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**GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS**

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**DEPARTMENT OF MINERAL RESOURCES**

NO. 1706

24 DECEMBER 2019

**PUBLICATION OF DRAFT UPSTREAM PETROLEUM RESOURCES  
DEVELOPMENT BILL, 2019 FOR PUBLIC COMMENT**

I, **SAMSON GWEDE MANTASHE, MP**, Minister of Mineral Resources and Energy, hereby publish the Draft Upstream Petroleum Resources Development Bill, 2019 for public comment.

Interested and affected parties are hereby invited to submit written representations on the draft Bill. The representations must be marked for the attention of **Ms Sibongile Malie** and hand delivered, emailed or sent by post, on or before **21 February 2020** to the following addresses;

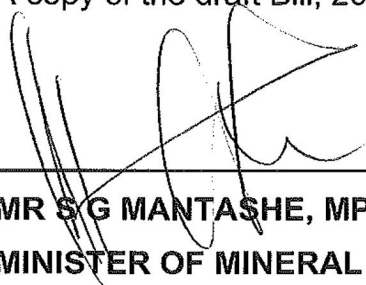
70 Meintjies street  
Sunnyside  
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or

Private Bag X 59  
Arcadia  
0007

Email address: [representations@dmr.gov.za](mailto:representations@dmr.gov.za)

A copy of the draft Bill, 2019 is attached hereto.



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**MR S G MANTASHE, MP**  
**MINISTER OF MINERAL RESOURCES AND ENERGY**

**REPUBLIC OF SOUTH AFRICA**

**UPSTREAM PETROLEUM RESOURCES DEVELOPMENT BILL**

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*(As introduced in the National Assembly (proposed section 76); explanatory  
summary of Bill published in Government Gazette No. ... of 2019) (The English  
text is the official text of the Bill)*  
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**(MINISTER OF MINERAL RESOURCES AND ENERGY)**

**[B 2019]**

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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.

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**BILL**

**To make provision for equitable access to and sustainable development of the nation's petroleum resources; to provide for orderly development of petroleum resources, to create an enabling environment for the acceleration of exploration and production of the nation's petroleum resources, to provide for active State participation in the development of the nation's petroleum resources; to provide for black person's participation in the upstream petroleum sector; to provide for the establishment of the Petroleum Agency of South Africa as the national regulatory authority for the upstream petroleum sector; to provide for the objectives and functions of the Agency; to provide for the constitution of the Board of the Agency, the appointment of the Chief Executive Officer of the Agency, the staff and the finances of the Agency; to provide for the designation of PetroSA as a National Oil Company; and to provide for matters connected therewith.**

**PREAMBLE**

**ACKNOWLEDGING** that South Africa's petroleum resources belong to the nation and that the State is the custodian thereof;

**RECOGNISING** that petroleum resources are non-renewable natural resources and must contribute to South Africa's social and economic development;

**Recognising** the need to accelerate petroleum exploration and production; and

**REAFFIRMING** the State's commitment to regulatory certainty and guaranteeing security of tenure in respect of exploration and production rights;

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

## **ARRANGEMENT OF ACT**

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3. Custodianship of nation's petroleum resources
4. Interpretation of Act
5. Legal nature of exploration right, production right, and rights of holder thereof
6. Prohibition relating to illegal acts
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9. Establishment of Petroleum Agency

10. Functions of Petroleum Agency
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12. Appointment and functions of Chief Executive Officer
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28. Consultation with interested and affected parties
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38. Active participation of black persons in exploration and production rights
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59. Rights and obligations of holder of retention permit
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**SCHEDULE 1**  
**AMENDMENT OF LAWS**

**CHAPTER 1**  
**DEFINITIONS**

**Definitions**

1. In this Act, unless the context indicates otherwise—

“administrative fees” means fees levied in terms of this Act for the purposes of funding administrative operations of Petroleum Agency;

**"appraisal operations"** means any operation, study, activity to appraise and evaluate the extent and volume of petroleum within a discovery made by the holder in the exploration area for purposes of determining whether the discovery is in such quantities as will permit the economic development thereof on its own or in combination with other existing discoveries as part of a unitised development;

**"appraisal work programme"** means the approved appraisal work programme indicating the operations to be conducted in the appraisal area during the validity of the exploration right, including—

- (a) the details regarding the appraisal activities, phases, equipment to be used;  
and
- (b) estimated expenditures for the different appraisal activities and phases;

**"black person"** is a generic term which means Africans, Coloureds and Indians—

- (a) who are citizens of the Republic of South Africa by birth or descent; or

- (b) who became citizens of the Republic of South Africa by naturalisation—
  - (i) before 27 April 1994; or
  - (ii) on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date; or
- (d) a juristic person which is managed and controlled by persons contemplated in paragraph (a) or (b) and the persons collectively or as a group own and control all issued share capital or members' interest, and are able to control the majority of the members' vote;

**"block"** means any area of land or sea, including the sea bed, identified as a block by co-ordinates on a map prepared by the Petroleum Agency of South Africa and situated wholly or partly in the Republic or its exclusive economic zone and includes any part of such block;

**"Board"** means the Board of the Petroleum Agency of South Africa contemplated in section 15;

**"Broad based black economic empowerment"** means a social or economic strategy, plan, principle, approach or act which is aimed at—

- (a) redressing the results of past or present discrimination based on race, gender or other disability of historically disadvantaged persons in the petroleum industry, related industries and in the value chain of such industries; and
- (b) transforming such industries so as to assist in, provide for, initiate or facilitate—
  - (i) the ownership, participation in or the benefiting from existing or future exploration or production operations;
  - (ii) the participation in or control of management of such operations;

- (iii) the development of management, scientific, engineering or other skills of black persons;
- (iv) the involvement of or participation in the procurement chains of operations;
- (v) the ownership of and participation in the beneficiation of the proceeds of the operations or other upstream or downstream value chains in such industries;
- (vi) the socio-economic development of communities immediately hosting or affected by supplying of labour to the operations; and
- (vii) the socio-economic development of black persons the proceeds or activities of such operations;

**"carried interest"** means the interest allocated to the State in an exploration or production right, which interest vests exclusively for the benefit of the State and the costs of which are borne by the carrying holder as contemplated in section 39;

**"Chief Executive Officer"** means the person appointed in terms of section 12 as the Chief Executive Officer of the Petroleum Agency of South Africa;

**"Chief Inspector"** means the Chief Inspector of petroleum operations appointed in terms of applicable legislation regulating upstream petroleum health and safety;

**"commercial discovery"** means the discovery of petroleum within the exploration area in such quantities as will permit the economic development thereof, on its own or in combination with other existing discoveries or as part of a unitised development;

**"controlling interest" in relation to—**

- (a) a company, means the majority of the voting rights attaching to all classes of shares in the company;

(b) any other business other than a company referred to in paragraph (a), means any interest which enables the holder thereof to exercise directly or indirectly any control whatsoever over the activities or assets of the business;

**"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;

**"Department"** means the Department of Mineral Resources and Energy;

**"discovery"** means the discovery by the holder of an exploration right of petroleum within the exploration area;

**"development programme"** means the development programme approved under the terms and conditions of the production right;

**"Director-General"** means the Director-General of the Department;

**"employee"** means any person who works for the holder of a retention permit, technical co-operation permit, reconnaissance permit, exploration right and production right, and who is entitled to receive any remuneration, and includes any person working for an independent contractor;

**"environment"** means the environment as defined in section 1 of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

**"environmental authorisation"** has the meaning assigned to it in section 1 of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

**"existing exploration right"** means an exploration right granted prior to the commencement of this Act;

**"exploration area"** means the area comprising the block or blocks depicted in an exploration or production right;

**"exploration operation"** means any operations carried out for, or in connection with, the exploration for petroleum, and includes the reprocessing of existing seismic data, acquisition and processing of new seismic data or any other related activity to define a trap to be tested by drilling, logging and testing, including extended well testing, of a well with the intention of locating a discovery;

**"exploration right"** means an exploration right granted in terms of section 47;

**"exploration work programme"** means the approved exploration work programme indicating the petroleum exploration operations to be conducted on the exploration area during the validity of the exploration right, including the details regarding the exploration activities, phases, equipment to be used and estimated expenditures for the different exploration activities and phases;

**"holder"**, in relation to a retention permit, exploration right, production right, reconnaissance permit or technical co-operation permit, means the person to whom such right or permit has been granted or such person's successor in title;

**"land"** includes the surface of the land and the sea, where appropriate;

**"listed company"** means a 'listed company' as defined by the Income Tax Act, 1962 (Act No. 58 of 1962);

**"Mineral and Petroleum Titles Registration Office"** means the Mineral and Petroleum Titles Registration Office contemplated in section 2 of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967);

**"Minister"** means the Minister responsible for mineral resources and energy;

**"National Environmental Management Act"** means the National Environmental Management Act, 1998 (Act No. 107 of 1998);

**"officer"** means any employee of the Petroleum Agency of South Africa ;

**"owner"**, in relation to land means-

- (i) a person in whose name the land is registered; or
- (ii) if it is land owned by the State, means the State together with the occupant thereof;

**"pending application"** means an application that was submitted but not finalised before the commencement of this Act;

**"petroleum"** means any liquid, solid hydrocarbon or combustible gas existing in a natural condition in the earth's crust and includes associated liquid or gas, any liquid or solid hydrocarbon or combustible gas, which gas has in any manner been returned to such natural condition, but does not include coal, bituminous shale or other stratified deposits from which oil can be obtained by destructive distillation or gas arising from a marsh or other surface deposit;

**"Petroleum Agency"** refers to the Petroleum Agency of South Africa established in terms of section 9;

**"Petroleum Development and Environmental Committee"** means a Petroleum Development and Environmental Committee established in terms of section 29;

**"petroleum reservoir"** means a geological formation containing petroleum;

**"petroleum resource rent fee"** means a resource fee calculated on the basis of the quantity and value of petroleum produced, payable to the State in terms of an Act of Parliament;

**"PetroSA"** refers to the Petroleum Oil and Gas Corporation of South Africa (SOC) Ltd;

**"prescribed"** means prescribed by regulation;

**"production area"** means any area which is subject to a production right;

**"production operation"** means any operation carried out in connection with the production of petroleum, and includes any activity or matter that relates to the, appraisal, development and production of petroleum;

**"production right"** means a production right granted in terms of section 52;

**"reconnaissance operation"** means any operation carried out for or in connection with the search for petroleum by geological, geophysical and photo geological surveys and includes any remote sensing techniques;

**"reconnaissance permit"** means a permit granted in terms of section 42;

**"record"** means recorded information regardless of form or medium;

**"regulation"** means any regulation made under section 95;

**"retention area"** means the area of land which comprises the subject of a retention permit;

**"retention permit"** means a permit issued in terms of section 56;

**"Sea"** means the sea as defined in the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) continental shelf as contemplated in the Maritime Zones Act, 1994 (Act No. 15 of 1994);

**"State participation"** means a participating interest by the State in exploration and production rights as contemplated in section 39;

**"royalties"** means any royalties payable to the State in terms of an Act of Parliament;

**"sustainable development"** means the integration of social, economic and environmental factors into planning, implementation and decision making so as to ensure that petroleum resources development serves present and future generations;



**"technical co-operation permit"** means the technical co-operation permit issued in terms of section 44;

**"the sea"** has the meaning assigned to it by the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008), and includes the territorial waters, the exclusive economic zone and the continental shelf as contemplated in the Maritime Zones Act, 1994 (Act No. 15 of 1994);

**"this Act"** includes the regulations;

## CHAPTER 2

### FUNDAMENTAL PRINCIPLES

#### Objects of Act

2. The objects of this Act are to—
- (a) recognise the internationally accepted right of the State to exercise sovereignty over all the petroleum resources within the Republic;
  - (b) give effect to the principle of the State's custodianship of the nation's petroleum resources;
  - (c) promote equitable access to the nation's petroleum resources to all the people of South Africa;
  - (d) substantially and meaningfully expand opportunities for black persons, to enter into and actively participate in the upstream petroleum sector and to benefit from the exploitation of the nation's petroleum resources;
  - (e) promote economic growth and petroleum resources development in the Republic;
  - (f) promote employment and advance the social and economic welfare of all South Africans;
  - (g) provide for security of tenure in respect of exploration and production operations;
  - (h) give effect to section 24 of the Constitution by ensuring that the nation's petroleum resources are developed in an orderly and ecologically sustainable manner while promoting justifiable social and economic development;

- (i) ensure that holders of production rights contribute to the socio-economic development of the areas in which they are operating;
- (j) encourage and promote national development of petroleum resources through acceleration of exploration and production; and
- (k) promote and facilitate acquisition of petroleum geotechnical data.

### **Custodianship of nation's petroleum resources**

3. (1) Petroleum resources are the common heritage of all the people of South Africa and the State is the custodian thereof for the benefit of all South Africans.

(2) As the custodian of the nation's petroleum resources, the State, acting through the Minister, may—

- (a) grant, issue, refuse, control, administer and manage any reconnaissance permit, permission to remove, retention permit, technical co-operation permit, exploration right and production right; and
- (b) prescribe administrative fees and any other fees payable in terms of this Act.

(3) The Minister must ensure the sustainable development of South Africa's petroleum resources within a framework of national environmental policy, norms and standards and ensure that the industry contributes to welfare, employment as well as strengthening of the South African trade and industry and industrial development.

(4) Royalties, production bonus and the petroleum resource rent tax in respect of the development of petroleum resources must be determined and levied by the Minister of Finance in terms of an Act of Parliament.

## Interpretation of Act

4. (1) When interpreting a provision of this Act, any reasonable interpretation which is consistent with the objects of this Act must be preferred over any other interpretation which is inconsistent with such objects.

(2) In so far as the common law is inconsistent with this Act, this Act prevails.

## Legal nature of exploration right or production right, and rights of holders thereof

5. (1) An 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 petroleum and the block or blocks to which such right relates.

(2) The holder of an exploration right or production right is entitled to the rights referred to in this section and such other rights as may be granted to, acquired by or conferred upon such holder under this Act or any other law.

