

MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT NO. 28 OF 2002

[View Regulation]

[ASSENTED TO 3 OCTOBER, 2002]
[DATE OF COMMENCEMENT: 1 MAY, 2004]

(English text signed by the President)

This Act has been updated to *Government Gazette* 36541 dated 6 June, 2013.

as amended by

Minerals and Energy Laws Amendment Act, No. 11 of 2005

Mineral and Petroleum Resources Development Amendment Act, No. 49 of 2008

pending amendment by

Mineral and Petroleum Resources Development Amendment Act, No. 49 of 2008

ACT

To make provision for equitable access to and sustainable development of the nation's mineral and petroleum resources; and to provide for matters connected therewith.

Preamble.—RECOGNISING that minerals ~~and petroleum~~ are non-renewable natural resources;

ACKNOWLEDGING that South Africa's mineral ~~and petroleum~~ resources are a common heritage that belong to the nation and that the State is the custodian thereof;

AFFIRMING the State's obligation to protect the environment for the benefit of present and future generations, to ensure ecologically sustainable development of mineral ~~and petroleum~~ resources and to promote economic and social development;

RECOGNISING the need to promote local and rural development and the social upliftment of communities affected by mining;

REAFFIRMING the State's commitment to reform to bring about equitable access to South Africa's mineral ~~and petroleum~~ resources;

BEING COMMITTED to eradicating all forms of discriminatory practices in the mineral ~~and petroleum~~ industries;

CONSIDERING the State's obligation under the Constitution to take legislative and other measures to redress the results of past racial discrimination;

REAFFIRMING the State's commitment to guaranteeing security of tenure in respect of prospecting and mining operations; and

EMPHASISING the need to create an internationally competitive and efficient administrative and regulatory regime,

ARRANGEMENT OF ACT

CHAPTER 1 DEFINITIONS

1. Definitions

CHAPTER 2 FUNDAMENTAL PRINCIPLES

2. Objects of Act
3. Custodianship of nation's mineral and petroleum resources
4. Interpretation of Act
5. Legal nature of prospecting right, mining right, exploration right or production right, and rights of holders thereof
- 5A. Prohibition relating to illegal act

6. Principles of administrative justice

CHAPTER 3 ADMINISTRATION

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

CHAPTER 4 MINERAL AND ENVIRONMENTAL REGULATION

9. Order of processing of applications
10. Consultation with interested and affected parties
11. Transferability and encumbrance of prospecting rights and mining rights
12. Assistance to historically disadvantaged persons
13. Application for reconnaissance permission
14. Issuing and duration of reconnaissance permission
15. Rights and obligations of holder of reconnaissance permission
16. Application for prospecting right
17. Granting and duration of prospecting right
18. Application for renewal of prospecting right
19. Rights and obligations of holder of prospecting right
20. Permission to remove and dispose of minerals
21. Information and data in respect of reconnaissance and prospecting
22. Application for mining right
23. Granting and duration of mining right
24. Application for renewal of mining right
25. Rights and obligations of holder of mining right
26. Mineral beneficiation
27. Application for, issuing and duration of mining permit
28. Information and data in respect of mining or processing of minerals
29. Minister's power to direct submission of specified information or data
30. Disclosure of information
31. Application for retention permit
32. Issuing and duration of retention permit
33. Refusal of application for retention permit
34. Application for renewal of retention permit
35. Rights and obligations of holder of retention permit
36. Retention permit not transferable
37. Environmental management principles
38.
38A. Environmental authorisations
38B.

38B.	Approved environmental management programmes and environmental management plans
------	---

39.
40.
41.
42.
43. Issuing of a closure certificate
44. Removal of buildings, structures and other objects
45. Minister's power to recover costs in event of urgent remedial measures
46. Minister's power to remedy environmental damage in certain instances
47. Minister's power to suspend or cancel rights, permits or permissions
48. Restriction or prohibition of prospecting and mining on certain land
49. Minister's power to prohibit or restrict prospecting or mining
50. Minister may investigate occurrence, nature and extent of mineral resources
51. Optimal mining of mineral resources
52. Notice of profitability and curtailment of mining operations affecting employment
53. Use of land surface rights contrary to objects of Act
54. Compensation payable under certain circumstances
55. Minister's power to expropriate property for purpose of prospecting or mining
56. Lapsing of right, permit and permission

CHAPTER 5 MINERALS AND PETROLEUM BOARD

57. Establishment of Minerals and Petroleum Board
58. Functions of Board
59. Composition of Board

- 60. Disqualification of members
- 61. Vacation of office
- 62. Term of office and filling of vacancies
- 63. Meetings of Board
- 64. Committees of Board
- 65. Funding of Board
- 66. Remuneration of members of Board, committees and working groups
- 67. Reports of Board
- 68. Administrative functions

CHAPTER 6 PETROLEUM EXPLORATION AND PRODUCTION

- 69. Application of Chapter
- 70. Designated agency
- 71. Functions of designated agency
- 72. Funding of designated agency
- 73. Invitation for applications
- 74. Application for reconnaissance permit
- 75. Issuing and duration of reconnaissance permit
- 76. Application for technical co-operation permit
- 77. Issuing and duration of technical co-operation permit
- 78. Rights and obligations of holder of technical co-operation permit
- 79. Application for exploration right
- 80. Granting and duration of exploration right
- 81. Application for renewal of exploration right
- 82. Rights and obligations of holder of exploration right
- 83. Application for production right
- 84. Granting and duration of production right
- 85. Application for renewal of production right
- 86. Rights and obligations of holder of production right
- 87. Development of petroleum reservoir as unit
- 88. Information and data
- 89. Financial guarantee
- 90. Minister's power to suspend or cancel permits or rights

CHAPTER 7 GENERAL AND MISCELLANEOUS PROVISIONS

- 91. Power to enter prospecting area, mining area or retention area
- 92. Routine inspections
- 93. Orders, suspensions and instructions
- 94. Prohibition of obstruction, hindering or opposing of authorised person
- 95. Prohibition of occupational detriment against employee
- 96. Internal appeal process and access to courts
- 97. Serving of documents
- 98. Offences
- 99. Penalties
- 100. Transformation of minerals industry
- 101. Appointment of contractor
- 102. Amendment of rights, permits, programmes and plans
- 103. Delegation and assignment
- 104. Preferent prospecting or mining right in respect of communities
- 105. Landowner or lawful occupier of land cannot be traced
- 106. Exemptions from certain provisions of Act
- 107. Regulations
- 108. Proof of facts
- 109. Act binds State
- 110. Repeal and amendment of laws, and transitional provisions
- 111. Short title and commencement

SCHEDULE I REPEAL OR AMENDMENT OF LAWS

SCHEDULE II TRANSITIONAL ARRANGEMENTS

- 1. Definitions
- 2. Objects of Schedule
- 3. Pending prospecting and mining applications
- 4. Continuation of Exploration Operation
- 5. Continuation of Production Operations
- 6. Continuation of old order prospecting right

7.	Continuation of old order mining right
8.	Processing of unused old order rights
9.	Continuation of reservations, permissions and certain rights
10.	Continuation of approved environmental management programme
11.	Consideration of royalty payable
12.	Payment of compensation
13.	Certain functions of Director: Mineral Development to be performed by
	Regional Manager or Minister
Table 1	(old order rights)
Table 2	old order mining rights)
Table 3	(unused old order rights)

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

CHAPTER 1 DEFINITIONS

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

"artisanal mining" means traditional and customary mining operations using traditional or customary ways and means, which includes the activities of individuals using mostly rudimentary mining methods, manual and rudimentary tools to access mineral ore, usually available on surface, or at shallow depths;

"artisanal mining permit" means a permit issued in terms of section 27A(6);

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

"authorised person" means an authorised person contemplated in section 91;

"beneficiation", in relation to any mineral resource, means the following—transformation or value addition of a mineral or mineral product, or a combination of minerals, to a higher value product over baselines determined by the Minister, which can either be consumed locally or exported;

- (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;

[Definition of "beneficiation" inserted by s. 1 (a) of Act No. 49 of 2008.]

"black person" has the meaning assigned to it in the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)

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

~~**"Board"** means the Minerals and Mining Development Board established by section 57;~~

"broad based economic empowerment" has the meaning assigned to it in the Broad Based Black Economic Empowerment Act, 2003 (Act No.53 of 2003); ~~means a social or economic strategy, plan, principle, approach or act which is aimed at—~~

~~(a) —redressing the results of past or present discrimination based on race, gender or other disability of historically disadvantaged persons in the minerals and petroleum industry, related industries and in the value chain of such industries; and~~

~~(b) —transforming such industries so as to assist in, provide for, initiate or facilitate—~~

~~(i) —the ownership, participation in or the benefiting from existing or future mining, prospecting, exploration~~

~~or production operations;~~

~~(ii) the participation in or control of management of such operations;~~

~~(iii) the development of management, scientific, engineering or other skills of historically disadvantaged persons;~~

~~(iv) the involvement of or participation in the procurement chains of operations;~~

~~(v) the ownership of and participation in the beneficiation of the proceeds of the operations or other upstream or downstream value chains in such industries;~~

~~(vi) the socio-economic development of communities immediately hosting, affected by supplying of labour to the operations; and~~

~~[Sub-para. (vi) substituted by s. 1 (b) of Act No. 49 of 2008.]~~

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

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

"committee" means the Regional Mining Development and Environmental Committee, established by section 10(c);

"community" means 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 the agreement, custom or law; 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;~~

~~[Definition of "community" substituted by s. 1 (c) of Act No. 49 of 2008.]~~

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

~~"Constitution" means the Constitution of the Republic of South Africa, 1996;~~

~~"controlling interest", in relation to –~~

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

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

~~"council" means the Ministerial Advisory Council that may be established in terms of section 56A;~~

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

~~[Definition of "Council for Geoscience" inserted by s. 1 (d) of Act No. 49 of 2008.]~~

~~"day" means a calendar day excluding a Saturday, Sunday or public holiday and when any particular number of days are prescribed for the performance of any act, those days must be reckoned by excluding the first and including the last day,~~

~~[Definition of "day" substituted by s. 1 (e) of Act No. 49 of 2008.]~~

~~"Department" means the Department responsible for mining of Minerals and Energy;~~

~~"designated agency" means the organ, agency or company designated in terms of section 70;~~

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

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

~~"effective date" means the date on which the relevant permit is issued or the relevant right is granted by the Minister; executed; [Definition of "effective date" inserted by s. 1 (f) of Act No. 49 of 2008.]~~

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

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

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

~~[Definition of "environmental authorisation" inserted by s. 1 (g) of Act No. 49 of 2008.]~~

~~"environmental management plan"~~

~~[Definition of "environmental management plan" deleted by s. 1 (h) of Act No. 49 of 2008.]~~

~~"environmental management programme"~~

~~[Definition of "environmental management programme" deleted by s. 1 (i) of Act No. 49 of 2008.]~~

~~"exclusionary act" means any act or practice which impedes or prevents any person from entering into or actively participating in the mineral and petroleum industry, or entering into or actively participating in any market connected with the mineral industry and petroleum industries, or from making progress within such industry or market;~~

~~[Definition of "exclusionary act" substituted by s. 1 (j) of Act No. 49 of 2008.]~~

~~"execution date" means the date of the signing of the right by the Minister and holder in the presence of the notary public;~~

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

~~"exploration operation" means the re-processing of existing seismic data, acquisition and processing of new seismic data or any other related activity to define a trap to be tested by drilling, logging and testing, including~~

~~extended well testing, of a well with the intention of locating a discovery;~~

~~**"exploration right"** means the right granted in terms of section 80;~~

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

~~**"financial provision"**~~

[Definition of "financial provision" deleted by s. 1 (k) of Act No. 49 of 2008.]

~~**"gasification"** means a process applied to non-mined coal seams, using injection drilled from the surface, which enables the coal to be converted from original state into gas"~~

~~**"historically disadvantaged person"** means —~~

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

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

~~(e) — 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);~~

[Para. (c) substituted by s. 1 (l) of Act No. 49 of 2008.]

"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, small-scale mining permit, and artisanal mining permit issued in terms of this Act;

"holder", in relation to a prospecting right, mining right, ~~mining permit, small-scale mining permit, artisanal mining permit, retention permit, exploration right, production right, or reconnaissance permission permit or technical co-operation permit,~~ means the person to whom such right or permit has been granted or such person's successor in title;

"interested and affected persons" means a natural or juristic person or an association of persons with a direct interest in the proposed or existing prospecting or mining operation or who may be affected by the proposed or existing prospecting or mining operation;

"labour sending areas" refers to areas within the Republic of South Africa where the majority of mineworkers, both historical and current, were sourced;

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

"landowner" means a natural or juristic person, or a community, who holds a right in land, registered or unregistered, over which such person or community enjoys protection under any law;

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

"meaningful consultation" means that the applicant, has in good faith facilitated participation in such a manner that reasonable opportunity was given to provide comment by the landowner, lawful occupier or interested and affected person in respect of land subject to an application about the impact the prospecting or mining activities would have to his or her right of use of the land by availing all relevant information pertaining to the proposed activities enabling these parties to make an informed decision regarding the impact of the proposed activities;

"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 or residue stockpile, 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 resource is being extracted, including the mining area and all buildings, structures, machinery, residue deposit or 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~~ the mining of any mineral, in or under the earth, water or any residue deposit, whether by underground gasification, ~~or~~ open working or otherwise and includes any operation or activity incidental thereto, in, on or under the relevant mining area;

[Definition of "mine" substituted by s. 1 (m) of Act No. 49 of 2008.]

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

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

~~(b) — petroleum; or~~

~~(c) — peat;~~

"mining area"—

(a) in relation to a mining right ~~or a mining permit,~~ small-scale mining permit or artisanal mining permit,

means the area ~~on which the extraction of any mineral has been authorised and~~ for which that right ~~is granted~~ or permit is ~~issued~~granted;

- (b) in relation to any environmental, health and safety, social and labour matter and any residual, latent or other impact thereto, includes~~ing~~—
- (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, powerline, pipe line, cableway or conveyor belt mining infrastructure~~ is located, under the control of the holder of such a mining right, ~~or a mining permit and small-scale mining permit or artisanal 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 deposit or other stockpiles, or objects situated on or in the area as contemplated in subparagraphs (i) and (ii). ~~subsections (ii) (a) and (ii) (b)~~;
- [Definition of “mining area” substituted by s. 1 (n) of Act No. 49 of 2008.]

“mining operation” means any operation relating to the act of mining and matters directly incidental thereto, including residue stockpiles and deposit; —

“small - scale mining permit” means a permit issued in terms of section 27 (6);

“mining right” means a right to mine granted in terms of section 23 (1);

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

[Definition of “Mineral and Petroleum Titles Registration Office”, previously “Mining Titles Office”, substituted by s. 1 (o) of Act No. 49 of 2008.]

“mining work programme” means the planned mining work programme to be followed in order to mine a mineral resource optimally;

"Minister" means the Minister responsible for Mining; of Minerals and Energy;

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

[Definition of "National Environmental Management Act, 1998" inserted by s. 1 (p) of Act No. 49 of 2008.]

"officer" means any officer of the Department appointed under the Public Service Act, 1994 (Proclamation No. 103 of 1994);

"organ of state" has the meaning assigned to it in section 239 of the Constitution;

"owner", in relation to—

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

"owner of works" has the meaning contemplated in paragraph (b) of the definition of "owner" in section 102 of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);

[Definition of "owner of works" inserted by s. 1 (q) of Act No. 49 of 2008.]

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

"petroleum reservoir" means a geological formation containing petroleum;

"prescribed" means prescribed by regulation;

"Principle Inspector of Mines" has the meaning assigned to it in the Mine Health and Safety Act, 1996 (Act No.29 of 1996);

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

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

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

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

"prospecting" means intentionally searching for any mineral by means of any method—

- (a) which disturbs the surface or subsurface of the earth, including any portion of the earth that is under the sea or under other water; or
- (b) in or on any residue stockpile or residue deposit, in order to establish the existence of any mineral and to determine the extent and economic value thereof; or
- (c) in the sea or other water on land;

"prospecting area" -in relation to a mining right, small- scale mining permit or artisanal mining permit, means the

(a) 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 contemplated in paragraph (a), but upon which related or incidental operations are being undertaken and impacting on the environment means the area of land which is the subject of any prospecting right;

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

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

"prospecting work programme" means the planned prospecting work programme to be followed in order to establish the occurrence of any mineral resource in the prospecting area during the period applied for;

"public entity" means a 'public entity' as defined in the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"reconnaissance operation" means any operation carried out for or in connection with the search for a mineral or petroleum by geological, geophysical and photo geological surveys and includes any remote sensing techniques, but does not include any prospecting or exploration operation other than acquisition and processing

of new seismic data;

[Definition of "reconnaissance operation" substituted by s. 1 (r) of Act No. 49 of 2008.]

"reconnaissance permit" means a permit issued in terms of section 75 (1);

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

"regulation" means any regulation made under section 107;

"Regional Manager" means the officer designated by the Director-General in terms of section 8 as regional manager for a specified region;

"Regional Mining Development and Environmental Committee" means a Regional Mining Development and Environmental Committee established in terms of section ~~10 A; 64(1);~~

"residue deposit" means any residue stockpile remaining at the termination, cancellation or expiry of a prospecting right, mining right, small-scale mining permit, artisanal mining permit, mining permit, exploration right, production right or an old order right;

[Definition of "residue deposit" substituted by s. 1 (t) of Act No. 49 of 2008.]

"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, small-scale mining permit, artisanal mining permit, mining permit, production right or an old order right, including historic mines and dumps created before the implementation of this Act;

[Definition of "residue stockpile" substituted by s. 1 (u) of Act No. 49 of 2008.]

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

"retention permit" means a permit issued in terms of section 32;

"Registrar" means the registrar of deeds as defined in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937);

[Definition of "Registrar" inserted by s. 1 (s) of Act No. 49 of 2008.]

"security of supply" means the orderly supply of designated minerals or mineral products for local beneficiation in order to support or sustain national development imperatives;

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

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

"technical co-operation permit" means the technical co-operation permit issued in terms of section 77 (1);

"the sea" 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); 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 Zones 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);

"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

(a)(b) The Codes of Good Practice for the South African Minerals Industry and Housing and Living Conditions Standards for the Minerals Industry;

"topsoil" means the layer of soil covering the earth which—

- (a) provides a suitable environment for the germination of seed;
- (b) allows the penetration of water;
- (c) is a source of micro-organisms, plant nutrients and in some cases seed; and
- (d) is not of a depth of more than 0,5 metres or such other depth as the Minister may prescribe for a specific prospecting or exploration area or a mining area.

