

PARLIAMENT
OF THE
REPUBLIC OF SOUTH AFRICA

**ANNOUNCEMENTS,
TABLINGS AND
COMMITTEE REPORTS**

THURSDAY, 22 NOVEMBER 2018

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ANNOUNCEMENTS

National Assembly

The Speaker

1. Referral to Committees of papers tabled

- (1) The following paper is referred to the **Standing Committee on Public Accounts** for consideration and to the **Portfolio Committee on Cooperative Governance and Traditional Affairs**:
 - (a) Consolidated General Report of the Auditor-General on National and Provincial Audit Outcomes for 2017-18 [RP 433-2018].
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TABLINGS

National Assembly

1. The Speaker

- (a) Report on State of Food Insecurity and Vulnerability in the Republic of South Africa.

Referred to the **Portfolio Committee on Agriculture, Forestry and Fisheries**, **Portfolio Committee on Cooperative Governance and Traditional Affairs**, **Portfolio Committee on Small Business Development**, **Portfolio Committee on Economic Development** and **Portfolio Committee on Public Works** for consideration.

COMMITTEE REPORTS

National Assembly and the National Council of Provinces

1. Report of the Joint Standing Committee on the Financial Management of Parliament on the Parliament of the Republic of South Africa's 2017/18 Annual Report, dated 21 November 2018

The Joint Standing Committee on the Financial Management of Parliament, having considered the Parliament of the Republic of South Africa's 2017/18 Annual Report, reports as follows:

1. INTRODUCTION

- 1.1 Section 4 of the Financial Management of Parliament and Provincial Legislatures Act, No 10 of 2009 (FMPPLA) provides for the establishment of an oversight mechanism to maintain oversight of the financial management of Parliament. The Joint Standing Committee on the Financial Management of Parliament (the Committee) was established in terms of the Joint Rules of Parliament. The Committee has the powers afforded to parliamentary committees under sections 56 and 69 of the Constitution. In addition, section 4 of the FMPPLA mandates the Committee to, amongst others, consider Parliament's Annual Report.
- 1.2 Parliament's 2017/18 Annual Report was referred to the Committee on 1 September 2018 for its consideration. In its consideration of the report, the Committee received input from the Auditor General of South Africa (AGSA), the Committee Researcher and the Committee Content Advisor. The Acting Secretary to Parliament—the accounting officer—and her senior management team appeared before the Committee in a meeting held on 31 October 2018 during which the institution's performance for the period under review was interrogated.

- 1.3 This report should be read along with Parliament's 2014-2019 Strategic Plan, the 2017/18 Annual Performance Plan and budget, as well as the institution's 2017/18 Annual Report.
- 1.4 This report comprises four parts: Part A contains a summary of the institution's financial and performance information for the period under review; Part B contains the Auditor General South Africa's key findings; and Part C contains the Committee's observations and recommendations.

PART A: PERFORMANCE IN THE 2017/18 FINANCIAL YEAR

2. Mandate

2.1 Parliament derives its mandate from:

- chapter 4 of the Constitution of the Republic of South Africa, No 108 of 1996, which sets out its composition, powers and functions;
- the FMPPLA which regulates the institution's financial management;
- the Money Bills Amendment Procedure and Related Matters Act, 2009 No 9 of 2009 which provides procedures to amend money bills; and
- the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act No 4 of 2004 which defines and declares the national and provincial legislatures' powers, privileges and immunities.

2.2 Mission and vision

- 2.2.1 The institution has identified six values according to which it conducts its business: openness; responsiveness; accountability; teamwork; professionalism; and integrity.
- 2.2.2 In pursuit of its vision to be "activist and responsive" so as to improve the quality of life in South Africa and to ensure enduring equality, the institution has, as its mission, to provide, amongst

others, “an innovative, transformative, effective and efficient parliamentary service and administration that enables Members of Parliament to fulfil their constitutional responsibilities”.

2.3 Strategic Priorities 2014-2019/Strategic Goals in the year under review

2.3.1 The institution’s five strategic priorities are:

- strengthening oversight and accountability;
- enhancing public involvement;
- deepening engagement in international fora;
- strengthening co-operative governance; and
- strengthening its legislative capacity.

2.3.2 To achieve the above, the Fifth Parliament adopted the following strategic outcome-oriented goals:

- to enhance Parliament’s oversight and accountability over the work of the executive to ensure implementation of the objectives of the Medium Term Strategic Framework (MTSF) 2014-2019;
- to co-operate and collaborate with other spheres of government on matters of common interest and ensure co-operative and sound inter-governmental relations;
- to enhance public involvement in the processes of Parliament to realise participatory democracy through the implementation of the public involvement model by 2019;
- to enhance parliamentary international engagement and co-operation;
- to enhance the ability of Parliament to exercise its legislative power through consolidation and implementation of integrated legislative processes by 2019 in order to fulfil its constitutional responsibility; and
- to build a capable and productive parliamentary service that delivers enhanced support to Members of Parliament in order that they may efficiently fulfil their constitutional functions.

3. Financial Performance in the year under review

Parliament received an unqualified audit report with no material findings on performance information and compliance with laws and regulations for the 2017/18 financial year. At the end of the period under review, Parliament had spent R2.233 billion of a final appropriation of R2.268 billion, which resulted in an under expenditure of R34.790 million.

Table 1 below provides an overview of Parliament's expenditure per economic classification for the period under review.

Line Item	Final Budget R'000	Actual Amounts	Variance	Variance in percentage
Compensation of employees	785,503	829,782	-44,279	-6%
Compensation of members	556,288	455,520	100,768	18%
Goods and Services	505,207	489,220	15,987	3%
Transfers to non-profit organisations	417,331	435,098	-17,767	-4.26%
Acquisition of property, plant and equipment	3,906	23,699	-19,793	-507%
Purchase of intangible assets	-	126	-126	-100%
Total	2,268,235	2,233,445	34,790	1.5%

Table 2: Statement of comparison of budget and actual amounts

(Source: Parliament of the Republic of South Africa, 2018)

3.1 Variances

The reported reasons for variances over 5 per cent per economic classification are outlined below.

- 3.1.1 The budget for compensation of employees has been less than the compensation value of positions filled by Parliament at the end of 2017/18 financial year. This resulted to an over expenditure R44.279 million or 6 per cent of the allocated R785,503 million for the period under review. The resultant shortfall was funded from retained unspent funds from previous years in line with section 23 (1) of the FMPPLA. The said underfunding has been referred by the Executive

Authority to the Minister of Finance for consideration of a baseline review in the 2018 Medium Term Budget Policy Statement (MTBPS) and 2019/20 budget allocation.

- 3.1.2 Under compensation for members, an under expenditure of R100,768 million or 18 per cent was recorded against at the final budget of R556,288 million at the end of the 2017/18 financial year. The baseline for compensation of members has been overstated since the 2009/10 financial year. Part of this underspending was surrendered to the National Revenue Fund (NRF) in terms of section 23(4) of the FMPPLA. Of which an amount of R95 million has been shifted to Compensation of Employees for the 2018/19 financial year.
- 3.1.3 In terms of acquisition of property, plant and equipment, Parliament has recorded an over expenditure of R19,739 million or 507 per cent from a budget of R3,906 million. This was due to the budget for property, plant and equipment being less than the required funds for capital expenditure. The reported shortfall would be funded from unspent funds of previous years which were retained in terms of section 23(1) of the FMPPLA. The said underfunding has been referred by the Executive Authority to the Minister of Finance for consideration of a baseline review in the 2018 Medium Term Budget Policy Statement (MTBPS) and 2019/20 budget allocation.
- 3.1.4 Parliament recorded a 100 per cent variance in terms of the Purchase of intangible and heritage assets. No budget has been allocated for intangible assets (computer software) for the 2017/18 financial year. The reported shortfall would be funded from unspent funds of previous years which were retained in terms of section 23(1) of the FMPPLA. The said underfunding has been referred by the Executive Authority to the Minister of Finance for consideration of a baseline review in the 2018 Medium Term Budget Policy Statement (MTBPS) and 2019/20 budget allocation.

3.2 Disclosures

- 3.2.1 The reported irregular expenditure for the 2017/18 financial year was R336 thousand. The total irregular expenditure incurred in 2016/17 amounted to R2.443 million. This represents an 86 per cent decrease in irregular expenditure incurred in 2016/17. The reduction was due to the Executive Authority condoning R2.446 million in the period under review. The total irregular expenditure for the 2017/18 financial year related to; an award made to a member of Parliament (R20 thousand); and local content not specified in advertisements (R316 thousand). Parliament reported that it has established a Governance Assurance Committee to ensure the effective processing of irregular expenditure in the future.
- 3.2.2 In the period under review the institution incurred fruitless and wasteful expenditure amounting to R271 thousand. This represents a decrease of 75 per cent when compared to the R1,067 million fruitless and wasteful expenditure recorded in the 2016/17 financial year. The fruitless and wasteful expenditure incurred in 2017/18 comprises: R28 thousand in cancellation fees; R192 thousand as a result of damages to/loss of hired goods; R116 thousand due to unaccredited courses; R2 thousand in traffic fine administration fees; and R49 thousand for 'other' reasons. The Executive Authority has written off R1,053 million in fruitless and wasteful expenditure in 2017/18.
- 3.2.3 The reported contingent liabilities for the 2017/18 financial year amounted to R5 million for staff litigation (labour-related disputes and claims by former and current employees) and R12,250 million for other litigation. When compared to 2016/17, staff litigation decreased by R43,481 million whilst other litigation has increased by R2,666 million. The decrease recorded under staff litigation was due to an arbitration amounting to R38 million, which was initially awarded to the Researchers in the 2015/16 financial year, which the Parliament appealed the ruling in the Labour Court and won. The other possible litigation against Parliament increased by 28 per cent due to more pending cases.

