Draft Bill Reference	Text From Bill	Comments	ASPASA Comments	Recommendation
DEFINITIONS				
Section 1 – Artisanal mining	Inserted Artisanal mining means traditional and customary mining operations using traditional or customary wavs 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:	This definition falls to be read with clause 27 of the Bill dealing with the insertion of a new Section 27A in the MPRDA. The definition uses the concepts of traditional and customary mining operations and rudimentary mining methods, traditional or customary ways and means, rudimentary mining methods, manual and rudimentary tools. None of these terms have been defined and therefore a great deal of discretion will be left to the Minister in deciding whether a particular applicant is an artisanal miner or not and this could be abused by persons who do not qualify because of the less onerous restrictions imposed upon applicants for Artisanal Mining permits and obligations imposed upon the holders of Artisanal Mining permits.	Support the statement under comments This lack of clarity is especially a problem for quarrying because small operators often use simple machines like compressors or small crushers. Without clear rules, it's unclear whether these operations count as artisanal mining or not, and this can be left to personal interpretation. The Bill says artisanal mining includes people using basic	DMPR do define the: **traditional** and **customary mining operations** and **rudimentary mining methods, traditional or customary ways and means, rudimentary mining methods, manual and rudimentary tools.** Consider **clarifying or broadening the definition** to include operations that use *basic or semi-mechanized tools* (like small crushers or compressors), especially in quarrying. This would make the law **more inclusive and practical** for small operators who still mine at a small

		The definition uses the concept of "usually" available on surface or at shallow depths. But this does not seem to preclude deep level Artisanal Mining permits with all of the health and safety issues with artisanal miners accessing deep level abandoned gold mining shafts. The threshold requirement of using mostly rudimentary mining methods creates uncertainty on what level of mechanisation would be allowed in artisanal mining (if any at all).	hand tools to mine minerals that are easy to reach near the surface. This means only those using very simple, manual methods will qualify as artisanal miners. Anyone using small machines—even simple ones—might not be included. This could unfairly exclude small quarrying operations that don't use advanced equipment but aren't fully manual either.	scale but use limited machinery. Could include wording like: 1. "*...including individuals or groups using rudimentary or semi-mechanized tools and methods, provided the operations remain small-scale and non-industrial in nature.*" This would reduce confusion and help support small-scale miners and quarry operators more effectively.

S1 – Artisanal mining permit	Inserted artisanal mining permit' means a permit issued in terms of section 27A (6)	The reference to sec 27A(6) should be removed and the definition should simply read "artisanal mining permit' means a permit issued in terms of section 27A".	Support the comments made	
S1 Associated mineral	Inserted 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;	These provisions must be read with the amendments to section 102(2). Comments on these provisions are included below. The definition assumes one "primary mineral" which may not be correct. The term "physically impossible" should be expanded to include cost considerations i.e. physically impossible to economically or optimally mine.	**Regulatory Burden**: Mining houses might be required to **apply for separate rights or amendments** to include the associated mineral—even though its extraction is unavoidable. **Licensing Delays**: Quarrying operations often encounter minerals like **clay, sand, or aggregates** together. If each is treated separately, this could **delay operations or create legal uncertainties**. **Compliance Risk**: If a mining right only lists the primary mineral (e.g., granite), but limestone or other material is also extracted during the	• **Clarify that the associated mineral can be mined under the same right** if its extraction is **unavoidable and incidental** to mining the primary mineral. • Consider adding a provision such as: "*Where the associated mineral is unavoidably extracted in the process of mining the primary mineral, and is not mined for commercial gain independently, no separate mining right shall be required.*"

			process, the company might **inadvertently breach** the MPRDA by not having rights over the associated minerals. **Financial Impact**: Mining houses may be forced to **incur additional costs** for amending mining rights or face **royalties or penalties** for unintentionally extracting unlicensed associated minerals. **Will the new CADASTRAL support the process? If manual intervention needed, fraudulent rights still possible**	This will **reduce administrative burdens** and protect mining houses—particularly in quarrying—from **unintended non-compliance** while ensuring **regulatory oversight** is maintained for commercial exploitation of such minerals.
S1 Authorised person	Inserted Authorised person means an authorised person contemplated in section 91.			

S1 Beneficiation	Substituted **Beneficiation, [in relation to any mineral resource, means the [following]]-** **[for 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**	This definition falls to be read with clause 25 whereby Section 26 of the MPRDA is proposed to be amended. The reference to "baselines to be determined by the Minister" is however vague, provides no legislative guidelines or criteria in regard to how the Minister is to determine such baselines and therefore could be unconstitutional as being contrary to the rule of law principle in Section 1(c) of the Constitution of the Republic of South Africa (see *Darwood v Minister of Home Affairs 2000 (3) SA 936 (CC)* paras 47 - 55), and contains no procedure (such as prescription by regulation or at least notice in the Government Gazette, whereby such determination is to occur. The Minerals Council submits that the determination of such baselines is so fundamental to this important issue that it should occur now by way of a schedule to the MPRDA itself in a similar fashion to Schedules I and II (refined and unrefined condition of mineral	**Positive Implications** 1. **Encourages Local Industrialisation**: By promoting value-addition, it supports the **development of local industries** such as smelters, refineries, and manufacturers. 2. **Job Creation**: Local beneficiation processes (e.g., polishing, refining, manufacturing) can **create employment opportunities** across various skill levels. 3. **Increased Revenue**: Selling processed or manufactured goods instead of raw materials can lead to **higher export revenues** and improved trade balances. 4. **Reduced Export of Raw Materials**:	**Recommendation:** To improve clarity, promote regulatory certainty, and balance beneficiation goals with investment realities, the following recommendations are proposed: **a. Retain or Incorporate Stages of Beneficiation:** Reintroduce the prior classification of **beneficiation stages** (primary, secondary, tertiary, final) in either the Act or accompanying regulations. This would assist stakeholders in **understanding compliance expectations** and **planning investments accordingly**. **b. Require Publication of Ministerial Baselines:** Amend the clause to require that any **baselines**

	industry and trade as fully and finally processed or manufactured and value-added products or articles] <u>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.</u>	resources) to the Mineral and Petroleum Resources Royalty Act, 2008. In addition, it is uncertain whether beneficiation is limited to the holder of the mining right or permit in question who mined the mineral in question. As the definition currently reads, it may include offsite beneficiation by a person other than the holder of the mining right or permit who mined the mineral. Note must be taken that the definition of “residue stockpile” refers to “mineral processing plant waste”.	Keeps more of the **economic benefits within the country**, rather than allowing foreign entities to profit from refining and manufacturing. **Negative implications** 1. **Unclear Implementation Framework**: Without specific guidance on how "value addition" will be measured or enforced, the definition gives **broad discretion to the Minister**, which may create **regulatory uncertainty**. 2. **Increased Compliance Costs**: Mining companies—especially smaller operators—may face **financial pressure** if required to build beneficiation facilities or partner with downstream processors.	**determined by the Minister** be developed in **consultation with industry stakeholders**, and be **gazetted** for public comment prior to implementation, in line with the principles of **administrative justice and transparency**. **c. Include a Flexibility Clause for Small-Scale Operators:** Incorporate provisions that **exempt small-scale or junior mining operations** from mandatory beneficiation requirements unless suitable support mechanisms are in place. **d. Encourage Incentive-Based Compliance:** Rather than relying solely on mandatory beneficiation, include a framework to **incentivize compliance**,

			3. **Infrastructure Gaps**: The country may **lack the infrastructure** (electricity, rail, industrial zones) needed to support full beneficiation, especially in rural mining areas. 4. **Export Delays**: Over-regulating raw mineral exports in favour of local beneficiation could **discourage investment** or **delay mining operations**, particularly if no local processing options are available.	such as tax rebates, shared processing infrastructure, or export credits for locally beneficiated products. --- **5. Conclusion:** While the intention of the revised definition is aligned with South Africa's developmental objectives, its current form introduces uncertainty and may have **unintended negative consequences** for mining operations, particularly in the quarrying and small-scale sectors. A more balanced and transparent approach—combining staged definitions, published baselines, and stakeholder consultation—would better serve the objectives of the MPRDA and promote inclusive,

				sustainable beneficiation across the sector.
S1 Black people	Inserted 'Black person' has the meaning assigned to it in the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003):'';5	The term used on the B-BBEE Act is in fact "black people" not "black person". This "black people" term as used in the B-BBEE Act has very specific references to citizenship and naturalisation dates which are specifically relevant in the context of measurement of B-BBEE. Reliance on these citizenship provisions allow the introduction of very specific restrictions on non-citizens engaging in small-scale and artisanal mining activities would be unique in the South Africa context and at odds with policies in other contexts allowing for skilled foreign workers and foreign inward investment. The effect of these provisions should be carefully considered.		
S1 Board	Deleted			

S1 Broad based black economic empowerment	Substituted Broad based economic empowerment **[means a social or economic strategy, plan, principle, approach or act which is aimed at** **(a) redressing the results of past or present discrimination based on race, gender or other disability of historically disadvantaged persons in the minerals and petroleum industry, related industries and in the value chain of such 15 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;**	The term used in the B-BBEE Act is in fact "broad-based **black** economic empowerment" The term used here "broad based economic empowerment" is not consistently used in the Draft Bill. Sections 16(2)(d); 28(3) and 100(3)(b) use a slightly different term - broad-based **socio-**economic empowerment. There needs to be consistency of definitions throughout the Bill. The removal of a specific definition of this term in the mining context and its substitution with the general term from the B-BBEE Act does not assist in advancing an understanding of how this term is to be applied in the mining industry. The manner in which alignment with the regime under the B-BBEE Act is intended needs specific clarification in consultation with the mining industry. The approach under the Codes does not set any specific mandatory B-BBEE requirements and is a points based measurement system, this is at odds with the approach currently under the MPRDA and Mining Charter. The insertion of this term without the release of the proposed regulations or any indication of how these matters will be treated in existing mining rights creates significant uncertainty. Transitional provisions are required with regard to all	1. **Impact on Quarrying and Small Miners**: Small and medium-scale quarrying operations might find it harder to **comply w0ith national BBBEE scorecards**, which are often designed with **large corporates** in mind, and **not tailored to artisanal or rural mining contexts**. 2. **Ambiguity in Licensing Conditions**: The MPRDA often ties mining rights and renewals to BBBEE compliance. The absence of a mining-specific definition could create **uncertainty** for license applicants and regulators alike. **Conclusion:** While aligning the MPRDA definition of BBBEE with the national legislation improves	**Retain a Sector-Specific BBBEE Definition or Interpretation Clause**: While aligning with the BBBEE Act is legally sound, consider **retaining key elements** of the former MPRDA definition in a **sectoral code or explanatory clause**, emphasizing: • Ownership and participation of HDPs in mining activities, • Local procurement and employment, • Skills development, • Socio-economic upliftment of host communities. 5. Suggested wording for reinsertion (possibly under a guideline or regulation):

	(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 the of supplying labour to the operations; and** **(vii) the socio-economic development of all historically disadvantaged South Africans from the proceeds or activities of such operations;]** has the meaning assigned to it in the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).	matters related to black economic empowerment under the MPRDA. For ease of reference the definition in the B-BBEE Act is as follows: **“broad-based black economic empowerment”** means the viable economic empowerment of all black people, in particular women, workers, youth, people with disabilities and people living in rural areas, through diverse but integrated socio-economic strategies that include, but are not limited to— (*a*) increasing the number of black people that manage, own and control enterprises and productive assets; (*b*) facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises; (*c*) human resource and skills development; (*d*) achieving equitable representation in all occupational categories and levels in the workforce; (*e*) preferential procurement from enterprises that are owned or managed by black people; and (*f*) investment in enterprises that are owned or managed by black people;	coherence, it may **weaken the mining industry’s specific transformation agenda** if not accompanied by **sectoral guidance and protections**. To avoid diluting the core objectives of inclusive growth and community empowerment in mining regions—especially for quarrying and rural operators—it is essential to retain or supplement the definition with **clear sectoral benchmarks**, **updated Mining Charter provisions**, and **support mechanisms** for compliance by small operators.	**"*In the application of the BBBEE Act within the context of this Act, transformation shall include the promotion of ownership, participation, procurement, and socio-economic development in communities affected by mining operations, especially those historically disadvantaged.*"** **Develop or Update the Mining Sector BBBEE Code of Good Practice**: **Department of Mineral and Resources and Energy (DMRE)** to **review or update** the **Mining Charter** or any industry-specific **sector codes**, ensuring they reflect the **original intent** of redressing mining-specific historical inequalities.

				Provide Exemptions or Adapted Frameworks for SMMEs and Quarry Operators: Include provisions or supporting regulations that **differentiate expectations** for small-scale or community-based quarrying operations, ensuring they are not **unfairly disadvantaged** by general BBBEE scoring models.
S1 Committee	Inserted 'Committee' means the Regional Mining Development and Environmental Committee, established by section 10(c).			
S1 Community	Substituted Community' means [**a group of historically disadvantaged persons with interest or rights in a particular**	The restriction of a "community" to one specific municipal area may not accord with the practical boundaries of traditional communities. The removal of any relationship with the mining area is difficult	**Potential Concerns:** **Loss of Focus on Directly Affected Members**:	To ensure inclusivity, legal certainty, and protection of directly affected communities, it is

	area of land on which the members have or exercise communal rights in terms of an agreement, custom or law: Provided that, where as a consequence of the provisions of this act, negotiations or consultations with the community is required, the community shall include the members or part of the community directly affect by mining on land occupied by such members or part of the community] a coherent, social group of persons within a metropolitan municipality or a district municipality as defined in the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), with interests or rights in a particular area of land which the members have or exercise communally in terms of an agreement, custom or law;	to understand and requires further consideration.	○ The new definition **removes the requirement** to consult specifically with **members directly affected by mining operations** on the land. ○ This could **exclude those most impacted**, such as residents displaced by mining, from critical consultation or benefit-sharing processes. 2. **Broader and Vague Definition of "Coherent Social Group"**: • The term "coherent social group" is **undefined**, creating ambiguity. This may allow **non-representative groups** to claim community status or lead to **disputes over legitimate representation**. 3. **Over-reliance on Municipal Boundaries**:	recommended that the drafter: **a. Reinsert or Reinforce the "Directly Affected" Clause:** Include a provision stating that: "*Where negotiations or consultations are required under this Act, such consultation shall include members or parts of the community directly affected by mining activities on their occupied land.*" This ensures **fair representation and inclusion** of those bearing the brunt of mining operations. **b. Define or Clarify "Coherent Social Group":** Include a definition or guidance in the regulations to prevent misinterpretation or abuse of the term.

			○ Municipal boundaries may **not reflect traditional or historical community land rights**. For example, traditional communities may span across **multiple municipal wards or districts**. ○ These risks **diluting the identity and autonomy** of traditional or customary land rights holders. 4. **Potential for Misrepresentation in Consultation**: ○ Without a clear focus on **locally affected members**, mining right holders may consult **broader or less directly impacted structures**, potentially undermining the **Free, Prior, and Informed Consent (FPIC)** principle.	Suggested criteria could include: • Shared landholding practices; • Traditional leadership structures; • Social cohesion and historical ties. **c. Recognise Traditional and Customary Communities Beyond Municipal Borders:** Amend or supplement the definition to allow recognition of communities that may **not fall neatly within one municipality**, especially where **customary tenure systems** or **traditional leadership** is present. In directly affected community – scenario rail

			While the substituted definition modernises the recognition of communities by aligning it with municipal frameworks, it risks **excluding those most directly affected** by mining from consultation and benefit-sharing processes. It also creates **ambiguity** around community representation. A balanced approach that recognises **both municipal jurisdiction and customary land tenure**, while **guaranteeing direct community engagement**, will better serve the principles of **equity, participation, and sustainable development** under the MPRDA.	between mine and processing plant with community in between the two- case by case
S1 Contractual royalties	Deleted			
S1 Constitution	Inserted			

	Constitution means the Constitution of the Republic of South Africa,1996.			
S1 Council	Inserted Council' means the Ministerial Advisory Council that may be established in terms of section 56A			
S1 Controlling interest	Inserted 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.	There is a new definition of "Controlling Interest" (which is used in Section 11 of the MPRDA and in respect of which comments on the amendments to Section 11 are provided below) which means in relation to - • a Company, means the majority of the voting rights attaching to all classes of shares in the company; • any other business other than a Company means any interest which enables the holder to exercise, directly or indirectly any control whatsoever over the activity or assets of the business.	1. **Broad Use of the Term "Business"**: ○ The term *"business"* is not a defined legal form, unlike "company," "partnership," or "trust." ○ This creates **legal ambiguity** and could lead to **inconsistent interpretation** or unintended inclusion of **non-commercial entities** such as NGOs or community structures involved in mining rights. 2. **Overreach and Uncertainty in Application**:	**a. Define "Business" More Precisely:** • Replace the general term *"business"* with more specific legal entities such as: • *"…any other juristic person, partnership, trust, or joint venture…"* • Alternatively, add a definition for "business" that limits its scope to **commercial entities involved in mineral resource operations**.

		This definition is insufficient because control of a Company may be exercised through other means such as control of the Board. The more problematic issue relating to this definition is that there is a reference to providing for a controlling interest in any other "business" other than a Company. There is no legal concept of a business other than a Company and therefore these provisions are not intelligible from a legal, factual and practical point of view. Furthermore there is no reference to a business in Section 11 of the MPRDA or even in the proposed amendments in the Bill. The reason for including the new definition is also not clear in the light of the proposed amendments to Section 11 which are proposed to prohibit the disposal of any interest in an unlisted company (thus no longer just a controlling interest) and the removal through the Erratum notice of the requirement to obtain consent for the transfer of a controlling interest in a listed company. This will be dealt with in the	○ The phrase *"any control whatsoever"* is extremely broad. Even a **minor investor, strategic partner, or financier** might unintentionally be classified as holding a controlling interest. ○ It may create **barriers to investment**, especially in **joint ventures, BEE transactions**, or **community trusts** where control is shared or exercised informally. 3. **Impact on Change of Ownership Provisions**: ○ This definition may affect **section 11** of the MPRDA (ministerial consent for the transfer of controlling interests). ○ **Even minor internal restructures or shared management roles** may	**b. Qualify the Phrase "Any Control Whatsoever":** • Narrow the wording to avoid overreach. Suggested revision: • *"…any interest which enables the holder thereof to exercise dominant or effective control over the strategic decisions, operations, or assets of the business."* **c. Exclude Passive Investors and Non-Controlling Interests:** • Add a clause stating that **passive shareholding or funding arrangements** do not constitute controlling interest unless they confer **decision-making powers**. **d. Provide Regulatory Guidelines or Thresholds:**

		comments on Section 11 amendments below.	now require ministerial approval, increasing **regulatory delays and transactional costs**. 4. **Risk to Small-Scale and Informal Operators**: ○ The vagueness around "control" in non-company businesses may **unfairly capture small-scale miners or cooperatives**, who operate informally but collaboratively.	• Recommend that the Minister or Department publish **guidelines** clarifying thresholds (e.g., 50%+1 vote, management control, board representation) to assist in consistent application of the term.
S1 Department	Substituted Department means the Department **[of Mineral Resources and Energy]** responsible for mining.			
S1 Effective date	Substituted Effective date' means the date on which the [**relevant**] permit is issued or right is [**executed**] granted by the Minister	The definition of "Effective Date" has been amended to be the date on which a permit is issued or a right is granted by the Minister. This definition does not accord with the decision in *Mawetse SA Mining*	**Unfair Time Loss**: Applicants may be penalized if regulatory or logistical delays cause late notification—	**a. Align the Definition with the Mawetse Judgment:** 6. Amend the definition of "Effective Date" to reflect that it is the **date**

		Corporation (Pty) Ltd v Minister of Mineral Resources and Others (3081/12) [2014] ZAGPPHC 11 which held that the date that a right effectively commences is the date on which the applicant is notified of this decision which often happens some weeks or even months after the date of grant The definition also does not accord with the principles of administrative law in terms of which a decision is deemed final and effective only once the recipient has notice of the decision.	shortening the period in which they can exercise their rights. □ Compliance **Risk**: Businesses may unknowingly fail to meet obligations (such as environmental authorizations or financial provisioning) tied to the commencement date. □ **Investor Uncertainty**: For foreign and domestic investors, such legal ambiguity **undermines confidence** in South Africa's regulatory consistency and **rule of law**. □ **Litigation Exposure**: The disconnect between administrative processes and legal notification may lead to **increased litigation** around the validity and timing of permits or mining rights. The current amendment to the definition of "Effective Date" in the Bill is **legally flawed** as it	**on which the applicant is formally notified in writing** of the Minister's decision to grant the permit or right. **Proposed wording**: *"Effective Date means the date on which the applicant is formally notified in writing by the Minister or the Department of the granting of the permit or right."* **b. Clarify in Supporting Regulations:** If needed, clarify the difference between **administrative date of grant** and the **legal date of effectiveness** in the regulations to aid both departmental staff and industry in compliance.

			contradicts binding judicial precedent. The *Mawetse* case clearly established that **notification—not grant—is the trigger for commencement of rights**. The mining industry may suffer prejudice if this definition is implemented as is. It is therefore strongly recommended that the Bill be amended to reflect **notification-based effectiveness** to maintain **legal certainty, administrative justice**, and **compliance with constitutional principles**.	**c. Ensure Notification is Prompt and Documented:** Strengthen internal procedures to ensure that notifications are **issued without undue delay**, and that a **record of notification** is kept avoiding future disputes.
S1 Designated agency; development programme	Deleted			

S1 Employee	Amended/substituted 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			
S1 Exclusionary act	Amended Exclusionary act' means any act or practice which impedes or prevents any person from entering into or actively participating in the mineral [and petroleum] industry, or entering into or actively participating in any market connected with the mineral [and petroleum industries] industry, or from making progress within such industry or market.	This term is not used and the reasons for its amendment required further discussion.	**1.Intended Purpose (Assumed):** The insertion of this definition likely intends to support transformation and inclusive participation in the mining industry by **prohibiting anti-competitive or discriminatory behaviour**.	**a. Delete the Definition from the MPRDA Amendment:** If the MPRDA does not create **substantive rights, duties, or mechanisms** related to "exclusionary acts," the term should be **removed** from the Bill as **irrelevant and confusing**.

			2.However, Several Implications Arise: • **Lack of Legal Foundation in MPRDA**: The term **does not link to any specific provision** or regulatory requirement in the MPRDA. It appears **imported from competition law** (specifically, the **Competition Act, 1998**) without a clear application or enforcement mechanism under the MPRDA. • **Jurisdictional Overlap**: The **Competition Commission and Equality Courts** already regulate exclusionary or discriminatory practices. Including this term in the MPRDA **creates potential duplication** and **regulatory confusion**,	**b. Refer to Existing Legislation Where Applicable:** If transformation and fair access are the goals, the Bill can **reference or align with the Broad-Based Black Economic Empowerment Act** or the **Competition Act**, both of which already address exclusionary conduct. **c. If Retained, Provide Clear Legal Context:** Should the legislature decide to keep the term, then: • Define how such acts are identified, • Indicate who may investigate or sanction them, • Specify whether they are reviewable under

			particularly about which body has authority. • **Unclear Legal Consequences**: It is **not stated** what legal or administrative action follows if an "exclusionary act" is committed under the MPRDA. There is **no penalty, reporting mechanism, or redress pathway** tied to this definition, making it **procedurally irrelevant**. • **Vague Scope**: The definition is **overbroad and subjective**—for example, it is unclear whether standard commercial competition (e.g., tender processes, project exclusivity) could be misinterpreted as exclusionary.	administrative law or court processes, and • Ensure it does not conflict with or duplicate existing laws.

			3.Concerns to the Mining Industry: • **Legal Uncertainty**: Stakeholders will be unsure how to interpret or comply with the definition, especially since it lacks accompanying provisions. • **Risk of Abuse**: The vagueness of the term may lead to **misuse in disputes**, where normal business practices could be wrongly framed as exclusionary, potentially delaying projects or investments. • **Compliance and Enforcement Vacuum**: Without defined triggers, reporting structures, or sanctions, the definition becomes **symbolic at best and confusing at worst**.	

