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**GENERAL NOTICE**

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**NOTICE 1666 OF 2005****DEPARTMENT OF MINERALS AND ENERGY****NOTICE OF INTRODUCTION OF BILL INTO PARLIAMENT**

The Minister of Minerals and Energy intends introducing the Bill set out below into Parliament during 2005:

Draft Mineral and Petroleum Resources Development Amendment **Bill**

Written comments must be received not later than 23 September 2005 and must be addressed to:

**The Director-General  
Attention: Adv M M Mononela  
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## GENERAL EXPLANATORY NOTE:

- [                    ] Words in bold type in square brackets indicate omissions from existing enactments.
- \_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

## DRAFT BILL

To amend the Mineral and Petroleum Resources Development Act, 2002, so as to remove ambiguity in the definition of certain terminology; to further provide for promotion of administrative justice in line with current legislation; to further provide for the levying of certain fees by the Minister of Minerals and Energy; to protect registered rights granted in terms of the principal Act as limited real rights; to further promote co-operative governance by adding functions to REMDEC; to amend the short title of the principal Act; to amend the transitional provisions so as to further afford statutory protection to certain existing old order rights; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 28 of 2002

- 1.** Section 1 of the Mineral and Petroleum Resources Development Act, 2002 Act (hereinafter referred to as the principal Act), is hereby amended— 5
- (a) by the substitution for the definition of day of the following definition: 5
- “ ‘day’ means a calendar day excluding a Saturday, Sunday or public holiday and when any particular number of days are prescribed for the performance of any act, those days must be reckoned by excluding the first and including the last day, unless the last day falls on a Saturday, a Sunday or any public holiday, in which case the number of days must be reckoned by excluding the first day and also any such Saturday, Sunday or public holiday;”;
- 10
- (b) by the substitution for the definition of financial provision of the following definition— 15
- “ ‘financial provision’ means a [the insurance] bank guarantee, trust fund, [or] cash deposit or any other method approved by the Director-General that applicants for or holders of a right or permit must provide in terms of sections 41 and **89** guaranteeing the availability of sufficient funds to undertake the agreed work programmes and to rehabilitate the prospecting, mining, reconnaissance, exploration or production areas, as the case may be;”;
- 20
- (c) by the substitution for paragraph (c) of the definition of ‘historically disadvantaged person’ of the following paragraph:

- “(c) **[any]** a juristic person other than an association **[in]** which —
- (i) is managed and controlled by persons contemplated in paragraph (a) and that the persons collectively or as a group own and control a majority of the issued share capital or members’ interest, and are able to control the majority of the members’ vote; or
  - (ii) is a subsidiary, as defined in section 1(e) of the Companies Act, 1973, of a juristic person who is a historically disadvantaged person by virtue of the provisions of paragraph (c)(i).”;
- (d) by the substitution for the definition of mine of the following definition —
- “**mine**” means, when —
- (a) used as a noun —
    - (i) any excavation in the earth, including any portion under the sea or under other water or in any residue deposit, as well as any borehole, whether being worked or not, made for the purpose of searching for or winning a mineral;
    - (ii) any other place where a mineral resource is being extracted, including the mining area and all buildings, structures, machinery, residue stockpiles, access roads or objects situated on such area and which are used or intended to be used in connection with such searching, winning or extraction or processing of such mineral resource: Provided that if two or more such excavations, boreholes or places are being worked in conjunction with one another, they shall be deemed to comprise one mine unless the Regional Manager, in consultation with the Chief Inspector of Mines, notifies the owner thereof in writing that such excavations, boreholes or places comprise two or more mines; and
  - (b) used as a verb, any operation or activity for the purposes of winning any mineral on, in or under the earth, water or any residue deposit, whether by underground or open working or otherwise and includes any operation or activity incidental thereto, in, on or under the relevant mining area.”;
- (e) by the substitution for the definition of mining area of the following definition —
- (a) in relation to a mining right, **[or a]** mining permit or a production right, the area for which that right or permit is granted; and
  - (b) in relation to any adjacent or non-adjacent surface of land, if it is connected to the relevant area in paragraph (a) by means of a road, railway line, power line, pipe line, cableway or conveyor belt under the control of the holder of the right or permit and which is used for the purpose of winning or extracting a mineral or petroleum;
- (f) by the insertion after the definition of ‘**Regional Mining Development and Environmental Committee**’ of the following definition:
- “‘**registrar**’ means the Registrar of Deeds as defined in the Deed Registries Act, 1937 (Act No. 47 of 1937)”;