(3) Subject to this Act, any holder of an exploration right or production right may—

(a) enter the block or blocks to which such right relates together with his or her employees, and bring onto that block or blocks 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 of an exploration or production, as the case may be;

- (b) explore or produce, as the case may be, for his or her own account on or under that block or blocks for the petroleum for which such right has been granted;
- (c) remove and dispose of any such petroleum found during the course of production;
- (d) subject to the National Water Act, 1998 (Act No. 36 of 1998), use water from any natural spring, lake, river or stream, situated on, or flowing through, such land or from any excavation previously made and used for exploration or production purposes, or sink a well or borehole required for use relating to exploration or production on such block or blocks; and
- (e) carry out any other activity incidental to exploration or production operations, which activity does not contravene the provisions of this Act.

#### **Prohibition relating to illegal acts**

6. No person may conduct technical co-operation operations or studies, reconnaissance operations, explore for and produce any petroleum or commence with any work incidental thereto on any block or blocks without—

- (a) an environmental authorisation, where applicable;
- (b) a reconnaissance permit, permission to remove, retention permit, technical co-operation permit, exploration right or production right, as the case may be; and
- (c) giving the Petroleum Agency, landowner or lawful occupier of the land in question at least 21 days written notice.

## **Principles of administrative justice**

7. (1) Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), any administrative action in terms of this Act must be taken within a reasonable time and in accordance with the principles of lawfulness, reasonableness and procedural fairness.

(2) Any administrative action contemplated in subsection (1) must be in writing and accompanied by written reasons.

## **CHAPTER 3**

### **ADMINISTRATION**

#### **Division of Republic, territorial waters, continental shelf and exclusive economic zone into blocks**

8. (1) For the purposes of this Act, the Minister must, by notice in the Gazette, divide the Republic including territorial waters, exclusive economic zone and the continental shelf into numbered blocks.

2. The size of the block or blocks in respect of existing permits or rights granted before the coming into effect of this Act shall not be reduced as a result of section (1).

#### **Establishment of Petroleum Agency**

9. (1) The Petroleum Agency of South Africa is hereby established as a juristic person.

(2) The Petroleum Agency is, subject to this Act, the national authority responsible for—

(a) the promotion and evaluation of petroleum resources;

- (b) the regulation of exploration and production of petroleum resources; and
- (c) the custodianship of petroleum geotechnical data.

### **Functions of Petroleum Agency**

**10.** The Petroleum Agency must—

- (a) provide technical support to the Minister for the promotion of onshore and offshore exploration for, and production of petroleum;
- (b) receive applications for reconnaissance permits, technical co-operation permits, exploration rights, production rights and retention permit in terms of this Act;
- (c) evaluate such applications and make recommendations to the Minister;
- (d) monitor, enforce compliance and report regularly to the Minister in respect of compliance with such permits or rights;
- (e) receive, maintain, store, interpret, evaluate, add value to, disseminate or deal in, all geotechnical data relating to petroleum submitted in terms of section 62;
- (f) bring to the notice of the Minister any information in relation to the exploration and production of petroleum which is likely to benefit the State;
- (g) advise and recommend to the Minister on the need to carry out on behalf of the State reconnaissance operations in connection with petroleum by itself, through contractors or through any other State enterprise;
- (h) collect the prescribed fees in respect of reconnaissance permits, technical co-operation permits, retention permit, exploration rights and production rights; and

- (i) perform any other function in respect of petroleum resources, which the Minister may determine from time to time.

### **Funding of Petroleum Agency**

11. (1) Funds of the Petroleum Agency consist of—

- (a) moneys appropriated by Parliament;
- (b) moneys received by way of State grant or contribution and investment;
- (c) fees payable in terms of this Act; and
- (d) revenue received from the sale of petroleum geotechnical data.

(2) The Petroleum Agency must utilise its funds to defray the expenses incurred in the performance of its functions under this Act;

(3) Moneys received by way of any State grant or contribution in accordance with subsection (1)(d) must be utilised in accordance with any conditions so imposed by the grantor or contributor.

(4) The Petroleum Agency may, with the approval of the Minister, provide technical and consulting services and assistance to equivalent agencies of other countries.

### **Appointment and functions of Chief Executive Officer**

12. (1) The Board must, in consultation with the Minister, appoint a suitable person as Chief Executive Officer of the Agency.

(2) The Agency must pay the Chief Executive Officer the remuneration, allowances, subsidies and other service benefits determined from time to time by the Board in consultation with the Minister.



(3) Subject to the directions and instructions of the Board, the Chief Executive Officer is responsible for the administration and the general management of the Petroleum Agency.

### **13. Persons in service of Petroleum Agency**

(1) The Chief Executive Officer must be assisted in the performance of his or her functions by persons appointed to the Petroleum Agency on such conditions of service as determined by the Board.

### **Accounting by Petroleum Agency**

**14.** (1) The Petroleum Agency must perform its functions and report in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999), and any other Act of Parliament.

(2) The Petroleum Agency must open one or more accounts in its name with one or more financial institutions registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990), and deposit therein all moneys received from the sources contemplated in section 11.

(3) The financial records of the Petroleum Agency must be audited in accordance with the Public Audit Act, 2004 (Act No. 25 of 2004).

(4) The financial year of the Petroleum Agency starts on 1 April of each year and ends on the 31 March of the following year.

## Composition of Board

15. (1) The Minister must appoint a Board of the Petroleum Agency consisting of at least eight members;

(2) The Board must consist of the following—

- (a) one official from the Department of Mineral Resources and Energy;
- (b) one official from any other relevant Department;
- (c) one independent person with expertise in the practical application of a relevant natural science discipline;
- (d) one independent person with knowledge or experience of petroleum exploration and production activities;
- (e) two other persons with appropriate experience, expertise or skills to enhance the Board's capability of performing its functions more effectively; and
- (f) the Chief Executive Officer of the Petroleum Agency by virtue of holding that office.

(3) The Minister must designate the chairperson of the Board from the members contemplated in subsection (2).

(4) The Minister may, whenever he or she deems it necessary or expedient, subject to the provisions of subsection (1) and (3), appoint an alternate member for any member of the Board.

### Functions of Board

16. (1) The Board must ensure that the functions of the Petroleum Agency are performed and that in so doing the objects of the Agency as the Regulator are achieved.

(2) The Board—

(a) must advise the Minister on—

- (i) any matter which must be referred to the Board by or under this Act;
- (ii) the sustainable development of the nation's petroleum resources;
- (iv) ensure adherence to good governance in terms of all prescribed

legislation

(b) must ensure the promotion of human resource development in the petroleum industry; and

(c) may enquire into and report to the Minister on any matter concerning the objects of this Act.

(3) The Board must perform any function imposed upon it by the Minister in accordance with the policy directive not in conflict with this Act.

(4) The Board must give priority to matters referred to it by the Minister.

### Term of office of members of Board

17. (1) A member or alternate member of the Board, except the chief executive officer, must hold office for such period as the Minister may determine at the time of his or her appointment, which period may not exceed three years.

(2) Any person whose term of office as a member or alternate member of the Board has expired, is eligible for reappointment for one additional term of office only.

(3) If a member or an alternate member of the Board for any reason vacates his or her office, the Minister may appoint a person in the place of such member or alternate member for the unexpired period of the term of office.

### **Meetings of Board**

**18.** (1) The chairperson, or in his or her absence, a member of the Board elected by the members present, must preside over meetings of the Board.

(2) The first meeting of the Board must be held at a time and place determined by the chairperson, and thereafter at a time and place determined by the Board.

(3) The chairperson may at any time, and must at the request of not less than two thirds of the members in office at the time, convene a special meeting of the Board, and must determine the time and place of the meeting.

(4) The quorum for a meeting of the Board is the majority of its members.

(5) The Chairperson must submit any recommendation of the Board relating to the application of this Act to the Minister within seven days after such resolution has been passed by the Board.

(6) A member of the Board must recuse himself or herself from participating in any investigation, hearing or decision concerning a matter in respect of which that member has a financial or personal interest.

### **Committees of Board**

**19.** (1) The Board may establish permanent or *ad hoc* committee as it deems necessary to assist it in the performance of its functions, and any such committee may include members who are not members of the Board.

(2) A committee established under subsection (1) may, subject to the approval of the Board, establish *ad hoc* working groups to assist it in the performance of its functions, and any such working group may include persons who are not members of such committee or the Board.

(3) If a committee or working group consists of more than one member, the Board must designate a member of such committee or working group as chairperson thereof.

(4) A committee or working group of the Board is accountable to the Board.

(5) The assistance contemplated in subsections (2) and (3) does not absolve the Board from its responsibility under this Act.

### **Remuneration of members of Board, committees and working groups**

**20.** A member of the Board, a committee or working group, except a member who is a fulltime employee of the State, must be appointed on such conditions including conditions relating to the payment of remuneration and allowances as the Minister may determine with the concurrence of the Minister of Finance.

### **Persons disqualified from being members of Board**

**21.** No person contemplated in section 15(2)(c) to (e) may be appointed as a member of the Board if she or he—

- (a) has been declared by a court to be mentally ill or disordered;
- (b) is an unrehabilitated insolvent;
- (c) is not a citizen of or permanently resident in the Republic;
- (d) has been convicted of an offence and has been sentenced therefor to imprisonment without the option of fine.

### **Vacation of office by members of Board**

**22.** (1) A member of the Board must vacate his or her office if he or she—

- (a) becomes subject to any disqualification contemplated in section 21 or, in the case of an official in the service of the State, ceases to be such an official;
- (b) has been absent from more than two consecutive meetings of the Board without the Board's leave;
- (c) tenders his or her resignation in writing to the Minister and the Minister accepts the resignation; or
- (d) is removed from office by the Minister under subsection (2).

(2) The Minister may, after following a fair process, remove any member of the Board from office—

- (a) on account of misconduct, incapacity or incompetence; or
- (b) if the member has engaged in any activity that may undermine the integrity of the Board, which may include—

- (i) participation in any investigation, hearing or decision concerning a matter in respect of which that person has a financial or personal interest;
- (ii) making private use of, or profiting from, any confidential information obtained as a result of performing his or her functions as a member of the Board; or
- (iii) divulging any information referred to in paragraph (ii) to any third party, except as required by or under this Act or the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

(3) The Minister may on good cause shown dissolve the Board and appoint a new Board in accordance with section 15.

### **Reports of Board**

**23.** In addition to any specific report which the Minister may request from the Board from time to time, the Board must before 31 March of each year submit a report to the Minister setting out the activities of the Board during the year preceding that date and must include a business plan for the ensuing year.

### **Transitional provisions and savings**

**24.** (1) (a) Every person who is in the service of the Petroleum Agency of South Africa established immediately before this Act takes effect is, as from that date, transferred to the service of the Petroleum Agency established by section 8.

(b) Every person so transferred must be regarded as having been appointed in terms of section 13.

(2) The remuneration and other terms and conditions of service of any person contemplated in subsection (1) may not be less favourable than the remuneration and other terms and conditions of service applicable to that person immediately before this Act takes effect and he or she remains entitled to all rights, benefits and privileges to which he or she was entitled to immediately before that date, including, where applicable—

- (a) membership of a pension fund;
- (b) membership of a medical aid scheme;
- (c) employer contributions in connection with the memberships contemplated in paragraphs (a) and (b);
- (d) accrued pensionable service;
- (e) accrued leave benefits; and
- (f) retirement at a specific age.

(3) Any person transferred to the service of the Petroleum Agency in terms of subsection (1), who immediately before such transfer was a member of a pension fund, remains a member of that pension fund upon such transfer notwithstanding any provision to the contrary in any law or in the rules of that pension fund and the Petroleum Agency shall contribute to the pension fund in respect of that person to the same extent as an employer is required in terms of the laws and rules regulating that pension fund to contribute in respect of an employee who is a member of that fund.

(4) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of employer shall be regarded as having taken place when a



person is transferred to the service of the Petroleum Agency in terms of subsection (1) and the position of those persons in respect of the phasing-in of tax levied on benefits or advantages derived by reason of employment or the holding of any office as contemplated in the Seventh Schedule to the Income Tax Act, 1962, shall be regarded as remaining unchanged.

(5) All assets, rights, liabilities and obligations which, on the date when this section Act takes effect, vest in the Petroleum Agency of South Africa established immediately before this Act takes effect pass to the Petroleum Agency referred to in subsection (1) on that date.

(6) The registrar of deeds must make the necessary entries or endorsements for the transfer of any property in terms of subsection (5), and no transfer fee, office fee or other charge is payable in respect of that entry or endorsement.

(7) Any application for a reconnaissance permit, exploration right, technical co-operation permit, production right or retention permit lodged in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), but not finalised on the date on which this Act takes effect must be regarded as having been lodged after that date.

(8) Any right or permit lodged for registration with the Mineral and Petroleum Titles Registration Office in terms of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967) but not finalised on the date on which this Act takes effect must be regarded as having been lodged after that date.

(9) Any right, permit, exemption or any other form of authorisation issued before the date on which this Act takes effect continues in force, subject to

the terms and conditions under which it was granted or issued or was deemed to have been granted or issued, until such time it is due for renewal.

(10) If an application for renewal of a right or permit or form of authorisation referred to in terms of subsection (9) has been lodged within the period referred to in subsection (9), the right or permit or authorisation remains valid until the application is decided.

(11) Anything done before the commencement of this Act under or in terms of a provision repealed by this Act must be regarded, unless clearly inappropriate, to have been done under or in terms of the corresponding provision of this Act.

## CHAPTER 4

### PETROLEUM REGULATION

#### **Investigation of occurrence, nature and extent of petroleum resources**

**25.** (1) The Minister may through a notice in a Gazette direct the Petroleum Agency, in collaboration with other relevant Departments and State-owned entities, to undertake an investigation of petroleum occurrence, nature, extent and its potential impacts on other economic activities which may amongst others include-

- (a) the potential of petroleum activities to advance the attainment of the objects referred to in section 2; and
- (b) the potential economic and social impact of the petroleum activities.

(2) Any investigation in terms of this section must be conducted in a manner which prevents any detrimental effect to the land and the environment.

### **Application for permits or rights**

**26.** (1) The Minister may, by notice in the Gazette, invite applications for exploration rights, technical co-operation permit and production rights in respect of block or blocks as specified in the notice, and may prescribe in such notice—

- (a) the period within which any application may be lodged with the Petroleum Agency;
- (b) the procedures which must apply in respect of such lodgment; and
- (c) the terms and conditions subject to which such applications may be granted or refused.

(2) Applications received in terms of subsection (1) must be processed in accordance with the provisions of this Act, including the terms and conditions specified in the notice contemplated in subsection (1).

(3) Notwithstanding the publication of a notice contemplated in subsection (1) for any form of a permit or right in terms of this section, the Minister is not obliged to grant any permit or right pursuant to an application so received.