			• **Fragmentation of Legal Frameworks**: Including competition or equality-related concepts in the MPRDA may dilute the focus of the Act, which is meant to regulate **mineral resource development and environmental compliance**, not **market behaviour**. The definition of "Exclusionary Act" in the MPRDA amendment is **currently unanchored**, lacking both **statutory relevance and operational clarity**. Without a supporting legal framework, it creates **interpretive confusion, jurisdictional overlap, and practical enforcement challenges**. It is recommended that this term be **removed** or **substantively restructured** within an appropriate legal context	

			aligned to the objectives and scope of the MPRDA.	
S1 Execution date	Substituted/amended Execution date' means the date of the signing of the right by the Minister and holder in the presence of the notary public.	It is not necessary for the Minister and holder to appear in person before the notary and their authorised representatives may also appear. This should be clarified in the definition. It is noted that the MPRD Bill proposes (in section 17(5A), 22(5)(b) etc) new sections in respect of the rights granted and/or permits issued in terms of the MPRDA stating that where an appeal is lodged against the granting of the right or issuance of the permit, the notarial deed of granting may not be executed until such appeal is finalised. It appears that the effect of the abovementioned provisions is that the execution date will automatically be suspended. The effect of the suspension of the execution date is that the right or permit is suspended and the holder thereof	In *Mawetse SA Mining Corporation (Pty) Ltd v Minister of Mineral Resources and Others* [2014] ZAGPPHC 11, the Court held that a right **does not become effective merely upon granting**, but rather **upon notification to the applicant** of the decision to grant the right. Thus, while the **execution of the right** is a formal requirement for registration, it does **not determine the effective date** of the right. Effectiveness is linked to **notification**, not signature. ***However, It Raises the Following Concerns:***	**Clearly Distinguish Between "Effective Date" and "Execution Date" in the Act:** Ensure that: • **"Effective Date"** refers to **the date of written notification** of the granting of the right (as per *Mawetse*), • **"Execution Date"** refers to the **administrative act of signing** before a notary public for registration purposes. **Suggested language:** *"For clarity, the execution of the right does not constitute its effective date. The right*

		prohibited from commencing with the activities. Such a provision could only be fair if the timeline for considering any appeal is rigorously followed and the appellant does not unnecessarily delay prosecution of the appeal and does not lodge a frivolous appeal. Generally, delays in the process are caused by the failure of the decision-maker to furnish the reasons and record. The time period associated with these provisions should be a maximum of 90/120 days and punitive costs orders should be possible where an appellant is considered to have frivolously prosecuted an appeal.	1. **Confusion Between Execution and Effectiveness**: Stakeholders may **confuse the execution date with the date the right becomes legally enforceable**, especially if no clear distinction is made in the law or licence terms. 2. **Misalignment with Court Rulings**: Referring to the execution date without clarifying its role may create **legal uncertainty**, especially where deadlines, compliance obligations, or transfer rights depend on the “effective date.” 3. **Delays in Execution May Prejudice the Right Holder**: In practice, the Minister may take **weeks or months to execute** the right after	*becomes effective on the date the applicant is formally notified of its grant by the Minister.”* **b. Prescribe Reasonable Timeframes for Execution:** To avoid prejudicing applicants, the law or its regulations should prescribe a **maximum number of days** (e.g., 30 days) within which the Minister must execute the right after notification. **c. Include Guidance in Regulations or Practice Notes:** The Department should issue **guidelines to clarify the legal and administrative functions** of each date (grant, notification, execution, registration) to support

			notifying the applicant. If administrative delays occur, rights might **lapse or face non-compliance risks**, especially where other approvals (e.g., environmental authorisations) are linked to timelines. 4. **Contractual and Financial Risks**: For investors or financiers, ambiguity around when a right becomes enforceable may cause **transaction delays** or affect **due diligence outcomes**. While the inclusion of an "Execution Date" serves a useful administrative function, it must not be confused with the **"Effective Date"**, which is legally triggered by **notification**, not signature. Failure to distinguish these two	uniform application by regional offices.

			may lead to **legal disputes, implementation delays, and compliance risks** for right holders. A **statutory clarification and procedural guidance** are essential to uphold the principles of certainty and fairness in the granting and administration of mineral rights.	
S1 Exploration area, exploration operation, exploration right, exploration work programme	Deleted			
S1 Gasification	Inserted 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.	This has been defined as a process applied to non-mined coal seams using injection production wells drilled from the surface, which enables the coal to be converted *in situ* into gas. This definition does not make sense as it is understood that the coalbed methane already exists	**Limited Scope of the Definition**: The definition is **narrowly worded** to cover only **non-mined coal seams**. It excludes other **potential**	**a. Broaden and Future-Proof the Definition:** • Expand the definition to include **other forms of coal gasification** and

		underground and the Gasification does not actually constitute a conversion of the coal into gas underground but rather is a process of releasing the already existing coalbed methane, which exists underground. This combined with the amendments to the definition of “mineral” (discussed below) creates uncertainty regarding how coal bed methane and similar resources will be regulated, under the MPRDA or the Upstream Petroleum Resources Development Act, 2024.	**gasification contexts**, such as: • Surface coal gasification (from mined coal), • Gasification of other carbon-rich materials, • Future technologies involving hybrid processes. □ **Environmental and Safety Risks Not Reflected**: Underground coal gasification has been linked to **groundwater contamination, subsidence, and uncontrolled underground combustion**. These **risks are not addressed** in the definition or surrounding provisions. □ **Overlap with Petroleum Legislation**: Since gasification produces **synthetic gas**, it may fall within the **regulatory grey**	**future technologies**. Suggested revision: • *“Gasification means any process, whether in situ or surface-based, which converts coal or other carbon-based mineral resources into gas through chemical or thermal methods, including but not limited to injection and ignition in non-mined seams.”* **b. Clarify Regulatory Pathways:** The Act or accompanying regulations should: • **Specify what type of right or permit** is required for gasification activities. • Clarify whether such operations fall under

			area between mineral resource and petroleum legislation. This could lead to **jurisdictional confusion** between the MPRDA and other frameworks (e.g., Gas Act, NEMA). **No Licensing Clarity**: It is not clear whether gasification would require a **mining right, technical production right, or petroleum right**, especially since it straddles different energy sectors.	**mineral or petroleum** resource regulation. • Consider a **dedicated licensing framework** for gasification if it becomes more widely used. **c. Ensure Environmental Protections:** Include a requirement that all gasification activities: • Undergo a **comprehensive Environmental Impact Assessment (EIA)** under NEMA, • Be **monitored for groundwater, air quality, and subsidence risks**, • Have detailed **closure and rehabilitation plans**.

				d. Avoid Overlap and Ensure Coordination: • Ensure alignment with the **Gas Act, 2001** and **Energy Policy**, and clarify coordination between the **DMRE, DFFE, and NERSA** to avoid regulatory duplication or gaps.
S1 Historically disadvantaged person	Deleted	The deletion of this term without the release of an amended Mining Charter or similar Code for the mining industry or any indication of how this term will be treated in existing mining rights creates significant uncertainty. Transitional provisions are required with regard to all matters related to black economic empowerment under the MPRDA.	**Concerns** Absence **of a Transitional Framework**: No clarity exists on how existing HDP-linked rights, obligations, or Charter targets will be treated. No **Updated Charter or Replacement Code**: The **2018 Mining Charter** is still in effect, and no new Charter or **B-BBEE Sector**	**Reinstate or Replace the Term with Transitional Provisions:** • Reintroduce the **definition of HDP**, or • Replace it with a clear reference to **"black people" as defined in the B-BBEE Act** but include **transitional provisions** to manage the shift.

			Code for Mining has been gazetted to replace it. Lack **of Stakeholder Consultation**: Removing such a foundational transformation term **without clear stakeholder engagement** undermines participatory governance principles. The deletion of "Historically Disadvantaged Person" from the MPRDA—without an immediate legal substitute or updated Mining Charter—creates a **dangerous gap in South Africa's transformation framework** for the mineral resources sector. It risks **legal uncertainty, implementation paralysis, and regression on empowerment goals**.	**b. Gazette a New Mining Charter or B-BBEE Sector Code:** • Before deleting HDP, **publish a replacement Mining Charter or sector-specific B-BBEE Code** that sets clear transformation targets and ownership rules. • Ensure alignment between the MPRDA and the **B-BBEE Act framework**. **c. Protect Existing Rights and Obligations:** Include a clause such as: • *"Any empowerment terms, conditions, or obligations imposed in terms of rights granted prior to this amendment shall remain valid and enforceable until amended or replaced in*

				terms of an applicable Charter or Code." **d. Stakeholder Engagement and Communication:** • Conduct a **formal consultation process** with industry, labour, and community stakeholders to ensure buy-in and clarity before removing critical transformation definitions. **Urgent transitional provisions**, alignment with the **B-BBEE Act**, and the publication of a **new sector charter or code** are essential to maintain the constitutional and developmental objectives of inclusive economic participation in mining.

S1 Historic residue stockpiles	Inserted 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	Proposed amendments to the Environmental Impact Assessment ("**EIA**") Regulations, 2014 and Associated Listing Notices of 2014 were published on 6 December 2024. The Amendments propose the insertion of the following definition of "**historical mine dumps**" in Listing Notice 1 of 2014: "…*means any debris, discard, residues, tailings, slimes, slurry, waste rock, foundry sand, beneficiation plant waste, ash or any other product derived from or incidental to a prospecting or mining operation which does not require a right or permit in terms of the Mineral and Petroleum Resources Development Act."* Should the proposed amendments be accepted and promulgated, the reclamation (as defined) of a **historical mine dump** and "any other applicable activity" required for such reclamation will require an environmental authorisation. The draft National Dust Control Amendment Regulations were published for comment. The draft Regulations also	**Legal Uncertainty Over Ownership and Title:** • The exclusion of permit holders under the MPRDA, while including those with "any other right or title (including common law ownership)," creates **confusion**: ○ What happens if a **historic owner** (e.g., a landowner or previous miner) claims rights over residue that is now subject to interest by a **current mining right holder**? ○ There's **no clarity** on whether **reprocessing requires a new mining right** or can be done under a separate permit or existing rights. **Risk of Retrospective Application:**	

		proposes the insertion of a definition for "**historical mine dumps**" which means "*debris, discard, residues, slimes, screening, slurry, tailings, waste rock, foundry sand, beneficiation plant waste, ash or any other product derived from or incidental to prospecting, exploration, mining or production operations, which do not require any authorisation in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No.*28 of 2002). The Regulations, once amended, will find application to persons conducting reclamation of historical mine dumps. It is clear that the legislature intends to regulate the reclamation or mining of historic residue stockpiles / mine dumps in terms of the MPRDA as well as the NEMA and Specific Environmental Management Acts (SEMA). The definitions of "historical mine dumps" in the NEMA and SEMAs should be aligned with the proposed definition of "historic residue stockpiles" so as to not result in ambiguities. The NEMA and	• If the State asserts control over historic stockpiles (even those lawfully held under prior frameworks), it may amount to **de facto expropriation** without compensation or procedural fairness. **c. Environmental Liability Unclear:** • The definition does not clarify who bears **environmental responsibility** for historic stockpiles: the **original depositor**, the **landowner**, or the **new operator**? • This may create reluctance to invest in **re-mining historic dumps** due to **potential inherited environmental risks**.	

		SEMAs should in our view defer to the MPRDA definition. In addition, it is noted that the exclusion in the definition of “historic residue stockpiles” refers to a <u>prospecting right</u> granted in terms of the MPRDA however, this reference is omitted from the definition of “residue stockpile”. Refer to our comments below.	**d. No Procedural Framework for Licensing or Transfer:** • The MPRDA amendment introduces the term but **does not provide a process** for: ○ Licensing the reprocessing of historic stockpiles, ○ Transferring rights to new operators, ○ Resolving disputes between past and current rights holders.	
S1 Holder	Holder’ in relation to a prospecting right, mining right, **[mining permit]** small-scale mining permit, artisanal mining permit, retention permit or reconnaissance permission **[,exploration right, production right, reconnaissance permit or technical cooperation permit**], means the person to whom such right or	This definition has created practical issues especially on transfers of rights because it is not clear what is meant by a person's "successor-in-title" and whether it includes a person in respect of whom a Section 11 consent has been granted as a transferee or whether a person becomes a successor-in-title upon notarial execution	No issue with the definition there is only addition of artisanal mining permit and small-scale mining permit, the successor in title it encourages continuation of the right	The regulations must clarify the how part only

	permit has been granted or such person's successor in title;	of the cession of a right or whether registration of the cession in the Mining Titles Office is required in order for a person to become a successor-in-title and thus a holder. This should be clarified in the Bill.		
S1 Interested and affected persons	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;	The addition of "who may be affected by the existing prospecting or mining operation" is problematic as it would subject existing prospecting or mining operation to fresh objection. In respect of existing operations, interested and affected persons rights should be limited to commenting on amendment applications of such rights and not that the whole existing operation should be subject to comments. Incidents in respect of existing operations must be subject to incident and complaints mechanisms instead of the comment procedure for interested and affected persons.	**Implications for Quarry Operations:** 1. **Wider Consultation Obligations**: Quarry operators must **engage not only with those directly affected** (e.g., landowners or neighbours), but also with **any group or person who could possibly be affected**, such as: ○ Environmental groups, ○ Nearby communities (what is nearby?),	improve clarity and reduce disputes, it is recommended that the DMPR Bill: • Provides **guidance or criteria** to help determine who qualifies as "may be affected" (e.g., based on distance, environmental impact, or land use). • Encourages early **screening and stakeholder mapping**, so quarry applicants can identify legitimate

		Definition of “interested and affected persons” in the Mineral and Petroleum Resources Development Regulations to be removed.	○ Farmers concerned about dust or water use, ○ Municipal bodies, etc. **Potential for Objections and Delays**: The **broad and open-ended nature** of “who may be affected” means that **more people or groups can object**, even if the risk or impact to them is small or uncertain. This can: ○ Delay the approval process, ○ Increase the number of public meetings and documentation required, ○ Lead to litigation or appeals. 3. **Need for Strong Stakeholder Engagement Plans**: Quarry operators will need to develop **clear**	I&APs early in the process and avoid unnecessary conflict.

			communication and engagement strategies, ensuring transparency and early involvement of I&APs to avoid challenges later in the process. **Implications of the Phrase “who may be affected”:** • The phrase is **deliberately broad and precautionary**. It allows people to participate in the process **even if it is not certain they will be affected**. • This **creates uncertainty** for quarries, as the **scope of who must be consulted is not precisely defined**.	

			It increases the **regulatory burden** and risk of delays because it **lowers the threshold** for public involvement.	
S1 Labour sending areas	Labour sending areas' refers to areas within the Republic of South Africa where the majority of mineworkers, both historical and current, were sourced:'';	To the extent that the addition of this definition and the associated requirement in 2(i) is intended to extend the areas within which SLP activities can be conducted to labour sending areas this is welcomed. To the extent that there is any intention that mining rights holders have any specific responsibilities to identify such areas, identify the needs in such areas or consult on implementation of SLP activities in such area, this would unduly burden mining rights holders and lead to conflicting and overlapping activities and would be better coordinated from a DMPR level.	Support the definition	
S1 Land	Substituted/amended 'land' includes the surface of the land and the sea, as well as residue deposits and	The proposed reference to residue deposits and residue stockpiles incorrectly conflates the land itself (which is	**a. "Residue Deposits" vs "Residue Stockpiles":**	To reduce confusion and improve legal clarity, the Bill should be amended to:

	residue stock piles on such land, where appropriate.	immovable) and the residues placed thereon (which are likely to be movable). The land itself and residues produced from mining of land have always correctly been considered separately from the point of view of applications for and grant of permits, licences and rights. The words "where appropriate" do not assist and they give no indication of what the legislature considers to be appropriate or not. It is submitted that an applicant needs expressly and separately to apply for permits, permissions and rights in respect of the land itself on the one hand, and in respect of residues on such land on the other. Minerals Council thus requests that the proposed amendments be deleted and the definition of remains as is.	These are **technical terms**, but the Bill does not define them clearly. The difference may relate to: ○ **Residue deposits**: more permanent, managed waste from processing. ○ **Stockpiles**: temporary or stored waste that could still have value. Confusion over these terms may lead to **disputes about ownership, responsibility, and rehabilitation obligations**. **b. "Where Appropriate":** • This is a **vague and subjective qualifier**. • It creates **legal uncertainty** about: ○ When and how the broader definition of land applies, ○ Whether all residue materials are always regulated under	1. **Provide clear definitions** for: ○ **Residue deposits** and **residue stockpiles**, including how they differ and who owns them. ○ Clarify **if/when residue materials are subject to mining rights** or separate licensing. 2. **Clarify the application of the phrase "where appropriate"** by: ○ Stating specific circumstances where this definition applies. ○ Avoiding discretionary language that could lead to inconsistent interpretations.

			mining law, or only in certain cases. **c. Inclusion of "Sea":** • The inclusion of the sea under the definition of "land" is conceptually confusing. • It may **blur jurisdiction** between the **Department of Mineral Resources and Energy (DMRE)** and **marine/coastal regulatory bodies** like the Department of Forestry, Fisheries and the Environment (DFFE).	3. **Separate marine and land-based regulatory frameworks**, or at least clarify which authority oversees mineral resources in marine environments to avoid overlapping mandates.
S1 Landowner	"Land owner' 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;	A new definition of "Land owner" has been inserted to refer to 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.	**Unclear Meaning of "Unregistered" Land Rights:** The term "unregistered" is **vague**. It is not clear whether this includes:	Amend the Bill or supporting regulations to **define what constitutes "unregistered" land rights**, including specific examples (e.g., customary land tenure, informal settlements, grazing rights).

		This definition is far too wide and includes all and any persons who may have an interest in land including lessees, servitude holders, holders of rights of pre-emption. The list is endless. There already is a new definition of "Interested and Affected Persons" and thus the amendment of the definition of "Land owner" is nonsensical and not required and should be deleted. The holder of an existing mining or prospecting right or application over the land in question should also be specifically consulted in all contexts where a landowner is consulted.	○ Occupiers without formal agreements, ○ Tenants, ○ Informal settlements, ○ Or only legally recognized customary land rights. This creates **uncertainty** about who qualifies as a landowner, making **due diligence more complex** for mining/quarrying companies. **Ambiguity Around “Protection Under Any Law”:** • The phrase “any law” is **broad and undefined**, and may include: ○ National legislation (e.g., the Interim Protection of Informal Land Rights Act),	b. Clarify what is meant by **“protection under any law”** by referencing applicable legislation or customary law frameworks.

			○ Provincial ordinances, ○ Customary law, ○ Court judgments. • The breadth of this clause means **land ownership claims could arise under various legal sources**, leading to **potential disputes** or **overlapping claims**. **Risk of Overlapping or Competing Rights:** • There could be **multiple parties claiming rights** (e.g., a person with a registered lease, a traditional authority, and an occupier with informal tenure), leading to **conflicts over consent** or **entitlement to compensation**.	

S1 Listed company	Inserted Listed company' means a 'listed company' as defined by the Income Tax Act, 1962 (Act No. 58 of 1962.	Following the Erratum notice this definition should be removed. Unless it is to be used to define what an "unlisted" company is by exclusion.	Support the comment	
S1 Meaningful consultation	Inserted 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.	A new definition of "Meaningful Consultation" has been inserted meaning that the applicant has in good faith facilitated participation in that a reasonable opportunity was given to provide comment about the impact of prospecting or mining activities. The use of the term "informed decision" is incorrect in this context as it appears to assume that there is a decision on the mining or prosecting activity which lies with the land owner or occupant. This should be amended to "enabling these parties to ~~make~~ **gain** an informed **understanding** ~~decision~~ regarding the impact of the proposed activities. This definition also clarifies that the new definition of "land owner" is superfluous	Support the comment **Impact on Quarries** 1. **Reduced Consultation Ambiguity** ○ Quarries would have clearer guidance on what counts as *meaningful consultation*, avoiding disputes over whether proper engagement was done with landowners or communities. ○ This can speed up **application processes** by reducing interpretation challenges.	**Amend the definition** of "meaningful consultation" to replace *"informed decision"* with: *"…enabling the landowner, lawful occupier, or interested and affected parties to gain an informed understanding of the impact of the proposed activities."* **Delete the amended definition of "landowner"** in the Regulations because the new "meaningful consultation" definition already covers lawful occupiers and other affected parties. **Consider removing** the definition of "meaningful consultation" entirely from the Regulations if it causes duplication or legal confusion with the **Mineral and Petroleum Resources Development Act (MPRDA)**.

		and meaningless because already included in this new definition of "Meaningful Consultation" is reference to an lawful occupier or interested and affected person and therefore the amended definition of "land owner" to include any person that holds any form of right in land should be deleted. Definition of “meaningful consultation” in the Mineral and Petroleum Resources Development Regulations to be removed.	2. **Less Power Shift to Landowners** ○ By rejecting the term “informed decision,” the Council removes the **perception that landowners have veto power** over quarry operations. ○ This maintains the current legal stance that final mining approvals rest with the state (through DMRE), not the landowner. 3. **Avoiding Duplication in Definitions** ○ If the “landowner” definition is deleted as suggested, quarries won’t need to navigate overlapping or contradictory definitions that can **create unnecessary administrative burdens**.	Ensure that any regulatory wording **preserves the state’s role** in granting mining rights and avoids unintended shifts of decision-making authority to landowners.

			Regulatory Certainty ○ Clearer language reduces the **risk of legal challenges** against quarry permits based on alleged consultation flaws.	
S1 Mine	Substituted/amended 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 **[granted]** issued; (b) in relation to any environmental, health and safety, social and labour matter and any residual, latent or other impact thereto, [including] includes— (i) any [**land or**] surface of land within, adjacent or nonadjacent to the area as contemplated in **[subsection (i)]**	In paragraph (b) in which "Mine" as used as a verb is defined, the broad concept of underground working, of which gasification is very rare and a narrow example, needs to be retained. This can be achieved simply by moving the new word "gasification" from where it currently appears after the word "underground", to after the word "working", so that the third line of paragraph (b) would read - "*underground or open working, gasification, or otherwise*". In relation to paragraph (b)(i), it is not clear how a residual, latent or other impact will arise in relation to a health and safety, social and labour matter.	Support the comments	

	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, pipeline, cableway or conveyor belt]** mining infrastructure is located, under the control of the holder of such mining rights [**or mining permit**] 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 [subsections (ii) and (ii)fibj] subparagraphs fi) and [ii}**[.]**	The insertion of the words "…and impacting on the environment" is not clear having regard to the fact that paragraph (b) currently relates to environmental, **health and safety, social and labour matters**. The amendment to the definition indicates that the mining area in relation to a labour matter for example, will extend to any surface of land within, adjacent or nonadjacent land where related matters are undertaken **and impacting on the environment**. The link which the definition seeks to establish between the mining area and a labour matter for example is dependent on an impact on the environment of which the connection with a health and safety, social and labour matter is not clear. The reference to the words "impacting on the environment" should in our view be removed insofar as it relates to labour, social, health and safety matters. With regards to paragraph (b)(ii), we suggest that the word "such" should be removed.		

		With regards to paragraph (b)(iii), we suggest that the inclusion of "all buildings, structures, machinery" is arguably already included in paragraph (b)(ii). Paragraph (b)(ii) refers to "mining infrastructure". Limit paragraph (b)(iii) only to residue deposits or residue stockpiles. It is not clear what is meant by other stockpiles.		
S1 Minerals	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;]**	The removal of the exclusion of "petroleum" from the term "minerals" means "petroleum" is now included in this term. This seems to be an error in light of the Upstream Petroleum Resources Development Act, 2024 and the definition should be reconsidered.		

