amendments to the definition will severely restrict access to guarantees from registered financial institutions such as short term and long term insurers, friendly societies, collective investment schemes and participation bond schemes defined in the Financial Services Board Act, 1990. It is proposed that guarantees from all registered financial institutions regulated by the Financial Services Board under the Financial Services Board Act, 1990 be permitted for financial provision purposes.

We are concerned that the estimated quantum of financial provision for premature closure is often substantially higher than the estimates for final closure costs. Mines with a long life of mine can have premature closure cost estimates up to ten times more than their final closure cost. Were the premature closure cost to be financed through a rehabilitation trust only, a substantial over-provision or surplus would arise in the trust at the end of the life of the mine at the time of closure. Under current legislation, such a surplus, may not be redistributed to the contributing mine. (Section 37A of the Income Tax Act, 1962 and the proposed provision to be introduced by clause 34 of the Bill make it clear that any surplus remaining after the issue of a closure certificate by the Minister must be transferred to another rehabilitation trust fund or, in its absence, a trust fund controlled by the Minister.)

The availability of a combination of financial provision methods, including guarantees from registered long term and short term insurers could alleviate substantially the financial burden on mines to make financial provision for premature closure costs. The "financial" guarantee option for financial provision contained in the Bill could only be issued against cash held by the miner or lines of credit offered by a financial, usually a banking, institution. This would force mines to encumber their balance sheets and available lines of credit in order to comply with the full extent of the unfunded premature closure costs that the Minister may prescribe. Such encumbrances could severely inhibit funds available in the industry for capital expansion, mining projects and liquidity, and may be simply unaffordable for many participants in the mining industry, particularly start-up operations.

Accordingly it is proposed that the definition of "financial provision" be amended to allow guarantees from any regulated financial institution as defined in the Financial Services Board Act, 1990, alternatively, that the provision for guarantees from registered short term and long term insurers be retained in the Act.

The addition of s41(d) in clause 33 of the Bill may be beneficial, to the extent that it is intended to protect any financial provision made under the Act. The addition of a protective provision could provide the Minister with the comfort she would require on the enforceability of guarantees issued by any regulated financial institution, including long term and short term insurers, were the insurance guarantee option to be retained or incorporated by reference to guarantees from financial institutions as defined in the Financial Services Board Act, 1990. The Chamber is concerned, however, that the proposed s41(6) might not achieve this intended purpose.

The new s41A proposed in clause 34 of the Bill refers only to "trust funds" for financial provision. However, s37A of the Income Tax Act, 1962 on which the proposed s41A is modelled, refers to both rehabilitation trusts and companies. The omission of companies from the ambit of the proposed s41A is a further restriction on the options available for financing provision. The Chamber proposes that the new s41A be harmonized fully in the Bill with s37A of the Income Tax Act, 1962, or that a simple cross reference be made to the provisions of ss11(hA) and 37A of the Income Tax Act, 1962.

The proposed s41A(5) allows for the transfer of surplus funds from one rehabilitation trust fund to another if the Minister is satisfied that the rehabilitation fund is able to rehabilitate and manage the environmental impacts for which it was formed. A similar concession is requested for the transfer of cash deposits and guarantees to new applications, particularly by small-scale miners. The object is to facilitate the continuity of operations of small-scale miners from one operation to the next when applications for new rights are submitted. Of benefit would be a possible reduction in the administrative burden on the regional offices of the Department. At present small-scale miners experience a considerable delay in the refund of their cash deposits or cancellation of their guarantees when moving from one operation to the next. Without capital, they are subsequently unable to make financial provision for a new application which is then refused on the grounds of their inability to make adequate financial provision.

2.4 *Regional Mining Development and Environmental Committee (RMDEC):*

Clause 32(c): proposed s40(3)

It is the Chamber's view that the RMDEC should be provided with a timeframe within which it must adjudicate over the concerns of a Government Department. Upon failure to act within such timeframe, the Minister should make a final decision.