3.2.4 In terms of the balance sheet, total assets of R440,633 million were recorded against total liabilities of R1,684 billion, resulting in an accumulated deficit of R1.243 billion at the end of the 2017/18 financial year. The deficit resulted mainly from the provision made for post-retirement medical benefits for current and former members of Parliament and provincial legislatures. The total number of former Members of Parliament receiving the benefit currently totalled 961 at the end of the 2017/18 financial year. The contribution made by Parliament through the annual appropriation for 2017/18 was R56,726 million. Should Parliament no longer be responsible for the post-retirement medical aid liability, its net asset position would amount to R99,738 million. It is for this reason that Parliament continues to be regarded as a going concern.

4. Performance across programmes

Although the institution showed a slight improvement in its performance, it still failed to achieve the majority of its targets. Of the 19 targets set, only 11 were achieved (57,89 per cent). This section summarises the purpose of each of the five programmes, as well as the reported performance against targets.

4.1 Programme 1: Strategic Leadership and Governance

4.1.1 This programme provides for political and strategic leadership, governance and institutional policy, executive communication and co-ordination, and oversight of the development and implementation of Parliament's strategic plan, annual performance plan and budget. Programme one comprises the Office of the Speaker of the National Assembly, the Office of the Chairperson of the National Council of Provinces (NCOP), the Parliamentary Budget Office (PBO), the Treasury Advice Office and the Office for Institutions Supporting Democracy (OISD).

4.1.2 The strategic objectives under this programme are:

- to improve strategic, advisory, executive, administrative and logistical support to the Executive Authority; and
- to improve independent, objective and professional analysis and advice related to the budget and other money bills tabled in Parliament.

4.1.3 Only one of the three targets set under this programme was achieved i.e. the institution set out to table 22 analytical reports, and succeeded in tabling 45. The two targets that were not achieved related to the implementation of governance schedules, and the tabling and referral of governance documents. The over-performance in relation to the analytical reports was ascribed to increased demands from Members of Parliament for analytical reports, resulting in the PBO's services being extended beyond the Finance and Appropriations committees.

4.1.4 The 25 per cent under performance in relation to the governance schedule was ascribed to executive committee meetings not taking place according to the planned schedule: none took place in the first half of 2017/18.

4.1.5 Only 15 of the 20 governance reports tabled in the period under review, were tabled and referred timeously. The tabling procedures have since been reviewed, and this should address the under-performance.

4.2 Programme 2: Administration

4.2.1 This programme provides for strategic leadership support and management, institutional policy and governance, development of programmes for parliamentarians, overall management and administration, internal audit and financial management, and the Registrar of Members' Interests.

4.2.2 The strategic objectives under this programme are:

- to develop and implement the Members Capacity Building and Development Strategy by 2019 so as to improve the usefulness, relevance and accessibility of integrated development programmes for parliamentarians;
- to implement a revised Sector Strategy aimed at improving inter-governmental relations between Parliament and provincial legislatures by 2019;
- to develop and implement efficiency measures to reduce inefficiencies by 1 per cent annually; and
- to implement the FMPPLA in order to strengthen strategic management, governance and compliance.

4.2.3 All eight targets in relation to the number of capacity-building programmes for parliamentarians were met. Capacity building programmes were developed with the University of Johannesburg (continuing education programmes), Nelson Mandela Metropolitan University (certificate in human settlement) and the University of London (post graduate programmes).

4.2.4 The targeted 15 per cent completion rate was exceeded by 25 per cent. The overachievement was attributed to the performance of those registered for the Continuing Education Programmes. Those enrolled at the Nelson Mandela Metropolitan University and the University of Johannesburg will complete their qualifications in 2019.

4.2.5 All targets set in relation to the actioning of resolutions of the Speakers Forum and Secretaries' Association of the Legislatures of South Africa (SALSA) were met.

4.2.6 The institution failed to achieve 100 per cent compliance with prescripts and regulations. The 5 per cent under-performance was ascribed to lack of administrative coordination in the submission of governance documents.

4.2.7 The institution failed to achieve 100 per cent compliance in respect of the submission of governance documents in compliance of the FMPPLA. The Committee was not provided with a reason for the under-performance.

4.3 Programme 3: Core Business

4.3.1 This programme provides for procedural and legal advice, analysis, information and research, language, content and secretarial and legislative drafting services for meetings of the National Assembly and National Council of Provinces and their committees. The programme aims to:

- improve the timeliness and quality of advisory and information services;
- implement the oversight and accountability model;
- develop and implement models to improve the quality of legislation and improved oversight and cooperative governance;
- improve access and participation in parliamentary processes;
- improve support for Parliament's international engagement;
- increase Parliament's oversight capacity to monitor the implementation of international agreements; and
- provide professional protocol and ceremonial services.

4.3.2 The institution reported 100 per cent achievement of the following targets under this programme:

- all House Papers available on days of sittings;
- timeous response to all information requests in terms of the Promotion of Access to Information Act 2 of 2000 (PAIA);
- legal advice provided within seven days; and
- 10 per cent of the population having access to participate in Parliament.

It should be noted that the target in relation to public access to Parliament was set below the actual performance of 11,5 per cent that was reported in 2016/17.

4.3.3 The institution exceeded the targets set in relation to the following indicators:

- research delivered within the prescribed time period (99,74 per cent i.e. exceeded by 4,74 per cent);
- improved internal controls led to an over-achievement in terms of information requests being attended to within the allocated time (97,77 per cent i.e. exceeded by 2,77 per cent);
- draft minutes delivered within 3 days (95,84 per cent, i.e. exceeded by 5,84 per cent);
- official report of the unrevised Hansard within 5 days (100 per cent, i.e. exceeded by 5 per cent); and
- translations delivered within agreed time (95,11 per cent i.e. exceeded by 0,11 per cent).

4.3.4 The institution under-performed in relation to the following indicators:

- vacancies and increased work volumes led to under-performance in relation to service provision in line with the service charter (90,85 per cent i.e. 4,15 per cent under performance);
- procedural advice provided within seven days (99,89 per cent i.e., 0.11 under-performance);
- the absence of a tracking system resulted in the performance in terms of policy advice provided within seven days not being measured in the first half of the year (43,86 per cent i.e. 56.14 per cent under-performance);
- vacancies and competing priorities resulted in reports not being delivered within eight days (91,91 per cent i.e. 5,84 under-performance);

- the under-performance in relation to the provision of interpretation services was ascribed to high staff turnover and the unavailability of interpreters (56,74 per cent, i.e. under-performance of 38,26 per cent); and
- population participating in parliamentary processes (6 per cent, i.e., under-performance of 4 per cent).

4.3.5 The target set in relation to the Office of the Leader of Government Business tracking of published documents was set at 100 per cent. Performance could not be reported on however because the monitoring measure was unclear.

4.4 Programme 4: Support Services

4.4.1 This programme provides for institutional communication services, human resource management, information communication technology, institutional support services, and Members' support services.

4.4.2 The strategic objectives under this programme are:

- to develop and implement a stakeholder management plan, and an integrated and independent scientific survey of Members' satisfaction by 2019 in order to improve relationships with stakeholders;
- to develop and implement a comprehensive communications strategy by 2019 so as to increase public involvement through better communication of Parliament's business;
- to increase Members and employees' universal access to integrated information services from 40 to 80 per cent by 2019 by leveraging current and innovative technologies;
- to create a conducive working environment by optimising facilities usage and provide adequate and appropriate space so as to increase employee satisfaction from 68 to 85 per cent by 2019; and

- to develop and increase performance on the talent management index by 15 per cent by 2019 so as to increase the availability of strategic competencies, talent and skills.

4.4.3 The client satisfaction survey conducted under strategic objective 1 was concluded in March 2018. According to the internal survey, 70 per cent of Members and employees who participated were satisfied with the services. This amounted to a 3,5 per cent under performance which will hopefully be addressed when the Stakeholder Management Plan was implemented in full.

4.4.4 The client satisfaction survey measuring satisfaction with the Institutional Support Services Division (ISSD) revealed that 69,7 per cent of those who participated were satisfied with the services. The 0,3 per cent under-performance will be addressed through various interventions around catering, Safety, Health and Environment, and facilities management.

4.4.5 The institution reported over achievement in relation to the following targets:

- percentage of the population aware of the business of Parliament (23 per cent i.e. 12,25 per cent over-achievement)
- percentage of members who have universal access to Information Communication Technology (72 per cent i.e. 2 per cent over-achievement); and
- increase performance in terms of the talent management index (9 per cent i.e. 3 per cent over-achievement).

4.5 Programme 5: Associated Services

4.5.1 This programme provides travel, communication and other facilities to Members of Parliament to fulfil their duties as elected public

representatives. It also provides for financial support to represented political parties, their leaders and constituency offices. According to the Annual Report all four targets under this programme were met.

4.5.2 The strategic objectives under the programme are:

- to review the Members' needs and integrated services in a seamless support service by 2018 so as to ensure greater effectiveness;
- to reduce the average turnaround time for the processing and payment of reimbursements to Members; and
- to improve the payment and compliance of transfer payments for effective financial management.

4.5.3 The institution failed to meet targets set in relation to implementation of the integrated service strategy. Of the seven milestones, only six were met: the milestone set in relation to the refurbishment of the Members' service lounge was not met.

4.5.4 The institution met the target set in relation to the publication of the Handbook. It was published by 31 October 2018.

4.5.5 The targets set in relation to the average number of days to reimburse parliamentarians was 2,37 days i.e. 0,3 shorter than targeted.

4.5.6 The institution succeeded in making 100 per cent of all payments to political parties and other institutions within the prescribed timeframes.

5. Human Resource-related information

5.1 Parliament's establishment comprised a total of 1 414 posts in the 2017/18 financial year. A total of 1 274 posts were filled, and 140 were active and vacant, resulting in a vacancy rate of 9.9 per cent.

Table 3 below provides an overview of the vacancies at the end of the 2017/18 financial year per programme.