#### Amendment of section 3 of Act 28 of 2002

2. Section 3 of the principal Act is hereby amended —
- (a) by the substitution for paragraph (b) in subsection (2) of the following paragraph:
    - “(b) in consultation with the Minister of Finance, **[determine]** prescribe and levy, any fee **[or consideration]** payable in terms of **[any relevant Act of Parliament.]** this Act.”
  - (b) by the insertion of subsection (4):
    - “(4) The State royalty must be determined and levied by the Minister of Finance in terms of an Act of Parliament.”

**Amendment of section 5 of Act 28 of 2002**

3. Section 5 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) A prospecting right, mining right, exploration right or production right granted in terms of this Act and registered in terms of the Mining Titles Registration Act, 1967, as amended, is a limited real right in respect of the mineral or petroleum and the land to which such right relates.”; and

(b) by the substitution for paragraph (c) of subsection (4) of the following paragraph:

“(c) having [notifying and consulting with] notified in writing the landowner or lawful occupier of the land [in question] concerned of the date such holder will enter the land to which such right relates.”

**Amendment of section 9 of Act 28 of 2002**

3. Section 9 of the principal Act is hereby amended—

(a) by the substitution for the subsection (1) of the of the following subsection—

“(1) Subject to subsection (2), if [If] a Regional Manager receives more than one application for a prospecting right, a mining right or a mining permit, as the case may be, in respect of the same mineral and land, such applications must be dealt with in order of receipt. [applications received on—]

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

[(b) different dates must be dealt with in order of receipt.]

(b) by the substitution for the subsection (2) of the following subsection—

“(2) When the Minister considers applications received on the same day [date] and such applications were made by one or more historically disadvantaged persons and by one or more non-historically disadvantaged persons, he or she must give preference to applications from historically disadvantaged persons; provided however that applications by historically disadvantaged persons shall among themselves in turn be dealt with in order of receipt.”

**Amendment of section 13 of Act 28 of 2002**

4. Section 13 of the principal Act is hereby amended—

(a) by the substitution for paragraph (c) in subsection (1) of the following paragraph:

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

(b) 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 must reject the application and notify the applicant in writing [of that fact] within 14 days of the receipt of the application with reasons, [and return the application to the applicant]”

**Amendment of section 14 of Act 28 of 2002**

5. Section 14 of the principal Act is amended by the substitution for subsection (3) of the following subsection—

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

**Amendment of section 15 of Act 28 of 2002**

6. Section 15(1) is hereby amended—
- (a) by the substitution of the section 15(1) by the following subsection—  
 “(1) **A reconnaissance permission entitles the holder, [on production or lawful occupier thereof] after giving written notice to the landowner or the lawful occupier of the land concerned and [on production] presentation of the reconnaissance permission, to enter the land concerned for the purpose[s] of conducting reconnaissance operations”** 5
- (b) ~~by the substitution of paragraph (a) of subsection (2) of the following paragraph—~~ 10  
 “(2)(a) conduct any prospecting or mining operations for any mineral in or on the land in question; or”;
- (c) By the substitution of paragraph (b) of the subsection (2) of the following paragraph— 15  
 (2)(b) any exclusive right to apply for or be granted a prospecting right [or], mining right or mining permit in respect of the land to which such reconnaissance permission relates.”

