

REPUBLIC OF SOUTH AFRICA

MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL

(As amended by the Portfolio Committee on Mineral Resources (National Assembly))
(The English text is the official text of the Bill)

(MINISTER OF MINERAL RESOURCES)

[B 15D—2013]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

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

BILL

To amend the Mineral and Petroleum Resources Development Act, 2002, as amended by the Mineral and Petroleum Resources Development Act, 2008 (Act No. 49 of 2008); so as to remove ambiguities that exist within the Act; to provide for the regulation of associated minerals, partitioning of rights and enhance provisions relating to the regulation of the mining industry through beneficiation of minerals or mineral products; to promote national energy security; to streamline administrative processes; to align the Mineral and Petroleum Resources Development Act with the Geoscience Act, 1993 (Act No. 100 of 1993), as amended by the Geoscience Amendment Act, 2010 (Act No. 16 of 2010); to provide for enhanced sanctions; to improve the regulatory system; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 28 of 2002, as amended by section 1 of Act 49 of 2008

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

(a) by the insertion before the definition of “beneficiation” of the following definitions:

“**‘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

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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;”;

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

“ **‘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 or manufactured and value added products or articles]** transformation, value addition or downstream beneficiation of a 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;”;

- (c) by deletion of the definition of “Board”;

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

“ **‘community’** means [a group of historically disadvantaged persons with interest or rights in a particular area of land on which the members have or exercise communal rights in terms of an agreement, custom or law: Provided that, where as a consequence of the provisions of this act, negotiations or consultations with the community is required, the community shall include the members or part of the community directly affect by mining on land occupied by such members or part of the community] a coherent, social group of persons within a metropolitan municipality or 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;”;

- (e) by the insertion after the definition of “community” of the following definitions:

“ **‘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;”;

- (f) by the insertion after the definition of “contractual royalties” of the following definition:

“ **‘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;”;

- (g) by the substitution for the definition of “Department” of the following definition:
 “**‘Department’** means the Department of [**Minerals and Energy** Mineral Resources;”;
- (h) by the insertion after the definition of “Department” of the following definition: 5
 “**‘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;”;
- (i) by the insertion after the definition of “Director-General” of the following definition: 10
 “**‘discovery’** means the discovery by the holder of an exploration right of petroleum within the exploration area;”;
- (j) by the insertion after the definition of “exploration work programme” of the following definitions: 15
 “**‘free carried interest’** means interest allocated to the State in exploration or production operations without any financial obligation on the State;
‘gasification’ means a process applied to non-mined coal seams, using injection and production wells drilled from the surface, which enables the coal to be converted *in situ* into gas;” 20
- (k) by the substitution for the definition of “historically disadvantaged person” of the following definition:
 “**‘historically disadvantaged South Africans [person means—**
 (a) **any person, category of persons or community, disadvantaged by unfair discrimination before the Constitution took effect;** 25
 (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)(i);]** 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;” 30
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- (l) by the insertion after the definition of “historically disadvantaged person” of the following definition: 45
 “**‘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;” 50
- (m) by insertion after the definition of “holder” of the following definition: 55
 “**‘labour sending areas’** refers to areas from where a majority of mineworkers, both historical and current are or have been sourced;”;
- (n) by the substitution for the definition of “land” of the following definition:
 “**‘land’** includes the surface of the land and the sea, as well as residue deposits and residue stock piles on such land, where appropriate;”;
- (o) by the insertion after the definition of “land” of the following definition: 60
 “**‘listed company’** means a ‘listed company’ as defined by the Income Tax Act, 1962 (Act No. 58 of 1962);”;

- (p) by the substitution for the definition of “mine” of the following definition:
 “**‘mine’** means, when—
 (a) used as a noun—
 (i) any excavation in the earth, including any portion under the sea or under other water or in any residue deposit, as well as any borehole, whether being worked or not, made for the purpose of searching for or winning a mineral;
 (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]** gasification, open working or otherwise and includes any operation or activity incidental thereto, in, on or under the relevant mining area;
- (q) by the insertion after the definition of “mine” of the following definition:
 “**‘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 mine processing site, and excludes charges such as transport and delivery charges from the mine area or the mine processing site to the local beneficiary;”;
- (r) by the substitution for the definition of “mining area” of the following definition:
 “**‘mining area’**—
 (a) in relation to a mining right or a mining permit, means the area **[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 (i)] 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 (ii)(a) and (ii)(b)] subparagraphs (i) and (ii)[.]**;”;
- (s) by the substitution for the definition of “mining operation” of the following definition:
 “**‘mining operation’** means any operation relating to the act of mining and matters directly incidental thereto, including residue stock piles;”;
- (t) by the substitution for the definition of “Minister” of the following definition:
 “**‘Minister’** means the Minister of **[Minerals and Energy]** Mineral Resources;”;
- (u) by the insertion after the definition of “officer” of the following definition:
 “**‘organ of state’** has the meaning assigned to it in terms of section 239 of the Constitution;”;
- (v) by the insertion after the definition of “production right” of the following definition:
 “**‘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;”;

- (w) by the substitution for the definition of “prospecting area” of the following definition:
- “**‘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, means 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;”;
- (x) by the insertion after the definition of “prospecting work programme” of the following definition:
- “**‘public entity’** means a ‘public entity’ as defined in the Public Finance Management Act, 1999 (Act No. 1 of 1999);”;
- (y) by the substitution for the definition of “Regional Mining Development and Environment Committee” of the following definition:
- “**‘Regional Mining Development and Environmental Committee’** means a Regional Mining Development and Environmental Committee established in terms of section [64(1)] 10A;”;
- (z) by the substitution for the definition of “residue stockpile” of the following definition:
- “**‘residue stockpile’** means any debris, discard, tailings, slimes, screening, slurry, waste rock, foundry sand, [beneficiation] mineral processing plant waste, ash or any other product derived from or incidental to a mining operation and which is stockpiled, stored or accumulated within the mining area for potential re-use, or which is disposed of, by the holder of a mining right, mining permit or, production right or an old order right, including historic mines and dumps created before the implementation of this Act;”;
- (zA) by the insertion after the definition of “retention permit” of the following definitions:
- “**‘security of supply’** means orderly supply of designated minerals or mineral products for local beneficiation in order to support and sustain national development imperatives;
- ‘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;”;
- (zB) by the insertion after the definition of “State royalties” of the following definition:
- “**‘strategic minerals’** means such minerals as the Minister may declare to be strategic minerals as and when the need arises in the *Gazette*;”;
- (zC) by the substitution for the definition of “the sea” of the following definition:
- “**‘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), of the Republic, including the water and the bed of any tidal river and of any tidal lagoon;
- (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);” and
(zD) by the substitution for the definition of “this Act” of the following definition:

“**this Act** includes—

- (a) the regulations and any term or condition to which any permit, permission, **[licence]** 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;”.

Amendment of section 2 of Act 28 of 2002, as amended by section 2 of Act 49 of 2008

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

- “(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]**;
- (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;”.

Amendment of section 5A of Act 28 of 2002, as inserted by section 5 of Act 49 of 2008

3. Section 5A of the principal Act is hereby amended by the substitution for the section heading of the following heading:

“**Prohibition relating to an illegal act**”.

Substitution of section 7 of Act 28 of 2002

4. The following section is hereby substituted for section 7 of the principal Act:

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

7. 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.”.

Amendment of section 9 of Act 28 of 2002, as amended by section 6 of Act 49 of 2008

5. The following section is hereby substituted for section 9 of the principal Act:

“Invitation for applications

9. (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 reconnaissance 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 lodgment.

(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). 5

(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. 10

(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. 15

(5) The Minister shall, when processing applications, give preference to an application lodged by a person referred to in subsection (2).” 20

Substitution of section 10 of Act 28 of 2002, as amended by section 7 of Act 49 of 2008

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

“Consultation with interested and affected parties and communities

10. (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— 25

(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 30

(b) call upon interested and affected persons and communities 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 or community objects to the granting of a prospecting right, mining right or mining permit, the Regional Manager— 35

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

(b) may refer the objection and comments to the applicant to consult with the person or community objecting and submit the result of the consultation within the prescribed period. 40

(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.”. 45

Insertion of sections 10A, 10B, 10C, 10D, 10E, 10F and 10G in Chapter 4 of Act 28 of 2002

7. The following sections are hereby inserted after section 10 of the principal Act:

“Establishment of Regional Mining Development and Environmental Committee 50

10A. The Regional Mining Development and Environmental Committee is hereby established for each region contemplated in section 7 of the Act.

