



DLA CLIFFE DEKKER
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ENVIRONMENTAL ALERT

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THE REMAINING RIFTS BETWEEN ENVIRONMENTAL REGULATION UNDER NEMA AND THE MPRDA

The Mineral and Petroleum Resources Development Draft Amendment Bill (draft Amendment Bill) was approved by the South African Cabinet on 7 December 2012.

The draft Amendment Bill is an attempt at aligning the Mineral and Petroleum Resources Development Act, No 28 of 2002 (MPRDA) with the provisions introduced by the National Environmental Management Amendment Act, No 62 of 2008 (NEMA Amendment Act). The NEMA Amendment Act provides for mineral related activities to be regulated under the National Environmental Management Act, No 107 of 1998 (NEMA) and the Department of Environmental Affairs through a two stage transitional process.

The draft Amendment Bill, however, introduces considerable confusion regarding the transitional arrangements of its implementation, contains some surprising environmental rehabilitation measures and fails to clarify existing ambiguities between the two Acts. It appears to delete the provisions of the Mineral and Petroleum Resources Amendment Act 49 of 2008 (MRPDA Amendment Act), which aligns the amendments of the MPRDA's environmental provisions to the transitional processes provided for in the NEMA Amendment Act. Insufficient clarity is provided in the Bill on the position of companies who have already submitted environmental management plans or

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environmental management programmes which are pending approval before the commencement of the MPRDA Amendment Act. More onerous environmental rehabilitation provisions for mining and related activities are also introduced than currently contained in NEMA, which could be considered an inappropriate intrusion into the competency of the Department of Environmental Affairs. It also does not address the continuing confusion regarding when environmental authorisations are required under NEMA for activities associated to mining.

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