**Amendment of section 16 of Act 28 of 2002**

7. Section 16 of the principal Act is hereby amended— 20
- (a) 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 must reject the application and notify the applicant [of that fact] in writing within 14 days of the receipt of the application with reasons for such decision. [and return the application to the applicant];” 25
- (b) by the substitution for subsection (4) of the following subsection—  
 “(4)(a) to submit an environmental plan, as prescribed, within 60 days of such notice; and  
 (4)(b) to notify in writing and consult with the land owner or lawful occupier and any other affected [party] person and submit the result, in writing, of the consultation within 30 days from the date of the notice.”; 30
- (c) by the substitution for subsection (5) of the following subsection—  
 “(5) If the submitted environmental management plan complies with all the requirements of the Act, the Regional Manager must accept the environmental management plan within 14 days of such date of compliance for consideration by the Minister in terms of section 39(4).”; 35
- (d) by the substitution for subsection (6) of the following subsection:  
 (6) The Minister may—  
 (a) by notice in the Gazette invite applications for prospecting rights in respect of any mineral and land in respect of which no other person holds a prospecting right, mining right, mining permit or retention permit for the same mineral and land as contemplated in subsection 2(b), and; 40  
 (b) specify in such notice the period within which any application may be lodged [and the terms and conditions subject to which such rights may be granted] whereupon all the provisions of this Act, including subsection (1) to (5) of this section and section 17, but excluding section 9, shall apply to any application lodged pursuant to such invitation and to any prospecting right granted pursuant to any such application.” 45 50

**Amendment of section 17 of Act 28 of 2002**

8. Section 17 of the principal Act is amended—

(a) by the substitution for the expression ‘subsection (4)’ where it appears in subsection (1) of the expression ‘subsections (2) and (5)’; and

(b) by the substitution for paragraph (a) of subsection (2) of the following paragraph—

“(a) the application does not meet all the requirements referred to in subsections (1) or (4);”;

(c) by the substitution for the expression ‘programme’ in subsection (5) of the expression ‘plan’; and

(d) by the substitution for the number ‘39’ of the number ‘39(4)’.

**Amendment of section 18 of Act 28 of 2002**

9. Section 18 of the principal Act is hereby amended by the substitution for the expression ‘programme’ in paragraph (c) of subsection (2) of the expression ‘plan’.

**Amendment of section 19 of Act 28 of 2002**

10. Section 19 of the principal Act is hereby amended—

(a) by the substitution for the expression ‘programme’ in paragraph (e) of subsection (2) of the expression ‘plan’.

(b) by the substitution for paragraph (g) in subsection (2) of the following paragraph:

“(g) subject to section 20 and the relevant Act of Parliament, pay any required State royalties in respect of any mineral removed and disposed of during the course of prospecting operations.”

**Amendment of section 21 of Act 28 of 2002**

11. Section 21 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The holder of a prospecting right or reconnaissance permission must—

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

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

**Amendment of section 22 of Act 28 of 2002**

12. Section 22 of the principal Act is hereby amended—

(a) 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 must reject the application and notify the applicant in writing [of that fact] within 14 days of the receipt of the application with reasons. [and return the application to the applicant]”

(b) by the substitution for the subsection (4) of the following subsection—

4 (a) to notify and consult with the land owner or lawful occupier and any other interested and affected persons and submit the result, in writing, of the consultation within 60 days from the date of the notice together with the scoping report as prescribed.

(b) to conduct an environmental impact assessment and submit an environmental management programme, as prescribed, within 180 days from the date of the notice.