Functions of Regional Mining Development and Environmental Committee

10B. 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).

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Composition of Regional Mining Development and Environmental Committee

10C. (1) The members appointed to the committee must have expertise in mineral and mining development, mine environmental management, petroleum exploration and production.

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(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.

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(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.

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Disqualification of members

10D. 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.

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Vacation of office

10E. (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) 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).

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(2) The Minister may remove any member of the committee from office—

- (a) on account of misconduct or inability to perform functions of his or her office properly; or
- (b) if the member has engaged in any activity that may undermine the integrity of the committee, which activities may include—
 - (i) participation in an investigation, hearing or decision concerning a matter in respect of which that person has a financial or personal interest;
 - (ii) making private use of, or profiting from, any confidential information obtained as a result of performing his or her functions as a member of the committee; or
 - (iii) divulging any information referred to in subparagraph (ii) to any third party, except as required by or under this Act or the

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Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

Term of office and filling of vacancies

10F. (1) A member of the committee holds office for a period not exceeding three years.

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

(3) If a member of the committee vacates the office or dies, the Minister may fill the vacancy by appointing a person in accordance with section 10C(3) for the unexpired period of the term of office of his or her predecessor.

Reports of Regional Mining Development and Environmental Committee

10G. 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.”.

Amendment of section 11 of Act 28 of 2002, as amended by section 8 of Act 49 of 2008

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

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

“(1) A prospecting right or a part of a prospecting right, mining right or a part of a mining right or an interest in any such right **[or any interest]** in **[a close corporation or]** an unlisted company or any controlling interest in a listed company (which **[corporations or]** companies hold a prospecting right or mining right or an interest in any such right), may not be ceded, transferred, encumbered, let, sublet, assigned or alienated **[or otherwise disposed of]** without the prior written consent of the Minister, as prescribed.”;

(b) by the insertion after subsection (2) of the following subsection:

“(2A) Any transfer of a part of a prospecting right or mining right contemplated in subsection (1) must be granted if—

- (a) the application for such transfer is accompanied by an application in terms of section 102 to vary the right;
- (b) the transferee has simultaneously lodged an application in terms of section 16 or 22, as the case may be;
- (c) the applicant has complied with the requirements contemplated in section 17 or 23, as the case may be; and
- (d) the applicant has been granted a prospecting right or a mining right to which the transfer relates.”;

(c) by the substitution for subsection (3) of the following subsection:

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

- (a) any bank, as defined in the Banks Act, 1990 (Act No. 94 of 1990); **[or]**
- (b) any other financial institution approved for that purpose by the Registrar of Banks referred to in the Banks Act, 1990 (Act No. 94 of 1990), on request by the Minister

[, if the bank or financial institution in question undertakes in writing that any sale in execution or any other disposal pursuant to foreclosure of the mortgage will be subject to the consent in terms of subsection (1).]; or

- (c) any public entity,

if the bank, public entity or financial institution in question undertakes in writing that any sale in execution or any other disposal pursuant to foreclosure of the mortgage will be subject to the consent in terms of subsection (1).”; and

- (d) by the substitution for subsection (4) of the following subsection: 5
 “(4) Any transfer, cession, letting, subletting, alienation, encumbrance by mortgage or variation of a prospecting right or mining right, as the case may be, contemplated in this section must be lodged for **[the]** registration at the Mineral and Petroleum Titles Registration Office within **[60 days]** the prescribed period from the date of [the relevant transaction] execution.” 10

Amendment of section 13 of Act 28 of 2002, as amended by section 9 of Act 49 of 2008

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

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 15
 “Any person who wishes to apply to the Minister for a reconnaissance permission must, subject to section 9, lodge the application—”; and
 (b) by the substitution in subsection (3) for the following subsection: 20
 “(3) If the application does not comply with the requirements of this section, the Regional Manager must reject the application and notify the applicant in writing within **[14 days]** the prescribed period of the receipt of the application with written reasons for such decision.” 25

Amendment of section 14 of Act 28 of 2002, as amended by section 10 of Act 49 of 2008

10. Section 14 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

- “(3) If the Minister refuses to grant a reconnaissance permission, the Minister must, within **[30 days]** the prescribed period of the decision, notify the applicant in writing with reasons for such decision.” 30

Amendment of section 16 of Act 28 of 2002, as amended by section 12 of Act 49 of 2008

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

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 35
 “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—”;
 (b) by the substitution for subsection (3) of the following subsection: 40
 “(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]** the prescribed period of the receipt of the application.”;
 (c) by the substitution for subsection (4) of the following subsection: 45
 “(4) 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] 50
 (b) to consult in the prescribed manner with the landowner, lawful occupier **[and any interested and]**, an affected party and community 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.” 55

Amendment of section 17 of Act 28 of 2002, as amended by section 13 of Act 49 of 2008

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

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 5
 “The Minister must within **[30 days]** the prescribed period of receipt of the application from the Regional Manager, grant a prospecting right if—”;
- (b) by the substitution in subsection (1) for paragraph (c) of the following paragraph: 10
 “(c) the prospecting will not result in unacceptable pollution, ecological degradation or damage to the environment and an environmental authorisation **[is]** has been issued.”;
- (c) by the substitution in subsection (1) for paragraphs (d), (e) and (f) of the following paragraphs, respectively: 15
 “(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; 20
 (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”;
- (d) by the addition in subsection (1) after paragraph (f) of the following paragraph: 25
 “(g) the applicant has, where necessary, submitted proof of application for a licence for use of water in terms of the applicable legislation.”;
- (e) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 30
 “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—”;
- (f) by the addition in subsection (2) after paragraph (b) of the following paragraph: 35
 “(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.”; and
- (g) by the substitution for subsection (5) of the following subsection: 40
 “(5) 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.”; 45

Amendment of section 18 of Act 28 of 2002, as amended by section 14 of Act 49 of 2008

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

- (a) by the substitution in subsection (2) for paragraph (c) of the following paragraph: 50
 “(c) be accompanied by a report reflecting the **[extent of]** holders compliance with the conditions of the environmental authorisation; **[and”];**”;
- (b) by the insertion in subsection (2) after paragraph (c) of the following paragraph: 55
 “(cA) where necessary include proof of application for an amended environmental authorisation; and”;

- (c) by the substitution in subsection (2) for paragraph (e) of the following paragraph:
 “(e) include a certificate issued by the Council for Geoscience that all prospecting information as prescribed has been submitted.”; 5
- (d) by the substitution in subsection (3) for paragraph (a) of the following paragraph:
 “(a) terms and conditions of the prospecting right and is not in contravention of **[any relevant provision of]** this Act;”; 5
- (e) by the substitution in subsection (3) for paragraph (c) of the following paragraph:
 “(c) compliance with the conditions of the environmental authorisation[.]; and”; 10
- (f) by the insertion in subsection (3) after paragraph (c) of the following paragraph:
 “(cA) the amended environmental authorisation has, where necessary, been approved.”; 15
- (g) by the substitution for subsection (5) of the following subsection:
 “(5) 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 deed of renewal has been executed, or such application has been [or] refused; and 20
 - (a) during such remaining in force, the holder of the prospecting right shall be entitled to continue to conduct prospecting operations in terms of the existing prospecting 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 resultant notarial deed of renewal.”; and 25
- (h) by the addition after subsection (5) of the following subsection:
 “(6) The Minister must refuse to renew a prospecting right if the applicant fails to comply with subsection (1), (2) or (3).”. 30

Amendment of section 19 of Act 28 of 2002, as amended by section 15 of Act 49 of 2008

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

- (a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs: 35
 - “(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 section (2), the exclusive right to apply for **[and be granted]** a mining right in respect of the mineral and prospecting area in question; and”; 40
- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
 “(a) lodge such right for registration at the Mineral and Petroleum Titles Registration Office within **[60 days]** the prescribed period after the right has become effective;”; and 45
- (c) by the substitution in subsection (2) for paragraphs (g) and (h) of the following paragraphs, respectively:
 - “(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 50
 - (h) annually submit progress reports and data of prospecting operations to both the Regional Manager **[within 30 days from the date of submission thereof to]** and the Council for Geoscience.”. 50

Amendment of section 20 of Act 28 of 2002, as amended by section 16 of Act 49 of 2008

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

- (a) by the substitution for subsection (2) of the following subsection: 5
 “(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 .”; 10
 and
- (b) by the addition after subsection (2) of the following subsection:
 “(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.” 15

Amendment of section 21 of Act 28 of 2002, as amended by section 17 of Act 28 of 2008

16. Section 21 of the principal Act is hereby amended by the substitution for subsection (1A) of the following subsection: 20

- “(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 both the Regional Manager and the Council for Geoscience in the prescribed manner.”.