CHAPTER 2 FUNDAMENTAL PRINCIPLES

2. Objects of Act.—The objects of this Act are to—

- (a) recognise the internationally accepted right of the State to exercise sovereignty over all the mineral and petroleum resources within the Republic;

- (b) give effect to the principle of the State's custodianship of the nation's mineral ~~and petroleum~~ resources;
- (c) promote equitable access to the nation's mineral ~~and petroleum~~ resources to all the people of South Africa;
- (d) substantially and meaningfully expand opportunities for historically disadvantaged persons, including women and communities, 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;

[Para. (d) substituted by s. 2 of Act No. 49 of 2008.]

- (e) promote o p t i m a l economic growth and mineral ~~and petroleum~~ resources development in the Republic, ~~particularly development of downstream industries through provision of feedstock, and development of mining and petroleum inputs industries;~~

[Para. (e) substituted by s. 2 of Act No. 49 of 2008.]

- (f) promote employment and advance the social and economic welfare of all South Africans;
- (g) provide for security of tenure in respect of prospecting ~~and, exploration, mining and production~~ operations;
- (h) give effect to section 24 of the Constitution by ensuring that the nation's mineral ~~and petroleum~~ resources are developed in an orderly and ecologically sustainable manner while promoting justifiable social and economic development; and
- (i) ensure that holders of mining ~~and production~~ rights contribute towards the socio-economic development through the implementation of social and labour plans in ~~of the~~ areas ~~in~~ which they are operating, including labour sending areas; .-

3. Custodianship of nation's mineral ~~and petroleum~~ resources.—(1) Mineral ~~and petroleum~~ resources are the common heritage of all the people of South Africa and the State is the custodian thereof for the benefit of all South Africans.

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

- (a) grant, issue, refuse, control, administer and manage any reconnaissance permission, prospecting right, permission to remove, mining right, small-scale mining permit, artisanal mining permit~~mining permit and~~, retention permit; ~~technical co-operation permit, reconnaissance permit, exploration right and production right;~~ and
- (b) in consultation with the Minister of Finance, prescribe and levy, any fee payable in terms of this Act.
[Para. (b) substituted by s. 3 (a) of Act No. 49 of 2008.]

(3) The Minister must ensure the sustainable development of South Africa's mineral ~~and petroleum~~ resources within a framework of national environmental legislation, policy, norms and standards while promoting economic and social development.

(4) The State royalty must be determined and levied by the Minister of Finance in terms of an Act of Parliament.
[Sub-s. (4) added by s. 3 (b) of Act No. 49 of 2008.]

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

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

5. Legal nature of prospecting right, mining right, ~~exploration right or production right~~, and rights of holders thereof.—(1) A prospecting right or, mining right, ~~exploration right or production right~~ granted in terms of this Act and registered in terms of the Mining Titles Registration Act, 1967, (Act No. 16 of 1967), is a limited real right in respect of the mineral ~~or petroleum~~ and the land to which such right relates.

[Sub-s. (1) substituted by s. 4 (a) of Act No. 49 of 2008.]

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

(3) Subject to this Act, any holder of a prospecting right and, a mining right, ~~exploration right or production right~~ may—

- (a) enter the land to which such right relates together with his or her employees, and bring onto that land any plant, machinery or equipment and build, construct or lay down any surface, underground or under sea infrastructure which may be required for the purpose of prospecting and, mining, ~~exploration or production;~~ as the case may be;

[Para. (a) substituted by s. 4 (b) of Act No. 49 of 2008.]

- (b) prospect or, mine, ~~explore or produce,~~ as the case may be, for his or her own account on or under that land for the mineral ~~or petroleum~~ for which such right has been granted;

- (c) remove and dispose of any such mineral found during the course of prospecting or, mining, ~~exploration or production;~~ as the case may be;

- (cA) subject to section 59B of the Diamonds Act, 1986 (Act No. 56 of 1986), (in the case of diamond) remove and dispose of any diamond found during the course of mining operations;

[Para. (cA) inserted by s. 4 (c) of Act No. 49 of 2008.]

- (d) subject to the National Water Act, 1998 (Act No. 36 of 1998), use water from any natural spring, lake, river or stream, situated on, or flowing through, such land or from any excavation previously made and used for prospecting or, mining, ~~exploration or production purposes;~~ or sink a well or

borehole required for use relating to prospecting or, ~~mining, exploration or production~~ on such land;
and

(e) carry out any other activity incidental to prospecting or, ~~mining, exploration or production~~ operations,

which activity does not contravene the provisions of this Act or any other law.—

(4)

[Sub-s. (4) deleted by s. 4 (d) of Act No. 49 of 2008.]

5A. ~~Prohibition relating to illegal act~~ Illegal prospecting and mining activities.—No person may prospect for or remove, mine, conduct ~~technical co-operation operations,~~ reconnaissance operations, ~~explore for and~~ produce any mineral ~~or petroleum~~ or commence with any work incidental thereto on any area without—

(a) an environmental authorisation in terms of National Environmental Management Act, 1998 (Act No. 107 of 1998) as amended;

(Date of commencement of para. (a): 8 December 2014.)

(b) a reconnaissance permission, prospecting right, permission to remove, mining right, small-scale mining permit, artisanal mining permit or mining permit, retention permit, ~~technical co-operation permit, reconnaissance permit, exploration right or production right,~~ as the case may be; and

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

[S. 5A inserted by s. 5 of Act No. 49 of 2008.]

5B. Prohibition relating to assistance in committing illegal prospecting and mining activities. – No person may assist or provide any service to any person, directly or indirectly, to enable or aid that person in committing an illegal prospecting and mining activity as contemplated in section 5A.

5C. Prohibition relating to possession and transportation of minerals. – No person may possess or transport in any manner minerals [sic] outside the boundaries of any mine, works or other property or place where such mineral is mined, or worked with, unless he or she is [sic] possession of the prescribed documentation.

6. Principles of administrative justice.—(1) Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), any administrative process conducted or decision taken in terms of this Act must be conducted or taken, as the case may be, within a reasonable time and in accordance with the principles of lawfulness, reasonableness and procedural fairness.

(2) Any decision contemplated in subsection (1) must be in writing and accompanied by written reasons for such decision.

CHAPTER 3 ADMINISTRATION

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

7A. Designation of certain areas for small-scale and artisanal mining. – In order to give effect to the objects referred to in section 2(c) and (d), the Minister may, by notice in the Gazette—

(a) after consultation with the Council for Geoscience, designate certain areas for black persons for small-scale and artisanal mining; and

~~(a)(b)~~ invite applications for small-scale and artisanal mining as contemplated in section 9A.

8. Designation and functions of officer.—The Director-General must, subject to the laws governing the public service, designate an officer in the service of the Department as regional manager for each region contemplated in section 7 who must perform the functions delegated or assigned to him or her in terms of this Act or any other law.

CHAPTER 4 MINERAL AND ENVIRONMENTAL REGULATION

9. Order of processing of applications.—(1) ~~If a Regional Manager receives more than one—~~ The Minister must not accept applications for a prospecting right, a mining right, ~~or a small-scale mining permit or artisanal mining permit,~~ as the case may be, where there is an existing application, right or permit. in respect of the same mineral and land, applications received on—

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

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

[Para. (b) substituted by s. 6 (a) of Act No. 49 of 2008.]

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

[Sub-s. (2) substituted by s. 6 (b) of Act No. 49 of 2008.]

9A. Invitation for applications.- (1) The Minister must, in the form and manner prescribed, by notice in the Gazette, invite applications –

(a) in respect of land or minerals 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, prospecting rights, mining rights, small-scale mining permits and artisanal mining permits in respect of any area of land, and may prescribe in such notice the period within which any application may be lodged with the Minister and the procedures which must apply in respect of such lodgement;

(b) in consultation with the Council for Geoscience and the relevant national department in a designated area as contemplated in section 7A, for small-scale and artisanal mining;

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

10. ~~E~~Meaningful consultation with interested and affected persons~~arties~~.—(1) Within ~~14~~ 7 days after accepting an application lodged in terms of section 16, 22 or 27, the ~~Minister and the applicant~~Regional Manager must in the prescribed manner—

(a) make known that an application for a prospecting right, mining right ~~or, small-scale~~ mining permit or artisanal mining permit has been accepted in respect of the land in question; and

[Para. (a) substituted by s. 7 of Act No. 49 of 2008.]

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

(2) If a person or community objects to the granting of a prospecting right, mining right, ~~or small-scale~~ mining permit or artisanal mining permit, the ~~Minister~~ Regional Manager must refer the objection to the Regional Mining Development and Environmental Committee to adjudicate ~~consider on~~ the objections and to advise the Minister thereon.

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

10B. Functions of the Regional Mining Development and Environmental Committee. - The committee must –

(a) adjudicate on objections received in terms of section 10 (2); and

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

10C. Composition of the Regional Mining Development and Environmental Committee. – (1) The Regional Mining Development and Environmental Committee must consist of not more than 14 members appointed by the Minister and must include –

(a) the Regional Manager as the chairperson;

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

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

(2) The members appointed to the Regional Mining Development and Environmental Committee must have expertise in mineral and mining development and mine environmental management.

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

10D. Disqualification of members. - A person may not be appointed as a member of the Regional Mining Development and Environmental Committee –

(a) unless he or she is a South African citizen who resides in the Republic permanently; or

- (b) if he or she is an unrehabilitated insolvent, has been declared to be of unsound mind by a court of the Republic or has been convicted of an offence committed after the date of commencement of the Constitution and sentenced to imprisonment without the option of a fine, unless the person has received a grant of amnesty or a free pardon before the date of his or her appointment.

10E. Vacation of Office. - (1) A member of the committee must vacate his or her office if he or she -

- (a) becomes subject to any disqualification contemplated in section 10D, or in the case of an official in the service of the State, ceases to be such an official;
(b) has been absent for more than two consecutive meetings of the committee without leave;
(c) tenders his or her resignation in writing to the Minister and the Minister accepts the resignation; or
(d) is removed from the office by the Minister under subsection (2).

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

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

10F. Term of office and filling of vacancies. - (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.

10G. Reporting by Regional Mining Development and Environmental Committee. - In addition to any specific report which the minister may request from the committee in respect of any of the regions, the committee must before 31 March of each year submit a report to the Minister setting out the activities of the committee during the year preceding that date and must include a business plan for the ensuing year.

11. Transferability and encumbrance of prospecting rights and mining rights.—(1) A prospecting right, ~~or~~ mining right or an interest in any such right, in an unlisted company, may not be ceded, transferred, encumbered, let, sublet, assigned or alienated without the prior written consent of the Minister.

~~11. or any interest in an unlisted company or any controlling interest in a listed company or close corporation, (which corporations [sic] or companies, which holds a prospecting right, mining right, small scale mining permit or artisanal mining permit 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, except in the case of change of controlling interest in listed companies.~~

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

- (a) is capable of carrying out and complying with the obligations and the terms and conditions of the right in question; and
- (b) satisfies the requirements contemplated in section 17 or 23, as the case may be.

(3) The consent contemplated in subsection (1) is not required in respect of the encumbrance by mortgage contemplated in subsection (1) of 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; 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 disposal pursuant to foreclosure of the mortgage is subject to the consent in terms of subsection (1).

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

(4) Any transfer, cession, 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 760 days from the execution date of the relevant transaction.

[Sub-s. (4) substituted by s. 8 (b) of Act No. 49 of 2008.]

(5) Any cession, transfer, letting, subletting, assignment, alienation or disposal of prospecting or mining right or an interest in a corporation or company made in contravention of subsection (1) is void.
.....

12. Assistance to historically disadvantaged persons.—(1) The Minister may facilitate assistance to any historically disadvantaged person to conduct prospecting or mining operations.

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

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

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

(4) When considering the assistance referred to in subsection (1), the Minister may request any relevant organ of State to assist the applicant concerned in the development of his or her prospecting or mining project.

13. Application for reconnaissance permission.—(1) Any person who wishes to apply to the Minister for a

reconnaissance permission must lodge the application—

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

[Para. (c) substituted by s. 9 (a) of Act No. 49 of 2008.]

(2) The Regional Manager must accept an application for a reconnaissance permission if—

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

(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 of the receipt of the application with written reasons for such decision.

[Sub-s. (3) substituted by s. 9 (b) of Act No. 49 of 2008.]

14. Issuing and duration of reconnaissance permission.—(1) Subject to subsections (1) and (2), the Minister must issue the reconnaissance permission if—

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

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

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

[Sub-s. (3) substituted by s. 10 (a) of Act No. 49 of 2008.]

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

[Sub-s. (4) substituted by s. 10 (b) of Act No. 49 of 2008.]

(5) A reconnaissance permission may not be transferred, ceded, let, sublet, alienated, disposed of or encumbered by mortgage.

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

(2) A reconnaissance permission does not entitle the holder to—

- (a) conduct any prospecting or mining operations for any mineral in or on the land in question; or;
- (b) any exclusive right to apply for or be granted a prospecting right, mining right, ~~or small-scale mining permit~~ or artisanal mining permit in respect of the land to which such reconnaissance permission relates.

[S. 15 substituted by s. 11 of Act No. 49 of 2008.]

16. Application for prospecting right.—(1) Any person who wishes to apply to the Minister for a prospecting right ~~must simultaneously apply for an environmental authorisation and~~ must lodge the application—

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

[Sub-s. (1) amended by s. 12 (a) of Act No. 49 of 2008 with effect from 8 December, 2014.]

(2) ~~The Regional Manager~~ An must accept an application for a prospecting right must be accepted if—

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

- (c) no prior application for a prospecting right, mining right, small-scale mining permit, artisanal mining permit or retention permit has been accepted for the same mineral on the same land and which remains to be granted or refused.

[Sub-s. (2) substituted by s. 12 (b) of Act No. 49 of 2008.]

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

[Sub-s. (3) substituted by s. 12 (c) of Act No. 49 of 2008.]

(4) If ~~the Regional Manager accepts~~ the application has been accepted, the ~~applicant Regional Manager~~ must ~~be, within 14 days from the date of acceptance, notified, in writing, within 14 days the applicant in writing~~

- (a) ~~to apply for an Environmental Authorisation in terms submit relevant environmental reports required in terms of Chapter 5 of the National Environmental Management Act, 1998, within 14 60 days from of the date of the notice; and~~

[Para. (a) substituted by s. 12 (d) of Act No. 49 of 2008 with effect from 8 December, 2014.]

- (b) to consult in the prescribed manner with the landowner, lawful occupier, ~~and any interested and affected persons~~ and ~~submit~~ include the result of the consultation, within 30 days from the date of the notice in the relevant environmental reports; and

[Sub-s. (4) amended by s. 12 (d) of Act No. 49 of 2008. Para. (b) substituted by s. 12 (d) of Act No. 49 of 2008 with effect from 8 December, 2014.]

- (c) to apply, where necessary, for a licence for use of water in terms of the applicable legislation.

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

(6)

[Sub-s. (6) deleted by s. 12 (e) of Act No. 49 of 2008.]

17. Granting and duration of prospecting right.—(1) The Minister must within 30 days of receipt of the application from the Regional Manager, grant a prospecting right if—

- (a) the applicant has access to financial resources and has the technical ability to conduct the proposed prospecting operation optimally in accordance with the prospecting work programme;

- (b) the estimated expenditure is compatible with the proposed prospecting operation and duration of the prospecting work programme;

- (c) the prospecting will not result in unacceptable pollution, ecological degradation or damage to the environment and an environmental authorisation in terms of National Environmental Management Act, 1998 as amended has been issued;

[Para. (c) substituted by s. 13 (b) of Act No. 49 of 2008 with effect from 8 December, 2014.]

- (d) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996); ~~and~~

- (e) the applicant is not in contravention of any ~~relevant~~ provision of this Act; ~~-~~

- (f) ~~the granting of such right will further the objects referred to in section 2(d) and comply with the broad-based socio-economic empowerment prescribed elements as contemplated in section 100(3)(b); and in respect of prescribed minerals the applicant has given effect to the objects referred to in section 2 (d);~~

[Sub-s. (1) amended by s. 13 (a) of Act No. 49 of 2008. Para. (f) added by s. 13 (c) of Act No. 49 of 2008.]

- (g) the applicant has, where necessary, submitted proof of application for a licence for use of water in terms of the applicable legislation

(2) The Minister must, within 30 days of receipt of the application from the Regional Manager, refuse to grant a prospecting right if—

- (a) the application does not meet all the requirements referred to in subsection (1);

- (b) the granting of such right will result in the concentration of the mineral resources in question under the control of the applicant and their associated companies with the possible limitation of equitable access to mineral resources; ~~and, -~~

- (c) the applicant submitted inaccurate, incorrect or misleading information in support of the application or any matter required to be submitted in terms of this Act.

[Sub-s. (2) amended by s. 13 (d) of Act No. 49 of 2008. Para. (b) substituted by s. 13 (e) of Act No. 49 of 2008.]

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

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

(4A) If the application relates to land occupied by a community, the Minister may impose such conditions as are necessary to promote the rights and interests of the community, including conditions requiring the participation

of the community.

[Sub-s. (4A) inserted by s. 13 (f) of Act No. 49 of 2008.]

(5) A ~~prospecting~~-right granted in terms of subsection (1) comes into effect on the effective date.

[Sub-s. (5) substituted by s. 13 (g) of Act No. 49 of 2008.]

(5A) Where an appeal against the granting of the right has been lodged within the prescribed period, the notarial deed of granting may not be executed until such appeal is finalised.

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

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

(a) at the office of the Regional Manager in whose region the land is situated;

- (b) in the prescribed manner; and
 - (c) together with the prescribed non-refundable application fee.
- (2) An application for renewal of a prospecting right must—
- (a) state the reasons and period for which the renewal is required;
 - (b) be accompanied by a detailed report reflecting the prospecting results, the interpretation thereof and the prospecting expenditure incurred;
 - (c) be accompanied by a report reflecting the holder's extent of compliance with the conditions of the environmental authorisation; and
[Para. (c) substituted by s. 14 (a) of Act No. 49 of 2008 with effect from 8 December, 2014.]

(cA) where necessary, include proof of application in terms of National Environmental Management Act, 1998 (Act No.107 of 1998) for an amended environmental authorisation; and"

- (d) include a detailed prospecting work programme for the renewal period.
- (e) a certificate issued by the Council for Geoscience that all prospecting information as prescribed has been submitted.

