PROPOSED CHANGES TO THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002 (ACT NO. 28 OF 2002)

BY THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL [B15-2013]
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1. Introduction

In 2013, the Mineral and Petroleum Resources Development Amendment Bill [B15-2013] (MPRDA Bill) was introduced in Parliament. The MPRDA Bill purports to amend the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002) (MPRDA). The Bill was passed by both houses of Parliament.

In terms of section 79(1) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), the Bill was sent to the President of the Republic of South Africa for assent. The President, however, did not sign the Bill into force and instead referred the Bill back to Parliament for reconsideration. The President had the following reservations about the constitutionality of the Bill:

a. The definition of “This Act” is likely unconstitutional in that the amended definition elevates the Codes of Good Practice for the South African Minerals Industry, the Housing and Living Condition Standards for the Minerals Industry and the Amended Broad-Based Socio-Economic Empowerment Charter for South African Mining and Minerals Industry to the status of national legislation. In addition, in terms of Section 74 of the Amended Act, the Minister is given the power to amend or repeal these instruments as and when the need arises effectively bypassing the constitutionally mandated procedures for the amendment of legislation.

b. As amended, Sections 26(2B) and 26(3) appear to be inconsistent with South Africa’s obligations under the General Agreement on Trade and Tariffs (GATT) and the Trade, Development and Cooperation Agreement (TDCA) insofar as they appear to impose quantitative restrictions on exports in contravention of GATT and TDCA and in so doing render the state vulnerable to challenges in international fora.

c. The NCOP and the Provincial Legislature did not sufficiently facilitate public participation when passing the Amendment Act as required by Section 72 and 118 of the Constitution in that the consultation period was highly compressed and there appears to have been insufficient notice of the public hearings held by the provincial legislatures.

d. The President is of the view that the Bill should have been referred to the National House of Traditional Leaders for its comments in terms of Section 18 of the Traditional Leadership and Governance Framework Act in that the Bill impacts upon customary law or the customs of traditional communities by:

i. allowing persons to enter upon land to conduct an investigation after notifying and consulting with the owner, occupier or person in control in terms of Section 50 and in so doing ignores the consent principle in customary law; and

ii. amending the definition of “community” in Section 1 of the Amendment Act.

Parliament has still not indicated whether it intends to attempt to remedy the constitutional defects or whether it intends to abandon the Bill.
2. Explanatory Memorandum

Section 3 of this memorandum is the MPRDA as amended by the MPRDA Bill. In this section, -

• The content of the MPRDA that is not envisaged to be affected by the MPRDA Bill appears in plain text.
• The content of the MPRDA that is envisaged to be deleted by the MPRDA Bill appears in square brackets and in bold text.
• The underlined text represents the content that is envisaged to be inserted into the MPRDA by the MPRDA Bill.

For example, in the following paragraph, the words “Minerals and Energy” is envisaged to be deleted by the Bill and the words “Mineral Resources” is envisaged to be inserted

...means the Department of [Minerals and Energy] Mineral Resources

The words “means the Department of” is envisaged to remain unchanged by the MPRDA Bill.

MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT 28 OF 2002

(English text signed by the President) (Assented to 3 October 2002)

ACT
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.

PREAMBLE
RECOGNISING that minerals and petroleum are non-renewable natural resources;

ACKNOWLEDGING that South Africa's mineral and petroleum 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 and petroleum 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 and petroleum resources; BEING COMMITTED to eradicating all forms of discriminatory practices in the mineral and petroleum 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,

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

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4. Interpretation of Act
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In this Act, unless the context indicates otherwise-

‘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;

‘associated mineral’ means any mineral which occurs in mineralogical association with, and in the same core deposit as the primary mineral being mined in terms of a mining right, where it is physically impossible to mine the primary mineral without also mining the mineral associated therewith;

‘authorised person’ means any person designated by the Minister in terms of section 91;

‘beneficiation’ [in relation to any mineral resource] means the following—
(a) primary stage, which includes any process of the winning, recovering, extracting, concentrating, refining, calcining, classifying, crushing, screening, washing, reduction, smelting or gasification thereof;
(b) secondary stage, which includes any action of converting a concentrate or mineral resource into an intermediate product;
(c) tertiary stage, which includes any action of further converting that product into a refined product suitable for purchase by minerals-based industries and enterprises; and
(d) final stage, which is the action of producing properly processed, cut, polished or manufactured products or articles from minerals accepted in the industry and trade as fully and finally processed mineral or mineral product (or a combination of minerals) to a higher value product, over baselines to be determined by the Minister, which can either be consumed locally or exported;

‘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 designated agency and situated wholly or partly in the Republic or its exclusive economic zone and includes any part of such block;

[‘Board’ means the Minerals and Mining Development Board established by section 57;]

‘broad based 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 minerals and 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 mining, prospecting, 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 historically disadvantaged 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, affected by supplying labour to the operations; and
(Paragraph (b)(vi) in the definition of —broad based economic empowerment substituted by section 1(b) of Act 49 of 2008 with effect from 7 June 2013)

(vii) the socio-economic development of all historically disadvantaged South Africans from the proceeds or activities of such operations;

‘Chief Inspector’ means the Chief Inspector of Mines appointed in terms of section 48(1) of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);

‘community’ means [a group of historically disadvantaged persons with interest or rights in a particular area of land on which the members have or exercise communal rights in terms of an agreement, custom or law: Provided that, where as a consequence of the provisions of this act, negotiations or consultations with the community is required, the community shall include the members or part of the community directly affect by mining on land occupied by such members or part of the community] a coherent, social group of persons within a district municipality as defined in the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), with interests or rights in a particular area of land which the members have or exercise communally in terms of an agreement, custom or law;

‘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;

‘Constitution’ means the Constitution of the Republic of South Africa, 1996;

‘Council’ means the Ministerial Advisory Council established in section 56A;

‘contractual royalties’ means any royalties or payment agreed to between parties in a mining or production operation;

‘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;

‘Council for Geoscience’ means the Council established by the Geoscience Act, 1993 (Act No. 100 of 1993);

‘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 [Minerals and Energy] Mineral Resources;

‘designated minerals’ means such minerals as declared by the Minister in the Gazette, which constitute input into local beneficiation programmes in line with national development imperatives;

‘designated agency’ means the organ, agency or company designated in terms of section 70;
‘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;

‘discovery’ means the discovery by the holder of an exploration right of petroleum within the exploration area;

‘effective date’ means the date on which the relevant permit is issued or the relevant right is executed;

(Definition of — effective date inserted by section 1(f) of Act 49 of 2008 with effect from 7 June 2013)

‘employee’ means any person who works for the holder of a reconnaissance permission, prospecting right, mining right, mining permit, retention permit, technical corporation permit, reconnaissance permit or exploration right, and who is entitled to receive any remuneration, and includes any employee working at or in a mine, including any person working for an independent contractor;

‘environment’ means the environment as defined in 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);

‘exclusionary act’ 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 and petroleum industries, or from making progress within such industry or market;

‘exploration area’ means the area comprising the block or blocks depicted in an exploration or production right;

‘exploration operation’ means the re-processing 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 the right granted in terms of section 80;

‘exploration work programme’ means the approved exploration work programme indicating the petroleum 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;

‘free carried interest’ means interest allocated to the State in exploration or production operations without any financial obligation on the State;

‘historically disadvantaged South Africans’ [person means—

(a) any person, category of persons or community, disadvantaged by unfair discrimination before the Constitution took effect;

(b) any association, a majority of whose members are persons contemplated in paragraph (a);

(c) a juristic person, other than an association, which—

(i) is managed and controlled by a person contemplated in paragraph (a) and that the persons collectively or as a group own and control a majority of the issued share capital or members’ interest, and are able to control the majority of the members’ vote; or

(ii) is a subsidiary, as defined in section 1(e) of the Companies Act, 1973, as a juristic person who is a historically disadvantaged person by virtue of the provisions of paragraph (c)(ii)] refers to South African citizens, a category of persons or a community, disadvantaged by unfair discrimination before the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), came into operation which should be representative of the demographics of the country;

‘historic residue stockpiles’ 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 or was stockpiled, stored or accumulated for potential re-use, or which is or was disposed of, by the holder of any right or title (including common law ownership) other than a prospecting right, mining right, mining permit, exploration right or production right issued in terms of this Act;

‘holder’, in relation to a prospecting right, mining right, mining permit, 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;

‘labour sending areas’ refers to areas from where a majority of mineworkers, both historical and current are or have been sourced;

‘land’ includes the surface of the land and the sea, as well as residue deposits and residue stock piles on such land, where appropriate;

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

‘mine’ means, when—

(a) used as a noun—

(i) any excavation in the earth, including any portion under the sea or under other water or in any residue deposit, as well as any borehole, whether being worked or not, made for the purpose of searching for or winning a mineral;

(ii) any other place where a mineral resources is being extracted, including the mining area and all buildings, structures, machinery, residue stockpiles, access roads or objects situated on such area and which are used or intended to be used in connection with such searching, winning or extraction or processing of such mineral resource; and

(b) used as a verb, [in] is the mining of any mineral, in or under the earth, water or any residue deposit, whether by underground [or] opencast, open working or otherwise and includes any operation or activity incidental thereto, in, on or under the relevant mining area;

‘mine gate price’ means the price (excluding VAT) of the mineral or mineral product at the time that the mineral or mineral product leaves the area of the mine or the mining processing site, and excludes charges such as transport and delivery charges from the mine area or the mining processing site to the local beneficiary;

‘mineral’ means any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth or in or under water and which was formed by or subjected to a geological process, and includes sand, stone, rock, gravel, clay, soil and any mineral occurring in residue stockpiles or in residue deposits, but excludes—

(a) water, other than water taken from land or sea for the extraction of any mineral from such water;

(b) petroleum; or

(c) peat;

‘mining area’—

(a) in relation to a mining right or a mining permit, means the area [on which the extraction of any mineral has been authorised and] for which that right or permit is granted;

(b) in relation to any environmental, health and safety, social and labour matter and any residual, latent or other impact thereto, [including includes—

(i) any [land or] surface of land within adjacent or non-adjacent to the area as contemplated in [subsection (iii)] paragraph (a) but upon which related or incidental operations are being undertaken and impacting on the environment;

(ii) any surface of land on which such [road, railway line, power line, pipe line, cableway or conveyor belt] mining infrastructure is located, under the control of the holder of such mining right or mining permit and which such holder is entitled to use in connection with the operations performed or to be performed under such right or permit; and

(iii) all buildings, structures, machinery, residue or other stockpiles, or objects situated on or in the area as contemplated in [subsections (iii)(a) and (iii)(b)] subparagraphs (i) and (ii)];

‘mining operation’ means any operation relating to the act of mining and matters directly incidental thereto, including residue stock piles:
'prospecting area' means an area of land which is the subject of any prospecting right;

'prospecting right' means a right to mine granted in terms of section 27(6);

'petroleum reservoir' means a geological formation containing petroleum;

'prescribed' means prescribed by regulation;

'processing', in relation to any mineral, means the winning, extracting, concentrating, refining, calcining, classifying, crushing, screening, washing, reduction, smelting or gasification thereof;

'production area' means any area which is subject to a production right;

'production operation' means any operation, activity or matter that relates to the exploration, appraisal, development and production of petroleum;

'production right' means a right granted in terms of section 84;

'production sharing agreement' means an agreement between the State and the petroleum company on how the extracted resource will be shared between the State and the petroleum company;

'prospecting' means intentionally searching for any mineral by means of any method-

(a) which disturbs the surface or subsurface of the earth, including any portion of the earth that is under the sea or under other water; or

(b) in or on any residue stockpile or residue deposit, in order to establish the existence of any mineral and to determine the extent and economic value thereof; or

(c) in the sea or other water on land;

'prospecting area' means the area of land which is the subject of any prospecting right—

(a) in relation to a mining right or a mining permit, the area for which that right or permit is granted; or

(b) in relation to any environmental, health and safety, social and labour matter and any residual, latent or other impact thereto, includes any land or surface within, adjacent or non-adjacent to the area as contemplated in paragraph (a) but upon which related or incidental operations are being undertaken and impacting on the environment;

'prospecting operations' mean any activity carried on in connection with prospecting;

'prospecting right' means the right to prospect granted in terms of section 17(1);

'prospecting work programme' means the planned prospecting work programme to be followed in order to mine a mineral resource optimally;

'production sharing agreement' means an agreement between the State and the petroleum company for petroleum development at exploration and production operations, including, inter alia:

(a) free carried interest and may include production sharing agreements
in production operations; and

(b) representation at the joint project committee of the exploration or production operation;

'State participation' means the right of the State to participate in petroleum development at exploration and production operations, including, inter alia:

(a) free carried interest and may include production sharing agreements
in production operations; and

(b) representation at the joint project committee of the exploration or production operation;

'State royalties' means any royalty payable to the State in terms of an Act of Parliament;

'strategic minerals' means such minerals as the Minister may declare to be strategic minerals as and when the need arises in the Gazette;
‘sustainable development’ means the integration of social, economic and environmental factors into planning, implementation and decision making so as to ensure that mineral and petroleum resources development serves present and future generations;
‘technical co-operation permit’ means the technical co-operation permit issued in terms of section 77(1);

‘the sea’ means the water of the sea, as well as the bed of the sea and the subsoil thereof below the low-water mark as defined in the Seashore Act, 1935 (Act No. 21 of 1935), and within—
(a) the territorial waters as contemplated in section 4 of the Maritime Zone Act, 1994 (Act No. 15 of 1994); and
(b) the exclusive economic zone as contemplated in section 7 of the Maritime Zones Act, 1994 (Act No. 15 of 1994); and
(c) the continental shelf as contemplated in section 8 of the Maritime Zones Act, 1994 (Act No. 15 of 1994).

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—
(a) the regulations and any term or condition to which any permit, permission, right, consent, exemption, approval, notice, closure certificate, environmental management plan, environmental management programme or directive issued, given, granted or approved in terms of this Act, is subject; and
(b) the Codes of Good Practice for the South African Minerals Industry Housing and Living Conditions Standards for the Minerals Industry and the Amended Broad Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry.

‘topsoil’ means the layer of soil covering the earth which—
(a) provides a suitable environment for the germination of seed;
(b) allows the penetration of water;
(c) is a source of micro-organisms, plant nutrients and in some cases seed; and
(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.
CHAPTER 2: FUNDAMENTAL PRINCIPLES

2. Objects of Act

The objects of this Act are to—
(a) recognise the internationally accepted right of the State to exercise sovereignty over all the mineral and petroleum resources within the Republic;
(b) give effect to the principle of the State's custodianship of the nation's mineral and petroleum resources;
(c) promote equitable access to the nation's mineral and petroleum resources to all the people of South Africa;
(d) substantially and meaningfully expand opportunities for historically disadvantaged [persons, including women and communities] South Africans, to enter into and actively participate in the mineral and petroleum industries and to benefit from the exploitation of the nation's mineral and petroleum resources;
(e) promote optimal economic growth and mineral and petroleum resources development in the Republic, [particularly including] development of downstream beneficiation industries [through provision of feedstock, and development of mining and petroleum inputs industries];
(f) promote employment and advance the social and economic welfare of all South Africans;
(g) provide for security of tenure in respect of prospecting, exploration, mining and production operations;
(h) give effect to section 24 of the Constitution by ensuring that the nation's mineral and petroleum resources are developed in an orderly and ecologically sustainable manner while promoting justifiable social and economic development; and
(i) ensure that holders of mining and production rights contribute towards the socio-economic development of the areas in which they are operating including labour sending areas.

