		Date:	13 August 2025
TO:	**Ms Stella Mamogale** Director: Mining and Mineral Policy, Department of Mineral Resources and Energy	Email:	Representations@dmre.gov.za
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Dear Madam

RE: Comments on the Draft National Mineral Resources Development Bill

1. **Introduction**

2. The Biodiversity Law Centre (**BLC**) hereby submits its comments on the Draft National Mineral Resources Development Amendment Bill (**Bill**) published by the Minister of Mineral and Petroleum Resources (**Minister**) on 20 May 2025.[1] These representations are submitted on 13 August 2025, the due date stipulated in the Government Gazette.

3. The BLC is a legal non-profit organisation that uses the law to protect and restore indigenous species and ecosystems that support sustainable livelihoods in Southern Africa. The BLC is particularly interested in law and policy that give effect to section 24 of the Constitution, and specifically the State's obligations to ensure the environment is protected for present and future generations, by preventing pollution and ecological degradation, promoting conservation, and securing ecologically sustainable development.

4. We understand that the Bill purports to amend the Mineral and Petroleum Resources Development Act 28 of 2002 (**MPRDA**). While we have not engaged with every proposed

[1] In Government Gazette No 52704, Government Notice 6210.

amendment in the Bill, these comments serve to highlight those amendments that we are most concerned about, including the following–

4.1. The Bill's provisions regarding "meaningful consultation";

4.2. The Bill's replacement of the established Minerals and Mining Development Board with the discretionary Mineral Advisory Council;

4.3. The Bill's internal appeal provisions;

4.4. The Bill's amendment of section 45 of the MPRDA requiring consultation with the Minister of Forestry, Fisheries and the Environment (**Environmental Minister**) in relation to the Minister's powers to recover costs in event of urgent remedial measures and to remedy environmental damage in certain instances; and

4.5. The Bill's failure to provide legal clarity in relation to mining activities in National Environmental Management: Protected Areas Act 47 of 2003 (**NEM:PAA**) protected areas and areas earmarked for protected area expansion.

5. Meaningful Consultation

5.1. The preamble to the Bill states that it "provide[s] for consultation". Accordingly, clause 11 of the Bill (amendment to MPRDA section 10) introduces the requirement that consultation with interested and affected persons (**IAPs**) regarding applications for prospecting rights, mining rights, small-scale mining permits or artisanal mining permits (**Mineral Rights**) is "meaningful". The Bill defines meaningful consultation as meaning 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".

5.2. While we welcome the legislative requirement that consultation with IAPs is meaningful, the Bill's definition of meaningful consultation is convoluted and problematic. We say this for the following reasons.

5.3. The Bill's definition of IAPs is broad, being –

> "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".

5.4. By contrast, the Bill narrowly defines "meaningful consultation" with IAPs with exclusive reference to the impact the prospecting or mining activities would have on their "right of use of the land".

5.5. The result is incongruous. On the one hand, the Bill widely defines IAPs, and then on the other hand, limits the facilitation of consultation *only* to IAPs that have a right of use of the land. This provision excludes from the realm of "meaningful consultation" those persons, communities, and civil society organisations which have a significant interest in the land but may not necessarily have a right of use of the land. The BLC is one such organisation which may have no right of use of land that is the subject of a Mineral Rights application but may still have a direct interest in the operation or be affected by same.

5.6. It is vital that an environmental NGO such as the Biodiversity Law Centre be afforded the opportunity to comment on prospecting and mining applications, as these activities can have significant and often irreversible impacts on biodiversity, ecosystems, and the services they provide to communities. Such stakeholders bring specialised legal, scientific, and policy expertise that can help ensure that decision-making processes are informed by robust environmental evidence, aligned with constitutional rights to an environment not harmful to health or well-being, and to have the environment protected, as well as being compliant with South Africa's environmental and biodiversity laws. Public participation of this nature enhances transparency, accountability, and the quality of environmental governance, while helping to identify and mitigate risks before they result in ecological degradation or community harm. It is critical that the definition of "meaningful consultation" does not unduly limit who is lawfully entitled to comment.