2.5 *Administrative processes:*

Clause 37(e): s43(5)

Clause 37(e) will amend s43(5) of the Act so that no closure certificate may be issued unless each Government Department charged with the administration of any law which relates to any matter affecting the environment as confirmed in writing that the provisions pertaining to potential environmental impacts and the pumping and treatment of extraneous water have been addressed.

This clause should be removed as it is superfluous because the closure certificate only relieves the holder of the right from provisions of the Act and not the provisions of any other legislation. It is therefore unnecessary for all other Government Departments to sign off on a closure certificate issued under the Act. Moreover, it has been difficult to secure a decision when only the Department of Water Affairs and Forestry and the Chief Inspector, Department of Minerals and Energy have to sign off. Including all other Government Departments would make it administratively impossible to obtain a closure certificate.

PART B: DETAILED COMMENTS

Clause 1(a): Definition of Beneficiation

For the reasons set forth in Part A above, the Chamber requests the deletion of paragraph (d) (a final stage), in the definition of beneficiation.

Clause 1(b): Definition of Broad Based Economic Empowerment

Some words seem to have been omitted from the amended sub-paragraph (iv) since the grammatical sense of it is unclear. Possibly it should read:

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

Clause 1(c): Definition of cumulative impact

It is noted that "cumulative impact" for the purposes of the Act is only taken into account during closure. In other environmental legislation, "cumulative impact" by implication is taken into account during any activity or process.

Clause 1(f): Definition of environmental management plan

In relation to the phrase "*application for ... the right to conduct a related activity*", there are no such rights for which application can be made in terms of the MPRDA.

Clause 1(h): Definition of exclusionary act

The Chamber remains of the view that the provisions in which this definition is used (namely s17(2) and 33(c)) are unconstitutional in not complying with the rule of law requirement in s1(c) of the Constitution of the Republic of South Africa, 1996.

The Chamber submits that the definition should be deleted and s17(2) and 33(c) should be amended for the reasons given and along the lines proposed in para 1.7 of Part A above.

Clause 1(i): Definition of financial provision

See the comments in Part A above.

Clause 1(j): Definition of historically disadvantaged person

- See the comments in para 1.14 of Part A above on a proposal to align this definition with the definition of "Historically Disadvantaged South Africans" in the Mining Charter. The following comments are offered in the event that such a proposal does not find favour.

- Since paragraphs (a) and (b) of this definition commence with the word "a" it is suggested that the reference to the word "any" in paragraph (c) also be retained.

- In sub-paragraph (c)(ii), the term "*subsidiary*" is not defined. To avoid uncertainty as to the meaning of that term, it is suggested that reference be made to a subsidiary as contemplated in s 1(3) of the Companies Act, 1973 (Act No. 61 of 1973).

Clause 1(k): Definition of mine

- The concept of searching should be deleted since in the context of the Mineral and Petroleum Resources Development Act, 2002 ("MPRDA") (as opposed to the Mine Health and Safety Act, 1996), a mine is related to the winning, and not the searching for, a mineral.

- For the same reason, the concept of extraction should be replaced by the concept of winning to avoid extraction during prospecting being classified as a mine for the purposes of the MPRDA.

- The words from "*including*" in the second line of sub-paragraph (ii) should govern both sub-paragraph (i) and (ii) as was the case in s 1 of the Minerals Act, 1991 but as was incorrectly reflected in the corresponding subsequent definition in s 1 of the Mine Health and Safety Act, 1996.

- The words "and all buildings, structures.... or processing such mineral resource" should be deleted from paragraph (a)(ii) of the definition of "mine" since they appear in paragraph (c) of the definition of "mining area" as suggested to be amended below.

- In paragraph (b) of the definition of "mine" the words "in, on or under the relevant mining area" should be omitted because these words would have the effect of excluding unlawful mining operations from the definition.

Clause 1(m): Definition of mining area

- In paragraph (b) of the definition reference should additionally be made to "safety".