(4) In order to give effect to objectives referred to in section 2 (j) and (k) the Minister may, by notice in the Gazette, invite seismic survey operators to lodge applications for reconnaissance permits to conduct regional seismic survey over multiple blocks, subject to terms and conditions to be agreed upon.

(5) The gazette notice contemplated in subsection (4) may include block or blocks which are a subject of existing exploration right or production right.

(6) Notwithstanding the provisions of subsection (5), applications for reconnaissance permits may be lodged in terms of section 41 in a prescribed

manner with the office of the Petroleum Agency at any time in respect of such block or blocks not subject to an invitation contemplated in subsection (5).

(7) Notwithstanding the provisions of subsection (1), the Minister may invite applications for exploration or production right on a first come first serve basis on such block or blocks identified by the Minister.

(8) Applications received in relation to subsection (7) shall be processed in terms of sections 46 and 51 respectively.

### **Processing of applications lodged in terms of section 26**

**27.** (1) Petroleum Agency must, within 14 days acknowledge receipt of an application in writing.

(2) The Petroleum Agency must within 60 days from the date of acknowledgment of the application as contemplated in subsection (1) inform applicants in writing of the decision to accept or reject an application.

(3) The Petroleum Agency must accept an application if –

(a) the applicant has proven financial resources in a form financial guarantee acceptable to Petroleum Agency and has the technical ability to conduct the proposed reconnaissance, exploration or production operations optimally in accordance with the reconnaissance, exploration or production work programme;

(b) the estimated expenditure is compatible with the intended reconnaissance, exploration or production operation and duration of the reconnaissance, exploration or production work programme;

(c) If the application will result in the achievement of the objects referred to in section 2;

(d) If the application complies with the requirements of sections 38 (1) and 39 (1) and (2).

(e) If the application complies with the requirements stipulated in the invitation notice published in the gazette; and

(f) the applicant has the ability to comply with the relevant provisions of the applicable legislation regulating upstream petroleum health and safety;

(4) The Petroleum Agency must reject an application if it does not meet the requirements of subsection (3) and provide the applicant with written reasons for the decision.

### **Consultation with interested and affected parties**

**28.** (1) The Petroleum Agency and the applicant must within 14 days from the date of acceptance of an application lodged in terms of section 46 or 51 in the prescribed manner—

(a) make known by notice in a Gazette that an application for an exploration right or production right has been accepted in respect of the block or blocks in question; and

(b) call upon interested and affected persons to submit their comments and objections regarding the application within 30 days from the date of the notice to the Petroleum Agency;

(2) If a person objects to the granting of an exploration right or production right, the Petroleum Agency—

(a) must refer the objection to the Petroleum Development and Environmental Committee to consider the objections and to advise the Minister thereon; and

(b) may refer the objection and comments to the applicant to consult with the person objecting and submit the result of the consultation to the Petroleum Agency within 60 days.

(3) Should the consultation contemplated in subsection (2)(b) result in an agreement, such agreement must be reduced to writing and forwarded to the Petroleum Agency for noting and onward transmission to the Petroleum Development and Environmental Committee.

(4) Where the applicant has not been successful in reaching the landowner or lawful occupier of the land concerned, the applicant must publish a notice in the local and national newspaper to trace the landowner, lawful occupier or a successor in title.

(5) The notice referred to in subsection (4) must be published for a period not less than 30 days.

(6) If the landowner or lawful occupier or successor in title is still not traceable after the 30 days of the publication notice, the applicant must, install a notice on a visible place on the land and enter the land to which the application relates.

### **Establishment of Petroleum Development and Environmental Committee**

**29.** The Petroleum Development and Environmental Committee is hereby established.

### **Functions of Petroleum Development and Environmental Committee**

- 30.** The committee must—
- (a) advise the Minister on objections received in terms of section 28(2); and
  - (b) make recommendations to the Minister in terms of section 80(5).

### **Composition of Petroleum Development and Environmental Committee**

**31.** (1) The members appointed to the Committee must have expertise in petroleum environmental management, petroleum resource exploration and production.

(2) The Committee must consist of not more than 14 members appointed by the Minister and must include—

- (a) the Chief Executive Officer as the chairperson;
- (b) the Principal Inspector responsible for upstream petroleum operations; and
- (c) representatives from the departments of Environmental Affairs, Forestry and Fisheries, Human Settlements, Water and Sanitation, Cooperative Governance and Traditional Affairs, Agriculture, Rural Development and Land Affairs, Transport, in the province to which the application relates.

(3) The Minister may appoint a representative from any relevant public entity when necessary.

### Disqualification from membership

- 32.** A person may not be appointed as a member of the Committee—
- (a) unless he or she is a South African citizen who resides in the Republic permanently; or
  - (b) if he or she—
    - (i) is an unrehabilitated insolvent, has been declared to be of unsound mind by a court of the Republic; or
    - (ii) has been convicted of an offence committed after the date of commencement of the Constitution, and sentenced to imprisonment without the option of a fine, unless the person has received a grant of amnesty or a free pardon before the date of his or her appointment.

### Vacation of office

- 33.** (1) A member of the Committee must vacate his or her office if he or she—
- (a) becomes subject to any disqualification contemplated in section 32 or, in the case of an official in the service of the State, ceases to be such an official;
  - (b) has been absent for more than two consecutive meetings of the Committee without leave of the Committee;
  - (c) tenders his or her resignation in writing to the Minister and the Minister accepts the resignation; or
  - (d) is removed from office by the Minister under subsection (2).



- (2) The Minister may remove any member of the Committee from office—
- (a) on account of misconduct or inability to perform functions of his or her office properly; or
  - (b) if the member has engaged in any activity that may undermine the integrity of the committee, which activities may include—
    - (i) participation in an investigation, hearing or decision concerning a matter in respect of which that person has a financial or personal interest;
    - (ii) making private use of, or profiting from, any confidential information obtained as a result of performing his or her functions as a member of the committee; or
    - (iii) divulging any information referred to in subparagraph (ii) to any third party, except as required by or under this Act or the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

### **Term of office and filling of vacancies**

- 34.** (1) A member of the Committee holds office for a period not exceeding three years.
- (2) The Minister may reappoint any member of the Committee at the expiry of his or her term for another period not exceeding three years.
- (3) If a member of the Committee vacates the office or dies, the Minister may fill the vacancy by appointing a person in accordance with section 15 for the unexpired period of the term of office of his or her predecessor.

## Reports of Petroleum Development and Environmental Committee

**35.** In addition to any specific report which the Minister may request from the committee in respect of any of the regions, the Committee must before 31 March of each year submit a report to the Minister setting out the activities of the Committee during the year preceding that date and must include a business plan for the ensuing year.

## Transferability and encumbrance of exploration right or production right

**36.** (1) An exploration or production right or an interest in any such right in an unlisted company or a controlling interest in a listed company may not be ceded, transferred, encumbered, assigned or alienated without the prior written consent of the Minister, as prescribed.

(2) The consent referred to in subsection (1) must be granted if the cessionary, transferee, assignee or the person to whom the right will be alienated or disposed of—

- (a) is capable of carrying out and complying with the obligations and the terms and conditions of the right in question; and
- (b) satisfies the requirements contemplated in section 46 or 51, as the case may be.

(3) The consent contemplated in subsection (1) is not required in respect of the encumbrance by mortgage of right or interest as security to obtain a loan or guarantee for the purpose of funding or financing an exploration or production project by—

- (i) any bank, as defined in the Banks Act, 1990 (Act No. 94 of 1990); or
- (ii) any other financial institution approved for that purpose by the Registrar of Banks referred to in the Banks Act, 1990 (Act No. 94 of 1990), on request by the Minister, if the bank or financial institution in question undertakes in writing that any sale in execution or any other disposal pursuant to the foreclosure of the mortgage will be subject to the consent in terms of subsection (1).

(4) Any transfer, cession, alienation, encumbrance by mortgage of an exploration or production right, as the case may be, contemplated in this section must be lodged for registration at the Mineral and Petroleum Titles Registration Office within 60 days of the relevant transaction.

### **Partitioning of a production right**

**37.** (1) A part of a production right may not be partitioned without prior written consent of the Minister, as prescribed.

(2) Any partitioning of a production right contemplated in subsection (1) must be granted if—

- (a) the application for such partitioning must be accompanied by an application in terms of section 93 to vary the right;
  - (b) the partitioner has simultaneously lodged an application in terms of section 51;
  - (c) the applicant has complied with the requirements contemplated in section 52;
- and

- (d) the applicant has been granted a production right to which the partitioning relates.

### **Active participation of black persons in exploration and production right**

**38. (1)** Every exploration or production right must have a minimum of 10 percent participating interest by black persons which must include economic interest plus corresponding percentage of voting rights, per exploration right or production right.

(2) In order to give effect to objectives referred to in section 2(d) the Minister may by notice in the gazette reserve a block or blocks in an open area for 100% black persons owned Companies subject to the following:

(a) black persons participation in such a company will not be diluted to less than 51% for purposes of raising capital;

(b) any dilution to below 51% will trigger the State carried participation of up to a minimum of 10%.

(3) The reservation of block or blocks referred to in subsection (2) may be provided subject to such terms and conditions as the Minister may determine.

(4) Before reserving block or blocks the Minister must take into account all relevant factors, including—

- (a) the need to promote equitable access to the nation's petroleum resources;
- (b) the need to transform the ownership structure of the petroleum industry; and
- (c) the extent to which the proposed exploration or production project meets the objects referred to in section 2 (c), (d), (e), (f) and (i).

(5) When considering reserving block or blocks as contemplated in subsection (2), the Minister may request any relevant organ of State to assist the applicant concerned in the development of the exploration or production project.

(6) Applications received in relation to subsection (2) must be processed in terms of provisions of this Act.

### **State participation in exploration and production rights**

**39.** (1) The State has, through the PetroSA, a right to a 20 percent carried interest in exploration and production rights.

(2) All applications for exploration and production rights must be accompanied by a shareholders' agreement indicating the State carried interest.

(3) The State carried interest shall not be recoverable at exploration and appraisal stage, the holder of a production right shall recover development and production costs from the proceeds generated from production operations as prescribed.

(4) PetroSA must enter into a joint operating agreement with the holder or become a party to an existing joint operating agreement.

(5) PetroSA must appoint two or more representatives to the joint operating committee of the exploration or production operation to represent the State.

(6) PetroSA is entitled to full participation including corresponding percentage of voting rights to the interest held in the joint operating agreement.

(7) In order to give effect to the objectives referred to in section (2), the Minister may, by notice in the Gazette reserve a block, part of a block or blocks in an open area for national developmental imperatives.

### **Domestic obligation requirements**

**40.** (1) The Minister may through a gazette notice, when the need arises, require a production right holder to avail certain volumes of oil or gas to provide for the Country's strategic stock.

(2) The Minister shall in the gazette notice identify where the oil or gas contemplated in subsection (1) must be delivered.

(3) The oil or gas delivered shall be paid at fair market value.

### **Application for reconnaissance permit**

**41.** (1) Any person may apply to the Minister for a reconnaissance permit and lodge an application—

- (a) at the office of the Petroleum Agency;
- (b) in the prescribed manner; and
- (c) together with the prescribed non-refundable application fee.

(2) The Petroleum Agency must, within 14 days of the receipt of the application, accept an application for a reconnaissance permit if—

- (a) the requirements contemplated in subsection (1) are met;
- (b) no other person holds a reconnaissance permit, technical co-operation permit, exploration right or production right for petroleum over the same block or blocks; and

(c) no prior application for an exploration right, production right, or technical co-operation permit has been accepted for the same petroleum and block or blocks.

(3) The Petroleum Agency may accept an application for a reconnaissance permit over any part of an area subject to a technical co-operation permit, exploration right or production right subject to the applicant furnishing written consent from the holder of a technical co-operation permit, exploration right or production right as the case may be, giving the Petroleum Agency consent to accept and process the application.

(4) If the application does not comply with the requirements of this section, the Petroleum Agency must notify the applicant in writing within 14 days of the receipt of the application and provide reasons.

(5) If the Petroleum Agency accepts the application, it must, within 14 days of the receipt of the application, only if the proposed reconnaissance operations do not involve space-borne or air-borne, instruments operating at altitudes greater than 100 metres, notify the applicant in writing to—

- (a) consult in the prescribed manner with the landowner, lawful occupier and any 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 referred to in paragraph (a) to the Petroleum Agency, within 60 days from the date of the notice.

(6) Notwithstanding subsection (1), the Minister may, subject to subsection (7), by notice in the *Gazette*, invite applications for regional seismic survey, including in areas that are already subject to a technical co-operation permit,

exploration or production right, as the case maybe, in the interest of facilitating the acquisition of regional geo-technical data.

(7) A reconnaissance permit application contemplated in subsection (6) may be granted if the Petroleum Agency consults with the affected permit or right holders and the proposed reconnaissance operations will not unreasonably interfere with the activities of the exploration or production right holder.

### **Issuing and duration of reconnaissance permit**

**42.** (1) Subject to subsection (4), the Minister must issue a reconnaissance permit if—

- (a) the applicant has access to financial resources and has the technical ability to conduct the proposed reconnaissance operation;
- (b) the estimated expenditure is compatible with the intended reconnaissance operation and duration of the reconnaissance programme;
- (c) the reconnaissance will not result in unacceptable pollution, ecological degradation or damage to the environment and that the environmental authorisation, where necessary, has been issued;
- (d) the applicant has the ability to comply with the relevant provisions of the applicable legislation regulating upstream petroleum health and safety ; and
- (e) the applicant is not in contravention of any relevant provision of this Act.

(2) The Minister must refuse to issue a reconnaissance permit if the application does not meet all the requirements contemplated in subsection (1).



(3) If the Minister refuses to issue a reconnaissance permit, the Minister must, within 30 days of the decision, in writing notify the applicant of the decision and the reasons thereof.

(4) A reconnaissance permit issued in terms of subsection (1) is—

- (a) subject to prescribed terms and conditions;
- (b) valid for a period not exceeding one year for onshore reconnaissance operation and period not exceeding two years for offshore reconnaissance operation;
- (c) not transferable; and
- (d) not renewable.

(5) The holder of the reconnaissance permit must—

- (a) actively conduct reconnaissance operations in respect of petroleum on the relevant area in accordance with the reconnaissance programme;
- (b) comply with the terms and conditions of the reconnaissance permit, and the relevant provisions of this Act and any other law; and
- (c) pay the prescribed reconnaissance fee to the Petroleum Agency.