5.7. It is further unclear what the definition means insofar as it refers to "make an informed decision". The decision which is the subject of an application lies with the competent authority. Rather, the definition should refer to an "informed comment", which must be taken into account by the decision-maker.

5.8. We therefore propose the following definition for meaningful consultation to accord with the Bill's IAP definition –

"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] their [**right of use of the land**] direct interest by availing all relevant information pertaining to the proposed activities enabling these parties to make [**an**] informed [**decision**] comment regarding the impact of the proposed activities".

5.9. There is a further mismatch between the definition of "meaningful consultation" and the Bill's clause 11 that addresses what meaningful consultation entails. The Bill's definition only refers to the applicant's duties in leading meaningful consultation, but

clause 11 requires both the Minister and the applicant to make known and call on IAPs to submit comments and objections. We propose that either the definition be amended to also provide for the Minister's duties, or that clause 11 is amended to only refer to the applicant.

5.10. Finally, the Bill's clause 11(2) amends section 10(2) of the MPRDA, by providing that the Regional Mining Development and Environmental Committee (**Committee**) is empowered to "adjudicate" on the objections and "advise the Minister thereon". It is unclear whether the Minister is bound by the Committee's adjudication of the objection, or whether the Minister can refute the adjudication, since the Committee merely "advises" the Minister of same.

5.11. We submit that the unclear status of the Committee's adjudication under clause 11 is a continuation of the unclear position under section 10(2) of the MPDRA, which refers to the Committee's "consider[ing]" an objection and advising the Minister thereon. Under the present wording of section 10(2), the facts of *Masuku and Others v Minister of Mineral Resources and Others*[2] is a useful example. In *Masuku,* the Committee upheld the applicant's objection under section 10 of the MPRDA.[3] However, that matter concerned an application for judicial review of decisions taken by the Minister, not of the Committee, so the Court did not engage with the Minister's submission that "[the Committee] does not take decisions. It advises the Minister…and makes recommendations. [The Committee] cannot approve or refuse a mining right neither can it review its own decisions and it can also not be *functus officio*."[4]

5.12. We request that the Bill should clarify the status of the Committee's "adjudication" under clause 11, and whether the Minister is bound by it, or whether it is merely advice to the Minister which, we suggest, it is. The Committee cannot approve or refuse a mining application. It can only make recommendations to the Minister which the Minister may consider. We are of the view that the Minister *cannot*, and should not, be bound by the Committee's adjudication, as this would unduly fetter the Minister's powers as decision-maker. Rather, clause 11(2) should read:

"If a person or community objects to the granting of a prospecting right, mining right, small-scale mining permit or artisanal mining permit, the Minister must refer the objection to the Regional Mining Development and Environmental Committee to consider the objections and make recommendations thereon to the Minister."

6. The replacement of the Board with the Council

6.1. Section 57 of the MPRDA established the Minerals and Petroleum Board, which the (yet to commence) Upstream Petroleum Resources Development Act 23 of 2024 (**UPRDA**) renames the Minerals and Mining Development Board, (**Board**).Section 58

[2] (25764/2019) [2022] ZAGPPHC 145 (10 March 2022).
[3] *Masuku* at para 107.
[4] *Masuku* at para 110.

of the MPRDA provides that the Board "must advise" the Minister on any matter which the MPRDA requires to be referred to the Board; on the sustainable development of the nation's mineral resources; on the transformation and downscaling of the minerals industry, and on objections the Minister refers to the Board (the UPRDA removes petroleum from the Board's functions). Section 58 of the MPRDA also empowers the Board to report to the Minister on any matter relating to the MPRDA's application of the Act, and to enquire into and report to the Minister on any matter concerning the objects of the MPRDA. Section 59 of the MPRDA provides for the Board to include at least one person representing any relevant nongovernmental organisation (**NGOs**), and two persons representing relevant community-based organisations (**CBOs**). The Board is also required under section 67 of the MPRDA to submit annual reports to the Minister setting out its activities of the year preceding and including a business plan for the ensuing year. It appears that because of the Board's importance, section 65 of the MPRDA expressly provides for funding of the Board's expenses from the Department.

