations are being undertaken;
- (ii) **[area connected to such area by means of any road, railway line, power line, cable way or conveyor belt]** any surface of land on which such road, railway line, powerline, pipe line, cableway or conveyor belt is located, under the control of the holder of such 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 30
- (iii) all buildings, structures, machinery, residue stockpiles, or objects situated on or in the area as contemplated in subsections (ii)(a) and (ii)(b).” 35
- (o) by the substitution for the definition of “Mining Titles Office” of the following definition: 40
- “**‘[Mining Titles Office] Mineral and Petroleum Titles Registration Office’ means the [Mining Titles Office] Mineral and Petroleum Titles Registration Office** contemplated in section 2 of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967);” 45
- (p) by the insertion after the definition of ‘Minister’ of the following definition:
- “ ‘National Environmental Management Act, 1998’ means the National Environmental Management Act, 1998 (Act No. 107 of 1998);”
- (q) by the insertion after the definition of “owner” of the following definition:
- “ ‘owner of works’ has the meaning contemplated in paragraph (b) of the definition of “owner” in section 102 of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);” 50
- (r) 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 photo geological surveys and includes any remote sensing techniques, but does not include any prospecting or exploration operation other than acquisition and processing of new seismic data;” 55
- (s) by the insertion after the definition of ‘retention permit’ of the following definitions:
- “ ‘Registrar’ means the registrar of deeds as defined in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937);” 60

- (t) 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 an old order right;”; and 5
- (u) by the substitution for the definition of ‘residue stockpile’ of the following definition:
 “ ‘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 an old order right;”. 10

Amendment of section 2 of Act 28 of 2002

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

- “(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; 20
- (e) promote economic growth and mineral and petroleum resources development in the Republic, particularly development of downstream industries through provision of feedstock, and development of mining and petroleum inputs industries;”. 25

Amendment of section 3 of Act 28 of 2002

3. Section 3 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for paragraph (b) of the following paragraph:
 “(b) in consultation with the Minister of Finance, **[determine]** prescribe and levy, any fee **[or consideration]** payable in terms of **[any relevant Act of Parliament.]** this Act.”; and 30
- (b) by the addition of the following subsection:
 “(4) The State royalty must be determined and levied by the Minister of Finance in terms of an Act of Parliament.”. 35

Amendment of section 5 of Act 28 of 2002

4. 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 in respect of the mineral or petroleum and the land to which such right relates.”; and 40
- (b) by the substitution in subsection (3) for paragraph (a) of the following paragraph:
 “(a) enter the land to which such right relates together with his or her employees, and **[may]** bring onto that land any plant, machinery or equipment and build, construct or lay down any surface, underground or under sea infrastructure which may be required for the purpose[s] of prospecting, mining, exploration or production, as the case may be;”; 45
- (c) 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), (in the case of diamond) remove and dispose of any diamond found during the course of mining operations;” and 50
- (d) by the deletion of subsection (4). 55

Insertion of section 5A of Act 28 of 2002

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

“Prohibition relating to illegal act

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 environmental authorisation;
- (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
- (c) giving the landowner or lawful occupier of the land in question at least 21 days written notice.”.

Amendment of section 9 of Act 28 of 2002 15

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

- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
“(b) different [**dates**] days must be dealt with in order of receipt.”; and
- (b) by the substitution for subsection (2) of the following subsection: 20
“(2) When the Minister considers applications received on the same [**date**] day he or she must give preference to applications from historically disadvantaged persons.”.

Amendment of section 10 of Act 28 of 2002

7. Section 10 of the principal Act is hereby amended by substitution in subsection (1) 25 for paragraph (a) of the following paragraph:

- “(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 30

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

- (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 any interest in a [**company or**] close corporation or unlisted company or any controlling interest in a listed company (which corporations or companies hold a prospecting right or mining right or an interest in any such right), may not be ceded, transferred, let, sublet, assigned alienated or otherwise disposed of without prior written of the Minister. [**, except in the case of changed of controlling interest in listed companies]**”; 35 40
- (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 the registration at the [**Mining Titles Office**] Mineral and Petroleum Titles Registration Office within [**30**] 60 days of the relevant [**action**] transaction.”; and 45
- (c) by the addition of the following subsection:
“(5) Any cession, transfer, letting, subletting, assignment, alienation or disposal of prospecting or mining right or an interest in a corporation or company made in contravention of subsection 1 is void.”.

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 5
- (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 reject the application and notify the applicant in writing **[of that fact]** within 14 days of the receipt of the application **[and return the application to the applicant]** with written 10 reasons for such decision.”.

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 15 Minister must, within 30 days of the decision, **[in writing]** notify the applicant in writing with reasons for [the] 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 20 and is not renewable.”.