Amendment of section 22 of Act 28 of 2002, as amended by section 18 of Act 49 of 2008 25

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

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words; 30
 “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—”;
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 35
 “The Regional Manager must, within **[14 days]** the prescribed period of the receipt of the application, accept an application for a mining right if—”;
- (c) by the substitution for subsection (3) of the following subsection: 40
 “(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]** the prescribed period of the receipt of the application.”;
- (d) by substitution in subsection (4) for paragraph (a) of the following paragraph: 45
 “(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] the prescribed period from the date of the notice; [and]”;
- (e) by the substitution at the end of subsection (4)(b) for a full stop of a semi colon and by the addition of the following paragraphs: 50
 “(c) to consult with the community and relevant structures regarding the prescribed social and labour plan within 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.”; and

- (f) by the substitution for subsection (5) of the following subsection:

“(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.”. 5

Amendment of section 23 of Act 28 of 2002, as amended by section 19 of Act 49 of 2008

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

- (a) by the substitution in subsection (1) for paragraph(d), (e), (g) and (h) of the following paragraphs, respectively: 10

“(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; 15

(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(d) and (f) and **[in accordance]** complies with 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 prescribed social and labour plan[.]; and”; 20 25

- (b) by the addition in subsection (1) after paragraph (h) of the following paragraph:

“(i) the applicant has, where necessary, submitted proof of application for a licence for use of water in terms of the applicable legislation.”;

- (c) by the substitution for subsection (2) of the following subsection: 30

“(2) The Minister **[may]** must **[having regard to the nature of the mineral in question,]** take into consideration the provisions of section 26.”;

- (d) by the substitution for subsection (2A) of the following subsection:

“(2A) If the application relates to the land occupied by a community, the Minister **[may]** must impose such conditions as are necessary to promote the rights and interests of the community **[, including conditions requiring the participation of the community].**”; 35

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

“(3) The Minister must, within **[60 days]** the prescribed period of receipt of the application from the Regional Manager, refuse to grant a mining right if the application does not meet the requirements referred to in subsection (1).”; 40

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

“(4) If the Minister refuses to grant a mining right, the Minister must, within **[30 days]** the prescribed period of the decision, in writing notify the applicant of the decision and the reasons thereof.”; 45

- (g) by the substitution for subsection (5) of the following subsection:

“(5) A **[mining]** right granted in terms of subsection (1) **[comes into effect on the effective date]** shall— 50

(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.”. 55

Amendment of section 24 of Act 28 of 2002, as amended by section 20 of Act 49 of 2008

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

- (a) by the substitution in subsection (2) for paragraph (b) of the following paragraph: 5

“(b) be accompanied by a report reflecting **[the extent of] the right holder’s** compliance with the conditions of the environmental authorisation; **[and]”**;
- (b) by the substitution at the end of subsection (2)(c) for the full stop of the words “; and” and by the addition of the following paragraph: 10

“(d) where necessary include proof of application for an amended environmental authorisation; and”;
- (c) by the insertion after subsection (2) of the following subsection:

“(2A) The Minister must take into consideration the provisions of section 26;”;

 15
- (d) by the substitution in subsection (3) for paragraphs (a) and (c) of the following paragraphs, respectively:

“(a) terms and conditions of the mining right and is not in contravention of **[any relevant provision of] this Act [or any other law]**;

(c) **[requirements of the prescribed]** approved social and labour plan; **[and]**”;

 20
- (e) by the substitution in subsection (3) for paragraph (d) of the following paragraph:

“(c) d) compliance with the conditions of the environmental authorisation~~;~~]; and”;

 25
- (f) by the insertion in subsection (3) after paragraph (d) of the following paragraph:

“(dA) the amended environmental authorisation has, where necessary, been approved.”;

 and
- (g) by the substitution for subsection (5) of the following subsection: 30

“(5) A mining 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 deed of renewal has been executed, or such application has been refused; and—

 - (a) during such remaining in force, the holder of the mining right shall be entitled to continue to conduct mining operations in terms of the existing mining 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 resultant notarial deed of renewal right.”.

Amendment of section 25 of Act 28 of 2002, as amended by section 21 of Act 49 of 2008

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

- (a) by the substitution for subsection (1) of the following subsection: 45

“(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.”;
- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph: 50

“(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;”;
- (c) by the substitution in subsection (2) for paragraph (d) of the following paragraph: 55

“(d) comply with the **[relevant]** provisions of this Act, any other relevant law and the terms and conditions of the mining right;”;

- (d) by the substitution in subsection (2) for paragraph (f) of the following paragraph:
 “(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;”;
- (e) by the insertion in subsection (2) after paragraph (f) of the following paragraph:
 “(fA) comply with the requirements of the Amended Broad Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry provided for in section 100;”;
- (f) by the substitution in subsection (2) paragraph (h) of the following paragraph:
 “(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], the approved social and labour plan.”.

Amendment of section 26 of Act 28 of 2002, as amended by section 22 of Act 49 of 2008

- 21.** Section 26 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
 “(1) The Minister **[may]** must in order to regulate the mining industry to meet national development imperatives and to bring optimal benefit for the Republic initiate or promote the beneficiation of **[minerals]** mineral resources in the Republic—
 (a) to ensure transformation of the mining and other sectors involved in the beneficiation of minerals or mineral products;
 (b) to ensure sustainability for the supply of minerals in the national interest; and
 (c) to develop local capacity.”;
- (b) by the substitution for subsection (2) of the following subsection:
 “(2) 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 as contemplated in section 56B;
publish such conditions required to ensure security of supply for local beneficiation in the prescribed manner.”
- (c) by the insertion after subsection (2A) of the following subsection:
 “(2B) Every producer of designated minerals must offer to local beneficiaries 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.”;
- (d) by the substitution for subsection (3) of the following subsection:
 “(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.”

Amendment of section 27 of Act 28 of 2002, as amended by section 23 of Act 49 of 2008

- 22.** Section 27 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
 “(a) the mineral in question can be mined optimally within a period of [two] three years; and”;

- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 “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—”; 5
- (c) by the substitution for subsection (4) of the following subsection:
 “(4) If the application does not comply with the requirements of this section, the Regional Manager must notify the applicant in writing within **[14 days]** the prescribed period of **[the]** receipt of the application.”; 10
- (d) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:
 “If the Regional Manager accepts the application, the Regional Manager must, within **[14 days]** the prescribed period of **[the]** receipt of the application, notify the applicant in writing, to—”; 15
- (e) by the substitution in subsection (5) for paragraph (b) of the following paragraph:
 “(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”; 20
- (f) by the addition in subsection (5) after paragraph (b) of the following paragraph:
 “(c) to apply, where necessary, for use of water in terms of applicable legislation.”; 25
- (g) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:
 “The Minister must, within **[60 days]** the prescribed period of receipt of the application from the Regional Manager, issue a mining permit if—”; 30
- (h) by the deletion in subsection (6) of the word “and” at the end of paragraph (a) and by the addition after paragraph (c) of the following paragraphs: 30
 “(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 of water in terms of the applicable legislation.”; 35
- (i) by the insertion after subsection (6) of the following subsection:
 “(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).”; 40
- (j) by the substitution in subsection (7) for paragraph (e) of the following paragraph:
 “(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.”; 45
- (k) by the substitution in subsection (8) for paragraph (a) of the following paragraph:
 “(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]** two years”; and 50
- (l) by the insertion after subsections (8) of the following subsections:
 “(9) A right granted in terms of subsection (6) shall— 55
 (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. 60
 (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.”.