6.2. Sections 91 and 92 of the MPRDA further empower the Minister to designate a member of the Board as an authorised person to enter and inspect any reconnaissance, prospecting, mining production or exploration or retention area or any place where prospecting operations or mining operations are being conducted, including without a warrant, including where they have reason to believe that any provision of the MPRDA has been, is being or will be contravened.

6.3. From an environmental perspective, the Board is important because it plays a key role in advising the Minister on granting or refusing applications for prospecting, mining, exploration, and production rights. Its recommendations directly influence whether and under what conditions resource extraction proceeds – decisions that can have profound consequences for ecosystems, biodiversity, water resources, and climate resilience. By considering environmental, social, and economic factors alongside mineral development objectives, the Board – as empowered by the MPRDA – could act as a critical checkpoint to ensure that projects comply with environmental legislation, respect constitutional rights to an environment not harmful to health or well-being and integrate sustainable development principles into resource governance. In effect, it has the power to shape how South Africa balances mineral exploitation with the protection of its natural heritage.

6.4. Despite the Board's potentially significant role noting its mandate and powers under the MPRDA, a recent report noted that the Board "is seen as ineffective with some stakeholders questioning its utility. Similar sentiments were expressed about the [Committee] established in terms of Section 64 of the [MPRDA] to consider objections lodged against applications."[5]

[5] Mineral Policy Review: Findings and Recommendations Report (August 2024) Mining Dialogues 360° and Good Governance Africa

6.5. The Bill removes all reference to the Board, and its clause 50 (which inserts new sections 56A, 56B, 56C, 56D, 56E, 56F and 56G to the MPRDA) appears to replace the Board with the Ministerial Advisory Council (**Council**). We have several difficulties with these provisions.

6.6. Firstly, the Council is not established by the Bill and is discretionary (the Minister "may" establish it). We are concerned that the Bill makes the establishment of a body that provides an important advisory role subject to the Minister's discretion. It should be mandatory.

6.7. Secondly, he Bill also, confoundingly, confers on the discretionary Council mandatory functions, including clause 25 of the Bill (amending section 26 of the MPRDA) which requires the Minister to consider the Council's advice before publishing conditions required to ensure security of supply for local beneficiation.

6.8. Thirdly, unlike the MPRDA, clause 50 of the Bill does not require the Minister to appoint any Council members from NGOs or CBOs. In our view this undermines the Council's role of advising the Minister on sustainable development of the nation's mineral resources and on the transformation of the minerals industry.

6.9. Finally, clauses 52 and 53 of the Bill (amending section 91 of the MPRDA and inserting a new section 91A) further remove reference to the Board being an authorised person for purposes of entering premises and conducting inspections, and do not provide for the Council being an authorised person, thereby stripping the important advisory body with powers necessary to undertake critical compliance and enforcement investigations. The Bill further removes the MPRDA provisions providing for the funding of the Board's expenses from the Department, and the requirement of annual reports by the Board, and it does not provide for these matters with regard to the Council.

6.10. We submit that the Bill substitutes the Board with a Council whose advisory role is diminished by the fact that the Minister can choose not to appoint a Council (and which would leave the Council's obligations unfulfilled), that there is no NGO or CBO representation required on the Council, and that the Bill does not provide for how Council's expenses will be funded. We submit further that the Council's transparency is also undermined by the Bill's omission of a requirement that the Council produce annual reports on its work and strategy.

6.11. We submit that the replacement of the Board with a discretionary Council is further disempowering of an advisory body that was already perceived as ineffective, and we propose that the Council be a compulsory body, that NGO and CBO membership is

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http://mineralscouncil.org.za/component/jdownloads/?task=download.send&id=2403&catid=3 at page 20.

required, and with provision made for its annual reporting and payment of its expenses.

7. The Internal Appeal Provisions

7.1. Section 96 of the MPRDA provides for internal appeals for administrative decisions in terms of the Act. Section 96(1)(a) of the MPRDA provides that the Director-General is the appeal authority for decisions taken by "a Regional Manager or any officer to whom the power has been delegated or a duty has been assigned by or under [the MPRDA]", and section 96(1)(b) provides that the Minister is the internal appeal authority if an administrative decision was taken by the Director-General or the designated agency.