S1 Mining area	Substituted/amended 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 [granted] issued; (b) in relation to any environmental, health and safety, social and labour matter and any residual, latent or other impact thereto, [including] includes— (i) any [**land or**] surface of land within, adjacent or nonadjacent 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, pipeline, cableway or conveyor belt]** mining infrastructure is located, under the control of the holder of such mining rights [**or mining permit**] small-scale mining permit	The Minerals Council suggests that the layout of the definition has, as in previous versions, been confused probably in the type setting thereof. The words beginning "under the control of …(ii)" should, as they did in the corresponding definition in Section 1 of the Minerals Act, 1991 govern all the concepts contemplated in paragraph (i), (ii) and (iii) of this definition. This would also clarify that only such residue deposits and residue stockpiles are encompassed within the definition, as are under the control of the holder and which it is entitled to use. The Minerals Council therefore suggests a definition of "Mining Area" as follows - "***Mining Area***" *means in relation to any environmental, health and safety, social and labour matter and any residual, latent or other impact thereto, the area for which a mining right, small-scale mining permit and artisanal*	Support the comment and input Practical example: Cement quarry 40km away from the processing plant – linked by a rail line owned by the mine. How can a mine be held liable for the processing plant safety and environmental activities? The mine has a mine manager and processing plant an operations manager. 2nd practical example: Lime plant 11km away from the quarry pit linked by gravel public road that does not belong to the mine. The road is not in direct control of the mine, public road. It is recommended that the quarry falls under MHSA and	It is recommended that the quarry falls under MHSA and process plants under OHSA in all events/scenarios

	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 [subsections (ii) and (ii)fibj] subparagraphs fi) and [ii}**[.]**	*mining permit has been granted and includes -* *(a) any adjacent surface of land,* *(b) any non-adjacent surface of land, if it is connected to such area by means of any installed infrastructure,* *(c) any surface of land on which such infrastructure is located, and* *(d) any residue deposits and residue stockpiles,* *under the control of the Holder of such prospecting right, mining right, small-scale mining permit or artisanal mining permit and which he is entitled to use in connection with the operations performed or to be performed under such right or permit.*" The other issue relating to the amended definition in the Bill is that there is	process plants under OHSA in all events	

		reference in (b)(iii) of the definition to "residue deposits or other stockpiles". It is not clear what is meant by the concept of "other stockpiles". It is presumed it is intended to mean "residue stockpiles". But this then contradicts paragraph (b)(ii) which refers to the surface of land but the new definition of "Land" in the Bill already includes residue deposits and residue stockpiles.		
S1 Mineral operation	Substituted/amended Mining operation' means any operation relating to the act of mining and matters directly incidental thereto, including residue stock piles and deposit;	The words "including residue stockpiles and deposit" have been inserted into the new definition of "Mining Operations". Once again, this insertion is grammatically incorrect and renders the entire definition nonsensical. Mining Operation connotes a verb being an operation relating to the act of mining and therefore the reference to "residue stockpiles and deposit" is nonsensical in the circumstances. We further assume the reference to "deposit" should have been to "residue deposit".	Support the comments	• **Amend the Definition for Clarity and Accuracy**: • Replace "including residue stockpiles and deposit" with **"including activities relating to residue deposits and residue stockpiles"** to ensure the definition refers only to **actions** and not static objects. • Correct the term "deposit" to **"residue deposit"** for consistency with the

				Minerals Act, 1991 and other mining legislation. • **Avoid Scope Creep**: • Ensure that "Mining Operations" only covers **active operational activities**, not the mere existence of residue stockpiles or deposits. • This prevents unnecessary regulation of quarries' storage facilities and rehabilitated areas. • **Engage Industry Stakeholders**: • Consult with quarry and mining representatives before finalising the definition to ensure it reflects practical industry operations.
S1 Small scale mining permit	Substituted			

	Small-scale mining permit' means a permit issued in terms of section 27(6).			
S1 Minister	Substituted Minister means the Minister **[of Mineral Resources and Energy]** responsible for Mining			
S1 Organ of state	Inserted Organ of state' has the meaning assigned to it in section 239 of the Constitution			
S1 Principal Inspector of Mines	Principal Inspector of Mines has the meaning assigned to it in the Mine Health and Safety Act, 1996 (Act No.29 of 19961			
S1 Prospecting area	Substituted/amended Prospecting area' **[means the area of land which is the subject of any prospecting right]**— (a) in relation to a mining right, small-scale mining permit or artisanal mining permit, means the area for which that right or permit is granted: or	This definition does not make sense as amended as it does not refer to a prospecting right whatsoever but only in relation to a mining right, small-scale mining permit or artisanal mining permit. The definition then overlaps to a large extent with the definition of "Mining Area" but with several substantial differences and thus in conflict with it.	Support the comments –	**Prospecting area"** refers to the specific **geographical area of land** that is the **subject of a prospecting right** granted in terms of the MPRDA. This area is demarcated in an approved application and authorizes the holder to conduct **prospecting operations**—which include searching for, locating, and

	(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-adiacent to the area as contemplated in paragraph (a), but upon which related or			assessing the presence of mineral or petroleum resources within the boundaries of the designated land.
S1 Public Entity	Inserted public entity' means a 'public entity' as defined in the Public Finance Management Act, 1999 (Act No. 1 of 1999).			
S1 Regional Manager	Substituted Regional Mining Development and Environmental Committee means a Regional Mining Development and Environmental Committee established in terms of section [64(1)] 10A			
S1Residue deposits	Substituted Residue deposit means any residue stockpile remaining at the termination, cancellation or expiry of a prospecting right, mining right,			

	[mining permit, exploration right, production right] small-scale mining permit, artisanal mining permit or an old order right.			
S1 Residue stockpiles	Residue stockpile' means any debris, discard, tailings, slimes, screening, slurry, waste rock, foundry sand, [**beneficiation]** <u>mineral processing</u> plant waste, ash or any other product derived from or incidental to a mining operation and which is stockpiled, stored or accumulated <u>within the mining area</u> for potential re-use, or which is disposed of, by the holder of a mining right, **[mining permit]** <u>small-scale mining permit, artisanal mining permit</u>, [**or, production right**] or an old order right, including historic mines and dumps created before the implementation of this Act	There is now a change to the definition of "Residue Stockpile". Once again this is an attempt by the DMPR to cover the *De Beers Consolidated Mines Ltd vs Ataqua Mining (3215/06) [2007] ZAFSHC 74* decision which provided that tailings created pre-MPRDA were not subject to the MPRDA. Once again, this amendment is illogical, ungrammatical and could create more problems than exist currently. The amendment proposed to "Residue Deposit" already includes a reference to residue stockpiles remaining at the termination of an old order right and therefore the attempt to amend the definition of "Residue Stockpile" is unnecessary. The reference to "historical mines" is so vaguely stated that it would probably include underground mining operations	Support the comments and concerns raised.	**Clarify Ownership and Use Rights:** The Bill should explicitly state: ○ **Who owns** residue stockpiles from historic mines, ○ Under what **conditions they can be exploited**, and ○ What approvals (if any) are needed. **Create Transitional Provisions:** Introduce **clear transitional arrangements** for old order right holders and landowners to:

		which were terminated and would then be regarded as residue stockpiles. This would obviously have major ramifications for mining companies in relation to historic mines in respect of which no new MPRDA rights have been granted but which companies have historical environmental obligations. It would further seemingly imply that if a party acquired say a prospecting right over an area in respect of which there is an historic old mine, the holder of the prospecting right would assume all historical obligations in relation to the historic mine as it would form part of the Mining Area as being part of the Residue Stockpile as per the new definitions of "Mining Area" and "Residue Stockpile" which would be iniquitous. The inclusion of "dumps created before the implementation of the Act" would appear also to be designed to cover the De Beers vs Ataqua decision. However in the view of Minerals Council this would not do so. Firstly "dump" is not defined. Does it including a tailings dam for instance? The		○ **Register historic stockpiles**, ○ Apply for **conversion or recognition**, and ○ Regularize operations **without penalty**, provided certain conditions are met.

		definition of "Mine" when used as a verb still only includes residue deposits and not residue stockpiles. However the drafters of the Bill appear to think that they have covered the situation by including the reference to residue stockpiles in the definition of "Mining Operation" yet it is not included in the definition of "Mine" when used as a verb. The inclusion of the words in the definition of Residue Stockpile "including historic mines and dumps created before the implementation of this Act" also conflicts with the new definition that has been inserted of "Historic Residue Stockpile". The definitions as amended of "Mine", "Mining Operation", "Residue Deposit", "Residue Stockpile" and "Historic Residue Stockpiles and Deposits" are so confused now as to render the entire situation relating to tailings, historical liabilities relating to mines, residue deposits and residue stockpiles, completely and utterly undecipherable.		

		Furthermore the proposed reference to "historic mines and dumps created before the implementation of the MPRDA", will result in an expropriation of the residues in the same way as if the quantity of gold, diamonds, coal or other minerals already separated from the land from which they originated had been expropriated. This will expose the State to significant potential claims for compensation. Such old dumps are the movable property of the entity that lawfully mined them having expended labour and cost thereon or having subsequently acquired them. This is in the same way as a sack of minerals eg of gold, diamonds, coal etc. lying on the ground. In ordinary meaning, working of residues constitutes processing not mining, the concept of mining having for the first time in the Minerals Act 1991 been artificially extended not only to actual mining in the earth but also to working in mined tailings. The effect of these proposed amendments will retrospectively constitute expropriation of old residues since the rights of		

		ownership over them will have been removed by the State, attracting claims to compensation in terms of Section 25 of the Constitution read with item 12 in Schedule II to the MPRDA. Minerals Council therefore requests that the deletion of the proposed amendments.		
S1 Security of supply	Inserted Security of supply' means the orderly supply of designated minerals or mineral products for local beneficiation in order to support and sustain national development imperatives	A new definition of "Security of Supply" has been inserted meaning the orderly supply of designated minerals or mineral products for local beneficiation in order to support and sustain national development imperatives. There is no reference to designated minerals in the amended	No issue with local beneficiation, Quarries are doing it locally. Relook into the Beneficiation requirements	The Bill have to clarify the issue of designated mineral through definition and categories.

		Section 26 with which we deal below. It is assumed that these would be designated by Regulation. The definition also conflicts with the insertion of the new Section 26(2)(B) which provides that every producer of minerals must make available minerals or mineral products for local beneficiation. That does not refer to designated minerals but all minerals.		
S1 The sea	Substituted The sea' **[means the water of the sea, as well as the bed of the sea and the subsoil thereof below the low-water mark as defined in the Seashore Act, 1935 (Act No. 21 of 1935), and within—** **(a) the territorial waters as contemplated in section 4 of the Maritime Zone Act, 1994 (Act No. 15 of 1994), of the Republic, including the water and the bed of any tidal river and of any tidal lagoon;** **(b) the exclusive economic zone as contemplated in section 7 of the**	The definition "the Sea" in Section 1(1) of the National Environmental Management: Integrated Coastal Management Act 2008 in paragraph (a) thereof includes the "the High Seas" which do not fall within the jurisdiction of South Africa and hence also not within the jurisdiction of the MPRDA. It is therefore suggested that the existing definition be retained save that the reference to the low water mark as defined in the Seashore Act, 1935 be replaced with a reference to "Low Water Line" as defined in the Maritimes Zones Act, 1994.	Support the comments and suggestion.	

	Maritime Zones Act, 1994 (Act No. 15 of 1994); and (**c) the continental shelf as contemplated in section 8 of the Maritime Zones Act, 1994 (Act No. 15 of 1994**] has the meaning assigned to it by the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008), and includes the territorial waters, the exclusive economic zone and the continental shelf as contemplated in the Maritime Zones Act,1994 (Act No.15 of 1994);";			
S1 This Act	Amended 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,	Minerals Council requests the deletion of the proposed paragraph (b) referring to the Codes of Good Practice and the Housing and Living Conditions Standards for the Minerals Industry. In this regard see the criticism by the Court in *Akani Garden Route (Pty) Ltd v Pinnacle Point Casio (Pty) Ltd 2001 (4) SA 501 SCA para 7* of giving policy the force of legislation. Given the vagueness and ambiguity of the code and the standards which were not	Support the deletion of (b) because the code of good practice and Housing and Living Conditions cannot be made Law.	Enforce section 98 of the MPRDA

	granted or approved in terms of this Act [, **is subject**]; and (b) the Codes of Good Practice for the South African Minerals Industry and Housing and Living Conditions Standards for the Minerals Industry.	designed so as to constitute legislation, giving those documents legislative force would be unconstitutional for vagueness and hence contrary to the rule of law principle in Section 1(c) of the Constitution, and also for contravening the Constitutional Principle that laws must be made by Parliament and not by the executive. This is particularly significant in the context of section 98(a)(viii) which makes it an offence to contravene "any provision" of "the Act".		
OBJECTIVES (SECTION 2)				
S2 Amended	2. The objects of the 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;	There has been retained the reference to substantially and meaningfully expanding opportunities for Historically Disadvantaged Persons to enter the minerals and mining industry. However, this contradicts the deletion of the definition of "Historically Disadvantaged Persons" in clause 1(t) of the Bill.	Support the comments. More information to clarify why the Objects were modified. **Clarified Explanation of the Objectives of the Act** • The objectives of the Act are designed to govern how mineral and petroleum resources are managed	

	(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; (e) promote optimal 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]; (f) promote employment and advance the social and economic welfare of all South Africans; (g) provide for security of tenure in respect of prospecting, **[exploration,]** and mining [and production] operations;		and developed in South Africa. The core principles and implications of each objective are as follows: 1. **State Sovereignty (a)** ○ **Clarification**: The State has full authority over all mineral and petroleum resources within South Africa. ○ **Rationale**: Aligns with international norms where the State holds ultimate control to ensure national interests are protected. ○ **Implication for Quarries**: Quarry operators do not "own" the mineral resources they extract; they require state-issued rights to access and use them.	

	(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 <u>through the implementation of social</u> and labour plans [**of**] in [**the**] areas [**in**] which they are operating, including labour sending areas;".		2. **Custodianship by the State (b)** ○ **Clarification**: The State acts as a custodian on behalf of all citizens, managing resources responsibly and equitably. ○ **Rationale**:Prevents monopolization and ensures resources benefit the broader public. ○ **Implication for Quarries**: Must comply with state guidelines and fulfills obligations to maintain rights and licenses. 3. **Equitable Access (c)** ○ **Clarification**: All South Africans should have fair opportunities to access mineral resources.	

			○ **Rationale**:Addresses historical imbalances and promotes inclusivity. ○ **Implication for Quarries**: Must operate within a framework that supports inclusive participation and avoids discriminatory practices. 4. **Empowerment of Historically Disadvantaged Persons (d)** ○ **Clarification**: There should be proactive inclusion of historically disadvantaged groups (e.g., Black South Africans, women, communities) in the mineral sector. ○ **Rationale**: Corrects historical injustices and promotes economic transformation.	

			○ **Implication for Quarries**: Encouraged or required to implement BEE (Black Economic Empowerment) strategies and form community partnerships. 5. **Economic Growth and Development (e)** ○ **Clarification**: Resource extraction should support economic growth, including the development of downstream industries and inputs for other sectors. ○ **Rationale**: Leverages the resource sector to boost broader industrial and economic development. ○ **Implication for Quarries**: Expected to contribute to local beneficiation (e.g., supplying aggregates to construction) and value chains.	

			6. **Employment and Welfare (f)** ○ **Clarification**: Mining activities should generate jobs and uplift the living standards of citizens. ○ **Rationale**: Leverages resource wealth to fight poverty and unemployment. ○ **Implication for Quarries**: Must prioritize local employment and demonstrate positive socio-economic contributions. 7. **Security of Tenure (g)** ○ **Clarification**: Rights holders must be guaranteed security to carry out prospecting and mining without arbitrary revocation.	

			○ **Rationale**: Encourages investment by providing legal certainty. ○ **Implication for Quarries**: Once granted rights, operators are protected as long as they comply with regulations. 8. **Sustainable Development (h)** ○ **Clarification**: Resource development must balance economic, social, and environmental considerations. ○ **Rationale**: Aligns with constitutional obligations (Section 24) to protect the environment. ○ **Implication for Quarries**: Must comply with environmental impact assessments,	

			rehabilitation, and sustainable practices. 9. **Social and Labour Plans (i)** ○ **Clarification**: Mining right holders must implement plans to support community and labour development, especially in their areas of operation and in labour-sending regions. ○ **Rationale**: Ensures that communities benefit from nearby mining activity and that labour conditions are improved. ○ **Implication for Quarries**: Required to invest in local development initiatives, education, housing, and other community upliftment projects.	

			Identified Conflict and Purpose of Resolution • **Conflict Addressed**: The Act seeks to address the **historic exclusion and exploitation** of local communities and previously disadvantaged individuals in the mining and quarrying sectors. It balances **private sector investment** with **public benefit**, ensuring that while companies may profit from extraction, they also contribute meaningfully to social, environmental, and economic upliftment. • **Rationale Behind the Act**: • Promote **inclusive growth**, **redress inequality**, and ensure **sustainable resource use**.	

			• Avoid a repeat of **colonial and apartheid-era mining models**, which prioritized profits over people and the environment. **Conclusion: Implications for Quarries** • Must **align with national transformation goals**, including BEE and community development. • Required to **obtain legal rights from the State** and comply with **environmental and social regulations**. • Need to demonstrate **sustainable practices** and contribute to **inclusive economic growth**. • Non-compliance may lead to **revocation of mining rights**, reputational damage, or legal action.	

CUSTODINASHIP (SECTION3)				
S3 Amended	"(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.''; (c) by the substitution for subsection (2) of the following subsection: "(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, **[mining permit]** small-scale mining permit, artisanal mining permit **[,]** and retention permit **[, technical co-operation permit, reconnaissance permit, exploration right and production right; and**], (d) by the substitution of subsection 3 of the following subsection:			

	"{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."			
LEGAL NATURE OF RIGHTS (SECTION 5)				
S5 Amended	(a) by the substitution for the heading of the following heading: Legal nature of prospecting right, mining right, **[exploration right or production right],** and rights of holders thereof.; (b) by the substitution of subsection (1) of the following subsection: (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.;	Section 5 amendments do not follow the amendments made to the definition of the holders. This amendment does not include holders of artisanal mining permits and small-scale mining permits – is the intention to exclude them from the rights provided in section 5? This should be clarified in the Bill.	Not included the artisanal mining permits and small-scale mining permits because there were not specifically mentioned in Act 49 of 2008 to amend. However, section 5 as amended aimed to: **Conflicts Addressed (if any)** • Yes, the amendment seems to **resolve potential ambiguity** regarding: • **Overlap** or confusion between **mineral and**	

	(c) by the substitution of subsection (2) of the following subsection: "(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."; (d) by the substitution of subsection 3 of the following subsection: " (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;		**petroleum rights**—both are now treated equally under "limited real rights." • **Conflicting interpretations** of holders' rights between mining and exploration/production sectors—particularly around **access, disposal, and water use**. • Clarifies what activities are **lawful and incidental** to rights holders, reducing legal uncertainty and potential disputes with landowners or regulators. In **Summary** This amendment aims to: • Clarify and unify the legal interpretation of mining-	

	(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; (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.		related rights (including quarrying). • Legally solidify the status of such rights as **limited real rights** under South African law. • Prevent conflict and misinterpretation by aligning language and expectations across the mining and petroleum sectors. • Support lawful and environmentally compliant quarry operations.	

ILLEGAL ACTS (SECTION 5A)				
S5A Amended	Section 5A of the principal Act is hereby amended— (a) by the substitution for the heading of the following heading: "**<u>Illegal prospecting and mining activities":</u>** (b) by the substitution for the words preceding paragraph (a) of the following words: "No person may prospect for or remove, mine, conduct **[technical cooperation operations,]** reconnaissance operations, [explore for and] produce any mineral **[or petroleum]** or commence with any work incidental thereto on any area without— (b) by the substitution for paragraph (a) of the following paragraph: "(a) an environmental authorisation in terms of National Environmental Management Act, 1998 (Act No.107 of 1998) as amended:".	The words "in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998) as amended" have been inserted into this section. This superfluous because the definition of "Environmental Authorisation" in Section 1 of the MPRDA already makes reference to NEMA.	**1. Significance of the Amendment to Section 5A** • The amendment to Section 5A of the MPRDA strengthens the **regulatory framework against illegal mining activities** and clarifies the **legal requirements** for anyone wishing to conduct mining-related activities in South Africa. **Key Changes:** • **Heading change**: From a broader scope to a more direct title — **"Illegal prospecting and mining activities"** — highlighting a stricter stance on unlawful operations. • **Clarification of prerequisites**: Tightens	**Recommendations** **a. Enhanced Enforcement:** • **Capacity-building** for enforcement authorities (DMRE, SAPS, and Environmental Management Inspectors) to act swiftly on violations. • Strengthen coordination between DMRE and DFFE for joint inspections and crackdowns. **b. Awareness and Stakeholder Training:** • Conduct **awareness campaigns** for communities, artisanal miners, and local municipalities on legal requirements and permit processes.

	(c) by the substitution for paragraph (b) of the following paragraph: "(b) a reconnaissance permission, prospecting right, permission to remove, mining right, **[mining permit]** <u>small-scale mining permit, artisanal mining permit</u> **[,]** or retention permit, **[technical cooperation permit, reconnaissance permit, exploration right or production right,]** as the case may be.		language to specify that **no person may engage in any prospecting, reconnaissance, mining or removal of minerals** without both: (a) **Environmental authorisation** (as per NEMA), and (b) The **relevant mining or prospecting rights/permits**. • **Updated permit types**: Introduces **artisanal and small-scale mining permits**, aligning the Act with efforts to **formalize artisanal mining** and make the sector more inclusive, while removing outdated references like "technical cooperation operations."	• Support **small-scale miners** in formalizing their operations through training and streamlined access to permits. **c. Amend Supporting Regulations:** • Update related **regulations and guidelines** to reflect new permit types and dual compliance expectations. • Consider **integrating a digital registry** for environmental and mineral rights to ease verification and reduce fraud. **d. Clarity on Artisanal Mining Permit Criteria:** • Ensure the criteria, rights, and responsibilities for **artisanal and small-scale mining** are well-

			2. Implications of the Amendment **a. For Illegal Operators:** • The amendment **reinforces criminal liability** for illegal mining or prospecting without the required environmental and mineral rights. • Provides a stronger legal basis for **enforcement actions**, seizures, and prosecution. **b. For Rights Holders:** • Enhances **legal protection** and security of tenure by reducing unlawful competition from illegal operators. • Reduces environmental degradation caused by unregulated activities,	defined to avoid abuse of the system and ensure safety and sustainability.

			which can affect legitimate operations. **c. For Regulatory Bodies:** • Streamlines oversight and enforcement by clearly defining **dual compliance requirements** (environmental and mineral rights). • Aids in formalizing previously informal or illegal mining activities into regulated small-scale or artisanal operations. 🔹 **3. How the Amendment Supports Rights Holders** • **Protects legal entitlements**: Ensures that only entities with proper legal standing and environmental compliance can operate.	

			• **Reduces encroachment**: Discourages illegal miners from operating on legally held land, reducing potential conflicts and resource theft. • **Promotes responsible mining**: Aligns environmental responsibilities with mineral exploitation rights, creating a more sustainable operating environment. • **Enables recourse**: Strengthens the legal tools that rights holders can use to report and address encroachments or illegal activities on their concessions.	
SECTION 5B and C				

S5B Inserted	**Prohibition relating to assistance in committing illegal prospecting and mining activities** 5B. 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.	A new section has been inserted into the MPRDA by virtue of the Bill to deal with illegal mining activities so that no person may assist or provide any service to any person, directly or indirectly to enable or aid the committing of illegal prospecting and mining activities contemplated in Section 5A. Although the principle behind this is salutary so that is desired to cover masterminds behind illegal mining activities this may have unintended consequences of causing all service providers to any mining company to have to do a full due diligence before taking on any service. This would include mining contractors, geologists, accountants and lawyers, for example. Thus, for example, there may be a dispute between 2 mining houses which ends up in Court and the Court may decide in favour of one party as opposed to the other and the other party that loses the litigation may therefore technically be mining unlawfully. Anybody including any service provider who assisted the company would be guilty of an offence. Therefore it is suggested that the	Do not support the statement from Mineral Council, these illegal mining negatively affects small mining houses. Illegal crushing of stone from old ownerless rock dumps and illegal digging of sand and anyone who provide machinery or transportation of such materials in my view falls under any service provider “.	The regulations have to clarify who is regarded as person who may assist or provide any services.

		words "provide any service" should be deleted.		
S5C Inserted	**Prohibition relating to possession and transportation of minerals** 5C. No person may possess or transport in any manner minerals 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 possession of the prescribed documentation.".	A new Section 5C prohibits persons from possessing or transporting any minerals outside the boundaries of any mine without the prescribed documentation. It is extremely unclear what is meant by this and whether there will be regulations which deal with what documentation must be in possession of the transporter of minerals. These provisions must also be dovetailed with the restrictions that already exist in respect of diamonds under the Diamonds Act and precious metals under the Precious Metals Act.	Support the comments and inputs	Unclear with kind of compliance documentation
DIVISION PROVISION (SECTION 7)				
S7 Amended	**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, <u>including</u> 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 <u>in terms of applicable legislation,</u>			
S7A Inserted	**Designation of certain areas for small-scale and artisanal mining** 7A. 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 (b) invite applications for small-scale and artisanal mining as contemplated in section 9A.".	A new Section 7A has been proposed whereby the Minister in the Government Gazette can designate certain areas only for **Black persons** for small-scale and Artisanal Mining and invite applications for small-scale and Artisanal Mining as contemplated in Section 9A. There are 2 issues relating to this section which need to be borne in mind in the redrafting thereof if it is to be retained. The first relates to the fact that the designation of the area is restricted only to Black persons. This is extremely discriminatory. The exclusion of all other persons in South Africa other than Black persons would exclude many current diggers in the Northern Cape for example.	If the Bill provides that **only Black persons** (as defined under the **Broad-Based Black Economic Empowerment Act**) may be awarded **small-scale mining permits and artisanal mining permits**, this provision carries both **transformative intentions** and **potentially discriminatory implications**. **Intended Purpose (Rationale):** • The provision aims to **promote redress and equitable access** to mineral resources by historically disadvantaged	**Widen the Definition of Beneficiaries**: • Include all **historically disadvantaged persons** (not only "Black") who meet **economic vulnerability criteria**, such as **White women, Indians, and Coloureds**. • **Use Socio-Economic Criteria Alongside Race**: • Consider **poverty level, geographic location (rural areas), and gender** to identify deserving applicants for small-scale and artisanal mining opportunities.