Substitution of section 28 of Act 28 of 2002, as amended by section 24 of Act 49 of 2008

23. The following section is hereby substituted for section 28 of the principal Act:

“Information and data in respect of mining or processing of minerals

28. (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 and any agent, purchaser or seller of any mineral or mineral product 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 (f), the charter contemplated in section 100 and the approved social and labour plan] accurate information and data in respect of mineral reserves and resources within the mining areas.**

(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.”.

Amendment of section 31 of Act 28 of 2002, as amended by section 26 of Act 49 of 2008

24. Section 31 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
“Any holder of a prospecting right or an exploration right who wishes to apply to the Minister for a retention permit must—”;
- (b) by the substitution in subsection (1) for paragraph (e) of the following paragraph:
“(e) submit a report reflecting **[the extent of]** compliance with **[the]** section 32(1) or 32(1A) as the case may be.”; and
- (c) by the substitution in subsection (2) for paragraph (b) of the following paragraph:
“(b) the applicant is the holder of the prospecting right or exploration right in question.”.

Amendment of section 32 of Act 28 of 2002, as amended by section 27 of Act 49 of 2008

25. Section 32 of the principal Act is hereby amended—

(a) by the insertion after subsection (1) of the following subsection:

“(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.”; and

(b) by the substitution for subsections (2), (3) and (4) of the following subsections respectively:

“(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 or an exploration right in question runs concurrently with that of the retention permit.

(3) Despite subsection (2), the conditions of the environmental authorisation issued in respect of the 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.”.

Amendment of section 33 of Act 28 of 2002, as amended by section 28 of Act 49 of 2008

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

“The Minister may refuse to issue a retention permit if, after having regard to the information submitted under 32(1) and research conducted by the **[Board]** Regional Manager at the request of the Minister, it is established that—”.

Amendment of section 35 of Act 28 of 2002, as amended by section 29 of Act 49 of 2008

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

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

“(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 the mineral or petroleum in question.”;

(b) by the deletion in subsection (2) of the word “and” at the end of paragraph (a).

(c) by the substitution at the end of subsection (2)(b)(ii) for a full stop of a semicolon and by the addition of the following paragraphs:

“(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

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

“(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.”.

Amendment of section 37 of Act 28 of 2002, as amended by section 30 of Act 49 of 2008

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

- “(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)[— 5
- (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].”.** 10

Amendment of section 38B of Act 28 of 2002, as amended by section 32 of Act 49 of 2008

29. Section 38B of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) of the following subsection: 15
- “(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.”; and 20
- (b) by the insertion after subsection (3) of the following subsection:
- “(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.”.
- 25

Insertion of section 42A in Act 28 of 2002

30. The following section is hereby inserted after section 42 of the principal Act:

“Management of historic residue stockpiles and residue deposits 30

42A. (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. 35

(2) The holder of a mining right or mining permit who owns historic residue deposits or residue stockpiles which are located within the mining area has an exclusive right to apply for an amendment of the mining works programme in terms of section 102 to include such deposits and stockpiles into the right. 40

(3) The holder referred to in subsection (2) must process the residue deposits and residue stockpiles in terms of the amended mining works programme. 45

(4) The owner of any historic residue deposit and residue stockpile located outside the mining area has an exclusive right to apply in the prescribed manner, at the office of the Regional Manager in whose region the residue deposit or residue stockpile is situated, for a mining right or mining permit, as the case may be, within a period of two years from the date of commencement of Mineral and Petroleum Resources Development Amendment Act, 2014. 50

(5) The mining right or mining permit, 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. 55

(6) The Minister must grant such a mining right or mining permit in terms of subsection (4) if the applicant satisfies the requirements contemplated in section 23 or 27, as the case may be.

(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.”.

Amendment of section 43 of Act 28 of 2002, as amended by section 34 of Act 49 of 2008

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

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

“(1) The holder of a prospecting right, mining right, retention permit, 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.”;

(b) by the insertion after subsection (1) of the following subsection:

(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.”.

(c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“(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]** have ceased to exist, or the person contemplated in subsection (2), as the case may be, must apply for a closure certificate upon—”;

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

“(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.”;

(e) by the substitution for subsection (5A) of the following subsection:

“(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] the prescribed period 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.”;

(f) by the substitution for subsection (6) of the following subsection:

“(6) When the Minister issues a certificate he or she **[must return such portion of the financial provision contemplated in section 41 the National Environmental Management Act, 1998, as the Minister may deem appropriate, to the holder of the prospecting right, mining**

right, retention permit or mining permit, 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 period must be determined in the prescribed manner.”.

- (g) by the addition after subsection (13) of the following subsection:
- “(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).”.

Amendment of section 44 of Act 28 of 2002, as amended by section 35 of Act 49 of 2008

- 32.** Section 44 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“When a prospecting right, mining right, retention permit or mining permit lapses, is cancelled or is abandoned or when any prospecting or mining operation ceases the holder of any such right or permit may not demolish or remove any building structure or object—”.

Amendment of section 45 of Act 28 of 2002, as amended by section 36 of Act 49 of 2008

- 33.** Section 45 of the principal Act is hereby amended—

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

“If any prospecting, mining, reconnaissance, exploration, technical cooperation or production operations or activities incidental thereto cause or results in ecological degradation, pollution or environmental damage, or is in contravention of the conditions of the environmental authorisation, or which may be harmful to health, safety or well-being of anyone and requires urgent remedial measures, the Minister, in consultation with the Minister of 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—;”;

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

“(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.”.

Amendment of section 46 of Act 28 of 2002, as amended by section 37 of Act 49 of 2008

- 34.** Section 46 of the principal Act is hereby amended—

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

“(1) If the Minister directs that measures contemplated in section 45 must be taken to prevent pollution or ecological degradation of the environment, to address any contravention in the environmental authorisation or to rehabilitate dangerous health or safety occurrences but establishes that the holder of a reconnaissance permission, prospecting right, mining right, retention permit or mining permit, the holder of an old order right or the previous owner of works, as the case may be or his or her successor in title is deceased or cannot be traced or in the case of a juristic person, has ceased to exist, has been liquidated or cannot be traced, the Minister in consultation with the Minister of Water and 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.”; and

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

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

Amendment of section 47 of Act 28 of 2002, as amended by section 38 of Act 49 of 2008

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

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

“Subject to subsections (2), (3) and (4), the Minister may cancel or suspend any reconnaissance permission, prospecting right, mining right, mining permit, retention permit or **[holders of]** old order rights or **[previous owners of]** works, if the holder or owner thereof—”;

- (b) by the deletion in subsection (1) of paragraph (d);

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

“(c) afford the holder **[a reasonable opportunity]** 30 days notice to show why the right, permit or permission should not be suspended or cancelled, and”.

- (d) by the insertion in subsection (2) of the word “and” at the end of paragraph (d) and by the addition after paragraph (d) of the following paragraph:

“(e) direct the holder to take specified measures to remedy any contravention, breach or failure.”;

- (e) by the deletion of subsection (3);

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

“(4) If the holder does not comply with the **[direction]** directive given under subsection **[(3)] (2)(e)**, the Minister may act under subsection (1) against the holder after having—

- (a) given the holder **[a reasonable opportunity]** 30 days notice to make representations; and

- (b) considered any such representations.”; and

- (g) by the substitution in subsection (5) for paragraph (a) of the following paragraph:

“(a) complies with a directive contemplated in subsection **[(3)] (2)(e)**; or”.

Amendment of section 48 of Act 28 of 2002, as amended by section 39 of Act 49 of 2008

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

“(a) land comprising a residential area, and any land which is within an approved town planning scheme and zoned for residential purposes;”.