- In sub-paragraph (b)(i) it should be indicated that the activities or operations are undertaken "*by or on behalf of the holder of the mining right or mining permit*". If not, the holder would attract liability for totally independent operations, for example by a person to whom the holder sells minerals and who thereupon processes the minerals so purchased.

- In paragraph (c) the words "access roads" should be added after "residue stockpiles"; and the words "and which are used or intended to be used in connection with winning or processing a mineral" should be added after the words "in paragraph (b)".

Clause 4(a): Substitution of s5(1)

It is submitted that a right should be a real right once executed so that the owner of the right becomes as against the owner of the land, the owner of minerals once they are removed from the ground without waiting for registration of the right to occur. Section 2(4) of the Mining Titles Registration Act, 1967 which refers to registration constituting a real right needs to be amended consequently.

Clause 5: Amendment of s9

The sentiment in clause 5 is supported. The meaning of clause 5 would however be clearer if s9(3) were cast in the negative, i.e. that the processing of any subsequent applications for a reconnaissance permission, prospecting right, mining right, or mining permit in respect of the same mineral and land may not commence until the expiry of at least 40 days after the later of the first-ranking applications contemplated in sub-section (1) having been rejected or refused, or if appeal or review has been instituted against such rejection or refusal, the date on which such appeal or review is decided.

Clause 7(a): Amendment of s11(1)

- The reference to a company or close corporation needs to be amplified or clarified so that reference is made to a company or close corporation that holds a prospecting right or mining right.

- See further the comments in para 1.1 of Part A above in connection with the proposed amendment to s11(1) whereby any interest (i.e. not only a controlling interest) in a company or close corporation, requires ministerial consent.

Clause 7(b): Amendment of s11(4)

Due to the delay consequent upon obtaining consent in terms of s11(1) it is suggested that the requirement should be to lodge for registration within 60 days of the relevant consent having been obtained.

Clause 9(b): Substitution of s14(4)

- Should a reconnaissance permission be issued in respect of a large area, the proposed amendment of the period of the permission to one year will place the holder thereof in a difficult position in that the holder will be hard pressed to complete its reconnaissance operations within the non-renewable period of one year.

- It is suggested that the tenure of a reconnaissance permission remain as two years, but that s14(4) be amended to require the holder thereof to relinquish 50% of the area that is the subject of the permission after the expiry of the first year of the permission.

Clause 11(a): Substitution of s16(2)(b)

It is suggested that the existing wording of s16(2)(b) be retained in that it is only if an application is made for the same mineral that the application should be rejected. Should an application be made for a mineral on land in respect of which rights or permits for other minerals are held, whether such application should be granted ought to be the subject of consideration at the stage of grant after objections by the holders of existing rights or permits have been considered. See further the comments in this regard in para 1.2 of Part A above.

Clause 11(b): Substitution of s16(3)

The Chamber further suggests that clause 55(c) in the Bill, which currently would apply only to reconnaissance permissions, should apply universally in the Act in regard to not only rejections but also refusals of applications. It therefore suggests that s16(3) of the Act (and similar provisions throughout the Act) be amended to indicate that before an application is rejected or refused, the applicant must be requested to remedy the relevant deficiencies within seven days from date of written notice to that effect. This amendment would give effect to the principles of administrative justice which are referred to in s33 of the Constitution, s3 of the Promotion of Administrative Justice Act, 2000, and s6(1) of the Act itself, which might be a suitable place for a general provision of this nature to be embodied. In this regard, rejections and refusals have the dramatic effect that the applicant loses its priority status in terms of s9 of the Act. It is submitted that such procedure does not accord with the principles of lawfulness, reasonableness, and procedure fairness which are espoused in the Constitution, the Promotion of Administrative Justice Act, 2000 or indeed in s6(1) of the Act itself, and that it would therefore be helpful were the legislature to give the executive express guidance in the Act of what is expected in that regard. Clause 55(c) in the Bill gives a suitable indication of how this could be done. See further the comments in this regard in para 1.3 of Part A above.