Substitution of section 15 of Act 28 of 2002

11. The following section is hereby substituted for section 15 of the principal Act:

“Rights and obligations of holder of reconnaissance permission

- 15.** (1) A reconnaissance permission entitles the holder, **[on production of the reconnaissance permission and after consulting the landowner or lawful occupier thereof]** after giving written notice to the landowner or the lawful occupier of the land at least 14 days before the day such holder will enter the land to which such permission relates, to enter the land concerned for the purposes of conducting reconnaissance operations. 25
- (2) A reconnaissance permission does not entitle the holder 30 to—
- (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.”. 35

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 (1) for the words preceding paragraph (a) of the following words: 40

“Any person who wishes to apply to the Minister for a prospecting right must simultaneously apply for an environmental authorisation and must lodge the application—”;
- (b) by the substitution for subsection (2) of the following subsection:

“(2) The Regional Manager must accept an application for a 45 prospecting right if—

 - (a) the requirements contemplated in subsection (1) are met; **[and]**
 - (b) no other person holds a prospecting right, mining right, mining permit or retention permit for the same mineral and land; and
 - (c) no prior application for a prospecting right, mining right, mining 50 permit or retention permit has been accepted for the same mineral on the same land and which remains to be granted or refused.”;

- (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 Regional Manager must notify the applicant in writing within 14 days of the receipt of the application **[of that fact and return the application to the applicant]**.”; 5
- (d) by the substitution for subsection (4) of the following subsection:
 “(4) If the Regional Manager accepts the application, the Regional Manager must within 14 days from the date of acceptance, notify the applicant in writing—
 (a) to submit **[an environmental management plan]** relevant environmental reports required in terms of Chapter 5 of the National Environmental Management Act, 1998 within 60 days of the date of notice; and 10
 (b) **[to notify in writing and consult with the land owner or lawful occupier and any other affected party and submit the result of the consultation within 30 days from the date of the notice]** to 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 relevant environmental reports;”; and 15
 (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:
 “[**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—”; 25
- (b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
 “(c) the prospecting will not result in unacceptable pollution, ecological degradation or damage to the environment and an environmental authorisation is issued”; 30
- (c) by the addition to subsection (1) of the following paragraph:
 “(f) in respect of prescribed minerals the applicant has given effect to the objects referred to in section 2(d).”; 35
- (d) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 “The Minister must, within 30 days of receipt of the application from the Regional Manager, refuse to grant a prospecting right if—”; 40
- (e) by the substitution in subsection (2) for paragraph (b) of the following paragraph:
 “(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]** 45
result in the concentration of the mineral resources in question under the control of the applicant and their associated companies with the possible limitation of equitable access to mineral resources.”; 50
- (f) by the insertion after subsection (4) of the following subsection: 50
 “(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.”; 55
- (g) by the substitution for subsection (5) of the following subsection: 55
 “(5) A prospecting right granted in terms of subsection (1) comes into effect on the effective date.”.

Amendment of section 18 of Act 28 of 2002

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

- (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 environmental management programme, the rehabilitation to be completed; the estimated cost thereof]** conditions of the environmental authorisation; and”;
- (b) by the addition to subsection (2) of the following paragraph:
 - “(e) a certificate issued by the Council for Geoscience that all prospecting information as prescribed has been submitted.”; and
- (c) by the substitution in subsection (3) for paragraph (c) of the following paragraph:
 - “(c) **[requirements of the approved environmental management plan]** compliance with the conditions of the environmental authorisation.”.

Amendment of section 19 of Act 28 of 2002

15. Section 19 of the principal Act is hereby amended—

- (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) **become 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;”;
- (b) by the substitution in subsection (2) for paragraph (e) of the following paragraph:
 - “(e) comply with **[the requirements of the approved environmental management programme]** the conditions of the environmental authorisation;”;
- (c) by the substitution in subsection (2) for paragraph (g) of the following paragraph:
 - “(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.”; and
- (d) by the addition to subsection (2) after paragraph (g) of the following paragraph:
 - “(h) submit progress reports and data of prospecting operations to the Regional Manager within 30 days from the date of submission thereof to the Council for Geoscience.”.

Amendment of section 20 of Act 28 of 2002

16. 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].**”.

Amendment of section 21 of Act 28 of 2002

17. 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”;

- (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.”; and 5
- (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 written directions of the relevant Regional Manager in consultation with the Council for Geoscience.”. 10

Amendment of section 22 of Act 28 of 2002

18. Section 22 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 15
 “Any person who wishes to apply to the Minister for a mining right must simultaneously apply for an environmental authorisation and must lodge the application—”;
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 20
 “The Regional Manager must, within 14 days of receipt of the application, accept an application for a mining right if—”;
- (c) by the deletion of the word “and” at the end of paragraph (a), the addition of the word “and” at the end of paragraph (b) and the addition to that subsection of the following paragraph: 25
 “(c) no prior application for a prospecting right, mining right or mining permit or retention permit, has been accepted for the same mineral and land and which remains to be granted or refused.”;
- (d) by the substitution for subsection (3) of the following subsection: 30
 “(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 days of the receipt of the application **[and return the application to the applicant]**.”;
- (e) by the substitution in subsection (4) for paragraphs (a) and (b) of the following paragraphs, respectively: 35
 “(a) **[to conduct an environmental impact assessment and submit an environmental management programme for approval in terms of section 39];** to submit the relevant environmental reports within 180 days from the date of the notice, as required in terms of Chapter 5 of the National Environmental Management Act, 1998; and 40
 (b) **[to notify and consult with interested and affected parties within 180 days from the date of the notice]** to 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 relevant environmental reports.”; and 45
- (f) by the substitution for subsection (5) of the following subsection: 50
 “(5) The Regional Manager must, within 14 days of receipt of the environmental 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

