

**AGRI SA'S COMMENTARY ON THE DRAFT  
MINERAL AND PETROLEUM RESOURCES  
DEVELOPMENT BILL, 2012**



Agri Suid-Afrika  
*Tuis van die Suid-Afrikaanse boer*  
Agri South Africa  
*Home of the South African farmer*

**PORTFOLIO COMMITTEE ON MINERAL RESOURCES**  
**11 September 2013**

**Annelize Crosby**  
**Legal & Policy Advisor**

# Agri SA



- Agri South Africa is a federal organisation which promotes, on behalf of its members, the sustainability, profitability and stability of commercial agricultural through its involvement and input on national and international level
- Represent commercial and emerging farmers through:
  - *9 provincial unions*
  - *24 commodity organisations*

**Comments are limited to matters relating to agriculture and to ownership and occupation of land:**



- **Notification of landowners and occupiers** (*section 10, regulation 3 of the MPRDA*);
- **Partitioning of prospecting and mining rights** (*section 11 of MPRDA*);
- **Consideration of the agricultural use and potential of land** (*section 3(3), 17 and 23 of the MPRDA*);
- **Claims for damage to land** (*section 54 of MPRDA*)

# Notification of landowners and occupiers



- It is proposed that section 10 be amended to deal in more detail with the obligations of the applicant to notify the owner or lawful occupiers of an application by **deleting the reference to “and the applicant”** in the section 10(1) of the draft Bill and by **inserting a new section 10(1A)** which provides as follows:
  - *“Within 14 days after an application lodged in terms of section 16, 22 or 27 has been accepted by the Regional Manager, the applicant shall, subject to the provisions of subsection (c),*
    - publish a notice of application in accordance with the provisions of subsection (b)(i)-(iv) in English and in another official language commonly used in the area where the land is situated, once in the *Government Gazette* and simultaneously therewith or not more than one week thereafter, once in the said languages in two newspapers of different languages circulating in the area in which the property is situated; and
    - cause to be served upon the owner and/or lawful occupiers a notice of application in accordance with the provisions of subsection (b).

# Notification of landowners and occupiers (cont)



## The notice of application shall-

- contain a **clear and full description of the property** or part of the property in respect of which application is made;
- **state the right and the duration** of the right for which application is made;
- **specify the mineral** for which application is made;
- indicate the **proposed surface infrastructure** to be erected on the property in question; and
- contain a copy of the **prospecting work programme or mining work programme** which accompanied the application; and
- **draw the attention** of the owner or occupiers to the **provisions of section 10.**

## Notification of landowners and occupiers (cont)



- Subject to the provisions of subsection (d), the applicant shall cause the **notice of application** to be served by causing a **copy thereof to be delivered** or tendered or sent by **registered post to every person** who, according to the title deed of the land or the registers of the Registrar of Mining Titles or of any other Government office in which rights granted in terms of any law relating to the land are recorded, **has any interest in that land** or who to the knowledge of the applicant **lawfully occupies** the land and, if the land is situated within the area of jurisdiction of a local authority, upon such **local authority**.

## Notification of landowners and occupiers (cont)



- If the **whereabouts of the owner** or of every owner of the property in question or of any person or every person having an interest therein, as is contemplated in subsection (c), **is not readily ascertainable** by the applicant, or, if by reason of the number of such owners or persons having such an interest or for any other reason, service of a notice of application in accordance with subsection (c) is **not practicable**, the applicant shall cause to be published once in the **Gazette** and once a week during **two consecutive weeks** in an **Afrikaans and in an English newspaper** circulating in the area in which the property in question is situated, an appropriate notice complying with the provisions of subsection (b).”

