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SA mining industry hopes to keep controversial new bill out of court as tensions cool

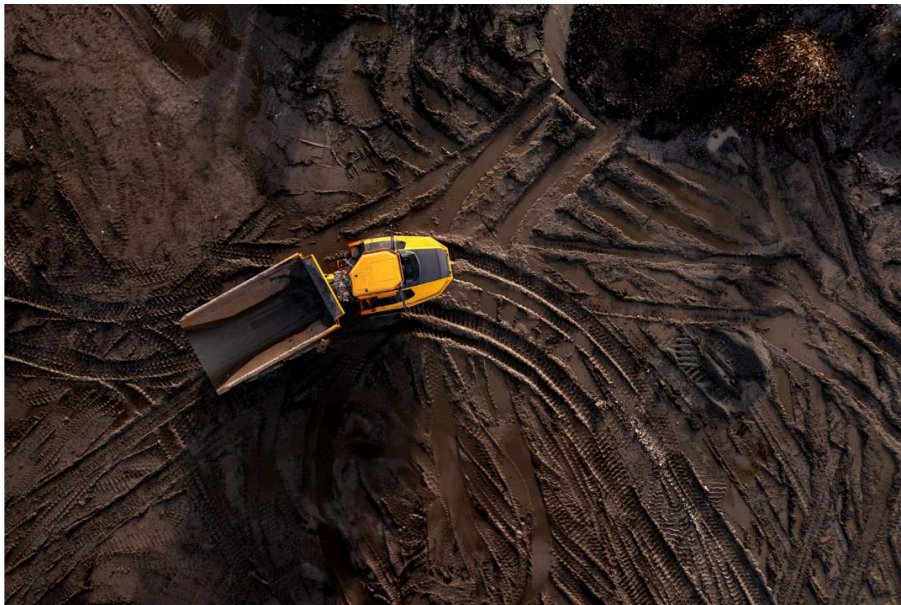
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The Department of Mineral and Petroleum Resources will engage industry on the contentious new draft mining bill.

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The Minerals Council South Africa hopes any dispute around a new mining bill can be kept out of the courts.

The industry body's submission on the bill addresses several issues, including empowerment.

The council has committed to keeping talks with the government private to ensure the best possible outcome.

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The Minerals Council South Africa will enter talks with the government on the new draft mining bill in good faith, with an intention to keep the matter out of the courts.

The industry body – which represents 90% of mining production in South Africa – on Monday addressed the media on the contentious draft mining bill, which last week closed for public comments.

The council has made an extensive submission on behalf of its members, with the overarching concern being that the bill, in its current form, does not encourage investment in the mining industry for growth.

Heads have cooled since the draft bill was first published for comment in May this year.

At the Minerals Council's Annual General Meeting, its newly elected president and

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In attendance was Mineral and Petroleum Resources Minister Gwede Mantashe, who cautioned Dunne about making “subtle threats” of legal action.

During Monday’s briefing, council CEO Mzila Mthenjane said attitudes had softened since.

“We’ve had a number of engagements which have given us the assurance that battling it out in court is not something that we want... and it’s something that the DMPR doesn’t want either,” he said. “We’ll take it one step at a time, but I think from the progress that we’ve seen... there’s a possibility that we can avoid seeing ourselves in court.”

The council has committed to keeping negotiations out of the public eye in a bid to ensure the best possible outcome. On Monday, it provided an overview of its board-approved submission.

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“Our key point of departure in engagements with the department is to have pragmatic conversations that address elements of the bill that discourage investment and growth of the industry, which we all agree has untapped potential that is not being realised,” Mthenjane said, adding:

It is of fundamental importance for the Minerals Council that the bill creates certainty, predictability and a competitive regulatory environment, while eliminating ambiguity.

Key elements of the bill that will be the focus of the Minerals Council engagement with the DMPR include empowerment, beneficiation, tailings, and mine closure provisions.

The bill seeks to legislate the BEE codes of good practice for the sector, seemingly doing away with the court-tested “once empowered, always empowered” provision of the Mining Charter, which allows for black shareholding in a mining company to remain recognised even after said shareholders have sold out.

The Minerals Council and its members are committed to the transformation of the industry, but said the bill must build on existing successes. “The contents of the empowerment regime that will give effect to the empowerment objectives incorporated in the bill need to be settled,” said Ursula Brown, the council’s head of legal. “At this point in time, we have not seen the regulations, and we’re therefore not able to provide any substantive comments on what the empowerment provisions will entail.”

Beneficiation questions

While the document proposes forced quotas for in-country beneficiation of minerals, the council said the government must look at incentivising beneficiation, developing transport and water infrastructure and cost-competitive electricity rather than imposing prescriptive obligations and penalising noncompliance.

The bill seeks to bring tailings dams under mining legislation, with historical dumps required to apply for a mining right or risk being expropriated by the state.

“From an industry perspective, we note that these historical stockpiles over the past 20 years have been dealt with as private property under common law, and



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interests in companies holding these rights. "We have, in our submission, also made some recommendations as to how this section can broadly be [overhauled]," Brown said.



On the issue of mine closure, the industry hopes the new bill can provide clarity on what a mine closure certificate would entail.

The council, however, noted that the bill relies on regulations that have yet to be published for public scrutiny, making it impossible to fully engage the department in detail on key elements of the draft document.

The Minerals Council said it has no objection to the bill's attempts to formalise artisanal mining, provided it can be done in an environmentally responsible, safe, and healthy manner, with clear, identifiable obligations and responsibilities attributable to artisanal mining. In this regard, the Minerals Council is advocating for a fit-for-purpose regulatory framework for artisanal mining.

The council further welcomed criminalisation of illegal mining in the bill and has recommended more effective penalties to be imposed to serve as a deterrent in the long run.

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