3. Custodianship of nation's mineral and petroleum resources

(1) Mineral and 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) The custodianship of the nation's mineral and petroleum resources, the State, acting through the Minister, may—
(a) grant, issue, refuse, control, administer and manage any reconnaissance permission, prospecting right, permission to remove, mining right, mining permit, retention permit, technical co-operation permit, reconnaissance permit, exploration right and production right; and
(b) in consultation with the Minister of Finance, prescribe and levy, any fee payable in terms of this Act.
(3) The Minister must ensure the sustainable development of South Africa's mineral and petroleum resources within a framework of national environmental policy, norms and standards while promoting economic and social development.
(4) The State royalty must be determined and levied by the Minister of Finance in terms of an Act of Parliament.

4. Interpretation of Act

(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.

5. Legal nature of prospecting right, mining right, exploration right or production right, and rights of holders thereof

(1) A prospecting right, mining right, exploration right or production right granted in terms of this Act and registered in terms of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967), is a limited real right in respect of the mineral or petroleum and the land to which such right relates.
(2) The holder of a prospecting right, mining right, 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 a prospecting right, a mining right, exploration right or production right may—
(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, mining, exploration or production, as the case may be;
(b) prospect, mine, explore or produce, as the case may be, for his or her own account on or under that land for the mineral or petroleum for which such right has been granted;
(c) remove and dispose of any such mineral found during the course of prospecting, mining, exploration or production, as the case may be;
(d) subject to section 59B of the Diamonds Act, 1986 (Act No. 56 of 1986), in the case of diamond remove and dispose of any diamond found during the course of mining operations;
(e) 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 prospecting, mining, exploration or production purposes, or sink a well or borehole required for use relating to prospecting, mining, exploration or production on such land; and
(f) carry out any other activity incidental to prospecting, mining, exploration or production operations, which activity does not contravene the provisions of this Act.

5A. Prohibition relating to an illegal act

No person may prospect for or remove, mine, conduct technical co-operation operations, reconnaissance operations, explore for and produce any mineral or petroleum or commence with any work incidental thereto on any area without—
(a) an environmental authorisation;
(b) a reconnaissance permission, prospecting right, permission to remove, mining right, mining permit, retention permit, technical co-operation permit, reconnaissance permit, exploration right or production right, as the case may be; and
(c) giving the landowner or lawful occupier of the land in question at least 21 days written notice.

6. Principles of administrative justice

(1) Subject to the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000), any administrative process conducted or decision taken in terms of this Act must be conducted or taken, as the case may be, within a reasonable time and in accordance with the principles of lawfulness, reasonableness and procedural fairness.
(2) Any decision contemplated in subsection (1) must be in writing and accompanied by written reasons for such decision.
CHAPTER 3: ADMINISTRATION

7. Division of Republic, territorial waters, continental shelf and exclusive economic zone into regions

For the purposes of this Act the Minister must, by notice in the Gazette, divide the Republic including the sea [as defined in section 1 of the Sea-shore Act, 1935 (Act No. 21 of 1935), and the exclusive economic zone and continental shelf referred to in sections 7 and 8 respectively, of the Maritime Zones Act, 1994 (Act No. 15 of 1994),] into regions.

8. Designation and functions of officer

The Director-General must, subject to the laws governing the public service, designate an officer in the service of the Department as regional manager for each region contemplated in section 7 who must perform the functions delegated or assigned to him or her in terms of this Act or any other law.
[9. Order of processing of applications](#)

(1) If a Regional Manager receives more than one application for a prospecting right, a mining right or a mining permit, as the case may be, in respect of the same mineral and land, applications received on—

(a) the same day must be regarded as having been received at the same time and must be dealt with in accordance with subsection (2); and

(b) different days must be dealt with in order of receipt.

(2) When the Minister considers applications received on the same day he or she must give preference to applications from historically disadvantaged persons.

9. Invitation for applications

(1) The Minister must by notice in the Gazette invite applications, including in respect of land relinquished or abandoned or which was previously subject to any right, permit or permission in terms of this Act, which has been cancelled or relinquished or which has been abandoned, or which has lapsed for re-connaissance permissions, reconnaissance permit, prospecting rights, exploration rights, mining rights, technical co-operation permit, production rights and mining permits, in respect of any area of land, block or blocks, and may prescribe in such notice the period within which any application may be lodged with the Regional Manager and the procedures which must apply in respect of such lodgement.

(2) Any person may, after identifying an area of land, block or blocks, and the type of mineral, mineral product or form of petroleum in or on such area or land, request the Minister to invite applications in such area of land, block or blocks in terms of subsection (1).

(3) Applications received in terms of subsection (1) must be processed in accordance with the provisions of the Act, including the terms and conditions upon which applications may be accepted, rejected, granted or refused.

(4) Any invitation referred to in subsection (1) must not include any mineral, mineral product or form of petroleum and land in respect of which another person holds a right or permit (excluding a reconnaissance permit or reconnaissance permission and an application made in terms of section 11 (2A)), or an application for a right or permit which has already been lodged prior to such invitation, and which remains to be granted or refused.

(5) The Minister shall, when processing applications, give preference to an application lodged by a person referred to in subsection (2).”

10. Consultation with interested and affected parties

(1) Within [14 days] the prescribed period after accepting an application lodged in terms of section 16, 22 or 27, the Regional Manager and the applicant must in the prescribed manner—

(a) make known that an application for a prospecting right, mining right or mining permit has been accepted in respect of the land 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 Regional Manager within the prescribed period.

(2) If a person objects to the granting of a prospecting right, mining right or mining permit, the Regional Manager—

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

(b) may refer the objection and comments to the applicant to consult with the person objecting and submit the result of the consultation within the prescribed period.

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

10A. Establishment of Regional Mining Development and Environmental Committee

The Regional Mining Development and Environmental Committee is hereby established for each region contemplated in section 7 of the Act.

10B. Functions of Regional Mining Development and Environmental Committee

The committee must—

(a) advise the Minister on objections received in terms of section 10(2); and

(b) make recommendations to the Minister in terms of section 54(5).

10C. Composition of Regional Mining Development and Environmental Committee

(1) The members appointed to the committee must have expertise in mineral and mining development, mine environmental management, petroleum exploration and production.

(2) The committee must consist of not more than 14 members appointed by the Minister and shall include:

(a) the Regional Manager as the chairperson;

(b) the Principal Inspector of Mines for that region; and

(c) representatives of relevant State departments within the national, provincial and local sphere of government or relevant organs of state within each sphere.

(3) The Minister may appoint a representative from any relevant public entity from time to time provided that such representative shall not have a right to vote at any meeting of the committee.

10D. Disqualification of members

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 is an unrehabilitated insolvent, has been declared to be of unsound mind by a court of the Republic or 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.

10E. Vacation of office

(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 10D, 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;

(c) tender his or her resignation in writing to the Minister and the Minister accepts the resignation; or

(d) is removed from the 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.
Any transfer of a part of a prospecting right or mining right, or any interest in any such right, may not be ceded, transferred, encumbered, let, sublet, assigned or alienated without the prior written consent of the Minister, as prescribed.”

10G. Reports of Regional Mining Development and Environmental Committee

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;”

11. Transferability and encumbrance of prospecting rights and mining rights

Any transfer of a part of a prospecting right or mining right, or any interest in any such right, may not be ceded, transferred, encumbered, let, sublet, assigned or alienated without the prior written consent of the Minister, as prescribed.”

12. Assistance to historically disadvantaged persons

The Minister may facilitate assistance to any historically disadvantaged person to conduct prospecting or mining operations.

The assistance referred to in subsection (1) may be provided subject to such terms and conditions as the Minister may determine.

Before facilitating the assistance contemplated in subsection (1), the Minister must take into account all relevant factors, including-

- the need to promote equitable access to the nation’s mineral resources;
- the financial position of the applicant;
- the need to transform the ownership structure of the minerals and mining industry; and
- the extent to which the proposed prospecting or mining project meets the objects referred to in section 10C(3) for the unexpired period of the term of office of his or her predecessor.

13. Application for reconnaissance permission

Any person who wishes to apply to the Minister for a reconnaissance permission must, subject to section 9, lodge the application-

- at the office of the Regional Manager in whose region the land is situated;
- in the prescribed manner; and
- in the prescribed non-refundable application fee.

The Regional Manager must accept an application for a reconnaissance permission if-

- the requirements contemplated in subsection (1) are met; and
- no person holds a prospecting right, mining right, mining permit or retention permit for the same mineral and land.

If the application does not comply with the requirements of this section, the Regional Manager must reject the application and notify the applicant in writing within 14 days of the expiration of the application with written reasons for such decision.

14. Issuing and duration of reconnaissance permission

Subject to subsections (1) and (2), the Minister must issue the reconnaissance permission if-

- the applicant has access to financial resource and has the technical ability to conduct the proposed reconnaissance operations in accordance with the reconnaissance work programme;
- the estimated expenditure is compatible with the proposed reconnaissance operation and duration of the reconnaissance work programme; and
- the applicant is not in contravention of any relevant provision of this Act.

The Minister must refuse to issue a reconnaissance permission if the applicant does not meet all the requirements referred to in subsection (1).

If the Minister refuses to grant a reconnaissance permission, the Minister must, within 30 days of the submission of the application, notify the applicant in writing with reasons for such decision.

The reconnaissance permission is valid for one year and is not renewable.

A reconnaissance permission may not be transferred, ceded, let, sublet, alienated, disposed of or encumbered by mortgage.
15. Rights and obligations of holder of reconnaissance permission

(1) A reconnaissance permission entitles the holder, after giving written notice to the landowner or the lawful occupier of the land at least 14 days before the day such holder will enter the land to which such permission relates, to enter the land concerned for the purposes of conducting reconnaissance operations.

(2) A reconnaissance permission does not entitle the holder to—
(a) conduct any prospecting or mining operations for any mineral in or on the land in question; or
(b) any exclusive right to apply for or be granted a prospecting right, mining right or mining permit in respect of the land to which such reconnaissance permission relates.

16. Application for prospecting right

Any person who wishes to apply to the Minister for a prospecting right [must simultaneously apply for an environmental authorisation and] must, subject to section 9, lodge the application—
(a) at the office of the Regional Manager in whose region the land is situated;
(b) in the prescribed manner; and
(c) together with the prescribed non-refundable application fee.

The Regional Manager must accept an application for a prospecting right if—
(a) the requirements contemplated in subsection (1) are met;
(b) no other person holds a prospecting right, mining right, mining permit or retention permit for the same mineral and land; and
(c) no prior application for a prospecting right, mining right, mining permit or retention permit has been accepted for the same mineral on the same land and which remains to be granted or refused.

If the application does not comply with the requirements of this section, the Regional Manager must notify the applicant in writing within [14 days] the prescribed period of receipt of the application.

If the Regional Manager accepts the application, the Regional Manager must, within [14 days] the prescribed period from the date of acceptance, notify the applicant in writing—
(a) to apply for an environmental authorisation and submit relevant environmental reports required in terms of Chapter 5 of the National Environmental Management Act, 1998, within [60 days of the date of the notice] the prescribed period; [and]
(b) to consult in the prescribed manner with the landowner, lawful occupier and [any interested and an affected party and include the result of the consultation in the relevant environmental reports; and]
(c) to apply, where necessary, for a licence for use of water in terms of the applicable legislation.

Upon receipt of the information referred to in subsection (4)(a) and (b), the Regional Manager must forward the application to the Minister for consideration.

17. Granting and duration of prospecting right

The Minister must within [30 days] the prescribed period of receipt of the application from the Regional Manager, grant a prospecting right if—
(a) the applicant has access to financial resources and has the technical ability to conduct the proposed prospecting operation optimally in accordance with the proposed work programme;
(b) the estimated expenditure is compatible with the proposed prospecting operation and duration of the proposed work programme;
(c) the prospecting will not result in unacceptable pollution, ecological degradation or damage to the environment and an environmental authorisation has been issued;
(d) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996); [and]
(e) the applicant is not in contravention of any [relevant] provision of this Act;
(f) [in respect of prescribed minerals the applicant has given effect to] the granting of such right will further the objects referred to in section 2(d) and comply with the Amended Broad Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry provided for in section 100[.]; and
(g) the applicant has, where necessary, submitted proof of application for a licence for use of water in terms of the applicable legislation.

The Minister must, within [30 days] the prescribed period of receipt of the application from the Regional Manager, refuse to grant a prospecting right if—
(a) the application does not meet all the requirements referred to in subsection (1);
(b) the granting of such right will result in the concentration of the mineral resources in question under the control of the applicant and their associated companies with the possible limitation of equitable access to mineral resources; and
(c) the applicant submitted inaccurate, incorrect or misleading information in support of the application or any matter required to be submitted in terms of this Act.

If the Minister refuses to grant a prospecting right, the Minister must, within 30 days of the decision, in writing notify the applicant of the decision with reasons.

The Minister may, having regard to the type of mineral concerned and the extent of the proposed prospecting project, request the applicant to give effect to the object referred to in section 2(d).

If the application relates to land occupied by a community, the Minister may impose such conditions as are necessary to promote the rights and interests of the community, including conditions requiring the participation of the community.

A [prospecting] right granted in terms of subsection (1) [comes into effect on the effective date] shall—
(a) come 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 shall not be executed until such appeal has been finalised.

A prospecting right is subject to this Act, any other relevant law and the terms and conditions stipulated in the right and is valid for the period specified in the right which may not exceed five years.

18. Application for renewal of prospecting right

Any holder of a prospecting right who wishes to apply to the Minister for the renewal of a prospecting right must lodge the application—
(a) at the office of the Regional Manager in whose region the land is situated;
(b) in the prescribed manner; and
(c) together with the prescribed non-refundable application fee.

An application for renewal of a prospecting right must—
(a) state the reasons and period for which the renewal is required;
(b) be accompanied by a detailed report reflecting the prospecting results, the interpretation thereof and the prospecting expenditure incurred;
(c) be accompanied by a report reflecting the extent of holders compliance with the conditions of the environmental authorisation; [and]
(d) include a detailed prospecting work programme for the renewal period.

The Minister must grant the renewal of a prospecting right if the application complies with subsections (1) and (2) and the holder of the prospecting right has complied with the—
(a) terms and conditions of the prospecting right and is not in contravention [of any relevant provision] of this Act:
(b) prospecting work programme; and
(c) compliance with the conditions of the environmental authorisation[.]; and
(d) the amended environmental authorisation has, where necessary, been approved.

A prospecting right may be renewed once for a period not exceeding three years.

A prospecting right in respect of which an application for renewal has been lodged shall, despite its stated expiry date, remain in force until such time as such application has been granted and a notarial
19. Rights and obligations of holder of prospecting right

(1) In addition to the rights referred to in section 5, the holder of a prospecting right has-

(a) subject to section 18, the exclusive right to apply for [and be granted] a renewal of the prospecting right in respect of the mineral and prospecting area in question;
(b) subject to subsection (2), the exclusive right to apply for [and be granted] a mining right in respect of the mineral and prospecting area in question; and
(c) subject to the permission referred to in section 20, the exclusive right to remove and dispose of any mineral to which such right relates and which is found during the course of prospecting.