Amendment of section 49 of Act 28 of 2002, as amended by section 40 of Act 49 of 2008

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

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

“(1) Subject to subsection (2), the Minister may **[after inviting representations from relevant stakeholders, from time to time]** after consulting a Minister of a relevant state department as 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 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 5
- (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 mining permit in respect of a specific mineral or]**, minerals or class of minerals, petroleum or form of petroleum identified by the Minister for such period and on such terms and conditions as the Minister may determine.”; 10
- (b) by the substitution for subsection (4) of the following subsection: 15

“(4) Subject to subsection (2)(b), the Minister may by notice in the *Gazette* invite applications for a reconnaissance permission, reconnaissance permit, technical co-operation permit, exploration right, production right, 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 terms and conditions subject to which such rights or permit may be granted; and”; and 20
- (c) by the addition after subsection (4) of the following subsection: 25

“(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.”.

Amendment of section 50 of Act 28 of 2002

38. Section 50 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 30

“(1) The Minister may **[cause]** direct 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.”; and
- (b) by the substitution in subsection (4) for paragraph (a) of the following paragraph: 35

“(a) 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 or community has been consulted and notified in writing of the intention to enter and to conduct the investigation.”.

Amendment of section 51 of Act 28 of 2002

39. Section 51 of the principal Act is hereby amended—

- (a) by the substitution for subsections (1), (2) and (3) of the following subsections, respectively: 40

“(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). 45

(2) Before making the recommendation, the **[Board]** Regional Manager must consider whether the technical and financial resources of the holder of a mining right in question and the prevailing market conditions justify such recommendation. 50

(3) (a) If the Minister agrees with the recommendation, he or she must, within 30 days from the 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 **[mentioned]** specified in the notice. 55

- (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.""; and 5
- (b) by the substitution in subsections (4) and (5) of the words preceding paragraph (a) of the following words, respectively:
- “(4) The Minister may, on the recommendation of the **[Board]** Regional Manager, suspend or cancel the mining right if—;
- (5) The Minister may, on the recommendation of the **[Board]** Regional Manager, lift the suspension of a mining right if the holder in question—”. 10

Amendment of section 52 of Act 28 of 2002, as amended by section 41 of Act 49 of 2008

- 40.** Section 52 of the principal Act is hereby amended— 15
- (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
- “The **[Board]** Regional Manager must, after consultation with the relevant holder, investigate—”; and
- (b) by the substitution in subsection (3) for paragraph (a) of the following paragraph: 20
- “(a) The Minister may, **[on the recommendation of the Board and]** after consultation with the Minister of Labour and any registered trade union or affected persons or their nominated representatives where there is no such trade union, direct in writing that the holder of the mining right in question take such corrective measures subject to such terms and conditions as the Minister may determine.”. 25

Amendment of section 53 of Act 28 of 2002, as amended by section 42 of Act 49 of 2008

- 41.** Section 53 of the principal Act is hereby amended— 30
- (a) by the substitution for subsection (3) of the following subsection:
- “(3) Despite subsection (1), the Minister may **[cause]** direct that an investigation **[to]** be conducted if it is alleged that a person intends to use the surface of any land in a way that could result in the mining of mineral resources being detrimentally affected.”; and 35
- (b) by the substitution in subsection (4) for paragraph (c) of the following paragraph:
- “(c) offer that person the opportunity to respond within **[30 days]** the prescribed period.”.

Amendment of section 54 of Act 28 of 2002 40

- 42.** Section 54 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
- “(c) cannot be found in order to **[apply for]** gain access.”; and
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 45
- “The Regional Manager must, within **[14 days]** the prescribed period from the date of the notice referred to in subsection (1)—”.

Amendment of section 56 of Act 28 of 2002, as amended by section 43 of Act 49 of 2008

43. The following section is hereby substituted for section 56 of the principal Act:

“Lapsing of right, permit and permission

- 56.** 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~~[.]; or~~
 - (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.”.

Insertion of section 56A, 56B, 56C, 56D, 56E, 56F and 56G of Act 28 of 2002

44. The following sections are hereby inserted after section 56 of the principal Act:

“Establishment of Ministerial Advisory Council

- 56A.** (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.

Functions of Ministerial Advisory Council

- 56B.** 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.

Subcommittees of Council

- 56C.** (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. 5

Disqualification of members

- 56D.** (1) 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 10
 - (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. 15

Vacation of office 20

- 56E.** (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; 25
 - (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). 30
- (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— 35
 - (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 40
 - (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). 45

Term of office and filling of vacancies

- 56F.** (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. 50
- (3) If a member of the Council vacates office or dies, the Minister may 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.

Remuneration and allowances of members of Ministerial Advisory Council

56G. 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.”. 5

Repeal of sections 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67 and 68 of Act 28 of 2002

45. Sections 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67 and 68 of the principal Act are hereby repealed.

Amendment of section 69 of Act 28 of 2002, as amended by section 50 of Act 49 of 2008 10

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

“(a) For the purposes of this Chapter, [section] sections 9, 10, 11, 12, 15
21, [26,] 28, 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.”; and
 - (b) by the substitution in subsection (2)(b) for the words preceding subparagraph (i) of the following words: 20

“(b) Any reference in the provisions referred to in paragraph (a) or any
provision of this Act to—”.

Amendment of section 70 of Act 28 of 2002

47. The following section is hereby substituted for section 70 of the principal Act:

**“[Designated agency] Processing of petroleum exploration and pro- 25
duction applications by Regional Manager**

70. 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.”.

Amendment of section 71 of Act 28 of 2002, as amended by section 51 of Act 49 of 2008 30

- 48.** Section 71 of the principal Act is hereby amended—
- (a) by the substitution for the section heading of the following heading:

“**Functions of [designated agency] Regional Manager**”;
 - (b) by the substitution for the words preceding paragraph (a) of the following 35
words:

“The [designated agency] Regional Manager must—”; and
 - (c) by deletion of paragraphs (a), (e), (f) and (g) respectively.

Insertion of section 71A in Act 28 of 2002

49. The following section is hereby inserted after section 71 of the principal Act: 40

“Promotional aspects of the petroleum sector

- 71A.** (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 45
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.”.

Repeal of sections 72 and 73 of Act 28 of 2002

50. Sections 72 and 73 of the principal Act are hereby repealed.

Amendment of section 74 of Act 28 of 2002, as amended by section 53 of Act 49 of 2008

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

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 - “(1) Any person who wishes to apply to the Minister for a reconnaissance permit must, subject to section 9, lodge the application—”;
- (b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
 - “(a) at the office of the **[designated agency]** Regional Manager;”;
- (c) by the substitution for subsection (2) of the following subsection:
 - “(2) The **[designated agency]** Regional Manager 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]** the same area; and
 - (c) no other prior application for an exploration right, production right, or technical co-operation permit has been accepted for the same mineral, land and area.”;
- (d) by the insertion after subsection (2) of the following subsection:
 - “(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.”;
- (e) by the substitution for subsection (3) of the following subsection:
 - “(3) If the application does not comply with the requirements of this section, the **[designated agency]** Regional Manager must notify the applicant in writing within **[14 days]** the prescribed period of the receipt of the application and provide reasons.”; and
- (f) by substitution for subsection (4) of the following subsection:
 - “(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.”.

Amendment of section 75 of Act 28 of 2002, as amended by section 54 of Act 49 of 2008

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

- (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph: 5
 “(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;”;
- (b) by the substitution for subsection (3) of the following subsection: 10
 “(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;”;
- (c) by the substitution in subsection (4) for paragraph (c) of the following paragraph: 15
 “(c) **[not]** an exclusive right only in respect of data produced under the reconnaissance permit;”;
- (d) by the substitution in subsection (5) for paragraph (c) of the following paragraph: 20
 “(c) pay the prescribed reconnaissance fee to the **[designated agency]** Regional Manager;”;
- (e) by the addition of the following subsections after subsection (5):
 “(6) The holder of the reconnaissance permit has an exclusive right to market the data collected under the reconnaissance permit for six years. 25
 (7) Notwithstanding the provisions of subsection (6), the Minister may grant a reconnaissance permit over an area with an existing reconnaissance permit, if the applicant applies different methods and technologies for petroleum data acquisition that will advance petroleum exploration.”. 30

Amendment of section 76 of Act 28 of 2002, as amended by section 55 of Act 49 of 2008

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

- (a) by substitution for subsection (1) of the following subsection: 35
 “(1) Any person who wishes to apply to the Minister for a technical co-operation permit must, subject to section 9, lodge the application—
 (a) at the office of the **[designated agency]** Regional Manager;”;
- (b) by the substitution for subsection (2) of the following subsection: 40
 “(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 accpeted for the same **[mineral]** petroleum resource, land and area;”;
- (c) by the substitution for subsection (3) of the following subsection: 45
 “(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.”. 50

Amendment of section 77 of Act 28 of 2002

54. Section 77 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: 55

- “ (3) If the Minister refuses to **[issue]** grant 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;”.