19. Section 23 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (d) of the following paragraph: 55
 “(d) the mining will not result in unacceptable pollution, ecological degradation or damage to the environment and an environmental authorisation is issued;”;

- (b) 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;”;
- (c) by the insertion after subsection (2) of the following subsection: 5
“(2A) If the application relates to the 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.”
- (d) by the substitution for subsection (3) of the following subsection: 10
“(3) The Minister must, within 60 days of receipt of the application from the Regional Manager, refuse to grant a mining right if the application does not meet the requirements referred to in subsection(1).”; and
- (e) by the substitution for subsection (5) of the following subsection: 15
“(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

20. Section 24 of the principal Act is hereby amended—
- (a) by the substitution in subsection (2) for paragraph (b) of the following paragraph: 20
“(b) be accompanied by a report reflecting the extent of compliance with the **[requirements of the approved environmental management programme, the rehabilitation to be completed and the estimated cost thereof]** conditions of the environmental authorisation;” and
 - (b) by the substitution in subsection (3) for paragraph (d) of the following paragraph:
 - (c) by the substitution for subsection (4) of the following subsection: 30
“(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

21. Section 25 of the principal Act is hereby amended—
- (a) by the substitution in subsection (2) for paragraph (a) of the following paragraph: 35
“(a) lodge such right for registration at the **[Mining Titles Office within 30 days of the date on which the right—**
 - (i) **become 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 and the right has become effective;”;
 - (b) by the substitution in subsection (2) for paragraph (e) of the following paragraph:
“(e) comply with the **[requirements of the approved environmental management programme]** conditions of the environmental authorisation;”;
 - (c) by the substitution in subsection (2) for paragraph (g) of the following paragraph:
“(g) in terms of any relevant law, pay the State royalties; and”.

Amendment of section 26 of Act 28 of 2002

22. 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.”; and
 - (b) by the insertion after subsection (2) of the following subsection: 55
“(2A) In promoting beneficiation, the Minister may prescribe the levels required for beneficiation.”.

Amendment of section 27 of Act 28 of 2002

23. 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.”;
- (b) by the substitution for subsection (2) of the following subsection:

“(2) Any person who wishes to apply to the Minister for a mining permit must simultaneously apply for an environmental authorisation and must lodge the application—”
- (c) 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.”;
- (d) 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 days of the receipt of the application **[and return the application to the applicant].**”;
- (e) by the substitution for subsection (5) of the following subsection:

“(5) If the Regional Manager accepts the application, the Regional Manager must within 14 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 relevant environmental reports; and
 - (b) submit the relevant environmental reports within 60 days from the date of the notice as required in terms of the National Environmental Management Act, 1998.”;
- (f) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:

“The Minister must, within 60 days of receipt of the application from the Regional Manager, issue a mining permit if—”;
- (g) by the substitution in subsection (6) for paragraph (b) of the following paragraph:

“(b) **[the applicant has submitted the environmental management plan]** the environmental authorisation is issued.”;
- (h) by the addition in subsection (6) after paragraph (b) 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);”;
- (i) 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;”;
- (j) by the addition to subsection (7) of the following paragraph:

“(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

24. Section 28 of the principal Act is hereby amended—

- (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
- (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—”.

Amendment of section 30 of Act 28 of 2002

25. 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] 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 5

(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 must be kept confidential until such time as the right, permit or permission has lapsed or is cancelled, or terminated, or the area to which such right, permit or permission relates has been abandoned or relinquished.”. 10

Amendment of section 31 of Act 28 of 2002

26. Section 31 of the principal Act is hereby amended by the substitution in subsection (1) for paragraphs (a), (b) and (c) of the following paragraphs, respectively: 15

“(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;”. 20

Amendment of section 32 of Act 28 of 2002

27. Section 32 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Despite subsection (2), the conditions of the environmental [management programme approved] authorisation issued in respect of the prospecting right remains in force as if the prospecting right had not lapsed.”. 25

Amendment of section 33 of Act 28 of 2002

28. Section 33 of the principal Act is hereby amended by the substitution for paragraph (c) of the following paragraph: 30

“(c) the granting of such right will [—

(i) result in an exclusionary act;

(ii) prevent fair competition;

(iii) result in the concentration of the mineral resources under the control of the applicant] 35

result in the concentration of the mineral resources in question under the control of the applicant and their associated companies with the possible limitation of equitable access to mineral resources.”.

Amendment of section 35 of Act 28 of 2002

29. Section 35 of the principal Act is hereby amended— 40

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

“(a) give effect to the [approved environmental management programme] conditions of the environmental authorisation and pay the prescribed retention fees”; and 45

(b) 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” 50

(c) by the addition to subsection (2) of the following paragraph:

“(c) submit the retention permit for recording in the Mineral and Petroleum Titles Registration Office within 60 days after the permit has been issued.”.