(2) The holder of a prospecting right must-

(a) lodge such right for registration at the Minerals and Petroleum Titles Registration Office within [60 days] the prescribed period after the right has become effective.
(b) commence with prospecting activities within 120 days from the date on which the prospecting right becomes effective in terms of section 17(5) or such an extended period as the Minister may authorise;
(c) continuously and actively conduct prospecting operations in accordance with the prospecting work programme;
(d) comply with the terms and conditions of the prospecting right, relevant provisions of this Act and any other relevant law;
(e) comply with the conditions of the environmental authorisation;
(f) pay the prescribed prospecting fees to the State; and
(g) subject to section 20 and in terms of any relevant law, pay the State royalties in respect of any mineral removed and disposed of during the course of prospecting operations; and
(h) annually submit progress reports and data of prospecting operations to both the Regional Manager [within 30 days from the date of submission thereof] and the Council for Geoscience.

20. Permission to remove and dispose of minerals

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

(2) The holder of a prospecting right [must obtain the Minister's written permission to remove and dispose for such holder's own account of diamonds and bulk samples of any other minerals found by such holder in the course of prospecting operations] shall not without the prior written permission of the Minister remove bulk samples of any mineral from a prospecting area for any purpose as prescribed.

(3) Any person who applies for permission to remove and dispose of minerals in terms of this section must obtain an environmental authorisation if such person has not done so in terms of section 16(4)(a) of this Act.

21. Information and data in respect of reconnaissance and prospecting

(1) The holder of a prospecting right or reconnaissance permission must-

(a) keep proper records, at the registered office or place of business of the holder, of reconnaissance or prospecting operations and the results and expenditure connected therewith, as well as borehole core data and core-log data, where appropriate; and
(b) submit progress reports and data, in the prescribed manner and at the prescribed intervals, to the Regional Manager regarding the prospecting operations.

(1A) The [Regional Manager] holder of a prospecting right or reconnaissance permission must, annually submit progress reports and data contemplated in subsection (1)(b) [within 30 days from the date of receipt thereof] to the Council for Geoscience in the prescribed manner.

(1B) The Council for Geoscience may advise the Minister on all prospecting information as contemplated in this section.

(2) No person may dispose of or destroy any record, borehole core data or core-log data contemplated in subsection (1)(a) except in accordance with the written directions of the relevant Regional Manager in consultation with the Council for Geoscience.

22. Application for mining right

(1) Any person who wishes to apply to the Minister for a mining right [must simultaneously apply for an environmental authorisation and] must, subject to section 9, lodge the application -

(a) at the office of the Regional Manager in whose region the land is situated;
(b) in the prescribed manner; and
(c) together with the prescribed non-refundable application fee.

(2) The Regional Manager must, within [14 days] prescribed period of receipt of the application, accept an application for a mining right if-

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

(3) If the application does not comply with the requirements of this section, the Regional Manager must notify the applicant in writing within 14 days of the receipt of the application.

(4) If the Regional Manager accepts the application, the Regional Manager must, within 14 days from the date of acceptance, notify the applicant in writing-

(a) to apply for an environmental authorisation and submit the relevant environmental reports, as required in terms of Chapter 5 of the National Environmental Management Act, 1998, within [180 days] prescribed period from the date of the notice; and
(b) to consult in the prescribed manner with the landowner, lawful occupier and any interested and affected party and include the result of the consultation in the relevant environmental report(s).

(c) to consult with the community and relevant structures regarding the prescribed social and labour plan with the prescribed period and submit a social and labour plan in the prescribed manner; and
(d) where necessary, apply for a licence for use of water in terms of applicable legislation.

(5) The Regional Manager must within [14 days] the prescribed period of receipt of the environmental reports and results of the consultation contemplated in subsection (4) and [section 40] in terms of Chapter 5 of the National Environmental Management Act, 1998, forward the application to the Minister for consideration.

23. Granting and duration of mining right

(1) Subject to subsection (4), the Minister must grant a mining right if-

(a) the mineral can be mined optimally in accordance with the mining work programme;
(b) the applicant has access to financial resources and has the technical ability to conduct the proposed mining operation optimally;
(c) the financing plan is compatible with the intended mining operation and the duration thereof;
(d) the mining will not result in unacceptable pollution, ecological degradation or damage to the environment and an environmental authorisation [is] has been issued;
(e) the applicant has [provided for] complied with the requirements of the prescribed social and labour plan which shall be reviewed every five years for the duration of the mining right;
(f) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);
(g) the applicant is not in contravention of any provision of this Act; and
(h) the granting of such right will further the objects referred to in section 2(4) and (f) and comply [in accordance] with the
24. Application for renewal of mining right

(1) Any holder of a mining right who wishes to apply to the Minister for the renewal of a mining right must lodge the application—

(a) at the office of the Regional Manager in whose region the land is situated;
(b) in the prescribed manner; and
(c) together with the prescribed non-refundable application fee.

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

(a) state the reasons and the period for which the renewal is required;
(b) be accompanied by a report reflecting the extent of the holder's compliance with the conditions of the environmental authorisation; and
(c) include a detailed mining work programme for the renewal period;
(d) where necessary include proof of application for an amended environmental authorisation; and
(e) where the holder of the mining right has complied with the terms and conditions of the mining right and is not in contravention of any relevant provision of law, the holder's compliance with the requirements of the prescribed social and labour plan; and
(f) where necessary, been approved.

(3) The Minister must—

(a) terms and conditions of the mining right and is not in contravention of any relevant provision of this Act or any other law;
(b) the mining work programme;
(c) [requirements of the prescribed] approved social and labour plan; and
(d) [c] compliance with the conditions of the environmental authorisation; and
(da) the amended environmental authorisation has, where necessary, been approved.

(4) A mining right may be renewed for further periods, each of which may not exceed 30 years at a time.

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

(6) A mining right is subject to this Act, any relevant law, the terms and conditions stated in the right and the prescribed terms and conditions and is valid for the period specified in the right, which period may not exceed 30 years.

25. Rights and obligations of holder of mining right

(1) In addition to the rights referred to in section 5, the holder of a mining right has, subject to section 24, the exclusive right to apply for and be granted a renewal of the mining right in respect of the mineral and mining area in question.

(2) The holder of a mining right must—

(a) lodge such right for registration at the Mineral and Petroleum Titles Registration Office within [60 days] the prescribed period and after the right has become effective;
(b) commence with mining operations within one year from the date on which the mining right becomes effective in terms of section 23(5) or such extended period as the Minister may authorise;
(c) actively conduct mining in accordance with the mining work programme;
(d) comply with the relevant provisions of this Act, any other relevant law and the terms and conditions of the mining right;
(e) comply with the conditions of the environmental authorisation;
(f) [comply with the requirements of] implement the [prescribed] approved social and labour plan which shall be reviewed every five years for the duration of the mining right;
(g) in terms of any relevant law, pay the State royalties; and
(h) submit the prescribed annual report, detailing the extent of the holder's compliance with the provisions of section 2(d) and (f), the [charter contemplated] Amended Broad Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry provided for in section 100; and
(i) comply with the requirements of the prescribed annual report, detailing the extent of the holder's compliance with the provisions of section 2(d) and (f), the [charter contemplated] Amended Broad Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry provided for in section 100 and, the approved social and labour plan.

26. Mineral beneficiation

(1) The Minister must—

(a) in consultation with a Minister of the relevant national departments designate any mineral or mineral product for local beneficiation;
(b) after taking into consideration the national developmental imperatives such as macro-economic stability, energy security, industrialisation, food security and infrastructure development; and
(c) after considering the advice of the Council, publish such conditions required to ensure security of supply for local beneficiation in the prescribed manner.

(2A) In promoting beneficiation, the Minister may prescribe the levels required for beneficiation.

(2B) Every producer of designated minerals must offer to local beneficiators a prescribed percentage of its production of minerals or mineral products in prescribed quantities, qualities and timelines at the mine gate price or agreed price.

(3) No person, other than a producer or an associated company of such producer in respect of its own production and who has complied with subsection (2B), may export designated minerals or mineral products without the Minister's prior written approval.
27. Application for, issuing and duration of mining permit

(1) A mining permit may only be issued if—
(a) the mineral in question can be mined optimally within a period of [two] three years; and
(b) the mining area in question does not exceed 5.0 hectares in extent.

(2) Any person who wishes to apply to the Minister for a mining permit [must simultaneously apply for an environmental authorisation] and must, subject to section 9, lodge the application—
(a) at the office of the Regional Manager in whose region the land is situated;
(b) in the prescribed manner; and
(c) together with the prescribed non-refundable application fee.

(3) The Regional Manager must accept an application for a mining permit if—
(a) the requirements contemplated in subsection (2) are met;
(b) no other person holds a prospecting right, mining right, mining permit or retention permit for the same mineral and land;
(c) the granting of a permit will not result in the applicant being granted more than one mining permit on the same or adjacent land;
(d) if the application does not comply with the requirements of this section, the Regional Manager must notify the applicant in writing within [14 days] the prescribed period of receipt of the application.

(4) If the Regional Manager accepts the application, the Regional Manager must within [14 days] the prescribed period of receipt of the application, notify the applicant in writing, to—
(a) consult in the prescribed manner with the landowner, lawful occupier and any interested and affected party and include the result of the consultation in the relevant environmental reports; and
(b) apply, where necessary, for an environmental authorisation and submit the relevant environmental reports as required in terms of the National Environmental Management Act, 1998, within [60 days] the prescribed period from the date of the notice; and
(c) to apply, where necessary, for use of water in terms of applicable legislation.

(6) The Minister must, within [60 days] the prescribed period of receipt of the application from the Regional Manager, issue a mining permit if—
(a) the requirements contemplated in subsection (1) are satisfied;
(b) the environmental authorisation is issued;
(c) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996); and
(d) the mining will not result in unacceptable pollution, ecological degradation or damage to the environment and an environmental authorisation has, where necessary, been issued;
(e) the applicant is not in contravention of any provision of this Act; and
(f) the applicant has, where necessary, provided proof of application for a licence for use in water in terms of the applicable legislation.

(6A) The Minister must, within the prescribed period of receipt of an application from the Regional Manager, refuse to issue a mining permit if the applicant does not meet the requirements referred to in subsection (6).

(7) The holder of a mining permit—
(a) may enter the land to which such permit relates together with his or her employees, and may bring onto that land any plant, machinery or equipment and build, construct or lay down any surface or underground infrastructure which may be required for purposes of mining;
(b) subject to the National Water Act, 1998 (Act No. 36 of 1998), may 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 prospecting or mining purposes, as the case may be, or sink a well or borehole required for use relating to prospecting or mining, as the case may be, on such land; and
(c) in terms of any relevant law, must pay the State royalties;
(d) may mine, for his or her own account on or under that mining area for the mineral for which such permit relates.

(e) must submit the mining permit for recording at the Mineral and Petroleum Titles Registration Office within [60 days] the prescribed period after the permit has been issued.

(8) A mining permit—
(a) is valid for the period specified in the permit, which may not exceed a period of [two] three years, and may be renewed for [three] two periods each of which may not exceed one year; and
(b) may not be transferred, ceded, let, sublet, alienated or disposed of, in any way whatsoever, but may be encumbered or mortgaged only for the purpose of funding or financing of the mining project in question with the Minister's consent.

(9) A right granted in terms of subsection (6) shall—
(a) come 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 shall not be executed until such appeal has been finalised.

(10) A mining permit in respect of which an application for renewal has been lodged shall, despite its stated expiry date, remain in force until such time as such application has been issued, or such application has been refused; and—
(a) during such time, the holder of the mining permit shall be entitled to continue to conduct mining operations in terms of the existing approved terms and conditions; and
(b) where the application is issued, the renewal will take effect and the renewal period for which application was made shall commence on the date of issuing of the renewal permit.

28. Information and data in respect of mining or processing of minerals

(1) The holder of a mining right or mining permit must, at the registered office or place of business of such holder, keep proper records of mining activities and proper financial records in connection with the mining activities.

(2) The holder of a mining right, [or] mining permit, [or], the manager of any mineral or mineral product processing plant operating as part of or separately from a mine, must submit to the Director-General—
(a) prescribed [monthly] returns with accurate and correct information and data; and
(b) an audited annual financial report or financial statements reflecting the balance sheet and profit and loss account; and
(c) [an] the prescribed annual report detailing [the extent of the holder's compliance with the provisions of section 2(d) and (1), the charter contemplated in section 100 and the social and labour plan] accurate information and data in respect of mineral reserves and resources.

(3) The holder of a mining right must submit to the Regional Manager the prescribed annual report detailing the holder's compliance with provisions of section 2(d) and (f), the Amended Broad Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry provided for in section 100 and the approved social and labour plan.

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

The Minister may, in order to achieve the objects of this Act and to fulfill any of the functions in terms of this Act, direct in writing that specified information or data be submitted by—
(a) an applicant for a prospecting right, mining right, retention permit or mining permit, as the case may be;
(b) any holder of a prospecting right, mining right, retention permit or mining permit; or
(c) any owner or lawful occupier of land which is the subject of a prospecting right, mining right, retention permit or mining permit, or which is the subject of an application for such a right or permit or of a prospecting or mining operation.

30. Disclosure of information

(1) Subject to subsection (2), any information or data submitted in terms of section 21, 28 or 29 may be disclosed to any person—
(a) in order to achieve any object referred to in section 2(e), (d) or (e); and
(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, permit or permission has lapsed or been cancelled, or the area to which such right or permission 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 28 or 29 must inform the Regional Manager concerned and indicate which information and data must be treated as confidential and may not be disclosed.

(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 Council for Geoscience in terms of section 21 must be kept confidential until such time as the right, permit or permission has lapsed or is cancelled, or terminated, or the area to which such right, permit or permission relates has been abandoned or relinquished.

31. Application for retention permit

(1) Any holder of a prospecting right or an exploration right who wishes to apply to the Minister for a retention permit must-
(a) lodge the application at the office of the Regional Manager in whose region the land is situated;
(b) lodge the application in the prescribed manner;
(c) lodge the application together with the prescribed non-refundable application fee;
(d) in the application state the reasons and period for which the retention permit is requested, and
(e) submit a report reflecting [the extent of] compliance with [the] section 32(1) or 32(1A) as the case may be.

(2) The Regional Manager 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 prospecting right or exploration right in question.

32. Issuing and duration of retention permit

(1) The Minister may issue a retention permit if the holder of the prospecting right has-
(a) prospected on the land to which the application relates;
(b) completed the prospecting activities and a feasibility study;
(c) established the existence of a mineral reserve which has mining potential;
(d) studied the market and found that the mining of the mineral 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 prospecting right.

(1A) The holder of an exploration right has—
(a) conducted appraisal operations on the land or area to which the application relates;
(b) proved the commercial discovery of gas;
(c) a market development programme; and
(d) complied with the provisions of this Act and the terms and conditions of the exploration right.

(2) A retention permit issued under subsection (1) suspends the terms and conditions of the prospecting right or an exploration right held in respect of the land to which the retention permit relates and if the prospecting period or an exploration period has not expired, the duration of the prospecting 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 prospecting right or an exploration right remains in force as if the prospecting right or an 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 in respect of the prospecting right and five years in respect of an exploration right.

33. Refusal of application for retention permit

The Minister may refuse to issue a retention permit if, after having regard to the information submitted under section 32(1) and research conducted by the [Board] Regional Manager at the request of the Minister, it is established that-
(a) the mineral to which the application relates can be mined profitably;
(b) the applicant has not completed the prospecting operations and feasibility study in relation thereto or
(c) the granting of such right will result in the concentration of the mineral resources in question under the control of the applicant and their associated companies with the possible limitation of equitable access to mineral resources.