## Notification of landowners and occupiers (cont)

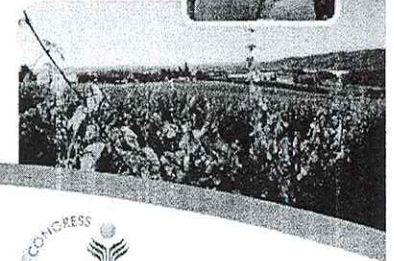


- On a technical drafting level, it is proposed that section 10(1)(a) of the draft Bill which provides that the Regional Manager and the applicant must “in the prescribed manner make known that an application for a prospecting right, mining right or mining permit **has been received** in respect of the land in question” should be amended to provide that they must “make known that an application for a prospecting right, mining right or mining permit **has been accepted** in respect of the land in question”. (This amendment occurred in s 10(1)(a) of the 2008 amendment but is substituted by the draft Bill’s said formulation.)
- It is proposed that the time period of 30 days in section 10(1)(b) **be extended to 60 days**.
- As far as the insertion of section 10A-10G is concerned, it is proposed that representatives of the **National and Provincial Departments** responsible for land and/or agriculture **be mandatory members** of REMDEC.



# Partitioning of prospecting and mining rights

- The following wording is suggested for section 11(2A)(a):
  - “the transferee has simultaneously lodged the applications mentioned in section 16 or 22, as the case may and has complied with section 10 and the Regional Manager’s directives in terms of section 16(4) or 22(4) as the case may be”



## Consideration of the agricultural use and potential of land



- Agri SA proposes that section 23(1)(d) be amended by insertion of the underlined words as follows:
  - *“the mining will not result in unacceptable pollution, ecological degradation or damage to the environment or unacceptable loss of agricultural land which is used, or has the potential to be used, for food, feed, fibre, forestry and other primary agricultural production activities and an environmental authorisation is issued”.*
- Agri SA furthermore proposes that section 3(3) of the MRPDA be amended by insertion of the underlined words to provide as follows:
  - *“The Minister must ensure the sustainable development of South Africa’s mineral and petroleum resources within a framework of national environmental policy, norms and standards and with due consideration of agricultural use or potential use of land while promoting economic and social development.”*

## Payment of compensation for damage to land



It is proposed that section 54 be deleted and substituted with the following:

- “Subject to the provisions of (b) and (c) below, the holder of a prospecting or mining right in respect of property must enter into an agreement with the owner of such property prior to the commencement of mining operations with respect to –
  - *the access to and use of the land for purposes of prospecting or mining operations;*
  - *just and equitable compensation for the granting of the access to and use of the land and ancillary rights as contemplated in sections 5(1) and 5(3) of the Act in respect of the surface of such land; and*
  - *compensation for damage or loss caused by prospecting or mining operations, if any.*