		Furthermore there is reference to an invite under Section 9A which is a new section dealing with invitation for applications by the Minister. However Section 9A only deals with the situation where there has been a relinquishment or abandonment of rights or rights have lapsed and the Minister can then invite any application over that area. There is also reference in the new Section 9A(1)(b) to areas designated as contemplated in Section 7A but the problem arises is that no provision exists for what the situation is should there be existing rights in existence over the designated area. Surely the designed areas in terms of Section 7A must be areas in respect of which no existing rights or applications exist.	South Africans (HDSAs), particularly Black South Africans. • It is consistent with the **Mining Charter** and Section 100 of the **Mineral and Petroleum Resources Development Act (MPRDA)**, which focus on **economic transformation** and **inclusive participation** in the mining sector.	• Create **Multiple Tiers of Support**: • Offer **graduated support mechanisms** where Black South Africans may receive **priority access**, but others can also participate through **capacity-building programs or equity conditions**. **Consult Widely Before Implementation**: • onduct **impact assessments** and **public participation** processes that include **marginalized groups from all racial backgrounds**, especially those with valid claims to inclusion. • Ensure **Constitutional Alignment**:

				• Engage with the **South African Human Rights Commission (SAHRC)** or **legal experts** to ensure the provision meets the **proportionality test** under constitutional law.
PROCESSING APPLICATION (SECTION 9 and 9A)				
S9 Amended	"(1) **[If the Regional manager!** The minister must not accept **[receives more than one]** applications for a prospecting right, a mining rights, **[or a mining permit]** a small-scale mining permit or artisanal mining permit, as the case may be, **[in respect of the same mineral and** land, applications received on— **(a) the same day must be regarded as having been received at the same time and must be dealt with in accordance with subsection (2);**	Section 9(1) of the MPRDA which deals with the "first-come first-served" application procedure is intended to be amended substantially. It is stated that the Minister must not accept applications for prospecting rights, mining rights etc. where there is an existing application, right or permit. It is very unclear as to importance of this. There is no reference to the same mineral on the same land so does this mean that where there is an existing application, right or permit no other application for any form of mineral, even a	The amendment appears to change the process for handling **multiple applications** for a **prospecting right, mining right, mining permit, small-scale mining permit, or artisanal mining permit**. **Current Provision (before amendment):** • If multiple applications are received **for the same land and mineral**, they are treated as follows:	Recommendation • **Introduce a Time Limit on Processing Applications**: Ensure that if the initial application is not processed within a set period (e.g., 90–120 days), the Minister must open the land to other applicants to avoid abuse of the system. • **Apply the Rule with Exceptions**:

	(b) different days must be dealt with in order of receipt.] where <u>there is an existing application, right or permit.</u>	mineral which is unconnected with the existing right, may be accepted? The amended Section 9(1) also then does not talk to Section 9(2) of the MPRDA. Section 9(2) provides that applications that are received on the same day must be dealt with on the basis that Historically Disadvantaged Persons have preference. However the definition of "Historically Disadvantaged Persons" has been deleted in the Bill and therefore Section 9 is not workable in the circumstances. Furthermore Section 9(1) also contradicts Section 16(2)(b) and Section 22(2)(b) of the MPRDA which provide that the Minister must reject an application where another person holds a prospecting right, mining right etc for the same mineral and land. Section 9(1) does not refer to the same mineral and land and therefore there is a direct contradiction between Section 9 and Sections 16 and 22 of the MPRDA. The Minerals Council suggests that Section 9 be dovetailed with Section 16(2)	○ Applications received **on the same day** are considered **simultaneous** and processed according to a prescribed method (e.g., based on merit or draw-lots). ○ Applications received on **different days** are processed **chronologically** (first-come, first-served).	Allow for **parallel processing** of applications **where one application is incomplete or not progressing**. • **Add a Safeguard Against Land Hoarding**: Prevent applicants from continuously **resubmitting to block others** without genuine intent to develop the resource. • **Provide a Transparent Queueing System**: Rather than outright rejection, place simultaneous applicants into a **publicly visible queue**, with clear status updates and timelines.

		and Section 22(2) of the MPRDA. It was contemplated in workshops held with the Legal Department of the DMPR prior to the gazetting of the Bill that there would be a provision that no applications could be accepted on a piece of land for any mineral where there was an existing right or application for any mineral including minerals which are not the subject of the new application without the consent of the existing holder or applicant. It is suggested that this concept should be worked into the new Section 9(a) and then cross-referred to in Sections 16(2) and 22(2) of the MPRDA. The Minerals Council does welcome the introduction of a new designated application system which ousts the jurisdiction of Regional Managers to accept or reject applications as there are literally hundreds of appeals that have been lodged with the DMRE Appeal Authority flowing from unlawfully accepted applications by Regional Managers which has caused extreme consternation in the		• **Clarify Criteria for Prioritization (if applicable)**: If simultaneous applications are accepted under exceptional circumstances, establish **transparent criteria** (e.g., socio-economic benefit, transformation goals, financial and technical capability). **Conclusion** The amendment strengthens regulatory control and simplifies the mineral rights allocation process. However, it introduces potential concerns about fairness, access, and unintended exclusion — especially for small-scale or historically disadvantaged applicants. To maintain **equity and transparency**, the legislature

		mining and mineral industry of South Africa. Section 9 should also deal with the concept of "associated minerals" introduced into section 1 and section 102(2). If an application for an "associated mineral" that may arise in connection with the minerals for which an existing mining or prospecting application or right has been granted the application should be rejected and rights to such associated minerals should only be granted following the new process allowed by section 102(2) allowing an existing holder the right to include associated minerals in their existing right. Without doing this the new provisions in section 102(2) cannot be applied.		should include **procedural safeguards**, **time-bound mechanisms**, and **clarity on exceptions**.
S9A Inserted	**Invitation for applications** 9A. (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	It is not clear whether Section 9 is now designed to provide a procedure that only when the Minister has, by notice in the Gazette invited application for rights can such applications be lodged or can a party still independently lodge an application in	Support the comments 9A.1 (a) is more of the regulation not the law. It must just relate to different rights issued in terms of the provisions of the MPRDA, land and minerals	

	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 the terms and conditions upon which applications may be accepted, rejected, granted or refused.	terms of Sections 16 or 22, nonetheless. We assume the latter interpretation is correct but this should be clarified. Furthermore the drafting in Section 9A needs to be tidied up as there is no concept of relinquishment or abandonment of land or mineral so therefore the relinquishment and abandonment parts of this section should only relate to rights, permits and permissions in terms of the MPRDA. In regard to clause 9A(1)(b) please see our comments above in relation to Section 7A which has been proposed in the Bill.	cannot be part of what section 9A.1.a.	
CONSULTATIONS WITH INTERESTED PARTIES (SECTION 10 – 10A, B, C, D, E, F and G)				

S10 Amended	(a) by the substitution for the heading of the following heading: **Meaningful consultation with interested and affected** [**parties**] persons": (b) by the substitution for subsection (1) of the following subsection: "(1) Within [14] seven days after accepting an application lodged in terms of section 16, 22 or 27, the **[Regional manager]** Minister and the applicant must in the prescribed manner— (a) make known that an application for a prospecting right, mining right, **[or mining permit]** small-scale mining permit or artisanal mining permit has been accepted in respect of the land in question; and (b) call upon interested and affected person to submit their comments and objections regarding the application within 30 days from the date of the notice to the [**Regional manager]** Minister.''; and (c) by the substitution for subsection (2) of the following subsection:	Section 10 read with Regulation 3 currently casts duties on the Regional Manager, not on the applicant. For example, the applicant cannot put a notice on the Regional Manager's notice board or arrange a notice at the Magistrate's Court. Nor can the applicant do so within 7 days of the Minister accepting the application because the acceptance letter usually follows only some days after the acceptance has occurred. If the proposed reference to the applicant is, notwithstanding the afore going, to be retained, then Section 10 would have to be amplified further to provide for - • the Minister to inform the applicant of the identity of any interested and affected persons (including competing holders or applicants for rights) who are known to the Minister; and • the Regional Manager to provide an additional notice board on which	Support the amendment. This amendment promotes **greater inclusivity, transparency, and efficiency** in the consultation process by: • Expanding the definition to include all affected **persons** (not just parties), • Requiring **faster notification (within 7 days)**, • And placing shared responsibility on both the **Minister and the applicant**. While it aligns with principles of participatory democracy, it also places **operational demands** on both the Regulator and applicants. Stronger administrative systems and clearer guidance will be necessary	**Recommendations to the Regulator (DMRE / Minister)** **a. Strengthen Public Participation Frameworks** • Develop or revise **clear guidelines** on what constitutes **"meaningful consultation"** for all permit types. • Include **visual, linguistic, and culturally appropriate methods** of notification, especially in rural areas. **b. Build Administrative Capacity** • Allocate resources to ensure the **7-day deadline** is met, especially in high-volume or rural regions.

	"(2) If a person or community objects to the granting of a prospecting right, mining right or **[mining permit]** <u>small-scale mining permit or artisanal mining permit</u>, the **[Regional manager]** <u>Minister</u> must refer the objection to the Regional Mining Development and Environmental Committee to **[consider]** <u>adjudicate</u> on the objections and to advise the Minister thereon.	applicants would be able to place notices by applicants. It is also unclear how the Minister will give the notice when such notice is currently provided by the Regional Managers. Section 10(2) of the MPRDA is proposed to be amended by referring to the fact that RMDEC must adjudicate on the objections. It is not clear as to the import of this amendment because it seems to connote that RMDEC adjudicates on applications in respect of which an objection has been lodged. This is completely unsatisfactory as in practice the workings of RMDEC have been very unsatisfactory in the past. It is only persons within the DMPR's office in the Regional Office and Heads Office that can assist the Minister on adjudicating an application. RMDEC should merely advise the Minister as currently and done based on a hearing and there reference therefore to "adjudication" should be reconsidered and possibly deleted.	to implement this amendment effectively and fairly.	• Consider **digital platforms** for fast and transparent publication of accepted applications and consultation notices. **c. Monitor Compliance of Applicants** • Introduce a **checklist or verification system** to ensure applicants are properly engaging all “interested and affected persons,” not just institutional stakeholders. • Hold applicants accountable for **misleading or tokenistic consultation**, with consequences for non-compliance. **d. Support Artisanal and Small-Scale Miners** • Provide **training and assistance** to small-

		The detailed provisions which have been inserted do not deal with frequency of meetings nor quorum. The proposal for a 14 member committee is very unwieldy and as is currently the case sittings are likely to be very infrequent. There should be no statutory obligation on this body to "adjudicate" all objections.		scale and artisanal miners so they can fulfill the consultation obligations. • Develop **standardized templates or community engagement tools** for these groups.
S10 A Inserted	**Establishment of Regional Mining Development and Environmental Committee** IOA. The Regional Mining Development and Environmental Committee is hereby established for each region contemplated in section 7 of the Act.	Section 64 of the MPRDA currently contemplates the establishing of RMDEC for each Region. Detailed provisions have now been inserted in terms of the new 10A - 10G dealing with RMDEC. It does not appear to be appropriate for this section to be inserted here because Section 10 deals with consultation with interested and affected parties. It is rather believed this section should fall under the administration section of the MPRDA.	Support the comments and suggest that the more detailed REMDC should be in the regulations.	Include section 10A-10G in the Regulations

S10B Inserted	**Functions of Regional Mining Development and Environmental Committee** IOB. 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).			
S10C	**Composition of Regional Mining Development and Environmental Committee** 10C.(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; a (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.			
S10D	**Disqualification of members** 10D. 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	The requirement that members be South Africa citizens is unusual in South African legislation and unusual in a context where representatives from various departments or public entities are intended to be members of the committee. This does not seem to accord with recognition in other areas of government policy of the importance of allowing skilled professionals with the appropriate work visa to contribute to the South African		

	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.	economy. The precedent such a provision will set should be carefully considered.		
S10E	**Vacation of office** Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998 10E. (1) A member of the committee must vacate his or her office if he or she— (a) becomes subject to any disqualification contemplated in section 10D, or in the case of an official in the service of the State, ceases to be such an official; (b) has been absent for more than two consecutive meetings of the committee without leave.			

	(c) tenders his or her resignation in writing to the Minister and the Minister accepts the resignation; or (d) is removed from the office by the Minister under subsection (2). (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:			
S10F	**Term of office and filling of vacancies** IOF. (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.			
S10G	**Reporting by Regional Mining Development and Environmental Committee** IOG. In addition to any specific report which the Minister may reguest 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.			
TRANSFER AND INCUMBRANCES (SECTION 11)				

S11(1) Amended	(a) by the substitution for subsection (1) of the following subsection: "(1) A prospecting right [**or**] mining rightjor an interest in any such right, or any interest in **[a close corporation or]** an unlisted company or any controlling interest in a listed company (**which corporations** or companies . which holds a prospecting right, [**or**] 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. As amended by Erratum note on 10 June 2025. "(1) A prospecting right [**or**] mining rightjor an interest in any such right, or any interest in **[a close corporation or]** an unlisted company ~~or any controlling interest in a listed company~~ (**which corporations** or	It was originally proposed that Section 11(1) is amended to read as follows - *"(1) A prospecting right, mining right, or an interest in any such right, or any interest in an unlisted company or any controlling interest in a listed company or companies, (which holds a prospecting right, mining right, small-scale mg permit or artisanal mining permit or an interest in any such right), may not be ceded, transferred, encumbered, let, sublet, assigned or alienated without the prior written consent of the Minister as prescribed*." There were various issues flowing from the amended provision, while the Erratum notice is to be welcomed it has not cured many of the difficulties that the amendments give rise to. We comment here on both the original amendments and include at the end our comment on	**Implications of the Amendment** **1. Broader Scope of Regulatory Oversight** The amended section **expands the Minister's consent requirement** beyond just direct rights (e.g., prospecting or mining rights) to now include: • **Interests in unlisted companies** • **Controlling interests in listed companies** • Companies or entities that **hold prospecting rights, mining rights, small-scale mining permits, or artisanal mining permits** **Implication:** • This means that **any transaction** involving a change of control, ownership, or interest	**Recommendations to the Regulator (DMRE / Minister)** **1. Issue Clear Guidelines on Ministerial Consent Process** • Provide **prescribed timelines** for approval to avoid unnecessary delays in business transactions • Define what constitutes a **"controlling interest"** in both listed and unlisted companies • Clarify the process for **indirect shareholding changes** that require consent **2. Develop a Simplified Framework for Small-Scale and Artisanal Miners** • Recognize that most artisanal or community-based miners

	companies . which holds a prospecting right, [**or**] 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.	the amendments withdrawn in the Erratum notice. Firstly there is reference to a prospecting right or mining right or an interest in such right not being able to be ceded, transferred etc without the consent of the Minister. This does not include a small-scale mining permit or an artisanal mining permit but strangely then there is the restriction of disposing of any interest in an unlisted company which holds a small-scale mining permit or artisanal mining permit. It illogical that that a small-scale mining permit or artisanal mining permit can be disposed without ministerial consent yet there is a requirement that if any interest in the holder of a small-scale mining permit or artisanal mining permit is transferred (even a1% shareholding) would require the consent of the Minister. Furthermore, this contradicts the proposed new Section 27(4) as inserted by clause 26 of the Bill which provides that a small-scale mining permit may be	(directly or indirectly) in companies that hold rights or permits **must first receive written consent** from the Minister. **2. Inclusion of Small-Scale and Artisanal Mining** • The amendment explicitly includes: • **Small-scale mining permits** • **Artisanal mining permits** **Implication:** • These permits were previously less regulated regarding ownership changes. Now, even **small community-led or individual mining operations** fall under the same regulatory control when it comes to **transfers or**	**lack legal and administrative capacity** • Create **simplified, low-cost procedures** for transfers or changes in small-scale operations • Offer **capacity-building and legal aid** for compliance **3. Implement a Monitoring and Audit System** • Ensure that **shareholding changes** in listed and unlisted companies that hold mineral rights are tracked and reported • Establish **data-sharing agreements with the Companies and Intellectual Property Commission (CIPC)** and the JSE to detect unreported transactions

		transferred, ceded, let, sublet, alienated or disposed or may be encumbered or mortgaged with the Minister's consent in writing. There is no reference any longer to a controlling interest in relation an unlisted entity and therefore the new Section 11(1) potentially impacts on each and every change in "interest" an unlisted company. This would implicate less than 1% changes, preference share funding, adjustments arising from employee share ownership schemes, share buy-backs and many other corporate transactions. This introduces micromanagement into the affairs of mining companies which is not found in any other sector of the economy, it goes well beyond the Competition threshold and the listed company triggers for approval and it is unclear why these are matters requiring Ministerial consent. Investors in mining companies require clear, transparent and efficient practices	**cessions** of rights or interests. This could: • Protect against exploitation or fronting • Create **compliance challenges** for small-scale operators unfamiliar with complex legal procedures **3. Indirect Control Transactions Now Regulated** • The inclusion of **interests in unlisted companies and controlling interests in listed companies** introduces oversight over **corporate-level transactions** (e.g., mergers, acquisitions, shareholding shifts) that might affect ownership of mineral rights **indirectly**. **Implication:** • Even if the mining right itself is not directly sold,	**4. Balance Regulation with Ease of Doing Business** • Engage industry to ensure the consent requirement does not **unnecessarily delay investments or transactions** • Consider adopting a **"pre-approval" or "notification and no objection" model** for certain low-risk or internal transactions

		for undertaking corporate activities, it has taken many years to establish an understanding of what section 11 requires and when it is triggered in the corporate transactional context. Judgements on these matters have brought clarity but these matters hould not be so unclear that they require judicial precedent to clarify. The new proposals completely change existing practices without establishing any clear need for the changes and without clearly indicating what exactly the circumstances are in which consent will be required. The issues of direct vs indirect shareholding, cessions in securitatum debiti, pledges for funding purposes, transfers triggered by insolvency are all matters on which clarity is needed. There should be purposive engagement on these matters to create an investor friendly environment while maintaining Ministerial control over important movements in shareholding.	the transaction will require consent if it results in a change in control of the **entity holding the right**. This could: • Delay or complicate commercial transactions (e.g., takeovers, restructuring) • Ensure **greater transparency and oversight** over who controls South Africa's mineral resources **4. Prevention of Unregulated Disposal** • Words like **"ceded," "encumbered," "sublet," "assigned," or "alienated"** reflect a wide net of activities that now require prior Ministerial approval. **Implication:**	

		Furthermore there is reference to the prior written consent of the Minister "as prescribed". It is not clear what is meant by "as prescribed". Is it intended that the application for the consent must be in terms of Regulations or is the form of the consent going to be prescribed. It is also unclear whether this gives the Minister discretion to impose conditions upon the grant of the Section 11 consent. There is no legislative guidelines or criteria for the exercise of the Minister's discretion if this is the case and this is therefore arguably unconstitutional as offending against the rule of law principle in Section 1(c) of the Constitution. Furthermore there is a deletion of the words "or otherwise disposed of" in Section 11(1). This contradicts for example the newly inserted 11(5) which refers to a disposal and the sections must talk to each other. If the words "or otherwise disposed of" is deleted from Section 11(1) then it is only the transactions which are specifically referred to as remaining being cessions,	• Prevents **backdoor disposals** or **creative workarounds** used to bypass formal transfer procedures. This supports **national interest**, but it may: • Increase administrative burden • Require legal compliance monitoring for corporate entities	

		transfers, encumbrance, letting, subletting, assignment or alienation that would be affected. The amendments withdrawn in the Erratum notice are welcomed as by their very nature, shares in listed companies are traded daily on the relevant Stock Exchange often by portfolio managers under general mandate. It is therefore not possible for the relevant shareholder, let alone the listed company itself to control or prevent such trading. In accordance with the maxim that the law does compel the impossible, these provisions should not be reintroduced.		
Sec 11(3)	(c) by the substitution for subsection (3) of the following subsection: (3) The consent contemplated in subsection (1) is not required in respect of the encumbrance by mortgage contemplated in subsection (1) of a right or interest as security to obtain a loan or guarantee for the purpose of funding or	Section 11(3) now includes reference to a public entity. Section 11(3)(c) has been improperly worded in that the words "if the bank, public entity ..." following from the words "any public entity" should cover all of (a), (b) and (c) of Section 11(3). An unintended consequence of the amendments to Section 11(1) and 11(3) is that pledges of shares will now fall under	Support the comments	

	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 **[, if the bank or financial institution in question undertakes in writing that any sale in execution or any other disposal pursuant to foreclosure of the mortgage will be subject to the consent in terms of subsection (1).]** (c) <u>any public entity, if the bank, public entity or financial institution in question undertakes, in writing, that any sale in execution or any other disposal pursuant to foreclosure of the mortgage is subject to the consent in terms of subsection (1).</u>	Section 11(1) because they will be regarded as an encumbrance over an interest in an unlisted company whereas previously this was not the case under the existing Section 11(1). The carveout in Section 11(3) would not assist banks in this regard because Section 11(3) only refers to encumbrance by mortgage and a pledge of shares would not be such security and therefore banks would require the consent of the Minister upfront to enter into a pledge of shares over a company holding a prospecting right or mining right. The wording of the amended Section 11(3) does not clarify a major issue with Section 11(3). Many banks have complained that Section 11(3) does not cover a situation where there is a security SPV that has been set up by a consortium of banks to fund a mining project and such security SPV would then not be regarded as a bank or other financial institution or public entity for purposes of Section 11(3) and this should be clarified as most project funding		

		for mining projects involves a consortium of banks.		
Sec 11(4)	(c) by the substitution for subsection (4) of the following subsection; "(4) Any transfer, cession, letting, subletting, alienation, encumbrance by mortgage or variation of a prospecting right or mining right, as the case may be, contemplated in this section, must be lodged for [**the**] registration at the Mineral and Petroleum Titles Registration Office within [**60**] <u>7</u> days <u>from the execution</u> date **[of the relevant transaction].**	There has been an amendment to Section 11(4) of the MPRDA which provides that any transfer, cession, letting etc. as contemplated in Section 11 must be lodged for registration at the Mineral and Petroleum Titles Registration Office within 7 days from the execution date. Firstly the time period is impractical and the reference to 60 days should be retained. It is often difficult to obtain all of the relevant documents post execution to enable parties to lodge the documents for registration. As part of the registration one has to obtain a transfer duty exemption certificate from SARS after execution and this often takes up to 3 weeks to obtain and the Mining Titles Office will not accept the documents for lodgement if such transfer duty receipt is not lodged. Furthermore the reference to the execution date is not correct in that, for example disposals of controlling interests or any	Support the comments	DMPR to retained in the BIll

		interest in the holder of a right would not be executed at all. This would be done in terms of a Sale Agreement and a transfer of shares in the securities register pursuant to a Sale Agreement for the shares and it is merely a noting that is done in the Mining Titles Office with an endorsement. There is therefore no execution date in such a circumstance. This makes Section 11(4) unworkable.		
Sec 11(5)	Inserted (b) by the addition of the following subsection: (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.	The Bill proposes to amend section 98 to make it an offence to contravene section 11 of the MPRDA with significant punitive measures as set out in section 99 which includes a fine not exceeding 10% of the person's or the right holder's annual turnover in South Africa and its export from South Africa during the person's or the right holder's preceding financial year as reflected in the last available annual financial statements, or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment. These proposed punitive measures will		

		significantly impede investment, funding and growth in the sector. This is particularly so where the provisions of section 11(1) are extremely unclear and parties would be hesitant to transact or advance funding in the face of such uncertainty.		
RECONNAISANCE PERMIT APPLICATION/RIGHTS/OBLIGATIONS ETC (SECTION 13)				
S13 Amended	By the substitution in subsection (2) for paragraph (b) of the following paragraph: "(b) no person holds a prospecting right, mining right, [mining permit] small-scale mining permit, artisanal mining permit or retention permit for the same mineral and land.	There are various minor amendments to the sections dealing reconnaissance permissions being Sections 13 - 15 of the MPRDA. However the major problem with reconnaissance permissions remains that there is no protection for the holder of a reconnaissance permission against the grant of a competing reconnaissance permission, and secondly, there is no protection from a third party lodging a prospecting right application whilst there exists a reconnaissance permission on a particular piece of land and both of these situations should be dealt with, either in amendments to Sections 13 and 15 of the MPRDA, or amendments to Sections 16	Support the comments	

		and 22 of the MPRDA to record that the Minister may not accept applications for prospecting rights or mining rights whilst there is an existing reconnaissance permission on a piece of land.		
S15 Amended	By the substitution in subsection (2) for paragraph (b) of the following paragraph: "(b) any exclusive right to apply for or be granted a prospecting right, mining right* [or mining permit] small-scale mining permit or artisanal mining permit in respect of the land to which such reconnaissance permission relates.			
PROSPECTING RIGHT (SECTYION 16, 17, 18, and 17)				
S16 Amended	(a) by the substitution for subsection (1) of the following subsection: (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-	There have been fairly substantial amendments to Section 16 of the MPRDA dealing with applications for prospecting rights. It is noted that there is reference to the application not being lodged at the office of the Regional Manager but on the designated application system. This is obviously a reference to the new cadastral system. It is salutary that discretion of the	The designated system which currently refer to SAMRAD and it needs to be updated as and when the status of applications changes.	To ensure that SAMRAD is working effectively to avoid competing applications.