Programme	Number of posts	Number of posts filled	Active vacant	Vacancy rate
Strategic Leadership and Governance	89	81	8	0.6%
Administration	137	122	15	1.1%
Core Business	675	612	63	4.5%
Support Services	513	459	54	3.8%
Associated Services	0	0	0	0.0%
Total	1 414	1 274	140	9.9%

5.2 From the total number of vacancies, the majority resided under highly skilled production or Level C category. From the total number of posts, 746 were under the Level C category of which 677 were filled and 69 or 4.88 per cent were vacant. The administration indicates that the fixed term employment contract and the high cost of living in Cape Town were some of the reasons for the high staff turnover reported.

PART B: REPORT OF THE AUDITOR GENERAL OF SOUTH AFRICA

6. Audit Outcome

6.1 The AGSA submitted that Parliament has sustained its unqualified audit outcome with no material findings of the past four financial years. The positive outcome notwithstanding, the AGSA raised concerns about the quality of financial statements submitted.

7. Financial health

- 7.1 In terms of the institution's financial health, AGSA stated that there was a continuous decrease in the cash and cash equivalents as a result of Parliament using its retained earnings to fund the shortfalls in the budget. AGSA cautioned that this was not sustainable in the longer term and further highlighted the net liability position which continued to be realised even though this was mainly caused by the provisions relating to direct charges. AGSA also suggested that Parliament should closely monitor expenditure as an operating deficit was realised in the 2017/18 financial year.

PART C: OBSERVATIONS AND RECOMMENDATIONS

8. Observations

8.1 Compliance with legislative requirements

- 8.1.1 The Committee welcomes the unqualified outcome with no material findings, which the institution has sustained for the past four financial years. The Committee further notes that Parliament's commitment to maintain and further improve the internal control environment should result in the audit outcome being sustained.

8.2 Performance and expenditure

- 8.2.1 The Committee notes with concern that the institution only succeeded in meeting 11 of its 19 targets it had set for the period under review. This points to a discord between expenditure and performance as the institutions almost spent its entire budget allocation for the 2017/18 financial year. This may be indicative of inadequate planning and target-setting which does not conform to SMART (Specific, Measurable, Achievable, Realistic, Time-bound) principles.

8.3 Financial Management

- 8.3.1 The Committee notes and welcomes the substantial reductions in irregular, fruitless and wasteful expenditure during the 2017/18 financial year. The Committee is however of the view that proper

investigations need to be conducted before the Executive Authority condone or write off deviations in terms of the FMPLA. The Committee strongly advises that fruitless and wasteful expenditure incurred due to indiscretions relating to the management of Parliament's finances not be condoned. Instead, the monies in question should be recovered, or written off where recovery is not possible.

8.3.2 The Committee welcomes the considerable reduction in the contingent liabilities related to staff litigation when compared to the 2016/17 financial year. The contingent liabilities related to staff litigations during 2016/17 amounted to R48,481 million. Other litigations have, however, increased by 28 per cent from R9,584 million in 2016/17 to R12,250 million in 2017/18 and needed to be monitored closely as it could pose a risk to the financial sustainability of the institution.

8.3.3 The Committee notes with concern that that Parliament's net liability totalled R1.243 billion at the end of the 2017/18 financial year mainly due to the provision of the post-retirement medical provision for former Members of Parliament and provincial legislatures. The said net liability increased substantially when compared to the previous financial year where it totalled R855.062 million

8.3.4 The Committee notes that at the end of the period under review 961 former members qualified for the post-retirement medical subsidy referred to above. The Committee is of the view that this subsidy poses a risk to the financial sustainability of the institution and should be addressed expeditiously.

8.4 Vacancies

8.4.1 The institution reported 140 or 9.9 per cent active vacancies at the end the period under review. The Committee is concerned about the high number of resignations under the Level C category (Highly Skilled Production).

- 8.4.2 The vacancy rate is a cause for concern, as it has in all likelihood contributed to the institution's poor performance against pre-determined targets.

9. Recommendations

The Committee's recommendations to Parliament follow below. The Executive Authority should, by 28 February 2019, provide the Committee with a report on the implementation of the undermentioned, and /or the reasons why implementation is not possible.

9.1 Compliance with legislative requirements

- 9.1.1 The Executive Authority should ensure that action plans are implemented to ensure that the monthly financial statements, and quarterly financial and performance reports are tabled within the legislated timeframes.

- 9.1.2 The Treasury Advice Office, which was created for the purpose of advising the Executive Authority with regard to the implementation of the FMPPLA should be established as a matter of urgency.

9.2 Performance and expenditure

- 9.2.1 The Executive Authority should ensure that the annual performance plan and budget are aligned, and that performance targets are specific, measurable, achievable, realistic and time-bound (SMART).

9.3 Financial Management

- 9.3.1 The Executive Authority should ensure that Parliament strengthens its mechanisms relating to the preparation of financial statements for submission to/auditing by the AGSA.

- 9.3.3 Although Parliament is viewed as a going concern, the Committee is of the opinion that measures should be explored to contain the net liability and deficit which poses future risks to the institution's viability.

9.4 Filling of vacancies

9.4.1 Parliament should identify and fill all critical vacancies. The Committee proposes that those posts that would be impacted directly by the size of the cabinet should not be filled until the Sixth Parliament, when the new administration/government has been elected and the cabinet has been reconfigured.

9.4.2 Further, Parliament should ensure that it improves the management of contracts for managers and highly-skilled specialists. Consideration should be given to converting fixed term contracts to performance based renewable contracts, and to ensure that a contract management regime is put in place.

9.5 Labour relations

9.5.1 Parliament should expedite all disciplinary proceedings including the one into the Secretary to Parliament so as to ensure stability within the organisation.

9.5.2 The Committee recommends that an inquiry be conducted into administration of the Fifth Parliament in order to establish the root causes of the strained labour relations that characterised the institution in that period. The inquiry should be conducted to ensure that the causes are addressed before the Sixth Parliament commences.

Report to be considered.

National Assembly

1. Report of the Portfolio Committee on Mineral Resources on its oversight visit North West and Gauteng on the 13-14 September 2018, dated 07 November 2018

The Portfolio Committee on Mineral Resources, having undertaken an oversight visit to North West and Gauteng, report as follows:

1. Introduction

A delegation of the Portfolio Committee on Mineral Resources (the Committee) visited North West and Gauteng Provinces from 13-14 September 2018.

Two specific mining operations in business rescue were in danger of being liquidated in terms of company law (Company's Act of 2008). The PCMR needed to understand challenges that the Department is facing in dealing with mines that may not have sufficient resources to cover environmental rehabilitation costs in the event of closure.

The management of distressed mines is a major weakness in current mining policy. The PCMR needs to understand whether the weaknesses are due to poor implementation by the department or gaps in the mining legislation.

The **first objective** of the oversight was to visit Shiva Uranium/Gold mine in Klerksdorp, North West Province. The environmental impact of the mine is under question, and whether or not required rehabilitation is adequately funded. The issue is whether the Department of Mineral Resources has monitored the situation with sufficient care to ensure that environmental laws are properly enforced. For example, the Committee had been informed that:

- No work was going on at the mine. Shiva security (who had not been paid) and security appointed by the IDC were said to be the only people on site.
- Certain equipment had been stolen or vandalised. A security bakkie was burned and the jaw crusher has been broken. One person estimated the cost of damage and replacement would be in the region of R30 million.
- Local people say a former mine manager and his family members were trying to get workers to sign some sort of document. There were reports of threatening behaviour to workers.
- An allegation has been made that some former management were trying to falsify reports of how much gold is still at the mine to make it seem more viable.

The **second objective** of the oversight was to visit Mintails mine in Mogale City, Gauteng Province and get a briefing from DMR and environmentalists where the Department has failed to ensure that this mine had made the required provision to repair over R300 millions of environmental damage.

- Why had the Department not required that funds be deposited long before the company went into business rescue?
- What steps will the Department take against the owners and directors of Mintails to ensure that they are held personally responsible for paying the money needed for rehabilitation, now that the business rescue process has failed?

The PCMR is often confronted by instances of the devastation caused by careless mining where the DMR says it is a state liability because no-one can be found to take responsibility.

In the case of the Mintails operation in Krugersdorp, this mine went into business rescue in 2015 at a time when the mining company had an unfunded environmental liability of over R300-m. It had saved barely R20-m for all its responsibilities.

According to the Business Rescue Practitioner, Mr Dave Lake, DMR withdrew its demand for a cash deposit as security “and agreed upon a ground-breaking and pragmatic approach for Mintails to practically effect rehabilitation activities monthly over the life of mine.”

This action of DMR staved off immediate liquidation of the mine in 2017 (and was said to have saved 800 jobs). But now the mine has been finally liquidated and there are not enough funds saved to pay for the environmental rehabilitation of the site.

The DMR was quoted as saying that it would engage with the appointed liquidators “with the intention to safeguard the environmental and social responsibilities.”

The Committee visited the two mining areas and held meetings with some of the stakeholders.

3. Composition of Delegation

3.1.1 Parliamentary Delegation

The delegation was constituted by the Chairperson of the Committee as the Leader of the delegation, Mr S Luzipo (ANC), Mr M Matlala (ANC), Ms MV Mafolo (ANC); Ms HV Nyambi (ANC) Mr I M Pikinini (ANC), Adv H C Schmidt (DA), Mr J Lorimer (DA), Mr T Rawula (EFF) Mr S Jafta (AIC).

Accompanying the committee was the Committee Secretary Miss A Boss, Committee Researcher Dr M Nicol, Committee Content Advisor, Mr N Kweyama, and Committee Assistant, Ms S Skhosana.