Clause 11(c): Substitution of s16(4)(a) and (b)

- It is suggested that a proviso be inserted that the applicant not be required to apply, lodge or notify as contemplated in clause 11(c), if prior applications have been lodged, until such prior applications have been refused. See further the comments in this regard in para 1.4 of Part A above.

- In s16(4)(b), if the existing reference to "*any other affected party*" is not retained, then the obligation to notify and consult holders of existing rights, whether old order or new order, would also be removed. It is submitted that the Act should retain an obligation to notify and consult with such holders. See further the comments in this regard in para 1.5 of Part A above.

Clause 11(d): Deletion of s16(6)

The above deletion is supported but the Chamber notes that s22(5), being the equivalent provision in respect of mining rights, has not been deleted, and suggests that it should also be deleted. The Chamber however notes that the deleted s16(6) re-appears in a new guise in clause 41(b) of the Bill, and accordingly cross-refers to its comments there and in para 1.11 of Part A above.

Clause 12(c): New s17(1)(f)

See the comments in para 1.6 of Part A above.

Clause 12(d): Substitution of s17(2)(b)(iii)

- The Chamber suggests the deletion of s17(2)(b)(iii) since the concept of concentration is vague and results in conferral of a discretion so broad as to be contrary to the rule of law principle in s1(c) of the Constitution.

- Insofar as the proposed change from concentration of mineral resources to concentration of rights granted is concerned, it is pointed out that the number of rights granted is not a suitable criterion since often in order to constitute a workable proposition, it is necessary to acquire numerous prospecting rights. The holding of numerous rights also in part results from the previous mineral right system and from the transitional arrangements in Schedule II to the MPRDA, which perpetuated the separate holding of rights following geographic rather than geological boundaries.

- If the proposed substitute clause is retained, it should be amplified to refer to concentration of rights "*in respect of the mineral in question*", since the holding of rights in respect of other minerals is clearly irrelevant to the issue.

In this regard see further para 1.7 of Part A above.

Clause 12(f): Substitution of s17(5)

Reference should be made to the later of the two dates because they may not be simultaneous. By virtue of the proposed amended s17(1)(c) which requires issue of an environmental authorisation as a precursor to the grant of the right, the later date will necessarily be the date of grant of the right. It is therefore suggested that the word "by" be substituted for "an" immediately before the word "which" in clause 12(f).

Clause 13(b) : Addition of s18(2)(e)

The necessity to obtain a confirmation from a third party is an impediment to timeous lodgement of a renewal, bearing in mind that an application for renewal must be lodged during the then current period of the prospecting right. It is therefore suggested that the requirement for confirmation from the Council for Geoscience be inserted as a new requirement for grant of (i.e. not for application for) renewal. This would then enable the Regional Manager to seek the necessary confirmation from the Council before making a recommendation to the Minister. See further para 1.8 of Part A above.

Clause 14(b): Addition of s19(2)(h)

The submission should be stated to be in terms of s21(1)(b).

Clause 15: Substitution of s20(2)

See the comment in para 1.9 of Part A above.

Clause 17(a): Substitution of s22(2)(b)

The above comments on clause 11(a) apply equally here.

Clause 18(d): Substitution of s23(5)

The comments at clause 12(f) above apply equally here.

Clause 21(b): New s26(2A)

For the reasons set forth in para 1.10 of Part A above the Chamber submits that clause 21(b) should be deleted from the Bill.

Clause 22: Section 27

- In past submissions, to the Department, on behalf of small-scale diamond mining operations, considerable concern has been expressed about the inadequacy of mining permits in relation to such operations. Small-scale alluvial diamond miners, in particular, are experiencing major difficulties because the 1.5 hectare limit under s27 is insufficient to sustain an operation for an economically viable period. While the increase (provided for in clause 22(a)) in the allowable mining area to 5 hectares is an advance, it will remain insufficient. We would propose – in relation to small-scale alluvial diamond mining operations – that the maximum allowable area be increased to 25 hectares.