Amendment of section 37 of Act 28 of 2002

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

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

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Repeal of section 38 of Act 28 of 2002

31. Section 38 of the principal Act is hereby repealed.

Insertion of sections 38A and 38B IN Act 28 of 2002

32. The following sections are hereby inserted in the principal Act after section 38:

“Environmental authorisations

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38A. (1) The Minister is the responsible authority for implementing environmental provisions in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998) and any of its related and specific environmental management legislation, as it relates to prospecting, mining, exploration, production or activities incidental thereto on a prospecting, mining, exploration or production area.

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(2) An environmental authorisation issued by the Minister shall be a condition prior to the issuing of a permit or the granting of a right in terms of this Act.

Approved environmental management programmes and environmental management plans

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38B. (1) An environmental management plan or environmental management programme approved in terms of this Act before and at the time of the coming into effect of the National Environmental Management Act, 1998, shall be deemed to have been approved and an environmental authorisation been issued in terms of the National Environmental Management Act, 1998.

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(2) Notwithstanding subsection (1), the Minister may direct the holder of a right, permit or any old order right, if he or she is of the opinion that the prospecting, mining, exploration and production operations is likely to result in unacceptable pollution, ecological degradation or damage to the environment, to take any action to upgrade the environmental management plan or environmental management programme to address the deficiencies in the plan or programme.

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(3) The Minister must issue an environmental authorisation if he or she is satisfied that the deficiencies in the environmental management plan or environmental management programme in subsection (2) have been addressed and that the requirements in Chapter 5 of the National Environmental Management Act, 1998, have been met.”.

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Amendment of section 39 of Act 28 of 2002

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33. Sections 39, 40, 41 and 42 of the principal Act are hereby repealed.

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 permit, [or] mining permit, or previous holder of an old order right or previous owner of works that has ceased to exist, remains responsible for any environmental liability, pollution, [or] ecological degradation, the pumping and treatment of extraneous water, compliance to the conditions of the environmental authorisation and the management and

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- sustainable closure thereof, until the Minister has issued **[an]** a closure certificate in terms of this Act to the holder or owner concerned.”;
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) On the written application in the prescribed manner by the holder of a prospecting right, mining right, retention permit, mining permit or previous holder of an old order right or previous owner of works that has ceased to exist, the Minister may transfer such environmental liabilities and responsibilities as may be identified in the environmental management report and any prescribed closure plan to a person with such qualifications as may be prescribed.”;
- (c) 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, mining permit, or previous holder of an old order right or previous owner of works that has ceased to exist, or the person contemplated in subsection (2), as the case may be, must apply for **[an]** a closure certificate upon—”;
- (d) 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) and must be accompanied by the **[prescribed environmental risk report]** required information, programmes, plans and reports prescribed in terms of this Act and the National Environmental Management Act, 1998.”;
- (e) 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 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 pollution to water resources, the pumping and treatment of extraneous water and compliance to the conditions of the environmental authorisation have been addressed.”
- (f) by the insertion after subsection (5) of the following subsection:
- “(5A) Confirmation from the Chief Inspector and each government department contemplated in subsection (5) 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.”;
- (g) by the substitution for subsection (6) of the following subsection:
- “(6) When the Minister issues a certificate he or she must return such portion of the financial provision contemplated in **[section 41]** the National Environmental Management Act, 1998, as the Minister may deem appropriate, to the holder of the prospecting right, mining right, retention permit or mining permit, **[or]** previous holder of an old order right or previous owner of works or the person contemplated in subsection (2), but may retain any portion of such financial provision for latent and **[or]** residual safety, health or environmental impact which may become known in the future.”; and
- (h) by the addition of the following subsections:
- “(7) The holder of a prospecting right, mining right, retention permit, mining permit, or previous holder of an old order right or previous owner of works that has ceased to exist, or the person contemplated in subsection (2), as the case may be, must plan for, manage and implement such procedures and such requirements on mine closure as may be prescribed.
- (8) Procedures and requirements on mine closure as it relates to the compliance of the conditions of an environmental authorisation, are prescribed in terms of the National Environmental Management Act, 1998.
- (9) The Minister, in consultation with the Minister of Environmental Affairs and Tourism, may identify areas by notice in the *Gazette*, where

mines are interconnected or their safety, health, social or environmental impacts are integrated which results in a cumulative impact.

(10) The Minister may, in consultation with the Minister of Environmental Affairs and Tourism, publish by notice in the *Gazette*, strategies to facilitate mine closure where mines are interconnected, have an integrated impact or pose a cumulative impact. 5

(11) The holder of a prospecting right, mining right, retention permit, mining permit, or previous holder of an old order right or previous owner of works that has ceased to exist, or the person contemplated in subsection (2), as the case may be, operating or who has operated within an area identified in subsection (9), must amend their programmes, plans or environmental authorisations accordingly or submit a closure plan, subject to the approval of the Minister, which is aligned with the closure strategies contemplated in subsection (10). 10

(12) In relation to mines with an interconnected or integrated health, safety, social or environmental impact, the Minister may, in consultation with the Minister of Environmental Affairs and Tourism, determine the apportionment of liability for mine closure as prescribed. 15

(13) 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; 20
- (b) the complete and correct records, borehole core data or core-log data that the Council of Geoscience may deem relevant, have been lodged with the Council for Geoscience; or 25
- (c) in the case of the holder a permit or right in terms of this Act, 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— 30