	(b) by the substitution in subsection (1} for paragraph (a) of the following paragraph: "(a) **[at the office of the Reginal manager in whose region the land is situated]** on the designated application system; (b) by the substitution for subsection (2) of the following subsection: "(2) **[The Regional manager must accept an**] 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, **[mining permit]** 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, [**mining permit]** small-scale mining permit, artisanal mining permit or retention permit has been accepted for the same mineral on the same	Regional Manager has been taken out of the equation because of the plethora of overlapping applications that have been accepted by Regional Managers and incorrectly so. Obviously, it is difficult to comment on the amendments without knowing how the designated application system will work in practice. The amendments to paragraph 16(2) are noted but please take note of the comments above in relation to the amendment to Section 9 and the contradiction between the proposed new Section 9(1) and Section 16(2)(b) and Section 16(2)(c). We note that further changes of substance are that an application for an environmental authorisation does not have to be lodged simultaneously but within 14 days from a notice from the Minister that the application has been accepted. We however note that the timeframe proposed in section 16(4)(b) for the submission of the consultation report, is		

	land, and which remains to be granted or refused.”; and (c) by the substitution for subsection (4) of the following subsection: “(4) If **[the Regional manager accepts] the application has been accepted, [the Regional manager]** the applicant must **[, within 14 days from the date of acceptance, notify the applicant in writing]** be notified, in writing, within 14 days— (a) to **[submit relevant environmental reports required in terms of Chapter 5]** apply for Environmental Authorisation in terms of the National Environmental Management Act, 1998 within [**60**] 14 days [**of**] from the date of the notice; [**and**] (b) to consult in the prescribed manner with the landowner, lawful occupies **[and any]** interested and affected **[party**] persons and [include] submit the result of the consultation [in the relevant environmental reports] within 30 days from the date of the notice and	insufficient. It is recommended that the 30 day timeframe in proposed section 16(4)(b) be amended to either align with the EIA Regulations 2014 timeframes or section 16(4)(b) should identify what information should be included in the consultation report, for example, proof of notification to landowners and potential interested and affected parties, with the complete consultation report to follow with submission of the BAR, specialist reports and EMPr. The reference to "in terms of National Environmental Management Act, 1998" is superfluous in Section 16(4)(a).		

	(c) to apply, where necessary, for a licence for use of water in terms of the applicable legislation.". (d) by the substitution for subsection (5) of the following subsection: "(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.			
Sec 17 Amended	a) by the substitution in subsection (1) for paragraph (c) of the following paragraph: "(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 [**is**] has been issued;"; (b) by the substitution in subsection (1) for paragraph (d) of the following paragraph: (d) the applicant has the ability to comply with the relevant provisions of the Mine	The reference to "in terms of National Environmental Management Act, 1998 as amended" is superfluous in the proposed new Section 17(1)(c). The Minerals Council welcomes the proposed deletion of Section 17(1)(f) issued under correction Notice 6298 as published in Government Gazette 52842 on 9 June 2025. We however note that Section 17(4) has not been simultaneously deleted in the Bill which means that the Minister may still require compliance with empowerment requirements in relation to	"The rationale behind this amendment is unclear. It is recommended that the drafter revisit the provision to clarify its legal intent and ensure alignment with the broader objectives of the legislation."	The section 17 need review to clarify ambiguity/

	Health and Safety Act, 1996 (Act No. 29 of 1996); [**and**] (c) by the substitution in subsection (1) for paragraph (e) of the following paragraph: "(e) the applicant is not in contravention of any **[relevant]** provision of this Act"; (d) by the substitution in subsection (1) for paragraph (f) of the following paragraph: "(f) **[in respect of prescribed minerals the applicant has given effect to the objects referred to in section 2(d)]** <u>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)fb); and''</u>: and (e) by the addition in subsection (1) after paragraph (f) of the following paragraph: (g) <u>the applicant has, where necessary, submitted proof of application for a licence</u>	prospecting. The Minerals Council continues to remain totally opposed to this requirement. Currently Mining Charter 2018 does not require any form of compliance with Mining Charter 2018 in respect of prospecting operations. This obligation changes the landscape entirely and may serve to destroy any future prospecting in South Africa rather than enhance it. Prospecting by its very nature is the spending of vast sums of money to determine a deposit. Economic benefits only flow should a viable deposit be encountered leading to a mining right application being applied for a granted and mining commencing whereafter the benefits will flow. It is therefore extremely difficult if not impossible for companies to obtain external funding for exploration and even more so in the case of empowerment entities who wish to conduct exploration without vast balance sheets. The best way to promote the industry is to allow for major mining companies to spend money on exploration which is extremely risky and costly as such companies will have access		

	for use of water in terms of the applicable legislation. (f) by the substitution in subsection (2) for paragraph (b) of the following paragraph: “(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 resourcesf.1: and": (g) by the addition in subsection (2) after paragraph (b) of the following paragraph: (c) the applicant submitted inaccurate, incorrect or misleading information in support of the application or any matter required to be submitted in terms of this Act, and (h) by the substitution for subsection (5) of the following subsection: "(5) A **[prospecting**] right granted in terms of subsection (1) comes into effect on the effective date."; and	to their own balance sheets to be able to do so. Therefore, imposing empowerment requirements upon exploration companies makes no legal or practical sense. **Clause 17(2): concentration of mineral resources** Section 17(2)(b) of the MPRDA has been retained. The Minerals Council persists in all of its prior comments on this section that it is potentially unconstitutional, namely that it is too vague to conform to the rule of law principle in Section 1(c) of the Constitution in that there is no indication expressly or impliedly whether it is for example 10,000 tonnes, 100,000 tonnes or a 1,000,000 tonnes, which exceed the threshold of what constitutes concentration. The Minerals Council therefore again suggests that Section 17(2)(b) (and corresponding references in other places) be deleted. **Clause 17(i): new sub-section 17(5A)** A new sub-section has been included into Section 17 stating that where an appeal		

	(i) by the insertion after subsection (5) of the following subsection: "(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.".	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. It is unclear why this section has been inserted. It is to all intents and purposes meaningless because the notarial deed of granting has no legal implication other than it enables the right to be registered. It is made clear that a prospecting right comes into effect on the Effective Date and the amended definition of "Effective Date" is the date that the Minister grants the right. See also our comments above in the definition of "execution date".		
Sec 18 Amended	(a) by the substitution in subsection (2) for paragraph (c) of the following paragraph: (c) be accompanied by a report reflecting the [extent of] holder's compliance with the conditions of the environmental authorisation; **[and"]**	The proposed removal of the words "extent of" in the amendment to section 18(2)(c) is unfortunate. There must be a discretion to renew the prospecting right application if there has not been full compliance by the holder. In a prospecting context there are many variables that could cause prospecting to be delayed or the holder not	Support the comments and welcome the suggestion but it is 18(6) not 17(6)	It should read: that the Minister must grant the prospecting right renewal within 60 days if the applicant complies with sub-sections (1), (2) or (3) but the Minister must refuse the renewal if the applicant does not comply

	(b) by the insertion in subsection (2) after paragraph (c) of the following paragraph: 'YcAJ 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": (c) by the substitution in subsection (3) for paragraph (a) of the following paragraph: "(a) terms and conditions of the prospecting right and is not in contravention of **[any relevant provision of]** this Act; (d) by the substitution in subsection (3) for paragraph (c) of the following paragraph: "(c) compliance with the conditions of the environmental authorisation issued in terms of National Environmental Management Act, 1989(Act No.107 of 1998); and, (e) by the addition in subsection (3) after paragraph (c) of the following paragraph:	to achieve full compliance with conditions which may no longer be appropriate. It is recommended that the words "extent of" be reinstated. There is the insertion of a new sub-section 18(5)(b) providing that whilst the prospecting right remains in force under Section 18(5) the holder of such right is entitled to conduct prospecting operations in terms of the existing prospecting work programme. It is therefore unclear how the holder can conduct prospecting operations in terms of the existing work programme. Section 18(5) should only be a holding period protecting the security of tenure of a prospecting right holder and only when the application for renewal is granted should the holder of the prospecting right be entitled to continue prospecting but under the auspices of the new work programme. There is the insertion of a new Section 18(5)(c) which provides that an application for renewal takes effect and the renewal period commences on the date of		with these sub-sections (1), (2) or (3) within a 60 day period.

	"(d) the approved amended environmental authorisation, where necessary, (f) by the substitution for subsection (5) of the following subsection: (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, and (g) by the addition after subsection (5) of the following subsection:	execution. It is not clear why this has been inserted as opposed to the Effective Date of the initial right itself which is the date on which the Minister grants it (which should be the day the holder gets notice of the Minister's grant). It is unclear why there is a discrepancy between that situation for the grant of a right and the renewal. There is also the insertion of a new Section 17(6) which provides that the Minister must grant or refuse the renewal of a prospecting right within 60 days if the applicant fails to comply with sub-sections (1), (2) or (3). This section is not correct. What it should say is that the Minister must grant the prospecting right renewal within 60 days if the applicant complies with sub-sections (1), (2) or (3) but the Minister must refuse the renewal if the applicant does not comply with these sub-sections (1), (2) or (3) within a 60 day period.		

	"(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).			
Sec 19 Amended	a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: "(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) by the substitution in subsection (1) for paragraph (b) of the following paragraph: "(b) subject to section (2), the exclusive right to apply for **[and be granted]** a mining right in respect of the mineral and prospecting area in question; and"; (c) by the substitution in subsection (2) for paragraph (a) and (e) of the following paragraphs: "(a) lodge such right for registration at the Mineral and Petroleum Titles Registration	Section 19(2)(a) has been amended to refer to the right being lodged for registration within the prescribed period. Once again too much discretion is being left to regulation and it is suggested that the reference to "60 days" be reinstated. There is also the insertion of a new 19(2)(e) including the words "issued in terms of National Environmental Management Act, 1991 (Act No. 107 of 1998)". Once again, these additional words are superfluous because of the definition of "Environmental Authorisation" in Section 1.	**Amendment (a):** • **Original:** The holder had the exclusive right to apply *and be granted* a renewal of the prospecting right. **Amended:** The holder now only has the exclusive right to **apply** for renewal, **not to be granted it automatically**. ◆ **Implications:** • The **automatic or guaranteed renewal** of a prospecting right is **removed**. • Mining houses can no longer assume that renewal will be a formality.	**1. Provide Clear Regulatory Guidance** • The DMRE should publish clear guidelines on: ○ **Assessment criteria** for renewal and conversion of rights ○ The **prescribed period** for registration (to replace "60 days") ○ How **environmental non-compliance** will influence right approval **2. Ensure Predictability for Investors** • While discretion is important, a transparent and **predictable framework** will maintain investor confidence.

	Office within **[60 days]** <u>the prescribed period</u> after the right has become effective; "(e) comply with conditions of environmental authorisation <u>issued in terms of National Environmental Management Act, 1998 (Act No. 107 of 1998</u>)."		• The Minister now has **greater discretion** to deny renewal, possibly based on non-compliance, transformation targets, or competing developmental interests. ◆ **Impact:** • Introduces **regulatory uncertainty** for long-term exploration planning and investment. • Could affect financial projections, especially for junior miners and exploration-focused companies. **Amendment (b):** • **Original:** The right holder had the exclusive right to apply *and be granted* a mining right. **Amended:** The holder now has only the **exclusive**	• Consider introducing **appeal or review mechanisms** for denied renewals or conversions to avoid perceptions of arbitrariness. **3. Strengthen Internal Compliance Systems** • Mining companies should: • Review and enhance **environmental management systems** to meet NEMA obligations. • Track **permit timelines** carefully to meet registration requirements once the prescribed period is gazetted. **4. Engage Proactively with Regulators** • Mining houses should maintain proactive relationships with DMRE and DFFE.

			right to apply, not to be granted a mining right. ◆ **Implications:** • Removes the **guarantee or expectation** that a mining right will follow a prospecting right. • The Minister retains discretion to assess applications based on broader considerations: compliance history, socio-economic contributions, environmental stewardship, or transformation progress. ◆ **Impact:** • Mining houses may face **greater regulatory hurdles** transitioning from exploration to mining. • **Increased risk** for investors and financing	• Submit high-quality, compliant applications early and ensure **community consultation** and **transformation obligations** are met before applying for renewals or mining rights. **5. Legal and Policy Review** Legal teams should **assess the contractual and financial impact** of no longer being guaranteed a renewal or conversion. Future contracts should include **risk mitigation clauses** in case applications are declined.

			institutions, as the link between exploration and mining phases is no longer secure. **Amendment (c):** **(i) Paragraph (a):** **Original:** Right must be lodged within 60 days. **Amended:** Now to be lodged within the **prescribed period** (open to change by regulation). ◆ **Implications:** • Introduces **flexibility**, which can be positive, but also uncertainty if the prescribed period is not clearly defined in regulations. • Delays or failure to meet the undefined prescribed period may lead to **regulatory non-compliance or lapsing of rights**.	

			(ii) Paragraph (e): New Addition: Must **comply with environmental authorisation** conditions under the **National Environmental Management Act (NEMA)**. ◆ **Implications:** • Stronger link between **mining authorisation and environmental compliance**. • Non-compliance with environmental conditions could be grounds for enforcement actions or denial of rights. ◆ **Impact:** • Heightens environmental accountability and places increased compliance obligations on mining houses.	

			• Could increase costs related to **EIA processes, rehabilitation, and monitoring**.	
PERMISSIONS (SECTION 20)				
Sec 20 Amended	(a) by the substitution for subsection (2) of the following subsection: "(2) The holder of a prospecting right must obtain the Minister's written permission **[to remove and dispose for such holder's own account of diamonds and bulk samples of any other minerals found by such holder in the course of prospecting operations]** <u>to remove bulk samples of any mineral from a prospecting area for any purpose, as prescribed</u>.": and (b) by the addition after subsection (2) of the following subsection: "(3) <u>Any person who applies for permission to remove and dispose of minerals in terms of this section must obtain an amended</u>	In order more pertinently to harmonise Section 20(2) with Section 20(1) it is suggested that Section 20(2) read - "(2) *Save as provided for in Section 20(1), the holder of a prospecting right must obtain the Minister's written permission to remove and dispose for such holder's own account of any minerals found by such holder in the course of prospecting operations conducted pursuant to such prospecting right.*"	Support the suggestion	

	<u>environmental authorisation issued in terms of National Environmental Management Act, 1998(Act No. 107 Of 1998).</u>			
MINING RIGHT (SECTION 22, 23, 24, AND 25)				
Sec 22	(a) by the substitution for subsection (1) of the following subsection: (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- (b) by the substitution in subsection (1) for paragraph (a) of the following paragraph: "(a) **[at the office of the regional manager in whose region the land is situated]** <u>on the designated application system</u>;''; (c) by the substitution for subsection (2) of the following subsection: "(2) **[The Regional manager, within 14 days of receipt of the application, accept an application for a mining right**	The amendments to Section 22 mirror *mutatis mutandis* the amendments to Section 16 of the MPRDA dealing with prospecting right applications and with which we have dealt with above and our comments apply equally to the mining right section being Section 22. The introduction of a requirement to consult on the social and labour plan required further consideration. The parties with an "Interest" would include employees but in the application process there would not be such employees. The parties considered to have an interest must be more clearly defined and the prescribed period for consultation also set out there. The introduction of this requirement without context or sufficient detail has the	Welcome the addition of the SLP however, the time period is too short it is better to make it 60 days some operations are situated between more than two communities and 30 days is not enough and what is a meaningful consultation and what constitute that?	

	if] The <u>Minister must within 14 days accept application for a mining if</u> (a) the requirements contemplated in subsection (1) are met; (b) no other person holds a prospecting right, mining right, **[mining permit]** <u>small-scale mining permit, artisanal mining permit</u> or retention permit for the same mineral and land; and (c) no prior application for a prospecting right, mining rights **[or mining permit]** <u>small-scale mining permit, artisanal mining permit</u> or retention permit, has been accepted for the same mineral and land and which remains to be granted or refused. (d) by the substitution for subsection (3) of the following subsection: "(3) If the application does not comply with the requirements of this section, the **[Regional manager]** Minister must notify the applicant in writing within [14 days] the prescribed period of the receipt of the application.	potential to delay further the grant to mining rights.		

	(e) by the substitution for subsection (4) of the following subsection: "(4) **[If the Regional manager accepts the application]** Upon receipt of the application, the **[Regional manager]** Minister must, within [**14 days from the date of acceptance!** within the prescribed period, accept the application and notify the applicant, in writing— (a) to **[submit the relevant environmental reports, as required in** **terms of Chapter 5]** apply for Environmental Authorisation in terms of the National Environmental Management Act, 1998 (Act No.107 of 1998) within [**180**] 14 days from the date of the notice; [**and**]"; (b) to consult in the prescribed manner with the landowner, lawful occupier and any interested and affected party and [**include**] submit the result of the consultation [in the relevant environmental reports.].within 30 days from the date of the notice; (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, [and]' (f) by the deletion of subsection (5): [“(5) **The Regional manager must, within 14 days of receipt of** **the environmental reports and results of the consultation contemplated in subsection and section 40 forward the application to the Minister for consideration,]”.**			
Sec 23 Amended	(a) by the substitution in subsection (1) for paragraph (d), of the following paragraph: "(d) the mining will not result in unacceptable pollution, ecological degradation or damage to the environment and an environmental authorisation [**is**] **has been** issued;";	Section 23(1)(h) is proposed to be amended by deleting reference to the Charter and making reference to Section 100(3)(b) so that the obligations will be legislatively imposed by regulation as Section 100(3)(b) will be achieved by means of regulations formulated in accordance with Section 107(jD). It is pertinent to note that in terms of the new	Support the comments	

	(b) by the substitution in subsection (1) for paragraph (e), of the following paragraph: “(e) the applicant has **[provided for]** complied with the requirements of the prescribed social and labour plan, which must be reviewed every five years for the duration of the mining right:": (c) by the substitution in subsection (1) for paragraph, of the following paragraph: “(g) the applicant is not in contravention of any provision of this Act; [and]”; (d) by the substitution in subsection (1) for paragraph, of the following paragraph: “(h) the granting of such right will further the objects referred to in section 2(d) and (f) and **[in accordance]** complies with [**the charter contemplated**] section 100(3)fbJ and the prescribed social and labour planM; and"; (b) by the addition in subsection (1) after paragraph (h) of the following paragraph: "(i) the applicant has, where necessary, submitted proof of application for a licence	proposed Section 107(1A) the Minister when making regulations under Section 107(jD) is not required to consult with affected stakeholders. Therefore the obligations referred to in Section 23(1)(h) can be amended at anytime by the Minister by regulation without consultation. The import of the amended Section 23(1)(h) as read with Section 100(3)(b) and Section 107 of the MPRDA is difficult to determine at this stage but it is suggested that investors may run scared without knowing what will be contained in the regulations and knowing that the Minister can amend those regulations at any time without consultation with stakeholders. The wholesale change in approach to B-BBEE in the mining industry without the release of the proposed regulations or any indication of how these matters will be treated in existing mining rights creates significant uncertainty. Transitional provisions are required with regard to all matters related to black economic empowerment under the MPRDA.		

	for use of water in terms of the applicable legislation,’’; (c) by the substitution for subsection (2) of the following subsection: "(2) The Minister [**may, having regard to the nature of the mineral in question,]** must take into consideration the provisions of section 26."; (d) by the substitution for subsection (2A) of the following subsection: (2A) If the application relates to the land occupied by a community, the Minister [may] must impose such conditions as are necessary to promote the rights and interests of the community **[, including conditions requiring the participation of the community].";** (e) by the substitution for subsection (4) of the following subsection: “(4) If **[Regional manager]** the Minister refuses to grant a mining right, the Minister must, within 30 days of the decision, in	There is also the insertion of a new proposed Section 23(5)(b) which provides that when 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. Once again, a mining right commences on the Effective Date and the Effective Date is the date of grant by the Minister. Therefore the insertion of the new Section 23(5)(b) is meaningless as there is no legal consequence of the notarial deed of granting other than it is required in order to procure registration but the right will be effective in any event. See also our comments above in the definition of “execution date”.		

	writing, notify the applicant of the decision and the reasons thereof.": and (f) by the substitution for subsection (5) of the following subsection: "(5) (a) A [mining] right granted in terms of subsection (1) comes into effect on the effective date. (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.":			
Sec 24 Amended	(a) by the substitution in subsection (1) for paragraph (c) of the following paragraph: (c) together with the prescribed non-refundable application fee[.]; and"; (b) by the addition in subsection (1) after paragraphic], of the following paragraph: "(d) where necessary, include proof of application for an amended environmental authorisation.	Please take note of the Minerals Council's comments on the renewal section relating to prospecting rights being Section 18 above. Similar changes have been brought forward in Section 24 of the MPRDA in the Bill and the comments above dealing with Section 18 apply *mutatis mutandis*. There is also a new requirement in section 24 (2A) requiring the Minister to take into consideration the provisions of section 26	Support the comments	Define section 26 before imposing to holders who applied for renewal of their mining rights

	(c) by the substitution in subsection (2) for paragraph (b) of the following paragraph: (b) be accompanied by a report reflecting **[the extent of**] <u>the right holder's</u> compliance with the conditions of the <u>National Environmental Management Act, 1998 (Act No.107 of 1998):</u> (d) by the insertion after subsection (2) of the following subsection: (2A) <u>The Minister must take into consideration the provisions of section 26.</u> (e) by the substitution for subsection (3) of the following subsection: 't3) The Minister must grant the renewal of a mining right if the application complies with subsection (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**] <u>approved</u> mining work programme;	which deals with beneficiation, in granting a renewal. Given that the terms and conditions applicable to beneficiation has not yet been defined, it is impossible to make meaning comments and the uncertainties relating to beneficiation are not assisting in creating a clear regulatory framework for mining. This matter requires urgent attention as the uncertainty regarding these provisions creates significant investor hesitancy in investing in new projects or in existing mining companies.		

	(c**) [requirements of the] approved [environmental management programme**] social and labour plan; (d) <u>conditions of the National Environmental Management Act, 1998 (Act No.107 of 1998</u>) f.l: and (dA) <u>the amended environmental authorisation provided that it has, where necessary, been approved.</u> (f) by the substitution for subsection (5) of the following subsection: "(5) (a) A mining right in respect of which an application for renewal has been lodged shall despite its stated expiry date remain in force until such time as such application has been granted or refused (b) <u>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</u>. (c) <u>Where an application in terms of paragraph fa) is granted, the renewal takes effect, and the renewal period for which</u>			

	application was made commences on, the date of execution."; and (g) by the addition after subsection (5) of the following subsection: (6) The Minister must refuse to renew a mining right if the applicant fails to comply with subsection (1), (2) or (3).			
Sec 25 Amended	(a) by the substitution for subsection (1) of the following subsection: "(1) In addition to the rights referred to in section 5, the holder of a mining right has, subject to section 24, the exclusive right to apply for **[and be granted]** a renewal of the mining right in respect of the mineral and mining area in question."; (b) by the substitution in subsection (2) for paragraph (a) and (e)of the following paragraphs: "(a) lodge such right for registration at the Mineral and Petroleum Titles Registration Office within [**60 days]** the prescribed period [**and**] after the right has become effective;	There is a new proposed sub-section 25(2)(a) providing for the lodgement for registration at the Mineral and Petroleum Titles Registration Office within the prescribed period after the right has become effective. Firstly, this should rather be a specified number of days set out in the Act rather than leaving it up to regulation. Furthermore a mining right can only be registered if it has been notarially executed. Because the right is effective on the date that the Minister grants it, it may not have been notarially executed within the prescribed period and therefore the obligation to lodge should rather be decided by reference to a certain number of days after the date of execution.	Support the comments	the Regulator to retain 60 days to lodge for registration

	"(e) comply with the conditions of the environmental authorisation issued in terms of National Environmental Management Act, 1998(Act No.107 of 1998): (c) by the substitution in subsection (2) for paragraph (d) of the following paragraph: "(d) comply with the [relevant] provisions of this Act, any other relevant law and the terms and conditions of the mining right;"; (d) by the substitution in subsection (2) for paragraph (f) of the following paragraph: "(f) **[comply with the requirements of]** implement the **[prescribed]** approved social and labour plan despite the operational status of the mine, which must be reviewed every five years for the duration of the mining right;": (e) by the insertion in subsection (2) after paragraph (f) of the following paragraph: "(fA) comply with the requirements of section 100(3)(bj; and	Importantly Section 25(2)(f) has been amended to require the holder of a mining right to continue with its obligations under the social and labour plan despite the operational status of the mine. This is designed to cover the situation where a mine is under care and maintenance and the DMPR still requires full compliance with the terms of the social and labour plan. Perhaps this could be clarified rather than stating the vague concept of the operational status of the mine. There is the insertion in sub-section (2) after paragraph (f) of the following paragraph, namely - "(fA) *comply with the requirements of Section 100(3)(b).*" Thus the obligation to comply with the empowerment obligations has now been statutorily imposed upon the holder of a mining right. Once again without the regulations dealing with the requirements of Section100(3)(b) it is difficult to determine the import. Thus,		

	(f) by the substitution in subsection (2) for paragraph (h) of the following paragraph: "(h) submit the prescribed annual report, detailing the [extent of the] holder's compliance with [the provisions of] section 2(d) and (f) section 100(3)(b) **[the charter contemplated in section 100**] and the approved social and labour plan.".	for example, the regulations may not provide for the "once-empowered always-empowered" principle which has been enshrined in Mining Charter 2018 as reinforced in the decision of the Minerals Council South Africa vs The Minister of Mineral Resources & Energy. Many mining companies have relied on the "once-empowered always-empowered" principle and many BEE and HDSA shareholders have sold out of mining entities subsequent to the entrenchment of the "once-empowered always-empowered" principle. The adoption of new criteria may render many mining companies in breach of their empowerment obligations in future. Once again, these provisions are to the potential detriment of investment in mining projects in South Africa.		
BENEFICIATION (SECTION 26)				
Sec 26 Amended	(a)by the substitution for subsection (1) of the following subsection:	The Minister must publish in the prescribed manner conditions required to ensure security of supply for local beneficiation.	Support the comments	Review and clarify ambiguity