3.1.3 Guests in Attendance

NAME	POSITION	COMPANY
Adv T Mokoena	DG	DMR
Mr MMA Zondi	Deputy Chief Inspector of Mines and acting chairperson, MQA	DMR
Mr X Mbonambi	Acting Deputy Chief Inspector	DMR
Mr S Mabaso	Regional Manager: Gauteng	DMR
Mr R Nkambule	Chief Director	DMR
Ms M Maduka	Deputy Director: MEM	DMR
Ms R Masenya	Director: Mine Clousure	DMR
Mr F Nkuna	Acting Principal Inspector Of Mines	DMR
Ms M Liefnerink	CEO	Federation for Sustainable Environment (FSE)
Ms J Sherlock	Student	FSE
Mr N Zindela	Regional Manager: North West	DMR
Mr K Mhlongo	DGs Office	DMR
Mr K Matrose	DGs Office	DMR
Mr K Mateboge	PLO	DMR
Mr T Ngwenya	Principal Inspector	DMR
Mr S Mabaso	Regional Manager: Gauteng	DMR
Mt K Malefo	Acting Director SDM	DMR
Mr H Phumudzo	Deputy Director Mine Environment	DMR
Mr T Manakana	Deputy Director Mine Economics	DMR
Ms R Dyobiso	Senior Inspector of Mines	DMR
Mr C Murray	Business Rescue Practitioner	Sechaba Trust
Mr C Monyela	Business Rescue Practitioner	Sechaba Trust
Ms R Murray	Office Administrator	Sechaba Trust
Mr R Van Zyl	Financial Manager	Sechaba Trust
Ms N Mabelane	Marketing Manager	Masiye Administrators Cc
Mr M Tumi	Chairperson	NUMSA
Mr J White	Ops Manager	UASA
Mr M Moloji	Ops Manager	UASA
Mr C Rheeder	Regional	Solidarity
Mr P Richardson	CEO	Shiva Uranium Mine
Mr I B Marais	Mineral Resource Manager	Shiva Uranium Mine
Mr J Kruger	HR Manager	Shiva Uranium Mine
Mr P H van der Merwe	Mining Rights Officer	Shiva Mine
Mr R J Barnard	Mine Manager	Shiva Mine

4.1 Shiva Uranium: Presentation by BRPs

4.1.1 HISTORY

The current Business Rescue Practitioners, Cloete Murray and Chris Monyela were appointed following a Court Application brought by the Industrial Development Corporation (IDC) on Thursday, the 31st of May 2018. The IDC applied for the removal of the erstwhile Practitioners, Kurt Knoop and Louis Klopper. On the morning of the hearing, Knoop and Klopper resigned. This led to the appointment of Cloete Murray (31 May 2018) in terms of the Court Order. Chris Monyela was then appointed by the CIPC on Friday, 1 June 2018.

The new Business Rescue Practitioners immediately made arrangements to visit the mines, which happened on Monday, the 4th of June 2018.

4.1.2 MINING OPERATIONS

Shiva Gold: Hartbeesfontein, Klerksdorp

On arrival at the mine in Hartbeesfontein, the Practitioners found that the mining operations have ceased but that the employees were still on the mine. They met with mine management and employees present on the day. The employees were requested to form an Employees Committee in terms of the Act. They were advised that the mining operations were halted when the business rescue proceedings commenced in February 2018.

The Practitioners were made aware of the volatile security situation on the mine and the incidents that had occurred shortly before their appointment. They were also advised that a number of the electrical cables had been stolen and that there was no electrical supply to some parts of the mine.

The Practitioners are in the process of identifying suitable contractors who might be interested in mining the Hartbeesfontein mine in an attempt to establish an income stream. No firm offers have been received to date and this process continues.

Shiva Gold: Brakfontein Delmas

The BRP's explained the complex interconnections between the Shiva Gold mine in Klerksdorp and a coal mine that the company operated for another right-holder near Delmas. This contract was critical to Shiva Gold because it could earn the company immediate income, to deal with all its debts and responsibilities.

On arrival at the mine in Brakfontein, the BRPs met with the mine management and employees present on the day. The employees were requested to form an Employees Committee in terms of the Act.

The BRPs found that the mining operations had also ceased although there was a stockpile of coal next to the crushing plant. The mine manager also informed them that there was a Section 54 notice in place in respect of the Health and Safety aspects relating to some of the mining equipment being used on the mine. It should be noted that this mining equipment did not belong to Shiva but rather to a related company, Confident Concepts. These assets have in the meantime been sold by the Business Rescue Practitioners of that Company and have been removed from the mine. (This automatically lifted the notice).

The Practitioners, in the meantime, identified a suitable mining contractor which will start mining the Brakfontein mine in terms of a contractor's agreement to be concluded with him. This process was severely delayed because of the refusal and/or inability of the employees to agree among themselves to continue the mining operations. Action by the employees at Brakfontein has hindered the company from getting back on its feet.

As soon as the contractor's final agreement has been signed, the relevant appointments will be made and forwarded to the Department.

4.1.3 FINANCIAL POSITION

It was reported that the Company was currently in a severe financial predicament primarily because of the following reasons:

1. The refusal and/or inability of Eskom to pay the amounts due to Shiva Uranium via its ultimate owner, Tegeta, in terms of a sub-contractor agreement. The amount due is in the vicinity of

R9,5-million and notwithstanding various requests to both Tegeta and Eskom, this money had not been paid. The BPRs were advised that Eskom refuses to make payment on any of the amounts due to all the entities related to Tegeta.

2. The Practitioners require post-commencement finance in order to secure and preserve the assets of the company and to pay the salaries of the employees.
3. The Practitioners were led to believe that the IDC would provide post-commencement finance to allow them sufficient time to market and dispose of the two mines to the best benefit of all concerned. This post-commencement finance has however not been forthcoming. They are not aware of the reasons, although it was a decision of the IDC board.
4. The Practitioners have also not been successful in procuring post-commencement finance from any other source. The holding company, Oakbay Resources, is not in a position to provide post commencement finance as they have no transactional banking facility available in the country.
5. If no post-commencement finance could be procured by the end of September 2018, there was a very good likelihood that the Practitioners would have to apply to the High Court for the provisional liquidation of the company. This was said to be a very last resort and it would have a dramatic impact on employment and the communities on and around both the mines.

4.1.4 EMPLOYEES

There are 152 employees at Brakfontein and 200 employees at Hartbeesfontein. The employees have not been dismissed or retrenched and their employment contracts are still in place.

The employees on both mines have formed Employees' Committees who represent them. The Practitioners have not been in a position to pay the employees' salaries in full. The employees had been paid their June

salaries as well as a portion (30%) of their July salaries. The remainder of the July salaries as well as the August salaries would be paid as soon as possible.

The Practitioners communicate with the employees on a regular basis through a bulk sms system or via the Employees' Committees. The Practitioners have also engaged with the representative labour unions: AMCU (Brakfontein) and NUMSA (Hartbeesfontein).

4.1.5 SECURITY SITUATION

There is a large security contingent present at the Hartbeesfontein mine at a huge expense. This is mainly because of the incidents of cable theft and the illegal mining activities. The security contingent consists of stationary guards, mobile guards and a reaction capacity.

The security situation has calmed down considerably after the appointment of the new Practitioners with no major incidents. The three incidents (burning of a conveyor belt, burning of two transformers) have been reported to the SAPS and the mine management have met with the SAPS regarding it.

Regarding the allegations of the vandalizing of assets, these incidents occurred before the appointment of the present BRPs.

4.1.6 ENVIRONMENTAL RISK; HEALTH AND SAFETY

The environmental risk posed by the mine is minimal as there are no mining activities taking place.

Regarding the rehabilitation guarantee, the Practitioners have been notified by Guardrisk that the guarantee would be cancelled. After engaging with Guardrisk, they agreed to withdraw the notice and re-issue it in four months. The Practitioners are aware of the R38 million shortfall, but the company is not in a position to pay it. However, the physical challenges on the mine will be attended to in order to reduce the shortfall.

Regarding the section 54 notice issued by the Department for Brakfontein, the majority of the notice related to the equipment on the premises of the mine. As mentioned above, these vehicles were owned by Confident Concepts and have been sold. A letter will be forwarded to the purchasers in which the section 54 notice will be brought to their attention.

4.1.7 LEGAL CHALLENGES

The current Business Rescue Practitioners have been inundated with a number of legal challenges since their appointment from the previous shareholders/directors. This by enlarge relates to the appointment of Murray and Monyela. The one matter that has been adjudicated was found in their favor. There are currently two legal matters that still need to be adjudicated and although the Practitioners are confident of their legal positions, the legal costs are escalating, and the funds being diverted to the legal fees could have been better allocated to the critical expenses of the company.

4.1.8 SELLING OF THE MINES

Various companies / individuals have approached the Practitioners to purchase the mines. The Practitioners have, together with an outside forensic auditor, introduced a vetting process to which potential purchasers have to submit themselves. This process includes making available basic financial information such as the latest financial statements and external confirmation of funding. To date, not a single party that has contacted the Practitioners could provide the requisite information.

The Practitioners stated that the Shiva assets are contaminated due to the involvement of the Gupta's before the business rescue process commenced. A number of companies have indicated that they are not willing to purchase these assets for that reason alone. This will have a dampening effect on the ability of the Practitioners to sell the mines as going concerns and to procure post commencement funding. When and if the mines have been sold, the section 11 process in the MPRDA will follow.

The financial predicament makes it impossible to launch a comprehensive marketing campaign to dispose of the mines.

4.2 Presentation by DMR

4.2.1 Mining Right

The Regional Manager, North West, Mr N Zindela made a presentation. He started with the introduction saying Shiva Uranium was issued with mining rights in respect of various portions of farms situated in the Magisterial district of Klerksdorp. There is an approved section 11 application for Oakbay Resources (Pty) Ltd to acquire 100% of the entire issued share capital and loan accounts of Uranium One Africa Limited business and assets dated 09th April 2010. Uranium One Africa Limited was also the right holder at the time and there was a name change to Shiva Uranium hence the rights falls under Shiva Uranium.

Shiva Uranium has three mining rights issued in the North West Province under file reference numbers **228MR**, **400MR** and **401MR**. Mining Right **228** was issued on the 28th of October 2006 with a duration of up to October 2036 for gold ore and allied minerals, uranium ore and allied minerals, rare earths and monazite (heavy minerals) over various portions of the farms Hartbeestfontein 297 IP, Rhenosterhoek 299 IP, Ryneveld 300 IP, Bramley 301 IP, Syferfontein 303 IP, Syferfontein 333 IP, Rhenossterspruit 326 IP, Wolwerano 425 IP, Wolwerano 413 IP, Rietkuil 397, Rietkuil 414 IP.