- The Chamber is concerned that clause 22(c) will prevent mining permit holders from securing rights to continue their operations by progressing from one area to an adjacent area. The proposed clause will make it impossible for the permit holder to be granted a permit on adjacent land. It is submitted that such an absolute bar should not be introduced because there may be circumstances in which a permit holder is awaiting a closure certificate in respect of the operations in the area of the permit but needs to continue his activities and discharge obligations to financiers and employees by obtaining a permit and extending his operations into adjacent land

Clause 22(b): Substitution of 27(3)(b)

The above comments on clause 11(a) apply equally here.

Clause 22(c): Substitution of s27(5)

The comments on clause 11(c) apply equally here.

Clause 24(b): Addition of s30(5)

- In the light of the new s30(5), s30(1) needs to be amended consequentially to delete the reference therein to s21.

- Section 30(5) should be amended to include a proviso that even if the right or permission has lapsed, is cancelled or terminated, but if the holder holds reconnaissance permissions, prospecting rights, mining rights or mining permits in the same geological area or has applied for or is granted a retention permit, mining right or mining permit pursuant to the holding of the right or permission, the data, information or reports will be kept confidential until all such rights, permits or permissions have lapsed, been cancelled or terminated.

Clause 27: Substitution of s33(c)(iii)

The above comments on clause 12(d) apply equally here.

Clause 31: Substitution of s39

There is a new requirement that on renewal, the holder must again apply for environmental authorisation. This severely detracts from the international requirement of continuity of tenure. It also conflicts with the relevant sections which deal with renewal (i.e. ss18, 24 and 27) which contain no such requirement. The Chamber strongly requests deletion of the references to renewal in the proposed new s39. In other words, the environmental authorisation issued at the time of the grant of the right, permit or permission must continue to avail also during any renewals thereof. See the comments in para 2.2 of Part A above.

Clause 32: Insertion of s40(3)

See the comments in para 2.4 of Part A above.

Clause 34: Insertion of s41A

- Section 41A is a duplication, with some changes, of s37A of the Income Tax Act, 1962. This duplication with its differences is undesirable. Section 41A should be deleted in favour of reliance on s37A on the Income Tax Act, 1962 or alternatively if s41A is retained, it should contain a simple cross-reference to s37A of the Income Tax Act, 1962.

- The omission of companies from the ambit of the proposed s41A is a further restriction on the options available for making financial provision. Section 37A of the Income Tax Act, 1962 refers to "closure rehabilitation company or trust".

- Insofar as it is intended that s41A apply also to petroleum, s69(2)(a) would have to be amended to insert a reference therein to s41A.

See comments in para 2.3 of Part A above.

Clause 36: Insertion of s42A

Insofar as it is intended that s42A apply also to petroleum, s69(2)(a) would have to be amended to insert a reference therein to s42A.

Clause 37: Amendment of s43

- In the proposed new s43(9)(b), the words "*that the Council for Geoscience may deem relevant*" give an open-ended discretion which offends against the rule of law principle in s1(c) of the Constitution. It is suggested that they be deleted.

- The specific reference to water issues (pumping) seems unnecessary as all environmental issues are covered by other definitions. Water is not the only environmental aspect which must be considered.

- Approval and written consent for closure from other Government Departments is unnecessary as the Department is the responsible department to approve and certify closure under the Act. See the comments in para 2.5 of Part A above.

Clause 41(a) : Amendment of s49(1)

In accordance with the principles of lawfulness, reasonableness and procedural fairness espoused in s6(1) of the MPRDA, the requirement to invite representations from relevant stakeholders should be retained. See further in this regard the comments in para 1.11 of Part A above.

Clause 41(b): New s49(4)

- Although it is proposed to delete s16(6), the same provision is inserted as a new s49(4). The Chamber has previously drawn to the attention of the Department the concern that s16(6) and s22(5) are probably unconstitutional in affording the Minister an unfettered overriding discretion to open tenders for prospecting or mining rights in respect of any land. Such a provision may allow the Minister to determine the terms and conditions subject to which such rights will be granted (thus overriding other provisions of the Act governing the grant of such rights). On advice received from Senior Counsel, this is contrary to the constitutional doctrine of the separation of powers in that it gives the Minister the discretion and authority to legislate for the grant of rights. If the Minister may impose terms and conditions completely different to those applicable to rights and permits applied for and acquired in terms of ss16, 17, 22, 23 and 27, then the executive in the form of the Minister would be clothed with legislative powers.