Amendment of section 78 of Act 28 of 2002, as amended by section 56 of Act 49 of 2008

55. Section 78 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 5
 “(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.”;
- (b) by the substitution in subsection (2) for paragraph (c) of the following paragraph: 10
 “(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.”.

Amendment of section 79 of Act 28 of 2002, as amended by section 57 of Act 49 of 2008

56. Section 79 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 20
 “(1) Any person who wishes to apply to the Minister for an exploration right must, subject to section 9, lodge the application—”;
- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
 “(a) at the office of the **[designated agency] Regional Manager**.”;
- (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 25
 “(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]”.
- (d) by the substitution in subsection (2) for paragraph (b) of the following paragraph:
 “(b) no other person holds a technical co-operation permit, exploration right or production right for petroleum over **[any part of] the same** 35
land and area applied for.”;
- (e) by the substitution for subsection (3) of the following subsection: 40
 “(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.”;
- (f) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words: 45
 “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 to—”;
- (g) by the substitution in subsection (4) for paragraph (b) of the following paragraph:
 “(b) apply for an environmental authorisation and submit the relevant 50
environmental reports required in terms of Chapter 5 of the National Environmental Management Act, 1998, within [a period of 120 days] the prescribed period from the date of the notice [.] and”;
- (h) by addition in subsection (4) after paragraph (b) of the following paragraph: 55
 “(c) to apply, where necessary, for a licence for use of water in terms of the relevant legislation.”; and

Amendment of section 80 of Act 28 of 2002, as amended by section 58 of Act 49 of 2008

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

- (a) by the substitution in subsection (1) for paragraph (g) of the following paragraph: 5
 “(g) the applicant has, where necessary, provided proof of application for a licence for use of water in terms of the applicable legislation.”;
- (b) by the substitution for subsection (2) of the following subsection: 10
 “(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(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.”;
- (c) by the substitution for subsection (3) of the following subsection: 15
 “(3) The Minister must, within **[60 days]** the prescribed period of the 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).”;
- (d) by the substitution for subsection (4) of the following subsection: 20
 “(4) If the Minister refuses to grant an exploration right, 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.”;
- (e) by the substitution for subsection (5) of the following subsection: 25
 “(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.”; and
- (f) by the substitution for subsection (6) of the following subsection: 30
 “(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 within the prescribed period, the notarial deed of granting shall not be executed until such appeal has been finalised.”. 35

Amendment of section 81 of Act 28 of 2002, as amended by section 59 of Act 49 of 2008

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

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 40
 “(a) at the office of the **[designated agency]** Regional Manager.”;
- (b) by the substitution for subsection (3) of the following subsection: 45
 “(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) has complied with the terms and conditions of the exploration right and is not in contravention of any **[relevant]** provision of this Act **[or any other law]**;
 (b) **[exploration work programmes and]** has access to financial resources and has the technical ability to conduct the proposed exploration operation optimally in accordance with the exploration work programme for the renewal period;
 (c) conditions of the environmental authorisation [.]; and
 (d) has included proof of application for an amended environmental authorisation.”; and 55
- (c) by the substitution for subsection (5) of the following subsection: 60
 “(5) An exploration right 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]** and a notarial deed of renewal has been executed, or such application has been 60

refused[.]; and—

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

Amendment of section 82 of Act 28 of 2002, as amended by section 60 of Act 49 of 2008

59. Section 82 of the principal Act is hereby amended— 10

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

“(a) lodge such right within **[60 days]** the prescribed period for registration at the Mineral and Petroleum Titles Registration Office; and 15

(e) pay the prescribed exploration fees to the **[designated agency]** Regional Manager **[; and]**”; 15

- (b) by the substitution at the end of subsection (2)(f) for a full stop of a semicolon and by the insertion of the following paragraphs:

“(g) relinquish a contiguous portion of the area to which the right relates 20
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.”; and 25

- (c) by the addition after subsection (2) of the following subsection:

“(3) If a discovery is made in the exploration area, the holder of an exploration right must— 30

(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.”. 35

Insertion of section 82A of Act 28 of 2002

60. The following section is hereby inserted in the principal Act after section 82:

“Permission to remove and dispose of petroleum resources

82A. (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. 40

(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. 45

(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.”. 50

Amendment of section 83 of Act 28 of 2002, as amended by section 61 of Act 49 of 2008

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

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

“(1) Any person who wishes to apply to the Minister for a production right must, subject to section 9, lodge the application—”;
- (b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) at the office of the **[designated agency]** Regional Manager;”;
- (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“The **[designated agency]** Regional Manager must, within **[14 days from the date of the receipt of the application]** the prescribed period, accept an application for **[an exploration]** a production right if—”;
- (d) by the substitution in subsection (2) for paragraph (b) of the following paragraphs:

“(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.”;
- (e) by the substitution for subsection (3) of the following subsection:

“(3) If the application does not comply with the requirements of this section, the **[designated agency]** Regional Manager must notify the applicant in writing within **[14 days]** the prescribed period of the receipt of the application and provide reasons.”;
- (f) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“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 the application, notify the applicant in writing to—”;
- (g) by the substitution in subsection (4) for paragraph (b) of the following paragraph:

“(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 from the date of the notice] the prescribed period [.] and”;
- (h) by the deletion at the end of subsection (4)(a) of the word “and” and by the addition after paragraph (b) of the following paragraph:

“(c) to apply where necessary for a licence for use of water in terms of the relevant legislation.”.

Amendment of section 84 of Act 28 of 2002, as amended by section 62 of Act 49 of 2008

62. Section 84 of the principal Act is hereby amended—

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

“(c) the production will not result in unacceptable pollution, ecological degradation or damage to the environment and an environmental authorisation has been issued”;
- (b) by the substitution at the end of subsection (1)(i) for the full stop of the word “; and” and by the addition of the following paragraph:

“(j) the applicant has, where necessary, provided proof of application for a licence for use of water in terms of the applicable legislation.”;
- (c) by the substitution for subsection (2) of the following subsection:

“(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).”;
- (d) by the substitution for subsection (3) of the following subsection:

“(3) If the Minister refuses to grant a production right, the Minister must, within **[30 days]** the prescribed period of the decision, notify the

applicant in writing of such decision and the reasons **[therefore]** thereof.”; and

(e) by the insertion after subsection (5) of the following subsection:

“(5A) A right 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.”.

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Amendment of section 85 of Act 28 of 2002, as amended by section 63 of Act 49 of 2008

63. Section 85 of the principal Act is hereby amended—

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

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

(b) by substitution in subsection (2) for paragraph (c) of the following paragraph: 15

“(c) be accompanied by a detailed report reflecting **[the extent of]** the right holder’s compliance with requirements of the approved environmental **[management programme]** authorisation, the rehabilitation to be completed and the estimated costs thereof;”;

(c) by the substitution in subsection (3) for paragraph (a) of the following paragraph: 20

“(a) terms and conditions of the production right and is not in contravention of any **[relevant]** provision of this Act or any other law;”;

(d) by substitution for subsection (5) of the following subsection: 25

“(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 and a notarial deed of renewal has been executed, or such application has been refused; and 30

(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.”. 35

Amendment of section 86 of Act 28 of 2002, as amended by section 64 of Act 49 of 2008

64. Section 86 of the principal Act is hereby amended by the substitution in subsection (2) for paragraphs (a) and (c) of the following paragraphs, respectively: 40

“(a) lodge such right within the prescribed period for registration at the Mineral and Petroleum Titles Registration Office **[within 60 days after the right has become effective]**;”;

“(c) comply with the terms and conditions of the production right, **[the relevant provisions of]** and this Act **[and any other law]**;”.