34. Application for renewal of retention permit

(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 31(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 32(1)(d) still prevail.

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

35. Rights and obligations of holder of retention permit

(1) Subject to subsection (2), the holder of a retention permit has the exclusive right to be granted a mining right or production right in respect of the retention area and mineral or 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; [and]
(b) submit a six monthly progress report to the Regional Manager indicating-
   (i) the prevailing market conditions, the effect thereof and the need to hold such retention permit in respect of the mineral and land in question; and
   (ii) efforts undertaken by such holder to ensure that mining operations commence before the expiry period referred to in section 32(4) or 34(3), as the case may be;
   (bA) in respect of an exploration right submit the prescribed annual reports to the Regional Manager on the progress of the gas market development programme; and
   (bB) apply for a production right before the expiry of the period referred to in section 32(4); and
   (c) submit the retention permit for recording in the Mineral and Petroleum Titles Registration Office within [60 days] the prescribed period after the permit has been issued.

36. Retention permit not transferable

A retention permit may not be transferred, ceded, let, sub-let, alienated, disposed of, mortgaged or encumbered in any way whatsoever.

37. Environmental management principles

(1) [The principles set out in section 2] All environmental requirements provided for by this Act will be implemented in terms of the National Environmental Management Act, 1998 (Act No.107 of 1998)-
(a) apply to all prospecting and mining operations, as the case may be, and any matter or activity relating to such operation; and
(b) serve as guidelines for the interpretation, administration and implementation of the environmental requirements of this Act.

(2) Any prospecting or mining 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 prospecting and mining projects in order to ensure that exploitation of mineral resources serves present and future generations.
38A. Environmental authorisations

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

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

38B. Approved environmental management programmes and environmental management plans

(1) An environmental management plan or environmental management programme approved in terms of this Act before and at the time of the coming into effect of the National Environmental Management Amendment Act, [1998,] 2014, shall be deemed to have been approved and an environmental authorisation been issued in terms of the National Environmental Management Act, 1998.

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

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

(4) All pending applications lodged in terms of this Act prior to the coming into operation of the National Environmental Management Amendment Act, 2014, shall be processed in terms of this Act as if the National Environmental Management Amendment Act, 2014, is not in operation.

42A. Management of historic residue stockpiles and residue deposits

(1) In order to promote orderly and optimal development of mineral resources and guarantee security of tenure, all historic residue stockpiles and residue deposits currently not regulated under this Act belong to the owners thereof and shall continue in force for a period of two years from the date on which the Mineral and Petroleum Resources Development Amendment Act, 2014, is promulgated.

(2) The holder or owner of a mining right, mining permit, or previous holder of an old order right or previous owner of works that has ceased to exist, remains responsible for any environmental liability, pollution, ecological degradation, the pumping and treatment of extraneous water, compliance [to] with 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.

(3) Despite the issuing of the closure certificate the holder or owner referred to subsection (1) remains liable for any latent or residual environmental liability, pollution, ecological degradation, the pumping and treatment of extraneous water which may become known in the future.

(4) On the written application in the prescribed manner by the holder of a prospecting right, mining right, retention permit, mining permit or previous holder of an old order right or previous owner of works that has ceased to exist, the Minister may transfer such environmental liabilities and responsibilities as may be identified in the environmental management report and any prescribed closure plan to a person with such qualifications as may be prescribed.

(5) The holder of a prospecting right, mining right, retention permit, mining permit, or previous holder of an old order right or previous owner of works that has [has] ceased to exist, 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 or permit in question;
   (b) the relinquishing of any portion of the prospecting of the land to which a right, permit or permission relate;
   (c) the discontinuance of any portion of the prospecting of the land to which a right, permit or permission relating;
   (d) completion of the prescribed closing plan to which a right, permit or permission relate.

(5A) An application for a closure certificate must be made to the Regional Manager in whose region the land in question is situated within 180 days of the occurrence of the lapsing, abandonment, cancellation, cessation, relinquishment or completion contemplated in subsection (5).

(6) The holder or owner referred to in terms of subsection (5) who has been authorised by the Minister to operate residue stockpile and residue stockpile, as the case may be, is valid for a period specified in such a right or permit, which period may not exceed 30 years depending on the circumstances of each case taking into account the nature and extent of the residue deposit and residue stockpile.

(7) The holder must lodge the mining right or mining permit within the prescribed period from the date of execution at the Mineral and Petroleum Titles Registration Office for recording or registration, as the case may be.

(8) Upon execution, recording or registration of the mining right or mining permit, as the case may be, the historic residue deposit or residue stockpile shall be deemed to be regulated in terms of this Act.

(9) In cases of historic residue deposits and residue stockpiles located outside the mining area and where the owner fails to apply for a mining right or mining permit within the period referred to in subsection (4), the custodianship of the minerals in such historic residues and stockpiles shall revert back to the State and the State shall be entitled to invite applications thereon in terms of section 9.

43. Issuing of a closure certificate

(1) The holder of a prospecting right, mining right, retention permit, mining permit, or previous holder of an old order right or previous owner of works that has ceased to exist, remains responsible for any environmental liability, pollution, ecological degradation, the pumping and treatment of extraneous water, compliance [to] with 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.

(1A) Despite the issuing of the closure certificate the holder or owner referred to subsection (1) remains liable for any latent or residual environmental liability, pollution, ecological degradation, the pumping and treatment of extraneous water which may become known in the future.

(2) On the written application in the prescribed manner by the holder of a prospecting right, mining right, retention permit, mining permit or previous holder of an old order right or previous owner of works that has ceased to exist, the Minister may transfer such environmental liabilities and responsibilities as may be identified in the environmental management report and any prescribed closure plan to a person with such qualifications as may be prescribed.

(3) The holder of a prospecting right, mining right, retention permit, mining permit, or previous holder of an old order right or previous owner of works that has [has] ceased to exist, 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 or permit in question;
   (b) the relinquishing of any portion of the prospecting of the land to which a right, permit or permission relate;
   (c) the discontinuance of any portion of the prospecting of the land to which a right, permit or permission relating;
   (d) completion of the prescribed closing plan to which a right, permit or permission relate.

(4) An application for a closure certificate must be made to the Regional Manager in whose region the land in question is situated within 180 days of the occurrence of the lapsing, abandonment, cancellation, cessation, relinquishment or completion contemplated in subsection (5).

(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 any matter affecting the environment] of Mines and the Department of Water and Environmental Affairs 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;“

(5A) Confirmation from the Chief Inspector of Mines [and each government department] the Department of Water and Environmental Affairs as contemplated in subsection (5) must be received within 60 days from the submission, from the date on which the Minister informs [such] the Chief Inspector of Mines [or (government department)] the Department of Water and Environmental Affairs, in writing, to do so;“

(6) When the Minister issues a certificate he or she [must return such portion of the financial provision contemplated in section 41 the National Environmental Management Act, 1998, as the Minister may deem appropriate, to the holder of the prospecting right, mining right, retention permit or mining permit, previous holder of an old order right or previous owner of works or the person contemplated in subsection (2), but] may retain any portion of such financial provision for latent and residual [safety, health or] environmental impact which may become known in the future for such period, as the Minister may determine having regard to the circumstances relating to the relevant operation, which portion and
(1) The holder of a prospecting right, mining right, retention permit, mining permit, or previous holder of an old order right or previous owner of works that has ceased to exist, or the person contemplated in subsection (2), as the case may be, must plan for, manage and implement such procedures and such requirements on mine closure as may be prescribed.

(8) Procedures and requirements on mine closure as it relates to the compliance of the conditions of an environmental authorisation, are prescribed in terms of the National Environmental Management Act, 1998.

(9) The Minister, in consultation with the Minister of Environmental Affairs and Tourism, may identify areas by notice in the Gazette, where mines are interconnected or their safety, health, social or environmental impacts are integrated which results in a cumulative impact.

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

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

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

(13) No closure certificate may be issued unless—
(a) the Council for Geoscience has confirmed in writing that complete and correct prospecting reports in terms of section 21(1) have been submitted to the Council for Geoscience;
(b) the complete and correct records, borehole core data or core-log data that the Council of Geoscience may deem relevant, have been lodged with the Council for Geoscience; or
(c) in the case of the holder a permit or right in terms of this Act, the complete and correct surface and the relevant underground geological plans have been lodged with the Council for Geoscience.

(14) The holder of a right or permit who formally or legally abandons the right and has not conducted any invasive operations in terms of the right is exempted from the provisions of section 43(6).

44. Removal of buildings, structures and other objects

When a prospecting right, mining right, retention permit or mining permit lapses, is cancelled or is abandoned or when any prospecting or mining operation ceases the holder of any such right or permit may not demolish or remove any building or structure 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 to which agreement has been approved by the Minister in writing.

(2) The provision of subsection (1) does not apply to mining equipment, which may be removed lawfully.

45. Minister’s power to recover costs in event of urgent remedial measures

(1) If any prospecting, mining, reconnaissance, exploration, technical cooperation or production operations or activities incidental thereto cause or result 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 Water and Environmental Affairs [and Tourism], may direct the holder of the relevant right or permit in terms of this Act or the holder of an environmental authorisation in terms of National Environmental Management Act, 1998, to—
(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, 1998; 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 well-being 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 the measures.

(d) [In addition to the application in terms of ] If funds raised by way of a High Court application as contemplated in paragraph (c) are not sufficient to cover measures in terms of paragraph (a), 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.

46. Minister’s power to remedy environmental damage in certain instances

(1) If the Minister directs that measures contemplated in section 45 must be taken to prevent pollution or ecological degradation of the environment, to protect against any contravention in the environmental authorisation or to rehabilitate dangerous health or safety occurrences but establishes that the holder of a reconnaissance permission, prospecting right, mining right, retention permit or mining permit, the holder of an old order right or the previous owner of works, as the case may be or his or her successor in title is deceased or cannot be traced or in the case of a juristic person, has ceased to exist, has been liquidated or cannot be tracked, the Minister in consultation with the Minister of Environmental Affairs and Tourism, may instruct the Regional Manager concerned to take the necessary measures to prevent 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, permit, the previous holder of an old order right or the previous owner of works in terms of the National Environmental Management Act, 1998, where appropriate, or if there is no such provision or if it is inadequate, from money appropriated by Parliament for the purpose.

(3) (a) Upon completion of the measures contemplated in subsection (1), the Regional Manager 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 are necessary to make the deed in question effective.

47. Minister’s power to suspend or cancel rights, permits or permissions

(1) Subject to subsections (2), (3) and (4), the Minister may cancel or suspend any reconnaissance permission, prospecting right, mining right, mining permit, retention permit or [previous owner of] old order tights or [previous owner of] works, if the holder or owner thereof—
(a) is conducting any reconnaissance, prospecting or mining
operation in contravention of this Act;
(b) breaches any material term or condition of such right, permit or permission;
(c) is contravening any condition in the environmental authorisation; or
(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 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 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 prospecting right, mining right or mining permit concerned of his or her intention to suspend or cancel the right or permit; and
(e) direct the holder to take specified measures to remedy any contravention, breach or failure;
(3) The Minister must direct the holder to take specified measures to remedy any contravention, breach or failure.
(4) If the holder does not comply with the direction given under subsection (3)(1) against the holder after having—
(a) given the holder a reasonable opportunity to make representations; and
(b) considered any such representations.
(5) The Minister may by written notice to the holder lift a suspension if the holder—
(a) complies with a directive contemplated in subsection (3)(1)(e); or
(b) furnishes compelling reasons for the lifting of the suspension.

48. Restriction or prohibition of prospecting and mining on certain land

(1) Subject to section 48 of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003), and subsection (2), no reconnaissance permission, prospecting right, mining right may be granted or mining permit be issued in respect of—
(a) land comprising a residential area, and any land which is within an approved town planning scheme and zoned for residential purposes;
(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.
(2) A reconnaissance permission, prospecting right, mining right or mining 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 mineral resources involved and the national interest, it is desirable to issue it;
(b) the reconnaissance, prospecting or mining 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 prospecting right or mining right.

49. Minister’s power to prohibit or restrict prospecting or mining

(1) Subject to subsection (2), the Minister may after inviting representations from relevant stakeholders, from time to time after consulting a Minister of a relevant state department and, when the need arises by notice in the Gazette, having regard to the national interest, the strategic nature of the mineral or petroleum in question and the need to promote the sustainable development of the nation’s mineral and petroleum resources—
(a) prohibit or restrict the granting of any reconnaissance permission, technical co-operation permit, reconnaissance permit, exploration right, production right, prospecting right, mining right or mining permit in respect of land identified by the Minister for such period and on such terms and conditions as the Minister may determine; or
(b) restrict the granting of any reconnaissance permission, reconnaissance permit, technical co-operation permit, exploration right, production right, prospecting right, mining right or mining permit in respect of a specific mineral or minerals or form 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 prospecting or mining in, on or under such land which, on the date of the notice, is the subject of a reconnaissance permission, prospecting right, a mining right, a retention permit or a mining 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 reconnaissance permit, technical co-operation permit, exploration right, production right, a prospecting right, mining right or mining permit in respect of any mineral or land, and may specify in such notice the period within which any application may be lodged and the terms and conditions subject to which such right or permit may be granted;
(5) Applications referred to in subsection (4) may be granted if the application complies with the requirements of sections 14, 17, 23, 26 or 27 of this Act, as the case may be.

50. Minister may investigate occurrence, nature and extent of mineral resources

(1) The Minister may cause that an investigation to be conducted on any land to establish if any mineral or geological formation occurs in, on or under such land and, if so, to establish the nature and extent thereof.
(2) (a) The Minister must compensate the owner of the land in question if any loss or damage is caused during an investigation contemplated in subsection (1).
(b) The Minister and the owner of the land may agree upon the compensation to be paid.
(c) If no agreement is reached, the amount of compensation must be fixed by arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965), or by a competent court.
(3) No investigation may be conducted under subsection (1) unless—
(a) the Minister has published a notice in the Gazette—
(i) indicating an intention to conduct the investigation;
(ii) inviting written comments on the proposed investigation, specifying an address to which and the date before which comments must be submitted; and
(iii) calling on the owner, occupier or person in control of such land to furnish the Minister with his or her particulars, if such owner, occupier or person is not known to the Minister;
(b) the Minister has considered any comments received; and
(c) a period of 30 days has lapsed after the Minister published the notice.
(4) No person may for the purposes of an investigation contemplated in subsection (1) enter upon land unless the owner, occupier or person in control of such land has been consulted and notified in writing of the intention to enter and to conduct the investigation.
(b) if the owner, occupier or person in control of the land in question cannot be traced, a copy of the notice contemplated in paragraph (a) must be affixed at a prominent place on the land before the investigation may be conducted.
(5) Any investigation in terms of this section must be conducted in a manner which limits or prevents any detrimental effect to the land and the environment.
51. Optimal mining of mineral resources

(1) Subject to subsection (2), the [Board] Regional Manager may recommend to the Minister to direct the holder of a mining right to take corrective measures if the [Board] Regional Manager establishes that the minerals are not being mined optimally in accordance with the mining 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 [Board] Regional Manager must consider whether the technical and financial resources of the holder of the mining 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 [Board] Regional Manager, 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 specified in the notice.