[Para. (e) added by s. 14 (b) of Act No. 49 of 2008.]

(3) The Minister must grant the renewal of a prospecting right if the application complies with subsections (1) and (2) and the holder of the prospecting right has complied with the—

- (a) terms and conditions of the prospecting right and is not in contravention ~~of any relevant provision of~~ this Act;
- (b) prospecting work programme; and
- (c) compliance with the conditions of the environmental authorisation issued in terms of National Environmental Management Act, 1989 [sic] (Act No.107 of 1998); and
[Para. (c) substituted by s. 14 (c) of Act No. 49 of 2008 with effect from 8 December, 2014.]
- (d) the approved amended environmental authorisation, where necessary.

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

(5)(a) 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 or such application has been refused.

(b) Whilst the prospecting right remains in force, the holder of such right is entitled to continue to conduct prospecting operations in terms of the existing prospecting work programme.

(c) Where an application for renewal is granted, the renewal will take effect and the renewal period for which the application was granted, commences on the date of execution.

(6) The Minister must grant or refuse the renewal of a prospecting right within 60 days if the applicant fails to comply with subsection (1),(2) or (3).

19. Rights and obligations of holder of prospecting right.—(1) In addition to the rights referred to in section 5, the holder of a prospecting right has—

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

(2) The holder of a prospecting right must—

- (a) lodge such right for registration at the Mineral and Petroleum Titles Registration Office within the prescribed period~~60 days~~ after the right has become effective;

[Para. (a) substituted by s. 15 (a) of Act No. 49 of 2008.]

- (b) commence with prospecting activities within 120 days from the date on which the prospecting right becomes effective in terms of section 17 (5) or such an extended period as the Minister may authorise;
- (c) continuously and actively conduct prospecting operations in accordance with the prospecting work programme;
- (d) comply with the terms and conditions of the prospecting right, relevant provisions of this Act and any other relevant law;

(e) comply with the conditions of the environmental authorisation issued in terms of National Environmental Management Act, 1998 (Act No.107 of 1998);

[Para. (e) substituted by s. 15 (b) of Act No. 49 of 2008 with effect from 8 December, 2014.]

(f) pay the prescribed prospecting fees to the State; and

(g) subject to section 20 and in terms of any relevant law, pay the State royalties in respect of any mineral removed and disposed of during the course of prospecting operations.

[Para. (g) substituted by s. 15 (c) of Act No. 49 of 2008.]

(h) submit progress reports and data of prospecting operations to the Regional Manager within 30 days from the date of submission thereof to the Council for Geoscience.

[Para. (h) added by s. 15 (d) of Act No. 49 of 2008.]

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

(2) The holder of a prospecting right must obtain the Minister's written permission to remove bulk samples of any mineral from a prospecting area for any purpose, as prescribed; and ~~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.~~

[Sub-s. (2) substituted by s. 16 of Act No. 49 of 2008.]

(3) Any person who applies for permission to remove and dispose of minerals in terms of this section must obtain an amended environmental authorisation issued in terms of National Environmental Management Act, 1998 (Act No.107 of 1998).

21. Information and data in respect of reconnaissance and prospecting.—(1) The holder of a prospecting right or reconnaissance permission must—

- (a) keep proper records, at the registered office or place of business of the holder, of reconnaissance or prospecting operations and the results and expenditure connected therewith, as well as borehole core data and core-log data, where appropriate; and

[Para. (a) substituted by s. 17 (a) of Act No. 49 of 2008.]

- (b) submit progress reports and data, in the prescribed manner and at the prescribed intervals, to the Regional Manager regarding the prospecting operations.

(1A) The Regional Manager must submit progress reports and data contemplated in subsection (1) (b) within 30 days from the date of receipt thereof to the Council for Geoscience.

[Sub-s. (1A) inserted by s. 17 (b) of Act No. 49 of 2008.]

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

[Sub-s. (1B) inserted by s. 17 (b) of Act No. 49 of 2008.]

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

[Sub-s. (2) substituted by s. 17 (c) of Act No. 49 of 2008.]

22. Application for mining right.—(1) Any person who wishes to apply to the Minister for a mining right ~~must simultaneously apply for an environmental authorisation and~~ must lodge the application—

- (a) on the designated application system at the office of the Regional Manager in whose region the land is situated;

- (b) in the prescribed manner; and

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

[Sub-s. (1) amended by s. 18 (a) of Act No. 49 of 2008 with effect from 8 December, 2014.]

(2) The ~~Minister~~ Regional Manager ~~must, within 14 days of receipt of the application, accept an~~ application for a mining right if—

- (a) the requirements contemplated in subsection (1) are met;

[Para. (a) amended by s. 18 (c) of Act No. 49 of 2008.]

- (b) no other person holds a prospecting right, mining right, small-scale mining permit, artisanal mining permit or retention permit for the same mineral and land; and

[Para. (b) amended by s. 18 (c) of Act No. 49 of 2008.]

- (c) no prior application for a prospecting right, mining right, ~~or small-scale~~ mining permit, artisanal mining permit or retention permit, has been accepted for the same mineral and land and which remains to be granted or refused.

[Sub-s. (2) amended by s. 18 (b) of Act No. 49 of 2008. Para. (c) added by s. 18 (c) of Act No. 49 of 2008.]

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

[Sub-s. (3) substituted by s. 18 (d) of Act No. 49 of 2008.]

(4) ~~If the Regional Manager accepts the application Upon receipt of an application, the Minister~~ Regional Manager ~~must, within the prescribed period, accept the application and 14 days from the date of acceptance,~~

notify the applicant in writing—

- (a) to apply for an Environmental Authorisation in terms of submit the relevant environmental reports, as required in terms of Chapter 5 of the National Environmental Management Act, 1998 (Act No.107 of 1998), within 180 14 days from the date of the notice; and

[Para. (a) substituted by s. 18 (e) of Act No. 49 of 2008 with effect from 8 December, 2014.]

- (b) to consult in the prescribed manner with the landowner, lawful occupier and any interested and affected party and submit~~include~~ the result of the consultation, within 30 days from the date of the notice; -

~~in the relevant environmental reports.~~

[Para. (b) substituted by s. 18 (e) of Act No. 49 of 2008 with effect from 8 December, 2014.]

- (c) to meaningfully consult with the interested and affected persons, within the prescribed period, regarding the prescribed social and labour plan 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 the applicable legislation.

~~(5) The Regional Manager must, within 14 days of receipt of the environmental reports and results of the consultation contemplated in subsection (4) and section 40, forward the application to the Minister for consideration.~~

~~[Sub-s. (5) substituted by s. 18 (f) of Act No. 49 of 2008 with effect from 8 December, 2014.]~~

23. Granting and duration of mining right.—(1) Subject to subsection (4), the Minister must grant a mining right if—

- (a) the mineral can be mined optimally in accordance with the mining work programme;
- (b) the applicant has access to financial resources and has the technical ability to conduct the proposed mining operation optimally;
- (c) the financing plan is compatible with the intended mining operation and the duration thereof;
- (d) the mining will not result in unacceptable pollution, ecological degradation or damage to the environment and an environmental authorisation is ~~is~~ has been issued;

[Para. (d) to be substituted by s. 19 (a) of Act No. 49 of 2008 with effect from 8 December, 2014.]

~~(a)~~(e) the applicant has complied with the requirements of the provided
for the prescribed social and labour plan, which must be reviewed every
five years for the duration of the mining right; ;

[Para. (e) substituted by s. 19 (b) of Act No. 49 of 2008.]

- (f) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);
- (g) the applicant is not in contravention of any provision of this Act; ~~and~~
- (h) the granting of such right will further the objects referred to in section 2 (d) and (f) and complies in accordance with ~~the charter contemplated in~~ section 100(3)(b) and the prescribed social and labour plan;and .-
- (i) the applicant has, where necessary, submitted proof of application for a licence for use of water in terms of the applicable legislation.

(2) The Minister ~~must may, having regard to the nature of the mineral in question,~~ take into consideration the provisions of section 26.

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

[Sub-s. (2A) inserted by s. 19 (c) of Act No. 49 of 2008.]

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

[Sub-s. (3) substituted by s. 19 (d) of Act No. 49 of 2008.]

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

(5)(a) A ~~mining~~ right granted in terms of subsection (1) comes into effect on the effective date. [Sub-s. (5) substituted by s. 19 (e) of Act No. 49 of 2008.]

(b) where an appeal against the granting of the right has been lodged within the prescribed period, the notarial deed of granting may not be executed until such appeal has been finalised.

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

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

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

(d):- where necessary, include proof of application for an amended environmental authorisation.

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

- (a) state the reasons and the period for which the renewal is required;
- (b) be accompanied by a report reflecting ~~the extent of the right holder's compliance with the conditions of the~~ National Environmental Management Act, 1998 (Act No.107 of 1998) ~~environmental authorisation;~~

[Para. (b) substituted by s. 20 (a) of Act No. 49 of 2008 with effect from 8 December, 2014.]

- (c) include a detailed mining work programme for the renewal period.

2A The Minister must take into consideration the provisions of section 26;

(3) The Minister must grant the renewal of a mining right if the application complies with subsections (1) and (2) and the holder of the mining right has complied with the—

- (a) terms and conditions of the mining right and is not in contravention of ~~any relevant provision of this Act or any other law;~~

(b) ~~the approved~~ mining work programme;

(c) ~~approved social and labour plan~~

(~~de~~) ~~conditions of the~~ National Environmental Management Act, 1998 (Act No.107 of 1998); and environmental authorisation.

[Para. (c) substituted by s. 20 (b) of Act No. 49 of 2008 with effect from 8 December, 2014.]

(~~dA~~) ~~the amended environmental authorisation provided that it has, where necessary, been approved requirements of the approved environmental management programme.~~

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

[Sub-s. (4) substituted by s. 20 (c) of Act No. 49 of 2008.]

(5)(~~a~~) A mining right in respect of which an application for renewal has been lodged shall, despite its expiry date, remain in force until such time as such application has been granted or refused.

(~~b~~) Whilst the mining right remains in force in terms of paragraph (a), the holder of the mining right is entitled to continue to conduct mining operations in terms of the existing mining work programme.

(~~c~~) Where an application in terms of paragraph (a) is granted, the renewal takes effect, and the renewal period for which application was made commences on, the date of execution.

(~~6~~) The Minister must refuse to renew a mining right if the applicant fails to comply with subsection (1), (2) or (3).

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

(2) The holder of a mining right must—

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

[Para. (a) substituted by s. 21 (a) of Act No. 49 of 2008.]

(b) commence with mining operations within one year from the date on which the mining right becomes effective in terms of section 23 (5) or such extended period as the Minister may authorise;

(c) actively conduct mining in accordance with the mining work programme;

(d) comply with the ~~relevant~~ provisions of this Act, any other relevant law and the terms and conditions of the mining right;

(~~e~~) comply with the conditions of the environmental authorisation issued in terms of the National Environmental Management Act, 1998 (Act No.107 of 1998);

[Para. (e) to be substituted by s. 21 (b) of Act No. 49 of 2008 with effect from 8 December, 2014.]

(~~f~~) implement ~~comply with the approved requirements of the prescribed~~ social and labour plan ~~despite the operational status of the mine, which must be reviewed every five years for the duration of the mining right;~~

(~~fa~~) comply with the requirements of section 100(3)(b);

(g) in terms of any relevant law, pay the State royalties; and

[Para. (g) substituted by s. 21 (c) of Act No. 49 of 2008.]

(h) submit the prescribed annual report, detailing ~~the extent of~~ the holder's compliance with ~~the provisions of~~ section 2 (d) and (f), section 100(3)(b) ~~the charter contemplated in section 100~~ and the social and labour plan.

26. Mineral beneficiation.—(1) The Minister ~~must~~ may, 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 resources in the Republic.

[Sub-s. (1) substituted by s. 22 (a) of Act No. 49 of 2008.]

(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

(~~a~~)(c) to develop local beneficiation capacity.

(2) ~~The Minister must –~~

(a) Consult with other Ministers in Government on a holistic approach to support local beneficiation ;

(b) taking into consideration the national developmental imperatives, such as macro-economic stability, energy security, industrialisation, food security and infrastructure development ; and

(c) considering the advice of the council as contemplated in section 56B, publish in the prescribed manner conditions required to ensure security of supply for local beneficiation.

~~f the Minister, acting on advice of the Board and after consultation with the Minister of Trade and Industry, finds that a particular mineral can be beneficiated economically in the Republic, the Minister may promote such beneficiation subject to such terms and conditions as the Minister may determine.~~

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

[Sub-s. (2A) inserted by s. 22 (b) of Act No. 49 of 2008.]

(2B) Every producer of minerals must make available minerals or mineral products for local beneficiation.

(3) Any person who intends to beneficiate any mineral mined in the Republic outside the Republic may only do so after written notice and in consultation with the Minister.

27. Application for, issuing and duration of small-scale mining permit.—(1) A mining permit may only be issued if—

(a) the mineral in question can be mined optimally within a period of five~~two~~ years; and

(b) the mining area in question does not exceed 5.0 hectares in extent.

[Para. (b) substituted by s. 23 (a) of Act No. 49 of 2008.]

(2) Any person who wishes to apply to the Minister for a small-scale mining permit must simultaneously apply for an environmental authorisation and must, subject to section 9, lodge the application—

(a) on the designated application system; at the office of the Regional Manager in whose region the land is situated;

(b) in the prescribed manner; and

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

[Sub-s. (2) amended by s. 23 (b) of Act No. 49 of 2008 with effect from 8 December, 2014.]

(3) The ~~Minister~~Regional Manager must accept an application for a [sic] mining permit if—

- (a) the requirements contemplated in subsection (2) are met;
- (b) no other person holds a prospecting right, mining right, small-scale mining permit, artisanal mining permit or retention permit for the same mineral and land;
- (c) the granting of a permit will not result in the applicant being granted more than one small-scale mining permit on the same or adjacent land; and. -

[Para. (c) added by s. 23 (c) of Act No. 49 of 2008.]

- (d) no prior application for a prospecting right, mining right, small-scale mining permit and artisanal mining permit or retention permit has been accepted for the same mineral on the same land, and which remains to be granted or refused.

(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 of the receipt of the application.

[Sub-s. (4) substituted by s. 23 (d) of Act No. 49 of 2008.]

(5) Upon receipt of If the Regional Manager accepts the application, the Minister Regional Manager must within 14 days of the receipt accept of the application and, notify the applicant in writing, within the prescribed period, to—

- (a) consult in the prescribed manner with the landowner, lawful occupier and any interested and affected party and include the result of the consultation in the relevant environmental reports; and

[Para. (a) substituted by s. 23 (e) of Act No. 49 of 2008.]

- (b) submit the relevant environmental reports as required in terms of the National Environmental Management Act, 1998, within 60 days from the date of the notice; and-

[Sub-s. (5) amended by s. 23 (e) of Act No. 49 of 2008. Para. (b) substituted by s. 23 (e) of Act No. 49 of 2008 with effect from 8 December, 2014.]

- (c) to apply, where necessary, for the water use licence in terms of the applicable legislation.

(6) The Minister must, within 60 days of receipt of the application from the Regional Manager, issue a mining permit if—

- (a) the requirements contemplated in subsection (1) are satisfied; and

- (b) the environmental authorisation is issued;

[Para. (b) substituted by s. 23 (g) of Act No. 49 of 2008 with effect from 8 December, 2014.]

- (c) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996); and

[Sub-s. (6) amended by s. 23 (f) of Act No. 49 of 2008. Para. (c) added by s. 23 (h) of Act No. 49 of 2008.]

- (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.

- (6A) The Minister must within 30 days of receipt of an application, refuse to issue a small-scale mining permit if the applicant does not meet the requirements contemplated in subsection (6).

(7) The holder of a small-scale mining permit—

- (a) may enter the land to which such permit relates together with his or her employees, and may bring onto that land any plant, machinery or equipment and build, construct or lay down any surface or underground infrastructure which may be required for purposes of mining;

- (b) subject to the National Water Act, 1998 (Act No. 36 of 1998), may use water from any natural spring, lake, river or stream situated on, or flowing through, such land or from any excavation previously made and used for prospecting or mining purposes, as the case may be, or sink a well or borehole required for use relating to prospecting or mining, as the case may be, on such land; and

- (c) in terms of any relevant law, must pay the State royalties;

[Para. (c) substituted by s. 23 (i) of Act No. 49 of 2008.]

- (d) may mine, for his or her own account on or under that mining area for the mineral for which such permit relates.

- (e) must submit the small-scale mining permit for recording at the Mineral and Petroleum Titles Registration Office within 60 days after the permit has been issued.

[Para. (e) added by s. 23 (j) of Act No. 49 of 2008.]