- The reference to sub-section (2)(b) is not correct because there is no sub-section (2)(b). Possibly it is intended to be a reference to sub-section (2) (or possibly sub-section (3)(b)?).

- There is no link in s49(4) to s49(1), i.e. it is not clear that s49(4) operates only where a prohibition or restriction has already been issued in terms of s49(1). This should be clarified since the universal application of s49(4), irrespective of whether or not a prohibition or restriction has been issued in terms of s49(1), would be inadvisable for the reasons mentioned in the first comment on clause 41(b) above.

- Any prohibition by the Minister in terms of s49(1) and any invitation in terms of what is proposed in clause 41(b) of the Bill may adversely affect the security and continuity of tenure of the rights of holders of rights, permits and permissions. For example, a holder of a prospecting right or a retention permit has, in terms of s19(1)(b) and 35(1) the exclusive right to apply for and be granted a mining right. In terms of ss19(1)(a), 25(1) and 34, holders of prospecting rights, mining rights and retention permits are entitled to renewals thereof. In order to avoid such an adverse effect it is suggested that s49(2) be amended by the insertion of words indicating that a Ministerial notice under s49(1) prohibiting or restricting prospecting or mining shall not affect the rights of the holder of any reconnaissance permission, prospecting right, mining right, retention permit or mining permit.

See further the comments in this regard in para 1.11 of Part A above.

Clause 42: Amendment of s52

(1) **The reduction from 12 to 3 months;**

See the comments in para 1.12 of Part A above.

(2) **The removal of the specific percentage or number of employees;**

See the comments in para 1.13 of Part A above.

(3) **The continued responsibility in terms of the Labour Relations Act, 1995 until a closure certificate is issued.**

Clause 42 of the Bill introduces an additional subparagraph (4) to s 52 which reads as follows:

"(4) The holder of a mining right remains responsible for the implementation of the processes provided for in the Labour Relations Act, 1995, pertaining to the management of downscaling and retrenchment, until the Minister has issued a closure certificate to the holder concerned."

The holder of a mining right thus remains responsible for compliance with the retrenchment provisions in the Labour Relations Act (LRA) until the Minister has issued a closure certificate in terms of s 43 of the Act.

The reason for the linkage between retrenchment obligations in terms of the LRA and the obtaining of a closure certificate is unclear. As long as a holder of a

mining right is an employer in terms of the LRA, the holder will have to comply with the LRA retrenchment provisions. This statutory obligation will continue even after the closure certificate has been issued if the holder still has employees in its employ that worked on that particular mine and now have to be retrenched.

The Chamber recommends that the proposed subparagraph (4) should be deleted. As long as the holder of a mining right has employees in its employ the LRA, including its retrenchment provisions, remain applicable. See further the comments in para 1.12 of Part A above.

Clause 52: Substitution of s69(2)(a)

The sections which are currently referred to in s69(2)(a) are partly incorrect in that the Parliamentary Portfolio Committee inserted ss13 to 15 into the Bill which became the Act, without the section numbers in s69(2)(a) having been corrected commensurately by the Parliamentary Secretariat. From the reference therein to s23 onwards, the numbers are therefore 3 digits too small. In order to correct this:

- the reference to s23 (which deals specifically with mining rights for minerals and is not relevant to petroleum rights) should be deleted;
- a reference to s26 should be inserted;
- as indicated in the Bill, references to ss29 and 30 should be inserted;
- the references to ss34, 35 and 36, which deal with retention permits, which are not available for petroleum, should be deleted;
- references to ss53 to 56 should be inserted;
- references to the proposed ss41A and 42A should be inserted.