- (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 35

- (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.”. 40

Amendment of section 45 of Act 28 of 2002

36. Section 45 of the principal Act is hereby amended—

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

“(1) If any prospecting, mining, reconnaissance, exploration or production operations or activities incidental thereto cause or results in ecological degradation, pollution or environmental damage, or is in contravention of the conditions of the environmental authorisation, or which may be harmful to health, safety or well-being of anyone and requires urgent remedial measures, the Minister, in consultation with the Minister of Environmental Affairs and Tourism, may direct the holder of the relevant right or permit in terms of this Act or the holder of an environmental authorisation in terms of National Environmental Management Act, 1998, to— 45

- (a) investigate, evaluate, assess and report on the impact of any pollution or ecological degradation or any contravention of the conditions of the environmental authorisation; 50
- (b) take such measures as may be specified in such directive in terms of this Act or the National Environmental Management Act, 1998; and
- (c) complete such measures before a date specified in the directive.”. 55

Amendment of section 46 of Act 28 of 2002

37. Section 46 is hereby amended—

(a) 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, to address any contravention in the environmental authorisation or to rehabilitate dangerous health or safety occurrences but establishes that the holder of **[the relevant]** a reconnaissance permission, prospecting right, mining right, retention permit or mining permit, the holder of an old order right or the previous owner 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 in consultation with the Minister of Environmental Affairs and Tourism, may instruct the Regional Manager concerned to take the necessary measures to prevent **[further]** pollution or ecological degradation of the environment or to rehabilitate dangerous health and social occurrences or to make an area safe.”; and

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

“(2) The measures contemplated in subsection (1) must be funded from financial provision made by the holder of the relevant **[reconnaissance permission, prospecting right, mining right, retention permit or mining permit in terms of section 41]** right, permit, the previous holder of an old order right or the previous owner of works in terms of the National Environmental Management Act, 1998, where appropriate, or if there is no such provision or if it is inadequate, from money appropriated by Parliament for the purpose.”.

Amendment of section 47 of Act 28 of 2002

38. 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 or previous owner of works, if the holder or owner thereof—”;

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

“(c) is contravening **[the approved environmental management programme]** any condition in the environmental authorisation”;

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

“(d) has submitted inaccurate, false, fraudulent, incorrect or misleading information for the purposes of the application or in connection with any matter required to be submitted under this Act;”;

(d) by the addition to 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.”; and

(e) by the substitution in subsection (2) for paragraph (d) of the following paragraph:

“(d) notify the **[mortgagor]** mortgagee, if any, of the prospecting right, mining right or mining permit concerned of his or her intention to suspend or cancel the right or permit.”.

Amendment of section 48 of the Act 28 of 2002

39. Section 48 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Subject to section **[20 of the National Parks Act, 1976 (Act No. 57 of 1976)]** 48 of the National Environmental Management: Protected Areas Act, 2003 (Act No.

57 of 2003), and subsection (2), no reconnaissance permission, prospecting right, mining right may be granted or mining permit be issued in respect of—”.

Amendment of section 49 of Act 28 of 2002

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

(a) by the substitution for subsection (1) of the following subsection: 5

“(1) Subject to subsection (2), the Minister may after inviting representations from relevant stakeholders, from time to time by notice in the *Gazette*, having regard to the national interest, the strategic nature of the mineral in question and the need to promote the sustainable development of the nation’s mineral resources— 10

(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; or

(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.”; and 15 20

(b) by the addition of the following subsection:

“(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 any application may be lodged and the terms and conditions subject to which such right or permit may be granted.”. 25

Amendment of section 52 of Act 28 of 2002

41. 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: 30

“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—”; and 35

(b) by the addition of the following subsection:

“(4) The holder of a mining right remains responsible for the implementation of the processes provided for in the Labour Relations Act, 1995(Act No. 66 of 1995), pertaining to the management of downscaling and retrenchment, until the Minister has issued a closure certificate to the holder concerned.”. 40

Amendment of section 53 of Act 28 of 2002

42. 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.”. 45

Amendment of heading to section 56 of Act 28 of 2002

43. Section 56 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading: 50

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

- (b) by the substitution for the words preceding paragraph (a) of the following words:

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

Substitution of heading to Chapter 5 of Act 28 of 2002 5

44. The following heading is hereby substituted for the heading to Chapter 5 of the Principle Act:

“**MINERALS AND [MINING DEVELOPMENT] PETROLEUM BOARD**”

Substitution of section 57 of Act 28 of 2002

45. The following section is hereby substituted for section 57 of the principal Act: 10

“Establishment of Minerals and [Mining Development] Petroleum Board

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

Amendment of section 58 of Act 28 of 2002 15

46. 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, respectively:

- “(ii) the sustainable development of the nation’s mineral and petroleum resources;
- (iii) the transformation and downscaling of the minerals and [**mining industry**] 20 petroleum industries; and
- (iv) [**dispute resolution**] objections referred to the Minister by the Board;”.