(b) The Minister must afford the holder the opportunity to make representations in relation to the [Board’s] Regional Manager’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 mining right.

(4) The Minister may on the recommendation of the [Board] Regional Manager, suspend or cancel a mining right if-

(a) the holder of that mining 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 [Board] Regional Manager, lift the suspension of a mining 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.

52. Notice of profitability and curtailment of mining operations affecting employment

(1) The holder of a mining right must, after consultation with any registered trade union or affected employees or their nominated representatives where there is no such trade union, notify the Minister in the prescribed manner-

(a) where prevailing economic conditions cause the profit to revenue ratio of the relevant mine to be less than six per cent on average for a continuous period of 12 months; or

(b) if any mining operation is to be scaled down or to cease with the possible effect that 10 per cent or more of the labour force or more than 500 employees, whichever is the lesser, are likely to be retrenched in any 12-month period.

(2) The [Board] Regional Manager must, after consultation with the relevant holder, investigate-

(a) the circumstances referred to in subsection (1); and

(b) the socio-economic and labour implications thereof and make recommendations to the Minister.

(3) (a) The Minister may, on the recommendation of the Board and after consultation with the holder of a mining right, permit or permission in terms of this Act;

(b) the Minister may, after consultation with the holder of a mining right, permit or permission in terms of this Act;

(c) if the directives contemplated in paragraph (a) are not complied with, the Minister may provide assistance to or apply to a court for judicial management of the mining operation.

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

53. Use of land surface rights contrary to objects of Act

(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) fanning or any incidental thereto; or

(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.

Despite subsection (1), the Minister may, if he or she directs that an investigation be conducted if it is alleged that a person intends to use the surface of any land in any way that could result in the mining of mineral resources being detrimentally affected.

(4) When an investigation is conducted in terms of subsection (3), the Regional Manager 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; and

(b) set out the measures to be taken in order to rectify the matter;

and

(c) offer that person the opportunity to respond within [30 days] the prescribed period.

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

54. Compensation payable under certain circumstances

(1) The holder of a reconnaissance permission, prospecting right, mining right or mining permit must notify the relevant Regional Manager if that holder is prevented from commencing or conducting any reconnaissance, prospecting or mining operations because the owner or the lawful occupier of the land in question-

(a) refuses to allow such holder to enter the land; or

(b) places unreasonable demands in return for access to the land; or

(c) cannot be found in order to [apply for] gain access.

(2) The Regional Manager must, within [14 days] the prescribed period 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 permission, prospecting right, mining right or mining permit; or

(b) inform that owner or occupier of the rights of the holder of a right, permit or permission 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 Regional Manager, 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, prospecting or mining 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 Regional Manager, 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 Regional Mining Development and Environmental Committee, concludes that any further negotiation may detrimentally affect the objects of this Act referred to in section 2(c), 2(d), 2(f ) or 2(g), the Regional Manager may recommend to the Minister that such land be expropriated in terms of section 55.
If the Regional Manager 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 permission, prospecting right, mining right or mining permit, the Regional Manager may in writing prohibit such holder from commencing or continuing with prospecting or mining operations on the land in question until such time as the dispute has been resolved by arbitration or by a competent court.

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

55. Minister’s power to expropriate property for purpose of prospecting or mining

(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.

56. Lapsing of right, permit and permission

Any right, permit [or] and permission granted or issued in terms of this Act shall lapse, whenever:

[(a) it expires;]

(b) the holder thereof is deceased and there are no successors in title;

(c) a company [or close corporation] 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 11 or such permission has been refused;

[(d) save for cases referred to in section 11(3), the holder is liquidated or sequestrated;]

(e) it is cancelled in terms of section 47; [or]

(f) it is abandoned; and

(g) 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 11.
CHAPTER 5: MINERALS AND PETROLEUM BOARD

56A. Establishment of Ministerial Advisory Council

(1) The Minister may establish a Council to be known as the Ministerial Advisory Council.

(2) The Minister must appoint the following members of the Council:
   (a) The Director-General who shall be the chairperson;
   (b) the Chief Inspector;
   (c) three persons representing relevant state departments;
   (d) a Regional Manager;
   (e) three persons representing organised business;
   (f) three persons representing organised labour; and
   (g) at least two other persons with appropriate experience, expertise or skill to enhance the Council’s capabilities of performing its functions more effectively.

(3) The members of the Council must elect one of its members as deputy chairperson at their first meeting.

56B. Functions of Ministerial Advisory Council

The Council must advise the Minister on—
   (a) sustainable development of the nation’s mineral and petroleum resources;
   (b) the growth and transformation of the minerals and petroleum industry;
   (c) the terms and conditions applicable to beneficiation as contemplated in section 26; and
   (d) any other matter which the Minister refers to the Council.

56C. Subcommittees of Council

(1) The Council may appoint subcommittees to assist with its functions as it may determine.

(2) The Council must determine the composition of a subcommittee.

(3) The Council may at any time dissolve or reconstitute a subcommittee.

(4) The Council must designate a member of a subcommittee as chairperson of that subcommittee.

(5) The Council is not absolved from the performance of any function entrusted to a subcommittee.

(6) The Council may make rules regarding the manner in which meetings of a subcommittee are to be convened, the procedure at, the functions of, and the quorums for such meetings and the manner in which minutes of such meetings must be kept.

56D. Disqualification of members

A person may not be appointed as a member of the Council—
   (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;
      (ii) has been declared to be of unsound mind by a court of the Republic; or
      (iii) 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.

56E. Vacation of office

(1) A member of the Council must vacate his or her office if he or she—
   (a) becomes subject to any disqualification contemplated in section 56D, 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 Council without leave;
   (c) tenders his or her resignation in writing to the Minister and the Minister accepts the resignation; or
   (d) is removed from the office by the Minister under subsection (2).

(2) The Minister may remove any member of the Council from office—
   (a) on account of misconduct or inability to perform any of the functions of his or her office effectively; or
   (b) if the member has engaged in any activity that may undermine the integrity of the Council, which activities 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 Council; 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).

56F. Term of office and filling of vacancies

(1) A member of the Council shall hold office for a period not exceeding three years.

(2) The Minister may reappoint any member of the Council at the expiry of his or her term for another period not exceeding three years.

(3) If a member of the Council vacates office or dies, the Minister must fill the vacancy by appointing a person in accordance with section 56A(2) for the unexpired period of the term of office of his or her predecessor.

56G. Remuneration and allowances of members of Ministerial Advisory Council

The members of the Council who are not in the full-time employment of the State, must be paid such remuneration and allowances as may be determined by the Minister in consultation with the Minister of Finance.

57. Establishment of Minerals and Petroleum Board The Minerals and Petroleum Board is hereby established.

58. Functions of Board

(1) 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 mineral and petroleum resources;
      (iii) the transformation and downscaling of the minerals and petroleum industries; and
      (iv) objections referred to the Minister by the Board;
   (b) must, in consultation with the Mining Qualifications Authority, ensure the promotion of human resource development in the minerals and mining industry; and
   (c) may—
      (i) report to the Minister on any matter relating to the application of this Act; and
      (ii) enquire into and report to the Minister on any matter concerning the objects of this Act.

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

59. Composition of Board

(1) The Board consists of no fewer than 17 and no more than 20 members, and must reflect the gender and racial composition in the Republic.

(2) The Minister must appoint as members of the Board—
   (a) a Chairperson;
   (b) the Chief Inspector;
   (c) three persons representing any relevant State department,
60. Disqualification of members

(1) No person may be appointed as member of the Board-
   (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;
      (ii) has been declared to be of unsound mind by a court of
           the Republic; or
      (iii) 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.

61. Vacation of office

(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 60
       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 remove any member of the Board from office-
   (a) on account of misconduct or inability to perform the functions of
       his or her office properly; or
   (b) if the member has engaged in any activity that may undermine the
       integrity of the Board, which activities 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

62. Term of office and filling of vacancies

(1) A member of the Board holds office for a period not exceeding
   three years.

(2) The Minister may reappoint any member of the Board at the
   expiry of his or her term of office for another period not exceeding
   three years.

(3) If a member of the Board vacates office or dies, the Minister may
   fill the vacancy by appointing a person in accordance with section
   59(2) for the unexpired portion of the term of office of his or her
   predecessor.

63. Meetings of Board

(1) The Chairperson or, in the absence of the Chairperson, the
    Minister must convene the first meeting of the Board.

(2) The Minister may, if he or she deems it necessary, call a special
    meeting of the Board.

(3) The Chairperson or, in the absence of the Chairperson, the Deputy
    Chairperson presides at meetings of the Board.

(4) If both the Chairperson and Deputy Chairperson are absent from
    a meeting, the attending members must nominate one of their
    members as acting chairperson for that meeting.

(5) The quorum for any meeting of the Board is fifty percent of the
    appointed members.

(6) The decision of the majority of the members of the Board present
    at a meeting constitutes a resolution of the Board, and in the
    event of an equality of votes on any matter the person presiding
    at the meeting in question has a casting vote.

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

(8) 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.

64. Committees of Board

(1) The Board must establish a Regional Mining Development and
    Environmental Committee in such manner as may be prescribed
    for each region contemplated in section 7.

(2) The Board may establish such other 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.

(3) A committee established under subsection (2) 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.

(4) 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.

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

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

65. Funding of Board

The expenses of the Board must be defrayed from money
appropriated by Parliament to the Department for that purpose.

66. Remuneration of members of Board, committees and working
groups

A member of the Board, a committee or working group, except
a member who is a full-time 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.

67. Reports of Board

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.

68. Administrative functions

The administrative functions of the Board must be performed by
officers of the Department who are designated by the Director-
General for that purpose.]
CHAPTER 6: PETROLEUM EXPLORATION AND PRODUCTION

69. Application of Chapter

(1) This Chapter provides for the granting of exploration rights and production rights and the issuing of technical co-operation permits and reconnaissance permits.

(2) For the purposes of this Chapter, [section] sections 9, 10, 11, 12, 16 [26], 29, 30, 31, 32, 33, 34, 35, 36, 37, 38A, 38B, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 64, 100 and Chapter 7 and Schedule II apply with the necessary changes.

(a) Any reference in the provisions referred to in paragraph (a) or any provision of this Act to-
   (i) minerals, must be construed as a reference to petroleum;
   (ii) mining, must be construed as a reference to production;
   (iii) mining area, must be construed as a reference to production area;
   (iv) mining rights, must be construed as a reference to production rights;
   (v) prospecting, must be construed as a reference to exploration;
   (vi) prospecting area, must be construed as a reference to exploration area;
   (vii) prospecting rights, must be construed as a reference to exploration rights; and
   (viii) reconnaissance permission, must be construed as a reference to reconnaissance permit.

70. [Designated agency] Processing of petroleum exploration and production applications by Regional Manager

The [Minister may designate an organ of State or a wholly owned and controlled agency or company belonging to the State to] Regional Manager must perform the functions referred to, in this Chapter.

71. Functions of [designated agency] Regional Manager

The [designated agency] Regional Manager must-

(a) promote onshore and offshore exploration for and production of petroleum;

(b) receive applications for reconnaissance permits, technical co-operation permits, exploration rights and production rights in the prescribed manner;

(c) evaluate such applications and make recommendations to the Minister;

(d) monitor 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 geological or geophysical information relating to petroleum submitted in terms of section 88;

(f) bring to the notice of the Minister any information in relation to the exploration and production of petroleum which is likely to be of use or benefit to the State;

(g) advise and recommend to the Minister on the need to by itself, through contractors or through any other State enterprise carry out on behalf of the State reconnaissance operations in connection with petroleum;

(h) collect the prescribed fees and considerations in respect of reconnaissance permits, technical co-operation permits, exploration rights and production rights;

(i) review and make recommendations to the Minister with regard to the acceptance of environmental reports and the conditions of the environmental authorisations and amendments thereto; and

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

71A. Promotional aspects of the petroleum sector

(1) The Minister shall after the promulgation of this Act appoint a public entity to perform the functions as referred to in subsection (2).

(2) The public entity appointed by the Minister must—

(a) promote onshore and offshore exploration for and production of petroleum;

(b) receive, store, maintain, interpret, add value to, evaluate, disseminate or deal in all geological or geophysical information relating to petroleum submitted in terms of section 88;

(c) bring to the notice of the Minister any information in relation to the exploration and production of petroleum which is likely to be of use or benefit to the State; and

(d) advise and recommend to the Minister on a need to by itself, through contractors or through any other State enterprise carry out on behalf of the State reconnaissance operations in connection with petroleum.

72. Funding of designated agency

(1) The designated agency is funded by money appropriated by Parliament.

(2) The designated agency may, with the approval of the Minister provide technical and consulting services and assistance to equivalent agencies of other countries.

73. Invitation for applications

(1) The Minister may by notice in the Gazette invite applications for exploration and production rights in respect of any block or blocks, and may specify in such notice the period within which any application may be lodged with the designated agency and the terms and conditions subject to which such rights may be granted.

(2) The designated agency may otherwise directly receive applications for exploration and production rights in respect of such blocks, which are not subject to an invitation as contemplated in subsection (1).

74. Application for reconnaissance permit

(1) Any person who wishes to apply to the Minister for a reconnaissance permit must, subject to section 9, lodge the application—

(a) at the office of the [designated agency] Regional Manager;

(b) in the prescribed manner; and

(c) together with the prescribed non-refundable application fee.

(2) The [designated agency] must, within [14 days] the prescribed period 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 any part of the same the area; and

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

(2A) The Regional Manager 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 Regional Manager consent to accept and process the application.

(3) If the application does not comply with the requirements of this section, the [designated agency] Regional Manager must notify the applicant in writing within [14 days] the prescribed period of the receipt of the application and provide reasons.

(4) If the [designated agency] accept Regional Manager accepts the application, the [designated agency] Regional Manager
must, within [14 days] the prescribed period of the receipt of an application, only if the proposed reconnaissance operations do not involve space-borne or air borne instruments operating at altitudes greater than 100 metres, notify an applicant in writing to—
(a) consult in the prescribed manner with the landowner, lawful occupier [and any interested] and an affected party and include the results of the consultation in the relevant environmental reports required in terms of Chapter 5 of the National Environmental Management Act, 1998; and
(b) submit relevant environmental reports in [subsection paragraph] (a), within [60 days] the prescribed period from the date of the notice

75. Issuing and duration of reconnaissance permit

(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 [is], where necessary, has been issued;
(d) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996); 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] the prescribed period of the decision, in writing notify the applicant of the decision and the reasons [therefor] 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;
(c) [not] an exclusive right only in respect of data produced under the reconnaissance permit;
(d) not transferable; and
(e) 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 [designated agency] Regional Manager.

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

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

76. Application for technical co-operation permit

(1) Any person who wishes to apply to the Minister for a technical co-operation permit must lodge the application—
(a) at the office of the [designated agency] Regional Manager;
(b) in the prescribed manner; and
(c) together with the prescribed non-refundable application fee.

(2) The [designated agency] Regional Manager 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 [any part of] the same area; and
(c) no prior application for an exploration right, production right, or technical co-operation permit has been accepted for the same [mineral] petroleum resource, land and area.

(3) If the application does not comply with the requirements of this section, the [designated agency] Regional Manager must notify the applicant in writing within [14 days] the prescribed period of the receipt of the application and provide reasons.

77. Issuing and duration of technical co-operation permit

(1) Subject to subsection (4), the Minister must [issue] grant 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 issue a technical co-operation permit, the Minister must, within [30 days] the prescribed period of the decision, in writing notify the applicant of the decision and the reasons [therefor] 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.