7.2. While the MPRDA empowers the Minister to grant Mineral Rights, it also provides for the delegation of this power, including to the Regional Manager and Director-General, under section 103. It is our understanding that in practice the Regional Manager or the Director-General grants Mineral Rights under this delegated authority.

7.3. Clause 55 of the Bill amends section 96(1) of the MPRDA, providing that the internal appeal authority is –

7.3.1. 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 the Bill, shall be deemed to be appeals lodged to the Minister: or

7.3.2. the "Minister of Water and Sanitation and Forestry, Fisheries and the Environment" if the decision taken relates to environmental matters and issues incidental thereto, in which instance the appeal is lodged and considered in terms of the National Environmental Management Act 107 of 1998 (**NEMA**).

7.4. Clause 55 further amends section 96(3) of the MPRDA by providing that –

"Subject to section 7(2)(c) of the Promotion of Administrative Justice Act [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."

7.5. There is a lack of clarity resulting from the Bill making the Minister the only appeal authority in terms of decisions made under the Bill, it appears that either –

7.5.1. the Minister can be both the decision maker, for example by granting Mineral Rights, and the internal appeal authority; or

7.5.2. any decision made by the Minister is not subject to clause 55 of the Bill, and any person whose rights or legitimate expectations have been materially and adversely affected or who is aggrieved by such decision can apply to the court

for the review of such decision, without having to follow the Bill's internal appeals process.

7.6. We propose that the Bill should clarify which of the two is the case, but we note that the former appears impermissible, as it allows the Minister to be the appeal authority of their own decision.

7.7. Finally, the Bill's reference to the "Minister of Water and Sanitation and Forestry, Fisheries and the Environment" as an internal appeal authority should be clarified. As it stands it is unclear whether the internal appeals authority is both the Minister of Water and Sanitation and the Minister of Forestry, Fisheries and the Environment, whether a potential appellant must lodge their appeal with both of these Ministers, and how two Ministers will come to one decision. We note that if it is that both Ministers are the internal appeal authority, this may delay the internal appeals process, contrary to the notion that internal appeals should be expeditious. We propose amending the draft provision to refer to one of these Ministers being the appeal authority.

8. **Amendment of section 45 of the MPRDA requiring consultation with Environmental Minister in relation to the Minister's powers to recover costs in event of urgent remedial measures and to remedy environmental damage in certain instances**

8.1. Section 45 of the MPRDA provides that "if any prospecting, mining, reconnaissance, operations or activities incidental thereto cause or result in ecological degradation, pollution or environmental damage, or is in contravention of the conditions of the environmental authorisation, or which may be harmful to health, safety or wellbeing 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 [Mineral Right] or the holder of an environmental authorisation in terms of NEMA to –

(a) investigate, evaluate, assess and report on the impact of any pollution or ecological degradation or any contravention of the conditions of the environmental authorisation;
(b) take such measures as may be specified in such directive in terms of [the MPRDA] or [NEMA]; and
(c) complete such measures before a date specified in the directive. (*emphasis added*)

8.2. Section 46 of the MPRDA further provides that if the Mineral Rights holder, or their successor in title "is deceased or cannot be traced or in the case of a juristic person, has ceased to exist, has been liquidated or cannot be traced, the Minister **in consultation with the Minister of Environmental Affairs and Tourism**, may instruct the Regional Manager concerned to take the necessary measures to prevent

pollution or ecological degradation of the environment or to rehabilitate dangerous health and social occurrences or to make an area safe." (*emphasis added*).

8.3. We note that the MPRDA has not been updated to reflect that there is no longer a Minister of Environmental Affairs and Tourism, rather there is now an Environmental Minister.

8.4. Clauses 39 and 40 of the Bill amend sections 45 and 46 of the MPRDA, removing the reference to the Minister consulting with the Environmental Minister. It is unclear why this consultation requirement has been removed, and we feel it is concerning.