Mining Right **400MR** was issued on the 10th of March 2011 and is valid until the 9th of March 2041 (30-year period), it allows the company to mine uranium and precious metals over the following farms; Rietkuil 397 IP, Rietkuil 414 IP, Wolwerand 413 IP and Wolwerand 425 IP. Mining Right **401MR** was issued on the 10th of March until the 9th of March 2041 for 30 years for uranium and precious metals over portion 44, 48, 49, 50, 51, 54, 55, 56, 57, 58, 59, 60, 61, 62, 73 of the Rietkuil Farm (397 IP).

Shareholding Structure

The shareholding structure of Shiva Uranium in respect of the three mining rights is as follows:

Oakbay Resources (PTY) Ltd	74%
Islandsite Investment 255 (PTY) Ltd	26%

Islandsite investment is made up of five shareholders namely Silver Heron Trade 14, Zim Holdings, Dixie Investments, Kyovert Holding who together hold 17.5% of the Islandsite Investment, while Mabengela Investments holds 45% of the Islandsite Investment, with the remainder being held by the MK War Veterans Association, Dominion Reefs Uranium Mine HDSA Community Trust, Aflase Workers Trust and Management.

4.2.2 Mining Works Program

Mining is executed through three declines and an incline namely dominion 1 and 2, Rietkuil and Rietkuil incline as per the approved Integrated Mine Works Programme. The production rate per annum (tpa) is 2400 000 tons, the initial production rate is 200 000 tons/month and was to increase to 400 000 tons/month when the mine has reached a steady state.

Geology of the Area:

The Uranium and Gold mineralization is hosted within two narrow, quartz pebble conglomerate units that are located within the lower sedimentary unit of the Dominion Group. The Dominion Group sedimentary and volcanic uncomfortably overly Archaean granites. There are two major areas under consideration are the Dominion Reef and Rietkuil areas. The lower and upper reefs are of major economic interest, with the middle reef being of a lesser economic importance, the economic horizons are outcropping in the Rietkuil and Dominions Reefs. A resource statement was compiled on the 30th of November 2009 by Mr Izak Bosman Marais (Mineral Resources Management certificate at Wits and is professionally registered). The uranium yield of the mine (Dominion Group) geology is 0.48 kg per ton and the total yield of the mineral is 90 Kilo Ton. With respect to gold the yield

is 1.04 gram per ton with a total gold content of 194 kg. According to the competent person's report the Rietkuil geological yield is 5.79 grams per ton which is equal to 661 658 ounces of gold in terms of the overall gold content.

4.2.3 Mining Operations

As per the report submitted in terms of section 28 of the MPRDA, the company undertook opencast mining, the production from the opencast gold section from July 2017 to 2018 April was 144 kg, for the same period 7kg of silver was produced and no uranium was produced. During the same period 211 people were employed by the operation together with 255 contractors. On the 30th of April 2018 there was no production.

4.2.4 Social and Labour Plan

Shiva Uranium Limited has one integrated Social and Labour Plan (SLP). The company's first Social and Labour Plan commenced in 2011 (which was due in 2016). The second SLP (2017 – 2021) has been submitted and approval is pending. The initial SLP is still active following section 93 order issued on 08 March 2018 on non-compliant elements in respect of Human Resource Development Programme, Employment Equity and Local Economic Development projects, the company submitted an action plan to address the non-compliance in response to Section 93.

4.2.5 Human Resource Development Compliance (Social and Labour Plan 2011 - 2016)

The company did not meet committed targets in respect of the following:

- Internal and external learnerships.
- Employee portable skills.
- Career progression.
- Mentorship.
- Bursaries.
- Internship.

At the time of the audit, the company's employment equity status was below the Mining Charter target of 40% HDSA in terms of top, senior and middle management.

Local Economic Development Projects Compliance (Social and Labour Plan 2011 – 2016).

The company is behind and did not complete implementation of the Enterprise Development Centre and Upgrading of Bakang Primary School. Furthermore, the company only implemented one project, namely Semogare Agricultural project. The project is however currently not operating, it consisted of six beneficiaries from Tigane Village with the produce sold to Matlosana Fresh Produce Market and the general public.

Housing and Living Conditions Compliance (Social and Labour Plans 2011 – 2016)

The company does not have employees living in hostels, the hostel buildings are used as work offices. There is no ownership scheme in place, the company pays transport allowance.

4.2.6 Environmental Compliance

Shiva Uranium (Pty) Ltd has a financial provision to the amount of R61 424 275 provided in a form of several insurance guarantees issued by Guard Risk Insurance Company Limited. In respect of the environmental liability report submitted, there is a shortfall amount of R38 594 383 which must be provided by the company. A compliance notice was issued to the company on the 20th of April 2018 to request a shortfall amount, however it has not been provided to date. A compliance notice was sent to the company dated the 11 April 2018 to instruct the company to provide the shortfall amount. A feedback letter was received from the company on the 09th of May 2018 indicating that the company is not in a position to provide such an amount based on their current financial status. On the 14th August 2018, this office has received a formal notification by Guardrisk insurance company stating their intension to withdraw Shiva Uranium Guarantees

after four (4) months from the date of notification (12 December 2018). The company was informed about Guardrisk's intention and was required to make alternative arrangements to provide financial provision within 60 days from the date which the letter was signed i.e. 30 August 2018.

4.2.7 Rehabilitation on site

The inspection conducted on the 30th June 2017 revealed that the company was not rehabilitating the disturbed environment in line with the approved EMP. The company was requested to provide the rehabilitation plan with target dates for implementation indicating how outstanding environmental liabilities will be dealt with (letter dated 27 July 2018), such report was never submitted to the Department. A follow up inspection was conducted on the 7th of March 2018 and the findings were that the rehabilitation was conducted in a very slow pace considering that a small portion of the disturbed areas was rehabilitated.

4.3 Members raised the following questions and concerns:

- Members wanted to know the nature of legal issues to be finalised.
- If there was some form of security towards environmental rehabilitation.
- Clarification on statements (contradiction) on employees. No retrenchments and no employees.
- What else has to be rescued in Shiva except employees. What other assets are there?
- Confused about what assets are there. What is the next step?
- IDC. Why the money has not been forthcoming.
- No prospects. How much do you think IDC will be able to recoup?
- More details why it is difficult to dispose assets in question.
- Non-operation of the mine does this not expose the operation to illegal mining.
- How often does BRP meet with DMR?
- Confusion about the non-availability of the plan.

- Purpose of appointing the BRP is to get the mine back into operational mode.
- Issue of payment of salaries for employees, timeframe.
- Does DMR have enough rehabilitation fund.
- Will you share in future the names of potential buyers and how long it will take to finalise the process?
- Relationship with unions. How often do you meet with them?
- IDC, go to court to get their R293 m. Can you share more information regarding this?
- Credibility of BRP. What is it as BRP, that the ones before were doing in the Shiva mine?
- Members wanted to know the process followed in appointing the BRPs, as well as demographics and credentials.
- Regarding Braakfontein, asset is held by Concept, what then becomes the role of the BRP.
- Estimated rehabilitation cost of this mine.
- Estimated rehabilitation cost of the mines under Tegeta /Oakbay.
- Is there a possibility that they will not be able to meet their rehabilitation obligations?
- What is the department doing on the matter of Shiva? Worried appointed Liquidators as BRP.
- Have you engaged IDC and what are they saying about the current situation?
- Clarity on the report referred by RM.
- Project infrastructure operations, RM not clear whether employees were retrenched or on 30 April 2018.
- Matlosana fresh produce market and general public. For how much was this project sold to Matlosana.
- Discussion for process on management for mine to operate. Clarity sought.
- Has DMR been in discussion with mine management on processes?
- Find a report of the previous BRP who were appointed before.
- Slide 21, those vetted are the one who showed interest to purchase the mines?
- You can't rescue, Tegeta group, Revoke licence.

- Why is there a shortfall in rehabilitation funds? How come that gap was allowed to exist?
- Down the line the department must tell the Committee what it has learnt or what is it learning. Can't get an indication that a license comes with responsibility and consequences.
- The Committee was concerned about the lack of implementation of the law and proposed that maybe in future they need to look at where it can be fixed.

4.4 Responses from the Department and BRP

- First legal challenge related to the appointment of current BRP. They contest that their appointment was not legal according to the legislation.
- Second one, labour, related to portion of unpaid wages.
- Current fixed deposit of R61m by Gourds risk. No one from the insurance companies is prepared to invest in replacement guarantees.
- Employment issue, except 3 suspended, no employees has been dismissed or suspended.
- Actively engaging with potential buyers of the mine. Business Rescue Plan has not been published yet, Mr Khumalo doesn't have funding.
- IDC finance, when appointed, was advised that IDC will provide finance, as for the reason not forthcoming, they don't have any idea.
- IDC made a loan of R250 m in 2011 to Shiva and it was never repaid. Interest portion was converted to equity under Oakbay Resources. When Shiva went into Business Rescue only R38 million was owed, R250 million is a contingent liability.
- Stockpile agreement to sell. The contractor did not physically remove the stock because of disruptions at the mine.
- Eskom owes money to Tegeta and has taken the issue of non-payment with Tegeta.
- When the BRP was appointed it made a financial plan which has not been approved yet.

- Illegal mining is the problem in Hartbeestfontein.
- Regular interaction with the DMR. There is a designated website for Shiva. communication and talks with employees is good. Held three mass meeting with the communities in Braakfontein though the community is divided.
- Salary issue is a big concern. As soon as we receive money, employees will be paid.
- IDC questioned the independence of initial BRP's. They were appointed by the Board of Directors.
- Moyane, the Liquidator, has been practising for 20 years. Mostly deal with labour issues. He was approached by NUM.