	"(1) The Minister **[may]** must, in order to regulate the mining industry to meet national development imperatives and to bring optimal benefit for the Republic, promote the beneficiation of **[minerals]** mineral resources in the Republic— (a) to ensure transformation of the mining and other sectors involved in the beneficiation of minerals or mineral products; (b) to ensure sustainability for the supply of minerals in the national interest: and (c) to develop local beneficiation capacity. (b) by the substitution for subsection (2) of the following subsection: "(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,	There are consultation obligations imposed upon the Minister but ultimately there is an unfettered discretion accorded to the Minister to determine the conditions required to ensure security of supply for local beneficiation as contemplated in the new Section 107(1)(jD), although in this regard Section 107(1)(a) as proposed, states that the Minster must consult with affected stakeholders before making such regulations. These discretions could serve as a disincentive to mineral investment in South Africa and are arguably unconstitutional offending against the rule of principle in Section 1(c) of the Constitution and being contrary to the fundament rights in Section 22 (Freedom of Trade, Occupation and Profession) and in Section 25 (Property of the Constitution) even when read with Section 36 (Limitation of Rights). The matters dealt with in the proposed Section 26(2) and the proposed Section 26(2B) are already insofar as diamonds and precious metals are concerned,		

	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.": (c) by the insertion after subsection (2A) of the following subsection: "(2B) Every producer of minerals must make available minerals or mineral products for local beneficiation.	regulated in the Diamonds Act and the Precious Metals Act and should therefore be excluded from the proposed Section 26(2) and Section 26(2)(B). There is the proposed insertion of a new Section 26(2B) which provides that every producer of minerals must make available minerals and mineral products for local beneficiation. There is no reference to designated minerals but every producer of all minerals. There are no directions given as to what percentage of such minerals must be made available for local beneficiation. This section is unacceptable in its current form. Furthermore there is reference to a producer of minerals. There is no concept of producer of minerals in the MPRDA, a "producer" being a concept relating to petroleum.		
SMALL SCALE MINING PERMIT - SECTION 27				
Sec 27 Amended	(a) by the substitution for the heading of the following heading:	The original Section 27 of the MPRDA has been amended to refer to small-scale	Support the comments	**Adopt Clear Transitional Provisions** – Explicitly state

	"**Application for, issuing and duration of small-scale mining permit";** (b) by the substitution in subsection (1) for paragraph (a) of the following paragraph: "(a) the mineral in question can be mined optimally within a period of [**two**] five years; and"; (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: "Any person who wishes to apply to the **[Regional manager]** Minister for a [mining permit] small-scale mining permit must simultaneously apply for an environmental authorisation and must, subject to section 9, lodge the application— (d) by the substitution in subsection (2) for paragraph (a) of the following paragraph: "(a) **[at the office of the Regional manager in whose region the land is situated]** on the designated application system:	mining permits rather than merely mining permits. The period thereof has been extended from 2 to 5 years. Whilst Section 27 is being amended it is suggested that Section 27(3)(c) also be amended. It is a common practice for affiliated companies to lodge separate applications for mining permits on the same land. Consideration should be given to amplifying Section 27(3)(c) to include applicants being controlled by the same ultimate controlling shareholder or member. Furthermore this section allows for transfer, cession etc provided the Minister's consent is obtained in writing. However Section 11(1) does not mention the ability to dispose of small-scale mining permits. As stated above there is only a provision relating to a disposal of control of the holder of a small-scale mining permit in Section 11(1). There is also the addition of a new Section 27(10) providing for the small-scale mining	**Longer Operational Security** – Extending permits from 2 to 5 years offers **greater stability** and reduces administrative costs for quarry operators. **Potential Overlap in Applications** – Without clarifying rules for affiliated companies applying for the same land, **conflicts and duplication** in quarry permit approvals could arise. **Transfer Restrictions** – Current legislative gaps could make it **difficult to sell, transfer, or restructure ownership** of small-scale quarry operations without unnecessary legal hurdles. **Permit Continuity** – Section 27(10) reduces **operational downtime risk** for quarries awaiting permit renewal,but may need tighter safeguards to avoid abuse.	that existing 2-year mining permits will be deemed small-scale mining permits and automatically extended to 5 years. **Amend Section 27(3)(c)** – Include wording to prevent multiple affiliated companies from applying for overlapping permits on the same land, unless coordinated under a single approval process. **Align Section 11(1)** – Insert explicit provisions for the **transfer, cession, or disposal** of small-scale mining permits (not only changes in control). **Ensure Environmental Alignment** – Expedite amendments to NEMA Listing Notices to avoid compliance mismatches for quarries. **Maintain Permit Continuity Safeguards** – Keep Section

	(c) by the substitution for subsection (3) of the following subsection: "(3) The **[Regional manager]** <u>Minister</u> must accept an application for a mining permit if— (a) the requirements contemplated in subsection (2) are met; (b) no other person holds a prospecting right, mining right, **[mining permit] 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 **[mining permit] small-scale mining permit** on the same or adjacent landf.1; and (d) <u>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</u>.";	permit to continue after its lapse notwithstanding that the renewal application has not been granted and the holder can continue mining operations in terms of the existing approved terms and conditions. The Bill does not provide for transitional arrangements in respect of existing mining permits granted for a period of 2 years in terms of section 27 of the MPRDA and the renewal thereof. Will existing mining permits be deemed to be small-scale mining permits and the period of validity automatically extended to 5 years? The NEMA Listings Notices will need amendment to align with the new permits provided for under the MPRDA.	**Uncertainty for Existing Permits** – Without transitional provisions, existing quarries with 2-year permits face uncertainty about whether they benefit from the new 5-year rule. **Environmental Compliance Pressure** – NEMA amendments are necessary to ensure quarry environmental authorisations match the new small-scale mining framework.	27(10) but require proof that renewal applications were lodged in good faith before the permit's expiry.

	(d) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words; “(5) **[If the Regional manager accepts]** Upon receipt of the application, [**Regional manager]** the Minister must [within 14 days of the **receipt of the application,]** accept the application and notify the applicant in writing, within the prescribed period, to— (e) by the substitution in subsection (5) for paragraph (b) of the following paragraph: “(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": (f) by the addition in subsection (5) after paragraph (b) of the following paragraph: ‘(fA) to apply, where necessary, for the water use licence in terms of the applicable legislation. (g) by the deletion in subsection (6) of the word "and” at the end of paragraph (a) (h)			

	by the addition in subsection (6) after paragraph (c) of the following paragraphs: "(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."; (i) by the insertion after subsection (6) of the following subsection: "(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). (j) by the substitution in subsection (7) for the words preceding paragraph (a) of the following words:			

	“(7) The holder of a **[mining permit**] small-scale mining permit— (k) by the substitution in subsection (7) for paragraph (e) of the following paragraph: “(e) must submit the [mining permit] small-scale mining permit for recording at the Mineral and Petroleum Titles Registration Office within 60 days after the permit has been issued."; (l) by the substitution for subsection (8) of the following subsection: "(8) Any holder of a small-scale mining permit, who intends to renew such permit, must lodge the application— (a) at the office of the **[Regional manager]** Minister 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 small-scale mining permit must— (a)state the reasons for the renewal, and be accompanied bv a detailed report reflecting the mining results, the interpretation thereof and the mining expenditure incurred; and (b)be accompanied bv 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 complies 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 anv 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 mav not exceed a period of five years, and mav be renewed for a period of five vears; and (b)mav be transferred, ceded, let, sublet, alienated, disposed of, or may be encumbered or mortgaged only for the purpose of funding or financing the mining project in question, with the Minister's consent, in writing;"; and (m) by the addition after subsection (8) of the following subsections: "(9) 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).			
Sec 27(2)	(2) Any person who wishes to apply to the **[Regional manager]** Minister for a [mining permit] small-scale mining permit must simultaneously apply for an environmental	The NEMA Listings Notices will need amendment to align with the new permits provided for under the MPRDA.	Support the comment	

	authorisation and must, subject to section 9, lodge the application. (d) by the substitution in subsection (2) for paragraph (a) of the following paragraph: “(a) **[at the office of the Regional manager in whose region the land is situated]** on the designated application system.			
Sec 27(3)	(c) by the substitution for subsection (3) of the following subsection: "(3) The **[Regional manager]** Minister must accept an application for a mining permit if— (a) the requirements contemplated in subsection (2) are met; (b) no other person holds a prospecting right, mining right, **[mining permit] 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 **[mining permit] small-scale mining**			

	permit on the same or adjacent landf.1; and (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.			
Sec 27(5)	(d) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words; "(5) **[If the Regional manager accepts]** Upon receipt of the application, [**Regional manager]** the Minister must [within 14 days of the **receipt of the application,]** accept the application and notify the applicant in writing, within the prescribed period, to— (e) by the substitution in subsection (5) for paragraph (b) of the following paragraph: "(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": (f) by the addition in subsection (5) after paragraph (b) of the following paragraph: '(fA) to apply, where necessary, for the water use licence in terms of the applicable legislation.:			
Sec 27(6) and (6)A	(g) by the deletion in subsection (6) of the word "and" at the end of paragraph (a) (h) by the addition in subsection (6) after paragraph (c) of the following paragraphs: "(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.";			

	(i) by the insertion after subsection (6) of the following subsection: "(6A) <u>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).</u>			
Sec 27(7)	(j) by the substitution in subsection (7) for the words preceding paragraph (a) of the following words: "(7) The <u>holder</u> of a **[mining permit**] <u>small-scale mining permit</u>— (k) by the substitution in subsection (7) for paragraph (e) of the following paragraph: "(e) must submit the [mining permit] small-scale mining permit for recording at the Mineral and Petroleum Titles Registration Office within 60 days after the permit has been issued.			
Sec 27(8)	<u>(l) by the substitution for subsection (8) of the following subsection:</u>			

	"(8) Any holder of a small-scale mining permit, who intends to renew such permit, must lodge the application— (a) at the office of the **[Regional manager]** Minister 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 small-scale mininq permit must— (a)state the reasons for the renewal, and be accompanied bv a detailed report reflectinq the mininq results, the interpretation thereof and the mininq expenditure incurred; and (b)be accompanied bv a report reflectinq 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 complies 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 be transferred, ceded, let, sublet, alienated, disposed of, or may be encumbered or mortgaged only for the purpose of funding or financing the mining project in question, with the Minister's consent, in writing; and (m) by the addition after subsection (8) of the following subsections:			

	"(9) 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).			
Sec 27A Inserted	"**Application for, issuing and duration of Artisanal mining permit** 27A. (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—	The Minerals Council welcomes the introduction of artisanal mining permits in a bid to attempt to curb illegal mining. It is not clear whether it will have this effect as it is still a fairly sophisticated application procedure and is akin to mining permits in the original Section 27 of the MPRDA which originally provided for areas that could be mined within a period of 2 years for 1.5 hectares in extent. There is reference to submitting an artisanal mining environmental authorisation. The NEMA EIA Regulations will have to be amended to provide for such artisanal mining environmental authorisation. Section 27A(3)(c) provides that a person may not hold more than 1 mining permit on the same or adjacent land. We repeat the	ASM 1.5 hectors Small scale mining 5 hectors Do small scale mining fall outside the ASM process? Needs a proper definition for small scale mining.	

	(a) at the regional office in which 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. (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	comment that this could be abused by applicants being sister or related companies and this restriction should be placed into Section 27A(3)(c). Section 27A(5)(c) provides that the Minister must issue an artisanal mining permit if the applicant has the ability to comply with health and safety guidelines. It is unclear what these guidelines are. It would therefore seem that the holder of an artisanal mining permit is not required to comply with the relevant provisions of the Mine Health and Safety Act. It is therefore unclear what applicable legislation will apply to the holder of an artisanal mining permit, health and safety issues being the biggest issue in relation to artisanal mining. The new Section 27A does not deal with the situation where an artisanal mining permit has lapsed although the holder has lodged an application for renewal. In other words there is no provisions dealing with the lacuna period between the lapse of the initial right and the grant of the renewal.		

	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	In the new Section 27A(10) there is reference to an artisanal mining permit not being capable of being transferred. This accords with the amended Section 11 which does not refer to the disposal of a small-scale mining permit or an artisanal mining permit. Minerals Council considers that disposal of control of the holders of artisanal mining permits should be controlled by virtue of Section 11 as otherwise there will be no control over who ultimately controls these permits. As stated above it is unclear whether applications under Section 27A are capable notwithstanding that the Minister has not invoked the new Section 7A. In other words it is not clear whether artisanal mining permits can only be applied for in areas referred to in Section 7(A) and (B) or whether applicants *meru motu may* lodge such applications under Section 27A in any event. It is also unclear whether artisanal mining permits can be held by persons other than Black persons or whether the reference to Black persons is only in		

	Titles Registration Office within 30 days after the permit has been issued. (7) Any holder of an artisanal mining permits 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	relation to that category of land referred to in 7A(a) being areas designated for Black persons for small-scale and artisanal mining by the Minister in terms of Section 7A(a).		

	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.".			
INFORMATION AND DATA - (SECTION 29)				
Sec 28 Amended	**"Information and data in respect of mining and processing of minerals.** (1} The holder of a mining right **[or mining permit]**, small-scale mining permit or artisanal mining permit must, at the registered office or place of business of	There is an amendment to Section 28(2) to provide obligations on agents, purchasers and sellers of any mineral or mineral product operating as part of or separately from the mine to submit information in terms of Section 28(2). It is queried whether this could ever be workable	Clarity required on what reporting on processing of the minerals – agree with Minerals Council	

	such holder, keep proper records of mining activities and proper financial records in connection with the mining activities. (2) The holder of a mining right **[or mining permit**, 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 [**the extent of the holder's compliance with the provisions of section 2(d) and (f), the charter contemplated in section 100 and the approved social and labour plan]** accurate information and data in respect of	considering that in many instances purchasers and sellers of any mineral products or minerals from a mine are foreign companies over which the DMPR does not have jurisdiction. The annual report references appears for the first time to stipulate "prescribed" categories on which "broad-based socio-economic empowerment" is to be reported. These seem based on the existing Mining Charter categories, rather than the categories in the new defined term "broad-based economic empowerment" The term "broad-based **socio**-economic empowerment" is not explained. The DMPR's intended B-BBEE regime and the management of the transition from the current reporting requirements to future reporting requirements must be clarified before any amendments are implemented.		

	mineral reserves and resources within the mining areas. [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.			
Sec 29 Amended	**Minister's power to direct submission of specified information or data** 29. The **[Regional manager]** Minister may, in order to achieve the objects of this Act 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 mining permit], small-scale mining permit or**			

	artisanal mining permit, as the case may be; (b) any holder of a prospecting right, mining right, retention permit **[or mining permit],** small-scale 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 mining permit**], 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.			
Sec 30	Section 30 of the principal Act is hereby amended- (a) by the substitution of subsection 2 of the following subsection: "(2) No information or data may be disclosed to any person if it contains information or data which is of commercially nature and is supplied to be	The beginning part of clause 29 is wrong by referring to Section 31 as opposed to Section 30. Furthermore the changes to Section 30(2) do not make grammatical sense whatsoever. The original wording should be retained. This would likewise apply to the new Section 30(3).	Agree with Minerals Council	

	treated as confidential **[in confidence]** by the supplier of the information or data. (b) by substitution of subsection 3 of the following subsection " (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.			
RETENTION PERMIT) - SECTION 31, 33, AND 34)				
Sec 31 Amended	Section 31 of the principal Act is hereby amended— (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: "(1) Any holder of a prospecting or mining right who wishes to apply to the **[Regional manager]** Minister for a retention permit must— (b) by the substitution in subsection (1) for paragraph (e) of the following paragraph:	There has been attempt to include the holder of a mining right being able to apply for a retention permit as much as the holder of a prospecting right can apply for a retention permit. However the reference to mining rights does not fit happily into Sections 31 - 36 of the MPRDA. The whole idea of retention permits is that the holder of a prospecting right having concluded prospecting and produced a feasibility study applies for a retention permit to retain the prospecting right because prevailing market conditions do not justify mining.	Retention permit only for exploration and then get investment – agree Minerals Council	

	"(e) submit a report reflecting **[the extent of]** compliance with [**the**] section 32(1)and (c) by the substitution in subsection (2) for paragraph (b) of the following paragraph: "(b) the applicant is the holder of the prospecting or <u>mining right</u> in question.	The holder of the prospecting right must have completed prospecting. This is completely different in a mining context. One of the requirements that has been inserted into the amended provisions is that mining must have ceased before a retention permit can be applied for. It therefore makes no sense for a retention permit to be applied for in those circumstances. Although the concept of retention in relation to mining rights can be favourably considered, this is more in the case of a care and maintenance situation and should be divorced from retention permits for prospecting. Thus there may be a temporary cessation of mining operations during which a retention permit can be held where market conditions have caused mining to become unprofitable. The rights and obligations of the holder of the retention permit could then be specified including obligations to comply with social and labour plans, reporting requirements etc all of which are obligations imposed upon the holder of a mining right.		

Sec 32 Amended	(a) by the substitution for subsection 1 of paragraph (a) (b) and (e) of the following paragraphs: “(1) The **[Regional manager]** Minister may issue a retention permit if the holder of the prospecting 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: (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"; (b) by the substitution for subsection (2) of the following subsection: “(2) A retention permit issued under subsection (1) suspends the terms and conditions of the prospecting or mining right held in respect of the land to which the retention permit relates and if the			

	prospecting or mining period or has not expired, the duration of the prospecting or mining right in question runs concurrently with that of the retention permit."; (c) by the substitution for subsection (3) of the following subsection: "(3) Despite subsection (2), the conditions of the environmental authorisation issued in terms of National Environmental Management Act, 1998 (Act No. 107 of 1998) in respect of the prospecting or mining right remains in force as if the prospecting or mining right had not lapsed."; and (d) by the substitution for subsection (4) of the following subsection: (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.			
Sec 33	Section 33 of the principal Act is hereby amended—			

	(a) by the substitution for the words preceding paragraph (a) of the following words: "The Minister may refuse to issue a retention permit if, after having regard to the information submitted under 32(1) and research conducted by the **[Board]** <u>council</u> at the request of the Minister, it is established that—and (b) by the substitution for paragraph (b) of the following paragraph: "(b) the applicant has not completed the prospecting or <u>mining</u> operations and feasibility study in relation thereto; or".			
ENVIRONMENTAL MANAGEMENT PRINCIPLES - SECTION 37				
Sec 37 Amended	Section 37 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: "(1) **[The principles set out in section 2]** <u>All environmental requirements provided for by this Act will be implemented in terms</u> of the National Environmental	The scope of the application of the NEMA to the MPRDA is no longer limited to the environmental management principles in section 2 of the NEMA which apply to decision making of organs of state which affect the environment. The scope has now been extended to include a reference to all environmental requirements.	Agree with Minerals Council	

	Management Act, 1998 (Act No. 107 of 1998)[— **(a) apply to all prospecting and mining operations, as the case may be, and any matter or activity relating to such operation; and** **(b) serve as guidelines for the interpretation, administration and implementation of the environmental requirements of this Act].**			
Sec 38B Amended	Section 38B of the principal Act is hereby amended— (a) by the substitution for subsection (1) of the following subsection: "(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 <u>Amendment</u> Act, **[1998]** <u>2014</u>, shall be deemed to have been approved and an environmental authorisation been issued in	The reinstatement of section 38B is welcomed. The heading incorrectly refers to an amendment of Section 38B of Act 28 of 2002 as amended by section 32 of Act 49. Section 38B has to date not been commenced with as a result there is no section 38B in the MPRDA which can be amended. Section 38B was going to be inserted into the MPRDA with effect from a date to be determined by the President by proclamation in the Gazette and that date has not yet been determined.	Agree with Minerals Council	

	terms of the National Environmental Management Act, 1998."; and (b) by the addition after subsection (3) of the following subsection: "(4) <u>All pending applications lodged in terms of this Act prior to the coming into operation of the National Environmental Management Amendment Act, 2014, shall be processed in terms of this Act as if the National Environmental Management Amendment Act, 2014, is not in operation.</u>	The re-introduction of section 38B into the MPRDA is welcomed, however, we are of the view that to avoid any further uncertainty regarding the transitional status of environmental management programme or plans approved under the MPRDA, a similar provision should also be introduced into the NEMA under the substituted section 12 referred to above. We also recommend that the wording of section 38B be amended as it refers to the coming into effect of the National Environmental Management Amendment Act, 2014 and no longer the National Environmental Management Act 107 of 1998. To avoid uncertainty, we recommend that the date of 8 December 2014 be inserted without referring to any amendment Act. Consequential amendments should also be made to Regulation 54A(1) of the EIA Regulations 2014 which should be deleted.		
MANAGEMENT OF HISTORIC STOCKPILES - SECTION 42A				

S42A Inserted	42A. (1) In order to promote orderly and optimal development of mineral resources and guarantee security of tenure, all historic residue stockpiles and residue deposits currently not regulated under this Act belong to the owners thereof and shall continue in force for a period of two years from the date on which the Mineral and Petroleum Resources Development Amendment Act, 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.	A detailed clause has been inserted into the MPRDA dealing with the management of historic residue stockpiles and residue deposits. As stated above the definitions are so confusing so as to render this section inoperative quite apart from the principle issues dealt with below. The current definitions of "Residue Deposit" and "Residue Stockpile" already refer to an old order right. Furthermore the proposed amendment of the definition of "Residue Stockpile" in clause 1(zL) now also includes historic mines and dumps created before the implementation of this Act. This then contradicts the new definition inserted in clause 1(u) of historic residue stockpiles. Section 42A(1) states that all historic residue stockpiles and residue deposits shall continue in force for a period of 2 years. This does not make sense. A stockpile and a deposit as assets and not rights and therefore continuing in force for a period of 2 years is meaningless.	Agree on definition clarity	

	(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[Reqional manager] 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	Section 42A(2) provides that a holder of a mining right 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 to include such deposits and stockpiles into the rights. Firstly the reference to "Historic Residue Deposits" appears to be incorrect as the definition in Section 1 of the Bill talks about historic residue stockpiles but secondly by the very definition of "Historic Residue Stockpiles those stockpiles which are created by a mining right holder or a small-scale mining permit or artisanal mining permit are already excluded by definition and therefore there is an inherent contradiction between Section 42A(2) and the definition of "Historic Residue Stockpiles". Furthermore the situation of the owner of a dump which is situated within a mining area that that that third party is not the mining right holder is not being catered for in the amended Section 42A at all. Furthermore if line 2 of 42A(2) is corrected to refer to historic		

	the applicant satisfies the reouirements 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 and 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	residue stockpiles and residue deposits, residue deposits are by the very definition deposits which come into existence on the lapse of a mining right and therefore the reference to residue deposits in Section 42A(2) is once again meaningless. In Section 42A(4) once again there is an incorrect reference to historic residue deposit as opposed to a historic residue stockpile. This section relates to historic residue stockpiles and residue deposits situated outside a mining area and the owner thereof has a period of 2 years from the implementation of the Amendment Act to apply for a mining right thereover. In Section 42A(5) it is not clear whether the right to renew would be included or not. Furthermore there is reference to "Residue Deposit" and "Residue Stockpile" which presumably should have been a reference to "Residue Deposit" and "Historic Residue Stockpile". The reference to "Historic Residue Deposit" in the new Section 42A(8)		

	historic residues and stockpiles shall revert back to the State.	appears to be wrong and should be a reference to "Historic Residue Stockpile". In the new Section 42A(9) once again there is an incorrect reference to "Historic Residue Deposits" and the term should have been "Historic Residue Stockpiles and Residue Deposits". MINERALS COUNCIL objects strongly to the provisions of Section 42A(9) which constitute an expropriation without compensation and without taking account of the expense incurred by the holder to have created such dumps. Furthermore there is no reference to the situation of historic residue stockpiles and residue deposits situated within a mining area for which no application is made for an amendment of the work programme as provided for in the new Section 42A. The situation in regard to those dumps are unclear as well as the situation regarding third parties owning dumps within a mining area but not being the holder of the actual mining right relating to that mining area. Furthermore the concept of custodianship		

		of the minerals reverting back to the State is unclear. It is not clear why it should revert back to the State as the State has never had custodianship. Furthermore it contradicts Section 3 which provides for the custodianship of the Nation's mineral resources not the minerals themselves. Furthermore in regard to those dumps referred to in the new 42A(9) for which no application is made for a mining right within a period of 2 years it is unclear what will transpire in regard to the rehabilitation obligations in relation to such dumps in respect of which in many instances the owners of the dumps even though they are old dumps assume statutory responsibility therefor. Presumably such statutory liability will lapse and the liability for the maintenance thereof will then rest with the State which is completely undesirable in the circumstances. It is the Minerals Council's recommendation that Section 42A be deleted in its entirety and if not, it should be		

		substantially redrafted and reworded to deal with all of the comments above.		
CLOSURE CERTIFICATES - SECTION 43				
Sec 43 Amended	(a) by the substitution for subsection (1) of the following subsection: "{1) The holder of a prospecting right, mining right, retention permit, **[mining permit]** <u>small-scale mining permit or artisanal mining permit</u>, or previous holder of an old order right or previous owner of works that has ceased to exist, remains responsible for any environmental liability, pollution, ecological degradation, the pumping and treatment of extraneous water, compliance **[to]** <u>with</u> 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.";	A new Section 43(1A) has been inserted providing that despite the issuing of a closure certificate the holder 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. This is an extremely onerous requirement as it now imposes ongoing liability notwithstanding the issue of a closure certificate which is a radical departure from the current provisions of the MPRDA and all previous mining legislation. The holder of a right can therefore never divest itself of any responsibilities under the MPRDA and the purpose of a closure certificate is therefore unknown.	Agree with Minerals Council	