(8) (1) Any holder of a small-scale mining permit, who intends to renew such permit, must lodge the application—

- ~~(a) (a) — at the office of the Minister in whose region the land is situated;~~
 - ~~(b) In the prescribed manner; and~~
 - ~~(c) together with the prescribed nonrefundable application fee.~~
- ~~is valid for the period specified in the permit, which may not exceed a period of two years, and may be renewed for three periods each of which may not exceed one year;~~
- ~~(2) An application for renewal of a small-scale mining permit must –~~
 - ~~(a) state the reasons for the renewal and be accompanied by a detailed report reflecting the mining results, the interpretation thereof and the mining expenditure incurred; and~~
 - ~~(b) be accompanied by a report reflecting the extent of compliance with the conditions of the environmental authorisation.~~
 - ~~(3) The Minister must grant the renewal of a mining permit if the application complied with subsections (1) and (2) and the holder of the small-scale mining permit has complied with the –~~
 - ~~(a) terms and conditions of the mining permit and is not in contravention of any relevant provision of this Act'; and~~
 - ~~(b) conditions of the environmental authorisation.~~
 - ~~(4) The small-scale mining permit –~~
 - ~~(a) is valid for the period specified in the permit, which may not exceed a period of five years, and may be renewed for a period of five years; and~~
 - ~~(b) may not be transferred, ceded, let, sublet, alienated or disposed of, or in any way whatsoever, but may be encumbered or mortgaged only for the purpose of funding or financing of the mining project in question, with the Minister's consent, in writing.~~
 - ~~(9)(1) A permit granted in terms of subsection (6) comes into effect –~~
 - ~~(a) on the effective date; or~~
 - ~~(b) where an appeal against the issuing of a permit or the approval of the environmental authorisation has been lodged, within the prescribed period, until such appeal has been finalised.~~
 - ~~(10) (a) A small-scale mining permit in respect of which an application for renewal has been lodged remains in force, despite its stated expiry date, until such time as such application has been issued or refused.~~
 - ~~(b) Whilst small-scale mining permit remains in force in terms of paragraph (a), the holder of such permit is entitled to continue to conduct mining operations in terms of the existing approved terms and conditions.~~
 - ~~(c) Where an application for renewal is issued in terms of paragraph (a), the renewal takes effect, and the renewal period for which the application was made, commences, on the date of issuing of the renewal permit.~~
 - ~~(11) The Minister must grant or refuse the renewal of a small-scale mining permit within 60 days if the applicant fails to comply with subsection (1),(2) or (3).~~

27A. Application for, issuing and duration of Artisanal mining permit. – (1) An artisanal mining permit may only be issued if –

- ~~(a) the mineral in question can be mined optimally within a period of two years; and~~
- ~~(b) the mining area in question does not exceed 1.5 hectares in extent.~~
- ~~(2) Any person who wishes to apply to the Minister for an artisanal mining permit must simultaneously submit an artisanal mining environmental authorisation, as prescribed, and must lodge the application –~~
 - ~~(a) at the regional office in which land is situated or on the designated application system;~~
 - ~~(b) in the prescribed manner; and~~
 - ~~(c) together with the prescribed non-refundable application fee.~~
- ~~(3) An application for an artisanal mining permit must be accepted if –~~
 - ~~(a) the requirements contemplated in subsection (2) are met;~~
 - ~~(b) no other person holds a prospecting right, mining right, small-scale mining permit, artisanal mining permit or retention permit for the same mineral and land;~~
 - ~~(c) the granting of a permit will not result in the applicant being granted more than one artisanal mining permit on the same or adjacent land; and~~
 - ~~(d) no prior application for a prospecting right, mining right, small-scale mining permit, artisanal mining permit or retention permit has been accepted for the same mineral on the same land, and which remains to be granted or refused.~~
- ~~(4) If the Minister accepts an application, the Minister must notify the applicant, in writing, within 14 days to consult, in the prescribed manner, with the landowner, lawful occupier and any interested and affected party, and include the result of the consultation in the relevant environmental reports.~~
- ~~(5) The Minister must, within 30 days of receipt of the application, issue an artisanal mining permit if–~~
 - ~~(a) the requirements contemplated in subsection (1) are satisfied;~~
 - ~~(b) an artisanal mining environmental authorisation is issued; and~~
 - ~~(c) the applicant has the ability to comply with health and safety guidelines.~~
- ~~(6) The holder of an artisanal mining permit must submit the artisanal mining permit for recording at the Mineral and Petroleum Titles Registration Office within 30 days after the permit has been issued.~~
- ~~(7) Any holder of an artisanal mining permit who wishes to apply to the Minister for the renewal of such~~

- permit must lodge the application –
- (a) at the office of the Minister in whose region the land is situated or on the designated application system;
 - (b) in the prescribed manner; and
 - (c) together with the prescribed non-refundable application fee.
- (8) An application for renewal of artisanal mining permits must –
- (a) state the reasons for the renewal; and
 - (b) be accompanied by a report reflecting the extent of compliance with the conditions of the artisanal mining environmental authorisation.
- (9) The Minister must grant the renewal of an artisanal mining permit if the application complies with subsections (1) and (2) and the holder of the artisanal mining permit has complied with the –
- (a) terms and conditions of the artisanal mining permit, and is not in contravention of any relevant provision of this Act; and
 - (b) conditions of the artisanal mining environmental authorisation.
- (10) An artisanal mining permit –
- (a) is valid for the period specified in the permit, which may not exceed a period of two years, and may be renewed for another period of two years; and
 - (b) may not be transferred, ceded, let, sublet, alienated, disposed of, encumbered or mortgaged.

28. Information and data in respect of mining or processing of minerals.—(1) The holder of a mining right ~~, small-scale~~or mining permit or artisanal 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.

[Sub-s. (1) substituted by s. 24 (a) of Act No. 49 of 2008.]

(2) The holder of a mining right ~~, or small-scale~~ mining permit or artisanal 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 accurate information and data in respect of mineral reserves and resources within the mining areas. the extent of the holder's compliance with the provisions of section 2 (d) and (f), the charter contemplated in section 100 and the social and labour plan.

[Sub-s. (2) amended by s. 24 (b) of Act No. 49 of 2008.]

- (3) The holder of a mining right must submit to the Minister the prescribed annual report detailing the holder's compliance with section 2(d) and (f), the broad-based socio-economic empowerment prescribed elements of ownership, inclusive procurement, supplier and enterprise development, human resources development, employment equity and mining community development and the approved social and labour plan.

29. Minister's power to direct submission of specified information or data.—The Minister may, in order to achieve the objects of this Act ~~and~~ to fulfil any of the functions in terms of this Act, direct, in writing that specified information or data be submitted by—

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

30. Disclosure of information.—(1) Subject to subsection (2), any information or data submitted in terms of section 21, 28 or 29 may be disclosed to any person—

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

(2) No information or data may be disclosed to any person if it contains information or data which is of commercially [sic] nature and is supplied to be treated as confidential ~~in confidence~~ by the supplier of the information or data.

(3) Any person submitting information or data in terms of section 28 or 29 must inform the Regional Manager concerned and indicate which information and data is of commercial nature and must be treated as confidential and may not be disclosed.

[Sub-s. (3) substituted by s. 25 (a) of Act No. 49 of 2008.]

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

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

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

[Sub-s. (5) added by s. 25 (b) of Act No. 49 of 2008.]

31. Application for retention permit.—(1) Any holder of a prospecting right or mining right who wishes to apply to the Minister for a retention permit must—

- (a) lodge the application at the office of the Regional Manager in whose region the land is situated;

[Para. (a) substituted by s. 26 of Act No. 49 of 2008.]

- (b) lodge the application in the prescribed manner;

[Para. (b) substituted by s. 26 of Act No. 49 of 2008.]

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

[Para. (c) substituted by s. 26 of Act No. 49 of 2008.]

- (d) in the application state the reasons and period for which the retention permit is requested; and
 - (e) submit a report reflecting ~~the extent of~~ compliance with ~~the~~ section 32 (1).
- (2) The Regional Manager must accept an application for a retention permit, if—
- (a) the requirements contemplated in subsection (1) are met; and
 - (b) the applicant is the holder of the prospecting right or mining right in question.

32. Issuing and duration of retention permit.—(1) The Minister may issue a retention permit if the holder of the prospecting right or mining right has—

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

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

[Sub-s. (3) substituted by s. 27 of Act No. 49 of 2008 with effect from 8 December, 2014.]

(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 the mining right.

33. Refusal of application for retention permit.—The Minister may refuse to issue a retention permit if, after having regard to the information submitted under section 32 (1) and research conducted by the ~~council~~ Board—at the request of the Minister, it is established that—

- (a) the mineral to which the application relates can be mined profitably;
- (b) the applicant has not completed the prospecting or mining operations and feasibility study in relation thereto; or
- (c) the granting of such right will result in the concentration of the mineral resources in question under the control of the applicant and their associated companies with the possible limitation of equitable access to mineral resources.

[Para. (c) substituted by s. 28 of Act No. 49 of 2008.]

34. Application for renewal of retention permit.—(1) An application for the renewal of a retention permit must be lodged in the same manner as an application for a retention permit contemplated in section 31 (1) and must include—

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

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

- (a) the holder has complied with the relevant provisions of this Act, any other relevant law and the terms and conditions of the retention permit; and
- (b) the market conditions contemplated in section 32 (1) (d) still prevail.

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

35. Rights and obligations of holder of retention permit.—(1) Subject to subsection (2), the holder of a retention permit has the exclusive right to be granted a mining right in respect of the retention area and mineral in question.

(2) The holder of a retention permit must—

- (a) give effect to the conditions of the environmental authorisation and pay the prescribed retention fees;

[Para. (a) substituted by s. 29 (a) of Act No. 49 of 2008 with effect from 8 December, 2014.]

(b) submit a six monthly progress report to the Regional Manager indicating—

- (i) the prevailing market conditions, the effect thereof and the need to hold such retention permit in respect of the mineral and land in question; and

[Sub-para. (i) substituted by s. 29 (b) of Act No. 49 of 2008.]

- (ii) efforts undertaken by such holder to ensure that mining operations commence before the expiry period referred to in section 32 (4) or 34 (3), as the case may be.

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

[Para. (c) added by s. 29 (c) of Act No. 49 of 2008.]

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

37. Environmental management principles.—(1) ~~The principles set out in section 2 All environmental requirements provided for by this Act will be implemented in terms~~ of the National Environmental Management Act, 1998 (Act No. 107 of 1998).—

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

[Para. (a) substituted by s. 30 of Act No. 49 of 2008.]

(b) ~~serve as guidelines for the interpretation, administration and implementation of the environmental requirements of this Act.~~

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

38.

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

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

[S. 38A inserted by s. 32 of Act No. 49 of 2008 with effect from 8 December, 2014.]

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

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

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

~~(4) All pending applications lodged in terms of this Act prior to 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.~~

~~.....~~

(Editorial Note: S. 38B to be inserted by s. 32 of Act No. 49 of 2008 with effect from a date to be determined by the President by proclamation in the *Gazette* – date not determined.)

39.

[S. 39 repealed by s. 33 of Act No. 49 of 2008.]

40.

[S. 40 repealed by s. 33 of Act No. 49 of 2008.]

41.

[S. 41 repealed by s. 33 of Act No. 49 of 2008.]

42.

42A. Management of historic residue stockpiles and residue deposits. – (1) In order to promote orderly and optimal development of mineral resources and guarantee security of tenure, all historic residue stockpiles and residue deposits currently not regulated under this Act belong to the owners thereof and shall continue in force for a period of two years from the date on which the Mineral and Petroleum Resources Development Amendment Act, 2025, commences.

(2) The holder of a mining right, small-scale mining permit or artisanal 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.

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

(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 Minister in whose region the residue deposit or residue stockpile is situated, for a mining right, small-scale mining permit or artisanal mining permit, as the case may be, within a period of two years from the date of commencement of the Mineral and Petroleum Resources Development Amendment Act, 2025.

(5) The mining right, small-scale mining permit or artisanal 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.

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

(7) The holder must lodge the mining right, small-scale mining permit or artisanal 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, small-scale mining permit or artisanal 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 where the owner fails to apply for a mining right, small-scale mining permit or artisanal 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.

43. Issuing of a closure certificate.—(1) The holder of a prospecting right, mining right, retention permit, small-scale mining permit or artisanal 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 ~~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.

[Sub-s. (1) substituted by s. 34 (a) of Act No. 49 of 2008.]

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

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

[Sub-s. (2) substituted by s. 34 (b) of Act No. 49 of 2008.]

(3) The holder of a prospecting right, mining right, retention permit, small-scale mining permit or artisanal mining permit, or previous holder of an old order right or previous owner of works that ~~have~~ ceased to exist, or the person contemplated in subsection (2), as the case may be, must apply for a closure certificate upon—

- (a) the lapsing, abandonment or cancellation of the right or permit in question;
- (b) cessation of the prospecting or mining operation;
- (c) the relinquishment of any portion of the prospecting of the land to which a right, permit or permission relate; or
- (d) completion of the prescribed closing plan to which a right, permit or permission relate.

[Sub-s. (3) amended by s. 34 (c) of Act No. 49 of 2008.]

(4) An application for a closure certificate must be made to the Regional Manager in whose region the land in question is situated within 180 days of the occurrence of the lapsing, abandonment, cancellation, cessation, relinquishment or completion contemplated in subsection (3) and must be accompanied by the required information, programmes, plans and reports prescribed in terms of this Act and the National Environmental Management Act, 1998.

[Sub-s. (4) substituted by s. 34 (d) of Act No. 49 of 2008 with effect from 8 December, 2014.]

(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 Sanitation~~ have confirmed, in writing, that the provisions pertaining to health and safety and management pollution to water resources, the pumping and treatment of extraneous water and compliance to the conditions of the environmental authorisation have been addressed.

[Sub-s. (5) substituted by s. 34 (e) of Act No. 49 of 2008.]

(5A) Confirmation from the Chief Inspector ~~of Mines and Department of Water and Sanitation~~~~each government department-s~~ contemplated in subsection (5) must be received within 60 days from the date on which the Minister informs ~~thesuch~~ Chief Inspector ~~of Mines or Department of Water and Sanitation~~~~government department~~, in writing, to do so.

[Sub-s. (5A) inserted by s. 34 (f) of Act No. 49 of 2008.]

(6) When the Minister issues a certificate he or she ~~must return such portion of the financial provision contemplated in section 41 of 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.~~

[Sub-s. (6) substituted by s. 34 (g) of Act No. 49 of 2008 with effect from 8 December, 2014.]

(7) The holder of a prospecting right, mining right, retention permit, small-scale mining permit or artisanal mining permit, or previous holder of an old order right or previous owner of works that have ceased to exist, or the person contemplated in subsection (2), as the case may be, must plan for, manage and implement such procedures and such requirements on mine closure as may be prescribed.

[Sub-s. (7) added by s. 34 (h) of Act No. 49 of 2008.]

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

[Sub-s. (8) added by s. 34 (h) of Act No. 49 of 2008.]

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

[Sub-s. (9) added by s. 34 (h) of Act No. 49 of 2008.]

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

[Sub-s. (10) added by s. 34 (h) of Act No. 49 of 2008.]

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

[Sub-s. (11) added by s. 34 (h) of Act No. 49 of 2008.]

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

[Sub-s. (12) added by s. 34 (h) of Act No. 49 of 2008.]

(13) No closure certificate may be issued unless—

- (a) the Council for Geoscience has confirmed in writing that complete and correct prospecting reports in terms of section 21 (1) have been submitted to the Council for Geoscience;
- (b) the complete and correct records, borehole core data or core-log data that the Council of Geoscience may deem relevant, have been lodged with the Council for Geoscience; or
- (c) in the case of the holder a permit or right in terms of this Act, the complete and correct surface and the relevant underground geological plans have been lodged with the Council for Geoscience.

[Sub-s. (13) added by s. 34 (h) of Act No. 49 of 2008.]

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

44. Removal of buildings, structures and other objects.—(1) When a prospecting right, mining right, retention permit, ~~or small scale mining permit or artisanal 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—

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

[Sub-s. (1) amended by s. 35 (a) of Act No. 49 of 2008.]

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

[Sub-s. (2) substituted by s. 35 (b) of Act No. 49 of 2008.]

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

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

[Sub-s. (1) substituted by s. 36 (a) of Act No. 49 of 2008 with effect from 8 December, 2014.]

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

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

(c) In order to implement the measures contemplated in paragraph (a), the Minister may by way of an *ex parte* application apply to a High Court for an order to seize and sell such property of the holder as may be necessary to cover the expenses of implementing such measures.

(d) ~~In addition to the application in terms of paragraph (c),~~ If funds raised by way of seizure and selling of property as envisaged in paragraph (c) are insufficient to cover the expenses of implementing such measures, the Minister may use funds appropriated for that purpose by Parliament to fully implement such measures.

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

46. Minister's power to remedy environmental damage in certain instances.—(1) If the Minister directs that measures contemplated in section 45 must be taken to prevent pollution or ecological degradation of the environment, to 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 small-scale mining permit~~ or artisanal mining permit, the holder of an old order right or the previous owner of works, as the case may be, ~~or his or her successor in title is deceased or cannot be traced, or in the case of a juristic person, has ceased to exist, has been liquidated or cannot be traced, the Minister~~ ~~in consultation with the Minister of Environmental Affairs and Tourism~~, may instruct the Minister 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.

[Sub-s. (1) substituted by s. 37 (a) of Act No. 49 of 2008.]

(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.

[Sub-s. (2) substituted by s. 37 (b) of Act No. 49 of 2008.]

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

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

47. Minister's power to suspend or cancel rights, permits or permissions.—(1) Subject to subsections (2), (3) and (4), the Minister may cancel or suspend any reconnaissance permission, prospecting right, mining right, small-scale mining permit, artisanal mining permit, retention permit or ~~holders of~~ old order rights or previous owner of works, if the holder or owner thereof—

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

[Para. (c) substituted by s. 38 (b) of Act No. 49 of 2008 with effect from 8 December, 2014.]

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

[Para. (d) substituted by s. 38 (c) of Act No. 49 of 2008.]

- (e)

[Sub-s. (1) amended by s. 38 (a) of Act No. 49 of 2008.]

- (e) has conducted the transactions mentioned in section 11 (1) before obtaining the necessary prior written approval of the Minister.

(Proposed amendment: Para. (e) to be added by s. 38 (d) of Act No. 49 of 2008 with effect from a date to be determined by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

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

- (a) give written notice to the holder indicating the intention to suspend or cancel the right;
- (b) set out the reasons why he or she is considering suspending or cancelling the right;
- (c) afford the holder a period of 30 days to make representations, in writing, a reasonable opportunity to show as to why the right, permit or permission should not be suspended or cancelled; and
- (d) notify the mortgagee, if any, of the prospecting right, mining right, ~~or small-scale mining permit~~ or artisanal mining permit concerned of his or her intention to suspend or cancel the right or permit; ~~and.~~

[Para. (d) substituted by s. 38 (e) of Act No. 49 of 2008.]

- (e) direct the holder, in writing, to take specified measures to remedy any contravention, breach or failure.

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

~~failure.~~

(4) If the holder does not comply with the directive~~ven~~ given under subsection ~~(2)(e)(3)~~, the Minister may act under subsection (1) against the holder after having—

- (a) given the holder ~~a reasonable opportunity a period of 30 days~~ to make representations, as contemplated in subsection (2)(c); and
 - (b) considered any such representations.
- (5) The Minister may by written notice to the holder lift a suspension if the holder—
- (a) complies with a directive contemplated in subsection ~~(2)(e)(3);~~ or
 - (b) furnishes compelling reasons for the lifting of the suspension.

48. Restriction or prohibition of prospecting and mining on certain land.—(1) Subject to section 48 of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003), and subsection (2), no reconnaissance permission, prospecting right, mining right may be granted or small-scale mining permit or artisanal mining permit be issued in respect of —

- (a) land comprising a residential area and any land which is within an approved town planning scheme and zoned for residential purposes;
- (b) any public road, railway or cemetery;
- (c) any land being used for public or government purposes or reserved in terms of any other law; or
- (d) areas identified by the Minister by notice in the *Gazette* in terms of section 49.

[Sub-s. (1) amended by s. 39 of Act No. 49 of 2008.]