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Insertion of section 86A to Act 28 of 2002

65. The following section is hereby inserted after section 86 of the principal Act:

“State participation on exploration and production rights

86A. (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. 50

(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

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(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.”.

Amendment of section 87 of Act 28 of 2002

66. The following section is hereby substituted for section 87 of the principal Act:

“Development of petroleum reservoir as unit

87. 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.”.

Amendment of section 88 of Act 28 of 2002, as amended by section 65 of Act 49 of 2008

67. Section 88 of the principal Act is hereby amended—

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

“(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.”;

(b) by the substitution for subsection (1A) of the following subsection:

“(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.”; and

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

“(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 are cancelled or terminated, or the portion of the 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.”.

Amendment of section 89 of Act 28 of 2002

68. The following section is hereby substituted for section 89 of the principal Act:

“Financial guarantee

89. 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.”.

Amendment of section 91 of Act 28 of 2002

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69. Section 91 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

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

Amendment of section 93 of Act 28 of 2002, as amended by section 67 of Act 49 of 2008

70. Section 93 of the principal Act is hereby amended—

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

“(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 out or in charge of the carrying out of such activities or operations or the manager, official, employee or agent of such holder or person to, take immediate rectifying steps; **[or]** and

(ii) may order that the reconnaissance, prospecting, exploration, mining, production or processing operations **[or part thereof]** be suspended **[or terminated,]** and give such other instructions in connection therewith as may be necessary.”;

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

“(2) The Director-General must confirm or set aside any order contemplated in subsection (1)**[(a) or](b) (i) and (ii).**”; and

(c) by the substitution for subsection (3) of the following subsection:

“(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)(i) and (ii), whether such order** has been set aside or confirmed, failing which such order shall lapse.”.

Amendment of section 96 of Act 28 of 2002, as amended by section 68 of Act 49 of 2008

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

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

“(1) Any person whose rights or legitimate expectations have been 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 of 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).”; 5
- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
 “(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]**.”; 10
- (c) by the insertion after subsection (2) of the following subsections:
 “(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.”; and 15
 “(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 lodgment of an appeal has expired, and if such appeal is lodged, until such appeal has been finalised.”; and 20
- (d) by the substitution for subsection (3) of the following subsection:
 “(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.”. 25

Amendment of section 98 of Act 28 of 2002, as amended by section 69 of Act 49 of 2008

- 72.** Section 98 of the principal Act is hereby amended—
- (a) by the substitution in paragraph (a) for subparagraphs (i), (iii), (iv) and (vii) of the following subparagraphs:
 “(i) **[section 5(4), or 28]** sections 2, 5A, 11, 15, 19, 20, 25, 26, 27, 35, 43 and 102; 35
 (iii) **[section 35]** sections 21 and 28;
 (iv) sections 11(4), 21(1A), 28(1) and 28(2)(d);
 (vii) any **[direction]** directive contemplated in section 29; or;”; and
- (b) by the deletion of paragraph (c).

Amendment of section 99 of Act 28 of 2002

- 73.** Section 99 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
 “(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; 45 50
- (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; 55

- (d) in the case of an offence referred to in section 98(a)(v), to the penalty that may be imposed in a magistrate's court for a similar offence;
- (e) in the case of an offence referred to in section 98(a)(vi) 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; 5
- (f) in the case of an offence referred to in section 98(c), to a fine not exceeding R500 000 for each day that such person persists in contravention of the said provision; 10
- (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']**.”; and 15
- (b) by the insertion after subsection (1) of the following subsection:
- “(1A) (a) (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 which has failed to comply with any provision contemplated in section 98(iv). 20
- (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. 25
- (b) (i) The Director-General, after considering the recommendation and any representation made in terms paragraph (a)(iii), must within the prescribed period from the date of receipt of the holder's representations in terms of paragraph (a)(iii) or after expiry of the 30 day period in paragraph (a)(iii) without such representations having been made, whichever is the earlier— 30
- (aa) disregard the recommendation;
- (bb) impose a fine not exceeding R800 000; or 35
- (cc) refer the matter to the National Prosecuting Authority for a decision as to whether the holder should be charged with an offence.
- (ii) The Director-General must in writing notify the holder of his or her decision made in terms of paragraph (b)(i) within the prescribed period.
- (iii) The holder may appeal the decision of the Director-General to the Minister in terms of section 96. 40
- (iv) Save if the holder has lodged an appeal in terms of paragraph (b)(iii), the holder must pay any fine imposed in terms of paragraph (b)(i)(bb) within 30 days of receipt of the Director-General's notification thereof in terms of paragraph (b)(ii). 45
- (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. 50
- (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. 55
- (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.”.

Amendment of section 100 of Act 28 of 2002, as amended by section 70 of Act 49 of 2008

74. Section 100 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsections:

“(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 minerals 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.”.

Amendment of section 102 of Act 28 of 2002, as amended by section 72 of Act 49 of 2008

75. Section 102 of the principal Act is hereby amended—

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

“(1) A reconnaissance permission, prospecting right, mining right, mining permit, retention permit, technical **[coporation]** 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.”;

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

“(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, except 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).”; and

(c) by the addition after subsection (2) of the following subsections:

“(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.”.

Amendment of section 106 of Act 28 of 2002, as amended by section 76 of Act 49 of 2008

76. Section 106 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(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] subsection (1) as long as the sand, stone, rock, gravel or clay is not sold or disposed of.”.

Amendment of section 107 of Act 28 of 2002, as amended by section 77 of Act 49 of 2008

77. Section 107 of the principal Act is hereby amended— 5
- (a) by the insertion in subsection (1) after paragraph (a) of the following paragraph: 10
- “(aA) the rehabilitation of disturbances of the surface of land where such disturbances are connected to prospecting or mining operations;”;
- (b) by the substitution for paragraph (g) of the following paragraph: 15
- “(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 or have to be issued, granted, approved, required or renewed in terms of this Act;”;
- (c) by the insertion in subsection (1) after paragraph (j) of the following paragraph: 20
- “(jA) determination of terms and conditions applicable to beneficiation of mineral resources as contemplated in section 26;
- (jB) procedures applicable in respect of invitation for applications in terms of section 9;
- (jC) the determination of the terms and conditions of the State participation as contemplated in section 86A;
- (jD) (i) the manner and form in which interested and affected persons must be informed of an application for a right in terms of this Act; and 25
- (ii) the manner and form of consultation required with such interested and affected persons.”; and”
- (d) by the addition after subsection (1) of the following subsection: 30
- “(1A) The Minister must, when making regulations as provided for in terms of subsection (1)(jA) and (jC), consult with affected stakeholders.”.

Amendment of item 3 of Schedule II to Act 28 of 2002, as amended by section 79 of Act 49 of 2008 35

78. Item 3 of Schedule II to the principal Act is hereby amended by the substitution for subitem (1) of the following subitem:

“(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.”. 40

Amendment of item 4 of Schedule II to Act 28 of 2002, as amended by section 80 of Act 49 of 2008

79. Item 4 of Schedule II to the principal Act is hereby amended— 45
- (a) by substitution for subitem (5) of the following subitem:
- “(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 50
- Deeds office or the Mineral and Petroleum Titles Registration Office for deregistration of the OP26 sublease as the case may be.”; and
- (b) by substitution for subitem (7) of the following subitem:
- “(7) Upon the conversion of the sublease **[and the registration of the exploration right into which it was converted]**, the sublease ceases to 55
- exist.”.

Amendment of item 5 of Schedule II to Act 28 of 2002, as amended by section 81 of Act 49 of 2008

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

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

“(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 Mineral and Petroleum Titles Registration Office for registration and **[simultaneously]** at the Deeds office or the Mineral and Petroleum Titles Registration Office for deregistration **[for** 5
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deregistration] of the OP26 lease, as the case may be.”; and

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

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

Amendment of item 6 of Schedule II to Act 28 of 2002, as amended by section 82 of Act 49 of 2008 15

81. Item 6 of Schedule II to the principal Act is hereby amended—

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

“(5) The holder must lodge the right converted under subitem (3) within 90 days from the execution date **[on which he or she received notice of conversion]** at the Mineral and Petroleum Titles Registration Office for registration and **[simultaneously]** at the Deeds Office or the Mineral and Petroleum Titles Registration Office for deregistration of the old order prospecting right, as the case may be.”; and 20

(b) by the substitution for subitem (7) of the following subitem: 25

“(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.”.