	(b) by the insertion after subsection (1) of the following subsection: "(1A) <u>Despite the issuing of the closure certificate, the holder or owner referred to subsection (1) remains liable for any latent or residual environmental liability, pollution, ecological degradation, the pumping and treatment of extraneous water which may become known in the future.</u> (c) by the substitution for subsection (2) of the following subsection: "(2) On the written application in the prescribed manner^ by the holder of a prospecting right, mining right, retention permit, **[mining permit]** <u>small-scale mining permit or artisanal mining permit</u>, or previous holder of an old order right or previous owner of works that [has] 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	Section 43(6) is proposed to be amended to state that the Minister can retain a portion of the financial provision after closure as the Minister may determine and for a period as determined by the Minister in the prescribed manner. Once again this leaves much discretion up to the Minster and it is unknown what the prescribed manner will be. Furthermore these provisions have to be aligned with Sections 24P and 24R of NEMA. The blanket continuation of liability in terms of section 24R of the NEMA, and the insertion of a similar type of provision in the MPRD Bill is unfortunate, unfair and unreasonable. Moreover, the ambit and blanket extent of retained legal liability post closure, as provided for in section 24R(1) of the NEMA renders the concept of a closure certificate as contemplated in section 43(1) of the MPRDA irrelevant. It is submitted that a clear distinction should be drawn between financial provisioning provided during the life of mine for purposes of managing post		

	with such qualifications as may be prescribed."; (d) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: "(3) The holder of a prospecting right, mining right, retention permit, **[mining permit]** <u>small-scale mining permit or artisanal mining permit</u>, or previous holder of an old order right or previous owner of works that [has] have ceased to exist, or the person contemplated in subsection (2), as the case may be, must apply for a closure certificate upon— (e) by the substitution for subsection (5) of the following subsection: "(5) No closure certificate may be issued unless the Chief Inspector **[and each government department charged with the administration of any law which relates to any matter affecting the environment]** of Mines and the <u>Department of Water and Sanitation</u> have confirmed in writing1 that the provisions	closure impacts and which financial provision defers to the State in relation to post closure latent and residual impacts and for the pumping of extraneous water and the continuation of environmental liability post closure for any environmental liability, pollution or ecological degradation. Where a rights holder has provided financial provisioning for environmental impact management post closure, and where a closure certificate has been issued, that holder should be exonerated from any environmental liabilities that arise by virtue of it being a rights holder under the MPRDA and the holder of an environmental authorisation or licence under the NEMA and/or the SEMA's post the issuing of the closure certificate. To hold otherwise will render section 43(1) of the MPRDA nugatory. The Mineral and Petroleum Resources Development Regulations define a latent environmental impact to mean any environmental impact that may result from <u>natural events or disasters after a closure</u>		

	pertaining to health and safety and management of pollution to water resources, the pumping and treatment of extraneous water and compliance to the conditions of the environmental authorisation have been addressed.'1; (f) by the substitution for subsection (5A) of the following subsection: "(5A) Confirmation from the Chief Inspector of <u>Mines</u> and **[each government department]** <u>Department of Water and Sanitation</u> as contemplated in subsection (5) must be received within 60 days from the date on which the Minister informs **[such]** the Chief Inspector of <u>Mines</u> or **[government department]** <u>Department of Water and Sanitation</u>, in writing, to do so. (g) by the substitution for subsection (6) of the following subsection: “(6) When the Minister issues a certificate^ he or she **[must return such portion of the financial provision contemplated in section 41 the National Environmental Management Act, 1998, as the Minister may deem appropriate, to the holder of**	<u>certificate has been issued</u>. Residual environmental impacts are defined to mean the environmental impact remaining after a closure certificate has been issued. The proposed insertion of section (1A) has been taken from section 24R of the NEMA and contradicts the intention and purpose of a closure certificate as contemplated in section 43(1) of the MPRDA. In addition, the NEMA has no definition for “residual impact”. A “latent environmental impact” is defined to mean “*when used in sections 24P and 24PA, means impacts which are existing and defined, but not yet developed and will manifest post-closure;*” It is clear that this definition is not aligned with the definition of latent impact in the Mineral and Petroleum Resources Development Regulations. Therefore, the adoption of the text in section 24R(1) as the text in the new section 43(1A) is misplaced and misaligned. Section 24R(1) is dependent on the definition of “latent environmental impact” as referred to above and with no		

	the prospecting right, mining right, retention permit, 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. (h) by the substitution for subsection (7) of the following subsection: "(7) The holder of a prospecting right, mining right, retention permit, **[mining permit]** small-scale mining permit or artisanal mining permit, or previous holder of an old order right or previous owner of works that [has] have ceased to exist, or the person contemplated in subsection (2), as the case may be, must plan for, manage and implement such	similar definition of residual environmental impact, the two sections are not aligned. It is furthermore submitted that a closure certificate should provide certainty that going forward, post closure, no residual or latent environmental liability will accrue to a rights holder under the MPRDA save in circumstances where an environmental impact arises which flows from the failure by a right's holder to take reasonable measures as contemplated in the statutory duties of care in the NEMA and the National Water Act 36 of 1998. It is submitted that only in limited circumstances where (i) there has been a failure in the time during pre-closure to take reasonable measures and (ii) a causal link established between that failure to take reasonable measures and the residual environmental impact that materializes, should a rights holder retain environmental liability post the issuing of a closure certificate. It is furthermore submitted that a rights holder should not be exposed to liability		

	procedures and such requirements on mine closure as may be prescribed.”; (i) by the substitution for subsection (11) of the following subsection: "(11) The holder of a prospecting right, mining right, retention permit, **[mining permit]** <u>small-scale mining permit or artisanal mining permit</u>, or previous holder of an old order right or previous owner of works that [**has**] <u>have</u> 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).”; and (j) by the addition after subsection (13) of the following subsection: <u>(14) The holder of a right or permit, who formally or legally abandons the right and</u>	arising from a latent environmental impact as defined in the Mineral and Petroleum Resources and Development Regulations. The definition of latent environmental impact in the aforesaid Regulations refers to any environmental impact that may result from natural events or disasters after a closure certificate. Rights holders should not be held liable for outcomes associated with natural events or disasters if all reasonable measures have been taken during the pre-closure phase to manage environmental impacts. In addition, the insertion of section 43(1A) appears to be out of pace with the establishment of new categories of rights holders for small-scale mining operations. In this regard, the small-scale mining permits and artisanal mining permit holders will be significantly financially burdened if those rights holders are held environmentally liable for <u>any latent or residual environmental liability, pollution, ecological degradation, the pumping and</u>		

	<u>has not conducted any invasive operations in terms of the right, is exempted from the provisions of section 43(6).</u>	<u>treatment of extraneous water which may become known in the future.</u> To continue to hold those categories of rights holders liable for post closure certificate environmental impacts, ecological degradation and for the pumping and treatment of polluted or extraneous water in circumstances where the financial provisioning provided for such eventualities prior to the issuing of a closure certificate will negate the intention of the legislature to promote small-scale and artisanal mining operations. There is the insertion of a new Section 43(14). This new section allows for an exemption in respect of the holder of a right who formally/legally abandons the right and has not caused environmental damage. This is a salutary section. It should probably be amplified to include a situation where the holder of a right abandons the right and a third party, by agreement with the holder, acquires a new right and assumes all liabilities under the MPRDA for environmental issues. It		

		should also refer not only to abandonment but all forms of lapsing in terms of Section 56.		
Sec 43(2)	c) by the substitution for subsection (2) of the following subsection: "(2) On the written application in the prescribed manner^ by the holder of a prospecting right, mining right, retention permit, **[mining permit]** <u>small-scale mining permit or artisanal mining permit</u>, or previous holder of an old order right or previous owner of works that [has] 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.			
Sec 43(3)	(d) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:			

	"(3) The holder of a prospecting right, mining right, retention permit, **[mining permit]** <u>small-scale mining permit or artisanal mining permit</u>, or previous holder of an old order right or previous owner of works that [has] have ceased to exist, or the person contemplated in subsection (2), as the case may be, must apply for a closure certificate upon—			
Sec 43(5) and (5)(A) (amendment and insertion)	(e) by the substitution for subsection (5) of the following subsection: "(5) No closure certificate may be issued unless the Chief Inspector **[and each government department charged with the administration of any law which relates to any matter affecting the environment]** of Mines and the <u>Department of Water and Sanitation</u> have confirmed in writing1 that the provisions pertaining to health and safety and management of pollution to water resources, the pumping and treatment of extraneous water and compliance to the			

	conditions of the environmental authorisation have been addressed.'1; (f) by the substitution for subsection (5A) of the following subsection: "(5A) Confirmation from the Chief Inspector of <u>Mines</u> and **[each government department]** <u>Department of Water and Sanitation</u> as contemplated in subsection (5) must be received within 60 days from the date on which the Minister informs **[such]** the Chief Inspector of <u>Mines</u> or **[government department]** <u>Department of Water and Sanitation</u>, in writing, to do so.			
Sec 43(6) Amended	(g) by the substitution for subsection (6) of the following subsection: “(6) When the Minister issues a certificate^ he or she **[must return such portion of the financial provision contemplated in section 41 the National Environmental Management Act, 1998, as the Minister may deem appropriate, to the holder of the prospecting right, mining right, retention permit, mining permit,**		We need time frames of when release letter will be given	

	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.			
Sec 43(7), (11), and (13)	(h) by the substitution for subsection (7) of the following subsection: "(7) The holder of a prospecting right, mining right, retention permit, **[mining permit]** small-scale mining permit or artisanal mining permit, or previous holder of an old order right or previous owner of works that [has] have ceased to exist, or the person contemplated in subsection (2), as the case may be, must plan for, manage and implement such	The recognition in (14) that different circumstances should apply where the holder of a right or permit, has not conducted any invasive operations in terms of the right is welcomed but such a person should really be exempted from all obligations with regard to closure.	Agree with Minerals Council	

	procedures and such requirements on mine closure as may be prescribed."; (i) by the substitution for subsection (11) of the following subsection: "(11) The holder of a prospecting right, mining right, retention permit, **[mining permit]** small-scale mining permit or artisanal mining permit, or previous holder of an old order right or previous owner of works that [**has**] have ceased to exist, or the person contemplated in subsection (2), as the case may be, 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)."; and (j) by the addition after subsection (13) of the following subsection: (14) The holder of a right or permit, who formally or legally abandons the right and			

	<u>has not conducted any invasive operations in terms of the right, is exempted from the provisions of section 43(6).</u>			
REMOVAL OF BUILDINGS - SECTION 44				
Sec 44	38. Section 44 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: "(1) When a prospecting right, mining right, retention permit **[or mining permit]**, <u>small-scale mining permit or artisanal mining permit</u> lapses, is cancelled or is abandoned or when any prospecting or mining operation ceases1 the holder of any such right or permit may not demolish or remove any building, structure or object.			
POWER TO RECOVER COSTS - SECTION 45				
Sec 45 Amended	(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:			

	(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—and (b) by the substitution in subsection (2) for paragraph (d) of the following paragraph: (d) **[In addition to the application in terms of]** If funds raised by wav 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.			
POWER TO REMEDY ENVIRONMENTAL DAMAGE - SECTION 46				
Sec 46	Section 46 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: (1) If the Minister directs that measures contemplated in section 45 must be taken to prevent pollution or ecological degradation of the environment, to address any contravention in the environmental authorisation or to rehabilitate dangerous health or safety occurrences but establishes that the holder of a reconnaissance permission, prospecting right, mining right, retention permit, **[mining permit]** <u>small-scale mining permit or artisanal mining permit</u>, 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 Environment Affairs and Tourism,]** may instruct the Minister 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.			
POWER TO CANCEL OR SUSPEND RIGHTS - SECTION 47				
Sec 47 Amended	Section 47 of the principal Act is hereby amended— (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: (1) Subject to subsections (2), (3) and (4), the Minister may cancel or suspend any reconnaissance permission, prospecting right, mining right, **[mining permit]** <u>small-scale mining permit, artisanal mining permit,</u> retention permit or **[holders of]** old			

	order rights or **[previous owners of]** works, if the holder or owner thereof— (b) by the deletion in subsection (1) of paragraph (d) (c) by the substitution in subsection (2) for paragraph (c) of the following paragraph: (c) afford the holder **[a reasonable opportunity]** <u>a period of 30 days to make representations,</u> in writing, [**to show]** <u>as to why</u> the right, permit or permission should not be suspended or cancelled; and"; (d) by the substitution in subsection (2) for paragraph (d) of the following paragraph: "(d) notify the mortgagee, if any, of the prospecting right, mining right **[or mining permit],** <u>small-scale mining permit or artisanal mining permit</u> concerned of his or her intention to suspend or cancel the right or permitf.l: and;"; (e) by the addition in subsection (2) after paragraph (d) of the following paragraph:			

	“(e) direct the holder, in writing, to take specified measures to remedy any contravention, breach or failure.; (f) by the deletion of subsection (3);, (g) by the substitution for subsection (4) of the following subsection: "(4) If the holder does not comply with the **[direction**] directive given under subsection **[(3)]** (2)(e), the Minister may act under subsection (1) against the holder after having— (a) given the holder **[a reasonable opportunity]** a period of 30 days to make representations, as contemplated in subsection (2)(c) and (b) considered any such representations; and, (h) by the substitution in subsection (5) for paragraph (a) of the following paragraph: (a) complies with a directive contemplated in subsection **[(3)]** (2)(e) or.			
RESTRICTIONS ON CERTAIN LAND - SECTION 48				

Sec 48 Amended	(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: (1) Subject to section 48 of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003), and subsection (2), no reconnaissance permission, prospecting right, mining right may be granted or [**mining permit]** <u>small-scale mining permit or artisanal mining permit</u> be issued in respect of— (b) by the substitution in subsection (1) for paragraph (a) of the following paragraph: "(a) land comprising a residential area and <u>any land which is within an approved town planning scheme and zoned for residential purposes</u>; and (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: '(2} A reconnaissance permission, prospecting right, mining right **[or mining permit],** 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-.’			
RESTRICTIONS AND PROHIBITIONS ON PROSPECTING & MINING - SECTION 49				
Sec 49 Amended	(a) by the substitution for subsection (1) of the following subsection: (1) Subject to subsection (2), the Minister may **[after inviting representations from relevant stakeholders, from time to time]** after consulting the relevant Ministers, by notice in the Gazette, having regard to the national interest, designate certain minerals as strategic **[nature of the]** minerals to promote sustainable development of the nation’s mineral resources— (a) prohibit or restrict the granting of any reconnaissance permission, prospecting right, mining right, [mining permit] 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 mining permit]**, 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."; (b) by the substitution for subsection (4) of the following subsection: "(4) Subject to subsection (2)(b), the Minister may by notice in the Gazette, invite applications for a reconnaissance permission, prospecting right, mining right, **[mining permit]** <u>small-scale mining permit or artisanal mining permit</u> in respect of any mineral or land, and may specify in such notice the period within which any application may be lodged and terms and			

	conditions subject to which such rights or permit may be granted.; and (c) by the addition after subsection (4) of the following subsection: (5) An application referred to in subsection (4) may be granted if the application complies with the requirements of sections 14, 17, 23, 27 or 27A of this Act, as the case may be.			
INVESTIGATION OF OCCURENCES - SECTION 50				
Sec 50 Amended	Section 50 of the principal Act is hereby amended— (a)by the substitution for subsection (1) of the following subsection: "(1)The Minister may **[cause]** direct that an investigation [to] be conducted on any land to establish if any mineral or geological formation occurs in, on or under such land and, if so, to establish the nature and extent thereof."; and (b)by the substitution in subsection (4) for paragraph (a) of the following paragraph:			

	"(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 <u>community</u> has been consulted and notified, in writing, of the intention to enter and to conduct the investigation.".			
OPTIMAL MINING - SECTION 51				
Sec 51Amended	(a)by the substitution for subsection (1) of the following subsection: "(1)Subject to subsection (2), the **[Board]** <u>council</u> may recommend to the Minister to direct the holder of a mining right to take corrective measures if the **[Board]** <u>council</u> 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)."; (b)by the substitution for subsection (2) of the following subsection:			

	"(2)Before making the recommendation, the [Board] council must consider whether the technical and financial resources of the holder of a mining right in question and the prevailing market conditions justify such recommendation."; (c)by the substitution for subsection (3) of the following subsection: "(3)(a)If the Minister agrees with the recommendation, he or she must, within 30 days from the date of receipt of the recommendation of the **[Board]** council, in writing., notify the holder that he or she must take such corrective measures as may be set out in the notice and must remedy the position within the period **[mentioned]** specified in the notice. (b)The Minister must afford the holder the opportunity to make representations in relation to the **[Board's**] council's findings within 60 days from the date of the notice and must point out that non-compliance with the notice [might] may result in suspension or cancellation of the mining right.";			

	(d)by the substitution in subsection (4) for the words preceding paragraph (a) of the following words: "(4)The Minister may, on the recommendation of the **[Board]** <u>council</u>, suspend or cancel the mining right if; and (e)the substitution in subsection (5) for the words preceding paragraph (b) of the following words: (5) The Minister may, on the recommendation of the **[Board]** <u>council,</u> lift the suspension of a mining right if the holder in question.			
PROFITABILITY AND CURTAILMENT - SECTION 52				
Sec 52 Amended	(a)by the substitution in subsection (2) for the words preceding paragraph *(a)* of the following words: (2) The **[Board]** <u>council</u> must, after consultation with the relevant holder, investigate—, and (b)by the substitution in subsection (3) for paragraph *(a)* of the following paragraph:			

	(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.			
USE OF LAND SURFACE RIGHTS - SECTION 53				
Sec 53 Amended	(a)by substitution for subsection (1) of the following subsection: (1)Subject to subsection (2), any person who intends to use the surface of any land in any way which may be contrary to any object of this Act or which is likely to impede any such object must **[apply]** <u>obtain comments</u> **[to]** from the Minister **[for approval]** in the prescribed manner. *(b)*by the substitution in subsection (2) for paragraph *(b)* of the following paragraph:	It is noted that it is proposed to amend Section 53 to state that rather than applying for approval from the Minister, such person under Section 53 must obtain "comments" from the Minister. It is not entirely clear why this change has been made. The reference to "obtain comments" is extremely vague. It is not clear what comments will be made by the Minister and what the implications of such comments are. This wording also offends against many of the Municipal By-Laws that have been framed in terms of	Agree with Minerals Council	

	"(b) the use of any land which lies within an approved town-planning scheme which has applied for and obtained **[approval]** comments in terms of subsection (1)"; *(c)*by the substitution for subsection (3) of the following subsection: "(3)Despite subsection (1), the Minister may **[cause]** direct that an investigation **[to]** be conducted if it is alleged that a person intends to use the surface of any land in a way that could result in the mining of mineral resources being detrimentally affected."; and *(d)*by the substitution in subsection (4) for paragraph (c) of the following paragraph: "(c)offer that person the opportunity to respond within **[30 days]** the prescribed period.	SPLUMA requiring Section 53 consent before a township approval can be granted. The obligation to obtain Ministerial “comments” should also include comments from any rights holders. The effect of a section 53 approval on future mining and prospecting applications must be clarified. Once section 53 “comments” have been obtained and the Minister has stated he has no objection can the Minister grant prospecting or mining rights over the property? The impact of section 53 consent granted on the area where mining rights are held is also unclear. Does a mining rights holder who does not object “abandon” mining over that portion. Does the mining right holder retain the section 5 rights to mine that area and bring infrastructure onto the area? Section 53 is becoming a very contentious section and the current uncertainties are inhibiting investments in power infrastructure for mines and in rural areas.		

		Engagement with industry is required to clarify these issues.		
COMPENSATION - SECTION 54				
Sec 54 Amended	(a)by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words: "(1)The holder of a reconnaissance permission, prospecting right, mining right **[or mining permit].** small-scale mining permit or artisanal mining permit must notify the relevant the Minister 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— (b)by the substitution in subsection (1) for paragraph (c) of the following paragraph: "(c)cannot be found in order to **[apply for]** gain access.;			

	(c)by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: (2)The **(Regional manager Minister** must, within **[14 days]** the prescribed period from the date of the notice referred to in subsection (1)—, (d)by the substitution in subsection (2) for paragraph *(a)* of the following paragraph: *"(a)*call upon the owner or lawful occupier of the land to make representations regarding the issues raised by the holder of the reconnaissance permission, prospecting right, mining **right [or mining permit],** small-scale mining permit or artisanal **mining permit";** and (e)by the substitution for subsection (6) of the following subsection: "(6)**If** the Minister determines that the failure of the parties to reach an agreement or to resolve the dispute is due to the fault of the holder of the reconnaissance permission, prospecting right, mining right **[or mining permit],** small-scale mining			

	permit or artisanal mining permit, the Minister may, in writings 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."			
LAPSING OF RIGHTS - SECTION 56 (56A, B, C, D, E, F, & G)				
Sec 56 Amended	The following section is hereby substituted for section 56 of the principal Act: **'Lapsing of right, permit and permission** **56.**{1)Any right, permit **[or]** and permission granted or issued in terms of this Act shall lapse, whenever— *[(a)***it expires;]** the holder thereof is deceased and there are no successors in title; (b)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	Although somewhat tautologous, the reference to "it expires" in Section 56(1)(a) should be retained lest because the others stipulated instances of lapsing are included in Section 56, the legal maxim to that effect would have it that expiry is excluded as an instance of lapsing. In Section 56(1)(c) the deletion of the reference to "close corporation" is premature since Section 220 read with Schedule 3 of the Companies Act has not repealed the Close Corporations Act 1984 in its entirety and close corporations continue to exist.	Agree with Minerals Council	

	terms of section 11 or such permission has been refused; **[(d)save for cases referred to in section 11(3), the holder is liquidated or sequestrated;]** (e)it is cancelled in terms of section 47; or (f) it is abandoned; (2)in the event that the holder is liquidated and finally deregistered or sequestrated, the right. permit. permission. or license must fall within the insolvent estate and if sold, transferred to the purchaser subject to the prior written consent of the Minister in terms of section 11.	Section 56(1)(c) and Section 56(2) (the newly inserted Section 56(2)) both deal with deregistered companies but deal with them in different ways, namely Section 56(1)(c) causes lapsing of the right, permit or permission whereas Section 56(2) causes continuance i.e non-lapsing thereof. Therefore the reference to "finally deregistered" should be deleted from Section 56(2). At the end of Section 56(2) the following proviso should be added, namely - "*provided however that if such permit, permission or right has upon deregistration of the company in terms of Section 82(2)(b) of the Companies Act 2008 not been so ceded, transferred, alienated or otherwise disposed of, it shall lapse in terms of Section 56(1)(c) above upon such deregistration.*"		
Sec 56A Inserted	56A. (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: fa) The Chairperson: (b) the Chief Inspector; (c) three persons representing relevant state departments: (d) a Regional manager; (e) three persons representing organised business: (f) three persons representing organised labour: and (g) at least two other persons with appropriate experience, expertise or skill to enhance the council's capabilities of performing its functions more effectively. (4) The members of the council must elect one of its members as deputy chairperson at their first meeting.			
Sec 56B Inserted	**Functions of council** 56B. The council must advise the Minister on— sustainable development of the			

	nation's mineral resources; the growth and transformation of the mineral industry; the terms and conditions applicable to beneficiation as contemplated in section 26; and any other matter which the Minister refers to the council.			
Sec 56C Inserted	**Subcommittees of council** 56C. (1) The council may appoint subcommittees to assist with its functions as it may determine. (2) The council must determine the composition of a subcommittee. (3) The council may at any time dissolve or reconstitute a subcommittee. (4) The council must designate a member of a subcommittee as chairperson of that subcommittee. (5) The council is not absolved from the performance of any function entrusted to a subcommittee. (6) The council may make rules regarding the manner in which meetings of a subcommittee are to be convened, the			

	procedure, the functions of, and the quorums for such meetings and the manner in which minutes of such meetings must be kept.			
Sec 56D Inserted	**Disqualification of members** 56D. (1) A person may not be appointed as a member of the council- fa) 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.	Given the wide range of interested parties who may be nominated as members of this council, including from industry and related bodies, the requirement that members must be South Africa citizens is unusual. This does not seem to accord with recognition in other areas of government policy of the importance of allowing skilled professionals with the appropriate work visa to contribute to the South African economy. The precedent such a provision will set should be carefully considered.		