(6) The holder of a reconnaissance permit has an exclusive right to market the data collected under the reconnaissance permit for a maximum of eight years.

(7) Notwithstanding the provisions of subsection (6), the Minister may grant a reconnaissance permit over an area with an existing reconnaissance permit, if the applicant applies different methods and technologies for petroleum data acquisition that will advance petroleum exploration.

### **Application for technical co-operation permit**

**43.** (1) Any person who applies to the Minister for a technical co-operation permit must, subject to section 26(7), lodge the application—

- (a) at the office of the Petroleum Agency;
- (b) in the prescribed manner; and
- (c) together with the prescribed non-refundable application fee.

(2) The Petroleum Agency must accept an application for a technical co-operation permit if—

- (a) the requirements contemplated in subsection (1) are met;
- (b) no other person holds a technical co-operation permit, exploration right or production right for petroleum over the same block or blocks; and
- (c) no prior application for an exploration right, production right, or technical co-operation permit has been accepted for the same petroleum resource and block or blocks.

(3) If the application does not comply with the requirements of this section, the Petroleum Agency must notify the applicant in writing within 14 days of the receipt of the application and provide reasons.

### **Issuing and duration of technical co-operation permit**

**44.** (1) Subject to subsection (4), the Minister must issue a technical co-operation permit if—

- (a) the applicant has access to financial resources and has the technical ability to conduct the proposed technical co-operation study;

- (b) the estimated expenditure is compatible with the intended technical co-operation study and duration of the technical co-operation programme; and
- (c) the applicant is not in contravention of any relevant provision of this Act.

(2) The Minister must refuse to issue a technical co-operation permit if the application does not meet all the requirements referred to in subsection (1).

(3) If the Minister refuses to grant a technical co-operation permit, the Minister must, within 30 days of the decision, notify the applicant in writing of the decision and the reasons thereof.

(4) A technical co-operation permit issued in terms of subsection (1) is—

- (a) subject to prescribed terms and conditions;
- (b) valid for a period not exceeding one year;
- (c) not transferable; and
- (d) not renewable.

### **Rights and obligations of holder of technical co-operation permit**

**45.** (1) The holder of a technical co-operation permit has subject to section 43 and subsection (2)(c), the exclusive right to apply for and be granted an exploration right in respect of the area to which the permit relates.

- (2) The holder of a technical co-operation permit must—
- (a) actively carry out the technical co-operation study in accordance with the technical co-operation work programme;

- (b) comply with the terms and conditions of the technical co-operation permit, the relevant provisions of this Act and any other law; and
- (c) submit a technical co-operation permit for recording in the Mineral and Petroleum Titles Registration Office.

### **Application for exploration right**

**46.** (1) Any person who applies to the Minister for an exploration right must, subject to section 26(7), lodge the application—

- (a) at the office of the Petroleum Agency;
- (b) in the prescribed manner; and
- (c) together with the prescribed non-refundable application fee.

(2) The Petroleum Agency must, within 14 days of the receipt of the application, accept an application for an exploration right if—

- (a) no other person holds a technical co-operation permit, exploration right or production right for petroleum over the same block or blocks applied for.
- (b) the requirements contemplated in subsection (1) are met;
- (c) no other person holds a technical co-operation permit, exploration right or production right for petroleum over any part of the block or blocks; and
- (d) no prior application for a technical co-operation permit, exploration right or production right, over the same petroleum, block or blocks applied for, has been accepted.

(3) If the application does not comply with the requirements of this section, the Petroleum Agency must notify the applicant in writing within 14 days of the receipt of the application and provide reasons.

(4) If the Petroleum Agency accepts the application, the Petroleum 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;
- (b) apply for an environmental authorisation and submit relevant environmental reports required in terms of Chapter 5 of the National Environmental Management Act, 1998, within a period of 120 days from the date of the notice; and
- (c) apply for a licence for use of water in terms of the relevant legislation.

(5) A technical co-operation permit in respect of which an application for an exploration right has been lodged in terms of subsection (1) remains in force, until such right has been granted or refused, notwithstanding its expiry date.

(6) The holder of the exploration right granted prior to the commencement of this Act, that has made a discovery during the last renewal period may apply for an additional two year period to conduct appraisal operations

(7) An additional two year period to conduct appraisal operations as contemplated in 6(1) will only be granted if the holder complied with the minimum work commitment for all exploration phases.

### **Granting and duration of exploration right**

**47.** (1) Subject to subsection (3), the Minister must grant an exploration right if—

- (a) the applicant has proven access to financial resources and has the technical ability to conduct the proposed exploration operation optimally in accordance with the exploration work programme;
- (b) the estimated expenditure is compatible with the intended exploration operation and duration of the exploration work programme;
- (c) the Minister has issued an environmental authorisation;
- (d) the applicant has the ability to comply with the relevant provisions of applicable legislation regulating upstream petroleum health and safety;
- (e) the applicant is not in contravention of any relevant provision of this Act;
- (f) the applicant has complied with the terms and conditions of the technical co-operation permit, if applicable;
- (g) the applicant has, where necessary, provided proof of application for a licence for use of water in terms of the applicable legislation; and
- (h) the applicant has complied with any prescribed requirements relating to empowerment of black persons.

(2) The Minister must, when granting an exploration right, determine the terms and conditions of a corresponding production right contemplated in section 52 and record those terms and conditions on such exploration right.

(3) The Minister must, within 60 days of receipt of the application from the Petroleum Agency, refuse to grant an exploration right if the application does not meet all the requirements referred to in subsection (1).

(4) If the Minister refuses to grant an exploration right, the Minister must, within 30 days of the decision, in writing notify the applicant of the decision and the reasons thereof.

(5) An exploration right is subject to prescribed terms and conditions and is valid for the period specified in the right, which period may not exceed five years.

(6) A right granted in terms of subsection (1)—

- (a) comes into effect on the effective date; and
- (b) where an appeal against the granting of the right or the approval of the environmental authorisation has been lodged within the prescribed period, the notarial deed of granting may not be executed until such appeal has been finalised.

#### **Application for renewal of exploration right**

**48.** (1) A holder of an exploration right who applies to the Minister for the renewal of an exploration right must lodge the application—

- (a) within twelve months before the expiry date of the exploration right;
- (b) at the office of the Petroleum Agency;
- (c) in the prescribed manner; and
- (d) together with the prescribed non-refundable application fee.

(2) An application for renewal of an exploration right must—

- (a) state the reasons and period for which the renewal is required;
- (b) be accompanied by a detailed report reflecting the exploration results, the interpretation thereof and the exploration expenditure incurred;
- (c) be accompanied by a report reflecting the extent of compliance with the conditions of the environmental authorisation;

- (d) be accompanied by a detailed report on compliance with black persons empowerment and State participation; and
- (e) include a detailed exploration work programme for the renewal period.

(3) The holder of an exploration right must when applying for renewal, relinquish—

- (a) at the end of the initial term of the exploration right, 20 percent of a continuous portion of a block or blocks; and
- (b) at the end of each subsequent renewal period, 15 percent of a continuous portion of a block or blocks.

(4) The Minister may exempt the holder from relinquishing the full percentages in terms of the provisions of subsection (3)(b) if the holder demonstrates that he or she is in a position to explore a larger exploration area, has made a discovery or demonstrates that relinquishment in terms of subsection (3)(b) may render the project uneconomic.

(5) If a holder makes a discovery, which it does not wish to appraise (non-commercial discovery), the area of that discovery must be included in the area to be relinquished.

(6) The State carried interest must be maintained and must not be affected when contiguous areas are relinquished in terms of subsection (3).

(7) The Minister must grant the renewal of an exploration right if the application complies with subsections (1) and (2) and the holder of the exploration right—

- (a) has complied with the terms and conditions of the exploration right and is not in contravention of any provision of this Act;



- (b) has access to financial resources and has the technical ability to conduct the proposed exploration operation optimally in accordance with the exploration work programme for the renewal period;
- (c) has complied with the conditions of the environmental authorisation;
- (d) has included proof of application for an amended environmental authorisation; and
- (e) complies with the requirements of State participation and relating to empowerment of black persons.

(8) An exploration right may be renewed for a maximum of three periods not exceeding two years each.

(9) An exploration right in respect of which an application for renewal has been lodged remains in force, until such time as such application has been granted and a notarial deed of renewal has been executed, or such application has been refused, notwithstanding its expiry date, and—

- (a) during such time, the holder of the exploration right is entitled to continue to conduct exploration operation in terms of the existing approved exploration work programme; and
- (b) where the application is granted, the renewal takes effect and the renewal period for which application was made commences on the date of execution of the renewal right.

### **Rights and obligations of holder of exploration right**

**49.** (1) In addition to the rights referred to in section 5, the holder of an exploration right—

- (a) subject to subsection (2), has the exclusive right to apply for a production right in respect of the petroleum and the exploration area in question;
- (b) subject to section 46, has the exclusive right to apply for a renewal of an exploration right in respect of petroleum and the exploration area in question;
- (c) has, subject to section 48, the exclusive right to remove and dispose of any petroleum samples found during the course of exploration; and
- (d) may only transfer and encumber the exploration right, subject to section 35.

(2) The holder of an exploration right must—

- (a) lodge such right within 60 days for registration at the Mineral and Petroleum Titles Registration Office;
- (b) continuously and actively conduct exploration operations in accordance with the approved exploration work programme;
- (c) comply with the terms and conditions of the exploration right, the relevant provisions of this Act and any other law;
- (d) comply with the requirements of the approved environmental authorisation;
- (e) comply with the requirements for State participation and relating to the empowerment of black persons;
- (f) pay the prescribed exploration fees to the Petroleum Agency;
- (g) commence with exploration activities within 90 days from the effective date of the exploration right or such extended period as the Minister may authorize; and
- (h) relinquish a continuous portion of the area to which the right relates as contemplated in section 46; and

(i) subject to section 48, and in terms of any relevant law, pay the royalties in respect of any petroleum removed and disposed of during the course of exploration operations.

(3) If a discovery is made in the exploration area, the holder of an exploration right must—

- (a) notify the Minister of such discovery;
- (b) submit an appraisal programme; and
- (c) apply for an environmental authorisation and submit relevant environmental reports required in terms of Chapter 5 of the National Environmental Management Act, 1998.

### **Permission to remove and dispose of petroleum resources**

**50.** (1) Subject to subsection (2), the holder of an exploration right may only remove and dispose for his, her or its own account petroleum found by such holder in the course of exploration operations conducted pursuant to such exploration right in such quantities as may be required to conduct tests on it or to identify or analyse it.

(2) The holder of an exploration right conducting any form of tests that involve producing petroleum may not, without prior written permission of the Minister, remove such petroleum for its own account subject to such conditions as the Minister may determine.

(3) Any person who applies for permission to remove and dispose of petroleum in terms of this section must obtain an environmental authorisation if such person has not done so in terms of section 46(4)(b).

## Application for production right

**51.** (1) Any person who applies to the Minister for a production right must, subject to section 26(7), lodge the application—

- (a) at the office of the Petroleum Agency;
- (b) in the prescribed manner; and
- (c) together with the prescribed non-refundable application fee.

(2) The Petroleum Agency must, within 14 days of the receipt of the application, accept an application for a production right if the requirements contemplated in subsection (1) are met.

(3) If the application does not comply with the requirements of this section, the Petroleum Agency must notify the applicant in writing within 14 days of the receipt of the application and provide reasons.

(4) If the Petroleum Agency accepts the application, the Petroleum 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;
  - (b) apply for an environmental authorisation and submit relevant environmental reports including consultation results required in terms of Chapter 5 of the National Environmental Management Act, 1998, within 180 days from the date of the notice;
  - (c) submit a production work programme as prescribed
- and

(d) where necessary, apply for a licence for use of water in terms of the relevant legislation.

### **Granting and duration of production right**

**52.** (1) Subject to subsection (3), the Minister must grant a production right if the applicant-

- (a) has access to financial resources and has the technical ability to conduct the proposed production operation optimally;
- (b) the estimated expenditure is compatible with the intended production operation and duration of the production work programme;
- (c) the production will not result in unacceptable pollution, ecological degradation or damage to the environment and an environmental authorisation has been issued;
- (d) has the ability to comply with the relevant applicable legislation regulating upstream petroleum health and safety ;
- (e) is not in contravention of any relevant provision of this Act;
- (f) has complied with the terms and conditions of the exploration right;
- (g) has demonstrated that the petroleum can be produced optimally in accordance with the production work programme;
- (h) complies with the requirements of State participation, empowerment of black persons; and
- (i) has demonstrated the ability to comply with transformation regulations as contemplated in section 95.
- (j) the applicant has, where necessary, provided proof of application for a licence for use of water in terms of the applicable legislation.

(2) The Minister must when granting a production right under this section give effect to the terms and conditions agreed to in a corresponding exploration right that relates to the production right.

(3) The Minister must, within 60 days of receipt of the application from the Petroleum Agency, refuse to grant a production right if the application does not meet all the requirements referred to in subsection (1).

(4) If the Minister refuses to grant a production right, the Minister must, within 30 days of the decision, notify the applicant in writing of such decision and the reasons therefore.

(5) A production right is subject to prescribed terms and conditions and is valid for the period specified in the right, which period may not exceed 30 years at a time.

(6) A right granted in terms of subsection (1)—

- (a) comes into effect on the effective date; and
- (b) where an appeal against the granting of the right or the approval of the environmental authorisation has been lodged within the prescribed period, the notarial deed of granting may not be executed until such appeal has been finalised.

### **Application for renewal of production right**

**53.** (1) A holder of a production right who applies to the Minister for the renewal of a production right must lodge the application—

- (a) within 24 months before the expiry date of the production right at the office of the Petroleum Agency;

- (b) in the prescribed manner; and
- (c) together with the prescribed non-refundable application fee.

(2) An application for renewal of a production right must—

- (a) state the reasons and period for which the renewal is required;
- (b) be accompanied by a detailed report reflecting the production results, the interpretation thereof and the production expenditure incurred;
- (c) be accompanied by a report reflecting the right holder's compliance with the requirements of the approved environmental authorisation, the rehabilitation to be completed and the estimated cost thereof;
- (d) be accompanied by a detailed report on compliance with the requirements of State participation and black person's empowerment; and
- (e) include a detailed production work programme for the renewal period.