78. Rights and obligations of holder of technical co-operation permit

(1) The holder of a technical co-operation permit has, subject to section 79 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; and
(b) comply with the terms and conditions of the technical co-operation permit, the relevant provisions of this Act and any other law.

(c) within the prescribed period from the date of execution submit [a] the technical co-operation permit for recording in the Mineral and Petroleum Titles Registration Office.

79. Application for exploration right

(1) Any person who wishes to apply to the Minister for an exploration right must lodge the application—
(a) at the office of the [designated agency] Regional Manager;
(b) in the prescribed manner; and
(c) together with the prescribed non-refundable application fee.

(2) The [designated agency] Regional Manager must, within [14 days] the prescribed period of the receipt of the application, accept an application for an exploration right if—
[no other person holds a technical co-operation permit, exploration right or production right for petroleum over the same land and area applied for.]

(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 [any part of] the same land and area applied for; and
(c) the prior application for a technical co-operation permit, exploration right or production right over the same mineral, land and area applied for has been accepted.

(3) If the application does not comply with the requirements of this section, the [designated agency] Regional Manager must notify the applicant in writing within [14 days] the prescribed period of receipt of the application and provide reasons.

(4) If the [designated agency] Regional Manager accepts the
80. Granting and duration of exploration right

(1) The Minister must grant an exploration right if-
(a) the applicant has 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 the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);
(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; and
(g) the granting of such right will further the objects referred to in section 100.

(2) The Minister may, having regard to the type of petroleum resource concerned and the extent of the proposed exploration project, request [that the applicant (gives) to give effect to the objects referred to in section 2(6) and (f)]. The applicant has, where necessary, provided proof of application for a licence for use of water in terms of the applicable legislation.

(3) The Minister must, within [60 days] the prescribed period of receipt of the application from the [designated agency] Regional Manager, 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 [5 days] the prescribed period of the decision, in writing notify the applicant of the decision and the reasons therefor 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 [three] five years.

(6) [An exploration] A right granted in terms of subsection (1) [comes into effect on the effective date] shall:
(a) come 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, be executed until such appeal has been finalised.

81. Application for renewal of exploration right

(1) Any holder of an exploration right who wishes to apply to the Minister for the renewal of an exploration right must lodge the application
(a) at the office of the designated agency;
(b) in the prescribed manner; and

(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; and
(d) include a detailed exploration work programme for the renewal period.

(3) 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 has complied with the-
(a) terms and conditions of the exploration right is not in contravention of any relevant provision of this Act or any other law:
(b) exploration work programme; and
(c) conditions of the environmental authorisation.

(4) An exploration right may be renewed for a maximum of three periods each.

(5) An exploration in respect of which an application for renewal has been lodged shall, notwithstanding its expiry date, remain in force until such time as such application has been granted or refused.

82. Rights and obligations of holder of exploration right

(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 and be granted a production right in respect of the petroleum and the exploration area in question;
(b) subject to section 81, has the exclusive right to apply for and be granted a renewal of an exploration right in respect of petroleum and the exploration area in question;
(c) has the exclusive right to remove and dispose of any petroleum samples found during the course of exploration, subject to section; and
(d) may only transfer and encumber the exploration right, subject to section 11.

(2) The holder of an exploration right must-
(a) lodge such right within [60 days] the prescribed period 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 management plan;
(e) pay the prescribed exploration fees to the [designated agency] Regional Manager; and
(f) commence with exploration activities within 90 days from the effective date of the exploration right or such extended period as the Minister may authorise;
(g) relinquish a contiguous portion of the area to which the right relates as prescribed when applying for the renewal of an exploration right or a production right unless the holder proves that he or she is in a position to explore the entire exploration area or he or she has made a discovery in respect of the entire exploration area; and
(h) subject to section 82A, 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.

82A. Permission to remove and dispose of petroleum resources

(1) Subject to subsection (2), the holder of an exploration right may only remove and dispose for his or her own account a 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 shall 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 79(4)(b) as the case may be of this Act.

83. Application for production right

(1) Any person who wishes to apply to the Minister for a production right must, subject to section 9, lodge the application-
(a) at the office of the [designated agency] Regional Manager;
(b) in the prescribed manner; and
(c) together with the prescribed non-refundable application fee.

(2) The [designated agency] Regional Manager must, within [14 days of the receipt of the application] the prescribed period, accept an application for (an exploration) a production right 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 [any part of the area applied for] the same area; and
(c) no prior application for technical co-operation permit, exploration right or production right over the same mineral, land and area applied for has been accepted.

(3) If the application does not comply with the requirements of this section, the [designated agency] Regional Manager must notify the applicant in writing within [14 days] the prescribed period of the receipt of the application and provide reasons.

(4) If the [designated agency] Regional Manager accepts the application, the [designated agency] Regional Manager must, within [14 days] the prescribed period of the receipt of the application, notify the applicant in writing-
(a) consult in the prescribed manner with the landowner, lawful occupier and any interested and affected party and include the result of the consultation in the relevant environmental reports as required in terms of Chapter 5 of the National Environmental Management Act, 1998; and
(b) apply for an environmental authorisation and submit relevant environmental reports required in terms of Chapter 5 of the National Environmental Management Act, 1998, within [180 days] the prescribed period from the date of the notice; and
(c) to apply where necessary for a licence for use of water in terms of the relevant legislation.

84. Granting and duration of production right

(1) The Minister must grant a production right if-
(a) the applicant 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) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);
(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 exploration right, if applicable;
(g) the applicant has provided financially and otherwise for a prescribed social and labour plan;
(h) the petroleum can be produced optimally in accordance with the production work programme;
(i) the granting of such right will further the object referred to in section 2(d) and (f) and in accordance with the Charter contemplated in section 100 and the prescribed social and labour plan; and
(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, within [60 days] the prescribed period of receipt of the application from the [designated agency] Regional Manager, refuse to grant a production right if the application does not meet all the requirements referred to in subsection (1).

(3) If the Minister refuses to grant a production right, the Minister must, within [30 days] the prescribed period of the decision, notify the applicant in writing of such decision and the reasons [thereof] thereof.

(4) A production right is subject to prescribed terms and conditions and is valid for the period specified in the right, which periods, each of which may not exceed 30 years.

(5) A production right granted in terms of subsection (1) becomes effective on the effective date.

SA. Rights granted in terms of subsection (1) shall:
(a) come 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 shall not be executed until such appeal has been finalised.

85. Application for renewal or production right

(1) Any holder of a production right who wishes to apply to the Minister for the renewal of a production right must lodge the application-
(a) at the office of the [designated agency] Regional Manager;
(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 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 detailed report reflecting [the extent of the right holder’s] compliance with the requirements of the approved environmental [management programme] authorisation, the rehabilitation to be completed and the estimated cost thereof; and
(d) include a detailed production work programme for the renewal period.

(3) The Minister must grant the renewal of a production right if the application complies with subsections (1) and (2) and the holder of the production right has complied with the-
(a) terms and conditions of the production right and is not in contravention of any [relevant] provision of this Act or any other law;
(b) production work programme;
(c) the requirements of the prescribed social and labour plan; and
(d) requirements of the approved environmental management programme.

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

(5) A production right in respect of which an application for renewal has been lodged, shall [despite notwithstanding] its expiry date, remain in force until such time as such application has been granted or a notarial deed of renewal has been executed, or such application has been refused; and
(a) during such time, the holder of the production right shall be 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 will take effect and the renewal period for which application was made shall commence on the date of execution of the renewal right.

86. Rights and obligations of holder of production right

(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 and be granted renewal of the production right in respect of the petroleum area in question;
(b) has the exclusive right to remove and dispose of any petroleum contained in the ground during the course of production; and
(c) may only transfer and encumber the production right, subject to section 5.

(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) continuously and actively conduct production operations in
accordance with the approved production work programme;
(c) comply with the terms and conditions of the production right, [the relevant provisions of] and this Act [and any other law];
(d) comply with the conditions of the environmental authorisation and the prescribed social and labour plan;
(e) in terms of any relevant law, pay the State royalties;
(f) commence with production operations within one year from the date on which a production right becomes effective in terms of section 84(5) or such extended period as the Minister may authorise; and

86A. State participation on exploration and production rights

(1) The State has, through the designated organ of state, a right to a 20 percent free carried interest in all new exploration and production rights, from the effective date of such rights.
(2) In addition to the free carried interest contemplated in subsection (1), the State is, in the prescribed manner, entitled to a further participation interest in the form of—
(a) acquisition at an agreed price; or
(b) production sharing agreements.
(3) The State shall upon acquiring interest in terms of subsections (1) and (2) enter into a joint operating agreement with the operating petroleum company.
(4) The State is entitled to a corresponding percentage of voting rights to the interest held in such joint operating agreements.
(5) The Minister must, acting on behalf of the State, appoint two representatives to the joint project committee of the exploration or production operation to represent the interest of the State.

87. Development of petroleum reservoir as unit

If an exploration right or a production right has been granted over an area which geologically forms part of the same petroleum reservoir to which any other exploration or production rights exist, the holders of such rights must prepare a scheme for the development of the petroleum reservoir as a unit and must submit such scheme to the [designated agency] Regional Manager for approval by the Minister in accordance with the terms and conditions of their respective exploration or production rights.

88. Information and data

(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 [designated agency] Regional Manager as may be prescribed.
(1A) The [designated agency] 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)[(b) within 30 days from the date of submission thereof] to both the Regional Manager and the Council for Geoscience.
(2) Subject to the Promotion of Access to Information Act, 2002 (Act No. [20 of 2002] 2 of 2000) all information, data, reports and interpretations thereof submitted to the [designated agency] Regional Manager must be kept confidential by the [agency] Regional Manager for a period—
(a) not exceeding four years from date of acquisition or creation; or
(b) ending on the date on which the [permit] permits or rights to which such information, data, reports and interpretations thereof relate have lapsed or terminated, or the portion of area [to which] of such permits or rights to which such information, data, reports and interpretations relate [have] has been abandoned or relinquished, whichever comes first.
(3) 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.

89. Financial guarantee

In addition to section 5(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 [designated agency] Regional Manager guaranteeing the availability of sufficient funds for the due fulfilment of all exploration and production work programmes by the holder.

90. Minister’s power to suspend or cancel permits or rights

The Minister may cancel or suspend any reconnaissance permit, technical co-operation permit, exploration right or production right in accordance with the procedure contemplated in section 47.
CHAPTER 7: GENERAL AND MISCELLANEOUS PROVISIONS

91. Power to enter prospecting area, mining area or retention area

(1) The Minister may designate [any member of the Board,] the Regional Manager [or, any officer, or any other person with appropriate expertise] as an authorised person, who can carry out the functions contemplated in subsection (4) and in section 92.

(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 (5):
   (a) in order to obtain evidence, enter any reconnaissance, prospecting, mining, exploration, production 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;
   (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 of 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
      (i) 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;
      (ii) 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;
   (5) 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 he or she 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.

(6) 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.

92. Routine inspections

Any authorised person may without a warrant-

(a) enter any reconnaissance, prospecting, mining production or exploration or retention area or any place where prospecting, or mining, 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.

93. Orders, suspensions and instructions

(1) If an authorised person finds that a contravention or suspected contravention of, or failure to comply with-

   (a) any provision of this Act; or
   (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, exploration, production, prospecting, mining or retention area or place where prospecting operations or mining operations or processing operations are being conducted, such a person [may]-
      (i) must order the holder of the relevant right permit or permission, or the person in charge of such area, any person carrying ant 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]
      (ii) may order that the reconnaissance, prospecting, exploration, mining, production or processing operations [or part thereof] be suspended [or terminated], and
      (iii) 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)](i) and (ii).

(3) The Director-General must notify the relevant holder or other person contemplated in subsection (1) in writing within [60 days] the prescribed period after the order referred to in subsection (1) [(a) or (b)](ii) and (i), whether such order has been set aside or confirmed, failing which such order shall lapse.

94. Prohibition of obstruction, hindering or opposing of authorised person

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.

95. Prohibition of occupational detriment against employee

(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 prospecting or mining 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 term
or condition of such right or any other law.

(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).

96. Internal appeal process and access to courts

(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] the prescribed period becoming aware of such administrative decision in the prescribed manner to—

(a) [the Director-General, if it is an administrative decision by a Regional Manager or any officer to whom the power has been delegated or a duty has been assigned by or under this Act] the Minister, if the decision was taken in terms of this Act provided that appeals already lodged to the Director-General at the promulgation of this Act, shall be deemed to be appeals lodged to the Minister; or

(b) [the Minister, if it is an administrative decision that was taken by the Director-General or the designated agency] the Minister of Environmental Affairs if the decision taken relates to environmental matters and issues incidental thereto. The appeal will be facilitated in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998).

(2) (a) [An] Subject to subsections (2A) and (2B), 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).

(2A) Any pending administrative decision in terms of this Act, which, in the opinion of the Minister may affect the outcome of an appeal in terms of subsection (1), must be suspended pending the finalisation of the appeal.

(2B) Any right granted in terms of this Act and any decision related to environmental matters shall, notwithstanding any other provision in this Act not be effective and shall not be executed unless the prescribed period for the lodgement of an appeal has expired, and if such appeal is lodged, until such appeal has been finalised.

(3) [No] Subject to section 7(2)(c) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), no person may apply to the court for the review of an administrative decision contemplated in subsection (1) until that person has exhausted his or her remedies in terms of that subsection.

(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.

97. Serving of documents

(1) Save as is otherwise provided for in this Act, 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—

(a) it is delivered by hand to that person; or

(b) it is sent by registered mail to that person’s last known business or 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.

98. Offences

Any person is guilty of an offence if he or she—

(a) contravenes or fails to comply with—

(i) [section 5(4), or 28] sections 2, 5A, 11, 15, 19, 20, 25, 26, 27, 35, 43 and 102;

(ii) section 92; 94 or 95;

(iii) [section 35] sections 21 and 28;

(iv) sections 11(4), 21(1A), 28(1) and 28(2)(d);

(v) section 44;

(vi) any directive, notice, suspension, order, instruction or condition issued, given or determined in terms of this Act;

(vii) any provision of this Act;

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

(c) fails to obtain approval from the Minister in terms of section 26(3).

99. Penalties

(1) Any person convicted of (a) an offence in terms of this Act is liable—

(a) in the case of an offence referred to in section 98(a)(i), to a fine not exceeding [R100 000] 10 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 [two] four years or to both such fine and such imprisonment;

(b) in the case of an offence referred to in section 98(a)(ii), to the penalty that may be imposed for perjury;

(c) in the case of an offence referred to in section 98(a)(iii), to a fine not exceeding [R500 000] 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 98(a)(iv), 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 98(a)(v) and (vii), to a fine not exceeding [R10 000] 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 98(c), to a fine not exceeding R50 000 for each day that such person persists in contravention of the said provision;

(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 [and].

(i) An authorised person in terms of section 91 may make a recommendation in writing to the Director-General that a fine be imposed on the holder who has failed to comply with any provision contemplated in section 98(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) The Director-General, after considering the recommendation and any representation made in terms of subparagraph (a)(ii), must within the prescribed period from the date of receipt of the holder’s representations in terms of paragraph (a)(ii) or after expiry of the 30 day period in paragraph (a)(iii) without such representations having been made, whichever is the earlier—

(a) disregard the recommendation;

(b) impose a fine not exceeding R800 000; or

(c) refer the matter to the National Prosecuting Authority for a decision as to whether the holder should be charged with an offence.