## Payment of compensation for damage to land (cont)



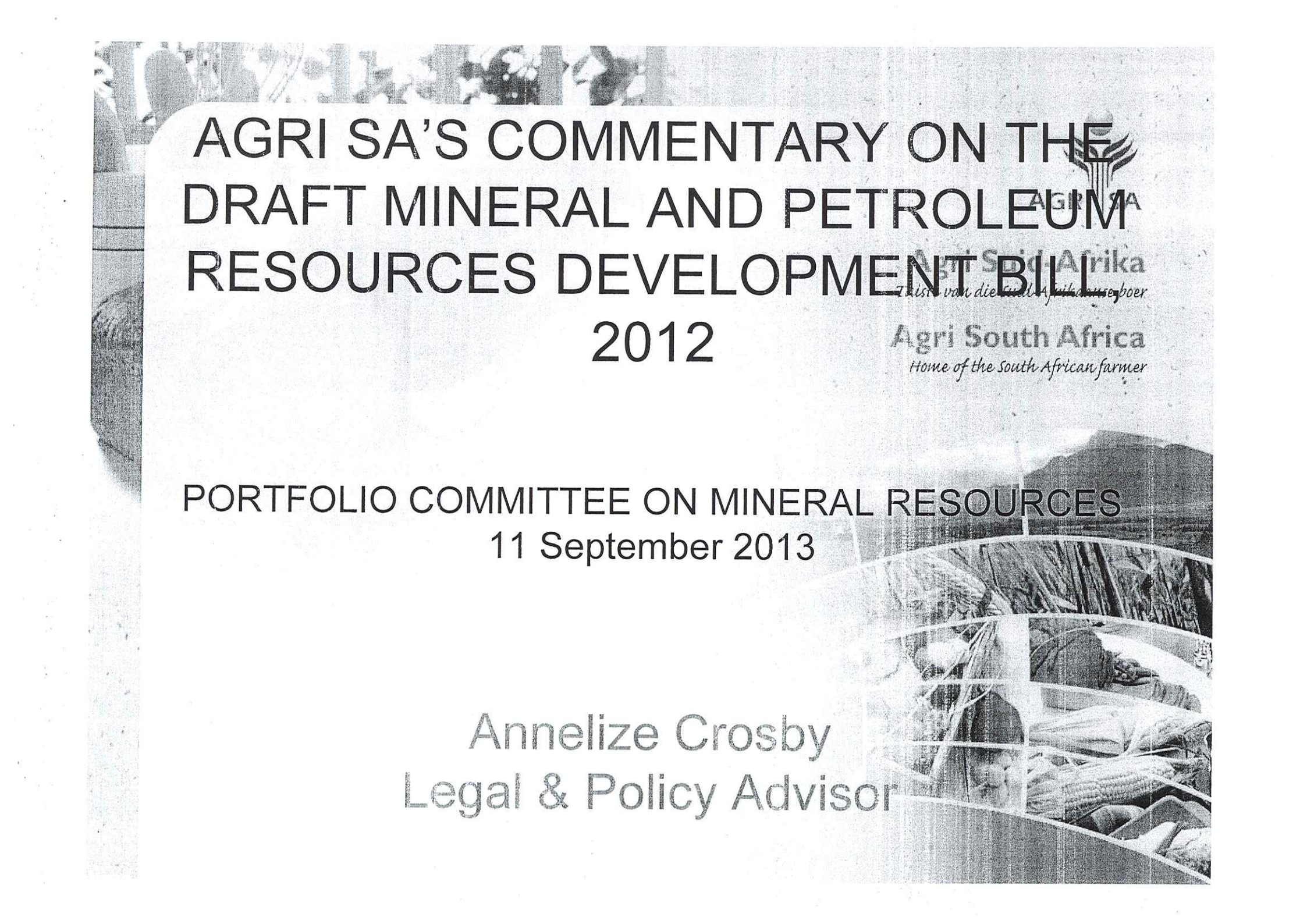
- In the absence of such agreement,
  - *the holder of the prospecting or mining right in respect of the property may not commence or continue with prospecting or mining,, until an agreement has been concluded; and*
  - *the owner of such property may claim compensation as contemplated in subsections (a)(ii) and (iii) above from the holder of such right, which compensation must be determined by arbitration in accordance with the Arbitration Act, 1965 (Act No. 42 of 1965), or by a competent court.*
- Such compensation shall, in the absence of agreement, on application of any party concerned, be determined by the High Court in whose area of jurisdiction the property in question is situated or by arbitration in terms of the Arbitration Act, 1965.
- The provisions of sections 14(2) to 14(9) of the Expropriation Act, 1975 shall apply to any such proceedings.”

**Thank you /  
Dankie**



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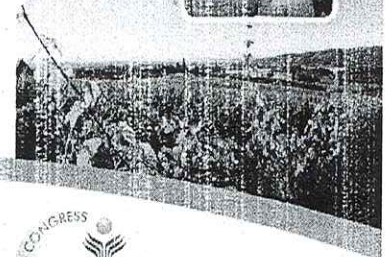
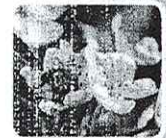
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## Payment of compensation for damage to land (cont)



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