(3) The Minister must grant the renewal of a production right if—

- (a) the application complies with subsections (1) and (2);
- (b) the applicant and the Minister have concluded the negotiating process referred to in subsection (4);
- (c) the applicant is not in contravention of any relevant provision of this Act or any other law; and
- (d) the holder of the production right has complied with the—
  - (i) terms and conditions of the production right
  - (ii) production work programme;
  - (iii) requirements of the prescribed social and labour plan;
  - (iv) requirements of State participation and in relation to the empowerment black persons; and
  - (v) requirements of the approved environmental authorisation.

(4) Notwithstanding the provisions of sections 47(3) and 52(2), an application for the renewal of a production right initiates a negotiating process between the Minister and the applicant relating to the terms and conditions of the production project.

(5) A production right may be renewed for further periods each of which must not exceed 30 years at a time.

(6) A production right in respect of which an application for renewal has been lodged remains in force until such time as such application has been granted and a notarial deed of renewal has been executed, or such application has been refused, notwithstanding its expiry date—

- (a) during such time, the holder of the production right is entitled to continue to conduct production operations in terms of the existing approved production work programme; and
- (b) where the application is granted, the renewal takes effect and the renewal period for which application was made commences on the date of execution of the renewal right.

### **Rights and obligations of holder of production right**

**54.** (1) In addition to the rights referred to in section 5, the holder of a production right—

- (a) subject to subsection (2), has the exclusive right to apply for renewal of the production right in respect of the petroleum area, block or blocks in question
- (b) has the exclusive right to remove and dispose of any petroleum found during the course of production; and



- (c) may only transfer and encumber the production right, subject to section 36.
- (2) The holder of a production right must—
- (a) lodge such right for registration at the Mineral and Petroleum Titles Registration Office within 60 days after the right has become effective;
  - (b) has the obligation to comply with the requirements for State participation and black person's empowerment;
  - (c) continuously and actively conduct production operations in accordance with the approved production work programme;
  - (d) comply with the terms and conditions of the production right and this Act;
  - (e) comply with the conditions of the environmental authorisation and the prescribed social and labour plan;
  - (f) in terms of any relevant law, pay the State royalties and production bonus;
  - (g) pay a petroleum resource rent tax, imposed in terms of an Act of Parliament, towards the sovereign wealth fund; and
  - (h) commence with production operations within twelve months from the date on which a production right becomes effective in terms of section 52(5) or such extended period as the Minister may authorise.

### **Application for retention permit**

**55.** (1) Any holder of an exploration right who applies to the Minister for a retention permit must—

- (a) lodge the application at the office of the Petroleum Agency;
- (b) lodge the application in the prescribed manner;

- (c) lodge the application together with the prescribed non-refundable application fee;
- (d) state the reasons and period for which the retention permit is requested; and
- (e) submit a report reflecting the extent of compliance with section 49.

(2) The Petroleum Agency must accept an application for a retention permit, if—

- (a) the requirements contemplated in subsection (1) are met; and
- (b) the applicant is the holder of the exploration right in question.

### **Issuing and duration of retention permit**

**56.** (1) The Minister may issue a retention permit if the holder of the production right has—

- (a) explored on the land to which the application relates;
- (b) completed the exploration activities and a feasibility study;
- (c) established the existence of a petroleum reserve which has production potential;
- (d) studied the market and found that the production of the petroleum in question would be uneconomical due to prevailing market conditions; and
- (e) complied with the relevant provisions of this Act, any other relevant law and the terms and conditions stipulated in the exploration right.

(2) A retention permit issued under subsection (1) suspends the terms and conditions of the exploration right held in respect of the block or blocks to which the retention permit relates and if the exploration period has not expired, the

duration of the exploration right in question runs concurrently with that of the retention permit.

(3) Despite subsection (2), the conditions of the environmental authorisation issued in respect of the exploration right remain in force as if the exploration right had not lapsed.

(4) A retention permit is valid for the period specified in the permit, which period may not exceed three years.

### **Refusal of application for retention permit**

**57.** (1) The Minister may refuse to issue a retention permit if, after having regard to the information submitted under section 46(1) and research conducted by the Board at the request of the Minister, it is established that—

- (a) the petroleum to which the application relates can be exploited economically;
- (b) the applicant has not completed the exploration operations and feasibility study in relation thereto; or
- (c) the granting of such permit will result in sterilisation of the petroleum resources in question.

### **Application for renewal of retention permit**

**58.** (1) An application for the renewal of a retention permit must be lodged in the same manner as an application for a retention permit contemplated in section 53(1) and must include—

- (a) an updated report of the circumstances which prevailed at the time of issuing of the retention permit; and
- (b) the period and reasons for the renewal being sought.

(2) A retention permit may only be renewed if—

- (a) the holder has complied with the relevant provisions of this Act, any other relevant law and the terms and conditions of the retention permit; and
- (b) the market conditions contemplated in section 55(1)(d) still prevail.

(3) A retention permit may be renewed once for a period not exceeding two years.

### **Rights and obligations of holder of retention permit**

**59.** (1) Subject to subsection (2), the holder of a retention permit has the exclusive right to apply for a production right in respect of the retention area and petroleum in question.

(2) The holder of a retention permit must—

- (a) give effect to the conditions of the environmental authorisation and pay the prescribed retention fees;
- (b) submit an annual progress report to the Petroleum Agency indicating—
  - (i) the prevailing market conditions, the effect thereof and the need to hold such retention permit in respect of the petroleum and block or blocks in question; and
  - (ii) efforts undertaken by such holder to ensure that production operations commence before the expiry period referred to in section 55(4) or 56(3), as the case may be.

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

(3) A retention permit may not be transferred, ceded, let, sublet, alienated, disposed of, mortgaged or encumbered in any way whatsoever.

### **Exemptions from certain provisions of Act**

**60.** (1) No person other than the State may conduct petroleum activities without a licence or permit, approvals or consents pursuant to this Act.

(2) Provisions otherwise provided for in the Act and Regulations issued pursuant to the Act shall apply to activities referred to in subsection (1) insofar as they are appropriate.

### **Unitisation of petroleum operations**

**61.** (1) If an exploration or production right has been granted over an area which geologically forms part of the same petroleum reservoir to which an exploration or production rights already exists, the holders of such rights must prepare a plan for the development of the petroleum reservoir as a unit and must submit such plan to the Petroleum Agency for approval by the Minister in accordance with the terms and conditions of their respective exploration or production rights.

### **Information and data**

**62.** (1) The holder of any permit or right who conducts reconnaissance operations, technical co-operation studies, exploration operations or production

operations must submit such information, data, reports and interpretations to the Petroleum Agency as may be prescribed.

(2) A reconnaissance permit holder has an exclusive right to market and sell data and recover costs for a period of eight years.

(3) The holder of any permit or right who conducts reconnaissance operations, technical co-operation studies, exploration operations or production operations must submit progress reports and data contemplated in subsection (1) to the Petroleum Agency.

(4) Subject to the Promotion of Access to Information Act, 2002 (Act No. 2 of 2002), all information, data, reports and interpretations thereof submitted to the Petroleum Agency must be kept confidential by the agency for a period—

- (a) not exceeding four years from date of acquisition; or
- (b) ending on the date on which the permit or rights to which such information, data, reports and interpretations thereof relate has or have lapsed, are cancelled or terminated, or the area to which such permits or rights relate has been abandoned or relinquished.

(5) Neither the State nor any of its employees—

- (a) is liable for the *bona fide* or inadvertent release of information or data submitted in terms of this Act; and
- (b) guarantee the accuracy or completeness of any such information or data or interpretation thereof.

**Minister's power to direct submission of specified information or data**

**63.** The Minister may, in order to achieve the objects of this Act and to fulfil any of the functions in terms of this Act, direct in writing that specified information or data be submitted by—

- (a) an applicant for an exploration right, production right or retention permit, as the case may be;
- (b) any holder of an exploration right, production right or retention permit; or
- (c) any owner or lawful occupier of land which is the subject of an exploration right, production right or retention permit, or which is the subject of an application for such a right or permit or of an exploration or production operation.

**Disclosure of information**

**64.** (1) Subject to subsection (2), any information or data submitted in terms of section 62 or 63 may be disclosed to any person—

- (a) in order to achieve any object referred to in section 2(c), (d) or (e);
- (b) in order to give effect to the right of access to information contemplated in section 32 of the Constitution;
- (c) if such information or data is already publicly available; or
- (d) if the relevant right or permit has lapsed or been cancelled, or the area to which such right or permit relates has been abandoned or relinquished.

(2) No information or data may be disclosed to any person if it contains information or data supplied in confidence by the supplier of the information or data.

(3) Any person submitting information or data in terms of section 62 or 63 must indicate which information and data must be treated as confidential and may not be disclosed.

(4) Neither the State nor any of its employees—

- (a) is liable for the *bona fide* or inadvertent release of information or data submitted in terms of this Act; and
- (b) guarantees the accuracy or completeness of any such information or data or interpretation thereof.

(5) Any data, information or reports lodged with the Petroleum Agency in terms of section 44 must be kept confidential until such time as the right, permit or permission has lapsed or is cancelled, or terminated, or the block or blocks to which such right or permit relates has been abandoned or relinquished.

### **Environmental management principles**

**65.** (1) The principles set out in section 2 of the National Environmental Management Act—

- (a) apply to all exploration and production operations, as the case may be, and any matter or activity relating to such operation.
- (b) serve as guidelines for the interpretation, administration and implementation of the environmental requirements of this Act.



(2) Any exploration or production operation must be conducted in accordance with generally accepted principles of sustainable development by integrating social, economic and environmental factors into the planning and implementation of exploration and production projects in order to ensure that exploitation of petroleum resources serves present and future generations.

### **Environmental authorisations**

**66.** (1) The Minister is the responsible authority for implementing environmental provisions in terms of the National Environmental Management Act, as it relates to exploration, production or activities incidental thereto on an exploration or production area.

(2) An environmental authorisation issued by the Minister is 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**

**67.** (1) An environmental management plan or environmental management programme approved in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) and at the time, of the coming into effect of the National Environmental Management Act, must be deemed to have been approved and to be an environmental authorisation issued in terms of the National Environmental Management Act.

(2) Notwithstanding subsection (1), the Minister may direct the holder of a right or permit if he or she is of the opinion that the exploration and production operations are 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.

### **Issuing of a closure certificate**

**68.** (1) The holder of an exploration or production right remains responsible for any environmental liability, pollution, ecological degradation, the pumping and treatment of extraneous water, compliance to the conditions of the environmental authorisation and the management and sustainable closure thereof, until the Minister has issued a closure certificate in terms of this Act to the holder or owner concerned.

(2) On the written application in the prescribed manner by the holder of an exploration or production right, 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.

(3) The holder of a exploration or production right, or the person contemplated in subsection (2), as the case may be, must apply for a closure certificate upon—

- (a) the lapsing, abandonment or cancellation of the right in question;
- (b) cessation of the exploration or production operation;

- (c) the relinquishment of a portion of a block to which an exploration or production right, relates; or
- (d) completion of the prescribed closure plan to which an exploration or production right relates.

(4) An application for a closure certificate must be made to the Petroleum Agency 24 months prior to lapsing, abandonment, cancellation, cessation, relinquishment or completion contemplated in subsection (3) and must be accompanied by the required information, programmes, plans and reports prescribed in terms of this Act and the National Environmental Management Act.

(5) No closure certificate may be issued unless the Chief Inspector and each government department charged with the administration of any law which relates to a matter affecting the environment have confirmed in writing that the provisions pertaining to health and safety and management of pollution to water resources, the pumping and treatment of extraneous water and compliance to the conditions of the environmental authorisation have been addressed.

(6) 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.

(7) When the Minister issues a certificate he or she may return such portion of the financial provision contemplated in section 45 of the National Environmental Management Act, as the Minister may deem appropriate, to the holder of an exploration or production right, or the person contemplated in subsection (2), but may retain any portion of such financial provision for latent and

residual safety, health or environmental impact which may become known in the future.

(8) The holder of an exploration or production right, or the person contemplated in subsection (2), as the case may be, must plan for, manage and implement such procedures and such requirements on petroleum operations closure as may be prescribed.

(9) Procedures and requirements on petroleum operations closure as it relates to the compliance of the conditions of an environmental authorisation, are prescribed in terms of the National Environmental Management Act.

(10) The Minister, in consultation with the Minister responsible for environmental affairs, may identify areas by notice in the *Gazette*, where petroleum operations 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 responsible for environmental affairs, publish by notice in the *Gazette*, strategies to facilitate operation closure where petroleum operations are interconnected, have an integrated impact or pose a cumulative impact.

(11) The holder of an exploration or production right, 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).

(12) In relation to petroleum operations with an interconnected or integrated health, safety, social or environmental impact, the Minister may, in

consultation with the Minister responsible for environmental affairs, determine the apportionment of liability for petroleum operations closure as prescribed.

(13) No closure certificate may be issued unless—

- (a) the Petroleum Agency has confirmed in writing that complete and correct exploration reports in terms of section 62(1) have been submitted;
- (b) complete and correct records or borehole core data have been submitted to the Petroleum Agency; or
- (c) in the case of the holder of a right in terms of this Act, the complete and correct surface and the relevant underground geological plans have been submitted to the Petroleum Agency.

### **Removal of buildings, structures and other objects**

**69.** (1) When a retention permit, exploration or production right lapses, is cancelled or is abandoned, or when any exploration or production operation ceases, the holder of any such right or permit may not demolish or remove any building structure or object—

- (a) which may not be demolished or removed in terms of any other law;
- (b) which has been identified in writing by the Minister for purposes of this section; or
- (c) which is to be retained in terms of an agreement between the holder and the owner or occupier of the land, which agreement has been approved by the Minister in writing.

(2) The provisions of subsection (1) do not apply to production or exploration equipment, which may be removed lawfully.

**Minister's power to recover costs in event of urgent remedial measures**

**70.** (1) If any exploration or production operations or activities incidental thereto cause or result in ecological degradation, pollution or environmental damage, or are in contravention of the conditions of an environmental authorisation, or may be harmful to health, safety or wellbeing of anyone and requires urgent remedial measures, the Minister, in consultation with the Minister responsible for environmental affairs, 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, to—

- (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;
- (b) take such measures as may be specified in such directive in terms of this Act or the National Environmental Management Act; and
- (c) complete such measures before a date specified in the directive.