Amendment of section 59 of the Act 28 of 2002

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

- (a) by the substitution for subsection (1) of the following subsection: 25

“(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: 30

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

Amendment of section 61 of Act 28 of 23002

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

Amendment of section 63 of Act 28 of 2002

49. Section 63 of the principal Act is hereby amended— 35

- (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**] 40 members as acting Chairperson for that meeting.”.

Amendment of section 69 of Act 28 of 2002

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

“(a) For the purposes of this Chapter, section 9, 10, 11, 12, 21, [23,] 26, 29,30, [34,35,36] 37, 38A,38B, [38,39,40,41,42,] 43, 44, 45,46, 47, 48, 49, 50, 51 [and] 52, 53, 54, 55, 56, 64 and Chapter 7 and Schedule II apply with the necessary changes.”. 5

Amendment of section 71 of Act 28 of 2002

51. Section 71 of the principal Act is hereby amended by the substitution for paragraph (i) of the following paragraph: 10

“(i) review and make recommendations to the Minister with regard to the **[approval of environmental plans, environmental management programme, development programmes]** acceptance of environmental reports and the conditions of the environmental authorisations and amendments thereto; and”. 15

Amendment of section 73 of Act 28 of 2002

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

Amendment of section 74 of Act 28 of 2002

53. Section 74 of the principal Act is hereby amended— 20

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

“The designated agency must, within 14 days of the receipt of the application, accept an application for a reconnaissance permit if—”.

(b) by the deletion of the word “and” at the end of paragraph (a), the addition of the word “and” at the end of paragraph (b) and by the addition to that subsection of the following paragraph: 25

“(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.”; 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]** provide reasons.”; and 35

(d) by the substitution in subsection (4) of the following subsection:

“(4) If the designated agency accept the application, the designated agency must, within 14 days of the receipt of the application, notify the applicant in writing to— 40

(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 relevant environmental reports required in terms of Chapter 5 of the National Environmental Management Act, 1998; and

(b) submit relevant environmental reports in subsection (a), within 60 days from the date of the notice.”. 45

Amendment of section 75 of Act 28 of 2002

54. Section 75 of the principal Act is hereby amended by the substitution in subsection (1) for paragraphs (a) and (c) of the following paragraphs:

“(a) the applicant has access to financial resources and has the technical ability to conduct the proposed reconnaissance operation **[survey] operation**; 50

(c) the reconnaissance will not result in unacceptable pollution, ecological degradation or damage to the environment and that the environmental authorisation is issued.”.

Amendment of section 76 of Act 28 of 2002

55. Section 76 of the principal Act is hereby amended—

- (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) and the addition to that subsection of the following paragraph: 5
 “(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
- (b) by the substitution for subsection (3) of the following subsection: 10
 “(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]**and provide reasons.”. 15

Amendment of section 78 of Act 28 of 2002

56. Section 78 of the principal Act is hereby amended by the addition to subsection (2) 15
 of the following paragraph:

- “(c) submit a technical co-operation permit for recording in the Mineral and Petroleum Titles Registration Office.”.

Amendment of section 79 of Act 28 of 2002

57. Section 79 of the principal Act is hereby amended— 20

- (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 20
 “The designated agency must, within 14 days of the receipt of the application, accept an application for an exploration right if—
 no other person holds a technical co-operation permit, exploration right 25
 or production right for petroleum over **[any part of]** the same land and area applied for.”; 30
- (b) by the deletion of the word “and” at the end of paragraph (a), the addition of the word “and” at the end of paragraph (b) and by the addition in that subsection of the following paragraph: 30
 “(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: 35
 “(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 **[and return the application to the applicant]**and provide reasons.”; 40
- (d) by the substitution for subsection (4) of the following subsection: 40
 “(4) If the designated agency accepts the application, the designated agency must, within 14 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 relevant environmental report as required 45
 in terms of Chapter 5 of the National Environmental Management Act, 1998; and
 (b) submit **[an environmental management programme in terms of section 39]** the relevant environmental reports within a period of 120 days from the date of the notice.”; and 50
- (e) by the substitution for subsection (5) of the following subsection: 50
 “(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.”. 55

Amendment of section 80 of Act 28 of 2002

58. Section 80 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
 - “(c) the Minister has **[approved an environmental management programme in terms of section 39(4)]** issued an environmental authorisation;”;
- (b) by the substitution for subsection (2) of the following subsection:
 - “(2) The Minister **[after taking into account the need for the]** may, having regard to the type of petroleum resource concerned and the extent of the exploration [the] project, request that the applicant gives effect to section 2(d).;”;
- (c) by the substitution for subsection (3) of the following subsection:
 - “(3) The Minister must, within 60 days of receipt of the application from the designated agency, refuse to grant an exploration right if the application does not meet all the requirements referred to in subsection (1).”; and
- (d) by the addition of the following subsection:
 - “(6) An exploration right granted in terms of subsection (1) comes into effect on the effective date.”.

Amendment of section 81 of Act 28 of 2002

59. Section 81 of the principal Act is hereby amended—

- (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] environmental management programme, the rehabilitation to be completed and the estimated cost thereof and]** conditions of the environmental authorisation; and”;
- (b) by the substitution in subsection (3) for paragraph (c) of the following paragraph:
 - “(c) **[requirements of the approved environmental management programme]** conditions of the environmental authorisation.”.