Clause 54: Deletion of s73(3)

The Chamber has no comment on the deletion of s73(3), but additionally, for the reasons mentioned in relation to clause 41(b) in relation to the proposed new s49(4), requests the deletion of s73(1), or at least that the reference therein to terms and conditions be deleted. In any event, ss73(1) and 49(4) would need to be harmonised to avoid duplication and inconsistency.

Clause 55(a): Substitution of ss 74(2)(a) and (b)

The current reference to "*mineral*" is clearly an error.

Clause 55(c): Substitution of s74(3)

As appears from the above comments on clause 11(a), the Chamber supports the concept in s74(3) and suggests that it be incorporated also in regard to all rejections and refusals throughout the Act.

Clause 55(d): Substitution of s74(4)

Possibly harmonise s74(4) with s16(4).

Clause 57(a): Substitution of s76(2)(b)

The comments on clause 55(a) apply similarly.

Clause 57(c): Substitution of s76(3)

Since rejection of an application causes the applicant to lose priority for purposes of s9, the Chamber suggests that as in clause 55(c), the applicant be requested to comply within 7 days. Accordingly, the Chamber requests that s76(3) be amended to reflect the wording in s74(3).

Clause 59(a): Substitution of s79(2)(b)

The comments on clause 55(a) apply similarly.

Clause 59(c): Substitution of s79(3)

The comments on clause 57(c) apply similarly.

Clauses 59(d) and (e): Substitution of ss79(4)(a) and (b)

Possibly harmonise s79(4) with s16(4).

Clause 60(b): Substitution of s80(2)

Sections 80(1)(g) and 80(2) are inconsistent in that s80(1)(g) compulsorily requires empowerment whereas in terms of s80(2) empowerment is only required if the Minister so requests. In the light of the proposed amendment s80(2), it follows that s80(1)(g) should be deleted.

Clause 60(c): Addition of s80(5)

Reference should be made to the later of the two dates, which in the light of clause 60(b) will be the date of execution of the right.

Possibly harmonise with s22(4).

Clause 64(c): Substitution of s84(5)

The comment on clause 60(c) applies.

Clause 69(a): Substitution of s96(1)

- The notion that the decision of the Minister's delegate should be subject to internal appeal is inconsistent with good law-making. The delegate's decision is in law the decision of the Minister, from whose decision no internal appeal, to any other official such as the Director-General, can lie. In practice the appeal procedure has been found to be unsatisfactory with many appeals awaiting decision.

- As a consequence of the proposed compulsory internal appeal from the decision of a delegate, the appellant will be constrained to apply to Court in terms of the Promotion of Administrative Justice Act, 2000, to compel the taking of a decision by the appeal authority on the appeal. Moreover, in terms of ss96(1)(a) and (b), an appeal would first, save in the case of decisions taken by the Director-General as delegate, have to be lodged with the Director-General, and on receipt of an unacceptable decision from him as appeal authority, a further appeal would then have to be lodged with the Minister. Only on receipt of an unacceptable decision from the Minister as appeal authority, would the aggrieved person at last be entitled to apply to court in terms of the Promotion of Administrative Justice Act for judicial review of the unacceptable decision. That would be a hopelessly protracted and costly procedure, with consequent unacceptably long delays. In addition, it would be contrary to the object in s2(e) of the MPRDA of promotion of economic growth and mineral resource development. The objects in ss2(d), (f) and (i) (i.e. of expanding opportunities for historically disadvantaged persons, promoting employment and advancing the social and economic welfare of all South Africans, and of contributing towards socio-economic development of mining and production areas) would also be detrimentally affected.

- In the result, aggrieved persons would continually be applying to court in terms of the Promotion of Administrative Justice Act to be exempted from the obligation to exhaust the internal remedies in s96 of the MPRDA on the ground that such exemption would be in the interests of justice. Relevant to this concern is the fact that by virtue of extensive delegations of powers by the Minister in terms of s103 of the MPRDA, the Minister has delegated her powers under almost all the provisions of the MPRDA which deal with the taking of decisions on applications for rights in terms of the MPRDA, to the Deputy