(2) (a) If the holder fails to comply with the directive, the Minister may take such measures as may be necessary to protect the health and wellbeing of any affected person or to remedy ecological degradation and to stop pollution of the environment.

(b) Before the Minister implements any measure, he or she must afford the holder an opportunity to make representations to him or her.

(c) In order to implement the measures contemplated in paragraph (a), the Minister may by way of an *ex parte* application apply to a High

Court for an order to seize and sell such property of the holder as may be necessary to cover the expenses of implementing such measures.

(d) In addition to the application in terms of paragraph (c), the Minister may use funds appropriated for that purpose by Parliament to fully implement such measures.

(e) The Minister may recover an amount equal to the funds necessary to fully implement the measures from the holder concerned.

### **Minister's power to remedy environmental damage in certain instances**

**71.** (1) If the Minister directs that measures contemplated in section 70 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—

- (a) the holder of a reconnaissance permit, technical co-operation permit, retention permit, exploration right or production right, as the case may be, or his or her successor in title is deceased or cannot be traced; or
- (b) the holder, 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 responsible for environmental affairs, may instruct the Petroleum Agency concerned to take the necessary measures to prevent pollution or ecological degradation of the environment or to rehabilitate dangerous health and social occurrences or to make an area safe.

(2) The measures contemplated in subsection (1) must be funded from financial provision made by the holder of the relevant right or permit, in terms of

the National Environmental Management Act, where appropriate, or if there is no such provision or if it is inadequate, from money appropriated by Parliament for the purpose.

(3) (a) Upon completion of the measures contemplated in subsection (1), the Petroleum Agency must apply to the registrar concerned that the title deed of the land in question be endorsed to the effect that such land had been remedied.

(b) The registrar concerned must, on receipt of an application contemplated in paragraph (a), make such endorsements as he or she may deem necessary so as to give effect to provisions of that paragraph, and no office fee or other charge is payable to the registrar in respect of such endorsement.

### **Financial guarantee**

**72.** In addition to section 3(4), no exploration operation or production operation may commence unless the holder of the rights concerned has provided for a financial provision acceptable to the Petroleum Agency guaranteeing the availability of sufficient funds for the due fulfilment of all exploration and production work programmes by the holder.

### **Minister's power to suspend or cancel permit or right**

**73.** (1) Subject to subsections (2), (3) and (4), the Minister may cancel or suspend any reconnaissance permit, retention permit, technical co-operation or permit, if the holder or owner thereof—



- (a) is conducting any reconnaissance, exploration or production operation in contravention of this Act;
- (b) breaches any material term or condition of such right or permit;
- (c) is contravening any condition in the environmental authorisation;
- (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;

(2) Before acting under subsection (1), the Minister must—

- (a) give written notice to the holder or owner indicating the intention to suspend or cancel the right;
- (b) set out the reasons why he or she is considering suspending or cancelling the right;
- (c) afford the holder or owner a reasonable opportunity to show why the right, permit or permission should not be suspended or cancelled; and
- (d) notify the mortgagee, if any, of the exploration right or production right concerned of his or her intention to suspend or cancel the right or permit.

(3) The Minister must direct the holder or owner to take specified measures to remedy any contravention, breach or failure.

(4) If the holder or owner does not comply with the direction given under subsection (3), the Minister may act under subsection (1) against the holder or owner after having—

- (a) given the holder or owner a reasonable opportunity to make representations;  
and
- (b) considered any such representations.

(5) The Minister may by written notice to the holder or owner lift a suspension if the holder or owner—

- (a) complies with a directive contemplated in subsection (3); or
- (b) furnishes compelling reasons for the lifting of the suspension.

**Restriction or prohibition of exploration and production on certain land or block**

**74.** (1) Subject to subsection (2) and section 48 of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003), no exploration right or production right may be granted or reconnaissance permit or technical co-operation permit issued in respect of—

- (a) land comprising a residential area;
- (b) any public road, railway or cemetery;
- (c) any land being used for public or government purposes or reserved in terms of any other law; or
- (d) areas identified by the Minister by notice in the *Gazette* in terms of section 75.

(2) An exploration right or production right granted or reconnaissance permit or technical co-operation permit may be issued in respect of the land contemplated in subsection (1) if the Minister is satisfied that—

- (a) having regard to the sustainable development of the petroleum resources involved and the national interest, it is desirable to issue it;
- (b) the reconnaissance, exploration or production will take place within the framework of national environmental management policies, norms and standards; and

- (c) the granting of such rights or permits will not detrimentally affect the interests of any holder of a exploration right or production right.

### **Minister's power to prohibit or restrict exploration or production**

**75.** (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 petroleum in question and the need to promote the sustainable development of the nation's petroleum resources—

- (a) prohibit or restrict the granting of any reconnaissance permit, technical co-operation permit, exploration right or production right 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 permit, technical co-operation permit, exploration right or production right in respect of a specific petroleum or petroleum or class of petroleum identified by the Minister for such period and on such terms and conditions as the Minister may determine.

(2) A notice contemplated in subsection (1) does not affect exploration or production in, on or under land or block which, on the date of the notice, is the subject of a reconnaissance permit, technical co-operation permit, exploration right, production right or a retention permit.

(3) The Minister may from time to time by notice in the *Gazette*—

- (a) lift a prohibition or restriction made in terms of subsection (1) if the circumstances which caused the Minister so to prohibit or restrict no longer exist; or

(b) amend the period, term or condition applicable to any prohibition or restriction made in terms of subsection (1) if the circumstances which caused the Minister so to prohibit or restrict have changed.

(4) Subject to subsection (2)(b), the Minister may by notice in the *Gazette* invite applications for a reconnaissance permit, technical co-operation permit, exploration right or production right in respect of any petroleum 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.

### **Optimal production of petroleum resources**

**76.** (1) Subject to subsection (2), the Petroleum Agency may recommend to the Minister to direct the holder of a production right to take corrective measures if the Petroleum Agency establishes that the petroleum is not being produced optimally in accordance with the production work programme or that a continuation of such practice will detrimentally affect the objects referred to in section 2(f).

(2) Before making the recommendation, the Petroleum Agency must consider whether the technical and financial resources of the holder of the production right in question and the prevailing market conditions justify such recommendation.

(3) (a) If the Minister agrees with the recommendation, he or she must, within 30 days from date of receipt of the recommendation of the Petroleum Agency, in writing notify the holder that he or she must take such corrective

measures as may be set out in the notice and must remedy the position within the period mentioned in the notice.

(b) The Minister must afford the holder the opportunity to make representations in relation to the Petroleum Agency's findings within 60 days from the date of the notice and must point out that non-compliance with the notice might result in suspension or cancellation of the production right.

(4) The Minister may, on the recommendation of the Petroleum Agency, suspend or cancel a production right if—

- (a) the holder of that production right fails to comply with a notice contemplated in subsection (3); or
- (b) having regard to any representations by the holder, the Minister is convinced that any act or omission by the holder justifies the suspension or cancellation of the right.

(5) The Minister may, on the recommendation of the Petroleum Agency, lift the suspension of a production right if the holder in question—

- (a) complies with the notice contemplated in subsection (3); or
- (b) furnishes compelling reasons for the lifting of the suspension.

### **Application for and issuing of a care and maintenance permit**

77. (1) The holder of a production right who wishes to scale down production operations or temporarily cease operations must apply for a care and maintenance permit and lodge such application—

- (a) at the office of the Petroleum Agency in the prescribed manner;
- (b) together with the prescribed non-refundable application fee;

- (c) state reasons and period for which care and maintenance permit is requested;
- (d) provide documentary evidence for scaling down or temporarily cessation of operations.

(2) The application for care and maintenance permit must be accompanied by—

- (a) a consultation report with a registered trade union or affected employees or their nominated representatives where there is no such trade union;
- (b) an environmental impact assessment report
- (c) report indicating compliance with the approved work programme and the extent of remaining reserves; and
- (d) a socio-economic impact assessment report.

(3) The Petroleum Agency must accept the application for care and maintenance permit if the requirements contemplated in subsections (1) and (2) are met.

(4) The Minister must issue a care and maintenance permit if the requirements of subsection (1) and (2) are met and satisfied that the reasons advanced for the application are justifiable.

(5) The care and maintenance permit—

- (a) is not transferable; and
- (b) may not be granted for a period exceeding 2 years.

### **Use of land surface rights contrary to objects of Act**

**78.** (1) Subject to subsection (2), any person who intends to use the surface of any land in any way which may be contrary to any object of this Act or

which is likely to impede any such object must apply to the Minister for approval in the prescribed manner.

(2) Subsection (1) does not apply to—

- (a) farming or any use incidental thereto;
- (b) the use of any land which lies within an approved town planning scheme which has applied for and obtained approval in terms of subsection (1); or
- (c) any other use which the Minister may determine by notice in the *Gazette*.

(3) Despite subsection (1), the Minister may 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 production of petroleum resources being detrimentally affected.

(4) When an investigation is conducted in terms of subsection (3), the Petroleum Agency must—

- (a) by written notice served on the person concerned, notify the person of the allegation and of the Minister's intention to issue a directive to take corrective measures;
- (b) set out the measures to be taken in order to rectify the matter; and
- (c) afford that person the opportunity to respond within 30 days.

(5) After considering the results of the investigation contemplated in subsection (3), and any representations contemplated in subsection (4)(c), the Minister may direct the person concerned to take the necessary corrective measures within a period specified in the directive.

### Compensation payable under certain circumstances

**79.** (1) The holder of a reconnaissance permit, exploration right or production right must notify the relevant Petroleum Agency if that holder is prevented from commencing or conducting any reconnaissance, exploration or production operations because the owner or the lawful occupier of the land in question—

- (a) refuses to allow such holder to enter the land;
- (b) places unreasonable demands in return for access to the land; or
- (c) cannot be found in order to apply for access.

(2) The Petroleum Agency must, within 14 days from the date of the notice referred to in subsection (1)—

- (a) call upon the owner or lawful occupier of the land to make representations regarding the issues raised by the holder of the reconnaissance permit, exploration right, production right or technical co-operation permit;
- (b) inform that owner or occupier of the rights of the holder of a right or permit in terms of this Act;
- (c) set out the provisions of this Act which such owner or occupier is contravening; and
- (d) inform that owner or occupier of the steps which may be taken, should he or she persist in contravening the provisions.

(3) If the Petroleum Agency, after having considered the issues raised by the holder under subsection (1) and any written representations by the owner or the lawful occupier of the land, concludes that the owner or occupier has suffered or is likely to suffer loss or damage as a result of the reconnaissance, exploration or production operations, he or she must request the parties concerned



to endeavour to reach an agreement for the payment of compensation for such loss or damage.

(4) If the parties fail to reach an agreement, compensation must be determined by arbitration in accordance with the Arbitration Act, 1965 (Act No. 42 of 1965), or by a competent court.

(5) If the Petroleum Agency, having considered the issues raised by the holder under subsection (1) and any representations by the owner or occupier of land and any written recommendation by the Petroleum Development and Environmental Committee, concludes that any further negotiation may detrimentally affect the objects of this Act referred to in section 2(c), (d), (f) or (g), the Petroleum Agency may recommend to the Minister that such land be expropriated in terms of section 80.

(6) If the Petroleum Agency determines that the failure of the parties to reach an agreement or to resolve the dispute is due to the fault of the holder of the reconnaissance permit, exploration right or production right, the Petroleum Agency may in writing prohibit such holder from commencing or continuing with reconnaissance, exploration or production operations on the land or block in question until such time as the dispute has been resolved by arbitration or by a competent court.

(7) The owner or lawful occupier of land on which reconnaissance, exploration or production operations will be conducted must notify the relevant Petroleum Agency if that owner or occupier has suffered or is likely to suffer any loss or damage as a result of the exploration or production operation, in which case this section applies with the changes required by the context.

## **Minister's power to expropriate property for purpose of exploration or production**

**80.** (1) If it is necessary for the achievement of the objects referred to in section 2 (*d*), (*e*), (*f*), (*g*) and (*h*) the Minister may, in accordance with section 25(2) and (3) of the Constitution, expropriate any land or any right therein and pay compensation in respect thereof.

(2) (*a*) Sections 6, 7 and 9(1) of the Expropriation Act, 1975 (Act No. 63 of 1975), apply to any expropriation in terms of this Act.

(*b*) Any reference in the sections referred to in paragraph (*a*) to "the Minister" must be construed as being a reference to the Minister defined in this Act.

## **Lapsing of right, permit or permission.**

**81.** Any right, permit or permission granted or issued in terms of this Act lapses, whenever—

(*a*) the holder thereof—

- (i) who is a natural person is deceased and there are no successors in title;
- (ii) who is a company is finally deregistered in terms of the relevant Acts and no application has been made or was made to the Minister for the consent in terms of section 36 or such permission has been refused;

(*b*) it is cancelled in terms of section 73;

- (c) it is abandoned; or
- (d) in the event that the holder is liquidated and finally deregistered or sequestrated, the right, permit, permission, or license must fall within the insolvent estate and if sold, transferred to the purchaser subject to the prior written consent of the Minister in terms of section 36.

## CHAPTER 5

### GENERAL AND MISCELLANEOUS PROVISIONS

#### **Power to enter exploration, production or retention area**

- 82.** (1) The Minister may designate any member of the Board, the Petroleum Agency or any officer as an authorised person, who can carry out the functions contemplated in subsection (4) and in section 83.
- (2) An authorised person must be furnished with a certificate signed by the Minister stating that he or she has been authorised under subsection (1).
- (3) An authorised person must, at the request of any person, exhibit the certificate referred to in subsection (2) to such a person.
- (4) An authorised person may, on the authority of a warrant issued in terms of subsection (6)—
- (a) in order to obtain evidence, enter any reconnaissance, exploration, production or retention area or any place where exploration or production operations are being conducted if he or she has reason to believe that any provision of this Act has been, is being or will be contravened;
  - (b) direct the person in control of or any person employed at such area—

- (i) to deliver or furnish any information, including books, records or other documents, in the possession, or under the control, of that person that pertains to the investigation; and
  - (ii) to render such assistance as the authorised person requires in order to enable him or her to perform his or her functions under this Act;
- (c) inspect any book, record, statement or other document including electronic records, documents or data and make copies thereof or excerpts therefrom;
- (d) examine any appliance or other material or substance found in such area;
- (e) take samples of any material or substance and test, examine, analyse and classify such samples; and
- (f) seize any material, substance, book, record, statement or other document including electronic records, documents or data which might be relevant to a prosecution under this Act and keep it in his or her custody.