Amendment of section 82 of Act 28 of 2002

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

- “(a) lodge such right within 60 days for registration at the **[Mining Titles Office within 30 days of the date on which the right—**
 - (i) **become effective; or**
 - (ii) **is renewed in terms of section 81(3)]** Mineral and Petroleum Titles Registration Office;”.

Amendment of section 83 of Act 28 of 2002

61. 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 14 days of the receipt of the application, accept an application for an exploration right if—;”;
- (b) 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) and by the addition to that subsection of the following paragraph:
 - “(c) no prior application for 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 days of the receipt of the application**[and return the application to the applicant]**and provide reasons.”; and 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 14 days of the receipt of the application, notify the applicant in writing to— 10
- (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 relevant environmental reports as required in terms of Chapter 5 of the National Environmental Management Act, 1998; and
- (b) **[conduct an environmental impact assessment and submit an environmental management programme for approval within 180 days from the date of the notice in terms of section 39]**submit relevant environmental reports within 180 days from the date of the notice”. 15

Amendment of section 84 of Act 28 of 2002 20

62. Section 84 of the principal Act is 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.”; 25
- (b) by the substitution for the subsection (2) of the following subsection:
 “(2) The Minister must, within 60 days of receipt of the application from the designated agency, refuse to grant a production right if the application does not meet all the requirements referred to in subsection (1).” 30
- (c) 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 therefore;”; and 35
- (d) by the substitution for subsection (5) of the following subsection:
 “(5) A production right granted in terms of subsection (1) becomes effective on the effective date.”. 40

Amendment of section 85 of Act 28 of 2002 40

63. 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.”. 45

Amendment of section 86 of Act 28 of 2002

64. Section 86 of the principal Act is hereby amended—
- (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]** 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 85(3);]** within 60 days after the right has become effective; 55

- (b) by the substitution in subsection (2) for paragraphs (c), (d) and (e) of the following paragraphs, respectively:
 - “(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 the]** conditions of the environmental authorisation and the prescribed social and labour plan;
 - (e) in terms of any relevant law, pay the State royalties; and”;
- (c) by the deletion in subsection (2) of paragraph (g).

Amendment of section 88 of Act 28 of 2002 10

65. 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 contemplated in subsection (1)(b) within 30 days from the date of submission thereof to the Council for Geoscience.”.
- 15

Amendment of section 92 of Act 28 of 2002

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

- (a) by the substitution for the words preceding paragraph (a) of the following words:
 - “Any authorised person may **[during office hours,]** without a warrant—
 - ”; and
 - (b) by the substitution for paragraph (b) of the following paragraph:
 - “(b) require the holder of the right, permit or permission **[or]** in question 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 purpose of obtaining copies thereof or extracts therefrom.”.
- 20

Amendment of section 93 of Act 28 of 2002 30

67. 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 granted or issued or **[any environmental management programme or]** an environmental authorisation issued, has occurred or is occurring on the relevant reconnaissance, exploration, production, prospecting, mining or retention area or place where prospecting operations or mining operations or processing operations are being conducted, such a person may—”.
- 35

Amendment of section 96 of Act 28 of 2002

68. Section 96 of the principal Act is hereby amended— 40

- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) Any person whose rights or legitimate expectations have been materially and adversely affected or who is aggrieved by any administrative decision in terms of this Act may appeal within 30 days becoming aware of such administrative decision in the prescribed manner to—
 - (a) the Director-General, if it is an administrative decision 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;
 - (b) the Minister, if it is an administrative decision that was taken by the Director-General or the designated agency.”;
 - (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.
- 45

(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

- 69.** Section 98 of the principal Act is hereby amended—
- (a) by the substitution in paragraph (a) for subparagraphs (i), (ii), (iii) and (iv) of the following subparagraphs respectively:
 - “(i) section 5(4), **[20(2), 19]** or 28;
 - (ii) section 92, 94 or 95;
 - (iii) section 35 [or 38(1)(c)];
 - [(iv) section 42(1) or (2)]**”; and
 - (b) by the substitution for paragraph (c) of the following paragraph:
 - “(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

- 70.** Section 100 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:
- “(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 for targets and time table for effecting the entry into and active participation of historically disadvantaged South Africans into 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

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

“Appointment of contractor

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.”.

Substitution of section 102 of Act 28 of 2002

- 72.** 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, mining work programme [environmental management programme] or an environmental authorisation issued in terms of the National Environmental Management Act, 1998, 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, mineralised bodies or strata, which are not at the time the subject thereof) without the written consent of the Minister.

(2) The amendment or variations 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 mineralised 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

73. 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

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

“(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 section 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

75. 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 106 of Act 28 of 2002

76. Section 106 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Despite subsection (1), the organ of state so exempted must submit **[an environmental management programme for approval in terms of section 39 (4)]** relevant environmental reports required in terms of Chapter 5 of the National Environmental Management Act, 1998, to obtain an environmental authorisation.”.