Amendment of item 7 of Schedule II to Act 28 of 2002, as amended by section 83 of Act 49 of 2008 30

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

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

“(5) The holder must lodge the right converted under subitem (3) within 90 days from the execution date **[on which he or she received notice of conversion]** at the Mineral and Petroleum Titles Registration Office for registration and **[simultaneously]** at the Deeds Office or the Mineral and Petroleum Titles Registration Office for deregistration of the old order mining right, as the case may be.”; and 35

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

“(7) Upon the conversion of the old order mining right **[and the registration of the mining right into which it was converted]** the old order mining right ceases to exist.”. 40

Amendment of item 9 of Schedule II to Act 28 of 2002, as amended by section 85 of Act 49 of 2008

83. Item 9 of Schedule II to the principal Act is hereby amended by the substitution for subitem (2) of the following subitem: 45

(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. 50

Short title and commencement

84. This Act is called the Mineral and Petroleum Resources Development Amendment Act, 2014, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL, 2013

1. BACKGROUND

- 1.1 The main objective of the Bill is to amend the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), as amended by the Mineral and Petroleum Resources Development Amendment Act, 2008 (Act No. 49 of 2008), to provide for, inter alia, strengthening of existing provisions relating to the implementation of Social and Labour Plans (SLP's) to augment and substantially increase the socio-economic development impact through mining, enhance the provision relating to the beneficiation of minerals as outlined in the approved beneficiation strategy, streamlining and integrating administrative processes relating to the licensing of rights to provide regulatory certainty, as well as providing for the State's active participation in petroleum development.
- 1.2 The Bill seeks to amend the principal Act to facilitate the smooth implementation of the mining and minerals regulatory framework by aligning it with sound administrative practises and the objects of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).
- 1.3 The Bill further seeks to amend the principal Act to align the Mineral and Petroleum Resources Development Act with the Geoscience Act, 1993 (Act No. 100 of 1993), as amended by the Geoscience Amendment Act, 2010 (Act No. 16 of 2010), to remove ambiguities that may exist in the principal Act by amending certain definitions.
- 1.4 The Bill enhances integrated licensing in respect of mining rights, environmental authorisations and licenses for the use of water currently resident in various government departments and provides for optimal contribution of the mining industry towards national development priorities, such as energy security. The Bill further enhances provisions which promote mineral and petroleum resources development in a sustainable and equitable manner for the benefit of all South Africans. The Bill furthermore aims to improve the efficiency and efficacy of the legislation in achieving the primary object of creating a mining and minerals regulation regime that conforms to regulatory best practice.

2. SUMMARY OF BILL

- 2.1 The following new definitions are added to the Act; appraisal operations, appraisal work programme, associated mineral, authorised person, Constitution, discovery, free carried interest, gasification, mine gate price, organ of state, production sharing agreement, strategic minerals, labour sending areas, and the definitions of beneficiation, mining area, prospecting area, land, residue stock piles and "this Act" are amplified with a view to provide clarity, certainty and remove any ambiguities and multiplicity of interpretation.
- 2.2 Section 9 of the Act which deals with the order of processing applications is amended by substituting the application process of first come first served with a process in terms of which the Minister reserves a right to periodically invite applications by notice in the Gazette. This invitation process will ensure coordinated quality approvals by the Department that meaningfully contribute towards the fulfillment of the objects of the Act. It will bring about certainty and transparency and further enhance optimal development of the nation's mineral and petroleum resources.
- 2.3 RMDEC is established as statutory body by insertion of clauses 10A to G dealing with the composition, functions and management of RMDEC after section 10 of the Act.

- 2.4 Section 11 of the Act is amended to provide for partitioning of rights, delete reference to close operations and remove reference to time frames and further correct grammatical errors. The rationale for these amendments is to afford the right holders a right to dispose of a portion of their right subject to the provisions of the Act. Further provide opportunity for public entities to mortgage rights without Ministerial consent.
- 2.5 Section 26 of the Act is amended to strengthen the linkages between the mining and manufacturing sectors in order to maximise the value realised from the country's mineral resources by its citizens thus contributing to government's objective of eliminating the triple developmental challenges of unemployment, inequality and poverty. Strengthening these linkages will be achieved by first identifying key mineral inputs into the country's developmental imperatives which include infrastructure development, energy security, food security and industrialisation.

These key minerals will then be designated by Minister through government *Gazette*, after consultation with Ministers of relevant state departments, as being crucial for local beneficiation. The amendment of section 26, further makes provision for producers of designated minerals to offer a portion of their production to local beneficiaries in prescribed quantities, qualities and timelines at mine gate price or an agreed price. Furthermore, any exports of designated minerals will require Minister's written approval before export.
- 2.6 Sections 70-89 are amended to substitute reference to designated agency for Regional Manager. The designated agency is effectively dissolved and its functions are to be performed by the Regional Managers. The realignment of the functions of PASA is done in order to consolidate the regulation of petroleum resources under the auspices of the DMR, while the promotional aspect is vested with the Council for Geoscience.
- 2.7 Section 86A is inserted to provide for the State participation in petroleum development. The State has a right to a free carried interest in all new exploration and production rights. The section further makes provision for the State to participate at Board level through joint project committee.
- 2.8 Section 96 and relevant sections of the Act are amended to make provision for the Minister to allow for the lodgement of appeals prior to the execution of rights. This amendment is in line with the streamlining of licensing processes between the Department of Mineral Resources, Environmental Affairs and Water Affairs.
- 2.9 Section 99 of the Act is amended to provide for improved sanctions in respect of offences committed under the Act. The offences are now linked to a percentage of a person or right holder's annual turnover and exports during the preceding financial year. Further increased the amount in respect of penalties that may be imposed by a court. Provision is also made for administrative fines. The basis for these improvements is to deter non compliance with the Act.
- 2.10 Section 102 of the Act is amended to introduce subsection (3) which deals with the regulation of exploitation of associated mineral or minerals. The right holders are required to declare and account for the associated mineral or minerals discovered in the mining process.
- 2.11 All reference to specific timeframes in the Act has been substituted with reference to time frames as prescribed. The time frames will be prescribed and fixed in the Regulations. These time frames will not detract from the standard

practice of 30, 60 to 90 days where applicable. These will further and most importantly conform to the principles of lawfulness, reasonableness, and fairness consistent with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), while allowing for the requisite flexibility where necessary.

- 2.12 The mine environmental management provisions i.e. sections 39 to 42 were repealed by Act 49 of 2008 and transferred to the National Environmental Management Act. In the Bill reference to environmental management programmes and plans has been substituted for reference to environmental authorisations to be issued in terms of NEMA.

The Minister of Mineral Resources is the competent authority to implement mine environmental management in terms of NEMA whereas the Minister of Environmental Affairs is the competent authority to develop, review and amend legislation, regulations and policies relating to mine environmental management. Processes are under way to give effect to this arrangement between the two departments regarding the mine environmental management function which include further refinement of both pieces of legislation to ensure that there is no duplication of mandates.

2. DEPARTMENTS/PARTIES CONSULTED

The following Departments and statutory bodies were consulted on the Amendment Bill 2013:

Department of Water Affairs;

Department of Environmental Affairs;

Trade and Industry;

The Competition Commission;

National Treasury;

SAMDA;

The South African Chamber of Mines;

National Union of Mine Workers;

UASA;

SOLIDARITY.

Communities in Limpopo, Mpumalanga, North West and Northern Cape Provinces.

Environmental groupings, the legal fraternity, the mining industry and petroleum industry.

3. FINANCIAL IMPLICATIONS FOR THE STATE

Financial implications for the entire Draft Amendment Bill will be finalised in consultation with National Treasury.

4. PARLIAMENTARY PROCEDURE

- 4.1 The State Law Advisers and the Department of Mineral Resources are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 4.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.
- 4.3. The Joint Tagging Mechanism of Parliament classified the Bill to be dealt with in terms of section 76 of the Constitution.