(2) A reconnaissance permission, prospecting right, mining right, ~~or small-scale~~ mining permit or artisanal mining permit may be issued in respect of the land contemplated in subsection (1) if the Minister is satisfied that—

- (a) having regard to the sustainable development of the mineral resources involved and the national interest, it is desirable to issue it;
- (b) the reconnaissance, prospecting or mining will take place within the framework of national environmental management policies, norms and standards; and
- (c) the granting of such rights or permits will not detrimentally affect the interests of any holder of a prospecting right or mining right.

49. Minister's power to prohibit or restrict prospecting or mining.—(1) Subject to subsection (2), the Minister may ~~after inviting representations from relevant stakeholders, from time to time after consulting the relevant Ministers,~~ by notice in the *Gazette*, having regard to the national interest, designate certain minerals as strategic minerals ~~the strategic nature of the mineral in question and the need~~ to promote the sustainable development of the nation's mineral resources—

- (a) prohibit or restrict the granting of any reconnaissance permission, prospecting right, mining right, ~~or small-scale~~ mining permit or artisanal mining permit in respect of land identified by the Minister for such period and on such terms and conditions as the Minister may determine; or
- (b) restrict the granting of any reconnaissance permission, ~~reconnaissance permit,~~ prospecting right, mining right, ~~or small-scale~~ mining permit or artisanal mining permit in respect of a specific mineral ~~or mining permit in respect of a specific mineral~~ or minerals or class of minerals identified by the Minister for such period and on such terms and conditions as the Minister may determine.

[Sub-s. (1) substituted by s. 40 (a) of Act No. 49 of 2008.]

(2) A notice contemplated in subsection (1) does not affect prospecting or mining in, on or under land which, on the date of the notice is the subject of a reconnaissance permission, prospecting right, a mining right, a retention permit or a mining permit.

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

- (a) lift a prohibition or restriction made in terms of subsection (1) if the circumstances which caused the Minister so to prohibit or restrict no longer exist; or
- (b) amend the period, term or condition applicable to any prohibition or restriction made in terms of subsection (1) if the circumstances which caused the Minister so to prohibit or restrict have changed.

(4) Subject to subsection (2) (b), the Minister may, by notice in the *Gazette* invite applications for a reconnaissance permission, prospecting right, mining right, ~~or small-scale~~ mining permit or artisanal mining permit in respect of any mineral or land, and may specify in such notice the period within which any application may be lodged and the terms and conditions subject to which such right or permit may be granted.

[Sub-s. (4) added by s. 40 (b) of Act No. 49 of 2008.]

(5) An application referred to in subsection (4) may be granted if the application complied with the requirements of sections 14, 17, 23, 27 or 27A of this Act, as this case may be.

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

(2) (a) The Minister must compensate the owner of the land in question if any loss or damage is caused during an investigation contemplated in subsection (1).

(b) The Minister and the owner of the land may agree upon the compensation to be paid.

(c) If no agreement is reached, the amount of compensation must be fixed by arbitration in terms of the

Arbitration Act, 1965 (Act No. 42 of 1965) or by a competent court.

(3) No investigation may be conducted under subsection (1) unless—

- (a) the Minister has published a notice in the *Gazette*—
 - (i) indicating an intention to conduct the investigation;
 - (ii) inviting written comments on the proposed investigation, specifying an address to which and the date before which comments must be submitted; and
 - (iii) calling on the owner, occupier or person in control of such land to furnish the Minister with his or her particulars, if such owner, occupier or person is not known to the Minister;
- (b) the Minister has considered any comments received; and
- (c) a period of 30 days has lapsed after the Minister published the notice.

(4) (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.

(b) If the owner, occupier or person in control of the land in question cannot be traced, a copy of the notice contemplated in paragraph (1) (a) must be affixed at a prominent place on the land before the investigation may be conducted.

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

51. Optimal mining of mineral resources.—(1) Subject to subsection (2), the ~~council~~Board may recommend to the Minister to direct the holder of a mining right to take corrective measures if the ~~council~~Board establishes that the minerals are not being mined optimally in accordance with the mining work programme or that a continuation of such practice will detrimentally affect the objects referred to in section 2 (f).

(2) Before making the recommendation, the ~~council~~Board must consider whether the technical and financial resources of the holder of the mining right in question and the prevailing market conditions justify such recommendation.

(3) (a) If the Minister agrees with the recommendation, he or she must, within 30 days from date of receipt of the recommendation of the ~~council~~Board, in writing notify the holder that he or she must take such corrective measures as may be set out in the notice and must remedy the position within the period ~~specified~~mentioned in the notice.

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

(4) The Minister may, on the recommendation of the ~~council~~Board, suspend or cancel a mining right if—

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

(5) The Minister may, on the recommendation of the ~~council~~Board, lift the suspension of a mining right if the holder in question—

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

52. Notice of profitability and curtailment of mining operations affecting employment.—(1) The holder of a mining right must, after consultation with any registered trade union or affected employees or their nominated representatives where there is no such trade union, notify the Minister in the prescribed manner—

- (a) where prevailing economic conditions cause the profit to revenue ratio of the relevant mine to be less than six per cent on average for a continuous period of 12 months; or
- (b) if any mining operation is to be scaled down or to cease with the possible effect that 10 per cent or more of the labour force or more than 500 employees, whichever is the lesser, are likely to be retrenched in any 12-month period.

[Sub-s. (1) amended by s. 41 (a) of Act No. 49 of 2008.]

(2) The ~~council~~Board must, after consultation with the relevant holder, investigate—

- (a) the circumstances referred to in subsection (1); and
- (b) the socio-economic and labour implications thereof and make recommendations to the Minister.

(3) (a) The Minister may, ~~on the recommendation of the Board and~~ after consultation with the 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.

(b) The holder of the mining right must comply with the directive and confirm in writing that the corrective measures have been taken.

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

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

[Sub-s. (4) added by s. 41 (b) of Act No. 49 of 2008.]

53. Use of land surface rights contrary to objects of Act.—(1) Subject to subsection (2), any person who intends to use the surface of any land in any way which may be contrary to any object of this Act or which is likely to impede any such object must ~~obtain comments apply to~~ from the Minister ~~for approval~~ in the prescribed manner.

(2) Subsection (1) does not apply to—

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

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

[Sub-s. (3) substituted by s. 42 of Act No. 49 of 2008.]

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

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

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

54. Compensation payable under certain circumstances.—(1) The holder of a reconnaissance permission, prospecting right, mining right, ~~or small-scale mining permit~~ or artisanal mining permit must notify the relevant ~~[sic] the Minister Regional Manager~~ if that holder is prevented from commencing or conducting any reconnaissance, prospecting or mining operations because the owner or the lawful occupier of the land in question—

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

(2) The ~~Minister Regional Manager~~ must, within ~~the prescribed period~~ 14 days from the date of the notice referred to in subsection (1)—

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

(3) If the Regional Manager, after having considered the issues raised by the holder under subsection (1) and any written representations by the owner or the lawful occupier of the land, concludes that the owner or occupier has suffered or is likely to suffer loss or damage as a result of the reconnaissance, prospecting or mining operations, he or she must request the parties concerned to endeavor to reach an agreement for the payment of compensation for such loss or damage.

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

(5) If the Regional Manager, having considered the issues raised by the holder under subsection (1) and any representations by the owner or occupier of land and any written recommendation by the Regional Mining

Development and Environmental Committee, concludes that any further negotiation may detrimentally affect the objects of this Act referred to in section 2 (c), (d), (f) or (g), the Regional Manager may recommend to the Minister

that such land be expropriated in terms of section 55.

(6) If the ~~Minister Regional Manager~~ determines that the failure of the parties to reach an agreement or to resolve the dispute is due to the fault of the holder of the reconnaissance permission, prospecting right, mining right, ~~or small-scale mining permit or artisanal mining permit~~, the ~~Minister Regional Manager~~ may, in writing, ~~prohibit~~ such holder from commencing or continuing with prospecting or mining operations on the land in question until such time as the dispute has been resolved by arbitration or by a competent court.

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

55. Minister's power to expropriate property for purpose of prospecting or mining.—(1) If it is necessary for the achievement of the objects referred to in section 2 (d), (e), (f), (g) and (h) the Minister may, in accordance with section 25 (2) and (3) of the Constitution, expropriate any land or any right therein and pay compensation in respect thereof.

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

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

56. Lapsing of right, permit and permission.—Any right, permit ~~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 sequestered;~~
- (e) it is cancelled in terms of section 47; or
- (f) it is abandoned.

[S. 56 amended by s. 43 (a) and (b) of Act No. 49 of 2008.]

(2) in the event that the holder is liquidated and finally deregistered or sequestered, the right, permit, permission, or licence 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.

56A. Establishment of Ministerial Advisory Council. – (1) The Minister may establish a council to be known as the Ministerial Advisory Council.

(2) The Minister must appoint the members of the council as prescribed.

(3) The Minister must appoint the following members of the Council:

- (a) the Chair-person;
- (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 council's capabilities of performing its functions more effectively.

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

56B. Functions of the Ministerial Advisory Council. – The council must advise the Minister on -

- (a) sustainable development of the nation's mineral resources;
- (b) the growth and transformation of the minerals and mining industry;
- (c) the terms and conditions applicable to beneficiation as contemplated in section 26; and
- (d) any other matter which the Minister refers to the council.

56C. Subcommittees of Council. – (1) The council may appoint subcommittees to assist with its functions as it may determine.

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

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

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

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

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

56D. Disqualification of members. – (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
- (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;
 - (iii) has been convicted of an offence committed after the date of commencement of the Constitution and sentenced to imprisonment without the option of a fine, unless the person has received a grant of amnesty or a free pardon before the date of his or her appointment.

56E. Vacation of Office. – (1) A member of the Council must vacate his or her office if he or she –

- (a) becomes subject to any disqualification contemplated in section 56D, or in the case of an official in the service of the State, ceases to be such an official;
- (b) has been absent for more than two consecutive meetings of the council without leave;
- (c) tenders his or her resignation in writing to the Minister and the Minister accepts the resignation; or
- (f) is removed from the office by the Minister under subsection (2).

(2) The Minister may remove any member of the council from office –

- (a) on account of misconduct or inability to perform functions of his or her office properly; or
- (b) if the member has engaged in any activity that may undermine the integrity of the council, which activities may include –
 - (i) participation in 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 council: or
 - (iii) divulging any information referred to in subparagraph (ii) to any third party, except as required by or under this Act or the Promotion of Access to Information Act, 2000 (Act No.2 of 2000).

56F. Term of office and filling of vacancies. – (1) A member of the council shall hold office for a period not exceeding three years.

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

(3) If a member of the committee vacates the 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.

56G. Remuneration and allowances of members of Ministerial Advisory Council- The members of the council who are not in the full-time employment of the State, must be paid such remuneration and allowances as may be determined by the Minister in consultation with the Minister of Finance.

CHAPTER 5
MINERALS AND PETROLEUM BOARD
[Heading substituted by s. 44 of Act No. 49 of 2008.]

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

~~[S. 57 substituted by s. 45 of Act No. 49 of 2008.]~~

58. ~~Functions of Board.~~ ~~(1) The Board—~~

- ~~(a) must advise the Minister on—
 - ~~(i) any matter which must be referred to the Board by or under this Act;~~
 - ~~(ii) the sustainable development of the nation's mineral and petroleum resources;~~
~~[Sub para. (ii) substituted by s. 46 of Act No. 49 of 2008.]~~
 - ~~(iii) the transformation and downscaling of the minerals and petroleum industries; and~~
~~[Sub para. (iii) substituted by s. 46 of Act No. 49 of 2008.]~~
 - ~~(iv) objections referred to the Minister by the Board;~~
~~[Sub para. (iv) substituted by s. 46 of Act No. 49 of 2008.]~~~~
- ~~(b) must, in consultation with the Mining Qualifications Authority, ensure the promotion of human resource development in the minerals and mining industry; and~~
- ~~(c) may—
 - ~~(i) report to the Minister on any matter relating to the application of this Act; and~~
 - ~~(ii) enquire into and report to the Minister on any matter concerning the objects of this Act.~~~~

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

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

~~[Sub s. (1) substituted by s. 47 (a) of Act No. 49 of 2008.]~~

~~(2) The Minister must appoint as members of the Board—~~

- ~~(a) a Chairperson;~~
- ~~(b) the Chief Inspector;~~
- ~~(c) three persons representing any relevant State department;~~
- ~~(d) three persons representing organised labour;~~
- ~~(e) three persons representing organised business;~~
- ~~(f) at least one person representing any relevant non-governmental organisation;~~
- ~~(g) two persons representing relevant community-based organisations; and~~
- ~~(h) at least two other persons with appropriate experience, expertise or skill to enhance the Board's capability of performing its functions more effectively;~~
- ~~(i) at least one person from a designated agency.~~

~~[Para. (i) added by s. 47 (b) of Act No. 49 of 2008.]~~

~~(3) The members of the Board must elect a deputy chairperson from amongst their number at their first meeting.~~

60.—Disqualification of members. ~~(1) No person may be appointed as member of the Board—~~

- ~~(a) unless he or she is a South African citizen who resides in the Republic permanently; or~~
- ~~(b) if he or she—~~
 - ~~(i) is an unrehabilitated insolvent;~~
 - ~~(ii) has been declared to be of unsound mind by a court of the Republic; or~~
 - ~~(iii) has been convicted of an offence committed after the date of commencement of the Constitution, and sentenced to imprisonment without the option of a fine, unless the person has received a grant of amnesty or a free pardon before the date of his or her appointment.~~

61.—Vacation of office. ~~(1) A member of the Board must vacate his or her office if he or she—~~

- ~~(a) becomes subject to any disqualification contemplated in section 60 or, in the case of an official in the service of the State, ceases to be such an official;~~
- ~~(b) has been absent from more than two consecutive meetings of the Board without the Board's leave;~~
- ~~(c) tenders his or her resignation in writing to the Minister and the Minister accepts the resignation; or~~
- ~~(d) is removed from office by the Minister under subsection (2).~~

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

- ~~(a) on account of misconduct or inability to perform the functions of his or her office properly; or~~

~~(Editorial Note: Please note that s. 48 of Act No. 49 of 2008 deletes section 61 (2) (a) (i) of this Act. This deletion could not be executed as subparagraph (i) does not exist in section 61 (2) (a).)~~

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

62. Term of office and filling of vacancies. ~~(1) A member of the Board holds office for a period not exceeding three years.~~

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

~~(3) If a member of the Board vacates office or dies, the Minister may fill the vacancy by appointing a person in~~

accordance with section 59 (2) for the unexpired portion of the term of office of his or her predecessor.

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

~~[Sub s. (1) substituted by s. 49 (a) of Act No. 49 of 2008.]~~

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

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

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

~~[Sub s. (4) substituted by s. 49 (b) of Act No. 49 of 2008.]~~

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

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

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

~~(8) A member of the Board must recuse himself or herself from participating in any investigation, hearing or decision concerning a matter in respect of which that member has a financial or personal interest.~~

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

~~(2) The Board may establish such other permanent or ad hoc committee as it deems necessary to assist it in the performance of its functions, and any such committee may include members who are not members of the Board.~~

~~(3) A committee established under subsection (2) may, subject to the approval of the Board, establish ad hoc working groups to assist it in the performance of its functions, and any such working group may include persons who are not members of such committee or the Board.~~

~~(4) If a committee or working group consists of more than one member, the Board must designate a member of such committee or working group as chairperson thereof.~~

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

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

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

66. Remuneration of members of Board, committees and working groups.—~~A member of the Board, a committee or working group, except a member who is a full time employee of the State, must be appointed on such conditions including conditions relating to the payment of remuneration and allowances as the Minister may determine with the concurrence of the Minister of Finance.~~

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

68. Administrative functions.—~~The administrative functions of the Board must be performed by officers of the Department who are designated by the Director General for that purpose.~~

~~CHAPTER 6~~ ~~PETROLEUM EXPLORATION AND PRODUCTION~~

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

~~(2) (a) For the purposes of this Chapter, section 9, 10, 11, 12, 21, 26, 29, 30, 37, 38A, 38B, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 64 and Chapter 7 and Schedule II apply with the necessary changes.~~

~~[Para. (a) substituted by s. 50 of Act No. 49 of 2008.]~~

~~(b) Any reference in the provisions referred to in paragraph (a) to—~~

~~(i) minerals, must be construed as a reference to petroleum;~~

| ~~(ii) mining, must be construed as a reference to production;~~

- ~~(iii) — mining area, must be construed as a reference to production area;~~
- ~~(iv) — mining rights, must be construed as a reference to production rights;~~
- ~~(v) — prospecting, must be construed as a reference to exploration;~~
- ~~(vi) — prospecting area, must be construed as a reference to exploration area;~~
- ~~(vii) — prospecting rights, must be construed as a reference to exploration rights; and~~
- ~~(viii) — reconnaissance permission, must be construed as a reference to reconnaissance permit.~~

70. — Designated agency. ~~The Minister may designate an organ of State or a wholly owned and controlled agency or company belonging to the State to perform the functions referred to in this Chapter.~~

71. — Functions of designated agency. ~~The designated agency must—~~

- ~~(a) promote onshore and offshore exploration for and production of petroleum;~~
- ~~(b) receive applications for reconnaissance permits, technical co-operation permits, exploration rights and production rights in the prescribed manner;~~
- ~~(c) evaluate such applications and make recommendations to the Minister;~~
- ~~(d) monitor and report regularly to the Minister in respect of compliance with such permits or rights;~~
- ~~(e) receive, maintain, store, interpret, evaluate, add value to, disseminate or deal in all geological or geophysical information relating to petroleum submitted in terms of section 88;~~
- ~~(f) bring to the notice of the Minister any information in relation to the exploration and production of petroleum which is likely to be of use or benefit to the State;~~
- ~~(g) advise and recommend to the Minister on the need to by itself, through contractors or through any other state enterprise carry out on behalf of the State reconnaissance operations in connection with petroleum;~~
- ~~(h) collect the prescribed fees and considerations in respect of reconnaissance permits, technical co-operation permits, exploration rights and production rights;~~
- ~~(i) review and make recommendations to the Minister with regard to the acceptance of environmental reports and the conditions of the environmental authorisations and amendments thereto; and~~
~~[Para. (i) substituted by s. 51 of Act No. 49 of 2008.]~~
- ~~(j) perform any other function, in respect of petroleum, which the Minister may determine from time to time.~~