- (c) by the insertion of subsection 4A after subsection (4)—  
 “(4A) If the submitted environmental management programme complies with all the requirements of the Act, the Regional Manager must accept the environmental management programme within 14 days of such date of compliance for consideration by the Minister in terms of section 39(4).”; and 5
- (d) by the substitution for subsection (5) of the following subsection:  
 “(5) The Minister may—  
 (a) by notice in the Gazette invite applications for prospecting rights in respect of any mineral and land in respect which no other person holds a prospecting right, mining right, mining permit or retention permit for the same mineral and land as contemplated in subsection 2(b), and; 10  
 (b) specify in such notice the period within which any application may be lodged **[and the terms and conditions subject to which such rights may be granted]** whereupon all the provisions of this Act, including subsection (1) to (4) of this section and 23, but excluding section 9, shall apply to any application lodged pursuant to such invitation and to any prospecting right granted pursuant to any such application.” 15 20

#### **Amendment of section 23 of Act 28 of 2002**

13. Section 23 of the principal Act is hereby amended by the substitution for the expression ‘all’ of the expression ‘any’ in subsection (3).

#### **Amendment of section 25 of Act 28 of 2002**

14. Section 25 of the principal Act is hereby amended by the substitution for the paragraph (g) in subsection (2) of the following paragraph: 25

“(g) pay any required State royalties; and”

#### **Amendment of section 26 of Act 28 of 2002**

15. Section 26 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 30  
 “(1) The Minister may **[initiate or prescribe incentives to]** promote the beneficiation of minerals in the Republic.”  
 (b) by the deletion of subsection (3).

#### **Amendment of section 27 of Act 28 of 2002**

15. Section 27 of the principal Act is hereby amended— 35

- (a) by the substitution for subsection (4) of the following subsection:  
 “(4) If the application does not comply with the requirements of this section, the Regional Manager must reject the application and notify the applicant in writing [of **that fact**] within 14 days of the receipt of the application with reasons. [and return the application to the applicant]” 40  
 (b) by the substitution for the expression ‘acceptance’ in subsection (5) of the expression “receipt”.  
 (c) by inserting a new paragraph (c) in subsection (6) of the following:  
 “the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996).” 45  
 (d) by the substitution for paragraph (c) in subsection (7) of the following paragraph:  
 (c) must pay **[the]** any required State royalties.”



**Amendment of section 28 of Act 28 of 2002**

16. Section 28 of the principal Act is amended—

- (a) by the substitution for subsection (1) of the following subsection:  
“(1) The holder of a mining right or mining permit must, at [its] the registered office or place of business of such holder, keep proper records of mining activities and proper financial records in connection with the mining activities”; and 5
- (b) by the insertion after the word ‘any’ in subsection (2) of the word ‘mineral’.

**Amendment of section 31 of Act 28 of 2002**

17. Section 31 of the principal Act is amended by the deletion of the words “must” where it occurs in paragraphs (a), (b) and (c) of subsection (1). 10

**Amendment of section 32 of Act 28 of 2002**

18. Section 32 of the principal Act is hereby amended by the substitution for the expression “programme” in subsection (3) of the expression “plan”.

**Amendment of section 33 of Act 28 of 2002** 15

19. Section 33 of the principal Act is amended by the substitution for subparagraph (iii) of paragraph (c) of the following subparagraph:  
“(iii) result in the concentration of the mineral [in] under the [hands] control of the applicant.”

**Amendment of section 35 of Act 28 of 2002** 20

20. Section 35 of the principal Act is hereby amended—

- (a) by the substitution for the expression “programme” in subsection (2)(a) of the expression “plan”;
- (b) by the substitution for subparagraph (i) of paragraph (b) of the following subparagraph: 25  
“(i) the prevailing market conditions, the effect thereof and the need to hold such retention permit [over] in respect of the mineral and land in question; and ”.

**Amendment of section 39 of Act 28 of 2002**

21. Section 39 of the principal Act is hereby amended— 30

- (a) by the substitution of subparagraph (b)(ii) of subsection (3) of the following subparagraph:  
(ii) the socio-economic conditions of any person who might be directly affected by the [prospecting or mining] operation; and”; and
- (b) by the substitution for subparagraph (b)(i) of subsection (4) of the following subparagraph: 35  
“(i) any recommendation by the Regional Mining Development and Environmental Committee in terms of section 40(3); and”.