Sec 56E Inserted	**Vacation of office** 56E. (1)A member of the council must vacate his or her office if he or she— (a) becomes subject to any disqualification contemplated in section 56D or, in the case of an official in the service of the State, ceases to be such an official; (b) has been absent for more than two consecutive meetings of the council, without leave; (c) tenders his or her resignation, in writing, to the Minister and the Minister accepts the resignation; or (d) is removed from the office by the Minister in terms of subsection (2). (2) The Minister may remove any member of the council from office- fa) on account of misconduct or inability to perform any of the functions of his or her office effectively; or			

	(b) if the member has engaged in any activity that may undermine the integrity of the council, which activities may include— (i) participation in any investigation, hearing or decision concerning a matter in respect of which that person has a financial or personal interest: (ii) making private use of, or profiting from, any confidential information obtained as a result of performing his or her functions as a member of the council; or (iii) divulging any information referred to in subparagraph (ii) to any third party, except as required by or under this Act or the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).			
Sec 56F Inserted	**Term of office and filling of vacancies** 56F. (1) A member of the council shall hold office for a period not exceeding three years. (2) The Minister may reappoint any member of the council at the expiry of his			

	or her term for another period not exceeding three years. (3) If a member of the council vacates office or dies, the Minister may fill the vacancy by appointing a person in accordance with section 56A (2) for the unexpired period of the term of office of his or her predecessor.			
Sec 56G inserted	**Remuneration and allowances of members council** 56G. The members of the council who are not in the full-time employment of the State must be paid such remuneration and allowances as may be determined by the Minister, in consultation with the Minister of Finance.".			
Repeal of sections 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 and 90 of Act 28 of 2002.				
POWER TO ENTER AN AREA - SECTION 91 (91A)				
Sec 91 Amended	(a)by the substitution for subsection (1) of the following subsection:			

	(1)The Minister may designate **[any member of the Board, the or]**¡ any officer <u>or any person with appropriate expertise</u> as an authorised person, who can carry out the functions contemplated in subsection (4) and in section 92; and (a)by the substitution in subsection (4) for paragraph *(a)* of the following paragraph: (b)by the substitution in subsection (4) for paragraph (a) of the following paragraph: (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;			
Sec 91A	**Powers of South African Police Service members.** 91A. (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.	In terms of the newly inserted 91A the Minister may assign to a member of a SA Police Services powers contemplated in Sections 92 and Section 93 dealing with routine inspections and rectification orders in terms of Section 93. Although it is	Agree with Minerals Council	

	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.	understood why this section has been inserted especially to curb illegal mining activities it is undesirable potentially for a member of the South African Police Service to issue for example Section 93 orders as only somebody with expertise in the MPRDA could determine whether a party may be in breach of the MPRDA. There is also a reference to "assign to that member all the powers contemplated in Sections 92 and 93". It is unclear what is meant by this. For example the Director-General has certain powers under Section 93. Surely the member of the South African Police Service cannot assume the		
ORDERS, SUSPENSIONS AND INSTRUCTIONS - SECTION 93				
Sec 93 Amended	*(a)*by the substitution in subsection (1) for paragraph *(b)* of the following paragraph: *"(b)*any term or condition of any right, permit or permission or any other law granted or issued or an environmental authorisation issued, has occurred or is occurring on the relevant reconnaissance,	Amendments have been made to Section 93(1) but the drafting error has been perpetuated. The words "such a person" in the sixth line of the amended 93(1)(b) should cover both (a) and (b) and not just (b).		

	[exploration, production,] prospecting, mining or retention area or place where prospecting operations or mining operations or processing operations are being conducted, such a person **[may]—** (i)must order the holder of the relevant right., permit or permission, or the person in charge of such area, any person carrying out or in charge of the carrying out of such activities or operations or the manager, official, employee or agent of such holder or person to take immediate rectifying steps; **[or]** and (ii)may order that the reconnaissance, prospecting, **[exploration,]** mining **[, production]** or processing operations **[or part thereof]** be suspended **[or terminated,]** and give such other instructions in connection therewith as may be necessary. ***(b)***by the substitution for subsection (2) of the following subsection:	The amendment to Section 93(3) is welcome as it was ill worded previously so that if the DG does not confirm or set aside the order within a period as prescribed the order will lapse which is what should have been provided in the original Section 93(3).		

	(2)The Director-General must confirm or set aside any order contemplated in subsection (1) ***[(a)* or]** <u>(b)(i) and (ii);</u> and (c)by the substitution for subsection (3) of the following subsection: (3)The Director-General must notify the relevant holder or other person contemplated in subsection (1)₁ in writing within **[60 days]** <u>the prescribed period</u> after the order referred to in subsection (1) ***[(a)* or]** <u>NM and (ii). whether such order</u> has been set aside or confirmed, failing which such order shall lapse.			
INTERNAL APPEAL AND ACCESS TO COURT - SECTION 96				
Sec 96 Amended	(a) by the substitution for subsection (1) of the following subsection: (1) Any person whose rights or legitimate expectations have been materially and adversely affected or who is aggrieved by any administrative decision in terms of this Act may appeal within 30 days becoming aware of such administrative decision in the prescribed manner to—	Section 96(1) has been fairly substantially amended by now providing that an appeal only lies to the Minister alternatively the Minister of Environmental Affairs if the decision relates to environmental matters and issues incidental thereto. Section 96(1)(b) is vague and there may well disputes as to whether the decision taken relates to environmental matters or whether it relates to rights themselves and	Callender days of working days	

	(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 Director-General, if it is an administrative decision by a the Regional manager or any officer to whom the power has been delegated or a duty has been assigned by or under this Act]** ,the Minister if the decision was taken in terms of this Act Provided that appeals already lodged to the Director-General at the promulgation of this Act, shall be deemed to be appeals lodged to the Minister; or *(b)***[the Minister, if it is an administrative decision that was taken by the Director-General or the designated agency]** the Minister of Water and Sanitation and Forestry, Fisheries and the Environment, if the decision taken relates to environmental matters and issues	should therefore fall under Section 96(1)(a). It is also unclear what is meant by the appeal being "facilitated in terms of NEMA". Section 96(1)(a) should exclude decisions taken by the Minister himself or herself as they will go straight to review. In order to implement Section 96(1)(b) appropriate amendments will have to be made to NEMA because at the moment NEMA appeals only relate to decisions taken under NEMA and not under the MPRDA. There is the insertion of a new Section 96(2A) which provides that "pending any administrative decision in terms of the MPRDA which, in the opinion of the Minister may affect the outcome of an appeal in terms of sub-section (1) must be suspended pending the finalisation of the appeal". This addition may be salutary, but somewhat overlaps with Section 96(2)(b) which provides that any subsequent application in terms of the Act must be		

	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). (a)by the substitution in subsection (2) for paragraph (a) of the following paragraph: *"(a)***[An]** Subject to subsections (2A) and (2B). an appeal in terms of subsection (1) does not suspend the administrative decision, unless it is suspended by [the Director-General or] the Minister [, **as the case maybe].";** (a)by the insertion after subsection (2) of the following subsections: (2A) Any ❑ending 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	suspended pending the finalisation of the appeal referred to in paragraph (a). It is suggested that Section 96(2)(b) be replaced by what is provided for in Section 96(2A) of the draft Amendment Bill. We further note that there is a new Section 96(2B) which provides that any right 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. There are many issues with this provision especially that it contradicts the definition of "Effective Date" which is the date of grant of the right by the Minister. This amendment thus makes the Effective Date suspended until the prescribed period for the lodgement of appeals has expired. It also refers to appeals being finalised. It is not clear what is meant by this. Would reviews to the High Court against the Minister's appeal decision also be included within this which could cause the effectiveness of rights to be suspended for many years? It also		

	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. and (a)by the substitution for subsection (3) of the following subsection: (3)NoI 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.	contradicts the provisions of Section 96(2)(a) which provides that an appeal does not suspend the administrative decision unless it is suspended by the Minister. This directly contradicts the new 96(2)(B) which provides that it is automatically suspended until the prescribed period for the lodgement of the appeal has expired and if such appeal is lodged until the appeal has been finalised. We note that sub-section (3) has been amended to specifically refer to Section 7(2)(c) of the Promotion of Administrative Justice Act 3 of 2000 ("**PAJA**") which is welcomed as it is now clear that if there are exceptional circumstances one can go straight to Court rather than invoking the appeal procedure. It is also suggested that sub-section (4) be amended to include specific reference to sub-section (7)(2)(c) of PAJA. We further note that reference to the Minister responsible for water affairs and the Minister responsible for environmental affairs as appeal authorities if the decision		

		relates to environmental matters and issues incidental thereto is open to challenge. Currently, section 43 of the NEMA only provides for an appeal to the Minister responsible for environmental affairs in relation or a specific environmental management Act ("**SEMA**") by the Minister responsible for mineral resources or any person acting under his or her delegated authority. While the intention of the insertion appears to be to align the appeal provisions in the NEMA with those of the MPRDA, the manner in which the insertion has been drafted suggests that there are no appeal provisions in the NWA. The substitution of section 43(1) with the new section appears to suggest that the Minister responsible for water affairs will also hear appeals on environmental matters in accordance with the appeal process in terms of the NEMA. It is common cause that the NWA has its own appeal provisions and process and		

		that the proposed substitution omits to acknowledge this. In our view, a distinction based on the decision made in terms of a specific Act will better give effect to the intention of inserting these provisions into section 96 of the MPRDA.		
SERVING OF DOCUMENTS - SECTION 97				
Sec 97 Amended	Section 97 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: (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 addressf.1; or			

	<u>(c)it is sent by electronic mail to that person's last known electronic mail address.</u>			
OFFENCES - SECTION 98				
Sec 98 Amended	*(a)*by the substitution in paragraph *(a)* for subparagraph (i) of the following subparagraph: (I)**[section 5(4), ❑r 28]** <u>sections 2. 5A. 5B. 5C. 11, 15. 19. 20. 21: 25. 26, 27. 28, 35, 43 and 102;</u> *(b)*by the substitution in paragraph *(a)* for subparagraph (vii) of the following subparagraph: (vii)any **[direction]** <u>directive</u> contemplated in section 29; or; and *(c)*by the deletion of paragraph (c).			
PENALTIES - SECTION 99				
Sec 99 Amended	(a)by the substitution for subsection (1) of the following subsection:	It is submitted that references in Section 99(1) to percentages of turnover and exports are not only draconian, but also	Agree with Minerals Council	

	(1)Any person convicted of **[a]** an offence in terms of this Act is liable— (a)in the case of an offence referred to in section 98(a)(i), to a fine not exceeding **[R100 000]** 10 percent of the 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 **[two]** 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;	unconstitutional as offending against Section 9 (Equality) of the Constitution in that the penalty for the same offence committed by different persons will vary immensely depending on each of such persons' turnover and exports. The Minerals Council suggests that given the draconian nature of penalties linked to percentages of turnover and exports if such provisions are, notwithstanding the Minerals Council's request that they be deleted, retained, Section 99 should be amended to include similar concepts set out in the Competition Act, 1998 which provides that the Court with a list of factors which must be taken into account when it determines an appropriate penalty. The Minerals Council welcomes the intention to criminalise illegal mining. We however note that the fine sanction in relation to persons be revised given that persons (zama zamas) involved in illegal mining may not have a measurable or substantial turnover. Linking fine to a turnover may render this sanction		

	(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**], and (b)by the insertion after subsection (1) of the following subsection:	worthless and serve as no deterrence to a person with no or low turnover. There is the insertion of a new Section 99(1)(a) providing that an authorised person referred to in Section 91 may make a recommendation to the DG for a fine to be imposed for failure to comply with any provision contemplated in Section 98(iv). Section 98(iv) has been deleted by Section 69(a) of Act 49 of 2008 and therefore this section does not tie in with Section 99 as amended.		

	(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 haying been made, whichever is the earlier— *(aa)*disregard the recommendation: *(bb)*impose a fine not exceeding R800 000: or *(cc)*refer the matter to the National Prosecuting Authority for a decision as to whether the holder should be charged with an offence. (ii)The Director-General must, in writing. notify the holder of his or her decision made in terms of paragraph (b)(i) within the prescribed period. (iii)The holder may appeal the decision of the Director-General 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 judgment lawfully given in that court in favour of the Department. (c)Money received by the Department in payment of administrative fines imposed in terms of paragraph *(a)* must be paid to a fund established and controlled by the Council for Geoscience in terms of this Act. (d)The Council for Geoscience must, in consultation with the Minister. use the money in the fund for the promotion of prospecting activities in the mining industry and matters incidental thereto.".			

TRANSFORMATION OF MINERAL INDUSTRY - SECTION 100				
Sec 100 Amended	Section 100 of the principal Act is hereby amended by the addition after subsection (2) of the following subsections: (3)The Minister must. when granting applications in terms ❑f 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. (4The 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	There is the insertion of a new Section 100(3) which provides that the Minister when granting applications in terms of Section 23 must impose the provisions of the Housing and Living Conditions and the Broad-Based Socio-Economic Empowerment prescribed elements of "Black Economic Empowerment" ownership inclusive of procurement, supplier and enterprise development, human resources development, employment equity and mining community development. Furthermore in terms of Section 100(4) the Minister may at the Minister's discretion repeal the Housing and Living Conditions standard, Codes of Good Practice and Broad-Based Socio-Economic Empowerment prescribed elements or amend same. All of this is done in terms of regulations under the amended Section 107. These	There is the insertion of a new Section 100(3) which provides that the Minister when granting applications in terms of Section 23 must impose the **provisions of the Housing and Living Conditions.** Quarries don't provide or build houses – financial implications on already low margins.	**Amend or Exempt**: • Clarify in the Bill that Section 100(3) **does not apply to quarries** where employees live off-site and no company housing is provided. • Alternatively, provide **an exemption framework** for operations where housing obligations are impractical or unnecessary. **Adopt a Flexible Compliance Approach**: • Allow quarries to meet the Housing and Living Conditions provisions through **non-housing measures**, such as safe transport allowances, improved on-site facilities, or

	<u>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.</u>	regulations have not yet been promulgated and hence it is impossible to assess the impact of the proposed amendments on the mining industry at this stage which continues to exacerbate the problem of legal uncertainty. In addition, there is the suggested insertion of a new 107(1A) providing that the Minister does not need to consult with affected stakeholders in relation to such regulations. This gives the Minister without reference to stakeholders the power in the Minister's discretion to amend the Broad-Based Socio-Economic Empowerment prescribed elements of Black Economic Empowerment in the mining industry. This will scare away investors in that the Minister will have complete and utter power to determine the rules of empowerment in the Minister's discretion at any time without reference to stakeholders by regulation. We note that Section 100(2) has not been repealed. Thus for example there is still Section 100(2)(b) which deals with the fact		partnerships with local housing projects. **Conduct an Economic Impact Assessment**: Evaluate the cost implications of applying Section 100(3) to small and medium-sized quarry operations before finalising the legislation.

		that the Charter sets out how the objects referred to in Sections 2(c), (d), (e) and (f) can be achieved but this contradicts the new provisions providing that transformation is achieved by means of the new Section 100(3). It is therefore extremely unclear what the new status of the Mining Charter will be in those circumstances. As is noted throughout these comments there are a number of terms used here which are used inconsistently and which are not defined. The manner in which a transition from the existing regime to the proposed regime is to be managed requires specific consideration. These amendments cannot be made without giving industry line of sight on what the regulations will contain and how that compare to the Mining Charter.		
APPOINTMENT OF CONTRACTOR - SECTION 101				

Section 101 amended	The following section is hereby substituted for section 101 of the principal Act: **Appointment of contractor** **101.** 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.			
Sec 102 Amended	*(a)*by the substitution for subsection (1) of the following subsection: (1)A reconnaissance permission, prospecting right, mining right, **[mining permit]** 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**	A new sub-section (3) has been inserted to deal with associated minerals. It is not clear how the declaration of an associated mineral is done and when it is done. It is also not clear what the position is if there is already an existing right holder for an associated mineral. Thus, what is the position under the new Section 102(3) if, say a platinum mining company is mining on the basis of a mining right for platinum and there is a third party that holds an	Agree with Minerals Council	

	programme,] mining work programme, **[environmental management programmel** social and labour plan. or an environmental authorisation issued in terms of the National Environmental Management Act, 1998, as the case may be, **[may]** must not be amended or varied (including by extension of the area covered by it or by the **[additional]** addition of minerals or a share or shares or seams, mineralised bodies or strata, which are not at the time the subject thereof) without the written consent of the **Minister.** (c)by the addition after subsection (2) of the following subsections: (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 riaht 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	existing prospecting right for chrome. Does Section 102(3) now give statutory authority to the platinum right holder to also mine and dispose of the chrome, notwithstanding the holding by the third party of a chrome right? Furthermore there is the insertion of a new paragraph 102(4) which provides that the person so declaring still has to do an amendment under Section 102 of the MPRDA. However this is problematic as third party applications may be lodged between the declaration and the grant of the 102 consent and protective measures need to be inserted so that the Minister must inform the applicant for the amendment under Section 102(4) if such third party applies and the new applicant's application for a new right must be suspended pending the Section 102 decision by the Minister. There is an insertion of a new Section 102(5) saying that should the right holder not apply to include such an associated mineral these associated minerals will be		

	other minerals discovered in the prospecting or mining process.	relinquished to the State. This section is undesirable and constitutes expropriation without compensation in favour of the State which is unconstitutional. It also a senseless expropriation by the State. Seemingly the State wishes to hand out such rights to third parties but how can rights be handed out to third parties if the mineral is inextricably wound up in an ore deposit which has already been mined. See also the comments in section 9 and in the definition of “associated minerals”		
PREFERENE PROVISION - SECTION 104				
Sec 104	Section 104 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection: "(4)The preferent right referred to in subsection (1) shall not be granted in respect of areas, where a prospecting right, mining right, [mining permit] small-scale mining permit, artisanal mining permit [,] or retention permit[, production right, exploration right, technical operation		Security of Tenure: Quarry operators holding a valid mining right or small-scale mining permit would be protected from having their operational area allocated to another party through a preferent right.	Retain the Protection for Existing Rights: Keep the exclusion of areas with existing mining, small-scale mining, artisanal mining, or retention permits from new preferent right allocations.

	permit or reconnaissance permit] has already been granted.".		This reduces the risk of overlapping rights and potential operational disputes. Clarity in Land Use: By excluding areas with existing mining or prospecting rights from preferent right allocations, quarry operators have greater certainty over their permitted boundaries. This prevents potential legal challenges and community disputes over access and use. Investment Stability: Quarries are more likely to invest in equipment, infrastructure, and rehabilitation if they know their mining areas are shielded from competing preferent rights. Possible Limitation for Expansion:	This ensures quarries and other mining operations have secure tenure and legal certainty. Provide Clear Mapping and Public Access to Rights Information: The DMRE should maintain and publish an up-to-date map/database showing all existing rights to avoid administrative errors or overlapping allocations. Clarify the Position on Removed Categories: If “production right,” “exploration right,” and “technical operation” are removed from the list, the DMRE should clarify why and whether this change affects the protection of certain operations.

			If nearby land is not yet part of a quarry's right but has been earmarked for a community's preferent right, this could limit future expansion potential.	
EXEMPTIONS - SECTION 106				
Sec 106	Section 106 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: "(3)Any landowner or lawful occupier of land who lawfully[,] takes sand, stone, rock, gravel or clay for farming or for effecting improvements in connection with such land or community development purposes, is exempted from the provisions of **[in]** subsection (1)., as long as the sand, stone, rack, gravel or clay is not sold or disposed of.		**Implications for Quarries** • **Positive**: ○ The clause clearly separates **commercial quarrying** from **non-commercial land use**, meaning quarries that operate under permits are not competing with small-scale community extraction intended for on-site use. ○ It prevents unnecessary licensing bureaucracy for farmers or communities who need small quantities for improvements. • **Risks/Concerns**:	Introduce a Threshold Limit: Define a maximum volume of sand, stone, rock, gravel, or clay that can be extracted annually under the exemption. This prevents large-scale operations from bypassing permitting by claiming community use. Mandatory Record-Keeping: Require landowners or communities to keep basic records of extraction for accountability and environmental monitoring,

			○ **Potential for Abuse**: Some individuals might claim the exemption while actually selling the materials, creating unfair competition with legitimate quarries. ○ **Monitoring Challenges**: Without proper tracking, it will be difficult for the DMRE to ensure exempted materials are not being sold. ○ **Impact on Resource Management**: Over-extraction under the guise of "community development" could degrade the environment or deplete resources without rehabilitation, unlike regulated quarry operations.	even if exempt from subsection (1). Periodic Inspections: The DMRE or local municipalities should conduct spot checks to ensure exempted activities are genuinely non-commercial. Awareness & Guidelines: Provide clear public guidance on what qualifies as "farming," "improvements in connection with the land," and "community development purposes" to avoid loopholes.
REGULATIONS - SECTION 107				
Sec 107	Section 107 of the principal Act is hereby amended—	As stated above the provisions of Section 1A are undesirable because it gives the	Agree with Minerals Council	

	(a)by the insertion in subsection (1) after paragraph *(a)* of the following paragraph: "(aA) the rehabilitation of disturbances of the surface of land where such disturbances are connected to prospecting or mining operations:": (b)by the substitution for paragraph *(g)* of the following paragraph: *"(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; (c)by the insertion in subsection (1) after paragraph *(j)* of the following paragraphs: "(OA) the determination of terms and conditions applicable to beneficiation of mineral resources as contemplated in section 26:	Minister complete discretion to determine the promotion of transformative elements of Broad-Based Black Empowerment ownership at the Minister's discretion which could deter investment into the mining industry completely as the Minister would have unfettered discretion to amend at the Minister's whim the elements of Broad-Based Black Economic Empowerment. The uncertainty created by this regime will be a significant impediment to investment in the sector.		

	(1B)the procedure applicable in respect of an invitation for applications in terms of section 9A: (IC)(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 (ID)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:": and *(d)*by the addition after subsection (1) of the following subsection: "(1A) The Minister must, when making regulations as provided for in terms of			

	<u>subsection (1)(iA) and (IC). consult with affected stakeholders.</u>			
SCHEDULES				
Schedule 2	Schedule II to the principal Act is hereby amended— (a)by the substitution in item 3 for subitem (1) of the following subitem: (1)Any application fora prospecting permit, mining authorisation, consent to prospect, consent to mine or permission to remove and dispose of any mineral lodged, but not finalised, in terms of section 6, 8 or 9 of the Minerals Act immediately before this Act took effect must be regarded as having been lodged in terms of section **[13,] 'IQ,** 22 [;] or 27[, **79 or 83] of** this Act, as the case may be. (b)by the substitution in item 4 for subitem (5) of the following subitem: (5)**[the]** The holder must lodge the right converted under subitem (3) within 90 days from the <u>execution</u> date **[on which he or she received notice of**			

	conversion] at the Mineral and Petroleum Titles Registration Office for **[deregistration]** <u>registration</u> 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."; (c)by the substitution in item 4 for subitem (7) of the following subitem: "(7)Upon the conversion of the sublease **[and the registration of the exploration right into which it was converted],** the sublease ceases to exist."; (d)by the substitution in item 5 for subitem (5) of the following subitem: "(5)The holder must lodge the right converted under subitem (3) within 90 days from the <u>execution</u> 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,"; **(e)**by the substitution in item 5 for subitem (7) of the following subitem: **"(7)Upon the conversion of the lease [and the registration of the production right into which it was converted],** the lease ceases to exist."; (f)by the substitution in item 6 for subitem (5) of the following subitern: "(5)The holder must lodge the right converted under subitem (3) within 90 days from the <u>execution</u> date **[on which he or she received notice of conversion] at the Mineral and Petroleum Titles** Registration Office for registration and **[simultaneously]** at the Deeds Office or the Mineral and Petroleum Titles Registration Office for deregistration of the old order prospecting right, as the case may be."; (g)by the substitution in item 6 for subitem (7) of the following subitem:			

	"(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."; (h)by the substitution in item 7 for subitem (5) of the following subitem: "(5)The holder must lodge the right converted under subitem (3) within 90 days from the <u>execution</u> 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.";** by the substitution in item 7 for subitem (7) of the following subitem: "(7)Upon the conversion of the old order mining right.,			

	[and the registration of the mining right into which it was converted] the old order mining right ceases to exist."; and *(i)*by the substitution in item 9 for subitem (2) of the following subitem: "(2)The holder, user or acquirer of any reservation[, **permission]** or right to use the surface of land contemplated in subitem (1) must register such reservation[, **permission]** or right in the Mineral and Petroleum Titles Registration Office within six years from the date on which **[this Act]** the <u>Mineral and Petroleum Resources Development Amendment Act 49 of 2008.</u> took effect and if such holder, user or **[occupier]** <u>acquirer</u> fails to register such reservation[, **permission]** or right, the reservation[, **permission]** or right shall cease to exist."			
PREAMBLE				
…	**RECOGNISING** that minerals **[and petroleum]** are non-renewable natural resources;			

	ACKNOWLEDGING that South Africa's mineral **[and petroleum]** resources <u>are a common heritage that</u> 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; **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]** <u>industry.".</u>			