72. Funding of designated agency. ~~(1) The designated agency is funded by money appropriated by Parliament.~~

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

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

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

~~(3) —~~

~~[Sub s. (3) deleted by s. 52 of Act No. 49 of 2008.]~~

74. — Application for reconnaissance permit. ~~(1) Any person who wishes to apply to the Minister for a reconnaissance permit must lodge the application—~~

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

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

- ~~(a) — the requirements contemplated in subsection (1) are met;~~

~~[Para. (a) amended by s. 53 (b) of Act No. 49 of 2008.]~~

~~(b) no other person holds a technical co-operation permit, exploration right or production right for petroleum over any part of the area; and~~

~~[Para. (b) amended by s. 53 (b) of Act No. 49 of 2008.]~~

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

~~[Sub s. (2) amended by s. 53 (a) of Act No. 49 of 2008. Para. (c) added by s. 53 (b) of Act No. 49 of 2008.]~~

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

~~[Sub s. (3) substituted by s. 53 (c) of Act No. 49 of 2008.]~~

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

~~(a) consult in the prescribed manner with the landowner, lawful occupier and any interested and affected party and include the result of the consultation in the relevant environmental reports required in terms of Chapter 5 of the National Environmental Management Act, 1998; and~~

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

~~[Sub s. (4) substituted by s. 53 (d) of Act No. 49 of 2008 with effect from 8 December, 2014.]~~

75. —Issuing and duration of reconnaissance permit. ~~(1) Subject to subsection (4), the Minister must issue a reconnaissance permit if—~~

~~(a) the applicant has access to financial resources and has the technical ability to conduct the proposed reconnaissance operation;~~

~~[Para. (a) substituted by s. 54 of Act No. 49 of 2008.]~~

~~(b) the estimated expenditure is compatible with the intended reconnaissance operation and duration of the reconnaissance programme;~~

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

~~[Para. (c) substituted by s. 54 of Act No. 49 of 2008 with effect from 8 December, 2014.]~~

~~(d) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996); and~~

~~(e) the applicant is not in contravention of any relevant provision of this Act.~~

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

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

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

~~(a) subject to prescribed terms and conditions;~~

~~(b) valid for a period not exceeding one year;~~

~~(c) not an exclusive right;~~

~~(d) not transferable; and~~

~~(e) not renewable.~~

~~(5) The holder of the reconnaissance permit must—~~

~~(a) actively conduct reconnaissance operations in respect of petroleum on the relevant area in accordance with the reconnaissance programme;~~

~~(b) comply with the terms and conditions of the reconnaissance permit, and the relevant provisions of this Act and any other law; and~~

~~(c) pay the prescribed reconnaissance fee to the designated agency.~~

76. —Application for technical co-operation permit. ~~(1) Any person who wishes to apply to the Minister for a technical co-operation permit must lodge the application—~~

~~(a) at the office of the designated agency;~~

~~(b) in the prescribed manner; and~~

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

~~(2) The designated agency must accept an application for a technical co-operation permit if~~

~~(a) the requirements contemplated in subsection (1) are met;~~
~~[Para. (a) amended by s. 55 (a) of Act No. 49 of 2008.]~~

~~(b) no other person holds a technical co-operation permit, exploration right or production right for petroleum over any part of the area; and~~
~~[Para. (b) amended by s. 55 (a) of Act No. 49 of 2008.]~~

~~(c) no prior application for an exploration right, production right, or technical co-operation permit has been accepted for the same mineral, land and area.~~
~~[Para. (c) added by s. 55 (a) of Act No. 49 of 2008.]~~

~~(3) If the application does not comply with the requirements of this section, the designated agency must notify the applicant in writing within 14 days of the receipt of the application and provide reasons.~~
~~[Sub s. (3) substituted by s. 55 (b) of Act No. 49 of 2008.]~~

77. — Issuing and duration of technical co-operation permit. ~~(1) Subject to subsection (4), the Minister must issue a technical co-operation permit if—~~

- ~~(a) the applicant has access to financial resources and has the technical ability to conduct the proposed technical co-operation study;~~
- ~~(b) the estimated expenditure is compatible with the intended technical co-operation study and duration of the technical co-operation programme; and~~
- ~~(c) the applicant is not in contravention of any relevant provision of this Act.~~

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

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

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

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

78. — Rights and obligations of holder of technical co-operation permit. ~~(1) The holder of a technical co-operation permit has subject to section 79, the exclusive right to apply for and be granted an exploration right in respect of the area to which the permit relates.~~

~~(2) The holder of a technical co-operation permit must—~~

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

~~[Para. (c) added by s. 56 of Act No. 49 of 2008.]~~

79. — Application for exploration right. ~~(1) Any person who wishes to apply to the Minister for an exploration right must lodge the application—~~

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

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

~~no other person holds a technical co-operation permit, exploration right or production right for petroleum over the same land and area applied for.~~

- ~~(a) the requirements contemplated in subsection (1) are met;~~

~~[Para. (a) amended by s. 57 (b) of Act No. 49 of 2008.]~~

~~(b) no other person holds a technical co-operation permit, exploration right or production right for~~

~~petroleum over any part of the area; and~~

~~[Para. (b) amended by s. 57 (b) of Act No. 49 of 2008.]~~

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

~~[Sub-s. (2) amended by s. 57 (a) of Act No. 49 of 2008. Para. (c) added by s. 57 (b) of Act No. 49 of 2008.]~~

~~(Editorial Note: Sub-s. (2) published as per the Original *Government Gazette* as amended by s. 57 (a) of Act No. 49 of 2008.)~~

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

~~[Sub-s. (3) substituted by s. 57 (c) of Act No. 49 of 2008.]~~

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

~~(a) — consult in the prescribed manner with the landowner, lawful occupier and any interested and affected party and include the result of the consultation in the relevant environmental report as required in terms of Chapter 5 of the National Environmental Management Act, 1998; and~~

~~(b) — submit the relevant environmental reports required in terms of Chapter 5 of the National Environmental Management Act, 1998, within a period of 120 days from the date of the notice.~~

~~[Sub-s. (4) substituted by s. 57 (d) of Act No. 49 of 2008 with effect from 8 December, 2014.]~~

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

~~[Sub-s. (5) substituted by s. 57 (e) of Act No. 49 of 2008.]~~

80. — Granting and duration of exploration right. ~~(1) The Minister must grant an exploration right if—~~

~~(a) the applicant has access to financial resources and has the technical ability to conduct the proposed exploration operation optimally in accordance with the exploration work programme;~~

~~(b) the estimated expenditure is compatible with the intended exploration operation and duration of the exploration work programme;~~

~~(c) the Minister has issued an environmental authorisation;~~

~~[Para. (c) substituted by s. 58 (a) of Act No. 49 of 2008.]~~

~~(d) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);~~

~~(e) the applicant is not in contravention of any relevant provision of this Act;~~

~~(f) — the applicant has complied with the terms and conditions of the technical co-operation permit, if applicable; and~~

~~(g) — the granting of such right will further the objects referred to in section 2 (d) and (f).~~

~~(2) — The Minister may, having regard to the type of petroleum resource concerned and the extent of the exploration project, request that the applicant gives effect to section 2 (d).~~

~~[Sub-s. (2) substituted by s. 58 (b) of Act No. 49 of 2008.]~~

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

~~[Sub-s. (3) substituted by s. 58 (c) of Act No. 49 of 2008.]~~

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

~~(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 years.~~

~~(6) — An exploration right granted in terms of subsection (1) comes into effect on the effective date.~~

~~[Sub-s. (6) added by s. 58 (d) of Act No. 49 of 2008.]~~

81. —Application for renewal of exploration right. ~~(1) Any holder of an exploration right who wishes to apply to the Minister for the renewal of an exploration right must lodge the application —~~

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

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

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

~~[Para. (c) substituted by s. 59 (a) of Act No. 49 of 2008 with effect from 8 December, 2014.]~~

- ~~(d) include a detailed exploration work programme for the renewal period.~~

~~(3) The Minister must grant the renewal of an exploration right if the application complies with subsections (1) and (2) and the holder of the exploration right has complied with the—~~

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

~~[Para. (c) substituted by s. 59 (b) of Act No. 49 of 2008 with effect from 8 December, 2014.]~~

~~(4) An exploration right may be renewed for a maximum of three periods not exceeding two years each.~~

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

82. —Rights and obligations of holder of exploration right. ~~(1) In addition to the rights referred to in section 5, the holder of an exploration right—~~

- ~~(a) subject to subsection (2), has the exclusive right to apply for and be granted a production right in respect of the petroleum and the exploration area in question;~~
- ~~(b) subject to section 81, has the exclusive right to apply for and be granted a renewal of an exploration right in respect of petroleum and the exploration area in question;~~
- ~~(c) has the exclusive right to remove and dispose of any petroleum samples found during the course of exploration, subject to section 20; and~~
- ~~(d) may only transfer and encumber the exploration right, subject to section 11.~~

~~(2) The holder of an exploration right must—~~

- ~~(a) lodge such right within 60 days for registration at the Mineral and Petroleum Titles Registration Office;~~
~~[Para. (a) substituted by s. 60 of Act No. 49 of 2008.]~~
- ~~(b) continuously and actively conduct exploration operations in accordance with the approved exploration work programme;~~
- ~~(c) comply with the terms and conditions of the exploration right, the relevant provisions of this Act and any other law;~~
- ~~(d) comply with the requirements of the approved environmental management plan;~~
- ~~(e) pay the prescribed exploration fees to the designated agency; and~~
- ~~(f) commence with exploration activities within 90 days from the effective date of the exploration right or such extended period as the Minister may authorise.~~

83. —Application for production right. ~~(1) Any person who wishes to apply to the Minister for a production right must lodge the application—~~

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

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

- ~~(a) the requirements contemplated in subsection (1) are met;~~
~~[Para. (a) amended by s. 61 (b) of Act No. 49 of 2008.]~~

- ~~(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; and~~

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

~~[Sub s. (2) amended by s. 61 (a) of Act No. 49 of 2008. Para. (c) added by s. 61 (b) of Act No. 49 of 2008.]~~

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

~~[Sub s. (3) substituted by s. 61 (c) of Act No. 49 of 2008.]~~

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

~~(a) consult in the prescribed manner with the landowner, lawful occupier and any interested and affected party and include the result of the consultation in the relevant environmental reports as required in terms of Chapter 5 of the National Environmental Management Act, 1998; and~~

~~(b) 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.~~

~~[Sub s. (4) substituted by s. 61 (d) of Act No. 49 of 2008 with effect from 8 December, 2014.]~~

~~84. —Granting and duration of production right.~~ ~~(1) The Minister must grant a production right if—~~

~~(a) the applicant has access to financial resources and has the technical ability to conduct the proposed production operation optimally;~~

~~(b) the estimated expenditure is compatible with the intended production operation and duration of the production work programme;~~

~~(c) the production will not result in unacceptable pollution, ecological degradation or damage to the environment;~~

~~(d) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);~~

~~(e) the applicant is not in contravention of any relevant provision of this Act;~~

~~(f) the applicant has complied with the terms and conditions of the exploration right, if applicable;~~

~~(g) the applicant has provided financially and otherwise for a prescribed social and labour plan;~~

~~(h) the petroleum can be produced optimally in accordance with the production work programme;~~

~~(i) the granting of such right will further the object referred to in section 2 (d) and (f) and in accordance with the Charter contemplated in section 100 and the prescribed social and labour plan.~~

~~[Para. (i) substituted by s. 62 (a) of Act No. 49 of 2008.]~~

~~(2) The Minister must, within 60 days of receipt of the application from the designated agency, refuse to grant a production right if the application does not meet all the requirements referred to in subsection (1):~~

~~[Sub s. (2) substituted by s. 62 (b) of Act No. 49 of 2008.]~~

~~(3) If the Minister refuses to grant a production right, the Minister must, within 30 days of the decision, notify the applicant in writing of such decision and the reasons therefore;~~

~~[Sub s. (3) substituted by s. 62 (c) of Act No. 49 of 2008.]~~

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

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

~~[Sub s. (5) substituted by s. 62 (d) of Act No. 49 of 2008.]~~

~~85. —Application for renewal of production right.~~ ~~(1) Any holder of a production right who wishes to apply to the Minister for the renewal of a production right must lodge the application—~~

~~(a) at the office of the designated agency;~~

~~(b) in the prescribed manner; and~~

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

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

~~(a) state the reasons period for which the renewal is required;~~

~~(b) be accompanied by a detailed report reflecting the production results, the interpretation thereof and~~

~~the production expenditure incurred;~~

~~(c) —be accompanied by a report reflecting the extent of compliance with the requirements of the approved environmental management programme the rehabilitation to be completed and the~~

~~estimated cost thereof; and~~

~~(d) — include a detailed production work programme for the renewal period.~~

~~(3) — The Minister must grant the renewal of a production right if the application complies with subsections (1) and (2) and the holder of the production right has complied with the —~~

~~(a) — terms and conditions of the production right is not in contravention of any relevant provision of this Act or any other law;~~

~~(b) — production work programme;~~

~~(c) — the requirements of the prescribed social and labour plan; and~~

~~(d) — requirements of the approved environmental management programme.~~

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

~~(5) — A production right in respect of which an application for renewal has been lodged, shall despite its expiry date, remain in force until such time as such application has been granted or refused.~~

~~[Sub s. (5) substituted by s. 63 of Act No. 49 of 2008.]~~

86. — Rights and obligations of holder of production right. ~~(1) — In addition to the rights referred to in section 5, the holder of a production right —~~

~~(a) — subject to subsection (2), has the exclusive right to apply for and be granted renewal of the production right in respect of the petroleum area in question;~~

~~(b) — has the exclusive right to remove and dispose of any petroleum found during the course of production; and~~

~~(c) — may only transfer and encumber the production right, subject to section 11.~~

~~(2) — The holder of a production right must —~~

~~(a) — lodge such right for registration at the Mineral and Petroleum Titles Registration Office within 60 days after the right has become effective;~~

~~[Para. (a) substituted by s. 64 (a) of Act No. 49 of 2008.]~~

~~(b) — continuously and actively conduct production operations in accordance with the approved production work programme;~~

~~(c) — comply with the terms and conditions of the production right, the relevant provisions of this Act and any other law;~~

~~[Para. (c) substituted by s. 64 (b) of Act No. 49 of 2008.]~~

~~(d) — comply with the conditions of the environmental authorisation and the prescribed social and labour plan;~~

~~[Para. (d) substituted by s. 64 (b) of Act No. 49 of 2008 with effect from 8 December, 2014.]~~

~~(e) — in terms of any relevant law, pay the State royalties; and~~

~~[Para. (e) substituted by s. 64 (b) of Act No. 49 of 2008.]~~

~~(f) — commence with production operations within one year from the date on which a production right becomes effective in terms of section 84 (5) or such extended period as the Minister may authorise; and~~

~~(g) —~~

~~[Para. (g) deleted by s. 64 (c) of Act No. 49 of 2008.]~~

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

~~88. — Information and data.~~ ~~(1) The holder of any permit or right who conducts reconnaissance operations, technical co-operation studies exploration operations or production operations must submit such information, data, reports and interpretations to the designated agency as may be prescribed.~~

~~(1A) The designated agency must submit progress reports and data contemplated in subsection (1) (b) within 30 days from the date of submission thereof to the Council for Geoscience.~~

~~{Sub s. (1A) inserted by s. 65 of Act No. 49 of 2008.}~~

~~(2) Subject to the Promotion of Access to Information Act, 2002 (Act No. 20 of 2002), all information, data, reports and interpretations thereof submitted to the designated agency must be kept confidential by the agency for~~

~~a period—~~

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

~~(Editorial Note: It is suggested that the expression "2002 (Act No. 20 of 2002)" in subsection (2) is intended to reflect as "2000 (Act No. 2 of 2000)".)~~

~~(3) Neither the State nor any of its employees—~~

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

~~**89. Financial guarantee.** In addition to section 5 (4), no exploration operation or production operation may commence unless the holder of the rights concerned has provided for a financial provision acceptable to the designated agency guaranteeing the availability of sufficient funds for the due fulfilment of all exploration and production work programmes by the holder.~~

~~**90. Minister's power to suspend or cancel permits or rights.** The Minister may cancel or suspend any reconnaissance permit, technical co-operation permit, exploration right or production right in accordance with the procedure contemplated in section 47.~~

CHAPTER 7 GENERAL AND MISCELLANEOUS PROVISIONS

91. Power to enter prospecting area, mining area or retention area.—(1) The Minister may designate any ~~member of the Board, the Regional Manager or~~ any officer or any person with appropriate expertise as an authorised person, who can carry out the functions contemplated in subsection (4) and in section 92.

(2) An authorised person must be furnished with a certificate signed by the Minister stating that he or she has been authorised under subsection (1).

(3) An authorised person must, at the request of any person, exhibit the certificate referred to in subsection (2) to such a person.

(4) An authorised person may, on the authority of a warrant issued in terms of subsection (5)—

- (a) in order to obtain evidence, enter any reconnaissance, prospecting, mining, ~~exploration, production or retention area,~~ or any place where prospecting operations or mining operations are being conducted where he or she has reason to believe that any provision of this Act has been, is being or will be contravened;
- (b) direct the person in control of or any person employed at such area—
 - (i) to deliver or furnish any information, including books, records or other documents, in the possession of or under the control of that person that pertains to the investigation; and
 - (ii) to render such assistance as the authorised person requires in order to enable him or her to perform his or her functions under this Act;
- (c) inspect any book, record, statement or other document including electronic records, documents or data and make copies thereof or excerpts therefrom;
- (d) examine any appliance or other material or substance found in such area;
- (e) take samples of any material or substance and test, examine, analyse and classify such samples; and
- (f)
 - (i) seize any material, substance, book, record, statement or other document including electronic records, documents or data which might be relevant to a prosecution under this Act and keep it in his or her custody;
 - (ii) the person from whom the control of any book, record or document including electronic records or data has been taken, may, at his or her own expense and under the supervision of the authorised person make copies thereof or excerpts therefrom.

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

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

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

91A. Powers of South African Police Service members.—(1) A member of the South African Police Service has, in respect of an offence in terms of this Act, all the powers of an authorised person in terms of section 91, including the powers conferred in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), excluding the power –

- (a) to conduct routine inspections in terms of section 92; and
- (b) to issue and enforce compliance notices in terms of section 93.

(2) Notwithstanding subsection (1), the Minister may, in concurrence with the Minister responsible for police, by written notice to a member of the South African Police Service, assign to that member all the powers contemplated in sections 92 and 93.