(i) The Director-General must in writing notify the holder of his decision made in terms of paragraph (b)(ii) within the prescribed period.

(ii) The holder may appeal the decision of the Director-General.
to the Minister in terms of section 96.

(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)(ii)(bb) within 30 days of receipt of the Director-General’s notification thereof in terms of paragraph (b)(iii).

(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 Council for Geoscience in terms of this Act.

(d) The Council for Geoscience must in consultation with the Minister use the money in the fund for the promotion of exploration and prospecting activities in the mining and petroleum industry and matters incidental thereto.

(2) Despite anything to the contrary in any other law, a magistrate’s court may impose any penalty provided for in this Act.

100. Transformation of minerals industry

(1) The Minister must, within five years from the date on which this Act took effect—

(a) and after consultation with the Minister for Housing, develop a housing and living conditions standard for the minerals industry; and

(b) develop a code of good practice for the minerals industry in the Republic.

(2) To ensure the attainment of Government’s objectives of redressing historical, social and economic inequalities as stated in the Constitution, the Minister must within six months from the date on which this Act takes effect—

(a) develop a broad-based socio-economic empowerment charter that will set the framework for targets and time table for effecting the entry into and active participation of historically disadvantaged South Africans into the mining industry, and allow such South Africans to benefit from the exploitation of mining and mineral resources and the beneficiation of such mineral resources.

(b) The Minister must set out, amongst others how the objects referred to in section 2(c), (d), (e), (f) and (l) can be achieved.

(3) The Minister must when granting applications in terms of sections 17 and 23 impose the provisions of the housing and living conditions standard for the minerals industry, codes of good practice for the mining industry and the broad-based socio-economic empowerment charter.

(4) The Minister shall as and when the need arises amend or repeal the housing and living conditions standard for the minerals industry, codes of good practice for the minerals industry and the broad-based socio-economic empowerment charter.

101. Appointment of contractor

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

102. Amendment of rights, permits, programmes and plans

(1) A reconnaissance permission, prospecting right, mining right, mining permit, retention permit, technical [co-operation] co-operation permit, reconnaissance permit, exploration right, production right, prospecting work programme, exploration work programme, production work programme, mining work programme environmental management programme) approved social and labour plan, 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] addition of minerals or a share or shares or seams, mineralised bodies or strata, which are not at the time the subject thereof) without the written consent of the Minister.

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

(a) extend an area or portion of an area with an area or portion of an area greater than the area for which the right has been granted for; but where the extension is to consolidate existing adjacent rights; or

(b) add a share or shares of the mineralised body, unless the omission of such area or share was a result of the administrative error, or

(c) addition of a mineral other than an associated mineral subject to subsection (3) and (4).

(3) Any right holder mining any mineral under a mining right may, while mining such mineral, also mine and dispose of any other mineral in respect of which such holder is not the right holder, but which must of necessity be mined with the first-mentioned mineral, provided that the right holder declares such associated mineral or any other mineral discovered in the mining process.

(4) The right holder contemplated in subsection (3) must within 60 days from the date of making the declaration apply for an amendment of its right to include the mineral so declared failing which a third party may apply in terms of section 16, 22, or 27 as the case may be for such associated mineral.

103. Delegation and assignment

(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 96, and may assign any duty so imposed upon him or her to the Director-General, the Regional Manager 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 Regional Manager 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, Regional Manager or officer may at any time—

(a) withdraw a delegation or assignment made in terms of subsection (1), (2) or (3), as the case may be; 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 shall be affected by such withdrawal and amending of a decision.

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

104. Preferent prospecting or mining right in respect of communities

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

(2) The Minister must grant such preferent right if the provisions of section 17 or 23 have been complied with: Provided that—

(a) the right shall be used to contribute towards the development and the social upliftment of the community;

(b) the community submits a development plan, indicating the manner in which such right is going to be exercised;

(c) the envisaged benefits of the prospecting or mining project will accrue to the community in question; and

(e) section 23(1)(e) and (h) is not applicable.

(3) The preferent right granted in terms of this section is—

(a) valid for a period not exceeding five years and can be renewed for further periods not exceeding five years; and

(b) subject to prescribed terms and conditions.
(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, production right, exploration right, technical operation permit or reconnaissance permit has already been granted.

105. Landowner or lawful occupier of land cannot be traced

(1) Any person who has applied for a right, permit or permission in terms of this Act must notify the Regional Manager if the landowner or lawful occupier of the land concerned—
(a) cannot be readily traced; or
(b) is deceased and no successor in title can be readily traced.

(2) Notwithstanding any other law, the Regional Manager, on application in writing from such applicant and on payment of the prescribed application fee, may—
(a) grant consent to such a person to install a notice on a visible place on the land and enter the land to which the application relates to; and
(b) subject such a person to such other terms and conditions as the Regional Manager may determine.

106. Exemptions from certain provisions of Act

(1) The Minister may, by notice in the Gazette, exempt any organ of state from the provisions of sections 16, 20, 22 and 27 in respect of any activity to remove any mineral for road construction, building of dams or other purpose which may be identified in such notice.

(2) Despite subsection (1), the organ of state so exempted must submit relevant environmental reports required in terms of Chapter 5 of the National Environmental Management Act, 1998, to obtain an environmental authorisation.

(3) Any landowner or lawful occupier of land who lawfully, takes sand, stone, rock, gravel or clay for farming or for effecting improvements in connection with such land or community development purposes, is exempted from the provisions of in connection with such land or community development purposes, is exempted from the provisions of sections 16, 20, 22 and 27 in respect of any activity to remove any mineral for road construction, building of dams or other purpose which may be identified in such notice.

107. Regulations

(1) The Minister may, by notice in the Gazette, make regulations regarding
(a) the rehabilitation of disturbances of the surface of land, where such disturbances are connected to prospecting or mining operations;
(b) the exploitation, processing, utilization or use of or the disposal of any mineral;
(c) procedures in respect of appeals lodged under this Act;
(d) fees payable in relation to any right, permit or permission 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 which may have to be done 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 management programme, permit, licence, certificate, permission, receipt or other document which may have 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 shall be kept, given, published or submitted in terms of or for the purposes of this Act;
(i) the prohibition on the disposal of any mineral 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 mineral in general;
(jA) determination of the terms and conditions of the State participation as contemplated in section 86A;
(jB) procedures applicable in respect of invitation for applications in terms of section 9.
SCHEDULE II: TRANSITIONAL ARRANGEMENTS

1. Definitions

In this Schedule, unless the context indicates otherwise-
(i) “holder” in relation to an old order right, means the person to whom such right was or is deemed to have been granted or by whom it is held or is deemed to be held, or such person’s successor in title before this Act came into effect;
(ii) “Minerals Act” means the Minerals Act, 1991 (Act No. 50 of 1991);
(iii) “old order mining right” means any mining lease, mynpachten, consent to mine, permission to mine, claim licence, mining authorisation or right listed in Table 2 to this Schedule in force immediately before the date on which this Act took effect and in respect of which mining operations are being conducted;
(iv) “old order prospecting right” means any prospecting lease, permission, consent, permit or licence, and the rights attached thereto, listed in Table I to this Schedule in force immediately before the date on which this Act took effect and in respect of which prospecting is being conducted;
(v) “old order right” means an old order mining right, old order prospecting right or unused old order right, as the case may be;
(vi) —OP26 mining lease” means any mining lease granted in terms of clause 22 of prospecting lease OP26 or the portions held under Deed of Cession 1/1996, registered in terms of the Mining Titles Registration Act, 1967 (Act No.16 of 1967);
(vii) —OP26 sublease” means those parts of the OP26 mining lease which are held under Cessions 1/1999 and 1/2002 registered as such at the Mineral and Petroleum Titles Registration Office on 8 September 1999 and 30 September 2002, respectively;
(viii) “OP26 right” means prospecting lease OP26 and the portions ceded under Deed of Cession 1/1996 registered in terms of the Mining Titles Registration Act, 1967 (Act No.16 of 1967) or an OP26 sublease or an OP26 mining lease;
(ix) “unused old order right” means any right, entitlement, permit or licence listed in Table 3 to this Schedule in respect of which no prospecting or mining was being conducted immediately before this Act took effect.

2. Objects of Schedule

The objects of this Schedule are in addition to the objects contemplated in section 2 of the Act and are to-
(a) ensure that security of tenure is protected in respect of prospecting, exploration, mining and production operations which are being undertaken;
(b) give the holder of an old order right, and an OP26 right an opportunity to comply with this Act; and
(c) promote equitable access to the nation’s mineral and petroleum resources.

3. Pending prospecting and mining applications

(1) Any application for a prospecting permit, mining authorisation, consent to prospect, consent to mine or permission to remove and dispose of any mineral lodged, but not finalised, in terms of section 6, 8 or 9 of the Minerals Act immediately before this Act took effect must be regarded as having been lodged in terms of section 13, 16, 22, 27, 79 or 83 of this Act, as the case may be.
(2) If any application contemplated in subitem (1) does not meet the requirements of this Act, the Regional Manager in whose region the land to which the application relates is situated must direct the applicant to submit the outstanding information within 120 days of such direction.
(3) Any environmental management programme submitted for approval in terms of section 39(1) of the Minerals Act which had not been approved when this Act took effect must be regarded as having been lodged in terms of section 39 of this Act.
(4) If the environmental management programme does not meet the requirements of this Act, the Regional Manager in whose region the land to which the environmental management programme relates is situated must direct the holder concerned to submit the outstanding information.

4. Continuation of Exploration Operation

(1) Any OP26 sublease in force immediately before this Act took effect continues in force subject to the terms and conditions under which it was granted until it is terminated or expires or until 30 June 2007, whichever is the sooner.
(2) Any holder of a sublease contemplated in subitem (1) who wishes to convert the sublease into an exploration right in terms of this Act, must lodge such sublease for conversion at the office of the designated agency together with-
(a) the prescribed particulars of the holder;
(b) a sketch plan or diagram depicting the area for which the conversion is required, which area may not be larger than the area for which he or she holds the lease;
(c) a statement setting out the period during which he or she conducted exploration operations before the date on which this Act took effect;
(d) information as to whether or not the OP26 sublease is mortgaged or in any way encumbered by way of endorsement at the Title Deeds Office or the Mining Titles Office.
(e) a statement setting out the terms and conditions which apply to the sublease;
(f) the original sublease and the approved environmental management programme, or certified copies thereof;
(g) an undertaking to the effect that, and a statement setting out the manner in which, the holder of the sublease will give effect to the object referred to in section 2(d) and 2(f); and
(h) an affidavit verifying that the holder is conducting or has been conducting exploration operation on the area of land to which the conversion relates and setting out the periods during which such exploration operations were converted and the results thereof.
(3) The Minister must convert the sublease if the holder-
(a) has complied with the provisions of subitem (2);
(b) is conducting exploration in respect of the sublease in question;
(c) indicates that he or she will continue to conduct exploration operations upon the conversion of such right; and
(d) has paid the prescribed conversion fee.
(4) No terms and conditions applicable to the sublease remain in force if they are contrary to any provision of the Constitution or this Act.
(5) [the] The holder must lodge the right converted under subitem (3) within 90 days from the execution date [on which he or she received notice of conversion] at the Mineral and Petroleum Titles Registration Office for [deregistration] registration and [simultaneously] at the Deeds office or the Mineral and Petroleum Titles Registration Office for deregistration of the OP26 sublease as the case may be.
(6) The registration contemplated in subitem (5) must occur within six months from the date on which the sublease has been converted and must be done at the same time as the deregistration of the sublease at the Mineral and Petroleum Titles Registration Office.
(7) Upon the conversion of the sublease [and the registration of the exploration right into which it was converted], the sublease ceases to exist.
(8) If the holder fails to lodge the sublease for conversion before the expiry of the period referred to in subitem (1) the sublease ceases to exist.
5. Continuation of Production Operations

(1) Any OP26 mining lease in force immediately before this Act took effect continues in force for a period of five years from the date on which this Act took effect, subject to the terms and conditions under which it was granted.

(2) Any holder of a lease contemplated in subitem (1) who wishes to convert the lease into a production right in terms of this Act, must lodge an application for the conversion of the lease at the designated agency together with:
   (a) the prescribed particulars of the holder;
   (b) a sketch plan or diagram depicting the area for which the conversion is required, which area may not be larger than the area for which he or she holds the lease;
   (c) a statement setting out the period during which he or she conducted production operations before the date on which this Act took effect;
   (d) a statement setting out the period for which the production right is required substantiated by a mining work programme;
   (e) an affidavit verifying that the holder is conducting production operations on the area of the land to which the conversion relates and setting out the period for which such production operation has been conducted;
   (f) a prescribed social and labour plan;
   (g) information as to whether or not the old order prospecting right ceases to exist.

90 days from the execution date [on which he or she received notice that the right is required, substantiated by a prospecting work programme;]

(3) The Minister must convert the lease if the holder:
   (a) has complied with the provisions of subitem (2);
   (b) has conducted prospecting operations upon the conversion of such right;
   (c) is producing petroleum in respect of the lease in question;
   (d) has paid the prescribed conversion fee.

(4) No terms and conditions applicable to the lease remain in force if they are contrary to any provision of the Constitution or this Act.

(5) The holder must lodge the right converted under subitem (3) within 90 days from the execution date [on which he or she received notice of conversion] at the Deeds Office or Mining Titles Office if the right relates.

(6) If a mortgage bond has been registered in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937), or the Mining Titles Registration Act, 1967 (Act No. 16 of 1967), over the lease, the production right into which it is converted must be registered subject to such mortgage bond, and the relevant registrar must make such endorsements on any relevant document and such entries in his or her registers as may be necessary in order to give effect to this subitem, without payment of transfer duty, stamp duty, registration fees or charges.

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

(8) If the holder fails to lodge the lease for conversion before the expiry of the period referred to in subitem (1) the sublease ceases to exist.

6. Continuation of old order prospecting right

(1) Subject to subitems (2) and (8), any old order prospecting right in force immediately before this Act took effect continues in force for a period of two years from the date on which this Act took effect subject to the terms and conditions under which it was granted or issued or was deemed to have been granted or issued.

(2) A holder of an old order prospecting right must lodge the right for conversion within the period referred to in subitem (1) at the office of the Regional Manager in whose region the land in question is situated together with:
   (a) the prescribed particulars of the holder;
   (b) a sketch plan or diagram depicting the prospecting area for which the conversion is required, which area may not be larger than the area for which he or she holds the old order prospecting right;
   (c) the name of the mineral or group of minerals for which he or she holds the old order prospecting right;
   (d) an affidavit verifying that the holder is conducting or has conducted prospecting operations immediately before this Act took effect on the area of that land to which the conversion relates and setting out the periods during which such prospecting operations were conducted and the results thereof;
   (e) a statement setting out the period for which the prospecting right is required, substantiated by a prospecting work programme;
   (f) information as to whether or not the old order prospecting right is encumbered by any mortgage bond or other right registered at the Deeds Office or Mining Titles Office;
   (g) a statement setting out the terms and conditions which apply to the old order prospecting right;
   (h) the original title deed in respect of the land to which the old order prospecting right relates, or a certified copy thereof;
   (i) the original old order right or a certified copy thereof; and
   (j) all prospecting information and the results thereof to which the right relates.