(5) The person from whom the control of any book, record or document including electronic records or data has been taken, may, at his or her own expense and under the supervision of the authorised person make copies thereof or excerpts therefrom.

(6) A warrant referred to in subsection (4) must be issued by a magistrate who has jurisdiction in the matter, and may only be issued if the magistrate is satisfied that there are reasonable grounds to believe that any material, substance, appliance, book, record, statement or document or electronic information, documents or data that may relate to a contravention of this Act, is in the respective area, or in the possession of a person in the respective area against whom such a warrant is sought.

(7) (a) If no criminal proceedings are instituted in connection with any item seized in terms of subsection (4), or if it appears that such item is not required for the purpose of evidence or of any court proceedings that item must be returned as soon as possible to the person from whom it was seized.

(b) After the conclusion of criminal proceedings any item seized in terms of subsection (4) and which served as an exhibit in proceedings in which a person was convicted must be handed over to the authorised person to be destroyed or otherwise dealt with as ordered by the court.

### **Routine inspections**

**83.** Any authorised person may without a warrant—

- (a) enter any reconnaissance, production or exploration or retention area or any place where exploration or production are being conducted in order to inspect any activity, process or operation carried out in or upon the area or place in question; and
- (b) require the holder of the right, permit or permission 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.

## Orders, suspensions and instructions

**84.** (1) If an authorised person finds that a contravention or suspected contravention of, or failure to comply with any provision of this Act or any other law governing the permitted activity or any term or condition of any right, permit or permission granted or issued or an environmental authorisation issued, has occurred or is occurring on the relevant reconnaissance, exploration, production or retention area or place where exploration or production operations or processing operations are being conducted, the authorised person may—

- (a) order the holder of the relevant right permit or permission, or the person in charge of such area, any person carrying out or in charge of the carrying out of such activities or operations or the manager, official, employee or agent of such holder or person to, take immediate rectifying steps; or
- (b) order that the reconnaissance, production or processing operations or part thereof be suspended or terminated, and give such other instructions in connection therewith as may be necessary.

(2) The Director-General must confirm or set aside any order contemplated in subsection (1)(a) or (b).

(3) The Director-General must notify the relevant holder or other person contemplated in subsection (1) in writing within 60 days after the order referred to in subsection (1)(a) or (b) has been confirmed or set aside, failing which such order lapses.

**Prohibition of obstruction, hindering or opposing of authorised person**

**85.** No person may obstruct, hinder or oppose any authorised person or any other person in the performance of his or her duties or the exercise of his or her powers and functions in terms of this Act.

**Prohibition of occupational detriment against employee**

**86.** (1) The holder of a right, permit or permission may not subject any of his or her employees to any occupational detriment on account, or partly on account, of any such employee disclosing information to the Minister, the Director-General or any authorised person—

- (a) regarding the failure by such holder to comply with any provision of this Act;
- (b) to the effect that such holder is conducting his or her exploration or production operation, as the case may be, in a manner which is contrary to the objects contemplated in section 2(e) and (f) and contrary to the social and labour plan; or
- (c) that any activity or operation which is being conducted by such holder does not comply with any provision of this Act, any other law or any term or condition of such right, permit or permission.

(2) For the purposes of this section, occupational detriment means "occupational detriment" as defined in section 1 of the Protected Disclosures Act, 2000 (Act No. 26 of 2000).

### Internal appeal process and access to courts

**87.** (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 of becoming aware of such administrative decision in the prescribed manner to—

- (a) the Director-General, if it is an administrative decision by the Petroleum Agency or 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.

(2) (a) An appeal in terms of subsection (1) does not suspend the administrative decision, unless it is suspended by the Director-General or the Minister, as the case may be.

(b) Any subsequent application in terms of this Act must be suspended pending the finalisation of the appeal referred to in paragraph (a).

(3) No person may apply to a court for the review of an administrative decision contemplated in subsection (1) until that person has exhausted his or her remedies in terms of this section.

(4) Sections 6, 7(1) and 8 of the Promotion of Administrative Justice Act, 2000 (Act No 3 of 2000), apply to any court proceedings contemplated in this section.



## Serving of documents

**88.** (1) Any notice, order, directive or other document which is required in terms of this Act to be served on or given to any person, must be regarded as having been duly served or given if it is —

- (a) delivered by hand to that person; or
- (b) sent by registered mail to that person's last known business, postal or residential address.

(2) Any notice, order, directive or any other document issued in terms of this Act is valid according to the terms thereof, despite any want of form or lack of power on the part of any officer who issues or authenticates it as long as such power is subsequently validly conferred upon the officer.

## Offences

- 89.** Any person is guilty of an offence if he or she—
- (a) contravenes or fails to comply with—
    - (i) sections 6, 50, 61 and 62;
    - (ii) section 83, 85 or 86;
    - (iii) section 69
    - (iv) section 40;
    - (v) any directive, notice, suspension, order, instruction or condition issued, given or determined in terms of this Act;
    - (vi) any direction contemplated in section 63; or
    - (vii) any other provision of this Act;

- (b) submits inaccurate, incorrect or misleading information in connection with any matter required to be submitted under this Act; or

## Penalties

- 90.** (1) Any person convicted of an offence in terms of this Act is liable—
- (a) in the case of an offence referred to in section 89(a)(i), to a fine not exceeding 10 percent of the persons or right holder's annual turnover in the Republic and its exports from the Republic during the person's or right holder's preceding financial year or to imprisonment for a period not exceeding four years or to both such fine and such imprisonment;
  - (b) in the case of an offence referred to in section 89(a)(ii), to the penalty that may be imposed for perjury;
  - (c) in the case of an offence referred to in section 89(a)(iii), to a fine not exceeding five percent of the persons or right holder's annual turnover in the Republic and its exports from the Republic during the persons or right holder's preceding financial year or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment;
  - (d) in the case of an offence referred to in section 89(a)(v), to the penalty that may be imposed in a magistrate's court for a similar offence;
  - (e) in the case of an offence referred to in section 89(a)(vi) and (vii), to a fine not exceeding five percent of the persons or right holder's annual turnover in the Republic and its exports from the Republic during the persons or right holder's preceding financial year;

- (f) in the case of an offence referred to in section 89(c), to a fine not exceeding R500 000 for each day that such person persists in contravention of the said provision; and
- (g) in the case of any conviction of an offence in terms of this Act for which no penalty is expressly determined, to fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

### **Administrative penalty**

- 91.** (1A) (a) (i) An authorised person referred to section 83 may make a recommendation in writing to the Director-General that an administrative fine be imposed on the holder which has failed to comply with any provision contemplated in section 89(iv).
- (ii) The authorised person must serve a copy of the recommendation on the holder concerned.
  - (iii) The holder may make written representations to the Director-General within 30 days of receipt of a copy of the recommendation.
  - (iv) A representation made in terms of subparagraph (iii) may not be used against the holder in any criminal or civil proceedings in respect of the same set of facts.
- (b) (i) The Director-General, after considering the recommendation and any representation made in terms paragraph (a)(iii), must within the prescribed period from the date of receipt of the holder's representations in terms of paragraph (a)(iii) or after expiry of the 30

day period in paragraph (a)(iii) without such representations having been made, whichever is the earlier—

- (aa) disregard the recommendation;
  - (bb) impose a fine not exceeding R800 000; or
  - (cc) refer the matter to the National Prosecuting Authority for a decision as to whether the holder should be charged with an offence.
- (ii) The Director-General must in writing notify the holder of his or her decision made in terms of paragraph (b)(i) within the prescribed period.
  - (iii) The holder may appeal the decision of the Director-General to the Minister in terms of section 87.
  - (iv) Save if the holder has lodged an appeal in terms of paragraph (b)(iii), the holder must pay any fine imposed in terms of paragraph (b)(i)(bb) within 30 days of receipt of the Director-General's notification thereof in terms of paragraph (b)(ii).
  - (v) If the right holder fails to pay the fine within the period referred to in paragraph (b)(iv) and an appeal has not been lodged within the required period, the Director-General may forthwith file with the clerk or registrar of a competent court a certified copy of the notice contemplated in paragraph (b)(ii), and the notice thereupon has the effect of a civil judgment lawfully given in that court in favour of the Department.

(c) Money received by the Department in payment of administrative fines imposed in terms of paragraph (a) must

be paid to a fund established and controlled by the Petroleum Agency in terms of this Act.

(d) The Petroleum Agency must, in consultation with the Minister, use the money in the fund for the promotion of exploration activities in the petroleum industry and matters incidental thereto.

### **Appointment of operator**

**92.** (1) If the holder of a right, permit or permission appoints any person or employs an operator to perform any work within the boundaries of the reconnaissance, exploration, production or retention area, as the case may be, such holder remains responsible for compliance with this Act.

(2) A copy of the contract appointing the operator indicating the terms and conditions must within 14 days from the date signing be submitted to Petroleum Agency for noting.

### **Amendment of rights, permits, programmes and plans**

**93.** (1) A retention permit, technical corporation permit, reconnaissance permit, exploration right, production right, exploration work programme, production work programme, or an environmental authorisation issued in terms of the National Environmental Management Act, may not be amended or varied without the written consent of the Minister.

## Delegation and assignment

**94.** (1) The Minister may, subject to such conditions as he or she may impose, in writing delegate any power conferred on him or her by or under this Act, except a power to make regulations or deal with any appeal in terms of section 86, and may assign any duty so imposed upon him or her to the Director-General, the Chief Executive Officer or any officer.

(2) The Minister may, in delegating any power or assigning any duty under subsection (1), authorise the further delegation of such power and the further assignment of such duty by a delegatee or assignee.

(3) The Director-General, the Petroleum Agency or any other officer to whom a power has been delegated or to whom a duty has been assigned by or under this Act, may in writing delegate any such power or assign any such duty to any other officer.

(4) The Minister, Director-General, Petroleum Agency or officer may at any time—

- (a) withdraw a delegation or assignment made in terms of subsection (1), (2) or (3); and
- (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 are affected by such withdrawal and amending of a decision.

(5) The Minister, Director-General, Petroleum Agency or officer is not divested of any power or exempted from any duty delegated or assigned by him or her.

## Regulations

- 95.** (1) The Minister may, by notice in the Gazette, make regulations regarding—
- (a) transformation of the upstream petroleum industry which must address procurement, human resources development and employment equity;
  - (b) the exploitation, processing, utilization or use of or the disposal of any petroleum;
  - (c) procedures in respect of appeals lodged under this Act;
  - (d) fees payable in relation to any right or permit issued or granted in terms of this Act;
  - (e) fees payable in relation to any appeal contemplated in this Act;
  - (f) the form of any application in terms of this Act and of any consent or document required to be submitted with such application, and the information or details which must accompany any such application;
  - (g) the form, conditions, issuing, renewal, abandonment, suspension or cancellation of any environmental authorisation, permit, licence, certificate, permission, receipt or other document which may or has to be issued, granted, approved, required or renewed in terms of this Act;
  - (h) the form of any register, record, notice, sketch plan or information which may or must be kept, given, published or submitted in terms of, or for the purposes of, this Act;
  - (i) the prohibition on the disposal of any petroleum or the use thereof for any specified purpose or in any specified manner or for any other purpose or in any other manner than a specified purpose or manner;

- (j) the restriction or regulation in respect of the disposal or use of any petroleum in general;
- (k) any matter which may or must be prescribed for in terms of this Act; and
- (l) any other matter, the regulation of which may be necessary or expedient in order to achieve the objects of this Act.

(2) No regulation relating to State revenue or expenditure may be made by the Minister except with the concurrence of the Minister of Finance.

(3) Any regulation made under this section may provide that any person contravening such regulation or failing to comply therewith, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

### **Proof of facts**

**96.** In any legal proceedings in terms of this Act, any statement, entry or information in or on any book, plan, record or other document is admissible as *prima facie* evidence of the facts in or on it by the person who made, entered, recorded or stored it.

### **Act binds State**

**97.** This Act binds the State, save in so far as criminal liability is concerned.



**Amendment of laws**

**98.** The laws mentioned in Schedule 1 are hereby amended to the extent indicated in the third column of that Schedule.

**Short title and commencement**

**99.** (1) This Act is called the Upstream Petroleum Resources Development Act, 2019, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) Different dates may so be fixed in respect of different provisions of this Act.