92. Routine inspections.—Any authorised person may without a warrant—

- (a) enter any reconnaissance, prospecting, mining production or exploration or retention area or any place where prospecting, or mining, exploration or production are being conducted in order to inspect any activity, process or operation carried out in or upon the area or place in question; and
- (b) require the holder of the right, permit or permission in question or the person in charge of such area or place or any person carrying out or in charge of the carrying out such activities, process or operations to produce any book, record, statement or other document including electronic documents, information or data relating to matters dealt with in this Act for inspection, or for the purpose of obtaining copies thereof or extracts therefrom.

[S. 92 amended by s. 66 (a) of Act No. 49 of 2008. Para. (b) substituted by s. 66 (b) of Act No. 49 of 2008.]

93. Orders, suspensions and instructions.—(1) If an authorised person finds that a contravention or suspected contravention of, or failure to comply with—

- (a) any provision of this Act; or
- (b) any term or condition of any right, permit or permission or any other law granted or issued or an environmental authorisation issued, has occurred or is occurring on the relevant reconnaissance, ~~exploration, production,~~ prospecting, mining or retention area or place where prospecting operations or mining operations or processing operations are being conducted, such a person ~~may~~
 - (i) must order the holder of the relevant right permit or permission, or the person in charge of such area, any person carrying 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; and or
 - (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.

[Para. (b) amended by s. 67 of Act No. 49 of 2008 with effect from 8 December, 2014.]

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

(3) The Director-General must notify the relevant holder or other person contemplated in subsection (1) in writing within the prescribed period~~60 days~~ 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.

94. Prohibition of obstruction, hindering or opposing of authorised person.—No person may obstruct, hinder or oppose any authorised person or any other person in the performance of his or her duties or the exercise of his or her powers and functions in terms of this Act.

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

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

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

96. Internal appeal process and access to courts.—(1) Any person whose rights or legitimate expectations have been materially and adversely affected or who is aggrieved by any administrative decision in terms of this Act may appeal within 30 days becoming aware of such administrative decision in the prescribed manner to—

- (a) ~~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 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;~~
- (b) ~~the Minister of Water and Sanitation and Forestry, Fisheries and the Environment, if the decision taken relates to environmental matters and issues incidental thereto, in which instance the appeal is lodged and considered in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998), if it is an administrative decision that was taken by the Director-General or the designated agency.~~

[Sub-s. (1) substituted by s. 68 (a) of Act No. 49 of 2008.]

- (2) (a) ~~An~~ Subject to subsections (2A) and (2B), an appeal in terms of subsection (1) does not suspend the administrative decision, unless it is

suspended by the ~~Director General or~~ the Minister. ~~, as the case may be.~~

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

[Sub-s. (2) substituted by s. 68 (b) of Act No. 49 of 2008.]

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

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

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

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

97. Serving of documents.—(1) Save as is otherwise provided for in this Act, any notice, order, directive or other document which is required in terms of this Act to be served on or given to any person, must be regarded as having been duly served or given if—

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

(b) it is sent by registered mail to that person's last known business, postal or residential address; ~~or.~~

~~(c) it is sent by electronic mail to that person's last known electronic mail address.~~

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

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

(a) contravenes or fails to comply with—

(i) section ~~2, 5A, 5B, 5C, 11, 15, 19, 20, 21, 25, 26, 27, 28, 35, 43 and 1025 (4), or 28;~~

[Sub-para. (i) substituted by s. 69 (a) of Act No. 49 of 2008.]

(ii) section 92, 94 or 95;

[Sub-para. (ii) substituted by s. 69 (a) of Act No. 49 of 2008.]

(iii) section 35;

[Sub-para. (iii) substituted by s. 69 (a) of Act No. 49 of 2008.]

(iv)

[Sub-para. (iv) deleted by s. 69 (a) of Act No. 49 of 2008.]

(v) section 44;

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

(vii) any directive ~~or~~ contemplated in section 29; or

(viii) any other provision of this Act;

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

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

~~{Para. (c) substituted by s. 69 (b) of Act No. 49 of 2008.}~~

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

(a) in the case of an offence referred to in section 98 (a) (i), to a fine not exceeding ~~R100 000~~ 10 percent of the person's or right holder's annual turnover in the Republic and its exports from the Republic during the person's or right's holder's preceding financial year or to imprisonment for a period not exceeding ~~ten~~ years or to both such fine and such imprisonment;

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

perjury;

- (c) in the case of an offence referred to in section 98 (a) (iii) to a fine not exceeding ~~R500 000~~ five percent of the person's or right holder's annual turnover in the Republic and its exports from the Republic during the person's or right holder's preceding financial year or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment;
- (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 person's or right holder's annual turnover in the Republic and its exports from the Republic during the person's or right holder's preceding financial year;
- (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 provisions;and
- (g) in the case of any conviction of an offence in terms of this Act for which no penalty is expressly determined, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment. ~~and~~

(1A) (a) An authorised person referred to in section 91 may make a recommendation, in writing, to the Director-General for a fine to be imposed on the holder that has failed to comply with any provision contemplated in section 98(iv).

(b) The authorised person must serve a copy of the recommendation referred to in paragraph (a) on the holder concerned.

(c) The holder may make written representations to the Director-General within 30 days of receipt of a copy of the recommendation referred to in paragraph (b).

(d) A representation made in terms of paragraph (c) may not be used against the holder in any criminal or civil proceedings in respect of the same set of facts.

(e) The Director-General, after considering the recommendation and any representation made in terms of paragraph (c), must, within the prescribed period from the date of receipt of the holder's representations in terms of paragraph (a)(iii) or after expiry of the 30 day period in paragraph (a)(iii), without such representations having been made, whichever is the earlier -

(aa) disregard the recommendation ;

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

(cc) refer the matter to the National Prosecuting Authority for a decision as to whether the holder should be charged for 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 in terms of section 96 (1)(b).

(iv) Save if the holder has lodged an appeal in terms of paragraph (b)(iii), the holder must pay any fine imposed in terms of paragraph (b)(i)(bb) within 30 days of receipt of the Director General's notification thereof in terms of paragraph (b)(ii).

(v) If the right holder fails to pay the fine within the period referred to in paragraph (b)(iv) and an appeal has not been lodged within the required period, the Director – General may 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 judgement lawfully given in that court in favour of the Department.

(c) Money received by the Department in payment of administrative fines imposed in terms of paragraph (a) must be paid to a fund established and controlled by the Council for Geoscience in terms of this Act.

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

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

100. Transformation of minerals industry.—(1) The Minister must, within five years from the date on which this Act took effect—

- (a) and after consultation with the Minister for Housing, develop a housing and living conditions standard for the minerals industry; and
- (b) develop a code of good practice for the minerals industry in the Republic.

(2) (a) To ensure the attainment of the Government's objectives of redressing historical, social and economic inequalities as stated in the Constitution, the Minister must within six months from the date on which this Act takes effect develop a broad-based socio-economic empowerment Charter that will set the framework for targets and time table for effecting the entry into and active participation of historically disadvantaged South Africans into the mining industry, and allow such South Africans to benefit from the exploitation of the mining and mineral resources and the beneficiation of such mineral resources.

[Para. (a) substituted by s. 70 of Act No. 49 of 2008.]

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

(3) The Minister must, when granting applications in terms of section 23, impose –

(a) the provisions of the housing and living conditions standard for the minerals industry and codes of good practice for the minerals industry;

(b) the broad-based socio economic empowerment prescribed elements of Black Economic Empowerment ownership, inclusive procurement, supplier and enterprise development, human resources development, employment equity and mining community development.

(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 prescribed elements of BEE ownership, inclusive procurement, supplier and enterprise development, human resources development, employment equity and mining community development.

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

[S. 101 substituted by s. 71 of Act No. 49 of 2008.]

102. Amendment of rights, permits, programmes and plans.—(1) A reconnaissance permission, prospecting right, mining right, ~~small-scale~~ mining permit, ~~artisanal mining permit~~, retention permit, ~~technical corporation permit, reconnaissance permit, exploration right, production right,~~ prospecting work programme, ~~exploration work programme, production work programme,~~ mining work programme, ~~environmental management programme-social and labour plan~~ or an environmental authorisation issued in terms of the National Environmental Management Act, 1998, as the case may be, ~~must~~ may not be amended or varied (including by extension of the area covered by it or by the addition of minerals or a share ~~or share~~s or seams, mineralised bodies or strata, which are not at the time the subject thereof) without the written consent of the Minister.

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

(a) extend an area or portion of an area; or

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

(Proposed amendment: Sub-s. (2) to be added by s. 72 of Act No. 49 of 2008 with effect from a date to be determined by the President by proclamation in the Gazette – date not determined.)

(3) Subject to compliance with subsection (4), any right holder of prospecting or mining of any mineral must, while prospecting or mining such mineral, also prospect, mine and dispose of associated minerals in respect of which such holder is not the right holder, but which must of necessity be prospected or mined with the licenced mineral, and the right holder must declare such associated minerals or any other minerals discovered in the prospecting or mining process.

(4) The right holder contemplated in subsection (3) must, within 60 days from the date of making a declaration, apply for an amendment of the right in terms of Section 102 to include the mineral so declared.

(5) Subject to sub-section 4, should the right holder not apply to include such associated mineral, those associated minerals are relinquished to the State.

103. Delegation and assignment.—(1) The Minister may, subject to such conditions as he or she may impose, in writing delegate any power conferred on him or her by or under this Act, except a power to make regulations or deal with any appeal in terms of section 96, and may assign any duty so imposed upon him or her to the Director- General, the Regional Manager or any officer.

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

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

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

- (a) withdraw a delegation or assignment made in terms of subsection (1), (2) or (3), as the case may be; and
- (b) withdraw or amend any decision made by a person exercising a power or performing a duty delegated or assigned in terms of subsection (1), (2) or (3), as the case may be: Provided that no existing rights of any person shall be affected by such withdrawal and amending of a decision.

[Para. (b) substituted by s. 73 of Act No. 49 of 2008.]

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

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

[Sub-s. (1) substituted by s. 74 of Act No. 49 of 2008.]

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

- (a) the right shall be used to contribute towards the development and the social upliftment of the community;
- (b) the community submits a development plan, indicating the manner in which such right is going to be exercised;
- (c) the envisaged benefits of the prospecting or mining project will accrue to the community in question; and
- (d)
- (e) section 23 (1) (e) and (h) is not applicable.

[Sub-s. (2) substituted by s. 74 of Act No. 49 of 2008.]

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

- (a) valid for a period not exceeding five years and can be renewed for further periods not exceeding five years; and
- (b) subject to prescribed terms and conditions.

(4) The preferent right referred to in subsection (1), shall not be granted in respect of areas, where a prospecting right, mining right, small-scale mining permit, artisanal mining permit or retention permit, ~~production right, exploration right, technical operation permit or reconnaissance permit~~ has already been granted.

105. Landowner or lawful occupier of land cannot be traced.—(1) Any person who has applied for a right, permit or permission in terms of this Act must notify the Regional Manager if the landowner or lawful occupier of the land concerned—

- (a) cannot be readily traced; or
- (b) is deceased and no successor in title can be readily traced.

[Sub-s. (1) substituted by s. 75 of Act No. 49 of 2008.]

(2) Notwithstanding any other law, the Regional Manager, on application in writing from such applicant and on payment of the prescribed application fee, may—

- (a) grant consent to such a person to install a notice on a visible place on the land and enter the land to which the application relates to; and
- (b) subject such a person to such other terms and conditions as the Regional Manager may determine.

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

(Editorial Note: Please note that section 94 (2) of Act No. 49 of 2008 states that section 106 (1) of this Act, as amended by Act No. 49 of 2008, comes into effect on 8 December, 2014. However, please note that section 106 (1) is not amended by Act No. 49 of 2008 and therefore, section 94 (2) cannot be applied.)

(2) Despite subsection (1), the organ of state so exempted must submit an environmental management programme for approval in terms of section 39 (4).

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

(Proposed amendment: Sub-s. (2) to be substituted by s. 76 of Act No. 49 of 2008 with effect from a date to be determined by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

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

107. Regulations.—(1) The Minister may, by notice in the *Gazette*, make regulations regarding—

(a)

[Para. (a) deleted by s. 77 of Act No. 49 of 2008.]

(aA) the rehabilitation of disturbances of the surface of land where such disturbances are connected to prospecting or mining operations.

- (b) the exploitation processing, utilization or use of or the disposal of any mineral;
- (c) procedures in respect of appeals lodged under this Act;
- (d) fees payable in relation to any right, permit or permission issued or granted in terms of this Act;
- (e) fees payable in relation to any appeal contemplated in this Act;
- (f) the form of any application which may or have to be done in terms of this Act and of any consent or document required to be submitted with such application, and the information or details which must accompany any such application;
- (g) the form, conditions, issuing, renewal, abandonment, suspension or cancellation of any ~~environmental management programme~~, permit, ~~licence~~, certificate, ~~permission~~, receipt or other document which may or ~~have to~~ must be issued, granted, approved, required or renewed in terms of this Act;
- (h) the form of any register, record, notice, sketch plan or information which may or shall be kept, given, published or submitted in terms of or for the purposes of this Act;
- (i) the prohibition on the disposal of any mineral or the use thereof for any specified purpose or in any specified manner or for any other purpose or in any other manner than a specified purpose or manner;
- (j) the restriction or regulation in respect of the disposal or use of any mineral in general;
- (jA) the determination of terms and conditions applicable to beneficiation of mineral resources as contemplated in section 26;
- (jB) the procedure applicable in respect of an invitation for applications in terms of section 9A;
- (jC) (i) the manner and form in which interested and affected persons must be informed of an application for a right in terms of section 16, 22 or 27 of this Act; and
(ii) the manner and form of consultation required with such interested and affected persons; and
- (jD) the promotion of transformative elements of Broad-Based Black-Economic-Empowerment ownership, inclusive procurement, supplier and enterprise development, human resources development, employment equity and mining community development;
- (k) any matter which may or must be prescribed for in terms of this Act; and
- (l) any other matter the regulation of which may be necessary or expedient in order to achieve the objects of this Act.

(1A) The Minister must, when making regulations as provided for in terms of subsection (1)(jA) and (jC), consult with affected stakeholders.

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

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

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

109. Act binds State.—This Act binds the State save in so far as criminal liability is concerned.

110. Repeal and amendment of laws, and transitional provisions.—Subject to Schedule 2, the laws mentioned in Schedule 1 are hereby repealed or amended to the extent set out in the third column of Schedule 1.

111. Short title and commencement.—(1) This Act is called the Mineral and Petroleum Resources Development Act, 2025~~02~~, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

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

COMMENCEMENT OF THIS ACT

<i>Date of commencement</i>	<i>The whole Act/ Sections</i>	<i>Proclamation No.</i>	<i>Governme nt Gazette</i>	<i>Date of Governme nt Gazette</i>
-----------------------------	--------------------------------	-------------------------	----------------------------	------------------------------------

1 May, 2004	The whole Act	R.25	26264	23 April, 2004
-------------	---------------	------	-------	----------------

SCHEDULE 1

REPEAL OR AMENDMENT OF LAWS

[Schedule I amended by s. 2 of Act No. 11 of 2005.]

(Section 110)

<i>No. and year of Act</i>	<i>Short Title</i>	<i>Extent of repeal or amendment</i>
.....		1. 2. 3.

4.		
(Editorial Note: The expression "Act No. 47 of 1937" in the first column, and the related information in the second and third column deleted by s. 2 of Act		
Act No. 50 of 1956	General Laws Amendment Act,	<i>Repeals sections 3 and 4.</i>
Act No. 96 of 1969	Expropriation of Mineral Rights (Township) Act, 1969	<i>Repeals the whole.</i>
Act No. 29 of 1996	Mine Health and Safety Act, 1996	<i>1. Amends section 102 by substituting the definition of "mining area".</i>
Act No. 57 of 1976	National Parks Act, 1976	<i>Deletes any reference to mineral right in sections 2A, 2C, 2D, 3 and 3A.</i>
Act No. 39 of 1979	Bophuthatswana Land Control Act,	The deletion of section 16 (1).
Act No. 6 of 1986	Venda Land Control Act, 1986	The deletion of section 16 (1).
Act No. 50 of 1991	Minerals Act, 1991	<i>Repeals the whole, except for the definitions of "precious metals" and "unwrought precious metal" in section 1 and Chapter XVI of the Mining Rights Act, 1967 and except the definition of "Sunday" and</i>
Act No. 47 of 1994	Mineral and Energy Laws Rationalisation	<i>Repeals the whole.</i>
Act No. 3 of 1996	Land Reform (Labour Tenant's)	<i>Amends section 2 (3) by deleting the reference to</i>
Act No. 94 of 1998	Transformation of Certain Rural Areas Act, 1998	<i>Repeals section 6.</i>
Act No. 107 of 1998	National Environmental	<i>Amends section 36 (1) by deleting the proviso.</i>
Act No. 8 of 1997	Land Survey Act, 1997	<i>1. Amends section 1 as follows: —paragraph (a) deletes paragraph (d) of the definition of "owner"; and paragraph (b) substitutes the definition of</i>
		<i>2. Amends section 29 (2) as follows: —paragraph (a) substitutes paragraph (c); paragraph (b) substitutes paragraph (ii) of the proviso to paragraph (d); and paragraph</i>
		<i>3. Amends section 34 (2) by substituting the proviso to paragraph (b).</i>

SCHEDULE II TRANSITIONAL ARRANGEMENTS

1. Definitions.—In this Schedule, unless the context indicates otherwise—

"holder" in relation to an old order right, means the person to whom such right was or is deemed to have been granted or by whom it is held or is deemed to be held, or such person's successor in title before this Act came into effect;

"minerals Act" means the Minerals Act, 1991 (Act No. 50 of 1991);

"old order mining right" means any mining lease, mynpachten, consent to mine, permission to mine, claim licence, mining authorisation or right listed in Table 2 to this Schedule in force immediately before the date on which this Act took effect and in respect of which mining operations are being conducted;

[Definition of "old order mining right" substituted by s. 78 (a) of Act No. 49 of 2008.]

| **“old order prospecting right”** means any prospecting lease, permission, consent, permit or licence, and the

rights attached thereto, listed in Table 1 to this Schedule in force immediately before the date on which this Act took effect and in respect of which prospecting is being conducted;

"old order right" means an old order mining right, old order prospecting right or unused old order right, as the case may be;

"OP26 mining lease" means any mining lease granted in terms of clause 22 of prospecting lease OP26 or the portions held under Deed of Cession 1/1996, registered in terms of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967);

[Definition of "OP26 mining lease" substituted by s. 78 (b) of Act No. 49 of 2008.]