(3) The Minister must convert the old order prospecting right into a prospecting right if the holder of the old order prospecting right:
   (a) complies with the requirements of subitem (2);
   (b) has conducted prospecting operations in respect of the right in question;
   (c) indicates that he or she will continue to conduct such prospecting operations upon the conversion of such right;
   (d) has an approved environmental management programme; and
   (e) has paid the prescribed conversion fee.

(4) No terms and conditions applicable to the old order prospecting right remain in force if they are contrary to any provision of the Constitution or this Act.

(5) The holder must lodge the right converted under subitem (3) within 90 days from the execution date [on which he or she received notice of conversion] at the Deeds Office or Mining Titles Office if the right relates.

(6) If a mortgage bond has been registered in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937), or the Mining Titles Registration Act, 1967 (Act No. 16 of 1967), over the old order prospecting right, the prospecting right into which it was converted must be registered subject to such mortgage bond, and the relevant registrar must make such endorsements on every relevant document and such entries in his or her registers as may be necessary in order to give effect to this subitem, without payment of transfer duty, stamp duty, registration fees or charges.

(7) Upon the conversion of the old order prospecting right [and the registration of the prospecting right into which it was converted], the old order prospecting right ceases to exist.

(8) If the holder fails to lodge the old order prospecting right for conversion before the expiry of the period referred to in subitem (1), the old order prospecting right ceases to exist.

7. Continuation of old order mining right

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

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

(2) The holder of an unused old order right has the exclusive right to apply for a prospecting right or a mining right, as the case may be, in terms of this Act within the period referred to in subitem (1).

(3) An unused old order right in respect of which an application has been lodged within the period referred to in subitem (1) remains valid until such time as the application for a prospecting right or mining right, as the case may be, is granted and dealt with in terms of this Act or is refused.

(4) Subject to subitems (2) and (3), an unused old order right ceases to exist upon the expiry of the period contemplated in subitem (1).

9. Continuation of reservations, permissions and certain rights

(1) Any reservation or permission for or right to the use of the surface of land granted or acquired or deemed to have been granted or acquired—

(a) in terms of section 75 of the Precious and Base Metals Act, 1908 (Act No. 35 of 1908), of the Transvaal;

(b) in terms of section 126(2) of the Precious Stones Act, 1964 (Act No. 73 of 1964);

(c) in terms of section 90, 91, 92, 93(4) or (7), 102, 103, 111, 113 or 116 of the Mining Rights Act, 1967 (Act No. 20 of 1967);

(d) in terms of section 127, 128 or 129 read with section 130 of the Mining Rights Act, 1967 (Act No. 20 of 1967); or

(e) by virtue of a reservation under section 158 of the Mining Rights Act, 1967 (Act No. 20 of 1967), as the case may be, and in force in terms of section 48 of the Minerals Act immediately before this Act took effect, remains in force subject to the terms and conditions under which it was granted or acquired and contained in the document or documents concerned under which it continues to exist or remain in force and in those cases where they were attached to old order rights will so remain in force notwithstanding the cessation or existence of the relevant old order right to which they were attached if such old order right is replaced by a prospecting right or mining right in terms of items 6 or 7 and shall thereupon similarly attach to such permit or right, as the case may be.

(2) The holder, user or acquirer of any reservation, permission or right to use the surface of land contemplated in subitem (1) must register such reservation, permission or right in the Mineral and Petroleum Titles Registration Office within six years from the date on which [this Act] the Mineral and Petroleum Resources Development Amendment Act, 2014, took effect and if such holder, user or [occupier] acquirer fails to register such reservation, permission or right, the reservation, permission or right shall cease to exist.

(3) Any reservation, permission or right to use the surface of land contemplated in subitem (1) which could have been ceded, transferred, let, sublet, subdivided, amended or mortgaged, wholly or in part, immediately before this Act took effect may be ceded, transferred, let, sublet, subdivided, amended or mortgaged, wholly or in part, in terms of this Act, but the holder must lodge it at the Mineral Titles Office within 90 days for the registration of such cession, transfer, letting, subletting, tributing, subdivision, amendment or mortgage.

(4) The owner of the land or any other person contemplated in section 48(2)(a) of the Minerals Act who was receiving compensation in terms of that section immediately before this Act took effect, or such owner’s or person’s successors in title, are entitled to continue receiving such compensation.
(5) (a) The holder of a reservation, permission or right contemplated in subitem (1) may abandon such reservation, permission or right, wholly or in part, by written notice to the relevant Regional Manager.

(b) The reservation, permission or right contemplated in paragraph (a), or such part thereof as may have been abandoned, must thereupon be regarded as having lapsed with effect from the date of such notice.

(6) The Director-General may cancel any reservation, permission or right if the holder thereof fails to comply with any term or condition of such right, reservation or permission, in which case section 47 applies with the necessary changes.

(7) Any lease of the State’s interest in a mine in terms of section 74 of the Precious Stones Act, 1964 (Act No. 73 of 1964), which was in force immediately before this Act took effect in terms of section 47(1)(a)(iiii) of the Minerals Act continues in force subject to the terms and conditions contained in the document under which it was granted or entered into.

10. Continuation of approved environmental management programme

(1) Any environmental management programme approved in terms of section 39(1) of the Minerals Act and in force immediately before this Act took effect and any steps taken in respect of the relevant performance assessment and duty to monitor connected with that environmental management programme continues to remain in force when this Act comes into effect.

(2) Subitem (1) does not prevent the Minister from directing the amendment of an environmental management programme in order to bring it into line with the requirements of this Act.

(3) Any person exempted in terms of section 39(2)(a) of the Minerals Act before this Act took effect and whose exemption does not otherwise remain in force in terms of this Act must apply for an exemption in terms of this Act within one year from the date on which this Act took effect, otherwise the exemption lapses.

(4) If the holder of an old order prospecting right or old order mining right ceases the relevant prospecting or mining operations ceases the relevant prospecting or mining operations right, wholly or in part, by written notice to the Regional Manager, such notice may be inspected by the Director-General; and

(5) If a development plan, indicating the manner in which the consideration or royalty is being used and any projects sponsored therewith;

(d) an undertaking that the consideration or royalty is being or will be used for the benefit of all the members of the community in question;

(e) the right of the Minister to intervene, in the event that it is alleged that the said consideration royalties is not being utilised for the purposes agreed to between, the Minister and the community concerned; and

(f) the establishment of a trust, section 21 Company, Agency or other structure to administer the funds, on whose Board of Directors or trustees or Executive Committee there is representation by members of the community affected.

12. Payment of compensation

(1) Any person who can prove that his or her property has been expropriated in terms of any provision of this Act may claim compensation from the State.

(2) When claiming compensation, a person must—

(a) prove the extent and nature of actual loss and damage suffered by him or her;

(b) indicate the current use of the property;

(c) submit proof of ownership of such property;

(d) give the history of acquisition of the property in question; and

(e) detail the nature of such property;

(f) prove the market value of the property and the manner in which such value was determined; and

(g) indicate the extent of any State assistance and benefits received in respect of such property.

(3) In determining just and equitable compensation all relevant factors must be taken into account, including, in addition to sections 25(2) and 25(3) of the Constitution—

(a) the State’s obligation to redress the results of past racial discrimination in the allocation of and access to mineral and petroleum resources;

(b) the State’s obligation to bring about reforms to promote equitable access to all South Africa’s natural resources;

(c) the provisions of section 25(8) of the Constitution; and

(d) whether the person concerned will continue to benefit from the use of the property in question or not.

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

(a) the manner in which such claim may be lodged;

(b) the procedure to be followed by the claimant and the Director-General in respect of such claim; and

(c) the time when any legal proceedings may be instituted in respect of the determination or payment of compensation as contemplated in subitem (1).

(5) Despite the provisions of the Prescription Act, 1969 (Act No. 68 of 1969), prescription in respect of a claim for compensation shall only commence to run—

(a) when the claimant has been informed in writing by the Director-General that he or she has denied the validity of the claim and the claimant has not appealed against such denial in terms of...
section 96; or
(b) where a claimant decides to appeal the denial of the Director-
   General in terms of section 96, when the claimant has been
   informed in writing by the Minister of the confirmation of the
   said denial; or
(c) 180 days after the claimant has been informed in writing that
   the Director-General has refused a determination and payment
   of compensation.

(6) On the occurrence of any of the event described in subitems (5)(a) to
(c)—
   (a) to the extent that they may be applicable, the provisions of
      sections 10(4), (5), (7) and (8), 14, 15, 19, 21 of the Expropriation
      Act, 1975 (Act No. 63 of 1975), apply with necessary changes to a
      claim made in terms of subitem (1); and
   (b) the claimant may issue proceedings in a court of law for the
      determination and payment of compensation, but not before.

(7) The provisions of this item do not apply to expropriation of property
in terms of section 55 of the Act.

13. Certain functions of Director: Mineral Development to be performed
by Regional Manager or Minister

(1) Until an officer is designated for a region in terms of section 8
   as Regional Manager, the officer appointed as Director: Mineral
   Development for that region in terms of section 4 of the Minerals
   Act must—
   (a) be regarded as having been appointed as Regional Manager; and

(b) must perform any function in the region for which he or she was
   appointed which the Regional Manager must perform under or
   in terms of the Act

(2) The regions contemplated in section 3 of the Minerals Act remain in
force until the Minister divides the Republic, the sea and continental
shelf into regions in terms of section 7.
### TABLE 1 (OLD ORDER PROSPECTING RIGHTS)

**Category 1**  
The common law mineral right, together with a prospecting permit obtained in connection therewith in terms of section 6(1) of the Minerals Act.

**Category 2**  
A consent to prospect in terms of section 6(1)(b) or 6(3) of the Minerals Act and the common law mineral right attached thereto, together with a prospecting permit obtained in connection therewith in terms of section 6(1) of the Minerals Act.

**Category 3**  
A prospecting lease, prospecting permit, prospecting licence or prospecting permission referred to in section 44 of the Minerals Act, the common law mineral right attached thereto and a prospecting permit obtained in accordance with section 6(1) of the Minerals Act.

**Category 4**  
Any permission to prospect in terms of section 16(1) of the Bophuthatswana Land Control Act, 1979 (Act No. 39 of 1979), section 16(1) of the Venda Land Control Act, 1986 (Act No.6 of 1986), section 15 of the Lebowa Minerals Trust Act, 1987 (Act No.9 of 1987), section 51(1) of the Rural Areas Act (House of Representatives), 1987 (Act No.9 of 1987), or section 6 of the Transformation of Certain Rural Areas Act, 1998 (Act No. 94 of 1998), and the common law mineral right attached thereto together with a prospecting permit obtained in connection therewith in terms of section 6(1) of the Minerals Act.

**Category 5**  
A temporary permit authorising the continuation of a prospecting operation on the land comprising the subject of a prospecting permit which had been authorised under such prospecting permit, as provided for in section 10 of the Minerals Act, 1991 (Act No. 50 of 1991).

### TABLE 2 (OLD ORDER MINING RIGHTS)

**Category 1**  
The common law mineral right, together with a mining authorisation obtained in connection therewith in terms of section 9(1) of the Minerals Act.

**Category 2**  
A consent to mine granted in terms of section 9(1)(b) or 9(2) of the Minerals Act and the common law mineral right attached thereto, together with a mining authorisation issued in connection therewith in terms of section 9(1) of the Minerals Act.

**Category 3**  
A right to dig or to mine or claim licence, a tributing agreement or a mynpachten referred to in section 47 of the Minerals Act and the common law mineral right attached thereto and a mining authorisation obtained in connection therewith under section 47(1)(e) in terms of section 9(1) of the Minerals Act.

**Category 4**  
A right to dig or to mine referred to in section 47(5) of the Minerals Act or any right to dig or mine acquired under a tributing agreement as defined in section 1 of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967), or any sub-grant acquired by virtue of the first mentioned right and the common law mineral right attached thereto, together with a mining authorisation obtained in connection therewith in terms of section 9(1) of the Minerals Act.

**Category 5**  

**Category 6**  
A temporary authorisation or permit authorising the continuation of a mining operation on the land comprising the subject of a mining authorisation or permit which had been authorised under such mining authorisation or permit, as provided for in section 10 of the Minerals Act, 1991 (Act No. 50 of 1991).
### TABLE 3 (UNUSED OLD ORDER RIGHTS)

**Category 1**
A mineral right under the common law for which no prospecting permit or mining authorisation was issued in terms of the Minerals Act.

**Category 2**
A mineral right under the common law for which a prospecting permit or mining authorisation was issued in terms of the Minerals Act.

**Category 3**
A consent to prospect in terms of section 6(1)(b) or 6(3) of the Minerals Act and the common law mineral right attached thereto in respect of which a prospecting permit was issued in terms of section 6(1) of the said Act.

**Category 4**
A consent to prospect in terms of section 6(1)(b) or 6(3) of the Minerals Act and the common law mineral right attached thereto in respect of which no prospecting permit was issued in terms of section 6(1) of the said Act.

**Category 5**
A prospecting lease, prospecting permit, prospecting licence or prospecting permission referred to in section 44 of the Minerals Act and the common law mineral right attached thereto in respect of which a prospecting permit was issued in terms of section 6(1) of the Minerals Act.

**Category 6**
A prospecting lease, prospecting permit, prospecting licence or prospecting permission referred to in section 44 of the Minerals Act and the common law mineral right attached thereto in respect of which no prospecting permit was issued in terms of section 6(1) of the Minerals Act.

**Category 7**
A consent to mine issued or granted in terms of section 9(1)(b) or 9(2) of the Minerals Act and the common law mineral right attached thereto in respect of which a mining authorisation was issued in terms of section 9(1) of the Minerals Act.

**Category 8**
A consent to mine granted in terms of section 9(1)(b) or 9(2) of the Minerals Act and the common law mineral right attached thereto in respect of which no mining authorisation was issued in terms of section 9(1) of the Minerals Act.

**Category 9**
A consent to mine issued or granted in terms of section 9(1)(a) or 9(2) of the Minerals Act and the common law mineral right attached thereto without a mining authorization issued in terms of section 9(1) of the Minerals Act.

**Category 10**
A right to dig or to mine referred to in section 47(5) of the Minerals Act or any right to dig or mine acquired under a tributing agreement as defined in section 1 of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967), or any sub-grant acquired by virtue of the first mentioned right and the common law mineral right attached thereto, together with a mining authorisation obtained in connection therewith in terms of section 9(1) of the Minerals Act.

**Category 11**
Any permission to prospect or mine in terms of section 16(1) of the Bophuthatswana Land Control Act, 1979 (Act No. 39 of 1979), section 16(1) of the Venda Land Control Act, 1986 (Act No.6 of 1986), section 15 of the Lebowa Minerals Trust Act, 1987 (Act No. 9 of 1987), section 51(1) of the Rural Areas Act (House of Representatives), 1987 (Act No.9 of 1987), or section 6 of the Transformation of Certain Rural Areas Act, 1998 (Act No. 94 of 1998), and the common law mineral right attached thereto and a prospecting permit or mining permit issued in terms of the Minerals Act.
4. LIST OF RESOURCES

- The Mineral and Petroleum Resources Development Amendment Bill, 2013 (B15 of 2013)
- Amendment of Proclamation 14 of 2013 dated 31 May 2013 (Notice 17 on GG 36541 of 6 June 2013)
PROPOSED CHANGES TO THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002 (ACT NO. 28 OF 2002)

BY THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL [815-2013]