Amendment of section 107 of Act 28 of 2002

77. Section 107 of the principal Act is hereby amended by the deletion in subsection (1) of paragraph (a).

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

78. 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:

“**‘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:
- “**‘OP26 mining lease’** means **[the]** any mining lease granted [to Mossgas (Pty) Ltd under] in terms of clause 22 of [the] prospecting lease OP26 [prospecting lease] 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:
- “**‘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: ”
- “**‘OP26 right’** means **[an]** 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 an OP26 mining lease;”.

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

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

- “(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

80. Item 4 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 Offices]** 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 deregistration of the OP26 sublease as the case may be.”; and
- (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 Tiles Office]** Mineral and Petroleum Titles Registration Office.”.

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

81. 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 for deregistration of OP26 lease , as the case may be.”; and

(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.”.

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

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82. Item 6 of Schedule II of 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.”.

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

83. Item 7 of Schedule II to the principal Act is hereby amended— 15

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

“(1) Subject to subitems (2) and (8), any old order mining right in force immediately before this Act took effect continues 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.”;

(b) by the substitution for the expression “Mining Titles Office” in subsection (1)(g) for the expression “Mineral and Petroleum Registration Office”;

(c) by the substitution in item (2) for subitem (k) of the following subitem: 25

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

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

“3A. If the applicant does not comply with the requirements of the subitem (2) and (3), the Regional Manager must in writing request the applicant to comply within 60 days of such request. 30

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. 35

3C. If the application relates to land occupied by the 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.”; and

(d) by the substitution for subitem (5) of the following subitem: 40

“(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.”. 45

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

84. Item 8 of Schedule II to the principal Act is hereby amended by the substitution of subitem (1) of the following subitem: 50

“(1) Any unused old order right in force immediately before this Act took effect, continues 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 Schedule II to Act 28 of 2002

85. Item 9 of Schedule II to the principal Act is hereby amended by the substitution for subitem (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 such reservation, permission or right in the **[Mining Titles Office]** Mineral and Petroleum Titles Registration Office within **[one]** six years from the date on which this Act took effect and if such holder, user or occupier fails to register such reservation, permission or right, the reservation, permission or right shall cease to exist.”.

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

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

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

“(4) If the holder of an old order prospecting right or old order right 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) and 45 **[applies]** apply to a holder of an old order prospecting right or old order mining right.”; and

(b) by the addition of the following subitem:

“(6) 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.”.

Insertion of Item 10A in Table 2 of Act 28 of 2002

87. The following item is hereby inserted in Schedule II to the principal Act after item 10—

“**10A.** Section 52 applies to a holder of an old order prospecting right or old order mining right.”.

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

88. Item 12 of Schedule II to the principal Act is hereby amend—

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

“(4) Any claim for compensation must be lodged with the Director-General **[in the prescribed manner]** 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).”; and

(b) by the addition of the following subitems:

“(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

(c) 180 days after the claimant has been informed in writing that the Director-General has refused a determination and payment of compensation.

- (6) On the occurrence of any of the event 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, 21 of the Expropriation Act, 1975 (Act No. 63 of 1975), apply with 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

89. Table 2 of Schedule II to 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 Schedule II to Act 28 of 2002

93. Table 3 of Schedule II to 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 in terms of section 9(1) of the Minerals Act.”.

Short title and commencement

94. (1) This Act is called the Mineral and Petroleum Resources Development Amendment Act, 2008, and shall come into operation on the date fixed by the President by proclamation in the *Gazette*.

(2) Despite subsection (1), 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 THE BILL

1. The main objects of the Bill are 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 make the Minister of Minerals and Energy the responsible authority for implementing environmental policy and legislative requirements in terms of NEMA, 1998, as it relates to prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration and production area.
- 1.2 The Bill seeks to promote and allow for efficient and effective administration of the country's mineral resources and to enhance co-operative governance between organs of state as well as confirming sound environmental management principles. 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). Ambiguities that exist in the principal Act regarding certain definitions are addressed and certain new definitions have been inserted to specifically harmonize the principal Act with definitions pertaining to environmental management in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998). The Bill further seeks to confirm the separation of powers between the Minister of Minerals and Energy, who is authorized 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 Mining Royalty Bill).
- 1.3 The Bill also seeks to enhance the promotion of HDSA participation including the community in the mining industry whilst at the same time preventing the occurrence of fronting, share manipulation and dilution and exploitation of BEE.

The Bill empowers the Minister, where the application relates to the land occupied by a community, to impose conditions as are necessary to promote the rights and interests of the community, including conditions requiring the participation of the community.

The Bill further strengthens the manner of consultation with the landowner, lawful occupier and interested and affected parties by prescribing in the regulation the manner in which the landowner, lawful occupier and interested and affected parties must be consulted.

The Bill also seeks to attract foreign and local investment in the country in that it makes all geological data and prospecting information of the country's mineral resources available at the Council for Geoscience.

- 1.4 The Bill encourages beneficiation of minerals, in that it empowers the Minister to set the levels of beneficiation by regulation.

The Bill also seeks to ensure that the holder of a mining right informs the Minister about possible retrenchments of employees and that the Minister through the Advisory Board takes immediate corrective measures to mitigate the impact of retrenchments.

The Bill promotes co-operative governance in that the Regional Mining Development and Environmental Committee will be able to consider recommendations to the Minister on environmental objections received from other state departments and not only upon the application stage.

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:

The 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.