"OP26 sublease" means those parts of the OP26 mining lease which are held under Cessions 1/1999 and 1/2002 registered as such at the Mineral and Petroleum Titles Registration Office on 8 September 1999 and 30 September 2002, respectively;

[Definition of "OP26 sublease" substituted by s. 78 (c) of Act No. 49 of 2008.]

"OP26 right" means prospecting lease OP26 and the portions ceded under Deed of Cession 1/1996 registered in terms of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967) or an OP26 sublease or an OP26 mining lease;

[Definition of "OP26 right" substituted by s. 78 (d) of Act No. 49 of 2008.]

"unused old order right" means any right, entitlement, permit or licence listed in Table 3 to this Schedule in respect of which no prospecting or mining was being conducted immediately before this Act took effect.

2. Objects of Schedule.—The objects of this Schedule are in addition to the objects contemplated in section 2 of the Act and are to—

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

3. Pending prospecting and mining applications.—(1) Any application for a prospecting permit, mining authorisation, consent to prospect, consent to mine or permission to remove and dispose of any mineral lodged, but not finalised, in terms of section 6, 8 or 9 of the Minerals Act immediately before this Act took effect must be regarded as having been lodged in terms of section ~~1316~~, 22 ~~or~~, 27, ~~79 or 83~~ of this Act, as the case may be.

(2) If any application contemplated in subitem (1) does not meet the requirements of this Act, the Regional Manager in whose region the land to which the application relates is situated must direct the applicant to submit the outstanding information within 120 days of such direction.

(3) Any environmental management programme submitted for approval in terms of section 39 (1) of the Minerals Act which had not been approved when this Act took effect must be regarded as having been lodged in terms of section 39 of this Act.

(4) If the environmental management programme does not meet the requirements of this Act, the Regional Manager in whose region the land to which the environmental management programme relates is situated must direct the holder concerned to submit the outstanding information.

[Subitem (4) substituted by s. 79 of Act No. 49 of 2008.]

4. Continuation of Exploration Operation.—(1) Any OP26 sublease in force immediately before this Act took effect continues in force subject to the terms and conditions under which it was granted until it is terminated or expires or until 30 June 2007, whichever is the sooner.

(2) Any holder of a sublease contemplated in subitem (1) who wishes to convert the sublease into an exploration right in terms of this Act, must lodge such sublease for conversion at the office of the designated agency together with—

- (a) the prescribed particulars of the holder;
- (b) a sketch plan or diagram depicting the area for which the conversion is required, which area may not be larger than the area for which he or she holds the lease;
- (c) a statement setting out the period during which he or she conducted exploration operations before the date on which this Act took effect;
- (d) information as to whether or not the OP26 sublease is mortgaged or in any way encumbered by way of endorsement at the Title Deeds Office or the Mining Titles Office;
- (e) a statement setting out the terms and conditions which apply to the sublease;
- (f) the original sublease and the approved environmental management programme, or certified copies thereof;

| (g) an undertaking to the effect that, and a statement setting out the manner in which, the holder of the

sublease will give effect to the object referred to in section 2 (d) and 2 (f); and

- (h) an affidavit verifying that the holder is conducting or has been conducting exploration operation on the area of land to which the conversion relates and setting out the periods during which such exploration operations were converted and the results thereof.

(3) The Minister must convert the sublease if the holder—

- (a) has complied with the provisions of subitem (2);
- (b) is conducting exploration in respect of the sublease in question;
- (c) indicates that he or she will continue to conduct exploration operations upon the conversion of such right; and
- (d) has paid the prescribed conversion fee.

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

(5) ~~¶The 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 and ~~simultaneously~~ at the Deeds office or the Mineral and Petroleum Titles Registration Office for deregistration of the OP26 sublease as the case may be.

[Subitem (5) substituted by s. 80 (a) of Act No. 49 of 2008.]

(6) The registration contemplated in subitem (5) must occur within six months from the date on which the sublease has been converted and must be done at the same time as the deregistration of the sublease at the Mineral and Petroleum Titles Registration Office.

[Subitem (6) substituted by s. 80 (b) of Act No. 49 of 2008.]

(7) Upon the conversion of the sublease ~~and the registration of the exploration right into which it was converted~~, the sublease ceases to exist.

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

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

(2) Any holder of a lease contemplated in subitem (1) who wishes to convert the lease into a production right in terms of this Act, must lodge an application for the conversion of the lease at the designated agency together with—

- (a) the prescribed particulars of the holder;
- (b) a sketch plan or diagram depicting the area for which the conversion is required, which area may not be larger than the area for which he or she holds the lease;
- (c) a statement setting out the period during which he or she conducted production operations before the date on which this Act took effect;
- (d) a statement setting out the period for which the production right is required substantiated by a mining work programme;
- (e) an affidavit verifying that the holder is conducting production operations on the area of the land to which the conversion relates and setting out the period for which such production operation has been conducted;
- (f) a prescribed social and labour plan;
- (g) information as to whether or not the old order OP26 lease is encumbered by any mortgage bond or other right registered at the Deeds Office or Mining Titles Office;
- (h) a statement setting out the terms and conditions which apply to the lease;
- (i) the original lease and the approved environmental management programme, or certified copies thereof; and
- (j) an undertaking to the effect that, and a statement setting out the manner in which, the holder of the lease or sublease will give effect to the object referred to in section 2 (d) and 2 (f).

(3) The Minister must convert the lease if the holder—

- (a) has complied with the provisions of subitem (2);
- (b) is producing petroleum in respect of the lease in question;
- (c) indicates that he or she will continue to conduct production upon the conversion of such lease; and

(d) has paid the prescribed conversion fee.

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

(5) The holder must lodge the right converted under subitem (3) within 90 days from the execution date ~~on which he or she received notice of conversion~~ at the 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 deregistration~~ of the OP26 lease, as the case may be.

[Subitem (5) substituted by s. 81 (a) of Act No. 49 of 2008.]

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

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

[Subitem (7) substituted by s. 81 (b) of Act No. 49 of 2008.]

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

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

(2) A holder of an old order prospecting right must lodge the right for conversion within the period referred to in subitem (1) at the office of the Regional Manager in whose region the land in question is situated together with—

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

(3) The Minister must convert the old order prospecting right into a prospecting right if the holder of the old order prospecting right—

- (a) complies with the requirements of subitem (2);
- (b) has conducted prospecting operations in respect of the right in question;
- (c) indicates that he or she will continue to conduct such prospecting operations upon the conversion of such right;
- (d) has an approved environmental management programme; and
- (e) has paid the prescribed conversion fee.

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

(5) The holder must lodge the right converted under subitem (3) within 90 days from the execution date ~~on which he or she received notice of conversion~~ at the Mineral and Petroleum Titles Registration Office for

~~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.

[Subitem (5) substituted by s. 82 of Act No. 49 of 2008.]

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

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

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

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

[Subitem (1) substituted by s. 83 (a) of Act No. 49 of 2008.]

(Editorial Note: Please note that s. 83 (b) of Act No. 49 of 2008 amends item 7 (1) (g) of this Act. This amendment could not be executed as sub-subitem (g) does not exist in item 7 (1) (g).)

(2) A holder of an old order mining right must lodge the right for conversion within the period referred to in subitem (1) at the office of the Regional Manager in whose region the land in question is situated together with—

- (a) the prescribed particulars of the holder;
- (b) a sketch plan or diagram depicting the mining area for which the conversion is required, which area may not be larger than the area for which he or she holds the old order mining right;
- (c) the name of the mineral or group of minerals for which he or she holds the old order mining right;
- (d) a affidavit verifying that the holder is conducting mining operations on the area of the land to which the conversion relates and setting out the periods for which such mining operations conducted;
- (e) a statement setting out the period for which the mining right is required substantiated by a mining work programme;
- (f) a prescribed social and labour plan;
- (g) information as to whether or not the old order mining right is encumbered by any mortgage bond or other right registered at the Deeds Office or Mining Titles Office;
- (h) a statement setting out the terms and conditions which apply to the old order mining right;
- (i) the original title deed in respect of the land to which the old order mining right relates, or a certified copy thereof;
- (j) the original old order right and the approved environmental management programme or certified copies thereof; and
- (k) documentary proof of the manner in which, the holder of the right will give effect the object referred to in section 2 (d) and 2 (f);

[Sub-subitem (k) substituted by s. 83 (c) of Act No. 49 of 2008.]

(Editorial Note: It is suggested that the expression “will give effect the object” in sub-subitem (k) is intended to reflect as “will give effect to the object”.)

(3) The Minister must convert the old order mining right into a mining right if the holder of the old order mining right—

- (a) complies with the requirements of subitem (2);
- (b) has conducted mining operations in respect of the right in question;
- (c) indicates that he or she will continue to conduct such mining operations upon the conversion of such right;
- (d) has an approved environmental management programme; and
- (e) has paid the prescribed conversion fee.

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

(3B) If the applicant does not comply with subitem 3A, the Minister must refuse to convert the right and must notify the applicant in writing of the decision within 30 days with reasons.

[Subitem (3B) inserted by s. 83 (d) of Act No. 49 of 2008.]

(3C) If the application relates to land occupied by the community, the Minister may impose such conditions as are necessary to promote the rights and interests of the community, including conditions requiring the participation of the community.

[Subitem (3C) inserted by s. 83 (d) of Act No. 49 of 2008.]

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

(5) The holder must lodge the right converted under subitem (3) within 90 days from the execution date ~~on which he or she received notice of conversion~~ at the 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.

[Subitem (5) substituted by s. 83 (d) of Act No. 49 of 2008.]

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

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

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

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

[Subitem (1) substituted by s. 84 of Act No. 49 of 2008.]

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

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

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

9. Continuation of reservations, permissions and certain rights.—(1) Any reservation or permission for or right to the use of the surface of land granted or acquired or deemed to have been granted or acquired—

- (a) in terms of section 75 of the Precious and Base Metals Act, 1908 (Act No. 35 of 1908) of the Transvaal;
- (b) in terms of section 126 (2) of the Precious Stones Act, 1964 (Act No. 73 of 1964);
- (c) in terms of section 90, 91, 92, 93 (4) or (7), 102, 103, 111, 113 or 116 of the Mining Rights Act 1967 (Act No. 20 of 1967);
- (d) in terms of section 127 128 or 129 read with section 130 of the Mining Rights Act, 1967 (Act No. 20 of 1967); or
- (e) by virtue of a reservation under section 158 of the Mining Rights Act, 1967 (Act No. 20 of 1967),

as the case may be, and in force in terms of section 48 of the Minerals Act immediately before this Act took effect, remains in force subject to the terms and conditions under which it was granted or acquired and contained in the document or documents concerned under which it continues to exist or remain in force and in those cases where they were attached to old order rights will so remain in force notwithstanding the cessation or existence of the relevant old order right to which they were attached if such old order right is replaced by a prospecting right or mining right in terms of items 6 or 7 and shall thereupon similarly attach to such permit or right, as the case may be.

(2) The holder, user or acquirer of any reservation, ~~permission~~ or right to use the surface of land contemplated in subitem (1) must register such reservation, ~~permission~~ or right in the Mineral and Petroleum Titles Registration Office within six years from the date on which the Mineral and Petroleum Resources Development Amendment Act 49 of 2008, ~~is Act~~ took effect and if such holder, user or ~~acquirer~~ ~~occupier~~ fails to register such

reservation, ~~permission~~ or right, the reservation, ~~permission~~ or right shall cease to exist.
[Subitem (2) substituted by s. 85 of Act No. 49 of 2008.]

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

(4) The owner of the land or any other person contemplated in section 48 (2) (a) of the Minerals Act who was receiving compensation in terms of that section immediately before this Act took effect, or such owner's or person's successors in title, are entitled to continue receiving such compensation.

(5) (a) The holder of a reservation, permission or right contemplated in subitem (1) may abandon such reservation, permission or right, wholly or in part, by written notice to the relevant Regional Manager.

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

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

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

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

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

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

(4) If the holder of an old order prospecting right or old order right mining right or the owner of previous works ceases the relevant prospecting or mining operation works, the holder must apply for a closure certificate in terms of section 43.

[Subitem (4) substituted by s. 86 (a) of Act No. 49 of 2008.]

(5) Sections 38, 41 (2) and 45 apply to a holder of an old order prospecting right or old order mining right.

[Subitem (5) substituted by s. 86 (a) of Act No. 49 of 2008.]

(6) If no application for a certificate contemplated in section 12 of the Minerals Act has been made, the holder referred to in that section, who remains liable for complying with the relevant provision of that Act, must apply for a closure certificate in terms of section 43.

[Subitem (6) added by s. 86 (b) of Act No. 49 of 2008.]

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

[Item 10A inserted by s. 87 of Act No. 49 of 2008.]

11. Consideration or royalty payable.—(1) Notwithstanding the provisions of item 7 (7) and 7 (8), any existing consideration, contractual royalty or future consideration, including any compensation contemplated in section 46 (3) of the Minerals Act, which accrued to any community immediately before this Act took effect, continues to accrue to such community.

(2) The community contemplated in subitem (1) must annually, and at such other time as required to do so by the Minister, furnish the Minister with such particulars regarding the usage and disbursement of the consideration or royalty as the Minister may require.

(3) If the consideration or royalties contemplated in subitem (1) accrued to a natural person, it may continue to accrue to the person subject to such terms and conditions as the Minister may determine, if—

(a) the discontinuation of such consideration or royalty will cause undue hardship to the person; or

(b) the person uses such consideration or royalty for social upliftment.

(4) If it is determined that the consideration or royalties referred to in subitem (3) continues then the provision of subitem (2) apply to such a recipient.

(5) The recipients contemplated in subitems (1) and (3) must within five years from the date on which this Act

| took effect inform the Minister of their need to continue to receive such consideration or royalties and the reasons

therefor, and furnish the Minister with the prescribed information.

(6) Any person who or community which receives any consideration or royalty by virtue of this item must—

- (a) keep prescribed records at an address in the Republic where they may be inspected by the Director-General; and
- (b) submit annual audited financial statements.

(7) The preservation contained in subitem (1) and continuation contemplated in subitem (4) when applied in respect of communities is subject to such terms and conditions as may be determined by the Minister which terms and conditions must, among others, include—

- (a) the manner in which such royalty will be used for purposes of promoting rural, regional and local economic development and the social upliftment of a community;
- (b) proper financial control is in respect of such consideration or royalty;
- (c) a development plan, indicating the manner in which the consideration or royalty is being used and any projects sponsored therewith;
- (d) an undertaking that the consideration or royalty is being or will be used for the benefit of all the members of the community in question;
- (e) the right of the Minister to intervene, in the event that it is alleged that, the said consideration royalties is not being utilised for the purposes agreed to between, the Minister and the community concerned; and
- (f) the establishment of a trust, section 21 Company Agency or other structure to administer the funds, on whose Board of Directors or trustees or Executive Committee there is representation by members of the community affected.

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

(2) When claiming compensation a person must—

- (a) prove the extent and nature of actual loss and damage suffered by him or her;
- (b) indicate the current use of the property;
- (c) submit proof of ownership of such property;
- (d) give the history of acquisition of the property in question and price paid for it;
- (e) detail the nature of such property;
- (f) prove the market value of the property and the manner in which such value was determined; and
- (g) indicate the extent of any State assistance and benefits received in respect of such property.

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

- (a) the State's obligation to redress the results of past racial discrimination in the allocation of and access to mineral and petroleum resources;
- (b) the State's obligation to bring about reforms to promote equitable access to all South Africa's natural resources;
- (c) the provisions of section 25 (8) of the Constitution; and
- (d) whether the person concerned will continue to benefit from the use of the property in question or not.

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

- (a) the manner in which such claim may be lodged;
- (b) the procedure to be followed by the claimant and the Director-General in respect of such claim; and
- (c) the time when any legal proceedings may be instituted in respect of the determination or payment of compensation as contemplated in subitem (1).

[Subitem (4) substituted by s. 88 (a) of Act No. 49 of 2008.]

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

- (a) when the claimant has been informed in writing by the Director-General that he or she has denied the validity of the claim and the claimant has not appealed against such denial in terms of section 96; or
- (b) where a claimant decides to appeal the denial of the Director-General in terms of section 96, when

the claimant has been informed in writing by the Minister of the confirmation of the said denial; or

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

[Subitem (5) added by s. 88 (b) of Act No. 49 of 2008.]

- (6) On the occurrence of any of the event described in subitems (5) (a) to (c)—

- (a) to the extent that they may be applicable, the provisions of sections 10 (4), (5), (7) and (8), 14, 15, 19, 21 of the Expropriation Act, 1975 (Act No. 63 of 1975), apply with necessary changes to a claim made in terms of subitem (1); and

- (b) the claimant may issue proceedings in a court of law for the determination and payment of compensation, but not before.

[Subitem (6) added by s. 88 (b) of Act No. 49 of 2008.]

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

[Subitem (7) added by s. 88 (b) of Act No. 49 of 2008.]

13. Certain functions of Director: Mineral Development to be performed by Regional Manager or Minister.—(1) Until an officer is designated for a region in terms of section 8 as Regional Manager, the officer appointed as Director: Mineral Development for that region in terms of section 4 of the Minerals Act must—

- (a) be regarded as having been appointed as Regional Manager; and

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

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

TABLE 1 (old order prospecting rights)

Category 1

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

Category 2

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

Category 3

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

Category 4

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

Category 5

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

TABLE 2 (old order mining rights)

Category 1

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

Category 2

| A consent to mine granted in terms of section 9 (1) (b) or 9 (2) of the Minerals Act and the common law mineral

right attached thereto, together with a mining authorisation issued in connection therewith in terms of section 9 (1) of the Minerals Act.

Category 3

[Category 3 substituted by s. 89 (a) of Act No. 49 of 2008.]

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

Category 4

[Category 4 substituted by s. 89 (b) of Act No. 49 of 2008.]

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

Category 5

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

Category 6

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

TABLE 3
(unused old order rights)

Category 1

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

Category 2

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

Category 3

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

Category 4

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

Category 5

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

Category 6

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

Category 7

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

Category 8

A consent to mine granted in terms of section 9 (1) (b) or 9 (2) of the Minerals Act and the common law mineral

| right attached thereto in respect of which no mining authorisation was issued in terms of section 9 (1) of the

Minerals Act.

Category 9

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

Category 10

[Category 10 substituted by s. 93 of Act No. 49 of 2008.]

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

Category 11

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