**SCHEDULE 1**  
**AMENDMENT OF LAWS**

No. and Year	Short Title	Extent of amendment or repeal
Act No. 28 of 2002	Mineral and Petroleum Resources Development Act, 2002	Amendment of section 1
		<p>1. Section 1 of the Mineral and Petroleum Resources Development Act, 2002 (hereinafter referred to as "the principal Act"), is hereby amended—</p> <p>(a) by the deletion of the definition of "block";</p> <p>(b) by the substitution in the definition of "broad based economic empowerment" for paragraph (a) of the following paragraph:</p> <p style="padding-left: 40px;">"(a) redressing the result of past or present discrimination based on race, gender or other disability of historically disadvantaged persons in the minerals <b>[and petroleum]</b> industry, related industries and in the value chain of such industries; and";</p> <p>(c) by the substitution in paragraph (b) of the definition of "broad based economic empowerment" for subparagraph (i) of the following subparagraph:</p> <p style="padding-left: 40px;">"(i) the ownership, participation in or the benefiting from existing or future mining, prospecting[, <b>exploration or production</b>] operations;";</p> <p>(d) by the substitution for the definition of "contractual royalties" of the following definition:</p> <p style="padding-left: 40px;">" <b>'contractual royalties'</b> means any royalties or payment agreed to between parties in a mining <b>[or production]</b> operation; and";</p> <p>(e) by the deletion of the definition of "designated agency",</p> <p>(f) by the deletion of the definition of "development programme",</p> <p>(g) by the substitution for the definition of "employee" of the following definition—</p> <p style="padding-left: 40px;">" <b>'employee'</b> means any person who works for the holder of a reconnaissance permission, prospecting right, mining right, mining permit[, <u>or</u> retention permit, <b>[technical corporation permit, reconnaissance permit, exploration right and production right,</b>] and who is entitled to receive any remuneration, and includes any person working for an independent contractor;";</p>

		<p>(h) by the substitution for the definition of "exclusionary act" of the following definition:  " <b>exclusionary act</b> means any act or practice which impedes or prevents any person from entering into or actively participating in the mineral [and petroleum] industry, or entering into or actively participating in any market connected with the mineral [<b>and petroleum industries] industry</b>;"</p> <p>(i) by the deletion of the definition of "exploration area";</p> <p>(j) by the deletion of the definition of "exploration operation";</p> <p>(k) by the deletion of the definition of "exploration right";</p> <p>(l) by the deletion of the definition of "exploration work programme";</p> <p>(m) by the substitution for the definition of "holder" of the following definition:  " <b>holder</b> in relation to a prospecting right, mining right, mining permit[, ] or retention permit, [<b>exploration right, production right, reconnaissance permit or technical corporation permit,</b>] means the person to whom such right or permit has been granted or such person's successor in title;"</p> <p>(n) by the deletion in the definition of "mineral" of paragraphs (b) and (c);</p> <p>(o) by the deletion of the definition of "petroleum";</p> <p>(p) by the deletion of the definition of "petroleum reservoir";</p> <p>(q) by the deletion of the definition of "production area";</p> <p>(r) by the deletion of the definition of "production right";</p> <p>(s) by the deletion of the definition of "reconnaissance operation";</p> <p>(t) by the deletion of the definition of "reconnaissance permit";</p> <p>(u) by the substitution for the definition of "residue deposit" of the following definition:  " <b>residue deposit</b> means any residue stockpile remaining at the termination, cancellation or expiry of a prospecting right, mining right, mining permit[, <b>exploration right, production right</b>] or an old order right;"</p> <p>(v) by the substitution for the definition of "residue stockpile" of the following definition:  " <b>residue stockpile</b> 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[, <b>production right</b>] or an old order right;"</p> <p>(w) by the substitution for the definition of "sustainable development" of the following definition:</p>
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		<p>" <b>'sustainable development'</b> means the integration of social, economic and environmental factors into planning, implementation and decision making so as to ensure that mineral <b>[and petroleum]</b> resources development serves present and future generations;"</p> <p>(x) by the deletion of the definition of "technical co-operation permit"; and</p> <p>(y) by the substitution in the definition of "topsoil" for paragraph (d) of the following paragraph:  "(d) is not of a depth of more than 0,5 metres or such other depth as the Minister may prescribe for a specific prospecting [or exploration area] or a mining area;"</p>
		<p><b>Amendment of section 2</b></p> <p><b>2.</b> Section 2 of the principal Act is hereby amended by the substitution for paragraphs (a), (b), (c), (d), (e), (g), (h) and (i) of the following paragraphs, respectively:</p> <p>"(a) recognise the internationally accepted right of the State to exercise sovereignty over all the mineral <b>[and petroleum]</b> resources within the Republic;</p> <p>(b) give effect to the principle of the State's custodianship of the nation's mineral <b>[and petroleum]</b> resources;</p> <p>(c) promote equitable access to the nation's mineral <b>[and petroleum]</b> resources to all the people of South Africa;</p> <p>(d) substantially and meaningfully expand opportunities for historically disadvantaged persons, including women and communities to enter into and actively participate in the mineral <b>[and petroleum]</b> industries and to benefit from the exploration of the nation's mineral <b>[and petroleum]</b> resources;</p> <p>(e) promote economic growth and mineral <b>[and petroleum]</b> resources development in the Republic, particularly development of downstream industries through provision of feedstock, and development of mining <b>[and petroleum]</b> inputs industries;</p> <p>(g) provide for security of tenure in respect of prospecting, exploration, mining <b>[and production]</b> operations;</p> <p>(h) <i>give effect to section 24 of the Constitution by ensuring that the nation's mineral <b>[and petroleum]</b> resources are developed in an orderly and ecologically sustainable manner while promoting justifiable social and economic development; and</i></p>

		<p>(i) ensure that holders of mining <b>[and production]</b> rights contribute towards the socio-economic development of the area in which they are operating.";</p>
		<p><b>Amendment of section 3</b></p> <p>3. The following section is hereby substituted for section 3 of the principal Act:</p> <p><b>"Custodianship of nation's mineral [and petroleum] resources</b></p> <p>3. (1) Mineral <b>[and petroleum]</b> resources are the common heritage of all the people of South Africa and the State is the custodian thereof for the benefit of all South Africans.";</p> <p>(2) As the custodian of the nation's mineral <b>[and petroleum]</b> resources, the State, acting through the Minister, may—</p> <p>(a) grant, issue, refuse, control, administer and manage any reconnaissance permission, prospecting right, permission to remove, mining right, mining permit, retention permit[, <b>technical co-operation permit,</b>] <b>and reconnaissance permit [and, exploration right and production right];</b> and</p> <p>(b) in consultation with the Minister of Finance, prescribe and levy, any fee payable in terms of this Act.</p> <p>(3) The Minister must ensure the sustainable development of South Africa's mineral <b>[and petroleum]</b> resources within a framework of national environmental policy, norms and standards while promoting economic and social development."</p>
		<p><b>Amendment of section 5</b></p> <p>4. The following section is hereby substituted for section 5 of the Principal Act:</p> <p><b>"Legal nature of prospecting right[,] or mining right, [exploration right or production right,] and rights of holders thereof</b></p> <p>5. (1) A prospecting right[, ] <b>or mining right [, exploration right or production right]</b> 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 <b>[or petroleum]</b> and the land to which such right relates.</p> <p>(2) The holder of a prospecting right[, ] <b>or mining right [, exploration right or</b></p>

		<p><b>production right]</b> is entitled to the rights referred to in this section and such other rights as may be granted to, acquired by or conferred upon such holder under this Act or any other law.</p> <p>(3) Subject to this Act, any holder of a prospecting right[, ] <b>or</b> mining right [, <b>exploration right or production right]</b> may—</p> <p>(a) enter the land to which such right relates together with his or her employees, and 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 of prospecting[, ] <b>or</b> mining [, <b>exploration or production]</b>, as the case may be;</p> <p>(b) prospect[, ] <b>or</b> mine, [<b>explore or produce,</b>] as the case may be, for his or her own account on or under that land for the mineral [<b>or petroleum]</b> for which such right has been granted;</p> <p>(c) remove and dispose of any mineral found during the course of prospecting[, ] <b>or</b> mining, [<b>exploration or production,</b>] as the case may be;</p> <p>(d) subject to the National Water Act, 1998 (Act No. 36 of 1998), use water from any natural spring, lake, river or stream, situated on, or flowing through, such land or from any excavation previously made used for prospecting[, ] <b>or</b> mining [, <b>exploration or production]</b> purposes, or sink a well or borehole required for use relating to prospecting, mining [, <b>exploration or production]</b> on such land; and</p> <p>(e) carry out any other activity incidental to prospecting[, ] <b>or</b> mining [, <b>exploration or production]</b> operations, which activity does not contravene the provisions of this Act."</p>
		<p><b>Amendment of section 5A</b></p> <p><b>5.</b> Section 5A of the principal Act is hereby amended—</p> <p>(a) by the substitution for the words preceding paragraph (a) of the following words: "No person may prospect for or remove, mine, conduct [<b>technical co-operations,</b>] reconnaissance operations [, <b>explore]</b> for [<b>and produce]</b> any mineral [<b>or petroleum]</b> or commence with any work incidental thereto on any area without—"; and</p> <p>(b) by the substitution for paragraph (b) of the following paragraph:</p>

		<p>"(b) reconnaissance permission, prospecting right, permission to remove, mining right, mining permit, retention permit, <b>[technical co-operation permit,]</b> or reconnaissance permit, <b>[exploration right or production right,]</b> as the case may be."</p>
		<p><b>Amendment of section 38A</b></p> <p><b>6.</b> Section 38A of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:</p> <p>"(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) as it relates to prospecting <b>[,]</b> <u>or</u> mining <b>[, exploration, production or]</b> activities incidental thereto on a prospecting <b>[,]</b> or mining<b>[, exploration or production]</b> area."</p>
		<p><b>Amendment of section 38B</b></p> <p><b>7.</b> Section 38B of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:</p> <p>"(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<b>[,]</b> <u>and</u> mining<b>[, exploration and production]</b> 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."</p>
		<p><b>Amendment of section 45</b></p> <p><b>8.</b> Section 45 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: "If any prospecting, mining<b>[,]</b> or reconnaissance<b>[, exploration or production]</b> operations or activities incidental thereto cause or <b>[results]</b> <u>result</u> 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,</p>

		<p>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—."</p>
		<p><b>Substitution of heading of Chapter 5</b></p> <p>9. The following heading is hereby substituted for the heading to Chapter 5 of the principal Act:</p> <p><b><u>"MINERALS AND [PETROLEUM] MINING DEVELOPMENT BOARD"</u></b></p>
		<p><b>Substitution of section 57</b></p> <p>10. The following section is hereby substituted for section 57 of the principal Act:</p> <p><b><u>"[Establishment of] Minerals and [Petroleum] Mining Development Board</u></b></p> <p>57. The Minerals and Petroleum Board <b><u>[is hereby] established in terms of this Act continues to exist under the name of the Minerals and Mining Development Board.</u></b></p>
		<p><b>Amendment of section 58</b></p> <p>11. Section 58 of the principal Act is hereby amended by the substitution in subsection (1)(a) for subparagraphs (ii) and (iii) of the following sub-paragraphs, respectively:</p> <p>(ii) the sustainable development of the nation's mineral <b><u>[and petroleum]</u></b> resources;</p> <p>(iii) the transformation and downscaling of the minerals and <b><u>[petroleum industries] mining industry;</u></b>".</p>
		<p><b>Repeal of sections 69 to 90</b></p> <p>12. Sections 69 to 90 of the principal Act are hereby repealed.</p>
		<p><b>Amendment of section 91</b></p> <p>13. Section 91 of the principal Act is hereby amended by the substitution for subsection 4 of the following subsection:</p>



		<p>"(4) An authorised person may, on the authority of a warrant issued in terms of subsection (5) in order to obtain evidence, enter any reconnaissance, prospecting, mining [<b>exploration, production</b>] or retention area or any place where prospecting operations or mining operations are being conducted where he or she has reason to believe that any provision of this Act has been, is being or will be contravened."</p> <p><b>Amendment of section 92</b></p> <p><b>14.</b> Section 92 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:</p> <p>"(a) enter any reconnaissance, prospecting, mining [<b>production or exploration</b>] or retention area or any place where prospecting[, ] or mining [<b>exploration or production</b>] are being conducted in order to inspect any activity, process or operation carried out in or upon the area or place in question."</p> <p><b>Amendment of section 93</b></p> <p><b>15.</b> Section 93 of the principal Act is hereby amended—</p> <p>(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:</p> <p>"(b) any term or condition of any right, permit or permission or any other law granted or issued or an environmental authorisation issued, has occurred or is occurring on the relevant reconnaissance[, <b>exploration, production</b>], prospecting, mining or retention area or place where prospecting operations or mining operations or processing operations are being conducted, such a person may—"; and</p> <p>(b) by the substitution in subsection (1)(b) for subparagraph (ii) of the following subparagraph:</p> <p>"(ii) order that the reconnaissance, prospecting [<b>exploration</b>], mining [<b>production</b>] or processing operations or part thereof be suspended or terminated, and give such other instructions in connection therewith as may be necessary."</p>
		<p><b>Substitution of section 101</b></p> <p><b>16.</b> The following section is hereby substituted for section 101 of the principal Act:</p> <p><b>"Appointment of contractor</b></p>

		<p><b>101.</b> 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 [, <b>exploration, production</b>] or retention area, as the case may be, such holder remains responsible for compliance with this Act."</p>
		<p><b>Amendment of section 102</b></p> <p><b>17.</b> Section 102 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">"(1) A reconnaissance permission, prospecting right, mining right, mining permit, retention permit, <b>[technical corporation permit,]</b> reconnaissance permit, <b>[exploration right, and]</b> production right, prospecting work programme[, <b>exploration work programme, production work programme</b>], mining work programme, environmental management programme or an environmental authorisation issued in terms of the National Environmental Management Act, 1998, as the case may be, 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."</p>
		<p><b>Amendment of section 104</b></p> <p><b>18.</b> Section 104 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:</p> <p style="padding-left: 40px;">"(4) The preferent right referred to in subsection (1), shall not be granted in respect of areas, where a prospecting right, mining right, mining permit, retention permit[, <b>production right, exploration right, technical operation permit</b>] or reconnaissance permit has already been granted."</p>
		<p><b>Substitution of long title</b></p> <p><b>19.</b> The following long title is hereby substituted for the long title of the principal Act:</p> <p style="padding-left: 40px;"><b>"To make provision for equitable access to and sustainable development of the nation's mineral [and petroleum resources]; and to provide for matters connected therewith."</b></p>
		<p><b>Substitution of Preamble</b></p>

		<p><b>20.</b> The following long title is hereby substituted for the long title of the principal Act:</p> <p style="text-align: center;">"Preamble</p> <p>RECOGNISING that minerals <b>[and petroleum]</b> are non-renewable natural resources;  ACKNOWLEDGING that South Africa's mineral <b>[and petroleum]</b> resources belong to the nation and that the State is the custodian thereof;  AFFIRMING the State's obligation to protect the environment for the benefit of present and future generations, to ensure ecologically sustainable development of mineral <b>[and petroleum]</b> resources and to promote economic and social development;  RECOGNISING the need to promote local and rural development and the social upliftment of communities affected by mining;  REAFFIRMING the State's commitment to reform to bring about equitable access to South Africa's mineral <b>[and petroleum]</b> resources;  BEING COMMITTED to eradicating all forms of discriminatory practices in the mineral <b>[and petroleum]</b> industries;  CONSIDERING the State's obligation under the Constitution to take legislative and other measures to redress the results of past racial discrimination;  REAFFIRMING the State's commitment to guaranteeing security of tenure in respect of prospecting and mining operations; and  EMPHASISING the need to create an internationally competitive and efficient administrative and regulatory regime,".</p>
		<p><b>Amendment of section 111</b></p> <p><b>21.</b> Section 111 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:</p> <p style="text-align: center;">"(1) This Act is called the Mineral <b>[and Petroleum]</b> Resources Development Act, 2002, and comes into operation on a date fixed by the President by proclamation in the <i>Gazette</i>."</p>
		<p><b>Amendment of citation of laws referring to Act 28 of 2002</b></p> <p><b>22.</b> Any reference to the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), contained in any law in force immediately prior to the Commencement of the Upstream Petroleum Resources Development Act, 2019, must be construed as a reference to the Mineral Resources Development Act, 2002 (Act No. 28 of 2002).</p>