**Amendment of section 40 of Act 28 of 2002**

22. Section 40 of the principal Act is hereby amended— 40

- (a) by the substitution for subsection (2) of the following subsection:  
“(2) Any state department consulted in terms of subsection (1) must submit comments within 60 days from the date on which the Minister, informs the relevant state department, in writing to do so [The Minister must request the head of a department being consulted, in writing, to submit the comments of that department within 60 days from the date of the request.]”; and 45

- (b) by the addition of subsection (3)  
 “(3) If any state department contemplated in subsection (1) objects to the contents of the environmental management plan or environmental management programme, the Minister must refer the objections to the Regional Mining Development and Environmental Committee to consider the objections and to advise the Minister thereon.” 5

**Amendment of section 41 of Act 28 of 2002**

23. Section 41 of the principal Act is hereby amended—
- (a) by the deletion of the word ‘negative’ in subsection (2); and
- (b) by the substitution for the word ‘increase’ of the word ‘adjust’ in subsection (3). 10
- (c) by the substitution for subsection (4) of the following subsection:  
 “(4) (a) If the Minister is not satisfied with the assessment and financial provision contemplated in this section, the Minister may appoint an independent assessor to conduct the assessment and determine the financial provision 15  
 (b) Any costs in respect of such Independent assessment must be borne by the holder of the prospecting, right, mining right, or mining, permit.”;

**Amendment of section 44 of Act 28 of 2002**

24. Section 44 of the principal Act is hereby amended— 20
- (a) by the substitution for the expression “comes to and end” in subsection (1) of the expression “ceases”; and
- (b) by the substitution for subsection (2) of the following subsection:  
 “(2) The provision of subsection (1) does not apply to **[bona fide]** mining equipment, which may be removed lawfully.” 25

**Amendment of section 46 of Act 28 of 2002**

25. 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 or to rehabilitate dangerous occurrences but]** establishes that the holder of **[the relevant]** a reconnaissance permission, prospecting right, mining right, retention permit or mining permit, 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 may instruct the Regional Manager concerned to take the necessary measures to prevent **[further]** pollution or ecological degrading of the environment or to rehabilitate dangerous occurrences or to make an area safe.”. 30 35

**Amendment of section 47 of Act 28 of 2002** 40

26. Section 47 of the principal Act is hereby amended by the substitution of paragraph (c) of subsection (1) of the following paragraph:  
 “(c) is contravening the approved environmental management programme or environmental management plan; or”.

**Amendment of section 53 of Act 28 of 2002** 45

27. Section 53 of the principal Act is hereby amended—
- (a) by the substitution for the expression ‘townplanning scheme’ in paragraph @ of subsection (2) of the expression ‘town’.

**Amendment of section 74 of Act 28 of 2002**

28. Section 74 of the principal Act is hereby amended—

(a) by the substitution for subsection (3) of the following subsection:

“(3) If the application does not comply with the requirements of this section, the designated agency must reject the application and notify the applicant **[of that fact]** in writing within 14 days of the receipt of the application with reasons. **[and return the application to the applicant]”**; and

(b) by the substitution for the expression ‘acceptance’ in subsection (4) of the expression ‘receipt’.

**Amendment of section 76 of Act 28 of 2002**

29. Section 76 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) If the application does not comply with the requirements of this section, the designated agency must reject the application and notify the applicant **[of that fact]** in writing within 14 days of the receipt of the application with reasons. **[and return the application to the applicant]”**.

**Amendment of section 79 of Act 28 of 2002**

30. Section 79 of the principal Act is hereby amended—

(a) by the substitution for subsection (3) of the following subsection: 20

“(3) If the application does not comply with the requirements of this section, the designated agency must reject the application and notify the applicant **[of that fact]** in writing within 14 days of the receipt of the application with reasons. **[and return the application to the applicant]”**; and 25

(b) by the substitution for the expression ‘acceptance’ in subsection (4) of the expression ‘receipt’.