Department

- A concern was raised, given that the Committee had a meeting with the Minister in connection with this mine. Observation of BRP, Companies Act regards the process as a business ICU, which eventually leads to liquidation.
- Did not issue section 11 but issued section 93 and NEMA to top up.
- When the company has a shortfall, the department has to top up as creditors.
- Company has generally not been compliant with SLP.
- Vetting of potential buyers, BRP find out they do not have cash flows.
- Scenario analysis, not done.
- Retrenchments, error.
- DMR have funds for rehabilitation.
- Section 54 that was issued to Braakfontein for non-compliance of the machinery. They informed the department that that the machine was sold, if that is the case then section 54 falls away.
- IDC loan is a stand-alone loan, rehabilitation deals with environment. The total amount of the required financial provision for rehabilitation is R61 million, but there is a R38 million shortfall, still owed by the mine. DMR has a limited control during the business rescue stage.

- Whatever is produced will be sold to Matlosana market.
- The DMR has constant engagement with the BRP's to make sure that the mines are do not go into Liquidation.

5. Briefing by DMR on the Liquidation of Mintails

Mr S Mabaso, Regional Manager, Gauteng gave a summarised overview of the state of affairs at Mintails and responded to the questions raised by the Portfolio Committee on Mineral Resources. In terms of the legislation, National Environmental Management Act (NEMA) empowers the Minister to prevent pollution or ecological degradation of the environment or to rehabilitate dangerous occurrences by utilizing financial provision made by the holder of the relevant reconnaissance permission, prospecting right, mining right, retention permit or mining permit. The MPRDA provides that the right lapses upon final liquidation or sequestration, however the Palala Judgement, the Supreme Court of Appeal ruled that the right continues to exist.

With regards to ownership, Mintails SA subsidiary of Mintails Limited a public company listed in the Australian Securities Exchange., 74 % - Mintails Limited. 26 % - not allocated*.

* The 26% was previously held by Dikgoshi Pty Ltd an HDSA entity which was bought out due to differences. No replacement of the BEE ownership to date.

5.1 Mining Rights Operated by Mintails SA

	Ref No	Date Granted	Period (years)	Expiry Date	Status
West Wits Monarch	132MRC	08/09/2010	10	07/09/2020	Not operational (opencast)
Minerals and Mining Reclamation	133MRC	27/11/2012	10	26/11/2022	Not operational (underground)
Mogale Gold	206MRC	29/04/2014	15	28/04/2029	Operational (opencast and dumps)

The Mining Rights were granted but never issued due to shortfalls in Financial Provision and non-compliance with SLP.

5.1.1 MINTAILS AND THE MINING RIGHTS

- Mogale Gold (206MR) is 100% subsidiary of Mintails SA.
- Minerals and Mining Reclamation Services (133MR) is 100% subsidiary of Mintails SA.
- GP132MR was acquired from West Wits Mining (DRD), section 11 was lodged to transfer it to Mintails SA but was subsequently withdrawn due to lack of BEE.
- The entire Mintails operation has 260 permanent and around 500 contracting employees.
- Mogale is the one with higher potential since it has a plant where potential buyers have more interest but has the highest liability.

5.2 Environmental Liability and Financial Provision

Ref No	Liability	Amount Provided	Form of Provision	Shortfall
GP132MR	88 727 794.19	23 001 853.00	Trust Fund – DRB	65 727 794.19
GP133MR	13 678 265.00	0.00	-	13 678 265
GP206 MR	383 561 751.88	2 600 000.00	Bank Guarantee	380 961 751.88
Total	485 967 811,07	25 601 000.00		460 367 811.07

5.2.1 Environmental Liability and Financial Provision

- After numerous directives by the RM, the DG directed Mintails on 9/10/2014 to fully provide for GP 133MR with immediate effect and further relaxed the requirements by allowing a six months payment plan to fully provide for GP132MR and GP206MR in terms of MPRDA.
- Management changes in 2015 at Mintails disputed the liability, thus Mr Moolman the new CEO, appointed Golder Associates Africa, in 2016 and later appointed Digby Wells Environmental in 2018. Both consultants brought low liability figures which are tabled in the next slide.

5.2.2 Liability Quantified by Golder and Digby Wells

Consultant	Liability
Golder Report – Feb 2016	R258 749 771.00
Digby Wells Report – Mar 2018	R245 870.177.64

The DMR could not accept these figures as they were not compliant with the relevant Regulations.

5.2.3 OTHER COMPLIANCES (SLP & MWP)

- The company did not comply with Social and Labour Plan commitments on HRD, LED and **Portable skills** (much needed now) training despite numerous orders, the latest issued on 10/08/2017.
- Mintails has not complied with the Mining Work Program. They processed ore from third party clean-up operations which was not approved in the MWP. This was stopped through a directive on 29/03/2018 and the third parties were engaged and directed to take corrective measures and the company lamented this stoppage as a contributing factor to their financial crisis.
- Despite directives issued on 23/12/2015 and 12/09/2017, Mintails failed to submit audited financial statements for the past five years as required in terms of Sect 28 of the MPRDA the DMR to assess their financial performance.

5.2.4 Actions Taken

- The Department had numerous engagements with Mintails and sent several statutory notices to remedy these non-compliances, in response the company pleaded financial crisis and repeatedly requested extension of the deadlines with promises to comply.
- This matter was then referred to Compliance Section for further handling and possibly instituting prosecution to hold the directors liable.

5.2.5 Mintails 'Engagement with the Minister

- Around May 2018, Mintails requested DMR to approve the release of the rehabilitation trust funds guarantees (held by DRD Trust Fund) in order to rescue their cash flow crisis with the promise that they will replace the trust fund when the company gets into a healthy financial status. This was refused as it was against Section 24P read together with EIA Regulation 7 of the National Environmental Management Act.

- On 19 June 2018 on a meeting held with Mr Harbour, the major shareholder, Mr Lake, the Business Rescue Practitioner and Mr Moolman, the CEO of Mintails they were instructed to remedy the non-compliances with immediate effect and also submit a comprehensive business rescue plan before any request for assistance could be considered.

5.2.6 Provisional Liquidation

- On 31 July 2018 the BRP was instructed by the majority shareholders to apply for provisional liquidation which was granted on the 17th August 2018.
- Liquidators have been appointed and are currently engaging with the Department.
- The hearing for final liquidation is set for 18 September 2018.
- Upon announcement of liquidation, the Regional Manager conducted an inspection on 08/08/20158 to ascertain the status of liability on site and confirmed that an independent audit is require before accepting the liability as proposed.

5.2.7 DG's Engagement with Liquidators

- The DG met with the liquidators on 07/09/20185 to ascertain the status and the role the DMR can play to avoid the situation deteriorating to the level of Blyvoorzicht gold mine and Aurora.

The following interventions were requested from DMR:

- Allow paying the liability over the life of the mine in order to enable prospective buyers to afford the huge liability requirements.
- Request Eskom to extend the deadline for switching off the electricity supply set for Tuesday 11 September 2018 as this could result in a dire situation resulting in the assets being vandalised to a state of beyond recovery due to lack of security.

5.2.8 DG's Role after Engagement

- The DG wrote to Eskom CEO on the same day requesting extension of the cut-off date by 60 days, however Eskom responded by confirming a deadline of Wednesday, 12 September 2018 if no payment of R2m is made by 14:00.
- On the second request, the DG promised to explore the possible regulatory transcripts enabling the payment of Financial Provision in stages over the life of the mine and to revert back to the liquidators.
- DMR hoped that a determination/solution could be made to rescue the situation to avoid a humanitarian similar to the Blyvoor and Aurora.

5.3 Presentation on Mine Health and Safety Inspectorate

Mr F Nkuna outlined the presentation as follows; Health and Safety performance (mandatory Inspections and Audits, Health and Safety challenges (Liquidation), Legal Appointment, medical Examination and Explosives), Illegal Mining and impact of surrounding Communities.

It was reported that there were 2 reportable accidents that were dispatched to the Office of the DMR which was on May 2016, where an employee's finger caught on the conveyor belt gear box and July 2018 accident where the security personnel was gassed inside the security booth. Audits and Inspections have always been conducted for both surface and underground. All disciplines have participated in individual inspections.

5.3.1 The following were reported as Health and Safety challenges during liquidation:

- Mine Health and Safety Act to be maintained.
- Key Legal Appointments.
- Healthy and Safe Environment Sec 5.
- Records of Medical Surveillance Sec 15.

- Explosives Evacuation Chapter 4 Reg 4.2(1).
- Annual and Quarterly Environmental Reports Chapter 9.
- Survey plan underground and surface Chapter 17.
- Reportable accidents and incidents Chapter 21& 23.

5.3.2 The following were reported as Health and Safety challenges for Personnel:

- Appointment of Chief Executive Officer.
- General/Plant Manager.
- Electrical or Mechanical Engineer.
- Safety Officer.
- Health and Safety Representative.
- Security Personnel.
- Full or Part Time Occupational Medical Practitioner.

Whilst the plant is winding down or still functional key appointments should still be maintained.

5.3.3 The following were reported as Health and Safety Medicals challenges:

- Records of Medical Surveillance including Exit Medicals.
- Employees still within service medicals to continue.
- Employees leaving the service undergo Exit Medical Summary (Exit Audiogram, Exit X-Ray Lung Function, Biological Monitoring Occupational Diseases, Summary of Compensation).
- Records to be kept for more than 30 years and accessible to stakeholders and employees.

5.3.4 The following were reported as Health and Safety Explosive challenges:

When mine closure is intended or when mine is not being worked.

- Type of explosive.
- Quantities.

- Location of such explosive.
- Measures taken to safeguard persons from significant risk associated with explosives.

Engagements with Inspectors of Explosive with relocation for such to Supplier/s.

With regards to illegal mining, it was reported that illegal mining is happening at West Village between Randfontein and Krugersdorp. Incidents occurring on both underground outcrop and open pit areas, tailings facilities and general surface. Slime pipes being vandalised. Shafts being reopened by illegal miners. Incident with +50 trapped miners in Krugersdorp in 2017.

With regard to community impact, it was reported as follows:

- December 2013, community of Kagiso protested against Mogale Gold due to blasting at Princess pit. (cracking of House, Damaged roofing, Shattered windows, noise and dust during blasting).
- Drowning of Kids during School Holidays is common in the West Rand.
- Criminals disposing bodies in the Open Pits and shafts.
- Absence of securing is going to present SAPS with increased illegal mining activities.

5.4 Presentation by FSE

Ms Marriette Liefferink, CEO of Federation for sustainable Environment) made presentation on Mintails' Alleged Failure in Duty of Care. She started by giving the mining background.

The desiccated Tudor dam on the Mintails property has radioactivity measuring 16 times the regulatory limit, while the water in the Lancaster dam is acutely toxic, says Federation for a Sustainable Environment CEO Mariette Liefferink.

She said, there is no uncertainty that Mintails is responsible, Both the nuclear regulator and the department of Water Affairs found [the pollution] was because of irresponsible mining activities by Mintails.”

As reported by investigative environmental journalism unit Oxpeckers, Mintails recently applied for provisional liquidation, and this appears to allow it to shirk its R336m liability to rehabilitate the environment. The report prompted the parliamentary committee to step in.

Mintails Mining SA, majority owned by Australian listed group Mintails, mined in Krugersdorp without a valid mining licence, a social and labour plan, environmental management plan or the funds required to fulfil its obligations, (Mabaso).

Mintails had three mining rights applications granted, but they were never issued as it failed to comply with several conditions. “They couldn’t make provision for the environmental liability,” (Mabaso).

Mintails disputed its environmental liability and employed consultants, who offered estimates much lower than those of the department of mineral resources. It has not produced audited financial statements for the past five years.

Mintails employed 750 people, so the department gave the company many concessions to allow it to get its affairs in order. “Mintails management kept making promises but never came through,” (Mabaso).

Liefferink said she is very concerned there were no environmental management reports for the Krugersdorp operation. “If there were [none] the mine cannot mine, it’s unlawful,” she says. “If a mining right has been granted and not issued, the operations of the mine are unlawful or illegal. I think it’s a straightforward matter.”

In late 2015 Mintails went into business rescue, a provision of the Companies Act to rehabilitate financially distressed companies. In a letter to Mabaso in June, business rescue practitioner Dave Lake warned that he would soon have to apply for liquidation if the department did not assist him.

He explained that the rescue plan required the department to provide in writing its verbal agreement that Mintails could fund the environmental rehabilitation costs over the life of the mine. Written confirmation was needed to satisfy funders of the plan, Lake wrote. The confirmation was not forthcoming and Mintails was put into provisional liquidation.

Now it seemed the state will be left with the significant environmental problem to clean up, which it estimates at R460m, significantly higher than the amount stated by the closure plan. There is only R28m in the environmental rehabilitation trust fund lodged by the previous mining right holder.

The department says it has legal options, such as the prosecution of directors in their personal capacities, and shareholders. But both the department and the Federation for a Sustainable Environment are worried about backlogs at the National Prosecuting Authority.

She said It's very clear from the liquidation paper and business rescue plan that there was delinquency by the directors, she believed this allows the Companies and Intellectual Property Commission to deregister Mintails's directors.

The Companies Act does not allow the environment to be a creditor. That provision could be tackled at the Constitutional Court, Liefferink says.

5.5 Members raised the following Questions and Concerns

- Non-compliance by Mintails being it SLP, Environment. When the department received an application is there no way to ascertain that the company cannot comply?
- Open pits, what can the department do to have those pits closed?
- Delinquency of shareholders should be, who should have done that?
- Why questions were not answered, nor acknowledged by DMR?
- Members wanted to know the time frame to sorting case backlog with the NPA.

- Members were concerned about this issue cutting across many departments, who should have a plan to clean this huge mess?
- Value of the mine is invested in the Mineral right. Granting of mineral right is normally subjected to acceptance of environmental liability. Is that the legal requirement to transfer the whole of environmental liability?
- Several engagements and the company did not honour, what was the outcome of the compliance officer's engagements?
- BRP, when were they appointed and has the department met with them?
- Hope next time FSC and DMR can present what they are doing collaboration. .
- Clarity was sought on the BRP process and how it (process) ended up in Provisional Liquidation.
- Members requested the Audit report and revert back to the Committee.

5.6 The Department responded as follows:

- Engaged the liquidators last week Friday, indicated they have no money. Since they are 8 liquidators only paid one, Created tension amongst liquidators.
- Need to follow up with compliance office, to date, no feedback.
- Able to detect. Section 16 and 17 together 22 and 23. State that they need to prove that they have all financial capabilities. These were not new applications, these were conversions. At the time of application, they had financial capabilities.
- Did not approve EMP due to lack of financial abilities.
- Pits not in provision.
- Delinquency of management/shareholders. Have a backlog with NPA. Need to do a lot of training between DMR and NPA.
- Palala Judgement, seeing being abused by the industry. Focusing on section 56 c which is deregistration of the company.

- Mintails is not an easy company to deal with. One day you deal with a particular Director the next day he is removed.
- Lack of Acknowledgement letters, there has been communication between RM office and FSE.
- Splitting the liability, liability goes with the right according to the MPRDA.
- Contact with legal services. See if the directors cannot be held liable.
- If everything fails it becomes a liability of the state.

Marriette added that:

- She has a Dilemma as FSE between Company's Act and MPRDA.
- No single closure certificate in the Gold Waterlands by DMR.

UASA responded that:

- One meeting, employees were told there was no more work. Argument on BRP, reports were positive until the investor did not put the money.
- Notified by Master of High Court that operation in under liquidation. They are busy appointing liquidators.

6. Findings

The Committee made the following observations:

- It is clear that some mining companies are still operating without adequate financial provision for repairing damage caused to the environment by mining activities, if they suddenly close.
- Neither Shiva Uranium (Pty) Ltd and Mintails Mining SA (Pty) Ltd has saved all the money they were supposed to set aside under the law to pay for environmental rehabilitation. The shortfalls are R36.6-million for Shiva and R460-million for Mintails.
- The state will inherit these liabilities if the mines are finally liquidated.

- The DMR has failed to implement effectively and carry out the intentions of Parliament to ensure that all mines rehabilitate the damage they cause.
- Changes to the mining law were made by Parliament after 2002 to ensure that in mining, as elsewhere, the polluter must pay.
- The new laws have not proven effective in avoiding this situation where the state and the taxpayer still ends up paying for the environmental harm caused by mining.
- There is a lack of clarity on the rules for the Department of Mineral Resources when it comes to Business Rescue Practitioners. It seems there is non-application of the law resulting in a free for all.
- The DMR allowed Mintails to operate between 2012 and 2018, despite the fact that the Department had never approved the environmental management plans of the mine and had never issued the company with a mining right under the law.
- There is a huge regulatory gap regarding the financial provision of environmental rehabilitation of a mine during the process of business rescue.
- There is a lack of standardization by the DMR on how to relax environmental obligations of a mine during the business rescue stage.

7. Recommendations by the Committee

The Portfolio Committee on Mineral Resources having heard the presentation from all stakeholders listed above recommends the following:

- The DMR must identify clearly and specifically the gaps between mining, insolvency and company law that have led to this ongoing situation, where the polluter does not pay, it is the state that ends up paying.
- DMR should get specific legal opinion on these complex issues.

- The DMR must report to the Committee in Parliament on what it will do [or needs to do] differently in future to ensure that this situation does not continue.
- DMR must report on what efforts they have made to hold directors and shareholders of Shiva and Mintails liable for the environmental debts of these failed ventures.
- The DMR must actively ensure that the licensing of mines goes with responsibility and accountability.
- The DMR should further explore the regulatory gaps resulting from the business rescue process and come up with regulations that will ensure full environmental compliance during the period when a mine is experiencing financial distress.
- The DMR should design and implement standardized approach when dealing with the relaxation of environmental financial provisions for mines that are undergoing business rescue process.

Report to be considered.

National Council of Provinces

1. Report of the Select Committee on Economic and Business Development on the Competition Amendment Bill [B23B - 2018] (s75), dated 21 November 2018.

The Select Committee on Economic and Business Development, having considered the *Competition Amendment Bill [B23B -2018 (s75)*, referred to it, reports that it has agreed to the Bill without amendments.

Objectives of the Bill

The main objective of these amendments is to address two persistent structural constraints on the South African economy, namely, the high levels of economic concentration in the economy and the skewed ownership profile of the economy.

This is done through—

1. Strengthening or clarifying the provisions of the Act relating to prohibited practices, restricted horizontal and vertical practices, abuse of dominance and price discrimination and mergers;
2. Requiring special attention to be given to the impact of anti-competitive conduct on small and medium businesses and firms owned or controlled by historically disadvantaged persons;
3. Strengthening the provisions relating to market inquiries so that:
 - The outcomes of these inquiries result in action that promotes competition;
 - There is guidance on how to evaluate the adverse features of a market; and
 - Requiring special attention on small and medium businesses and firms owned by historically disadvantaged persons.
4. Providing the national executive with effective means of participating in competition related proceedings and the power to initiate market inquiries into a sector and to intervene in mergers that affect the national security interests of the Republic; and

5. Promoting the administrative efficacy of the Competition Commission, market inquiries and the Competition Tribunal.

Process followed by the Committee

The Competition Amendment Bill [B23B -2018 (s75), was referred to the Select Committee on Economic and Business Development on 26 October 2018. The Economic Development Department was invited to brief the Committee on 09 October 2018.

The Committee advertised the Bill for two weeks inviting all interested stakeholders to submit written submissions. Further, the advert indicated whether stakeholders would like to make oral submission.

The Committee facilitated public participation, and received 18 submissions prior to the closing date, and only one submission received after the closing date. All of the submissions were considered, and all submitters were invited to make oral submissions. Only 8 submitters availed themselves to make oral presentation and 11 submitters declined.

On 19 November 2018 Economic Development Department responded on the submissions received. On 21 November 2018 the Committee deliberated on the content of the Bill and considered the issues raised in the public participation period, and the Department's response thereto.

Having considered the matter, the Committee agreed to adopt the Bill without amendments.

The following section outline the Minority View:

Minority View

The Competition Amendment Bill gives both the Competition Commission and the line-function Minister considerable scope to try and reshape the economy by intervening in market structures.

The bill is wholly anathema to the DA's political philosophy and economic policy. Ostensibly, the bill aims to tackle two major structural challenges facing the South African economy: high levels of market concentration and racially skewed patterns of ownership.

This is a laudable objective, but competition legislation is not the right tool for tackling economic exclusion. Making the economy more inclusive doesn't revolve around breaking up large firms or using a regulator to create a new market structure. There is no guarantee that smaller players will enter the market. Economic inclusion should be about radically transforming our labour laws to create jobs. We should focus on improving access to capital and credit for unbanked entrepreneurs and cutting red tape for small businesspeople. None of this can be achieved by the competition regulators.

The Competition Amendment Bill puts too great a burden on the competition authorities to solve South Africa's economic problems. And it gives them far too much power to do so.

Alarming, Section 18A of the bill enables the President to appoint a committee with the power to decide whether an acquisition by a "foreign acquiring firm" is in the interests of national security. "National security" is too broadly defined and the section introduces a new (and, in all likelihood, onerous, murky process) for mergers involving foreign firms. This is frankly a mad and dangerous provision that is likely to create uncertainty in the and disincentives foreign investment.

- The bill gives the Commission authority to make binding orders (rather than just recommendations, as has been the case until now) after it has conducted market inquiries. The Commission will be empowered to remedy structural features believed to adversely affect competition in a market. In terms of the current Act, market inquiries are fairly informal and co-operative processes and this encourages a degree of transparency and collaborativeness. The Commission's new powers to impose potentially drastic remedies will create a more adversarial process.
- The amendments provide for the imposition of more onerous and comprehensive administrative penalties for all contraventions of the Act. Previously, only misconduct related to cartels and certain kinds of abuse of dominance would lead to an administrative penalty for a first-time offence. The removal of a 'yellow card' for contraventions that aren't cut-and-dried, and the introduction of a 'red card' for both

outright and potential violations, will make it difficult for companies to monitor compliance. This may stifle dynamic competition by efficient large firms.

- The bill's merger control provisions entrench and intensify the current trend to elevate so-called "public interest" considerations over pure competition concerns. This gives the competition authorities the power to range freely and proprietorially over the domain of industrial policy. The amendments now enable the Minister to participate on public interest grounds in all merger proceedings before the Tribunal, whereas before his participation was limited to involvement in intermediate and large mergers. This shift is indicative of a broader power-grab by the Minister.
- The bill's overriding concern with market concentration in merger control may lead to confusion and uncertainty when mergers are assessed. It may put those smaller players that do exist in concentrated markets at a disadvantage.
- The bill's abuse of dominance provisions could dis-incentivise medium-sized businesses from growing their market share.

In sum, the Competition Amendment Bill will have negative economic consequences. It will introduce regulatory uncertainty, increase the cost of doing business and deter foreign investment.

The DA will thus not support this Bill.

Report to be considered.

2. Report of the Select Committee on Land and Mineral Resources on the Procedure for Making Regulations: Consultations in terms of section 47(2) of the National Environmental Management Act, 1998 (Act No 107 of 1998): Regulations laying down the procedure to be followed for the adoption of Spatial Tools and Environmental Management Instruments, dated 20 November 2018.

The Select Committee on Land and Mineral Resources, having considered the Regulations laying down the procedure to be followed for the adoption of Spatial Tools and Environmental Management Instruments in terms of section 47(2) of the National Environmental Management Act, 1998 (Act No 107 of 1998), referred to it on 30 June 2018, reports that the Committee has concluded its deliberations thereon.

Report to be considered

3. Report of the Select Committee on Land and Mineral Resources, on the Marine Spatial Planning Bill [B 9D - 2017] (National Assembly – Section 76), dated 20 November 2018.

The Department of Environmental Affairs briefed the committee on 26 June 2018 on the *Marine Spatial Planning Bill [B 9D - 2017]*. The Bill was referred to the committee on 24 April 2018.

The Select Committee on Land and Mineral Resources, having deliberated on and considered the subject of the **Marine Spatial Planning Bill [B 9D - 2017]** (National Assembly – sec 76), referred to it and classified by the JTM as a section 76 Bill, agrees to the Bill.

Report to be Considered

4. Report of the Select Committee on Communications and Public Enterprises on the National Research Foundation Amendment Bill [B 23B – 2017] (National Assembly – sec 75), dated 20 November 2018:

The Select Committee on Communications and Public Enterprises, having considered the subject of the **National Research Foundation Amendment Bill [B 23B – 2017] (National Assembly – sec 75)**, referred to it, reports that it has agreed to the Bill.

Process followed by the Committee

The National Research Foundation Amendment Bill was referred to the Select Committee on Communications and Public Enterprises on 29 May 2018.

The Committee received a briefing from the Department of Science and Technology on Communications on 31 October 2018.

The Committee advertised the Bill inviting all interested stakeholders to submit written submissions, and requesting them to indicate whether they would like to make oral submissions to the Committee or not. The invitation was advertised over a period of three weeks, from 19 October to 9 November 2018, in national and regional newspapers in all 11 languages, as well as on the parliamentary website.

The Committee only received one written submission from the National Research Foundation, which was given an opportunity to present orally on 14 November 2018. This was followed by deliberations and clarity-seeking questions by members and responses thereto.

Report to be considered.

5. Report of the Select Committee on Communications and Public Enterprises on the Films and Publications Amendment Bill [B 37B – 2015] (National Assembly – sec 75), dated 20 November 2018:

The Select Committee on Communications and Public Enterprises, having considered the subject of the *Films and Publications Amendment Bill [B 37B – 2015] (National Assembly – sec 75)*, referred to it, reports that it has agreed to the Bill with proposed amendments, as follows:

CLAUSE 6

1. On page 6, in line 15, after “chairperson”, to insert “, and such chairperson must be a retired judge of the High Court of South Africa”.
2. On page 6, from line 18, to omit subsection (3).

CLAUSE 12

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Amendment of section 13 of Act 65 of 1996, as amended by section 15 of Act 3 of 2009

- 12.** Section 13 of the principal Act is hereby amended—
 - (a) by the substitution of subsection (1) of the following subsection:

“(1) The expenditure in connection with the performance of the functions, the exercise of the powers and the carrying out of the duties of the Board, Council, Appeal Tribunal, Enforcement Committee and an advisory panel shall be defrayed from money appropriated by Parliament for [**the**] that purpose.”; and

(b) by the insertion after subsection (1) of the following subsection:

“(1A) All monies lawfully acquired by the Board in the performance of its functions must be utilised to achieve the objects of this Act.”

CLAUSE 15

1. On page 11, from line 40, to omit subparagraphs (i) and (ii) and to substitute the

following subparagraphs:

“(i) explicit sexual conduct accompanied by explicit violence which violates or shows disrespect for the right to human dignity of any person;

(ii) bestiality, incest, rape or conduct or an act which is degrading of human beings;”.

CLAUSE 17

1. On page 12, from line 20, to omit subparagraphs (i) and (ii) and to substitute the following subparagraphs:

“(i) explicit sexual conduct accompanied by explicit violence which violates or shows disrespect for the right to human dignity of any person;

(ii) bestiality, incest, rape, conduct or an act which is degrading of human beings;”.

CLAUSE 19

1. On page 16, in line 6, to omit “two years” and to substitute “one year”.

CLAUSE 34

1. On page 22, in line 47, to omit “2015” and to substitute “2018”.

Process followed by the Committee

The Films and Publications Amendment Bill was referred to the Select Committee on Communications and Public Enterprises on 6 March 2018.

The Committee received a briefing from the Department of Communications on 15 August 2018. The Committee, acting in accordance with its constitutional obligation to facilitate public participation, invited interested parties to submit written comments on the Bill.

The Committee advertised the Bill inviting all interested stakeholders to submit written submissions, and requesting them to indicate whether they would like to make oral submissions to the Committee or not. The invitation was advertised over a period of two weeks, from 23 July to 3 August 2018, in national and regional newspapers in all 11 languages, as well as on the parliamentary website.

Due to the outcry from the interested parties who claimed that they did not see the advert in the newspapers, the Committee decided to allow the interested parties to send their submissions until the morning of the day of consideration of those written submissions, which was on 5 September 2018.

The Committee conducted public hearings on the Bill and all interested persons and organisations were given the opportunity to make oral submissions, followed by clarity-seeking questions by members and responses thereto.

During deliberations the opposition parties (Democratic Alliance and Economic Freedom Fighters) expressed their general objection to the Bill.

Report to be considered.

6. Report of the Select Committee on Communications and Public Enterprises on the Protection, Promotion, Development and Management of Indigenous Knowledge Bill [B 6B-2016] (National Assembly – sec 76), dated 20 November 2018

The Select Committee on Communications and Public Enterprises, having considered the *Protection, Promotion, Development and Management of Indigenous Knowledge Bill* [B 6B-2016] (National Assembly – sec 76), recommitted to it, reports that it has agreed to an amended version of the Bill [B 6D-2016].

The Committee reports further as follows:

The Protection, Promotion, Development and Management of Indigenous Knowledge Bill [B 6B-2016] was recommitted by the Council to the Select Committee on Communications and Public Enterprises on 7 November 2018.

Subsequently, the Committee met on 20 November 2018 to consider its report on the amended version of the Protection, Promotion, Development and Management of Indigenous Knowledge Bill [B 6D-2016] and recommends that the Council adopts the amended Bill.

Report to be considered.