8.5. Consultation with the Environmental Minister in terms of sections 45 and 46 of the MPRDA is necessary because these provisions deal with mining activities that result in ecological degradation, pollution or environmental damage. The Environmental Minister holds the mandate, expertise, and legal responsibility for biodiversity conservation, protected areas, and environmental management under the National Environmental Management Act and related legislation. Their input ensures the necessary environmental oversight over the powers contemplated in sections 45 and 46, and ensures consistency with South Africa's constitutional obligation to protect the environment for the benefit of present and future generations. This inter-ministerial consultation helps balance mineral development with the protection of the country's natural heritage.

8.6. For these reasons, we are of the view that consultation with the Environmental Minister in exercise of the Minister's powers in sections 45 and 46 should remain mandatory, and the proposed amendments in sections 39 and 40 of the Bill should be reversed.

9. **Failure to provide legal clarity in relation to mining activities in NEM:PAA protected areas and areas earmarked for protected area expansion**

9.1. In terms of section 48 and 48A of **NEM:PAA**, no prospecting or mining activities may take place within a national park, nature reserve, special nature reserve, protected environment (unless written permission from the Environmental Minister is obtained), or marine protected area. Similarly, section 48(1) of the MPRDA provides that, subject to section 48 of NEM:PAA, no mining or prospecting right or permit may be granted in respect of land "reserved in terms of any other law."

9.2. Despite these prohibitions, section 48(2) of the MPRDA provides that the Minister may grant a mining or prospecting right or permit if having regard to sustainable development it's desirable to do so, if the activity will take place within the framework of national environmental management policies, norms and standards, and if the granting of such rights or permits will not detrimentally affect the interests of any holder of a prospecting right or mining right. These provisions have long created complexity

and confusion in relation to whether mining or prospecting rights may be granted over land that has been declared a protected area in terms of NEM:PAA. The Bill, while amending section 48 of the MPRDA to include reference to small scale mining permits and artisanal mining permits, wastes the opportunity to provide legal certainty and clarity in the context of mining in protected areas and areas earmarked for protected area expansion, as well as providing bold safeguards in this regard.

9.3. Including a clear prohibition on mining or prospecting in areas formally declared as protected areas or identified for future protected area expansion is essential to safeguarding South Africa's most ecologically valuable and irreplaceable landscapes. These areas are designated because of their exceptional biodiversity, ecosystem services, and cultural significance, and they are central to meeting national and international conservation commitments. Allowing mineral activities in protected areas, or areas earmarked for protected area expansion in national and / or provincial policy would undermine the purpose of their protection, fragment habitats, threaten endangered species, and compromise climate resilience. A statutory prohibition provides legal certainty, prevents costly conflicts, and ensures that conservation priorities are not eroded by short-term extractive interests, thereby protecting the integrity of the protected area network for present and future generations.

9.4. We consequently are of the view that section 48 of the MPRDA should be amended as follows:

"(1) Subject to [**section 48 of the National Environmental Management: Protected Areas Act, 2003 (Act 57 of 2003), and**] subsection (2), no reconnaissance permission, prospecting right, mining right may be granted or [**mining permit**] small-scale mining permit or artisanal mining permit be issued in respect of –

(a) land comprising a residential area and any land which is within an approved town planning scheme and zoned for residential purposes;
(b) any public road, railway or cemetery;
(c) any land being used for public or government purposes or reserved in terms of any other law; [**or**]
(d) areas identified by the Minister by notice in the Gazette in terms of section 49; or
(e) any land declared as a protected area or marine protected area in terms of the National Environmental Management: Protected Areas Act (Act 57 of 2003), or area designated as part of a protected area expansion area in terms of a national or provincial protected area expansion strategy.

(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)(a) to (d) if the Minister is satisfied that –"

10. **Conclusion**

10.1. We have endeavoured to comprehensively indicate where consideration and amendments are required, and we trust that our representations will be taken under consideration and welcome the opportunity to engage further.

Yours faithfully,

BIODIVERSITY LAW CENTRE NPC

***Per* Kate Handley and Khanya Sidzumo**