**Amendment of section 83 of Act 28 of 2002**

31. Section 83 of the principal Act is hereby amended—

(a) by the substitution for subsection (3) of the following subsection: 30

“(3) If the application does not comply with the requirements of this section, the designated agency must reject the application and notify the applicant **[of that fact]** in writing within 14 days of the receipt of the application with reasons. **[and return the application to the applicant]”**; and 35

(b) by the substitution for the expression ‘acceptance’ in subsection (4) of the expression ‘receipt’.

**Amendment of section 86 of Act 28 of 2002**

32. Section 86 of the principal Act is hereby amended by the substitution for paragraph (e) in subsection (2) of the following paragraph: 40

“pay **[the]** any required State royalties;”

**Amendment of section 98 of Act 28 of 2002**

33. Section 98 of the principal Act is hereby amended by the deletion of paragraph (c).

**Amendment of section 111 of Act 28 of 2002**

34. Section 111 of the principal Act is hereby amended by the deletion of the word ‘development’. 45

**Amendment of item 1 of Schedule II of Act 28 of 2002**

35. Item 1 of Schedule II of the principal Act is hereby amended—

- (a) by the insertion of the expression ‘mynpachten’ after the expression ‘mining lease’ in paragraph (iii).
- (b) by the substitution for the definition of ‘OP26 mining lease’ in subitem (vi) of the following definition” 5  
 “‘OP26 mining lease’ means [the] any mining lease granted [to Mosgas (Pty) Ltd] under clause 22 of the OP26 prospecting lease referred to in subitem 1(vii); and
- (c) by the substitution for paragraph (bb) of the definition of ‘OP26 sublease’ in subitem (vii) of the following paragraph:” 10  
 “(bb) those parts of the abovementioned prospecting lease OP26 which are held under Cessions 1/1999 and 1/2002 registered as such at the Mining Titles Office on 8 September 1999 and 30 September 2002 respectively.” 15

**Amendment of item 3 of Schedule II of Act 28 of 2002**

36. Item 3 of Schedule II of the principal Act is hereby amended—

- (a) by the substitution of subitem (1) of the following subitem:  
 “(1) Any application for a prospecting permit, or the renewal thereof, mining authorisation, consent to prospect, consent to mine or permission to remove and dispose of any mineral, or mining lease lodged, but not finalised, in terms of section 6, 8, 9, 10, or 44(8) of the Minerals Act immediately before this Act took effect must be regarded as having been lodged in terms of section [13], 16 22, 27, 79 or 83 of this Act, as the case may be.”; and 20 25
- (b) by the substitution for subitem (4) of the following subitem:  
 “(4) If the environmental management programme does not meet with the requirements of this Act, the Regional Manager in whose region the land to which the environmental management programme relates is situated must direct the holder concerned to submit the outstanding information within 60 or 180 days after such direction, as the case may be.” 30

**Amendment of item 6 of Schedule II of Act 28 of 2002**

37. Item 6 of Schedule II of the principal Act is hereby amended by the substitution for subitem (1) of the following subitem: 35

- “(1) Subject to subitems (2) and (8), any old order prospecting right in force immediately before this Act took effect continues in force for a period [of] not exceeding two years from the date on which this Act took effect, or the period for which it was granted, whichever period is the shortest. subject to the terms and conditions under which it was granted or issued or was deemed to have been granted or issued.” 40

**Amendment of item 7 of Schedule II of Act 28 of 2002**

38. Item 7 of Schedule II of the principal Act is hereby amended by the substitution for subitem (1) of the following subitem:

- (1) Subject to subitems (2) and (8), any old order mining right in force immediately before this Act took effect continues in force for a period not exceeding five years from the date on which this Act took effect or the period for which it was granted, whichever period is the shortest. subject to the terms and conditions under which it was granted or issued or was deemed to have been granted or issued. 45 50

**Amendment of item 8 of Schedule II of Act 28 of 2002**

39. Item 8 of Schedule II of the principal Act is hereby ‘amended—

- (a) by the substitution of subitem (1) of the following subitem: