

(30 May 2009 – to date)

[This is the **current** version and applies as from **30 May 2009** - i.e. the date of commencement of the Mine Health and Safety Amendment Act 74 of 2008 - **to date**]

## **MINE HEALTH AND SAFETY ACT 29 OF 1996**

*Government Notice 967 in Government Gazette 17242 dated 14 June 1996. Commencement date: 15 January 1997 for all sections with the exception of sections 86(2) and (3), which came into operation on 15 January 1998. [Proc. No.4, Gazette No. 17725, dated 15 January 1997].*

### **As amended by:**

*Government Notice R848 in Government Gazette 18078 dated 21 June 1997. Commencement date: 21 June 1997.*

*Government Notice R1317 in Government Gazette 18352 dated 10 October 1997. Commencement date: 10 October 1997.*

*Mine Health and Safety Amendment Act 72 of 1997 – Government Notice 1628 in Government Gazette 18488, dated 3 December 1997. Commencement date: 15 January 1998 [Proc. No. 2, Gazette No.18626, dated 15 January 1998].*

*Government Notice R612 in Government Gazette 18854 dated 24 April 1998. Commencement date: 24 April 1998.*

*Government Notice R906 in Government Gazette 23585 dated 2 July 2002, as corrected by Government Notice R1575 in Government Gazette 24168, dated 13 December 2002. Commencement date: 2 July 2002.*

*Skills Development Amendment Act 31 of 2003 - Government Notice 1673 in Government Gazette 25720 dated 14 November 2003. Commencement date: 14 November 2003.*

*Mineral and Petroleum Resources Development Act 28 of 2002 - Government Notice 1273 in Government Gazette 23922 dated 10 October 2002. Commencement date: 1 May 2004. [Proc. R25, Gazette No. 26264, dated 23 April 2004.]*

*Mine Health and Safety Amendment Act 74 of 2008 - Government Notice 428 in Government Gazette 32140 dated 17 April 2009. Commencement date: 30 May 2009 with the exception of sections 16 and 26. [Proc. 38, Gazette No. 32226, dated 12 May 2009.]*

*Publisher's Note:*

Prepared by:

*The principal Act has been amended by section 47 of Act 72 of 1997-*

- (a) *by the substitution for the expression "Chief Inspector", wherever it occurs, of the expression "Chief Inspector of Mines";*
- (b) *by the substitution for the expression "Government Gazette", wherever it occurs, of the expression "Gazette";*
- (c) *by the substitution for the expressions "owner", "owner or an employer", "owner or manager", "owner or the employer", "owner, manager", "management" and "an owner or employer", wherever they occur, of the expression "employer" ;*
- (d) *by the substitution for the expressions "owners" and "owners, employers and managers", wherever they occur, of the expression "employers";*
- (e) *by the substitution for the expression "manager", wherever it occurs, except in sections 3 and 4, of the expression "employer";*
- (f) *by the substitution for the expression "a manager", wherever it occurs, except in sections 3 and 4, of the expression "an employer"; and*
- (g) *by the substitution for the expression "managers' ", wherever it occurs, except in sections 3 and 4 of the expression "employers' ".*

*The principal Act has been amended by section 34 of Act 74 of 2008 by the substitution for the expression "permanent committee", wherever it occurs, of the expression "committee" or "committees".*

*The principal Act has been amended by section 34 of Act 74 of 2008 by the substitution for the expression "Minerals Act" wherever it occurs, of the expression "Mineral and Petroleum Resources Development Act".*

## **ACT**

**To provide for protection of the health and safety of employees and other persons at mines and, for that purpose-**

**to promote a culture of health and safety;**

**to provide for the enforcement of health and safety measures;**

**to provide for appropriate systems of employee, employer and State participation in health and safety matters;**

**to establish representative tripartite institutions to review legislation, promote health and enhance properly targeted research;**

**to provide for effective monitoring systems and inspections, investigations and inquiries to improve health and safety;**

**to promote training and human resources development;**

**to regulate employers' and employees' duties to identify hazards and eliminate, control and minimise the risk to health and safety;**

**to entrench the right to refuse to work in dangerous conditions; and**

**to give effect to the public international law obligations of the Republic relating to mining health and safety;**

**and to provide for matters connected therewith.**

*(English text signed by the President)*

*(Assented to 30 May 1996.)*

BE IT ENACTED by the Parliament of the Republic of South Africa as follows: -

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Prepared by:

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[An italicised word or phrase indicates that the word or phrase is defined in section 102 of this Act.]

### **CHAPTER 1**

#### **OBJECTS OF ACT**

#### **1. Objects of Act**

The objects of *this Act* are

- (a) to protect the *health* and *safety* of persons at *mines*;

- (b) to require *employers* and *employees* to identify *hazards* and eliminate, control and minimise the *risks* relating to *health* and *safety* at *mines*;
- (c) to give effect to the public international law obligations of the Republic that concern *health* and *safety* at *mines*;
- (d) to provide for *employee* participation in matters of *health* and *safety* through *health and safety representatives* and the *health and safety committees* at *mines*;
- (e) to provide for effective monitoring of *health* and *safety* conditions at *mines*;
- (f) to provide for enforcement of *health* and *safety* measures at *mines*;
- (g) to provide for investigations and inquiries to improve *health* and *safety* at *mines*; and
- (h) to promote
  - (i) a culture of *health* and *safety* in the mining industry;
  - (ii) training in *health* and *safety* in the mining industry; and
  - (iii) co-operation and consultation on *health* and *safety* between the State, *employers*, *employees* and their representatives.

## CHAPTER 2 HEALTH AND SAFETY AT MINES

### 2. Employer to ensure safety

- (1) The *employer* of every *mine* that is being worked must -
  - (a) ensure, as far as *reasonably practicable*, that the *mine* is designed, constructed and equipped -
    - (i) to provide conditions for safe operation and a *healthy* working environment; and
    - (ii) with a communication system and with electrical, mechanical and other equipment as necessary to achieve those conditions;
  - (b) ensure, as far as *reasonably practicable*, that the *mine* is commissioned, operated, maintained and decommissioned in such a way that *employees* can perform their work without endangering the *health* and *safety* of themselves or of any other person;



- (c) compile an annual report on *health and safety* at the *mine* including the statistics on *health and safety* that must be kept in terms of *this Act* and the annual medical report referred to in section 16; and
- (d) if the *employer* is a body corporate, and employs more than 50 *employees*, publish and distribute the report referred to in paragraph (c), in an appropriate form, to the body corporate's shareholders or members.

*(Section 2(1)(d) substituted by section 1 of Act 72 of 1997)*

- (2) The *employer* of a *mine* that is not being worked, but in respect of which a closure certificate in terms of the *Minerals and Petroleum Resources and Development Act [sic]* has not been issued, must take reasonable steps to continuously prevent injuries, ill-health, loss of life or damage of any kind from occurring at or because of the *mine*.

*(Section 2(2) substituted by section 1 of Act 74 of 2008)*

## **2A. Chief executive officer charged with certain functions**

- (1) Every *chief executive officer* must take reasonable steps to ensure that the functions of the *employer* as contemplated in *this Act*, are properly performed.
- (2) Without derogating from any responsibility or liability of the *chief executive officer* in terms of subsection (1), the *chief executive officer* may entrust any function contemplated in the said subsection to any person under the control of the *chief executive officer*, which person must act subject to the control and directions of the *chief executive officer*.
- (3) If the *employer* is a body corporate, the functions of the *chief executive officer* contemplated in subsections (1) and (2) may be performed by a member of the board of the body corporate designated by the board.
- (4) Subsections (1), (2) and (3) do not relieve an *employer* of any duty imposed on *employers* by *this Act*.
- (5) Every person appointed in terms of section 3 or 4(1) must perform their functions subject to the control and direction of the *chief executive officer* or the person contemplated in subsection (3).
- (6)
  - (a) The *employer* must inform the *Chief Inspector of Mines*, in writing, within seven days of the appointment of the *chief executive officer*.
  - (b) The information to the *Chief Inspector of Mines* include-
    - (i) the name of the *chief executive officer*;

- (ii) the nature of such person's function; and
- (iii) the name of persons who are *managers* under the supervision of the *chief executive officer*.

*(Section 2A(6) added by section 2 of Act 74 of 2008)*

*(Section 2A inserted by section 2 of Act 72 of 1997)*

### **3. Employer must appoint manager**

- (1) The *employer* of every *mine* that is being worked must -
  - (a) appoint one or more *managers* with the qualifications as may be *prescribed* to be responsible for the day to day management and operation of the mine, and if more than one *manager* is appointed, ensure that the *managers'* functions do not overlap;  
*(Section 3(1)(a) substituted by section 3 of Act 72 of 1997)*
  - (b) supply the *managers* with the means to perform their functions; and
  - (c) take reasonable steps to ensure that the *managers* perform their functions.
- (2) The appointment of a *manager* does not relieve the *employer* of any duty imposed on *employers* by *this Act* or any other law.
- (3) If no *manager* is appointed in terms of subsection (1), the *employer* must perform the functions of a *manager* in terms of *this Act*.

### **4. Employer may entrust functions to another person**

- (1) An *employer* may appoint any person except a *manager* to perform any function entrusted to the *employer* by sections 2 and 3 of *this Act*.  
*(Section 4(1) substituted by section 4 of Act 72 of 1997)*
- (2) An *employer* who appoints a person under subsection (1) must notify the *Chief Inspector of Mines* of that appointment within seven days, and must include in that notice -
  - (a) the name of the person appointed;
  - (b) the nature of the person's functions; and
  - (c) the names of the *manager* or *managers* over whom that person has control.

[4(2)-The *Chief Inspector of Mines* is appointed in terms of s. 48, and the *Chief Inspector of Mines'* functions are set out in s. 49.]

- (3) An *employer* who appoints a person under subsection (1) must –
- (a) supply each person appointed with the means to perform their functions; and
  - (b) take reasonable steps to ensure that they perform their functions.
- (4) The appointment of a person under subsection (1) does not relieve the *employer* of any duty imposed on *employers* by *this Act* or any other law.

## 5. Employer to maintain healthy and safe mine environment

- (1) As far as *reasonably practicable*, every *employer* must provide and maintain a working environment that is safe and without *risk* to the *health* of *employees*.
- (2) As far as *reasonably practicable*, every *employer* must -
- (a) identify the relevant *hazards* and assess the related *risks* to which persons who are not *employees* may be exposed; and
  - (b) ensure that persons who are not *employees*, but who may be directly affected by the activities at the *mine*, are not exposed to any *hazards* to their health and safety.

[5 - Negligent failure resulting in endangerment to a person at a mine is an offence. See s. 86 ]

*(Section 5 substituted by section 5 of Act 72 of 1997)*

## 6. Employer to ensure adequate supply of health and safety equipment

- (1) Every *employer* must -
- (a) supply all necessary *health and safety equipment and health and safety* facilities to each *employee*; and
  - (b) maintain, as far as *reasonably practicable*, that equipment and those facilities in a serviceable and hygienic condition.

*(Section 6(1) substituted by section 6(a) of Act 72 of 1997)*

- (2) Every *employer* must ensure that sufficient quantities of all necessary personal protective equipment are available so that every *employee* who is required to use that equipment is able to do so.
- (3) Every *employer* must take reasonable steps to ensure that all *employees* who are required to use personal protective equipment are instructed in the proper use, the limitations and the appropriate maintenance of that equipment.

*(Section 6(3) substituted by section 6(b) of Act 72 of 1997)*

[6 - Employees have a duty to use and take care of personal protective equipment and other health and safety facilities. See s. 22.

6 - Interference with health and safety facilities is an offence. See s. 84.

6 - Employees must not be made to pay for health and safety facilities. See s. 24.]

## **7. Employer to staff mine with due regard to health and safety**

(1) As far as *reasonably practicable*, every *employer* must -

*(Words preceding section 7(1)(a) substituted by section 7(a) of Act 72 of 1997)*

- (a) ensure that every *employee* complies with the requirements of *this Act*;
- (b) institute the measures necessary to secure, maintain and enhance *health and safety*;
- (c) provide persons appointed under subsections (2) and (4) with the means to comply with the requirements of *this Act* and with any instruction given by an *inspector*;  
*(Section 7(1)(c) substituted by section 7(b) of Act 72 of 1997)*
- (d) consider an *employee's* training and capabilities in respect of *health and safety* before assigning a task to that *employee*; and
- (e) ensure that work is performed under the general supervision of a person trained to understand the *hazards* associated with the work and who has the authority to ensure that the precautionary measures laid down by the *employer* are implemented.

[7(1) - Employees have a duty to comply with health and safety measures. See s. 22]

(2) The *employer* may appoint any person with qualifications as may be *prescribed* to perform any function of the employer in terms of *this Act*.

*(Section 7(2) substituted by section 7(c) of Act 72 of 1997)*

(3) The appointment of a person under subsection (2) does not relieve the *employer* of any duty imposed on *employers* by *this Act*.

(4) A *manager* may appoint any person with qualifications as may be *prescribed* to perform any function of the *manager* in terms of *this Act*.

*(Section 7(4) added by section 7(d) of Act 72 of 1997)*

(5) The appointment of a person under subsection (4) does not relieve the *manager* of any duty imposed on *managers* by this Act.

*(Section 7(5) added by section 7(d) of Act 72 of 1997)*

## **8. Employer must establish health and safety policy**

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- (1) Every *employer* must prepare a document that -
  - (a) describes the organisation of work;
  - (b) establishes a policy concerning the protection of *employees' health and safety* at work;
  - (c) establishes a policy concerning the protection of persons who are not *employees* but who may be directly affected by the activities at the *mine*; and  
*(Section 8(1)(c) substituted by section 8 of Act 72 of 1997)*
  - (d) outlines the arrangements for carrying out and reviewing policies.
- (2) The *employer* must consult with the *health and safety committee* on the preparation or revision of the document and policies referred to in subsection (1).

[8(2) - The requirements for establishing a health and safety committee are set out in Chapter 3]

- (3) The *employer* must -
  - (a) prominently and conspicuously display a copy of the document referred to in subsection (1) for *employees* to read; and
  - (b) give each *health and safety representative* a copy of the document.

## 9. Codes of practice

- (1) Any *employer* may prepare and implement a code of practice on any matter affecting the *health or safety of employees* and other persons who may be directly affected by activities at the *mine*.
- (2) An *employer* must prepare and implement a code of practice on any matter affecting the *health or safety of employees* and other persons who may be directly affected by activities at the *mine* if the *Chief Inspector of Mines* requires it.
- (3) A code of practice required by the *Chief Inspector of Mines* must comply with guidelines issued by the *Chief Inspector of Mines*.
- (4) The *employer* must consult with the *health and safety committee* on the preparation, implementation or revision of any code of practice.
- (5) The *employer* must deliver a copy of every code of practice prepared in terms of subsection (2) to the *Chief Inspector of Mines*.

- (6) The *Chief Inspector of Mines* must review a code of practice of a *mine* if requested to do so by a *registered trade union* with members at the *mine*, or a *health and safety committee* or a *health and safety representative* at the *mine*.
- (7) At any time, an *inspector* may instruct an employer to review any code of practice within a specified period if that code of practice -
- (a) does not comply with a guideline of the *Chief Inspector of Mines*; or
  - (b) is inadequate to protect the *health* or *safety* of *employees*.

## 10. Employer to provide health and safety training

- (1) As far as *reasonably practicable*, every *employer* must -
- (a) provide *employees* with any information, instruction, training or supervision that is necessary to enable them to perform their work safely and without *risk* to *health*; and
  - (b) ensure that every *employee* becomes familiar with work-related *hazards* and *risks* and the measures that must be taken to eliminate, control and minimise those *hazards* and *risks*.

[10(1) - Employees must not be made to pay for health and safety training. See s. 24]

- (2) As far as *reasonably practicable*, every *employer* must ensure that every *employee* is properly trained -
- (a) to deal with every *risk* to the *employee's health* or *safety* that -
    - (i) is associated with any work that the *employee* has to perform; and
    - (ii) has been recorded in terms of section 11;
  - (b) in the measures necessary to eliminate, control and minimise those *risks* to *health* or *safety*;
  - (c) in the procedures to be followed to perform that *employee's* work; and
  - (d) in relevant emergency procedures
- (3) In respect of every *employee*, the provisions of subsection (2) must be complied with -
- (a) before that *employee* first starts work;
  - (b) at intervals determined by the *employer* after consulting the *health and safety committee*;

- (c) before significant changes are introduced to procedures, mining and ventilation layouts, mining methods, plant or equipment and material; and
  - (d) before significant changes are made to the nature of that *employee's* occupation or work.
- (4) The *employer* must keep a record of all formal training provided in respect of each *employee* in terms of subsection (2).

*(Section 10(4) added by section 3 of Act 74 of 2008)*

- (5) All *mines* must submit a workplace skills plan and the annual training reports to the Mining Qualifications Authority.

*(Section 10(5) added by section 3 of Act 74 of 2008)*

## **11. Employer to assess and respond to risk**

- (1) Every *employer* must –
- (a) identify the *hazards* to *health* or *safety* to which *employees* may be exposed while they are at work;
  - (b) assess the *risks* to *health* or *safety* to which *employees* may be exposed while they are at work;
  - (c) record the significant *hazards* identified and *risks* assessed; and
  - (d) make those *records* available for inspection by *employees*.
- (2) Every *employer*, after consulting the *health and safety committee* at the *mine*, must determine all measures, including changing the organisation of work and the design of safe systems of work, necessary to –
- (a) eliminate any recorded *risk*;
  - (b) control the *risk* at source;
  - (c) minimise the *risk*; and
  - (d) in so far as the *risk* remains –
    - (i) provide for personal protective equipment; and
    - (ii) institute a programme to monitor the *risk* to which *employees* may be exposed.

- (3) Every *employer* must, as far as *reasonably practicable*, implement the measures determined necessary in terms of subsection (2) in the order in which the measures are listed in the paragraphs of that subsection.
- (4) Every *employer* must –
- (a) periodically review the *hazards* identified and *risks* assessed, including the results of *occupational hygiene* measurements and *medical surveillance*, to determine whether further elimination, control and minimisation of *risk* is possible; and
  - (b) consult with the *health and safety committee* on the review.
- (5) Every *employer* must -
- (a) conduct an investigation into every –
    - (i) accident that must be reported in terms of *this Act*;
    - (ii) *serious illness*; and
    - (iii) *health-threatening occurrence*;
  - (aA) commence an investigation referred to in paragraph (a) within 10 days from the date of such accident, *serious illness* or *health threatening occurrence*;  
*(Section 11(5)(aA) inserted by section 4(a) of Act 74 of 2008)*
  - (b) consult the *health and safety committee* on investigations in terms of this section;
  - (c) conduct an investigation in co-operation with the *health and safety representative* responsible for the *working place* in which the investigation takes place;
  - (d) on completion of each investigation, prepare a report that –
    - (i) identifies the causes and the underlying causes of the accident, *serious illness* or *health-threatening occurrence*;  
*(Section 11(5)(d)(i) substituted by section 4(b) of Act 74 of 2008)*
    - (ii) identifies any unsafe conditions, acts, or procedures that contributed in any manner to the accident, *serious illness* or *health-threatening occurrence*; and



(iii) makes recommendations to prevent a similar accident, *serious illness* or *health-threatening occurrence*; and

(e) deliver a copy of the report referred to in paragraph (d) within 30 days from the date of the accident, *serious illness* or *health-threatening occurrence* being investigated to the *Principal Inspector of Mines* and the *health and safety committee*. If there is no *health and safety committee* the *employer* must deliver a copy of the report to the *health and safety representative* responsible for the *working place*.

*(Section 11(5)(e) substituted by section 4(c) of Act 74 of 2008)*

(5A) An investigation in terms of subsection (5) must be completed within 30 days after the accident, *serious illness* or *health-threatening occurrence* being investigated or such longer period as the *Principal Inspector of Mines* may permit.

*(Section 11(5A) inserted by section 4(d) of Act 74 of 2008)*

(5B) The employer must notify the *Principal Inspector of Mines* of any accident or occurrence at a mine that results in-

- (a) the serious injury;
- (b) illness; or
- (c) death,

of any person, in order to allow the *Principal Inspector of Mines* to instruct an *Inspector* to conduct an investigation simultaneously with the *employer* as required in section 11(5)(a).

*(Section 11(5B) inserted by section 4(d) of Act 74 of 2008)*

(6) An investigation referred to in subsection (5) may be held jointly with an investigation conducted by an *inspector* in terms of section 60.

[11(6) - Section 60 empowers an inspector to investigate health and safety hazards if instructed by the Chief Inspector of Mines or requested by a trade union, a health and safety representative or a health and safety committee.]

(7) If there is no *health and safety committee* at a *mine*, the consultations required in this section must be held with -

- (a) the *health and safety representatives*; or
- (b) if there is no *health and safety representative* at the *mine*, with the *employees*.

(8) In the event of an incident in which a person died, or was injured to such an extent that he or she is likely to die, or suffered the loss of a limb or part of a limb, no person may without the consent of the

*Principal Inspector of Mines* disturb the site at which the incident occurred or remove any article or substance involved in the incident: Provided that an article or substance may only be removed if it is necessary to-

- (a) prevent any further incident;
- (b) remove the injured or dead; or
- (c) rescue any person from danger."

*(Section 11(8) added by section 4(e) of Act 74 of 2008)*

## **12. Employer to conduct occupational hygiene measurements**

- (1) The *employer* must engage the part-time or full-time services of a person qualified in *occupational hygiene* techniques to measure levels of exposure to *hazards* at the *mine* -
  - (a) if required to do so by *regulation* or a notice in the Gazette; or
  - (b) if, after assessing *risks* in terms of section 11(1), it is necessary to do so.
- (2) Every system of *occupational hygiene* measurements must -
  - (a) be appropriate, considering the *hazards* to which the *employees* are or may be exposed; and
  - (b) be designed so that it provides information that the *employer* can use in determining measures to eliminate, control and minimise the *health risks* and *hazards* to which *employees* are or may be exposed.
- (3) The *employer* must keep a *record* of all *occupational hygiene* measurements in terms of subsection (1) in a manner that can be linked as far as practicable to each *employee's record of medical surveillance*.

## **13. Employer to establish system of medical surveillance**

- (1) The *employer* must establish and maintain a system of *medical surveillance* of *employees* exposed to *health hazards* –
  - (a) if required to do so by *regulation* or a notice in the Gazette; or
  - (b) if, after assessing *risks* in terms of section 11(1), it is necessary to do so.
- (2) Every system of *medical surveillance* must –

- (a) be appropriate, considering the *health hazards* to which the *employees* are or may be exposed;
  - (b) be designed so that it provides information that the *employer* can use in determining measures to -
    - (i) eliminate, control and minimise the *health risk* and *hazards* to which employees are or may be exposed; or
    - (ii) prevent, detect and treat *occupational diseases*; and
  - (c) consist of an initial medical examination and other medical examinations at appropriate intervals.
- (3) Every *employer* who establishes or maintains a system of *medical surveillance* must –
- (a) engage the part-time or full-time services of –
    - (i) an *occupational medical practitioner*; and
    - (ii) .....

*(Section 13(3)(a)(ii) deleted by section 5(a) of Act 74 of 2008)*
  - (b) supply the practitioners with the means to perform their functions; and
  - (c) keep a *record of medical surveillance* for each *employee* exposed to a *health hazard*.
- (4) .....
- (Section 13(4) deleted by section 5(b) of Act 74 of 2008)*
- (4A) The employer must inform the *Principal Inspector of Mines*, in writing, within seven days of the appointment of the *occupational medical practitioner*;
- (Section 13(4A) inserted by section 5(c) of Act 74 of 2008)*
- (4B) The information submitted in terms of subsection (4A) must include-
- (a) the name of a [*sic*] *occupational medical practitioner*,
  - (b) his or her practice number; and
  - (c) whether the occupational medical practitioner is engaged full time or part time.
- (Section 13(4B) inserted by section 5(c) of Act 74 of 2008)*

- (5) An *occupational medical practitioner* must take every measure that is *reasonably practicable* to
- (a) promote the *health* and *safety* of *employees* at the *mine*; and
  - (b) assist *employees* in matters related to *occupational medicine*.
- (6) If any *employee* is declared unfit to perform work as a result of an *occupational disease*, the *employer* must conduct an investigation in terms of section 11(5).
- [13(6) - Employees have the right to challenge a decision that they are unfit to perform work. See s. 20]
- (7) If an *employee* is temporarily unfit to perform work as a result of any *occupational disease*, but there is a reasonable expectation that the *employee's health* will improve so that the *employee* can return to work, the *occupational medical practitioner* must record that fact and notify both the *employer* and *employee* of it.
- (8) The *employer* must –
- (a) retain the *records* referred to in sections 12(3), 13(3)(c) and 14(1) until the *mine* closes; and
  - (b) when the *mine* closes, deliver those *records* to the *Medical Inspector*.

#### **14. Record of hazardous work**

- (1) The *employer* at every *mine* must keep a service *record*, in the *prescribed* form, of *employees* at the *mine* who perform work in respect of which *medical surveillance* is conducted in terms of section 13.
- (2) The *employer* must deliver to the *Medical Inspector* a copy of the relevant part of the *record* kept in terms of subsection (1) –
- (a) when an *employee* whose name appears in that *record* ceases to be employed at that mine or
  - (b) when required to do so by the *Chief Inspector of Mines*.

#### **15. Record of medical surveillance**

- (1) An *employee's record of medical surveillance* kept in terms of section 13(3)(c) must be kept confidential and may be made available only –
- (a) in accordance with the ethics of medical practice;
  - (b) if required by law or court order; or

- (c) if the *employee* has consented, in writing, to the release of that information.

[15(1) - Improper disclosure of confidential information is an offence. See s. 87.

15(1) - Breach of confidence may result in an administrative sanction. See s. 39.]

- (2) Any person required to maintain an *employee's record of medical surveillance* must -

- (a) store it safely; and

- (b) not destroy it or dispose of it, or allow it to be destroyed or disposed of, for 40 years from the last date of the *medical surveillance* of that *employee*.

## 16. Annual medical reports

- (1) Every *occupational medical practitioner* at a *mine* must compile an annual report covering *employees* at that *mine*, giving an analysis of the *employees' health* based on the *employees' records of medical surveillance*, without disclosing the names of the *employees*.

- (2) The annual report compiled in terms of subsection (1) must be given to the *employer*, who must deliver one copy of the report to each of -

- (a) .....

*(Section 16(2)(a) deleted by section 9 of Act 72 of 1997)*

- (b) the *health and safety committees*, or if there is no *health and safety committee*, the *health and safety representatives*; and

- (c) the *Medical Inspector*.

## 17. Exit certificates

- (1) If an *employee* was subject to, or was required to be subject to, *medical surveillance* in terms of *this Act* and such *employee's* employment at a *mine* is terminated for any reason, the *employer* must arrange an exit medical examination of the *employee*.

*(Section 17(1) substituted by section 10 of Act 72 of 1997)*

- (2) The examination referred to in subsection (1) must be held before, or within 30 days after, termination of employment.

*(Section 17(2) substituted by section 6 of Act 74 of 2008)*

- (3) The *employee* must attend the examination.

- (4) The *occupational medical practitioner* conducting the examination must -
- (a) produce an exit certificate with respect to that *employee* indicating the results of all *medical surveillance* and the presence or absence of any *occupational disease*; and
  - (b) enter a copy of the exit certificate into the *employee's record of medical surveillance*.

## 18. Costs of examination

The *employer* must pay the costs of all clinical examinations and medical tests performed in terms of *this Act* unless *this Act* expressly provides otherwise.

## 19. Employees' right to information

- (1) An *employee* may request, and the *employer* must then provide, a copy of the *record* or of any part of it that –

- (a) is being kept in terms of sections 12(3) and 13(3)(c); and

[19(1)(a) - Section 12(3) instructs the employer to keep a record of all occupational hygiene measurements so that they can be linked to each employee's record of medical surveillance.

19(1)(a) - Section 13(3)(c) instructs every employer to keep a record of medical surveillance for each employee exposed to a health hazard.]

- (b) relates to that *employee*.

- (2) The *occupational medical practitioner* conducting an examination in terms of section 17 must provide the *employee* with a copy of the exit certificate prepared as a result of that examination.

## 20. Employee may dispute finding of unfitness to perform work

- (1) An *employee* may appeal to the *Medical Inspector* against –

- (a) a decision that the *employee* is unfit to perform any particular category of work; or
- (b) any finding of an *occupational medical practitioner* contained in an exit certificate prepared in terms of section 17.

- (2) An appeal under subsection (1) must –

- (a) be lodged with the *Medical Inspector* within 30 days of the relevant decision or finding, or such further period as may be *prescribed*; and

*(Section 20(2)(a) substituted by section 11 of Act 72 of 1997)*

- (b) state the grounds of the appeal.
- (3) When the *Medical Inspector* receives an appeal under subsection (1), the *Medical Inspector* must choose a *medical practitioner* who is not employed by the *employer* of the *employee*, and arrange for that *employee* to be re-examined by that *medical practitioner*, at the cost of the *Chief Inspector of Mines*.
- (4) The *medical practitioner* referred to in subsection (3) must report to the *Medical Inspector*, who must then consider the appeal and -
  - (a) confirm, set aside or vary the decision or finding of the *occupational medical practitioner*; or
  - (b) substitute any other decision or finding for that decision or finding.
- (5) Nothing in this section precludes an *employee* from –
  - (a) obtaining and paying for a medical opinion from any other *medical practitioner*; or
  - (b) pursuing any other legal remedy.
- (6) For the purposes of this section, "*employee*" includes any applicant for employment who has previously been employed at a *mine*.
- (7) An *employee* lodging an appeal under subsection (1) may not be dismissed on any grounds relating to unfitness to perform work, pending the outcome of the appeal.

*(Section 20(7) added by section 7 of Act 74 of 2008)*

## **21. Manufacturer's and supplier's duty for health and safety**

- (1) Any person who –
  - (a) designs, manufactures, repairs, imports or supplies any article for use at a *mine* must ensure, as far as *reasonably practicable* –
    - (i) that the article is safe and without *risk* to *health* and *safety* when used properly; and
    - (ii) that it complies with all the requirements in terms of *this Act*;
  - (b) erects or installs any article for use at a *mine* must ensure, as far as *reasonably practicable*, that nothing about the manner in which it is erected or installed makes it unsafe or creates a *risk* to *health* and *safety* when used properly; or

- (c) designs, manufactures, erects or installs any article for use at a *mine* must ensure, as far as *reasonably practicable*, that ergonomic principles are considered and implemented during design, manufacture, erection or installation.
- (2) Any person who bears a duty in terms of subsection (1) is relieved of that duty to the extent that is reasonable in the circumstances, if –
- (a) that person designs, manufactures, repairs, imports or supplies an article for or to another person; and
  - (b) that other person provides a written undertaking to take specified steps sufficient to ensure, as far as *reasonably practicable*, that the article will be safe and without *risk to health and safety* when used properly and that it complies with all prescribed requirements.
- (3) Any person who designs or constructs a building or structure, including a temporary structure, for use at a *mine* must ensure, as far as *reasonably practicable*, that the design or construction is safe and without *risk to health and safety* when used properly.
- (4) Every person who manufactures, imports or supplies any hazardous *substance* for use at a *mine* must –
- (a) ensure, as far as *reasonably practicable*, that the *substance* is safe and without *risk to health and safety* when used, handled, processed, stored or transported at a *mine* in accordance with the information provided in terms of paragraph (b);
  - (b) provide adequate information about –
    - (i) the use of the *substance*;
    - (ii) the *risks to health and safety* associated with the *substance*;
    - (iii) any restriction or control on the use, transport and storage of the *substance*, including but not limited to exposure limits;
    - (iv) the *safety* precautions to ensure that the *substance* is without *risk to health or safety*;
    - (v) the procedure to be followed in the case of an accident involving excessive exposure to the *substance*, or any other emergency involving the *substance*; and
    - (vi) the disposal of used containers in which the *substance* has been stored and any waste involving the *substance*; and



- (c) ensure that the information provided in terms of paragraph (b) complies with the provisions of the Hazardous Substances Act, 1973 (Act No. 15 of 1973).

[21(4)(c) - The Hazardous Substances Act provides for the control of substances which may cause ill health due to their toxic or flammable nature.

21 - Negligent failure resulting in endangerment to a person at a mine is an offence. See s. 86.]

## 22. Employees' duties for health and safety

Every *employee* at a *mine*, while at that *mine*, must –

- (a) take reasonable care to protect their own *health and safety*;
- (b) take reasonable care to protect the *health and safety* of other persons who may be affected by any act or omission of that *employee*;
- (c) use and take proper care of protective clothing, and other *health and safety* facilities and *equipment* provided for the protection, *health or safety* of that *employee* and other *employees*;

[22(c) - Employers have a duty to provide personal protective equipment for employees. See s.6. ]

- (d) report promptly to their immediate supervisor any situation which the *employee* believes presents a *risk* to the *health or safety* of that *employee* or any other person, and with which the *employee* cannot properly deal;
- (e) co-operate with any person to permit compliance with the duties and responsibilities placed on that person in terms of *this Act*; and
- (f) comply with *prescribed health and safety* measures.

[22 – It is an offence to fail to comply with a duty under this Act. See s. 91.

22 - It is an offence to discriminate against an employee who has asserted any right granted by this Act. See s. 83.]

## 23. Employees right to leave dangerous working place

- (1) The *employee* has the right to leave any *working place* whenever -
  - (a) circumstances arise at that *working place* which, with reasonable justification, appear to that *employee* to pose a serious danger to the *health or safety* of that *employee*; or
  - (b) the *health and safety representative* responsible for that *working place* directs that *employee* to leave that *working place*.

[23(1) - A health and safety representative has the right to direct an employee to leave a dangerous working place. See s. 30(1)(b).]

- (2) Every *employer*, after consulting the *health and safety committee* at the *mine*, must determine effective procedures for the general exercise of the rights granted by subsection (1), and those procedures must provide for –
- (a) notification of supervisors and *health and safety representatives* of dangers which have been perceived and responded to in terms of subsection (1);
  - (b) participation by representatives of *employer* and representatives of the *employees* in endeavouring to resolve any issue that may arise from the exercise of the right referred to in subsection (1);
  - (c) participation, where necessary, by an *inspector* or technical adviser to assist in resolving any issue that may arise from the exercise of the right referred to in subsection (1);
  - (d) where appropriate, the assignment to suitable alternative work of any *employee* who left, or refuses to work in, a *working place* contemplated in subsection (1); and  
*(Section 23(2)(d) substituted by section 12 of Act 72 of 1997)*
  - (e) notification to any *employee* who has to perform work or is requested to perform work in a *working place* contemplated in subsection (1) of the fact that another *employee* has refused to work there and of the reason for that refusal.
- (3) If there is no *health and safety committee* at a *mine*, the consultation required in subsection (2) must be held with –
- (a) the *health and safety representatives*; or
  - (b) if there is no *health and safety representative* at the *mine*, with the *employees*.
- (4) The *Minister*, by notice in the *Gazette*, must determine minimum requirements for the procedures contemplated in subsection (2)  
*(Section 23(4) added by section 8 of Act 74 of 2008)*

[23 - It is an offence to discriminate against an employee who has asserted any right granted by this Act. See s. 83. ]

#### **24. Employees not to pay for safety measures.**

No person may make any deduction from an *employee's* wages, or permit an *employee* to make any payment to any person, in respect of anything which the *employer* is obliged to provide or to do in terms of *this Act* in the interest of the *health and safety* of an *employee*.

### **CHAPTER 3 HEALTH AND SAFETY REPRESENTATIVES AND COMMITTEES**

## 25. Health and safety representatives and committees

- (1) Every *mine* with 20 or more *employees* must have a *health and safety representative* for each shift at each designated *working place* at the *mine*.

[25(1) - The process for designating working places is set out in s. 27.]

- (2) Every *mine* with 100 or more *employees* must have one or more *health and safety committees*.

- (3) A *health and safety representative* or a member of a *health and safety committee* does not incur any civil liability only because of doing or failing to do something which a *health and safety representative* or a member of a *health and safety committee* may do or is required to do in terms of *this Act*.

[25(3) - It is an offence to fail to do anything required by this Act. See s. 91.]

## 26. Negotiations and consultations before appointment of representatives

- (1) The *employer* of any *mine* where there must be a *health and safety representative* in terms of section 25 must meet, within the *prescribed* period, with the *representative trade union* of the *mine* to enter into negotiations to conclude a collective agreement concerning –

- (a) the designation of *working places*;
- (b) the number of full-time *health and safety representatives*;
- (c) the election or appointment of *health and safety representatives*;
- (d) the terms of office of *health and safety representatives* and the circumstances and the manner in which they may be removed from office;
- (e) the manner in which vacancies are to be filled;
- (f) the manner in which *health and safety representatives* must perform their functions in terms of *this Act*;
- (g) the procedures for the effective exercise of the right to withdraw from serious danger in terms of section 23;
- (h) circumstances and the manner in which meetings referred to in sections 30(1)(i) and 31(2) must be held;

[26(1)(h) - Section 30(1)(i), allows a health and safety representative to attend any meeting of a health and safety committee when appropriate. Section 31(2), requires an employer to provide reasonable time and facilities for employees to meet monthly with their health and safety representative.]

- (i) the facilities and assistance that must be provided to a *health and safety representative* in terms of section 31(3);

[26(1)(i) - Section 31(3), requires an employer to provide health and safety representatives with the facilities, assistance and training necessary to enable them to function effectively.]

- (j) the training of *health and safety representatives*;

- (k) a procedure that provides for the conciliation and arbitration of disputes arising from the application or the interpretation of the collective agreement or any provision of this Chapter;

*(Section 26(1)(k) substituted by section 13(a) of Act 72 of 1997)*

- (l) any *prescribed* matter; and

- (m) any other matter which the parties believe will promote *health and safety* at the *mine* or *mines* concerned.

- (2) Before concluding a collective agreement referred to in subsection (1) with the *representative trade union*, the *employer* must consult on the matters referred to in that subsection with all other *registered trade unions* with members at that *mine*.

- (3) A collective agreement referred to in subsection (1) may include two or more *employers* as parties to the agreement.

- (4) To the extent that an agreement concluded in terms of subsection (1) deals with any matter regulated by this Chapter or by any *regulation* regarding any matter regulated by this Chapter, the provisions of this Chapter or such *regulation* do not apply.

*(Section 26(4) substituted by section 13(b) of Act 72 of 1997)*

- (5) The provisions applicable to collective agreements in terms of the *Labour Relations Act*, read with the changes required by the context, apply to agreements concluded in terms of subsection (1).

[26(5) - See Part B of Chapter 3 of the Labour Relations Act.]

- (6) If there is no *representative trade union* at the *mine*, the *employer* must within the *prescribed* period -

- (a) consult with the *registered trade unions* with members at the *mine* on the matters referred to in subsection (1); and

- (b) endeavour to reach agreement on the number of full-time *health and safety representatives* at the *mine*.

- (7) If there is no *registered trade union* with members at the *mine*, the *employer* must, within the *prescribed* period -

- (a) consult with the *employees* or any elected representative of the *employees* on the matters referred to in subsection (1); and
  - (b) endeavour to reach agreement on the number of full-time *health and safety representatives* at the *mine*.
- (8) A dispute exists if either –
- (a) no collective agreement in terms of subsection (1) is concluded on the number of full-time *health and safety representatives* at a *mine*; or
  - (b) no agreement is reached in terms of either subsection (6)(b) or (7)(b).
- (9) When a dispute exists in terms of subsection (8), any party to the dispute may refer it to the *Commission*.
- (10) When a dispute is referred to the *Commission* under subsection (9), the *Commission* must attempt to resolve it through conciliation.
- (11) If a dispute remains unresolved, any party to the dispute may request that it be resolved through arbitration, in which case the *Commission*, taking *into* account the guidelines in Schedule 1, must determine the number of full-time *health and safety representatives*.
- (12) Nothing in this section precludes the *employer* from consulting with any *employee* who is not a member of a *registered trade union* or any representative of those *employees* concerning the matters referred to in subsection (1).

## **27. Designation of working places.**

- (1) If a collective agreement is concluded after the negotiations and consultations referred to in section 26, the *employer* must designate *working places* at the *mine* in accordance with that agreement.
- (2) If no collective agreement is concluded after the negotiations and consultations referred to in section 26, the *employer* must designate *working places* at the mine so that –
- (a) every *working place* at the *mine* is designated;
  - (b) no *health and safety representative* is responsible for more than 100 *employees*; and
  - (c) no *health and safety representative* is responsible for more than 50 *employees* if the designated *working place* includes separate *working places*.

## 28. Qualifications of representatives.

(1) To qualify to serve as a *health and safety representative* referred to in section 25(1), an *employee* must -

(a) be employed in a full-time capacity in the designated *working place*; and

(b) be acquainted with conditions and activities at the designated *working place*.

[28(1) - Section 25(1), stipulates that every mine with 20 or more employees must have a health and safety representative for each shift at each designated working place.]

(2) To qualify to serve as a full-time *health and safety representative* an *employee* must –

(a) be employed in full-time capacity at the *mine*;

(b) comply with any other qualifications which may be –

(i) agreed by a *health and safety committee*; or

(ii) *prescribed*.

## 29. Election and appointment of representatives

(1) At a *mine* referred to in section 25(1), the *employees* in a designated *working place* may elect from among themselves *health and safety representatives*.

(2) The *employees* at the *mine* may elect from among themselves any full-time *health and safety representatives* that may be agreed or determined in terms of section 26.

[29(2) - Section 26, deals with the election or appointment of health and safety representatives.]

(3) The elections referred to in subsections (1) and (2) must be conducted in the *prescribed* manner.

(4) The *employees* elected as representatives in terms of this section must be appointed by the *employer* in the *prescribed* manner.

## 30. Rights and powers of representatives

(1) A *health and safety representative* may –

(a) represent *employees* on all aspects of *health and safety*;

- (b) direct any *employee* to leave any *working place* whenever circumstances arise at that *working place* which, with reasonable justification, appears to the *health and safety representative* to pose a serious danger to the *health* or *safety* of that *employee*;

*(Section 30(1)(b) substituted by section 14 of Act 72 of 1997)*

- (c) assist any *employee* who has left a *working place* in terms of section 23;

[30(1)(c) - Section 23, empowers an employee to leave any dangerous working place and requires every employer to follow certain procedures in this regard.]

- (d) identify potential *hazards* and *risks* to *health* or *safety*;
- (e) make representations or recommendations to the *employer* or to a *health and safety committee* on any matter affecting the *health* or *safety* of *employees*;
- (f) inspect any relevant document which must be kept in terms of *this Act*;
- (g) request relevant information and reports from an *inspector*;
- (h) with the approval of the *employer*, be assisted by or consult an adviser or technical expert who may be either another *employee* or any other person;
- (i) attend any meeting of a *health and safety committee* –
  - (i) of which that representative is a member; or
  - (ii) which will consider a representation or recommendation made by that representative;
- (j) request –

- (i) an *inspector* to conduct an investigation in terms of section 60; or

[30(1)(j)(i) - Section 60, requires an inspector to investigate serious health and safety contraventions.]

- (ii) the *Chief Inspector of Mines* to conduct an inquiry in terms of section 65;

- (k) participate in consultations on *health* and *safety* with -
  - (i) the *employer* or person acting on behalf of the *employer*; or
  - (ii) an *inspector*;
- (l) participate in any *health* and *safety* inspection by -
  - (i) the *employer* or person acting on behalf of an employer; or

(ii) an *inspector*;

[30(1)(l)(ii) - Inspections are carried out by inspectors acting under section 50(2)(e).]

- (m) inspect *working places* with regard to the *health* and *safety* of *employees* at intervals agreed with the *employer*;
- (n) participate in any internal *health* or *safety* audit;
- (o) investigate complaints by any *employee* relating to *health* and *safety* at work;
- (p) examine the causes of accidents and other dangerous occurrences in collaboration with the *employer* or person acting on behalf of the *employer*;
- (q) visit the site of an accident or dangerous occurrence at any reasonable time;
- (r) attend a post-accident inspection;
- (s) co-operate with the *employer* in the conducting of investigations in terms of section 11(5);

[30(1)(s) - Section 11 (5), requires every employer working in co-operation with a health and safety representative to investigate health threatening situations. Section 11 (6) provides that this investigation may be conducted jointly with an inspector.]

- (t) participate in an inquiry held in terms of section 65; and
- (u) perform the functions –
  - (i) agreed by the *health and safety committee*; or
  - (ii) *prescribed*.

(2) The rights and powers referred to in subsection (1) apply to *health and safety representatives* referred to in section 25(1) only in respect of the *working places* for which they are responsible.

(3) If a *health and safety representative* requests information or reports under subsection (1)(g), the *inspector* must supply the representative with the information or reports in their possession.

[30(3) - Section 25(1), stipulates that every mine with 20 or more employees must have a health and safety representative for each shift at each designated working place.]

(4) An employer may not unreasonably withhold the approval required in terms of subsection (1)(h).

(5) A *health and safety representative* intending to exercise the right to inspect *working places* under subsection (1)(m) must –



- (a) give the *employer* reasonable notice of the inspection; and
  - (b) permit the *employer* to participate in the inspection.
- (6) *Health and safety representatives* are entitled to perform their functions and to receive training during ordinary working hours.
- (7) Any time reasonably spent by a *health and safety representative* for a purpose referred to in subsection (6) must be considered for all purposes to be time spent carrying out the employment duties of that representative.

**31. Duty to compensate and assist representatives.**

- (1) The *employer* must pay every full-time *health and safety representative* appropriate remuneration at least equal to the remuneration the representative earned immediately before being appointed as a full-time *health and safety representative*.
- (2) The *employer* must provide reasonable time and facilities for *employees* to meet monthly with their *health and safety representatives* in order to consider –
- (a) *health and safety* in their *working places*; and
  - (b) reports by the representatives on the performance of their functions.
- (3) The *employer* must provide *health and safety representatives* with -
- (a) the facilities and assistance reasonably necessary to perform their functions;
  - (b) training that is reasonably required to enable them to perform their functions; and
  - (c) time off from work, without loss of remuneration, to attend any training course that is agreed or *prescribed*.
- (4) Unless otherwise agreed, the assistance referred to in subsection (3)(a) does not include any costs associated with advisers or independent experts contemplated in either section 30(1)(h) or section 36(1)(g).
- (5) On the completion of a term of office as a full-time *health and safety representative*, the *health and safety representative* is entitled to –
- (a) employment in the same position held immediately before being appointed as a full-time *health and safety representative*; or

- (b) employment in a position that is at least as favourable as the position held immediately before being appointed a full-time *health and safety representative*.

### 32. Duty to inform representatives

Every *employer* must notify the *health and safety representatives* concerned and, if there is a *health and safety committee*, the *employee co-chairperson* of that committee –

- (a) in good time, of inspections, investigations or inquiries of which an *inspector* has notified the *employer*; and
- (b) as soon as practicable, of any accident, *serious illness* or *health-threatening occurrence*, or other dangerous event.

### 33. Negotiation and consultation on establishment of committees.

- (1) The *employer* of any *mine* in respect of which a *health and safety committee* must be established in terms of section 25(2), must meet, within the *prescribed period*, with the *representative trade union* at the *mine* to enter into negotiations to conclude a collective agreement concerning -
  - (a) the number of *health and safety committees* to be established at the *mine* and the *working places* for which they will be responsible;
  - (b) the number of *employer* and *employee* representatives on the committees;
  - (c) the election and appointment of members of *health and safety committees*;
  - (d) the terms of office of members of the *health and safety committee* and the circumstances and the manner in which the members may be removed from office;
  - (e) the manner in which vacancies are to be filled;
  - (f) the circumstances and the manner in which meetings may be held;
  - (g) the facilities and assistance which must be provided to *health and safety committees* in terms of section 37(a); and
  - (h) a procedure that provides for the conciliation and arbitration of disputes arising from the application or interpretation of the collective agreement or any provision of this Chapter.

*(Section 33(1)(h) substituted by section 15(a) of Act 72 of 1997)*

[33(1) - Section 25(2), provides that every mine with 100 or more employees must have one or more health and safety committees.]

- (2) Before concluding a collective agreement referred to in subsection (1) with the *representative trade union*, the *employer* must consult on the matters referred to in that subsection with all other *registered trade unions* with members at that *mine*.
- (3) A collective agreement referred to in subsection (1) may include two or more *employers* as parties to the agreement.
- (4) To the extent that an agreement concluded in terms of subsection (1) deals with any matter regulated by this Chapter or by any *regulation* regarding any matter regulated by this Chapter, the provisions of this Chapter or such *regulation* do not apply.

*(Section 33(4) substituted by section 15(b) of Act 72 of 1997)*

- (5) The provisions applicable to collective agreements in terms of the *Labour Relations Act*, read with the changes required by the context, apply to agreements concluded in terms of subsection (1).

[Section 33(5) - See Part B of Chapter 3 of the Labour Relations Act.]

- (6) If there is no *representative trade union* at the *mine*, the *employer* must consult, within the *prescribed* period, with the *registered trade unions* with members at the *mine* on the matters referred to in subsection (1).
- (7) If there is no *registered trade union* with members at the *mine*, the *employer* must, within the *prescribed* period, consult with the *employees* or any elected representatives of the *employees* on the matters referred to in subsection (1).
- (8) The negotiations and consultations referred to in this section may be held at the same time as those referred to in section 26.

#### **34. Establishment of health and safety committees**

- (1) If a collective agreement is concluded in terms of section 33(1), *health and safety committees* must be established in terms of that agreement.
- (2) If no collective agreement is concluded in terms of section 33(1), the *employer* must establish *health and safety committees* after the consultation referred to in section 33(6) or (7) and in accordance with this section and the *regulations*.
- (3) A *health and safety committee* must consist of –
  - (a) at least four *employee* representatives; and

- (b) a number of *employer* representatives equal to or less than the number of *employee* representatives.
  
- (4) The *health and safety representatives* must appoint the *employee* representatives on the *health and safety committee*. The *employee* representatives must be -
  - (a) broadly representative of the *working places* at the mine; and
  - (b) *employees* at that *mine*.
  
- (5) No more than two of the *employee* representatives may be appointed from full-time *employees* who are not *health and safety representatives*, unless all of the *health and safety representatives* have been appointed to the committee and there are still *employee* committee positions to be filled.
  
- (6) The *employer* must appoint the *employer* representatives on the *health and safety committee*. The persons appointed must include persons who have authority to develop and implement *health and safety* policies at the *mine*.

### **35. Committee procedures.**

- (1) The *employee* and *employer* representatives on a *health and safety committee* must each elect a chairperson from their number. Unless otherwise agreed by the committee, the two chairpersons must alternate as the presiding chairperson of the committee.
  
- (2) Unless otherwise agreed by a *health and safety committee*, the committee must meet at least once a month.
  
- (3) A *health and safety committee* may determine its own rules and procedures.
  
- (4) Persons other than *employee* or *employer* representatives may be invited to attend meetings of the *health and safety committee* and to participate in its proceedings.

### **36. Rights and powers of health and safety committee**

- (1) A *health and safety committee* may -
  - (a) represent *employees* on all aspects of *health and safety*;
  - (b) participate in consultations on any *health and safety* matter listed in the Schedule referred to in section 97(2);

[36(1)(b) - Section 97(2), empowers the Minister after consulting the Council to publish a notice in the Gazette that adds a further Schedule containing matters in respect of which health and safety committees may consult.]

- (c) request the *Chief Inspector of Mines* to review any code of practice;

[36(1)(c) - The rules governing codes of practice are set out in s. 9.]

- (d) request relevant information from any person who is required, in terms of *this Act*, to provide that information to the committee;

- (e) agree on additional qualifications or functions of *health and safety representatives*;

- (f) request –

- (i) an *inspector* to conduct an investigation in terms of section 60; or

[36(1)(f)(i) - Section 60, requires an inspector to investigate serious health and safety contraventions.]

- (ii) the *Chief Inspector of Mines* to conduct an inquiry in terms of section 65;

[36(1)(f)(ii) - Section 65, requires the Chief Inspector of Mines to direct an inspector to conduct an inquiry into the death of any person and into any health and safety contraventions.]

- (g) with the approval of the *employer*, be assisted by or consult an adviser or a technical expert who may be either another *employee* or any other person;

- (h) take reasonable time to prepare for each meeting of the committee; and

- (i) take reasonable time to report on meetings of the committee to the *health and safety representatives* at the *mine*.

(2) No *employer* may unreasonably withhold the approval required in terms of subsection (1)(g).

(3) Members of *health and safety committees* are entitled to perform their functions and to receive training during ordinary working hours.

(4) Any time reasonably spent by a member of a *health and safety committee* for a purpose referred to in subsection (3) must be considered for all purposes to be time spent carrying out the employment duties of that member.

### **37. Duty to support committee.**

The *employer* must –

- (a) provide the *health and safety committee* with the facilities and assistance reasonably necessary to perform its functions;

- (b) supply the *health and safety committee* with the annual report referred to in section 2(1)(c) and any information necessary to perform its functions.

[37(b) - Section 2(1)(c), requires the employer to compile an annual report on health and safety at the mine.]

### 38. Disclosure of information

- (1) Whenever an employer, *inspector* or a person who conducts an inquiry in terms of section 65, is required by the provisions of this Chapter to supply information or reports to a *health and safety representative* or to the *health and safety committee*, that *employer, inspector* or person –

- (a) must not disclose any information that is private personal information relating to an *employee*, unless the *employee* consents in writing to the disclosure of that information; and

- (b) is not required to supply any information –

- (i) that is legally privileged;

- (ii) that the *employer, inspector* or person could not disclose without contravening a prohibition imposed upon the *employer* by any law or court order; or

- (iii) that is confidential and, if disclosed, may cause substantial harm to an *employee* or the *employer*.

- (2) No *employee* may unreasonably withhold the consent required in terms of subsection (1)(a).

[38 - Section 65, requires the Chief Inspector of Mines to direct an inspector to conduct an inquiry into the death of any person and into any health and safety contraventions.

38 - Improper disclosure of confidential information is an offence. See s. 87.]

### 39. Disputes concerning disclosure of information

- (1) If there is a dispute about what information is required to be disclosed in terms of the provisions of this Chapter, any party to the dispute may refer the dispute in writing to the *Commission*.

- (2) The party who refers a dispute to the *Commission* must satisfy it that a copy of the referral has been served on all the other parties to the dispute.

- (3) The *Commission* must attempt to resolve the dispute through conciliation.

- (4) If the dispute remains unresolved, any party to the dispute may request that the dispute be resolved through arbitration.

- (5) A commissioner appointed to arbitrate a dispute must first decide whether or not the information is required to be supplied in terms of the provisions of this Chapter.

Prepared by:

- (6) If the commissioner decides that the information is required and if it is information contemplated in section 38(1)(a) or (b)(iii), the commissioner must balance the harm that disclosure is likely to cause to an *employee* or *employer* or any other person who employs *employees*, against the harm that the failure to disclose the information is likely to cause to the ability of *health and safety representatives* or members of the *health and safety committee* to perform their functions effectively.

*(Section 39(6) substituted by section 16 of Act 72 of 1997)*

- (7) If the commissioner decides that the balance of harm favours the disclosure of the information, the commissioner may order the disclosure of the information on terms designed to limit the harm likely to be caused to the *employee* or the *employer*.
- (8) When making an order under subsection (7), the commissioner must take into account any previous breach of confidentiality in respect of information disclosed in terms of the provisions of this Chapter, and may refuse to order the disclosure of the information or any other confidential information which might otherwise be disclosed for a period specified in the arbitration award.
- (9) In any dispute about an alleged breach of confidentiality, the commissioner may order that the right to disclosure of information in terms of the provisions of this Chapter be withdrawn for a period specified in the arbitration award.

#### **40. Disputes concerning this Chapter**

- (1) Any party to a dispute about the interpretation or application of any provision of this Chapter, other than a dispute contemplated in section 26(8) or 39, may refer the dispute in writing to the *Commission*.

[40(1) - section 26(8), provides that a dispute exists if no collective agreement is concluded or reached on the number of full-time health and safety representatives.]

- (2) The party who refers a dispute to the *Commission* must satisfy it that a copy of the referral has been served on all the other parties to the dispute.
- (3) The *Commission* must attempt to resolve the dispute through conciliation.
- (4) If the dispute remains unresolved, any party to the dispute may request that the dispute be resolved through arbitration as soon as possible.
- (5) The provisions relating to arbitration in the *Labour Relations Act*, read with changes required by the context, apply to an arbitration referred to in sections 26(11) and 39 and subsection (4).

[40(5) - See sections 133-146 of the Labour Relations Act.]

## **CHAPTER 4 TRIPARTITE INSTITUTIONS**

#### 41. Establishment of tripartite institutions.

- (1) A Mine Health and Safety Council is hereby established to advise the *Minister on health and safety at mines*.
- (2) A *committee, ad hoc committee or subcommittee* may when necessary be established, which *committee* may include -  
*(Words preceding section 41(2)(a) substituted by section 9 of Act 74 of 2008)*
  - (a) the Mining Regulation Advisory Committee;
  - (b) the Mining Occupational Health Advisory Committee; and
  - (c) the Safety in Mines Research Advisory Committee.
- (3) A Mining Qualifications Authority is hereby established to advise the *Minister* on -
  - (a) qualifications and learning achievements in the mining industry to improve *health and safety standards* through proper training and education;  
*(Section 41(3)(a) substituted by section 17(a) of Act 72 of 1997)*
  - (b) standards and competency setting, assessment, examinations, quality assurance and accreditation in the mining industry; and
  - (c) proposals for the registration of education and training standards and qualifications in the mining industry on the National Qualifications Framework referred to in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995).  
*(Section 41(3)(c) substituted by section 17(b) of Act 72 of 1997)*

[41(3)(c)-The South African Qualifications Authority Act provides for a National Qualifications Framework which aims to enhance the quality of education and training.]

#### 42. Mine Health and Safety Council

- (1) The *Council* consists of –
  - (a) five members representing *employers* in the mining industry;
  - (b) five members representing *employees* in the mining industry;
  - (c) four members representing departments of the State; and
  - (d) the *Chief Inspector of Mines*, who must chair the *Council*.



- (2) The *Minister* must appoint the members of the *Council* in accordance with the *regulations*.  
(Section 42(2) substituted by section 10(a) of Act 74 of 2008)
- (2A) The *Council* may appoint *members* to *committees*, *ad hoc*, *subcommittees* and *other committees*, for any period of time and on any conditions.  
(Section 42(2A) inserted by section 18(a) of Act 72 of 1997)  
(Section 42(2A) substituted by section 10(b) of Act 74 of 2008)
- (2B) The structure and functions of any *committee* contemplated in subsection (2A) must be provided for in the constitution contemplated in section 97(3).  
(Section 42(2B) inserted by section 10(c) of Act 74 of 2008)
- (3) The *Council* and its committees must govern themselves in accordance with the constitution contemplated in section 97(3).  
(Section 42(3) substituted by section 18(b) of Act 72 of 1997)
- [42(3) - Section 97(3), empowers the Minister, after consulting the Council and by notice in the Gazette, to add a Schedule containing the constitution of the Council and its committees.]
- (4) The *Council* may delegate any of its powers and assign any of its duties by or under *this Act* in accordance with the constitution contemplated in section 97(3).  
(Section 42(4) substituted by section 18(b) of Act 72 of 1997)
- (5) A delegation or an assignment under subsection (4) –
- (a) must be in writing;
  - (b) may be subject to such conditions and restrictions as the Council may determine; and
  - (c) does not prevent the exercise of that power or the performance of that duty by the Council.
- (6) Members of the *Council*, or of a committee of the *Council*, are each entitled to have their views reflected in any report of the *Council* or committee, as the case may be.
- (7) Each year, the *Minister*, with the agreement of the Minister of Finance, must provide sufficient funds for the administration of the *Council*, and committees of the *Council*, from public funds.

#### 43. Council's duties

The *Council* must –

- (a) advise the *Minister* on *health* and *safety* at *mines* including, but not limited to, any legislation on *mine* rehabilitation in so far as it concerns *health* and *safety*;  
(Section 43(a) substituted by section 19(a) of Act 72 of 1997)
- (b) co-ordinate the activities of its committees, receive reports from the committees and liaise with the Mining Qualifications Authority on matters relating to *health* and *safety*;
- (c) liaise with any other statutory bodies concerned with matters relating to *health* and *safety*;
- (d) promote a culture of *health* and *safety* in the mining industry;
- (e) at least once every two years arrange and co-ordinate a tripartite summit to review the state of *health* and *safety* at *mines*;  
(Section 43(e) substituted by section 19(b) of Act 72 of 1997)
- (eA) annually advise the *Minister* on relevant research relating to *health* and *safety* at *mines*; and  
(Section 43(eA) inserted by section 19(c) of Act 72 of 1997)  
(Section 43(eA) substituted by section 11 of Act 74 of 2008)
- (f) perform every duty imposed upon the *Council* in terms of *this Act*.

44. ....

(Section 44 amended by section 20 of Act 72 of 1997)  
(Section 44 repealed by section 12 of Act 74 of 2008)

#### 45. Mining Qualifications Authority

- (1) The Mining Qualifications Authority consists of –
  - (a) five members representing employers in the mining industry;
  - (b) five members representing *employees* in the mining industry;
  - (c) four members representing departments of State; and
  - (d) the *Chief Inspector of Mines*, who must chair the Mining Qualifications Authority.  
(Section 45(1)(d) substituted by section 21(a) of Act 72 of 1997)
- (2) The members of the Mining Qualifications Authority must be appointed in accordance with the constitution contemplated in section 97(4).  
(Section 45(2) substituted by section 27 of Act 31 of 2003)

- (3) The Mining Qualifications Authority and its committees must govern themselves in accordance with the constitution contemplated in section 97(4).

*(Section 45(3) substituted by section 21(b) of Act 72 of 1997)*

[45(3) - Section 97(4), empowers the Minister, after consulting the Council and by notice in the Gazette, to add a Schedule containing the constitution of the Mining Qualifications Authority.]

#### **46. Mining Qualifications Authority's functions**

- (1) The Mining Qualifications Authority must –

- (a) seek registration in terms of the South African Qualifications Act, 1995 (Act No. 58 of 1995), as a body responsible for generating education and training standards and qualifications as contemplated in section 5(1)(a)(ii)(aa) of that Act;

*(Section 46(1)(a) substituted by section 22(a) of Act 72 of 1997)*

[46(1)(a) - Section 5(1)(a)(ii)(aa) of the South African Qualifications Authority Act provides for the registration of bodies responsible for establishing educational training standards.]

- (b) seek accreditation in terms of the South African Qualifications Act, 1995 (Act No. 58 of 1995), as a body responsible for monitoring and auditing achievements as contemplated in section 5(1)(a)(ii)(bb) of that Act;

[46(1)(b) - Section 5(1)(a)(ii)(bb) provides for the accreditation of bodies responsible for monitoring achievements in terms of standards or qualifications.]

- (c) propose education and training standards and qualifications to bodies registered with that Authority and responsible for developing education and training standards;

*(Section 46(1)(c) substituted by section 22(b) of Act 72 of 1997)*

- (d) generate education and training standards and qualifications in the mining industry;

*(Section 46(1)(d) substituted by section 22(b) of Act 72 of 1997)*

*(Section 46(1)(d) amended by section 28(a) of Act 31 of 2003)*

- (e) monitor and audit achievement in terms of those standards and qualifications; and

*(Section 46(1)(e) amended by section 28(a) of Act 31 of 2003)*

- (f) perform the functions of a sector education and training authority in terms of the Skills Development Act, 1998 (Act No. 97 of 1998).

*(Section 46(1)(f) added by section 28(a) of Act 31 of 2003)*

- (2) The Mining Qualifications Authority -

- (a) may appoint permanent and ad hoc committees, and subcommittees, for any period and on any conditions;

(b) must administer and control its financial affairs in accordance with the Skills Development Act, 1998 (Act No. 97 of 1998); and

(c) may do anything necessary to achieve its objectives.

*(Section 46(2) substituted by section 28(b) of Act 31 of 2003)*

(3) The Mining Qualifications Authority may delegate any of its powers or assign any of its duties by or under *this Act* in accordance with the constitution contemplated in section 97(4).

*(Section 46(3) substituted by section 22(c) of Act 72 of 1997)*

(4) A delegation or an assignment under subsection (3) –

(a) must be in writing;

(b) may be subject to such conditions and restrictions as the Authority may determine; and

(c) does not prevent the exercise of that power or the performance of that duty by the Authority.

(5) In performing its functions, the Mining Qualifications Authority must comply with the policies and criteria formulated by the South African Qualifications Authority in terms of section 5(1)(a)(ii) of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995).

## CHAPTER 5 INSPECTORATE OF MINE HEALTH AND SAFETY

### 47. Inspectorate established

(1) (a) A juristic person to be known as the Mine Health and Safety Inspectorate is hereby established.

(b) The Public Finance Management Act, 1999 (Act No. 1 of 1999), applies to the Inspectorate.

*(Section 47(1) substituted by section 13 of Act 74 of 2008)*

(2) The *Minister*, by notice in the Gazette, may establish regions of the country for the purpose of administering *this Act* through regional offices of the Mine Health and Safety Inspectorate.

### 48. Chief Inspector of Mines

(1) The *Minister* must appoint an *officer*, with suitable mining qualifications and appropriate experience in *health and safety at mines*, to be *Chief Inspector of Mines*.

(2) Subject to the control and direction of the *Minister*, the *Chief Inspector of Mines* must perform the functions entrusted to the *Chief Inspector of Mines* by *this Act*.

- (3) The *Chief Inspector of Mines* may perform any of the functions of an *inspector*.

#### 49. Chief Inspector of Mines' functions

- (1) Without limiting any statutory duty of any other person in terms of *this Act*, the *Chief Inspector of Mines* must -

- (a) ensure that the provisions of *this Act* are complied with and enforced and that every duty imposed upon the *Chief Inspector of Mines*, the *Medical Inspector* or *inspectors* in terms of any other law is performed;
- (b) appoint an *officer* with the *prescribed* qualifications and experience as the *Medical Inspector*;
- (c) appoint *officers* with the *prescribed* qualifications and experience as *inspectors*;
- (d) administer the Mine Health and Safety Inspectorate;
- (e) determine and implement policies to promote the *health* and *safety* of persons at *mines* and any person affected by mining activities;
- (f) consult with the *Council* before issuing guidelines on the form, content and distribution of codes of practice referred to in section 9;

[49(1)(f) - Section 9, requires any employer to prepare a code of practice.]

- (g) collect, process and distribute information relating to *health* and *safety*;
- (h) advise the *Minister* on *health* or *safety* matters at *mines*;
- (i) each year, after consulting the *Council* and with the approval of the *Minister*, publish and distribute a plan of action for the activities of the Mine Health and Safety Inspectorate;
- (j) complete a report on *health* and *safety* at *mines* and the activities of the Mine Health and Safety Inspectorate for each year and submit the report to the *Minister* within three months of the end of the year concerned;  
*(Section 49(1)(j) substituted by section 14(a) of Act 74 of 2008)*
- (k) perform any duties relating to *health* or *safety* at *mines* that the *Minister* directs or prescribes;  
*(Section 49(1)(k) substituted by section 14(b) of Act 74 of 2008)*
- (l) develop and maintain an integrated *mine health* and *safety* database and reporting system;  
*(Section 49(1)(l) added by section 14(c) of Act 74 of 2008)*

- (m) conduct or commission relevant research and evaluate and publish the results of the research; and

*(Section 49(1)(m) added by section 14(c) of Act 74 of 2008)*

- (n) provide logistical, administrative and technical support to the *Council*.

*(Section 49(1)(n) added by section 14(c) of Act 74 of 2008)*

- (2) The *Chief Inspector of Mines* must furnish a *prescribed* certificate to the *Medical Inspector* and to each *inspector*.

- (3) Despite the provisions of the *Minerals and Petroleum Resources Development Act [sic]* or any other law, the *Chief Inspector of Mines* -

*(Words preceding section 49(3)(a) substituted by section 14(d) of Act 74 of 2008)*

- (a) has the power to monitor and control those environmental aspects at *mines* that affect, or may affect, the *health* or *safety* of *employees* or other persons; and

- (b) must consult with the appropriate officer appointed in terms of the *Minerals and Petroleum Resources Development Act [sic]* concerning the exercise of those powers.

*(Section 49(3)(b) substituted by section 14(e) of Act 74 of 2008)*

- (4) To further the objectives of *this Act* the *Chief Inspector of Mines* may –

- (a) enter into agreements with other persons;

- (b) authorise a competent independent person to perform any or all the functions of an *inspector*;

- (c) perform any act, whether in the Republic or elsewhere, that is calculated, directly or indirectly, to enhance the value of the services which the Mine Health and Safety Inspectorate renders, or perform any *prescribed* act;

- (d) require all *mines* or groups of *mines* to prepare and implement a *health* and *safety* management system for *mines*;

- (e) require all *mines* or groups of *mines* to prepare and implement a *hazard* management system for significant *hazards* mentioned under section 11;

- (f) in consultation with the *Minister* and the Minister of Finance acquire or dispose of immovable property;

- (g) hire, purchase or otherwise acquire any movable property and proprietary right, and lease or dispose of property;
- (h) collaborate with any other body or institution or establish and control facilities for the collection and dissemination of scientific and technical information relating to *health* and *safety* at *mines*;
- (i) collaborate with any educational, governmental or scientific body or institution in connection with the provision of instruction for, or the training of, persons required by the Mine Health and Safety Inspectorate;
- (j) provide financial or other assistance in connection with the training of persons in so far as is necessary to ensure that a sufficient number of trained persons are available to enable the Mine Health and Safety Inspectorate to perform its functions efficiently;
- (k) insure the Mine Health and Safety Inspectorate against any loss, damage, risk or liability;
- (l) invest any of the money of the Mine Health and Safety Inspectorate; and
- (m) institute or defend any legal action.

*(Section 49(4) substituted by section 14(f) of Act 74 of 2008)*

(5) The *Chief Inspector of Mines* must furnish a *prescribed* certificate to each person authorised under subsection (4)(b).

(6) The *Chief Inspector of Mines* must issue guidelines by notice in the Gazette.

*(Section 49(6) added by section 14(g) of Act 74 of 2008)*

#### **49A. Financial and judicial management of Mine Health and Safety Inspectorate**

(1) The funds of the Mine Health and Safety Inspectorate consist of-

- (a) money appropriated by Parliament;
- (b) any donations made to the Mine Health and Safety Inspectorate;
- (c) revenue made on investments; and
- (d) money raised and received in terms of *this Act*.

(2) The Mine Health and Safety Inspectorate must utilise its funds to defray expenses incurred by it in the performance of its functions.

- (3) The *Chief Inspector of Mines* must, after consultation with the *Council*, use the monies collected in terms of section 55B for the promotion of *health* and *safety* in the mining industry.
- (4) The *Chief Inspector of Mines* as the accounting authority of the Inspectorate must-
  - (a) open a bank account in the name of the Mine Health and Safety Inspectorate with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990); and
  - (b) deposit therein all money received in terms of subsection (1).
- (5) The Mine Health and Safety Inspectorate may invest any of its funds not immediately required-
  - (a) subject to any investment policy that may be prescribed; and
  - (b) in such a manner as may be approved by the *Minister*.
- (6) The Mine Health and Safety Inspectorate's financial year is from 1 April in any year to 31 March in the following year.
- (7) The report of the *Chief Inspector of Mines* referred to in section 49(1)(j) must reflect the financial affairs of the Mine Health and Safety Inspectorate.
- (8) Despite any other law, the Mine Health and Safety Inspectorate may not be placed under judicial management or in liquidation except if authorised by an Act of Parliament adopted especially for that purpose.

*(Section 49A inserted by section 15 of Act 74 of 2008)*

#### **49B. Co-operative governance**

- (1) The *Chief Inspector of Mines* must co-ordinate the exercise of the functions of the Mine Health and Safety Inspectorate with other organs of state in respect of regulating and promoting *occupational health* and *safety*, in accordance with the principles of co-operative governance contemplated in Chapter 3 of the Constitution.
- (2) The *Chief Inspector of Mines* may conclude co-operative agreements with relevant organs of state to give effect to the co-operation contemplated in subsection (1).

*(Section 49B inserted by section 15 of Act 74 of 2008)*

#### **50. Inspectors' powers**

- (1) An *inspector* may for the purposes of monitoring or enforcing compliance with *this Act* -



- (a) enter any mine at any time without warrant or notice;
  - (b) enter any other place after obtaining the necessary warrant in terms of subsection (7); and
  - (c) bring into and use at any *mine*, or at any place referred to in paragraph (b), vehicles, equipment and material as necessary to perform any function in terms of *this Act*.
- (2) While the *inspector* is at any *mine* or place referred to in subsection (1), the *inspector* may, for the purposes of monitoring or enforcing compliance with *this Act* –
- (a) question any person on any matter to which *this Act* relates;
  - (b) require any person who has control over, or custody of, any document, including but not limited to, a plan, book or *record* to produce that document to the *inspector* immediately or at any other time and place that the *inspector* requires;
  - (c) require from any person referred to in paragraph (b) an explanation of any entry or non-entry in any document over which that person has custody or control;
  - (d) examine any document produced in terms of paragraph (b), and make a copy of it or take an extract from it;
  - (e) inspect –
    - (i) any article, *substance* or *machinery*;
    - (ii) any work performed; or
    - (iii) any condition;
  - (f) inspect arrangements made by the *employer* for *medical surveillance* of *employees*;
  - (g) seize any document, article, *substance* or *machinery* or any part or sample of it; and
  - (h) perform any other *prescribed* function.

[50(2) - It is an offence to interfere with or hinder an inspector. See s. 88.]

- (3) An *inspector* may instruct any *employer*, *employee* or any other person who performs an activity regulated by *this Act* or any former *employer* or *employee* or person who formerly performed an activity regulated by *this Act*, to appear before the *inspector* to be questioned on any matter to which *this Act* relates.

[50(3) - It is an offence to fail to comply with an inspector's instruction. See s. 91. ]

- (4) Before an *inspector* may seize any document under subsection (2)(g), the *employer* of the *mine* may copy it.
- (5) An *inspector* may remove any article, *substance* or *machinery* or any part or sample of it from any *mine* or place referred to in subsection (1) for examination or analysis.
- (6) When an *inspector* seizes or removes any item under this section, the *inspector* must issue a receipt for that item to the *employer* of the *mine* or place involved.
- (7) A magistrate may issue a warrant contemplated in subsection (1)(b) only on written application by an *inspector* setting out under oath or affirmation the need to enter a place other than a *mine* to monitor or enforce compliance with *this Act*.

(7A) The *Inspector* may impose a prohibition on the further functioning of the site where-

- (a) a person's death;
- (b) serious injury or illness to a person; or
- (c) a health threatening occurrence,

has occurred by blocking, barring or barricading the site in such a manner as the *Inspector* may deem necessary.

*(Section 50(7A) inserted by section 16 of Act 74 of 2008 with effect from a date to be proclaimed)*

- (8) For the purpose of this section, "*mine*" does not include any home, or residential quarters, situated at the *mine*.

#### **51. Inspector may be accompanied.**

When performing any function under *this Act*, an *inspector* may be accompanied by an interpreter or any other person reasonably required to assist the *inspector*.

#### **52. Duty to assist inspector and answer questions**

- (1) When an *inspector* enters any *mine* or place referred to in section 50(1), the *employer* and each *employee* performing any work there must provide any facility that the *inspector* reasonably requires.

[52(1) - It is an offence to fail to comply with an inspector's instruction. See s. 91. ]

- (2) Persons questioned by an *inspector* under section 50(2)(a) or (c) or (3) must answer each question to the best of their ability, but no person is required to answer any question if the answer may be self-incriminating.

### 53. Duty to produce documents required by inspector

Any person who holds or should hold a permit, licence, permission, certificate, authorisation or any other document issued in accordance with *this Act* or the *Mineral and Petroleum Resources Development Act*, must produce it at the request of the *Chief Inspector of Mines* or any *inspector*.

[53 - It is an offence to obtain a required certificate of competency by fraudulent means. See s. 89.]

### 54. Inspector's power to deal with dangerous conditions.

- (1) If an *inspector* has reason to believe that any occurrence, practice or condition at a *mine* endangers or may endanger the *health* or *safety* of any person at the *mine*, the *inspector* may give any instruction necessary to protect the *health* or *safety* of persons at the *mine*, including but not limited to an instruction that -

*(Words preceding section 54(1)(a) substituted by section 23 of Act 72 of 1997)*

- (a) operations at the *mine* or a part of the *mine* be halted;
- (b) the performance of any act or practice at the *mine* or a part of the *mine* be suspended or halted, and may place conditions on the performance of that act or practice;
- (c) the *employer* must take the steps set out in the instruction, within the specified period, to rectify the occurrence, practice or condition; or
- (d) all affected persons, other than those who are required to assist in taking steps referred to in paragraph (c), be moved to *safety*.

[54(1) - It is an offence to fail to comply with an inspector's instruction. See s.91.]

- (2) An instruction under subsection (1) must be given to the *employer* or a person designated by the *employer* or, in their absence, the most senior *employee* available at the *mine* to whom the instruction can be issued.
- (3) An *inspector* may issue an instruction under subsection (1) either orally or in writing. If it is issued orally, the *inspector* must confirm it in writing and give it to the person concerned at the earliest opportunity.
- (4) If an instruction issued under subsection (1) is not issued to the *employer*, the *inspector* must give a copy of the instruction to the *employer* at the earliest opportunity.

- (5) Any instruction issued under subsection (1)(a) must either be confirmed, varied or set aside by the *Chief Inspector of Mines* as soon as practicable.
- (6) Any instruction issued under subsection (1)(a) is effective from the time fixed by the *inspector* and remains in force until set aside by the *Chief Inspector of Mines* or until the *inspector's* instructions have been complied with.
- (7) .....  
(Section 54(7) deleted by section 17 of Act 74 of 2008)
- (8) .....  
(Section 54(8) deleted by section 17 of Act 74 of 2008)
- (9) .....  
(Section 54(9) deleted by section 17 of Act 74 of 2008)
- (10) .....  
(Section 54(10) deleted by section 17 of Act 74 of 2008)

#### **55. Inspectors' power to order compliance.**

- (1) If an *inspector* has reason to believe that an *employer* has failed to comply with any provision of *this Act*, the *inspector* may instruct that *employer* in writing to take any steps that the *inspector*-  
(Words preceding section 55(1)(a) substituted by section 24 of Act 72 of 1997)
- (a) considers necessary to comply with the provision; and
- (b) specifies in the instruction.

[55(1) - It is an offence to fail to comply with an inspector's instructions. See s. 91.]

- (2) When issuing an instruction under subsection (1), an *inspector* must specify the period within which the specified steps must be taken. A period specified in an instruction may be extended by an *inspector* at any time by giving notice in writing to the person concerned.

#### **55A. Inspector's powers to recommend fine**

- (1) An *inspector* may make a recommendation in writing to the *Principal Inspector of Mines* that a fine be imposed on an *employer* who has failed to comply with any provision contemplated in section 91(1B).  
(Section 55A(1) substituted by section 18(a) of Act 74 of 2008)
- (2) .....  
(Section 55A(2) deleted by section 18(b) of Act 74 of 2008)

- (3) The *inspector* concerned must serve a copy of the recommendation on -  
(Words preceding section 55A(3)(a) substituted by section 18(c) of Act 74 of 2008)
- (a) the *employer*;
  - (b) the *health and safety committee*, or if there is no *health and safety committee*, to any *health and safety representative* responsible for the *working place* in question; and
  - (c) the *representative trade union*, or if there is no *representative trade union*, to every *registered trade union* with members at the *mine*.
- (4) The *employer* may make written representations to the *Principal Inspector of Mines* within 30 days of the recommendation.  
(Section 55A(4) added by section 18(d) of Act 74 of 2008)
- (5) A representation made in terms of this section may not be used against the *employer* in any criminal or civil proceedings in respect of the same set of facts.  
(Section 55A(5) added by section 18(d) of Act 74 of 2008)
- (Section 55A inserted by section 25 of Act 72 of 1997)

#### **55B. Principal Inspector of Mines may impose fines**

- (1) The *Principal Inspector of Mines*, after considering the recommendation and any representations made in accordance with section 55A, may-
- (a) disregard the recommendation;
  - (b) impose a fine not exceeding the maximum amount mentioned in Table 2 of Schedule 8; or
  - (c) refer the matter to the prosecuting authority for a decision as to whether the *employer* should be charged with an offence.
- (2) The *Principal Inspector of Mines* must notify the *employer*, *committee*, representative and trade union contemplated in section 55A(3), as the case may be, of any decision made in terms of subsection (1).
- (3) An *employer* must pay any fine imposed in terms of this section within 30 days of the imposition of the fine.
- (4) If the *employer* fails to pay the fine within the specified period, the *Chief Inspector of Mines* may apply to the Labour Court for the fine to be made an order of that court

(Section 55B inserted by section 25 of Act 72 of 1997)  
(Section 55B substituted by section 19 of Act 74 of 2008)

55C. ....

(Section 55C inserted by section 25 of Act 72 of 1997)  
(Section 55C repealed by section 20 of Act 74 of 2008)

55D. ....

(Section 55D inserted by section 25 of Act 72 of 1997)  
(Section 55D repealed by section 20 of Act 74 of 2008)

55E. ....

(Section 55E inserted by section 25 of Act 72 of 1997)  
(Section 55E repealed by section 20 of Act 74 of 2008)

55F. ....

(Section 55F inserted by section 25 of Act 72 of 1997)  
(Section 55F repealed by section 20 of Act 74 of 2008)

55G. ....

(Section 55G inserted by section 25 of Act 72 of 1997)  
(Section 55G repealed by section 20 of Act 74 of 2008)

55H. ....

(Section 55H inserted by section 25 of Act 72 of 1997)  
(Section 55H repealed by section 20 of Act 74 of 2008)

**56. Instructions to be posted at mine**

The *employer* of a *mine* must -

- (a) promptly supply a copy of any instruction of an *inspector* to -
  - (i) the *health and safety representative* representing the *employees* affected by the instruction; and
  - (ii) the *health and safety committee* responsible for those *employees*; and
- (b) promptly publicise the instruction by -
  - (i) prominently and conspicuously displaying copies of the instruction to the *employees* whose interests may be affected; and

- (ii) causing its contents to be communicated orally to those *employees*.

#### **57. Right to appeal inspectors' decisions**

- (1) Any person adversely affected by a decision of an *inspector*, except a decision contemplated in section 55B, may appeal against that decision to the *Chief Inspector of Mines*.  
(Section 57(1) substituted by section 27(a) of Act 72 of 1997)  
(Section 57(1) substituted by section 21 of Act 74 of 2008)
- (2) An appeal under subsection (1) must -
  - (a) be lodged with the *Chief Inspector of Mines* within 30 days of the decision, or such further period as may be *prescribed*; and  
(Section 57(2)(a) substituted by section 27(b) of Act 72 of 1997)
  - (b) set out the grounds of appeal.
- (3) After considering the grounds of the appeal and the inspector's reasons for the decision, the *Chief Inspector of Mines* must as soon as practicable -
  - (a) confirm, set aside or vary the decision; or
  - (b) substitute any other decision for the decision of the *inspector*.

#### **57A. ....**

(Section 57A inserted by section 28 of Act 72 of 1997)  
(Section 57A repealed by section 22 of Act 74 of 2008)

#### **58. Right to appeal Chief Inspector of Mines' decision**

- (1) Any person adversely affected by a decision of the *Chief Inspector of Mines*, either in terms of section 57(3) or in the exercise of any power under *this Act*, may appeal against the decision to the *Labour Court*.
- (2) An appeal under subsection (1), must be lodged with the registrar of the *Labour Court* in accordance with the rules of the *Labour Court*, within 60 days of the date that the Chief Inspector of Mines' decision was given.
- (3) The *Labour Court* must consider the appeal and confirm, set aside or vary the decision.

#### **59. Appeal does not suspend decision**

Prepared by:

- (1) An appeal against a decision under either section 57, 57A or 58 does not suspend the decision.
- (2) Despite subsection (1) –
  - (a) an appeal in terms of section 57A or 58 against a decision to impose a fine suspends the obligation to pay the fine, pending the outcome of the appeal; and
  - (b) the *Labour Court* may suspend the operation of the decision, pending the determination of the matter, if there are reasonable grounds for doing so.

*(Section 59 substituted by section 29 of Act 72 of 1997)*

## 60. Initiating investigations

- (1) The *Chief Inspector of Mines* must instruct an *inspector* to investigate any accident or occurrence at a *mine* that results in the death of any person.

*(Section 60(1) substituted by section 30 of Act 72 of 1997)*

- (2) At any time an *inspector* may investigate -
  - (a) any accident or occurrence at a *mine* that results in the *serious injury* or *serious illness* of any person;
  - (b) any occurrence, practice or condition concerning *health* or *safety* of persons at one or more *mines*; or
  - (c) any actual or suspected contravention of, or failure to comply with, any provision of *this Act*.

*(Section 60(2) substituted by section 30 of Act 72 of 1997)*

- (3) If there is cause for concern on *health* or *safety* grounds, an *inspector* must investigate any matter referred to in subsection (2), if -

- (a) instructed to do so by the *Chief Inspector of Mines*; or
- (b) requested to do so by -
  - (i) a *registered trade union* with members at the *mine* or *mines*;
  - (ii) a *health and safety representative* or *health and safety committee* at the *mine*; or
  - (iii) if there is no *health and safety representative*, an *employee* at the *mine*.



**61. Chief Inspector of Mines may designate assistant in investigation**

At any time before or during an investigation, the *Chief Inspector of Mines* may designate one or more persons to assist the *inspector* holding the investigation.

**62. Duty to answer questions during investigation**

Persons questioned during an investigation must answer every question to the best of their ability, but no person is required to answer any question if the answer may be self-incriminating.

**63. Enhancing effectiveness of investigation**

(1)

(a) For the purpose of enhancing the effectiveness of an investigation in terms of section 60 the National Prosecuting Authority, after receiving representations from the *Chief Inspector of Mines*, may issue a certificate that no prosecution may be instituted in respect of any contravention of, or failure to comply with, a provision of *this Act* related to the event being investigated.

(b) If a certificate is issued, no fine in terms of section 55B or disciplinary action related to the event investigated may thereafter be imposed on or taken against any person.

*(Section 63(1) substituted by section 31 of Act 72 of 1997)*

*(Section 63(1) substituted by section 23 of Act 74 of 2008)*

(2) The *Chief Inspector of Mines* must communicate in writing the protection afforded under subsection (1) to all persons questioned during the investigation.

(3) Persons questioned during the investigation who are afforded protection under this section must answer every question to the best of their ability and may not refuse to answer any question on the grounds that the answer may be self-incriminating.

**64. Reports on investigations**

(1) After completing an investigation, an *inspector* must prepare a written report of the findings, recommendations and any remedial steps.

(2) The *inspector* -

(a) must submit a copy of the report referred to in subsection (1) to the *Chief Inspector of Mines*;

- (b) must supply a copy of the report to the *employer* and to the *health and safety representative, health and safety committee, registered trade union* or *employee* that requested the investigation; and
- (c) may instruct the *employer* of the *mine* concerned to prominently and conspicuously display a copy of the report or portion of it for *employees* to read.

## 65. Initiating inquiries

- (1) Unless the provisions of section 63 have been invoked, the *Chief Inspector of Mines* must direct an *inspector* to conduct an inquiry into any accident or occurrence at a *mine* that results in the death of any person.
- (2) Unless the provisions of section 63 have been invoked, the *Chief Inspector of Mines* may direct an *inspector* to conduct an inquiry into -
  - (a) any accident or occurrence at a *mine* that results in the *serious injury* or *serious illness* of any person;
  - (b) any occurrence, practice or condition concerning *health* or *safety* of persons at one or more *mines*; or
  - (c) any actual or suspected contravention of, or failure to comply with, any provision of *this Act*.
- (3) If there is cause for concern on *health* or *safety* grounds and if the provisions of section 63 have not been invoked, the *Chief Inspector of Mines* may direct an *inspector* to conduct an inquiry into any matter referred to in subsection (2) if requested in writing to do so by -
  - (a) a *registered trade union* with members at the *mine* or *mines*;
  - (b) a *health and safety representative* or *health and safety committee* at the *mine*; or
  - (c) if there is no *health and safety representative* at the *mine*, an *employee*.
- (4) This section does not limit any other law regulating the holding of an inquest or other inquiry into the death of a person.

## 66. Investigation may be converted into inquiry.

- (1) At any time during an investigation, the *Chief Inspector of Mines* may convert it into an inquiry.

- (2) The provisions of sections 68 to 71 relating to attendance and examination of witnesses at inquiries apply equally to a converted investigation.
- (3) Any person instructed or summoned to give evidence at an inquiry that was converted from an investigation is not entitled to refuse to give evidence only on the grounds that a statement had previously been given, or documents previously been adduced, during the investigation.
- (4) This section does not preclude or limit holding an inquiry after an investigation has been completed.

#### **67. Chief Inspector of Mines may designate assistant in inquiry**

At any time before or during an inquiry the *Chief Inspector of Mines* may designate one or more persons to assist in the inquiry or to preside at the inquiry.

#### **68. Inquiry to be public**

- (1) An inquiry must be held in public.
- (2) Despite subsection (1) the person presiding at an inquiry may of that person's own accord or at the request of a witness exclude members of the public or specific persons or categories of persons from attending the proceedings or part of the proceedings when the proper conduct of the inquiry requires.
- (3) The person presiding at an inquiry may make any order necessary to ensure that *employees* at the *mine* and members of the public have access to the premises in which the inquiry is held.

#### **69. Right to participate in inquiry**

The persons listed in this section may participate in an inquiry and, either personally or through a representative, may put questions to witnesses and inspect any book, plan, *record* or other document or item presented at the inquiry. The persons entitled to participate are –

- (a) any person who has a material interest in the inquiry;
- (b) a representative of any *registered trade union* with members at the *mine* in respect of which the inquiry is being held; and
- (c) any *health and safety representative* responsible for the *working place* in respect of which the inquiry is being held.

*(Section 69(c) substituted by section 32 of Act 72 of 1997)*

#### **70. Powers of person presiding at inquiry**

The person presiding at an inquiry may –

- (a) instruct or summon any person to appear at any specified time and place;
- (b) question any person under oath or affirmation;
- (c) instruct any person –
  - (i) to produce any book, plan, *record* or other document or item necessary for the purposes of the inquiry; or
  - (ii) to perform any other act in relation to this Act necessary for the purpose of the inquiry.

## **71. Duty of persons summoned or instructed**

- (1) Subject to subsection (2), every person giving evidence at an inquiry must answer any relevant question.
- (2) The law regarding a witness's privilege in a court of law applies equally to any person being questioned at an inquiry.
- (3) The person presiding at an inquiry may direct that any evidence given by a person during an inquiry may not be used in any criminal or disciplinary proceedings against that person except in criminal proceedings on a charge of perjury against that person.

*(Section 71(3) substituted by section 33 of Act 72 of 1997)*

*(Section 71(3) substituted by section 24 of Act 74 of 2008)*

- (4) When a directive has been issued under subsection (3) the person involved is not entitled to refuse to answer any relevant question only on the grounds that the answer could expose that person to a criminal charge, disciplinary proceedings or a recommendation under section 55A.

*(Section 71(4) substituted by section 33 of Act 72 of 1997)*

- (5) A person instructed in terms of section 70(c) must comply with that instruction unless the person has sufficient cause for not doing so.

[71 – It is an offence to fail to attend an inquiry if required to do so, or to refuse to answer questions, or to give false evidence. See s.90.]

## **72. Inquiry records and reports**

- (1) A person presiding at an inquiry must –
  - (a) record the evidence given at the inquiry, including any evidence given with the assistance of an interpreter;

- (b) at the conclusion of the inquiry, prepare a written report of the findings, recommendations and any remedial steps;
  - (c) submit a copy of the report and the record of the inquiry to the *Chief Inspector of Mines*;
  - (d) supply a copy of the report and the *record* of the inquiry to the *employer* and to any *health and safety representative, health and safety committee or registered trade union* that requested the inquiry; and
  - (e) on request, supply a copy of the report and the *record* of the inquiry to any person who has a material interest in the inquiry.
- (2) An *inspector* may instruct the employer of the mine concerned to prominently and conspicuously display a copy of the report or any portion of it for employees to read.
- (3) The *Chief Inspector of Mines* may submit a copy of the report to the appropriate Attorney-General.

### **73. Chief Inspector of Mines may order further inquiry**

Upon considering the evidence and the report referred to in section 72, the *Chief Inspector of Mines* may require that the matter be inquired into further.

### **74. Inquiry and inquest may be conducted jointly**

- (1) An inquiry in terms of *this Act* into the death of a person may be held jointly with an inquest in terms of the Inquests Act, 1959 (Act No.58 of 1959).

[74(1) - The Inquests Act provides for the holding of inquests in cases of deaths apparently occurring from unnatural causes.]

- (2) The judicial officer contemplated in the Inquests Act, 1959 (Act No. 58 of 1959), must preside at a joint inquiry referred to in subsection (1) and the person instructed to hold the inquiry in terms of *this Act* must be deemed to be an assessor appointed in terms of the Inquests Act, 1959.
- (3) The provisions of the Inquests Act, 1959 (Act No. 58 of 1959), apply to a joint inquiry.
- (4) The assessor referred to in subsection (2) must -
- (a) prepare a report contemplated in section 72(1)(b); and
  - (b) submit the report and the *record* of the joint inquiry to the *Chief Inspector of Mines*.

## **CHAPTER 6**

## MINISTER'S POWERS

### 75. Minister may prohibit or restrict work

- (1) For any reason relating to *health* or *safety*, the *Minister*, by notice in the Gazette, may prohibit or restrict any work or any exposure of a person to a *substance* or an environmental condition, if -
  - (a) the *Minister* has consulted the *Council* on the prohibition or restriction; and
  - (b) unless the *Minister* believes that the public interest requires the notice to be published immediately, the *Minister* has –
    - (i) published a draft of the proposed notice at least three months previously; and
    - (ii) at that time invited interested persons to submit comments and representations concerning the proposed notice within a specified period.
- (2) The *Minister* may attach any conditions to a prohibition or restriction by specifying them in the published notice.
- (3) The *Minister*, after consulting the *Council*, may amend or withdraw a notice under subsection (1) at any time.

### 76. Minister may declare health hazards

- (1) The *Minister*, by notice in the Gazette, may declare that an environmental condition or a *substance* present at a *mine* is a *health hazard* to *employees* who are or may be exposed to that condition or *substance*, if -
  - (a) the *Minister* has consulted the *Council* on the issuing of the declaration; and
  - (b) unless the *Minister* believes that the public interest requires the notice to be published immediately, the *Minister* has -
    - (i) published a draft of the proposed notice at least three months previously; and
    - (ii) at that time invited interested persons to submit comments and representations concerning the proposed notice within a specified period.
- (2) In connection with any *health hazard*, the *Minister*, after consulting the Council, by notice in the Gazette, may -

- (a) impose conditions on the performance of work by *employees* exposed to the *health hazard*;
  - (b) stipulate the standards of fitness for an *employee* to perform work involving exposure to the *health hazard*;
  - (c) require *employers* to take measures to eliminate, control and minimise *health risks* associated with the *health hazard*;
  - (d) require *employers* to conduct specified *occupational hygiene* measurements;
  - (e) require *employers* to conduct specified *medical surveillance* in respect of *employees* exposed to the *health hazard*; and
  - (f) provide for any other matter that the *Minister* considers necessary to protect *employees* exposed to the *health hazard*.
- (3) The *Minister* may enter any *mine* at any time only for the purposes of *health hazards*.  
(Section 76(3) added by section 25 of Act 74 of 2008)

#### **77. Application of Minister's notice**

A notice under either section 75 or 76 may differentiate between *mines*, types of *mines*, parts of a *mine*, occupations and types of work.

#### **78. Exemption from Minister's notice**

- (1) A notice under either section 75 or 76 may exempt a particular person or group of persons from compliance with that notice if the *Minister* is satisfied that any of the following conditions exists -
- (a) in the circumstances the exemption is desirable;
  - (b) the performance of the work by that person or group of persons is temporary; or
  - (c) the *risk* to which that person or group of persons is exposed is negligible.
- (2) The *Minister*, after consulting the *Council*, may cancel an exemption granted under subsection (1) at any time.

#### **79. Exemption from all or part of this Act**

- (1) The *employer* of a *mine* may request an exemption from the *Minister*, and if satisfied that the *employer* has consulted appropriately with the affected *employees* or their representatives, the *Minister* may

exempt the *employer* from any or all the provisions of *this Act* or from a notice or instruction issued under *this Act*. An exemption may be -

- (a) general or particular;
  - (b) for any period; and
  - (c) on any conditions that provide the same overall protection which would result from the full application of *this Act*.
- (2) When an exemption is granted under subsection (1), the Minister must issue a certificate of exemption to the *employer*, specifying the scope, period and conditions of the exemption.
  - (3) The *Minister* may amend or withdraw a certificate of exemption at any time.
  - (4) The *employer* must prominently and conspicuously display any exemption granted, or deemed to have been granted, under this section to the *employees* to read.

#### **80. Minister may apply other laws to mine**

- (1) After consulting the *Council*, the *Minister*, by notice in the Gazette, may declare that any provision of the Occupational Health and Safety Act, 1993 (Act No. 181 of 1993), or any regulation made under that Act, or the provisions of any other Act or regulations, must apply to a *mine*.

[80(1) - The Occupational Health and Safety Act provides for the health and safety of persons at work and for the establishment of an advisory council for occupational health and safety.]

- (2) A declaration in terms of subsection (1) may differentiate between *mines*, types of *mines*, parts of a *mine*, occupations and types of work.

#### **81. Minister to table annual report**

- (1) Within 30 days of receiving the annual report of the *Chief Inspector of Mines*, the *Minister* must table it in Parliament.
- (2) If Parliament is not in session at the end of the period referred to in subsection (1), the *Minister* must table the report within 14 days of the beginning of the next session of Parliament.

## **CHAPTER 7 LEGAL PROCEEDINGS AND OFFENCES**

#### **82. Jurisdiction of Labour Court**



- (1) The *Labour Court* has exclusive jurisdiction to determine any dispute about the interpretation or application of any provision of *this Act* except where *this Act* provides otherwise.
- (2) The *Labour Court* has no jurisdiction in respect of offences in terms of *this Act*.

### **83. No discrimination against employees who exercise rights**

- (1) No person may discriminate against any *employee* for -
  - (a) exercising a right in terms of *this Act* or in terms of a collective agreement contemplated in *this Act*;
  - (b) doing anything that the *employee* is entitled to do in terms of *this Act* or in terms of a collective agreement contemplated in *this Act*;
  - (c) refusing to do anything that the *employee* is entitled to refuse to do in terms of *this Act* or in terms of a collective agreement contemplated in *this Act*;
  - (d) refusing to do anything that the *employee* is prohibited from doing in terms of *this Act* or in terms of a collective agreement contemplated in *this Act*; and
  - (e) standing for election, or performing any function, as a *health and safety representative* or a member of a *health and safety committee*.
- (2) For the purposes of this section -
  - (a) "discriminate" means to dismiss an *employee* or to engage in any other conduct which has the effect of prejudicing or disadvantaging the *employee*, or which prejudices or disadvantages the *employee* relative to other *employees*; and
  - (b) "*employee*" includes any applicant for employment who has previously been employed at a *mine*.

### **84. Safety equipment not to be interfered with**

Unless specifically authorised by the *employer*, no person -

- (a) other than an *inspector* acting in terms of section 50, may remove personal protective equipment from a *mine*, or cause that equipment to be removed;
- (b) other than an *inspector* acting in terms of section 50, may remove anything that is provided in the interest of *health* or *safety*, or cause that equipment to be removed; or

- (c) may alter, damage, misuse, render ineffective or interfere with anything that is provided in the interest of *health* or *safety*, or cause that equipment to be altered, damaged, misused, rendered ineffective or interfered with.

[84(1)-Section 50, beginning on page 54, outlines the inspector's powers which includes entering any mining area and questioning persons and examining documents and machinery.]

## 85. Juvenile employment underground prohibited

- (1) No person may cause or permit an *employee* under the age of 18 years to work underground at a *mine*.
- (2) No *employee* under the age of 18 years may work underground at a *mine*.
- (3) Despite subsections (1) and (2), an *employee* under the age of 18 years but over the age of 16 years may work underground as part of vocational education or training.

## 86. Negligent act or omission

- (1) Any person who, by a negligent act or by a negligent omission, causes *serious injury* or *serious illness* to a person at a *mine*, commits an offence.  
*(Section 86(1) substituted by section 35(a) of Act 72 of 1997)*
- (2) Any person, other than an *employer* or *employee*, who, by a negligent act or by a negligent omission, endangers the *health* or *safety* of a person at a *mine*, commits an offence.  
*(Commencement date of section 86(2): 15 January 1998)*  
*(Section 86(2) substituted by section 35(b) of Act 72 of 1997)*
- (3) .....  
*(Commencement date of section 86(3): 15 January 1998)*  
*(Section 86(3) deleted by section 35(c) of Act 72 of 1997)*

## 86A. Criminal liability

- (1) An *employer*, *chief executive officer*, *manager*, agent or *employee* commits an offence if he or she contravenes or fails to comply with the provisions of this Act thereby causing-
  - (a) a person's death; or
  - (b) serious injury or illness to a person.

(2) If a *chief executive officer, manager, agent or employee* of the *employer* commits an offence by performing or omitting to perform an act and such performance or omission would have constituted an offence had it been done by the *employer*, that *employer* is equally committing an offence if the act or omission fell within the scope of the authority or employment of the *chief executive officer, manager, agent or employee* concerned and the *employer*-

(a) connived at or permitted the performance or an omission by the *chief executive officer, manager, agent, or employee* concerned; or

(b) did not take all reasonable steps to prevent the performance or an omission.

(3) For the purposes of subsection (1) the-

(a) fact that the person issued instructions prohibiting the performance or an omission is not in itself sufficient proof that all reasonable steps were taken to prevent the performance or an omission;

(b) defence of ignorance or mistake by any person accused cannot be admitted; or

(c) defence that the death of a person, injury, illness or endangerment was caused by the performance or an omission of an act falling within the scope of the authority or employment of any individual within the employ of the *employer* may not be admitted.

*(Section 86A inserted by section 26 of Act 74 of 2008 with effect from a date to be proclaimed)*

## 87. Breach of confidence

(1) Any person who discloses any information that they acquired in the performance of a function in terms of *this Act* and that relates to the financial and business affairs of an *employer* or any other person who employs *employees*, commits an offence.

*(Section 87(1) substituted by section 36 of Act 72 of 1997)*

(2) Subsection (1) does not apply if the information -

(a) was disclosed to enable a person to perform a function in terms of *this Act*;

(b) must be disclosed in terms of *this Act*, any other law or an order of court; or

(c) was disclosed to a *health and safety representative* or *health and safety committee* in terms of Chapter 3.

## 88. Hindering administration of this Act

Any person who hinders, opposes, obstructs or unduly influences any person who is performing a function in terms of *this Act* commits an offence.

**89. Falsifying documents**

Any person who obtains or attempts to obtain a *prescribed* certificate of competency by means of fraud, dishonesty, false pretences or the presentation or submission of a false or forged document commits an offence.

**90. Failure to attend when summoned**

A person commits an offence who, having been instructed or summoned to attend an inquiry -

(a) without sufficient cause fails -

(i) to appear at the time and place specified; or

(ii) to remain in attendance until excused by the person presiding at the inquiry;

(b) attends as required, but without sufficient cause -

(i) fails to comply with an instruction in terms of section 70(c)(i); or

[90(b)(i) - Section 70(c)(i), empowers a person presiding at an inquiry to instruct anyone to produce a document for the purposes of the inquiry.]

(ii) refuses to be sworn or to make an affirmation; or

(c) attends as required and having been sworn or having made an affirmation -

(i) without sufficient cause fails to answer any question fully and to the best of that person's ability; or

(ii) gives evidence, knowing or believing it to be false.

**91. Failure to comply with this Act**

(1) Any person, including an *employer*, who contravenes, or fails to comply with, any -

(a) provision of *this Act*;

(b) *regulation*; or

- (c) condition, suspension, notice, order, instruction, prohibition, authorisation, permission, consent, exemption, certificate or document determined, given, issued, prescribed or granted by or under *this Act* by the *Minister, Chief Inspector of Mines, inspector*, any person authorised under section 49(4) or any person to whom any power has been delegated or the performance of any duty has been assigned under section 96,

commits an offence and is liable to a fine or imprisonment as may be *prescribed*.

*(Section 91(1) substituted by section 37(a) of Act 72 of 1997)*

*(Section 91(1) substituted by section 27(a) of Act 74 of 2008)*

(1A) .....

*(Section 91(1A) inserted by section 37(b) of Act 72 of 1997)*

*(Section 91(1A) deleted by section 27(b) of Act 74 of 2008)*

- (1B) Any *employer* is liable to a fine in terms of section 55B if the *employer* contravenes, or fails to comply with, any-

*(Words preceding section 91(1B)(a) substituted by section 27(c) of Act 74 of 2008)*

- (a) provision of this Act;

*(Section 91(1B)(a) substituted by section 27(d) of Act 74 of 2008)*

- (b) *regulation*; or

- (c) condition, suspension, notice, order, instruction, prohibition, authorisation, permission, consent, exemption, certificate or document determined, given, issued, promulgated or granted by or under *this Act* by the *Minister, Chief Inspector or [sic] Mines, inspector*, any person authorised under section 49(4) or any person to whom any power has been delegated or the performance of any duty has been assigned under section 96.

*(Section 91(1B) inserted by section 37(b) of Act 72 of 1997)*

- (1C) Despite subsection (1B), any *employer* who contravenes or fails to comply with any *standard* in a code of practice prepared in terms of section 9(2) is not liable to a fine in terms of section 55B if –

*(Words preceding section 91(1C)(a) substituted by section 27(e) of Act 74 of 2008)*

- (a) the *standard* exceeds any compulsory *standard* in any relevant guideline issued by the *Chief Inspector of Mines*; and

- (b) the conduct constituting the contravention or failure complies with the compulsory *standard* in any relevant guideline issued by the *Chief Inspector of Mines*.

*(Section 91(1C) inserted by section 37(b) of Act 72 of 1997)*

(2) .....

Prepared by:

*(Section 91(2) deleted by section 27(f) of Act 74 of 2008)*

- (3) A person appointed, under section 4(1) to perform any function entrusted to an *employer* by *this Act* commits an offence if that person fails to exercise reasonable care in performing that function.
- (4) Any *chief executive officer* or member of the board contemplated in section 2A who performs a function in terms of section 2A(1) or (3) commits an offence if that person fails to take reasonable steps in performing that function.

*(Section 91(4) added by section 37(c) of Act 72 of 1997)*

## **92. Penalties**

- (1) Any person convicted of an offence in terms of section 87, may be sentenced to a fine or to imprisonment to be determined by the court.
- (2) Any person convicted of an offence in terms of section 90(a) or (b)(i), may, be sentenced to the penalty applicable to a similar offence in a magistrate's court.
- (3) Any person convicted of an offence in terms of section 90(c)(ii), may be sentenced to any penalty that may be imposed in law for perjury.
- (4) Any person convicted of an offence in terms of *this Act* for which no penalty is otherwise expressly determined, may be sentenced to a fine or to imprisonment for a period not exceeding six months.
- (5) Any person convicted of an offence in terms of any section mentioned in Column 1 of Table 1 of Schedule 8, may be sentenced to a fine or to imprisonment for a period not exceeding the period mentioned in Column 2 of that Table opposite the number of that section.

*(Section 92(5) amended by section 38 of Act 72 of 1997)*

*(Section 92(5) substituted by section 28(a) of Act 74 of 2008)*

- (6) Any *owner* convicted of an offence in terms of section 86 or 86A may be sentenced to-
  - (a) withdrawal or suspension of the permit; or
  - (b) a fine of three million rands or a period of imprisonment not exceeding five years or to both such fine or imprisonment.

*(Section 92(6) added by section 28(c) of Act 74 of 2008)*

- (7) In the event of a conviction, the court may, in addition to imposing a sentence in respect of the offence and making an order, order the person convicted to-
  - (a) repair any damage caused, to the satisfaction of the *Chief Inspector of Mines*, and

- (b) comply with a provision of *this Act* within a specified period of time.

*(Section 92(7) added by section 28(c) of Act 74 of 2008)*

### **93. Magistrate's court has jurisdiction to impose penalties**

Despite anything to the contrary contained in any other law, a magistrate's court has jurisdiction to impose any penalty provided for in *this Act*.

### **94. Serving of documents**

Unless otherwise provided in *this Act*, a notice, order or other document which, in terms of *this Act*, must be served on or delivered to a person, will have been properly served or delivered if it has been either -

- (a) served on or delivered to that person; or
- (b) sent by registered post to that person's last known address; or
- (c) published in the Gazette.

### **95. Proof of facts**

In any legal proceedings in terms of *this Act* –

- (a) if it is alleged that a person at a *mine* is or was an *employee*, that person is presumed to be an *employee* at that *mine*, unless the contrary is proved;
- (b) if it is proved that a false statement, entry or information appears in or on a book, plan, *record* or other document, the person who kept that document is presumed to have made, entered, recorded or stored that statement, entry, *record* or information, unless the contrary is proved; and
- (c) subject to the provisions of sections 63(1), 63(3) and 71(2), any statement, entry or information in or on any book, plan, *record* or other document is admissible in evidence as an admission of the facts in or on it by the person who made, entered, recorded or stored it unless it is proved that that person did not make, enter, record or store it within the scope of their functions.

[95(c) - Section 63(1), provides that every answer given in an investigation is privileged.

95(c) - Section 63(3), provides that a report that an inspector has directed to be privileged may not be used in any civil, criminal or disciplinary proceedings, inquests or inquiries.

95(c) - Section 71(2), provides that a witness's privilege in a court of law applies equally to any person being questioned at an inquiry.]

## **CHAPTER 9**

Prepared by:

## GENERAL PROVISIONS

### 96. Delegation and exercise of power

- (1) The *Minister* may delegate any power conferred upon the *Minister* by or under *this Act*, except the power to make *regulations*, to the *Chief Inspector of Mines*.
- (2) The *Chief Inspector of Mines* may delegate any power or assign the performance of any duty conferred or imposed upon the *Chief Inspector of Mines* by or under *this Act*, or any other law, to –
  - (a) any *inspector*;
  - (b) any other person with appropriate knowledge and experience who is under the control of the *Chief Inspector of Mines*; or
  - (c) any other person, after consulting the *Council*.

*(Section 96(2) substituted by section 39 of Act 72 of 1997)*
- (3) A delegation or assignment under subsection (1) or (2) must be in writing, and may be subject to any conditions or restrictions determined by the *Minister* or *Chief Inspector of Mines*, as the case may be.
- (4) A delegation under subsection (1) or (2) does not prevent the exercise of that power by the *Minister* or *Chief Inspector of Mines*, as the case may be.

### 97. Minister's power to add and change Schedules

- (1) The *Minister*, after consulting the *Council*, by notice in the *Gazette* may add to, change or replace any Schedule to *this Act* other than Schedules 2, 3 and 7 and, subject to subsection (5), Schedule 4.

*(Section 97(1) substituted by section 29 of Act 31 of 2003)*
- (2) The *Minister*, after consulting the *Council*, by notice in the *Gazette* may add to *this Act* a further Schedule containing matters in respect of which *health and safety committees* may consult.
- (3) The *Minister*, after consulting the *Council*, by notice in the *Gazette*, may add to *this Act* a further Schedule containing the constitution of the *Council* and its committees.

*(Section 97(3) substituted by section 40(a) of Act 72 of 1997)*
- (4) The *Minister*, after consulting the *Council* and the Mining Qualifications Authority, by notice in the *Gazette* may add to *this Act* a further Schedule containing the constitution of the Mining Qualifications Authority and its committees.

*(Section 97(4) substituted by section 40(a) of Act 72 of 1997)*



- (5) The *Minister*, after consulting the *Council*, by notice in the *Gazette* may add to Schedule 4 further items containing transitional provisions necessary for the implementation of this Act.
- (6) The *Minister*, after consulting the *Council* and in consultation with the Minister of Health, by notice in the *Gazette* may add to *this Act* a further Schedule to suspend or vary the application of the Occupational Diseases in Mines and Works Act, 1973 (Act 78 of 1973), except in relation to the determination or payment of compensation.
- (7) The *Minister* may add to, change or replace any page header or sidenote by notice in the *Gazette*.

## 98. Regulations

- (1) The *Minister*, after consulting the *Council*, by notice in the *Gazette* may make regulations regarding –
  - (a) *health and safety* of persons at *mines*;
  - (b) *health and safety standards*, codes of practice and the provision of protective clothing, equipment and facilities in connection with *health and safety* at *mines*;
  - (c) the performance of work by *employees* exposed to a *health hazard* and the measures to eliminate, control and minimise *health risks*;
  - (d) *health and safety* management systems at *mines*;
  - (e) orderly operations at *mines*;
  - (f) the powers, duties, functions and responsibilities of *employees* at *mines* and of the *employers*;
  - (g) the issuing of permits for the use of *machinery*, equipment and material at *mines* and the accreditation of persons to test *machinery*, equipment and material for these purposes;
  - (h) the conditions under which *machinery*, equipment or material may be erected or used at *mines*;
  - (i) the elimination, control and minimisation of *health and safety hazards*;
  - (j) requirements for the safe use, handling, processing, storage, transport and disposal of hazardous *substances* used in the mining process and waste produced at the *mine*;
  - (k) the transport, handling, storage and use of explosives and the mixing of *substances* to make explosives at a *mine*;
  - (l) the protection of equipment, structures, water sources and the surface of land;

- (m) the conditions in which equipment, structures, water sources or the surface of land may be used, and the prohibition on, or restriction of, the erection of equipment and structures and the use of water sources or the surface of land in the vicinity of the *working places* at a *mine*;
- (n) the making safe of undermined ground and of dangerous excavations, tailings, waste dumps, ash dumps and structures of whatever nature made in the course of *prospecting* or mining operations or which are connected with those operations;
- (o) the monitoring and control as contemplated in section 49(3)(a) of those environmental aspects at *mines* which affect, or may affect, the *health* and *safety* of *employees* or other persons;

[98(1)(o) - Section 49(3)(a), empowers the Chief Inspector of Mines to monitor and control those environmental aspects at mines that affect the health and safety of employees or other persons.]

- (p) standards of housing and nutrition of *employees* who are accommodated at the *mine*;
- (q) initial standards of fitness to perform work involving exposure to a *health hazard*, standards of fitness to continue performing such work and the conditions under which *employees* may be withdrawn either temporarily or permanently from such work;
- (r) standards of *occupational hygiene* measurement techniques, the frequency and manner in which measurements must be made, the manner of *record* keeping and reporting of *occupational hygiene* measurements made at *mines*;
- (s) standards of medical tests or *biological monitoring* used in *medical surveillance*, the persons who may carry out those tests and that monitoring, the interpretation of results of *medical surveillance*, the frequency for carrying out periodic *medical surveillance*, the keeping of *records of medical surveillance* and the reporting of confidential extracts from *records of medical surveillance*;
- (t) the manner of reporting *prescribed* accidents and *health* matters at *mines*, the keeping of *records* and statistics in relation to accidents and *health* matters and the provision of emergency medical treatment after an accident or in connection with a *health* matter;
- (u) the manner of reporting *prescribed occupational diseases* at *mines*, the keeping of *records* in relation to *occupational diseases* and the control and provision of medical services in connection with *occupational diseases*;
- (v) the form of an exit certificate and the content of medical examinations associated with an exit certificate;

- (w) the form of any application to be made in terms of *this Act* and of any consent or document required to be submitted with an application, and the information or details which must accompany an application;
- (x) the form of any register, *record*, notice, sketch plan or information to be kept, given, published or submitted in terms of or for the purposes of *this Act*, and the manner in which a register, *record*, notice, sketch plan or information is to be kept, given, published or submitted;
- (y) the drawing up and keeping of *mine* plans and the submission of statistical and other reports in relation to *minerals, mines* and *machinery*;
- (z) negotiations and consultations in terms of sections 26 and 33 and the time periods within which the negotiations and consultations must be completed;
- (zA) qualifications for appointment as a *health and safety representative*, the election and terms of office of representatives, the circumstances in which a representative must vacate office, the circumstances in which a representative may be removed from office, the manner in which vacancies may be filled, the functions of representatives, the manner in which the functions of representatives must be conducted, the facilities and assistance that must be provided to representatives and the training of representatives;
- (zB) the establishment of *health and safety committees*, the election and appointment of members to a committee, the terms of office of members of a committee, the circumstances in which a member must vacate office, the circumstances in which a member may be removed from office, the manner in which vacancies may be filled, meetings of the committees, the rules and procedures of the committees, the facilities and assistance that must be provided to committees and the training of the members of committees;
- (zC) the appointment of members to the *Council* in accordance with the provisions of Schedule 2, the functions of the *Council*, the payment of allowances to members, the funding of the *Council* and its committees, and any other matter the regulation of which, in the opinion of the *Minister*, may be necessary for the proper functioning of the *Council* and its committees.
- (zD) the appointment of members of the Mining Qualifications Authority in accordance with Schedule 2;
- (zE) qualifications for *inspectors*;
- (zF) the establishment of one or more accounts and the control of those accounts by the *Chief Inspector of Mines* with a view to funding –
  - (i) research and surveys regarding, and for the promotion of *health* and *safety* at *mines*; and

(ii) the administration costs of the overall programme for relevant *health* and *safety* research;  
(Section 98(1)(zF) substituted by section 41(a) of Act 72 of 1997)

(zG) the manner in which the presence of witnesses at inquiries must be obtained in terms of section 71, and the procedures to be followed at inquiries;

[98(1)(zG) - Section 71, deals with the duty of every person summoned at an inquiry to answer any question.]

(zH) procedures to be followed in respect of appeals to the *Chief Inspector of Mines* or *Medical Inspector* under *this Act*;

(zI) fees payable in relation to applications, appeals and documents;

(zJ) the payment of levies by *mines* on the basis of *health* and *safety risk* for –

(i) research and surveys regarding, and for the promotion of *health* and *safety* at *mines*; and

(ii) the administration costs of the overall programme for relevant *health* and *safety* research.  
(Section 98(1)(zJ) substituted by section 41(b) of Act 72 of 1997)

(zK) the imposition of monetary and other obligations in connection with safe-making referred to in paragraph (n) on persons who -

(i) are or were responsible for the undermining of any ground or the making of any excavations, tailings, waste dumps, ash dumps or structures or for the dangerous condition of any of them; or

(ii) will benefit from that safe-making;

(zL) the assumption by the State of responsibility for safe-making referred to in paragraph (n) in particular cases;

(zM) the use of plain language in documents that are required to be published, displayed or distributed in terms of *this Act*; and

(zN) any other matter the regulation of which may be necessary or desirable in order to achieve the objects of *this Act*;

(Section 98(1)(zN) substituted by section 29(a) of Act 74 of 2008)

(zO) the system of fines contemplated in sections 55A and 55B including *regulations* regarding forms and documents, periods of time, procedures, *records* to be kept and the payment of fines;

(Section 98(1)(zO) added by section 41(c) of Act 72 of 1997)

*(Section 98(1)(zO) substituted by section 29(b) of Act 74 of 2008)*

(zP) minimum standards for the establishment, functioning, training, equipping and staffing of rescue services at *mines* and reporting by *employers* in respect of rescue services.

*(Section 98(1)(zP) added by section 29(c) of Act 74 of 2008)*

- (2) No *regulation* may be made relating to -
- (a) State revenue or expenditure except with the concurrence of the Minister of Finance;
  - (b) any *health* matter, except after consultation with the Minister for Health.
- (3) The *Minister*, after consultation with the Mining Qualifications Authority, by notice in the Gazette, may make *regulations* to provide for -
- (a) the qualifications for employment in any occupation; .
  - (b) conditions for acceptance as a candidate for examinations;
  - (c) the issuing of certificates of competency in respect of any occupation;
  - (d) the funding of the Mining Qualifications Authority including the manner by which such funds may be raised;
  - (e) procedures for assessing competency;
  - (f) the accreditation of assessors;
  - (g) the establishment of examination bodies;
  - (h) the appointment of examiners and moderators;
  - (i) the monitoring and administration of examinations;
  - (j) the setting of examination fees;
  - (k) the accreditation of providers of training;
  - (l) the establishment of quality assurance procedures;
  - (m) the issue of qualifications;

- (n) the registering of qualifications; and
  - (o) any other matter, the regulation of which may be necessary or desirable in order to promote the activities of the Mining Qualifications Authority.
- (4) *Regulations* made in terms of subsection (3) must be in accordance with the National Qualifications Framework approved in terms of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995).
- (5) The *Minister* may incorporate all or part of any *health and safety standard*, without restating the text of it, in a *regulation* by referring to the number, title and year of issue of that *health and safety standard* or, to any other particulars by which that *health and safety standard* is sufficiently identified.
- (6) The *Minister* must consult the *Council* before incorporating a *health and safety standard* in a *regulation*.
- (7) The *Minister*, after consulting the *Council*, by notice in the Gazette, may make *regulations* imposing any function of an *employer* on any person, other than the *employer*, who employs *employees*.  
*(Section 98(7) substituted by section 41(d) of Act 72 of 1997)*
- (8) For the purposes of *this Act*, any *health and safety standard* referred to in subsection (5) incorporated in a *regulation* is deemed to be a *regulation*, in so far as it is not repugnant to any *regulation* made under subsection (1).
- (9) Whenever a *health and safety standard* which has been incorporated in a *regulation* is subsequently amended or substituted by the competent authority, the *regulation* referred to in subsection (5) incorporating that *health and safety standard* is deemed to refer to that *health and safety standard* as so amended or substituted, unless a contrary intention is stated in the notice.
- (10) The *Chief Inspector of Mines* must keep a register of particulars of -
- (a) every amendment or substitution of a *health and safety standard* incorporated in the *regulations*;
  - (b) the publication of any amendment or substitutions;
  - (c) every publication in which a *health and safety standard* that has been incorporated in the *regulations* under subsection (5) was published; and
  - (d) the place in the Republic where each of those *standards* and publications is obtainable or otherwise available for inspection.

- (11) The *Chief Inspector of Mines* must allow any person to inspect the register kept in terms of subsection (9) and to make an extract from it.
- (12) The provisions of section 31 of the Standards Act, 1993 (Act No. 29 of 1993), do not apply to any incorporation of a *health and safety standard* or to any amendment or substitution of a *health and safety standard* under this section.

## 99. Amendment of laws

Each of the laws referred to in Schedule 3 is hereby amended to the extent specified in that Schedule

## 100. Transitional arrangements

- (1) The amendment of laws referred to in Schedule 3 does not affect any transitional arrangement made in Schedule 4.
- (2) The transitional arrangements in Schedule 4 must be read and applied as substantive provisions of *this Act*.

## 101. Interpretation

- (1) .....

*(Section 101(1) deleted by section 42 of Act 72 of 1997)*

- (2) Subject to sections 26 and 33, no agreement may affect any -
  - (a) provision of *this Act*;
  - (b) condition, notice, order, instruction, prohibition, authorisation, permission, consent, exemption, certificate or document determined, given, issued, promulgated or granted by or under *this Act* by the *Minister, Chief Inspector of Mines, inspector* or any other person authorised under *this Act*; or
  - (c) any condition contained in any exemption.

[101(2) - Section 26, deals with the election and appointment of health and safety representatives. Section 33, deals with the election and appointment of members of health and safety committees.]

- (3) Subsection (2) applies to any agreement whether entered into before or after the commencement of *this Act* or before or after the issuing of the documents referred to in subsection (2).

- (4) Any notice, order or any other document issued in good faith in terms of *this Act*, is valid according to its terms, despite any want of form or lack of power on the part of any person to issue or authenticate it, provided the necessary power is subsequently conferred upon that person.

## 102. Definitions

In *this Act*, unless the context otherwise indicates –

**"biological monitoring"** means a planned programme of periodic collection and analysis of body fluid, tissues, excreta or exhaled air in order to detect and quantify the exposure to or absorption of any *substance* or *organism*;

**"chief executive officer"** means the person who is responsible for the overall management and control of the business of an *employer*;

*(Definition of "chief executive officer" inserted by section 43(a) of Act 72 of 1997)*

**"Chief Inspector of Mines"** means the *officer* appointed in terms of section 48(1) and includes any officer acting in that capacity;

**"Commission"** means the Commission for Conciliation, Mediation and Arbitration established in terms of section 112 of the *Labour Relations Act*;

**"Constitution"** means the Constitution of the Republic of South Africa, 1996;

*(Definition of "Constitution" inserted by section 30(a) of Act 74 of 2008)*

**"Council"** means the Mine Health and Safety Council established by section 41(1);

**"Department"** means the Department of Minerals and Energy;

*(Definition of "Department" substituted by section 43(b) of Act 72 of 1997)*

**"employee"** means any person who is employed or working at a *mine*;

**"employer"** means an *owner*;

*(Definition of "employer" substituted by section 43(c) of Act 72 of 1997)*

**"engine"** means any appliance or combination of appliances by which power, other than human or animal power, can be applied to do mechanical work;

**"hazard"** means a source of or exposure to danger;

**"health"** refers to *occupational health at mines*;



**"health and safety committee"** means a health and safety committee established in terms of section 34;

**"health and safety equipment"** means an article or part of an article that is manufactured, provided or installed in the interest of the *health* or *safety* of any person;

**"health and safety representative"** means an *employee* elected and appointed in terms of section 29;

**"health and safety standard"** means any *standard*, irrespective of whether or not it has the force of law, which, if applied for the purposes of *this Act*, will in the opinion of the *Minister* promote the attainment of an object of *this Act*;

**"health hazard"** means any physical, chemical or biological *hazard* to *health*, including anything declared to be a health hazard by the *Minister*;

**"health-threatening occurrence"** means any occurrence that has or may have the potential to cause *serious illness* or damage to *health*;

**"healthy"** means free from illness or injury attributable to occupational causes;

**"inspector"** means an *officer* appointed in terms of section 49(1)(c), a *Medical Inspector* and any *Principal Inspector of Mines*;

*(Definition of "inspector" substituted by section 43(d) of Act 72 of 1997)*

**"Labour Court"** means the Labour Court established by section 151 of the *Labour Relations Act*; 25

**"Labour Relations Act"** means the Labour Relations Act, 1995 (Act No. 66 of 1995);

**"machinery"** means any *engine*, boiler or appliance or any combination of them, which is situated at a *mine* and used or intended to be used –

(a) for generating, developing, receiving, storing, converting, transforming, transmitting or distributing any form of power or energy; or

(b) for conveying persons, material or *minerals*;

**"manager"** means any competent person appointed in terms of section 3(1)(a);

**"Medical Inspector"** means a Medical Inspector appointed in terms of section 49(1)(b);

"**medical practitioner**" means a medical practitioner as defined in the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);

"**medical surveillance**" means a planned programme of periodic examination, which may include clinical examinations, *biological monitoring* or medical tests, of *employees* by an *occupational health practitioner* or by an *occupational medical practitioner* contemplated in section 13;

"**mine**" means, when -

(a) used as a noun -

(i) any borehole, or excavation, in any tailings or in the earth, including the portion of the earth that is under the sea or other water, made for the purpose of searching for or winning a *mineral*, whether it is being worked or not; or

(ii) any other place where a *mineral* deposit is being exploited, including the *mining area* and all buildings, structures, *machinery*, mine dumps, access roads or objects situated on or in that area that are used or intended to be used in connection with searching, winning, exploiting or *processing* of a *mineral*, or for *health* and *safety* purposes. But, if two or more excavations, boreholes or places are being worked in conjunction with one another, they are deemed to comprise one mine, unless the *Chief Inspector of Mines* notifies their *employer* in writing that those excavations, boreholes or places comprise two or more mines; or

(iii) a *works*; and

(b) used as a verb, the making of any excavation or borehole referred to in paragraph (a)(i), or the exploitation of any *mineral* deposit in any other manner, for the purpose of winning a *mineral*, including *prospecting* in connection with the winning of a *mineral*;

"**mineral**" means any *substance*, excluding water, but including sand, stone, rock, gravel and clay, as well as soil, other than top soil -

(a) whether that *substance* is in solid, liquid or gaseous form;

(b) that occurs naturally in or on the earth, in or under water or in tailings; and

(c) that has been formed by or subjected to a geological process;

"**Mineral and Petroleum Resources Development Act**" means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

*(Definition of "Mineral and Petroleum Resources Development Act" inserted by section 30(b) of Act 74 of 2008)*

**"Minerals Act"** .....

*(Definition of "Minerals Act" deleted by section 30(c) of Act 74 of 2008)*

**"mining area"** means a prospecting area, mining area, retention area, exploration area and production area as defined in section 1 read with section 65(2)(b) of the Petroleum and Mineral Resources Development Act, 2002 (Act No. 28 of 2002).

*(Definition of "mining area" substituted by section 110 of Act 28 of 2002)*

*Publisher's Note:*

*The reference to section 65(2)(b) of the "Petroleum and Mineral Resources Development Act" in the definition of "mining area" is incorrect. Section 65 consists of one sentence and has to do with funding. Section 69(2)(b) of the Mineral and Petroleum Resources Development Act may have been the intended reference.*

**"Minister"** means the Minister of Minerals and Energy;

*(Definition of "Minister" substituted by section 43(e) of Act 72 of 1997)*

**"occupational disease"** means any *health* disorder including a compensatable disease as contemplated by the Occupational Diseases in Mines and Works Act, 1973 (Act No. 78 of 1973), and an occupational disease contemplated by the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);

*(Definition of "occupational disease" substituted by section 43(f) of Act 72 of 1997)*

**"occupational health"** includes *occupational hygiene* and *occupational medicine*;

**"occupational health practitioner"** .....

*(Definition of "occupational health practitioner" deleted by section 30(d) of Act 74 of 2008)*

**"occupational hygiene"** means the anticipation, recognition, evaluation and control of conditions at the *mine*, that may cause illness or adverse health effects to persons;

**"occupational medicine"** means the prevention, diagnosis and treatment of illness, injury and adverse health effects associated with a particular type of work;

**"occupational medical practitioner"** means a *medical practitioner* who holds a qualification in *occupational medicine*, or an equivalent qualification, recognised by the Health Professions Council of South Africa;

*(Definition of "occupational medical practitioner" substituted by section 30(e) of Act 74 of 2008)*

**"officer"** means a woman or man who has been appointed permanently despite the fact that such appointment may be on probation to a post contemplated in section 8(1)(a) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and includes a woman or man contemplated in section 8(1)(b) or 8(3)(c) of that Act;

**"organism"** means any biological entity which is capable of causing illness to persons;

**"owner" –**

(a) in relation to a *mine*, means –

(i) the holder of a *prospecting* permit or mining authorisation issued under the *Mineral and Petroleum Resources Development Act*;

*(Paragraph (a)(i) of the definition of "owner" substituted by section 30(f) of Act 74 of 2008)*

(ii) if a *prospecting* permit or mining authorisation does not exist, the person for whom the activities contemplated in paragraph (b) of the definition of '*mine*' are undertaken, but excluding an independent contractor; or

(iii) if neither (i) or (ii) is applicable, the last person who worked the *mine* or that person's successor in title; and

(b) in relation to a *works*, means the person who is undertaking the activities contemplated in the definition of '*works*', but excluding an independent contractor;

*(Definition of "owner" substituted by section 43(g) of Act 72 of 1997)*

**"prescribed"** means prescribed by *regulation*;

**"Principal Inspector of Mines"** means the officer appointed by the *Chief Inspector of Mines* to be in charge of *health* and *safety* in any region established in terms of section 47(2);

*(Definition of "Principal Inspector of Mines" inserted by section 43(h) of Act 72 of 1997)*

**"processing"** means the recovering, extracting, concentrating, refining, calcining, classifying, crushing, milling, screening, washing, reduction, smelting or gasification of any *mineral*, and

**"process"** has a similar meaning;

**"prospecting"** means intentionally searching for any *mineral* by means that disturb any tailings or the surface of the earth, including the portion of the earth that is under the sea or under other water, by means of excavation or drilling, but does not include *mine* as a verb;

**"Public Finance Management Act"** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

*(Definition of "Public Finance Management Act" inserted by section 30(g) of Act 74 of 2008)*

**"reasonably practicable"** means practicable having regard to -

- (a) the severity and scope of the *hazard* or *risk* concerned;
- (b) the state of knowledge reasonably available concerning that *hazard* or *risk* and of any means of removing or mitigating that *hazard* or *risk*;
- (c) the availability and suitability of means to remove or mitigate that *hazard* or *risk*; and
- (d) the costs and the benefits of removing or mitigating that *hazard* or *risk*;

**"record"** includes information contained in or on a computer printout, tape or disc or any other computer storage medium;

**"record of medical surveillance"** means a *record* kept in terms of section 13(3);

**"registered trade union"** means a trade union registered in terms of the *Labour Relations Act*;

**"regulation"** means a regulation made under section 98 or in force in terms of item 4 of Schedule 4;

**"representative trade union"** means a *registered trade union*, or two or more *registered trade unions* acting jointly, that have as members the majority of *employees* at a *mine*;

**"risk"** means the likelihood that occupational injury or harm to persons will occur;

**"safety"** means safety at *mines*;

**"serious injury"** means any injury which is reportable under *this Act*;

**"serious illness"** means any illness resulting from occupational exposure that affects the *health* of a person to the extent that it incapacitates the affected person from resuming that person's normal or similar occupation for four days or more;

**"standard"** means any provision occurring –

- (a) in a specification, compulsory specification, code of practice or standard method as defined in section 1 of the Standards Act, 1993 (Act No. 29 of 1993); or
- (b) in any specification, code or any other directive having standardisation as its aim and issued by an institution or organisation inside or outside the Republic which, whether generally or with

respect to any particular article or matter and whether internationally or in any particular country or territory, seeks to promote standardisation;

"**substance**" includes any solid, liquid, vapour, gas or aerosol, alone or in any combination;

"**this Act**" includes –

- (a) the section numbers, but not the page headers, headings or sidenotes;
- (b) the Schedules;
- (c) the *regulations*; and
- (d) any condition, suspension, notice, order, instruction, prohibition, authorisation, permission, consent, exemption, certificate or document determined, given, issued, promulgated or granted by or under *this Act* by the *Minister, Chief Inspector of Mines, an inspector, any person authorised under section 49(4) or any person to whom a power has been delegated or the performance of a duty has been assigned under section 96;*

*(Paragraph (d) of the definition of "this Act" substituted by section 43(i) of Act 72 of 1997)*

"**topsoil**" means topsoil as defined in section 1 of the *Mineral and Petroleum Resources Development Act*;

*(Definition of "topsoil" inserted by section 43(j) of Act 72 of 1997)*

*(Definition of "topsoil" substituted by section 30(h) of Act 74 of 2008)*

"**working place**" means any place at a *mine* where *employees* travel or work;

"**works**" means any place, excluding a *mine*, where any person carries out –

- (a) the transmitting and distributing to another consumer of any form of power from a *mine*, by the *employer* thereof, to the terminal point of bulk supply or where the supply is not in bulk, to the power supply meter on any such other consumer's premises; or
- (b) training at any central rescue station; or
- (c) the making, repairing, re-opening or closing of any subterranean tunnel; or
- (d) any operations necessary or in connection with any of the operations listed in this paragraph.

### 103. Occupational Health and Safety Act, 1993, not applicable

The Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), is not applicable to any matter in respect of which any provision of *this Act* is applicable.

#### 104. Civil liability of State

The State Liability Act, 1957 (Act No. 20 of 1957), applies with the changes required by the context in respect of the Mine Health and Safety Inspectorate, and in such application a reference in that Act to the *Minister* of a department concerned must be construed as a reference to the *Chief Inspector of Mines*.

*(Section 104 substituted by section 31 of Act 74 of 2008)*

#### 105. Act binds State

The provisions of *this Act* bind the State except in so far as any criminal liability is concerned.

#### 106. Short title and commencement

- (1) *This Act* is called the Mine Health and Safety Act, 1996.
- (2) *This Act* comes into operation on a date fixed by the President by proclamation in the Gazette.

### SCHEDULE 1

#### GUIDELINES FOR DETERMINING THE NUMBER OF FULL-TIME HEALTH AND SAFETY REPRESENTATIVES

##### 1. Introduction

- (1) This Schedule contains guidelines for determining the number of full-time *health and safety representatives*.
- (2) *This Act* places the highest value on agreement. The parties referred to in section 26 must refer to this Schedule, using its guidelines in a manner that best suits the particular *mine*.
- (3) If agreement is not reached, the Commissioner appointed by the *Commission* must refer to this Schedule, using its guidelines in a manner that best suits the particular *mine*.

##### 2. Minimum threshold

- (1) There should be a full-time *health and safety representative* in every *mine* that requires the use of a full-time *health and safety representative*, taking into account -
  - (a) the volume, size and physical location of the *mine*;

- (b) the *health and safety record* of the *mine*;
  - (c) the number of designated *working places*; and
  - (d) the objects of *this Act*.
- (2) The guidelines as to the size of the *mine* that should have a full-time *health and safety representative*, is a *mine* with 500 *employees*.

### 3. Number of full-time health and safety representatives

- (1) The formula for determining the number of full-time *health and safety representatives* should take into account -
- (a) the nature, size and physical location of the *mine*;
  - (b) the *health and safety record* of the *mine*;
  - (c) the number of designated *working places*;
  - (d) the number of *health and safety representatives*;
  - (e) the number of shafts and the number of *employees* at the shaft; and
  - (f) the objects of *this Act*.

## SCHEDULE 2

### NOMINATION AND APPOINTMENT OF MEMBERS TO TRIPARTITE INSTITUTIONS

The *Minister* must make the regulations referred to in sections 42(2) and 45(2) in a manner that ensures that –

- (a) members appointed to represent *employees* are either -
  - (i) all nominated by agreement between *registered trade unions* representing at least 75% of *employees* belonging to such trade unions in the mining industry; or
  - (ii) failing agreement in terms of subparagraph (i) –
    - (aa) at least half are persons nominated by a *registered trade union* or unions representing the majority of *employees* belonging to such trade unions in the mining industry; and



- (bb) the rest are persons nominated by *registered trade unions* and appointed in accordance with the significance of the trade unions concerned; and
- (b) members appointed to represent *employers* are either -
- (i) all nominated by agreement between *employers'* organisations whose members employ at least 75% of *employees* in the mining industry; or
  - (ii) failing agreement in terms of subparagraph (i) -
    - (aa) at least half are persons nominated by an *employers'* organisation or organisations whose members employ the majority of the *employees* in the mining industry; and  
*(Schedule 2(b)(ii)(aa) substituted by section 44 of Act 72 of 1997)*
    - (bb) the rest are persons nominated by *employers'* organisations and appointed in accordance with the significance of the organisations concerned.

#### GENERAL EXPLANATORY NOTE:

□ Words in **bold** type in square brackets indicate omissions from existing enactments,

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

### SCHEDULE 3

#### AMENDMENT OF LAWS

##### A: MINERALS ACT, 1991

##### 1. Amendment of section 1 of Act 50 of 1991, as amended by section 1 of Act 103 of 1993.

Section 1 of the Minerals Act, 1991 (in this Schedule referred to as the principal Act), is hereby amended –

- (a) by the deletion of the definitions of "certificated", "engine", "investigating officer", "machinery", "manager", "mine safety committee", "peace officer", "regional director", "regional mining engineer", "serious bodily harm" and "works";
- (b) by the insertion before the definition of "Department" of the following definition:

" 'Chief Inspector of Mines' means the Chief Inspector of Mines appointed in terms of section 48 of the Mine Health and Safety Act, 1996;" and

- (c) by the insertion before the definition of "elevator" of the following definition:

" 'Director: Mineral Development' means any officer appointed in terms of section 4;".

## 2. Amendment of section 2 of Act 50 of 1991, as substituted by section 2 of Act 103 of 1993

Section 2 of the principal Act is hereby amended by the deletion of subsection (2).

## 3. Amendment of section 8 of Act 50 of 1991

Section 8 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- "(1) No holder of any prospecting permit shall remove any mineral found by **[him]** the holder in or on land or in tailings in the course of prospecting operations, from such land or the land on which such tailings are situated or dispose of any such mineral, excluding samples of any such mineral removed for tests thereon or identification or analysis thereof, except with the written consent of the holder of the right to such mineral in respect of such land or tailings, and with written permission granted by the **[regional director]** Director: Mineral Development concerned, subject to such conditions in respect of **[safety and health]** optimal utilization or rehabilitation as may be 20 **[determined by him and]** specified therein."

## 4. Amendment of section 9 of Act 50 of 1991

Section 9 of the principal Act is hereby amended –

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

"(a) with the manner in which and scale on which the applicant intends to mine the mineral concerned optimally **[and safely]** under such mining authorization;" ;

- (b) by the substitution for paragraph (c) of subsection (3) of 30 the following paragraph:

"(c) that such applicant has the ability and can make the necessary provision to mine such mineral optimally **[and safely]** and to rehabilitate such disturbances of the surface; and";

- (c) by the substitution for paragraph (c) of subsection (5) of the following paragraph:

" (c) particulars about the manner in which and scale on which the applicant intends to mine such mineral under such mining authorization optimally **[and safely]** and to rehabilitate disturbances of the surface which may be caused by **[his]** the intended mining operations;" ;

(d) by the deletion of the word "and" at the end of paragraph (d) of subsection (5) and by the substitution for paragraph (e) of that subsection of the following paragraph:

"(e) particulars about the applicant's ability to make the necessary provision to mine such mineral optimally **[and safely]** and to rehabilitate such disturbances of the surface; and";

(e) by the addition to subsection (5) of the following paragraph:

"(f) particulars about the applicant's ability to mine in a healthy and safe manner"; and

(f) by the addition of the following subsections:

"(7) The Director: Mineral Development shall consult as to the issuing of a mining authorisation with the Chief Inspector, and no mining authorisation may be issued unless the Chief Inspector is satisfied that the applicant has the ability and can make the necessary provision to mine in a healthy and safe manner.

(8) Subsection (7) shall apply *mutatis mutandis* in relation to the issuing of a prospecting permit in terms of section 6 or a permission in terms of section 8."

## 5. Amendment of section 12 of Act 50 of 1991

Section 12 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

" (2) Before issuing a certificate referred to in subsection (1), the Director: Mineral Development shall consult with the Chief Inspector in that regard, and no such certificate shall be issued if the Chief Inspector is of opinion that the provisions of the Mine Health and Safety Act, 1996, have not been complied with by the holder referred to in subsection (1)." .

## 6. Substitution of section 15 of Act 50 of 1991

Section 15 of the principal Act is hereby substituted for the following section:

**"15. Restriction on issuing of more than one prospecting permit or mining authorization in respect of same mineral and land.**

No prospecting permit or mining authorization shall be issued in respect of any mineral in respect of land or tailings, as the case may be, if a prospecting permit or mining authorization has already been issued in respect of such mineral and land or tailings, as the case may be, unless the **[regional director]** Director: Mineral Development is satisfied that such first-mentioned issuing will not detrimentally affect the object of this Act in relation to optimal exploitation of minerals **[safety, health]** or rehabilitation." .

**7. Amendment of section 25 of Act 50 of 1991**

Section 25 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The Manager of a mine **[or works]** may search or cause to be searched any person employed at such o mine **[or works]** for possession of any mineral in respect of which the possession has been prohibited under subsection (1).".

**8. Repeal of sections 26 to 37 of Act 50 of 1991**

Sections 26 to 37 of the principal Act are hereby repealed.

**9. Amendment of section 39 of Act 50 of 1991**

Section 39 of the principal Act is hereby amended by the substitution in subsection (3) of the words following upon paragraph (c) of the following words:

"he or she shall consult as to that with the Chief Inspector and each department charged with the administration of any law which relates to any matter affecting the environment.".

**10. Amendment of section 41 of Act 50 of 1991**

Section 41 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The **[regional director]** Director: Mineral Development may issue directives and determine conditions in relation to the use of the surface of land comprising the subject of any prospecting permit or mining authorization **[or upon which a works is situated]** in order to limit any damage to or the disturbance of the surface, vegetation, environment or water sources to the minimum which is necessary for any prospecting or mining operations or processing of any mineral: Provided that such directives and conditions shall not be construed as placing the holder of any such prospecting permit or mining authorization **[or the owner of such works, as the case may be]**, in a better position *vis-a-vis* the owner of such land in relation to the use of the surface thereof.".

**11. Amendment of section 51 of Act 50 of 1991, as amended 30 by section 20 of Act 103 of 1993**

Section 51 of the principal Act is hereby amended –

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

"(b) question any person and take a statement from **[him]** such person, in which case section **[29(4)]** 53C(4) shall be applicable *mutatis mutandis*;" and

(b) by the deletion of paragraph (d) of subsection (2).

**12. Insertion of sections 53A, 53B and 53C in Act 50 of 1991**

The following sections are hereby inserted after section 53:

**"53A. Orders, suspensions and instructions**

(1) If an officer authorised by the Director-General is of the opinion that any contravention or suspected contravention of or any failure to comply with any provision of this Act or any condition to which any authorization, exemption, environmental management programme or permission granted or approved in terms of this Act, is subject, occurs at any mine or place presumed to be a mine, such officer may –

(a) order the owner, manager or any official, employee or agent of such mine or place to take immediate rectifying steps; or

(b) order that the operations at such mine or place or part thereof be suspended,

and give such instructions in connection therewith as he or she may deem desirable.

(2) Any order referred to in subsection (1)(b) shall be confirmed or set aside by the Director: Mineral Development, who shall notify the owner or manager of the mine or presumptive mine concerned in writing of his or her decision as soon as practicable.

(3) Any order given under subsection (1)(b) shall take effect from the time fixed by the officer concerned and shall remain in force until set aside by the Director: Mining Development or until the instructions of the officer have been complied with.

**53B. Inquiries.**

(1) If any contravention or suspected contravention of or any failure or suspected failure to comply with any provision of this Act occurs at any mine or place presumed to be a mine, an inquiry may be held into any such matter by an officer designated by the Director-General.

- (2) The Director-General may, either before the commencement or at any stage of an inquiry held in terms of subsection (1) or (4) designate one or more other officers to assist in the holding of such inquiry and may designate an officer to preside at such inquiry.
- (3) Any investigating officer holding an inquiry into any matter in terms of this section shall, if necessary with the assistance of an interpreter, take down or record by mechanical means the evidence given thereat and submit a written copy thereof with a report thereon to the Director: Mineral Development, who shall transmit it to the Director-General, unless otherwise directed by the latter.
- (4) Upon consideration of the evidence and report referred to in subsection (3) the Director-General may require that the matter concerned be inquired into further.

**53C. Attendance and examination of witnesses at inquiry.**

- (1) An investigating officer holding an inquiry in terms of section 53B(1) or (4) into any matter or who is to preside or is presiding at such inquiry may, for the purposes of such inquiry -
- (a) direct or summon any person to appear before him or her at such time and place as may be determined by him or her; or
- (b) order any person present at the place where such inquiry is being held –
- (i) to give evidence thereat;
- (ii) to produce any document or thing which he or she may deem necessary for the proper disposal of such inquiry; or
- (iii) to perform any other act in relation to this Act which he or she may direct.
- (2)
- (a) If any person has reason to believe that he or she may be held liable for any matter which shall or may be inquired into in terms of section 53B(1) or (4), he or she shall have the right, but is, subject to subsection (1), not compelled, to be present at any such inquiry and to be assisted or represented by another person.
- (b) If at any inquiry held in terms of section 53B(1) or (4) evidence has been or is being given from which any person may reasonably infer that he' or she may be charged with contravening any provision of this Act or failing to comply therewith or may be held responsible in any manner for the matter comprising the subject of such inquiry, he or she shall have the right, but is not compelled, to give evidence and, either personally or through a representative –

(i) to be heard;

(ii) to call any witness or to request the investigating officer to direct or summon any witness on his or her behalf, either to give evidence thereat or to produce any document or thing;

(iii) to cross-examine anybody giving evidence at such inquiry; and

(iv) to peruse any document which has been presented as evidence.

(3) Any person who satisfies an investigating officer that he or she has a material interest in any inquiry held in terms of section 53B(1) or (4) may, either personally or through a representative, put such questions as the investigating officer may consider relevant to such inquiry, to a witness giving evidence thereat.

(4)

(a) Any investigating officer may, at any inquiry held in terms of section 53B(1) or (4), administer an oath which is normally administered to a witness in a court of law, to any witness before giving evidence or, if objecting to taking such oath, he or she may make an affirmation, and such affirmation shall have the same legal force and effect as such oath.

(b) No person called as a witness at any inquiry held in terms of section 53B(1) or (4) shall when he or she is requested thereto, refuse or fail to take an oath or, if he or she objects thereto, to make an affirmation.

(c) No person to whom an oath referred to in paragraph (a) has been administered or who has made an affirmation so referred to, shall give evidence knowing it to be false or make a statement under oath or affirmation which is contrary to any statement which that person made under oath or affirmation on a previous occasion.

(5) Any witness at any inquiry held in terms of section 53B(1) or (4) shall have the same privileges in relation to the answering of questions or the production of documents or things as such witness would have had under the same circumstances if the witness had been summoned as such before a court of law.

(6)

(a) Any inquiry or any part thereof held in terms of section 53B(1) or (4) shall, in so far as it is in the opinion of the investigating officer practically possible or desirable, be held in public.

(b) The investigating officer may decide whether any witness who has to give evidence or has given evidence at any inquiry referred to in paragraph (a), shall be present whilst other witnesses are giving their evidence thereat.

**53D. Obstruction of inquiry or investigating officer or failure to render assistance.**

No person shall, in relation to any inquiry held in terms 5 of section 53B(1) or (4) –

- (a) without reasonable justification fail to comply with any direction, summons or order issued or given under section 53C(1) or by virtue of a request under section 53C(2)(b)(ii);
- (b) refuse or fail to answer to the best of his or her knowledge any question lawfully put to him or her by or with the concurrence of the investigating officer: Provided that no person shall be obliged to answer any question whereby that person may incriminate himself or herself;
- (c) in any manner whatsoever advise, encourage, incite, order or persuade any person who has been directed, summoned or ordered under section 53C(1) or by virtue of a request under section 53C(2)(b)(ii), not to comply with such direction, summons or order or in any manner prevent him or her from doing so;
- (d) refuse or fail, when required thereto by the investigating officer, to furnish him or her with the means or to render him or her the necessary assistance for holding such inquiry;
- (e) refuse or fail, when required thereto by the investigating officer, to attend an inquiry; or
- (f) intentionally insult an investigating officer or intentionally interrupt the proceedings thereat."

**13. Amendment of section 54 of Act 50 of 1991**

Section 54 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- "(1) The holder of or applicant for any prospecting permit or mining authorization [**or the owner of a works**] shall, at least 14 days before he or she commences with any operations under any such a permit or authorization [**or at a works**] or intends to cease such operations temporarily or permanently, notify the [**regional director**] Director: Mineral Development concerned and the Chief Inspector in writing of any such intended commencement or cessation, and provide particulars in connection with the location, nature and extent of such operations."

**14. Amendment of section 60 of Act 50 of 1993**

Section 60 of the principal Act is hereby amended –

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

"(1) Any person who contravenes or fails to comply with –



- (a) any provision of –
- (i) section 5(2), 8(1), **[31(1), (3) or (4), 37(a)]** 38(1), 39(1), 40, 41(2), 42(5), 52 or 54;
  - (ii) section 7(1) **[31(5), 33(1) or 34(1)]**;
  - (iii) section 19(1) or (2), **[29(4)(b), 30(b), (c), (d), (e) or (f)]** 38(2)(a), 53C(4)(b), 53D(b), (c), (d), (e) or (f) [58] or 59;
  - (iv) **[section 35(1) or 36]**
  - (v) **[section 32(1) or (2) or 34(3)]**
  - (vi) **[section 37(b)]**
  - (vii) **[section 29(4)(c)]** 53C(4)(c); or
  - (viii) **[section 30(a)]** 53D(a); or
- (b) any provision of -
- (i) any direction, notice, suspension, order, instruction or condition issued, given or determined under section 22(1), 23(1), **[27(1) or (5), 33(2), 34(2) or ]** 38(2)(b) or 53A(1);
  - (ii) any request referred to in section 51 (3); or
  - (iii) any notice issued under section 25(1), shall be guilty of an offence."; and

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

"(2) Any person who contravenes or fails to comply with a provision of this Act, a regulation or any condition, notice, order, instruction, prohibition, authorization, permission, consent, exemption, certificate or document determined, given, issued, promulgated or granted by or under this Act by the Director-General, **[the Government Mining Engineer, a regional director, a regional mining engineer]** a Director: Mineral Development or any other officer in the service of the Department duly authorized thereto *ex officio* or by the Director-General shall, if any such contravention or failure is not declared an offence elsewhere, be guilty of an offence."

## 15. Amendment of section 61 of Act 50 of 1991, as amended by section 22 of Act 103 of 1993

Section 61 of the principal Act is hereby amended by the deletion of paragraphs (d), (e) and (f) of subsection (1).

**16. Amendment of section 63 of Act 50 of 1991, as amended by section 24 of Act 103 of 1993.**

Section 63 of the principal Act is hereby amended –

(a) by the deletion of paragraphs (a), (b), (h)(iv) and (v), (i), (j), (k), (l), (n), (u), (v), (w) and (x) of subsection (1);

(b) by the substitution for paragraph (m) of subsection (1) of the following paragraph:

"(m) the manner in which the presence of witnesses at inquiries held in terms of section **[28(1), (2) or (5)]** 53B(1) or (4) shall be obtained and procedures to be followed at such inquiries;"

(c) by the substitution for subsection (2) of the following subsection:

"(2) No regulation relating to State revenue or expenditure **[or to any health matter]** shall be made by the Minister except with the concurrence of the Minister of Finance **[or the Minister of State Expenditure or after consultation with the Minister for National Health and Welfare, respectively]**"; and

(d) by the deletion of subsection (3).

**17. Substitution of expression in Act 50 of 1991**

The principal Act is hereby amended by the substitution for the expression "regional director", wherever it occurs in the Act, of the expression "Director: Mineral Development".

**18. Substitution of long title of Act 50 of 1991**

The following long title is hereby substituted for the long title of the principal Act:

"To regulate the prospecting for and the optimal exploitation, processing and utilization of minerals; **[to provide for the safety and health of persons concerned in mines and works]** to regulate the orderly utilization and the rehabilitation of the surface of land during and after prospecting and mining operations; and to provide for matters connected therewith,".

**B: REFERENCE TO GOVERNMENT MINING ENGINEER IN CERTAIN ACTS**

**Substitution for Government Mining Engineer**

Prepared by:

The following Acts are hereby amended by the substitution for the expression "Government Mining Engineer", wherever it occurs, of the expression "Chief Inspector as contemplated in the Mine Health and Safety Act, 1996,":

Advertising on Roads and Ribbon Development Act, 1940 (Act No. 21 of 1940)

Rand Water Board Statutes (Private) Act, 1950 (Act No, 17 of 1950)

Mines and Works Act, 1956 (Act No. 27 of 1956)

Atmospheric Pollution Act, 1965 (Act No. 45 of 1965)

National Roads Act, 1971 (Act No. 54 of 1971)

Occupational Diseases in Mines and Works Act, 1973 (Act No. 78 of 1973)

National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977).

*(Schedule 3 Part B amended by section 45 of Act 72 of 1997)*

#### **SCHEDULE 4 TRANSITIONAL PROVISIONS**

1. Any *health and safety standard* which, immediately prior to the commencement of *this Act*, was incorporated under the provisions of the *Mineral and Petroleum Resources Development Act* or the regulations made under that Act is deemed to be a *health and safety standard* incorporated under this item.
2. A certificate of fitness issued under the provisions of the Occupational Diseases in Mines and Works Act, 1973 (Act No. 78 of 1973), which was valid immediately before the commencement of *this Act* shall be deemed to be sufficient proof that the *employee* is fit to perform work until the certificate is cancelled or expires.
3. A declaration in respect of any work which has been declared under the Occupational Diseases in Mines and Works Act, 1973 (Act No. 78 of 1973), to be *risk* work at controlled *mines* is deemed to be a declaration made under section 76(1) of *this Act* and remains in force until the declaration is withdrawn or superseded under *this Act*.
4. Any regulation made or deemed to be made under the *Mineral and Petroleum Resources Development Act* that relates to *health and safety* issues that can be regulated under *this Act*, may be amended under *this Act* and remains in force until repealed under *this Act*.

*(Item 4 of Schedule 4 substituted by section 46 of Act 72 of 1997 with effect from 15 January 1997)*

5. To the extent that it grants exemptions from the operation of a provision similar to a provision of *this Act*, an exemption is deemed to have been granted under section 79 if –
  - (a) it was granted under the provisions of the Mineral and Petroleum Resources Development Act; and
  - (b) it is still in force when this Act commences.
6. Section 85 does not apply to an *employee* employed at any *mine* immediately before the commencement of that section.
7. The Mine Health and Safety Inspectorate continues to exist as a juristic person and the Chief Inspector of Mines is its accounting authority.

*(Item 7 of Schedule 4 added by section 32 of Act 74 of 2008)*

## **SCHEDULE 5**

### **SUSPENSION AND VARIATION OF APPLICATION OF OCCUPATIONAL DISEASES IN MINES AND WORKS ACT, 1973 (ACT No. 78 OF 1973)**

#### **A. SUSPENSION OF APPLICATION OF ACT No. 78 of 1973**

The application of the following sections of the Occupational Diseases in Mines and Works Act, 1973 (in this Schedule referred to as the 1973 Act) is hereby suspended:

- (a) Section 4(2)(b).
- (b) Section 15.
- (c) Section 16(1)(b) and (c).
- (d) Section 23.
- (e) Section 24.
- (f) Section 25.
- (g) Section 26.
- (h) Section 27(2), (3), (4) and (5).

- (i) Section 28.
- (j) Section 29.
- (k) Section 30.
- (l) Section 37(2)(a).
- (m) Section 121(1)(b), (h) and (i).
- (n) Section 124(3)(g) and (h).
- (o) Section 125.
- (p) Section 126(1), (2)(a) and (b) and (3)(a) and (b)(i).

**B. VARIATION OF APPLICATION OF ACT No. 78 of 1973**

1. The application of the following sections of the 1973 Act is hereby limited to medical examinations for the purpose of determining benefits:
  - (a) Section 4(1) and (2)(a).
  - (b) Section 5.
  - (c) Section 31(1).
  - (d) Section 36, subject to item 3(b).
  - (e) Section 37(1), (2)(b) and (3).
2. The application of section 27(1) of the 1973 Act is hereby limited to instances where the director receives a communication as contemplated in section 33(1).
3. The application of the following sections of the 1973 Act is hereby limited to persons employed at mines or works:
  - (a) Section 31(1).
  - (b) Section 36(1)(a)

*(Schedule 5 added by GN R848 of 1997)*

## SCHEDULE 6

### CONSTITUTION OF THE MINE HEALTH AND SAFETY COUNCIL

[An italicised word or phrase is defined in section 102 of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996), (*this Act*) and an italicised word or phrase in bold is defined in item 24 of this Constitution.

In this Constitution all references to sections are references to sections in this Act unless otherwise indicated.]

#### 1. Establishment of Council and committees

(1) The *Council* and the committees of the *Council*, the Mining Regulation Advisory Committee, the Mining Occupational Health Advisory Committee and the Safety in Mines Research Advisory Committee are established by section 41(1) and (2) of *this Act*.

(2) The *Council* may establish ad hoc committees and subcommittees for such periods as the *Council* may consider necessary, to achieve the object or perform the functions of the *Council*.

[1(2) - Ad hoc and subcommittees are distinguished between in the definition of "*other committee*".]

(3) Every permanent or ad hoc committee may, subject to such conditions as the Council may determine, establish subcommittees, for such periods as the committee may consider necessary, to perform any function of that committee.

#### 2. Legal status

(1) The *Council* is a body corporate.

(2) All actions, suits or other proceedings at law, by or against any **committee** must be brought by or against the *Council*.

(3) The *Council* may authorise any person or persons to act on behalf of the Council and to sign all such documents and to take all such steps as may be necessary in connection with any proceedings at law brought by or against the *Council*.

#### 3. Object of Council

The object of the *Council* is to advise the *Minister on health and safety at mines*.

[3 - Section 41(1) prescribes the object of the Council]

#### 4. Functions of Council

The Council must –

- (a) advise the *Minister on health and safety at mines* including, but not limited to, any legislation on *mine* rehabilitation in so far as it concerns *health and safety*;
- (b) co-ordinate the activities of the **committees**;
- (c) consider the reports of the **committees**;
- (d) liaise with the Mining Qualifications Authority on matters relating to *health and safety*;
- (e) liaise with any other statutory bodies concerned with matters relating to *health and safety*;
- (f) promote a culture of *health and safety* in the mining industry;

[4 - Sections 43(a) to (f) determine the duties of the Council.]

- (g) at least once every two years arrange and co-ordinate a tripartite summit to review the state of *health and safety* at mines;
- (h) for each year consider an overall programme for relevant *health and safety* for approval as *prescribed* and deliver a copy to the Minister of Finance for consideration; and
- (i) perform every duty imposed upon the *Council* in terms of *this Act*.

## 5. Functions of committees

(1) The Mining Regulation Advisory Committee must advise the *Council* on –

- (a) proposed changes to legislation to improve *health* or *safety* at mines;
- (b) proposals for changes to legislation made by any committee;
- (c) guidelines for codes of practice; and
- (d) *standards* approved by the South African Bureau of Standards.

[5(1) - Sections 44(1)(a) to (d) determine the duties of MRAC.]

(2) The Mining Occupational Health Advisory Committee must advise the Council on -

- (a) policy relating to *health*;
- (b) *standards*, systems and procedures for assessing, avoiding, eliminating, controlling and minimising *health* risks;

- (c) *regulations on any aspect of health;*
- (d) *health research; and*
- (e) *collecting, processing and distributing health data in the mining industry.*

[5(2) - Sections 44(2)(a) to (e) determine the duties of MOHAC.]

(3) The Safety in Mines Research Advisory Committee must advise the Council on -

- (a) *criteria for determining the funding of health and safety research;*

[5(3)(a) – Section 98(1)(zJ) empowers the *Minister* to make regulations for the payment of levies for funding research and surveys and for the promotion of *health and safety at mines.*]

- (b) *the need for research into health and safety at mines;*
- (c) *research projects, including priorities of projects, cost, assessment, ratification and execution;*
- (d) *communication and publication of research results; and*
- (e) *the management of the cost of the overall programme.*

[5(3) – Sections 44(3)(a) to (e) and 44(4)(a) to (d) determine the duties of SIMRAC.]

(4) The Safety in Mines Research Advisory Committee must prepare the Programme for relevant *health and safety* research for the Council to consider. The programme must include -

- (a) *a review of health and safety performance in the different mining sectors;*
- (b) *an evaluation of the research proposals made by the Council or any committee;*
- (c) *the focus of health and safety research and priorities for the different sectors of mining; and*
- (d) *an estimate of the cost of the programme.*

[5(4) – Sections 44(3)(a) to (e) and 44(4)(a) to (d) determine the duties of SIMRAC.]

[5(4) - The Council considers the overall programme in terms of item 4(h).]

## 6. Functions of other committees

**Other committees** must perform the functions delegated or assigned to them in terms of item 7.

## 7. Delegation and assignment of functions



- (1) The *Council* may delegate or assign any of the functions of the *Council* by or under *this Act* to any *committee*.
- (2) Permanent and *ad hoc* committees may delegate or assign any of their functions to any of their subcommittees.
- (3) A delegation or assignment under subitem (1) or (2) -
  - (a) must be in writing;
  - (b) is subject to such conditions and restrictions as determined by the *Council*, a permanent or an *ad hoc* committee, as the case may be; and
  - (c) does not prevent the performance of that function by the *Council*, a permanent or an *ad hoc* committee, as the case may be.

[7 - Sections 42(4) and (5) enable the *Council* to delegate any of its powers or assign any of its duties by or under this Act to *committees*.]

## 8. Composition of Council and committees

- (1) The *Council* consists of -
  - (a) five members representing *employers* in the mining industry;
  - (b) five members representing *employees* in the mining industry;
  - (c) four members representing departments of State; and
  - (d) the *Chief Inspector of Mines*, who must chair the *Council*.

[8(1) - Section 42(1) prescribes the membership of the Council.]

- (2) Every committee consists of -
  - (a) five members representing *employers* in the mining industry;
  - (b) five members representing *employees* in the mining industry;
  - (c) four members representing departments of State; and
  - (d) an *officer* of the Mine Health and Safety Inspectorate who must chair the committee.
- (3) Every **other committee** consists of the number of members determined by the relevant **establishing authority**.

Prepared by:

- (4) The *parties* are entitled to equal representation on **other committees**.

## 9. Nomination and appointment of members

- (1) Members of the *Council* and committees are nominated and appointed in accordance with the *regulations* and members of any **other committee** are nominated and appointed in accordance with this item.

[9(1) - Regulations 18.1 to 18.7 published by Government Notice No. R.93 in the *Gazette* of 15 January 1997.]

- (2) Every **party** on the relevant **establishing authority** may nominate persons as members representing their **party** on any **other committee**.

- (3) The relevant **establishing authority** -

- (a) must appoint the members; and
- (b) may appoint one of the members as **chairperson**.

- (4) If the relevant **establishing authority** does not appoint a **chairperson**, the **members** of the committee may appoint a **chairperson** from among their number.

- (5) Members representing *employees* or *employers* on any **other committee** may hold office for such period as the relevant **establishing authority** may determine, which period may not exceed three years. A member whose period of office expires, may be reappointed.

[9(5) - Regulation 18.5 published by Government Notice No. R.93 in the *Gazette* of 15 January 1997 determines the term of office of members of the *Council* and its committees.]

- (6) If the office of a member of any **other committee** is vacated before the end of the period of office of such member, a person to replace such member must, subject to the provisions of this Constitution -

- (a) be nominated by the **party** that was represented by the member; and
- (b) be appointed by the relevant **establishing authority** for a period not exceeding the balance of the period of office of the member in whose place the person is appointed.

[9(6) – Mine Health and Safety Regulation 18(6) deals with the filling of casual vacancies of the *Council* and committees.]

- (7) The appointment of any member of any **other committee** is subject to any condition that the relevant **establishing authority** determine.

- (8) The **chairperson** of the relevant **establishing authority** must in writing notify the members of their appointment.

- (9) If a member appointed in terms of this item does not accept such appointment, a person to replace such person must be appointed in accordance with this item.
- (10) Every **party** must appoint an **alternate** for each of its members on the Council, a permanent or ad hoc committee and must notify the **chairperson** of the Council or the relevant permanent or ad hoc committee, as the case may be, of such appointment.
- (11) The relevant **establishing authority** =
- (a) may appoint **alternates** for members of subcommittees; and
  - (b) must notify -
    - (i) the **alternates** of their appointment; and
    - (ii) the members of their respective **alternates**.

## 10. Vacation of office

- (1) A **member** vacates office -
- (a) on expiry of the **member's** period of office;
  - (b) if such **member** –
    - (i) is absent from two consecutive meetings of the *Council* or **committee** for which such **member** is appointed without notifying the **chairperson** before the meeting that the **member** will be absent;
    - (ii) resigns as a **member**, or
    - (iii) is required to vacate office by the **party** or the organisation which that **member** represents;
  - (c) if such **member** was nominated by an organisation and that organisation no longer meets the criteria allowing it to nominate **members**; or
  - (d) if the *Council* or **committee** on which the **member** serves, is abolished.
- (2) If a member vacates office, the **alternate** appointed for such member ceases to hold office as **alternate**.

## 11. Functions of chairperson —

- (1) Every **chairperson** must with regard to the *Council* or **committee** which the person chairs—
  - (a) allow each **party** to appoint from among its members a person to act as convenor or such **party** for communication purposes. If a **party** does not appoint such convenor, the **chairperson** may appoint any member of that **party** as convenor of the **party**;
  - (b) cause meetings to be convened; and
  - (c) ensure the orderly conduct of meetings and that all resolutions are recorded.
- (2) If in the opinion of the **chairperson** the behaviour of any **member** is disruptive to the orderly conduct of the meeting, the **chairperson** may order that **member** to leave a meeting.
- (3) If the **chairperson** of the *Council* or a *committee* is unable to attend a meeting, the **chairperson** may designate another *officer* of the Mine Health and Safety Inspectorate to chair the meeting.

[11.3 - If the **chairperson** of any **other committee** is unable to attend a meeting, a **member** of that committee may be elected in terms of item 16(3) to chair the meeting.]

## 12. Appointment and functions of secretary—

- (1) The *Council* must appoint a secretary for -
  - (a) the *Council* and every permanent and ad hoc committee; and
  - (b) any subcommittee if the **establishing authority** so requires.  
*(Item 12(1) of Schedule 6 substituted by GNR 906 of 2002)*
- (2) If a secretary is not appointed for a subcommittee, the **members** of that committee must keep a record of and report to the relevant **establishing authority** on their activities.
- (3) A secretary must, with regard to the *Council* or **committee** for which the secretary is appointed -
  - (a) prepare the agenda for every meeting;
  - (b) prepare the minutes of every meeting;
  - (c) record every resolution of such meeting and if so requested by a **member**, the views of that **member**;

- (d) keep general records, records of members, minutes, documents and files of the *Council* or such **committee**; and
- (e) serve every member with -
  - (i) a convening notice and the agenda of a meeting at least five **clear days** before the meeting or two **clear days** before an urgent meeting;
  - (ii) any reports or documentation to be considered at a meeting, a reasonable period before the meeting; and
  - (iii) the minutes of every meeting.

### 13. Rights and obligations of members

- (1) Any **member** who is unable to attend a meeting of the *Council* or any **committee** -
  - (a) may designate any **alternate** of that **member's party** on the Council or that committee as the case may be, to represent the **member** at the meeting; and
  - (b) must before the meeting give notice of it to the **chairperson**.
- (2) An **alternate** designated under subitem 1 has the rights and obligations of the member whom that **alternate** represents.
- (3) Every **member** has the right to -
  - (a) be heard on any matter considered at the meeting;
  - (b) take part in the resolution of any matter before the meeting; and
  - (c) have their views, on any matter considered at the meeting, recorded in the minutes of the meeting and in any report or recommendation of the meeting.

[13(3) - Section 42(6) entitles **members** to have their views reflected in any report of the Council or **committee**.]

### 14. Meetings

- (1) The *Council* must meet at such intervals as required for the proper performance of the functions of the *Council*, but at least once every six months.
- (2) Every permanent and ad hoc committee must meet at such intervals as required for the proper performance of the functions of the committee, but at least once every three months.

- (3) Subcommittees must meet at such intervals as determined by their activities and the dates for the completion of their tasks.
- (4) An urgent meeting of the *Council* or any **committee** may be called by the **chairperson** at the written request of at least two **members** or when the **chairperson** deems it necessary.
- (5) The *Council* may direct any **committee** to call an urgent meeting to resolve any matter determined by the *Council*.
- (6) A permanent or *ad hoc* committee may direct any of its subcommittees to call an urgent meeting to resolve any matter determined by such committee.

## 15. Quorum

- (1) Eight **members** form a quorum for any meeting of the *Council* or a committee provided that at least two **members** of each **party** are present.
- (2) The quorum for any **other committee** must be determined by the relevant **establishing authority**.
- (3) Despite subitems (1) and (2), if the convenors of the *parties* in the *Council* or any **committee** so agree, a smaller number may constitute a quorum for an urgent meeting of the *Council* or that **committee**, as the case may be.
- (4) If a quorum is not present at a meeting, the meeting must be postponed to a date, time and place determined by the **chairperson**. The **members** present at the subsequent meeting form a quorum for that meeting.

## 16. Procedures at meetings

- (1) Items may be added to the agenda of any meeting if the meeting so decides.
- (2) Any **member** who has a direct or personal financial interest in any matter before the meeting must, before the matter is discussed by the meeting, declare such interest to the meeting and the **chairperson** must determine whether such **member** may participate in the consideration of that matter.
- (3) If the designated **chairperson** is not present at a meeting the **members** may elect from among their number a **chairperson** for that meeting.

## 17. Resolution of meeting

- (1) The *Council* or any **committee** must endeavour to reach **consensus** on any matter that requires resolution.
- (2) If **consensus** cannot be reached on any matter after sincere endeavours to do so, a decision of the majority of **members** present and voting at a meeting constitutes the resolution on that matter by the *Council* or any **committee**, as the case may be.
- (3) Any report or advice of the *Council* or any **committee** which reflects a resolution that was not reached by **consensus**, must reflect -
  - (a) the different views of the **members** on the matter so resolved; and
  - (b) which **members** supported each view.
- (4) No resolution nor any act authorised by the *Council* or any **committee** is invalid merely because of a vacancy on the *Council* or that **committee** or because any person not entitled to sit as a **member** sat at such meeting at the time the resolution was taken or the act was authorised if a quorum was constituted by the rest of the **members** present at the meeting and entitled to sit as **members** at the meeting.
- (5) Despite subitems (1) to (3), if the **members** present and voting at a meeting reach **consensus** on the matter, the *Council* may resolve that any specific resolution of the *Council* may only be amended or revoked by a special majority of or the **consensus** of the *Council*.

*(Item 17(5) of Schedule 6 inserted by GNR 906 of 2002 as corrected by GNR 1575 of 2002)*

## 18. Funds of Council

- (1) The funds of the *Council* consist of -
  - (a) moneys appropriated by Parliament to perform the functions of the *Council*;
  - (b) other moneys received in terms of this Act;
  - (c) revenue obtained from investments;
  - (d) fees or royalties obtained from intellectual property of the *Council*;
  - (e) donations or contributions received from any person, body, government or administration; and
  - (f) any other money received from any other source.

[18(1) - Section 42(7) empowers the Minister to provide funds for the administration of the Council and its **committees** from public funds.]

- (2) Moneys appropriated by Parliament must be used for -
- (a) the payment to members who are not in the full-time service of the State of such remuneration and allowances as the Minister may determine with the agreement of the Minister of Finance; and
  - (b) the payment for administrative functions of the Council and **committees**.

[18(2)(a) and (b) - Section 42(7) requires the agreement of the *Minister* of Finance for the provision of funds for the administration of the *Council* and its **committees** from public funds.]

- (3) Moneys referred to in subitem (1)(b), (c), (d) or (f) may be -
- (a) used as contemplated in *this Act*;
  - (b) invested with any bank registered as such under the Banks Act, 1990 (Act No. 94 of 1990), or invested in such other manner as may be determined by the Minister with the agreement of the *Minister* of Finance; and
  - (c) used to register or utilise any intellectual property of the *Council*.
- (4) Moneys referred to in subitem (1)(e) must be utilised in accordance with the conditions, if any, imposed by the donor or contributor of such moneys.
- (5) The **chairperson** of the *Council* must for each financial year submit a statement of estimated income and expenditure during such financial year to the *Minister* who, with the agreement of the Minister of Finance, must approve the budget for -
- (a) the first financial year, before the first meeting of the *Council*; and
  - (b) every other financial year, before the beginning of such financial year.

## 19. Accountability

- (1) The **chairperson** of the *Council* is the accounting officer of the *Council*.
- (2) The accounting officer is responsible for all moneys received and payments made by the *Council*.
- (3) The financial year of the *Council* ends on 31 March in each year.



- (4) The accounting officer must cause records to be kept in accordance with the Generally Accepted Accounting Principles that are necessary to represent fairly the state of affairs and business of the *Council* and to explain the transactions and financial position of the *Council*.
- (5) Annual financial statements must be prepared in respect of every financial year. The statements must consist of-
  - (a) a balance sheet dealing with the state of affairs of the *Council*;
  - (b) a return of income received and expenses incurred by the *Council*; and
  - (c) a statement of cash flow information.
- (6) The books of account, statements of account and annual financial statements of the *Council* must be audited annually by the Auditor-General. The Auditor-General must compile a report on the audit and submit a copy of it to the *Minister* and the **chairperson** of the *Council*.
- (7) The secretary of the *Council* must supply each member of the *Council* with a copy of the report of the Auditor-General.
- (8) As soon as practicable after the report of the Auditor-General has been submitted to the *Minister* in terms of subitem (6), the *Minister* must table it in Parliament.

## 20. Administrative, secretarial and other services

- (1) The *Council* may employ employees to provide such administrative, secretarial or other services to the *Council* and its **committees** as the *Council* may determine.
- (2) Despite subitem (1), the *Council*, with approval of the *Minister*, may contract any person or arrange for officers of the Mine Health and Safety Inspectorate to provide such administrative, secretarial and other services to the *Council* and its **committees** as the *Council* may determine.

*(Item 20 of Schedule 6 substituted by GNR 906 of 2002)*

## 21. Abolition of Council or committee

- (1) The *Council* and the committees may be abolished by an Act of Parliament.
- (2) The Council may at any time abolish any **other committee**.
- (3) A permanent or ad hoc committee may at any time abolish any subcommittee established by that committee.

[21 - See item 1 for the establishment of the Council and **committees**.]

## 22. Limitation of liability

- (1) A **member** or an employee of the *Council* does not incur any civil liability only because of doing or failing to do something which such **member** or employee may do or is required to do in terms of *this Act* or this Constitution.

*(Item 22(1) of Schedule 6 substituted by GNR 906 of 2002)*

- (2) The *Council* does not incur any civil liability only because a **member**, or an employee of the *Council*, or any person contracted to perform a function of the *Council* or a **committee**, or an *officer* of the Mine Health and Safety inspectorate assigned to perform such functions, took an action or failed to take an action under or in terms of this Act or this Constitution, and in taking or failing to take that action acted without negligence and in good faith.

*(Item 22(2) of Schedule 6 substituted by GNR 906 of 2002)*

## 23. Amendment of constitution

(1)

- (a) If the *Minister* wants to amend the constitution, the *Minister* must furnish a proposal containing such amendments to the **chairperson** of the *Council*, who must convene a meeting to consider the proposal.
- (b) At such meeting the *Council* must consider the proposal and resolve either to-
- (i) support the proposal as it is;
  - (ii) support the proposal with certain amendments; or
  - (iii) oppose the proposal.
- (c) The *Council* must submit its resolution to the *Minister*.
- (d) If the *Council* resolves to support the proposal with certain amendments or to oppose the proposal, the motivation for such resolution and the amendments, if any, must be included in the submission to the *Minister*.

(2)

- (a) If the *Council* wants the constitution to be amended, the *Council* must submit a proposal regarding such amendment to the *Minister*.
- (b) Such proposal by the Council is deemed to be consultation by the Minister with the Council as contemplated in section 97(1).

- (c) If the Minister is not satisfied with the amendments or the motivation for the amendments, the Minister may refer the proposal back to the Council for further consideration.

[23 - Section 97(1) read with 97(3) of this Act authorises the Minister to add to, change or replace this Constitution, after consultation with the Council, by publication in the Gazette.]

## 24. DEFINITIONS

Unless the context otherwise indicates -

"**alternate**" means any person appointed as an alternate to a member under item 9(10);

"**chairperson**" means any person who chairs any meeting of the *Council* or a **committee**;

"**clear day**" means any day of the week except Sundays and public holidays;

"**committee**" means any committee or **other committee**;

"**consensus**" means unanimous agreement;

"**establishing authority**" means -

- (i) in the case of the *Council* and a committee, Parliament by legislation;
- (ii) in the case of an ad hoc committee, the *Council*; and
- (iii) in the case of a subcommittee, the *Council*, or any permanent or *ad hoc* committee that establishes the subcommittee;

"**member**" means any member of the *Council* or any **committee** and includes any **alternate** designated by a member to represent that member at a meeting of the *Council* or **committee**;

"**other committee**" means -

- (a) an *ad hoc* committee established for a limited term to perform any function of the *Council* which is not a function of any committee; and
- (b) a subcommittee established by -
  - (i) the *Council* to perform any function of the *Council* which is not assigned by or under this Act to a committee; and

- (ii) a permanent or an ad hoc committee to perform any function of that committee; and

"party" means *employers, employees* or the State, as the case may be.

[If a function of the *Council* needs to be performed on a permanent basis by a *committee*, the *Council* may either delegate or assign the function to a committee or request that a new committee be established by legislation to perform the function.]

*(Schedule 6 added by GN R1317 of 1997)*

## SCHEDULE 7 CONSTITUTION OF THE MINING QUALIFICATIONS AUTHORITY

### ARRANGEMENT OF CONSTITUTION

1. Establishment of Authority and committees
2. Legal status
3. Objects of Authority
4. Functions of Authority
5. Functions of committees
6. Functions of other committees
7. Composition of Authority and committees
8. Nomination and appointment of members of committees
9. Vacation of office
10. Appointment and functions of the executive officer
11. Delegation and assignment of functions
12. Functions of the chairperson
13. Appointment and functions of secretary
14. Rights and obligations of members
15. Meetings
16. Quorum
17. Procedures at meetings
18. Resolution of meeting
19. Funds of Authority
20. Accounting
21. Abolition of Authority and committees
22. Limitation of Liability
23. Amendments to constitution
24. Interpretation

### CONSTITUTION OF THE MINING QUALIFICATIONS AUTHORITY (MQA)

**To provide for the constitution of the Mining Qualifications Authority; for the promotion of the objectives of the National Qualifications Framework in the mining industry; for advising the Minister**

**on matters relating to education and training standards and qualifications in the mining industry; and for matters connected therewith.**

[In this Constitution all references to sections are references to sections in this Act, unless otherwise indicated.]

[An italicised word or phrase is defined in section 102 of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996) (this Act) and an italicised word or phrase in bold is defined in item 24 of this Constitution.]

**1. Establishment of Authority and committees**

- (1) The Authority is established by section 41(3).
- (2) The Authority may establish permanent, ad hoc and subcommittees for such periods as the Authority may consider necessary, to achieve the objects or perform the functions of the Authority.
- (3) Every permanent or ad hoc committee may, subject to such conditions as the Authority may determine, establish subcommittees for such periods as the committee may consider necessary to achieve the objects or perform the functions of that committee.

[1(1)-(3) - Section 46(2) empowers the Authority to appoint permanent and ad hoc committees, and subcommittees, for any period and on any conditions.

1(3) - Ad hoc and subcommittees are distinguished in the definition of "other committees". ]

- (4) In the case of committees, the chairperson of the Authority must inform the Minister of such establishment.

**2. Legal status**

- (1) The Authority is a body corporate.
- (2) All actions, suits or other proceedings at law, by or against any committee must be brought by or against the Authority.
- (3) The Authority may authorise any person or persons to act on behalf of the Authority and to sign all such documents and to take all such steps as may be necessary in connection with any proceedings at law brought by or against the Authority.

**3. Objects of Authority**

- (1) The objects of the Authority are to -
  - (a) advise the Minister on -

- (i) qualifications and learning achievements in the mining industry to improve health and safety standards through proper training and education;
- (ii) standards and competency setting, assessment, examinations, quality assurance and accreditation in the mining industry; and
- (iii) proposals for the registration of education and training standards and qualifications in the mining industry on the National Qualifications Framework referred to in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995); and

[3(1)(a) - Section 41(3) prescribes the objects of the Authority.]

- (b) promote the objectives of the National Qualifications Framework in the mining industry, which are to -
  - (i) create an integrated national framework for learning achievements;
  - (ii) facilitate access to, and mobility and progression within education, training and career paths;
  - (iii) enhance the quality of education and training;
  - (iv) accelerate the redress of past unfair discrimination in education, training and employment opportunities; and thereby
  - (v) contribute to the full personal development of each learner and the social and economic development of the nation at large.

[3(1)(b) - Section 2 of the SAQA Act determines the objectives of the National Qualifications Framework.]

(2) In order to promote its objects the Authority must seek -

- (a) registration in terms of the SAQA Act as a body responsible for generating education and training standards and qualifications as contemplated in section 5(1)(a)(ii)(aa) of that Act; and
- (b) accreditation in terms of the SAQA Act as a body responsible for monitoring and auditing achievements as contemplated in section 5(1)(a)(ii)(bb) of that Act;

#### **4. Functions of Authority**

(1) The Authority must -

- (a) generate education and training standards and qualifications in the mining industry;

- (b) propose education and training standards and qualifications to bodies registered with the South African Qualifications Authority and responsible for developing education and training standards;
  - (c) monitor and audit achievements in terms of those standards and qualifications;
  - (d) accredit providers, assessors and moderators of education and training in the mining industry;
  - (e) analyse and prioritise education and training needs in the mining industry and recommend on the provision of such education and training;
  - (f) promote a culture of learning in the mining industry;
  - (g) assure the quality of education and training in the mining industry, without itself being a provider of education and training.
  - (h) facilitate strategic human resources development planning in the mining industry;
  - (i) liaise with the South African Qualifications Authority, or other bodies, persons or institutions concerned with or directly affected by education and training in the mining industry;
  - (j) keep a record of learning for people in the mining industry;
  - (k) perform any other function required by the South African Qualifications Authority in terms of the Authority's registration or accreditation; and
  - (l) perform any other function that must be performed by the Authority in terms of this Act or any other applicable law.
- (2) The Authority may perform any other function that may be performed by the Authority in terms of this Act or any other applicable law.

[4 - Sections 46(1)(c), (d) and (e) determine the advisory functions of the Authority. Section 46(5) requires that, in performing its functions, the Authority must comply with the policies and criteria formulated by the South African Qualifications Authority in terms of section 5(1)(a)(ii) of the SAQA Act.]

## 5. Functions of committees

Every committee, at the relevant levels of the National Qualifications Framework in the mining industry, must -

- (a) make recommendations to the Authority on -
  - (i) the generation of education and training standards and qualifications;

- (ii) the assessment of education and training standards and qualifications; and
  - (iii) the accreditation and moderation of education and training providers and assessors;
- (b) undertake activities necessary for the development and implementation of the National Qualifications Framework;
  - (c) co-ordinate the activities and consider the reports of its subcommittees; and
  - (d) perform such other functions delegated or assigned to it by the Authority.

## **6. Functions of other committees**

Other committees must perform the functions assigned or delegated to them in terms of item 11.

## **7. Composition of Authority and committees**

- (1) The Authority consists of -
  - (a) five members representing employers in the mining industry;
  - (b) five members representing employees in the mining industry;
  - (c) four members representing departments of State; and
  - (d) the Chief Inspector of Mines who must chair the Authority.

[7(1) - Section 45(1) prescribes the membership of the Authority.]

- (2) Every committee of the Authority consists of the following members:
  - (a) five members representing employers in the mining industry;
  - (b) five members representing employees in the mining industry;
  - (c) five members representing departments of State; and
  - (d) an employee of the Authority who must chair the committee.
- (3) Every other committee consists of the number of members determined by the relevant establishing authority.



- (4) The parties are entitled to equal representation on other committees.

## **8. Nomination and appointment of members of committees**

- (1) Members of the Authority are nominated and appointed in accordance with the regulations and members of any committee are nominated and appointed in accordance with this item.

[8(1) - Regulations 18.1 to 18.7 published by Government Notice No. R.93 in the Gazette of 15 January 1997.]

- (2) Members of the relevant establishing authority may nominate persons as members representing their party on any committee.

- (3) The relevant establishing authority -

- (a) must appoint the members; and
- (b) may appoint one of the members as chairperson.

- (4) If the relevant establishing authority does not appoint a chairperson, the members of the committee may appoint the chairperson from among their number.

- (5) Members representing employees or employers on any committee may hold office for such period as the relevant establishing authority may determine, which period may not exceed three years. A member whose period of office expires, may be reappointed.

[8(5) Regulation 18.5 published by Government Notice No. R.93 in the Gazette of 15 January 1997 determines the term of office of members of the Authority and its committees.]

- (6) If the office of a member of any committee is vacated before the end of the period of office of such member, a person to replace such member must, subject to the provisions of this Constitution -

- (a) be nominated by the party that was represented by the member; and
- (b) be appointed by the relevant establishing authority for a period not exceeding the balance of the period of office of the member in whose place the person is appointed.

[8(6) - Mine Health and Safety Regulation 18(6) deals with the filling of casual vacancies of the Authority]

- (7) The appointment of any member of any committee is subject to any condition that the relevant establishing authority may determine.

- (8) The chairperson of the relevant establishing authority must in writing notify the members of their appointment.

- (9) If a member appointed in terms of this item does not accept such appointment, a person to replace such person must be appointed in accordance with this item.

Prepared by:

- (10) Every party must appoint an alternate for each of its members on the Authority, a permanent or ad hoc committee and must notify the chairperson of the Authority or the relevant permanent or ad hoc committee, as the case may be, of such appointment.
- (11) The relevant establishing authority -
- (a) may appoint alternates for members of subcommittees; and
  - (b) must notify -
    - (i) the alternates of their appointment; and
    - (ii) the members of their respective alternates.

## **9. Vacation of office**

- (1) A member vacates office -
- (a) on expiry of the member's period of office; or
  - (b) if such member -
    - (i) is absent from two consecutive meetings of the Authority or committee for which such member is appointed without notifying the chairperson before the meeting that the member will be absent;
    - (ii) resigns as a member; or
    - (iii) is required to vacate office by the party or the organisation which that member represents;
  - (c) if such member was nominated by an organisation and that organisation no longer meets the criteria allowing it to nominate members; or
  - (d) if the Authority or committee on which the member serves, is abolished.
- (2) If a member vacates office, the alternate appointed for such member ceases to hold office as alternate.

## **10. Appointment and functions of the executive officer**

- (1) The Minister, after consulting the Authority, must appoint a person with experience and expertise in matters relating to functions of the Authority as executive officer of the Authority.
- (2) The executive officer must perform such functions as may be assigned to the executive officer by this Act or by the Authority.
- (3) The executive officer must attend all meetings of the Authority.
- (4) If the executive officer is absent or for any reason is unable to perform the functions of the executive officer or if there is a vacancy in the office of the executive officer, the chairperson of the Authority may designate an employee of the Authority to act as executive officer until the executive officer is able to resume the functions of executive officer or until an executive officer is appointed in terms of subitem (1)
- (5) The Authority may, subject to the provisions of item 19(2)(b), appoint persons as employees of the Authority to assist in the performance of the functions of the executive officer.
- (6) The terms and conditions of service of persons appointed under subitem (5) are determined by the Minister after consulting the Authority.

#### **11. Delegation and assignment of functions**

- (1) The Authority may delegate any of its powers or assign any of its functions by or under this Act to any committee or the executive officer.
- (2) Any permanent or ad hoc committee may delegate or assign any of its functions to any of its subcommittees.
- (3) The executive officer may delegate any power or assign the performance of any function conferred or imposed upon the executive officer to any employee of the Authority.
- (4) A delegation or assignment under subitem (1), (2) or (3) -
  - (a) must be in writing;
  - (b) may be subject to such conditions and restrictions as determined by the Authority, a permanent or an ad hoc committee or the executive officer, as the case may be; and
  - (c) does not prevent the exercise of that power or performance of that function by the Authority, a permanent or an ad hoc committee or the executive officer, as the case may be.

[11 - Sections 46(3) and (4) enable the Authority to delegate any of its powers or assign any of its duties by or under in this Act accordance with the constitution contemplated in section 97(4).]

## **12. Functions of the chairperson**

- (1) Every chairperson must, with regard to the Authority or committee which the person chairs -
  - (a) allow each party to appoint from among its members a person to act as convenor of such party for communication purposes. If a party does not appoint such convenor, the chairperson may appoint any member of that party as convenor of the party;
  - (b) cause meetings to be convened; and
  - (c) ensure the orderly conduct of meetings and that all resolutions are recorded.
- (2) A chairperson may order any member to leave a meeting if in the opinion of the chairperson the behaviour of such member is disruptive to the orderly conduct of the meeting.
- (3) If the chairperson of the Authority is unable to attend a meeting, the chairperson may designate another officer of the Mine Health and Safety Inspectorate, to chair the meeting.

[12(3) - If the chairperson of any other committee is unable to attend a meeting, a member of that committee may be elected in terms of item 17(3).]

- (4) If the chairperson of a committee is unable to attend a meeting, the executive officer may designate another employee of the Authority to chair the meeting.

## **13. Appointment and functions of secretary**

- (1) The executive officer must appoint a secretary for -
  - (a) the Authority and every permanent and ad hoc committee; and
  - (b) any subcommittee if the establishing authority so requires.
- (2) If a secretary is not appointed for a subcommittee, the members of that committee must keep a record of and report to the relevant establishing authority on their activities.
- (3) A secretary must, with regard to the Authority or committee for which the secretary is appointed-
  - (a) prepare the agenda for every meeting;
  - (b) prepare the minutes of every meeting;

- (c) record every resolution of such meeting and if so requested by a member, the views of that member;
- (d) keep general records, records of members, minutes, documents and files of the Authority, or such committee; and
- (e) serve every member with -
  - (i) a convening notice and the agenda of a meeting at least five clear days before the meeting or two clear days before an urgent meeting;
  - (ii) any reports or documentation to be considered at a meeting, a reasonable period before the meeting; and
  - (iii) the minutes of every meeting.

#### **14. Rights and obligations of members**

- (1) Any member who is unable to attend a meeting of the Authority or any committee -
  - (a) may designate any alternate of that member's party on the Authority or that committee, as the case may be, to represent the member at the meeting; and
  - (b) must before the meeting give notice of it to the chairperson.
- (2) An alternate designated under subitem 1(a), has the rights and obligations of the member whom that alternate represents.
- (3) Every member has the right to -
  - (a) be heard on any matter considered at the meeting;
  - (b) take part in the resolution of any matter before the meeting; and
  - (c) have their views, on any matter considered at the meeting, recorded in the minutes of the meeting and in any report or recommendation of the meeting.

#### **15. Meetings**

- (1) The Authority must meet at least once every three months.
- (2) Every permanent and ad hoc committee must meet at least once every two months.

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- (3) Subcommittees must meet at such intervals and frequency as determined by their activities and the dates for the completion of their tasks.
- (4) An urgent meeting of the Authority or any committee may be called by the chairperson at the written request of at least two members or when the chairperson deems it necessary.
- (5) The Authority may direct any committee to call an urgent meeting to resolve any matter determined by the Authority.
- (6) A permanent or ad hoc committee may direct any of its subcommittees to call an urgent meeting to resolve any matter determined by such committee.

## **16. Quorum**

- (1) Eight members form a quorum for any meeting of the Authority or a committee provided that at least two members of each party are present.
- (2) The quorum for any other committee must be determined by the relevant establishing authority.
- (3) Despite subitems (1) and (2), if the convenors of the parties in the Authority or any committee so agree, a smaller number may constitute a quorum for an urgent meeting of the Authority or that committee, as the case may be.
- (4) If a quorum is not present at a meeting, the meeting must be postponed to a date, time and place determined by the chairperson. The members present at the subsequent meeting form a quorum for that meeting.

## **17. Procedures at meetings**

- (1) Items may be added to the agenda of any meeting if the meeting so decides.
- (2) Any member who has a direct or personal financial interest in any matter before the meeting must, before the matter is discussed by the meeting, declare such interest to the meeting and the chairperson must determine whether such member may participate in the consideration of the matter.
- (3) If the designated chairperson is not present at a meeting the members may elect from among their number a chairperson for that meeting.

## **18. Resolution of meeting**

- (1) The Authority or any committee must endeavour to reach consensus on any matter that requires resolution.
- (2) If consensus cannot be reached on any matter after sincere endeavours to do so, a decision of the majority of members present and voting at a meeting constitutes the resolution on that matter by the Authority or any committee, as the case may be.
- (3) Any report or advice of the Authority or any committee which reflects a resolution that was not reached by consensus, must reflect -
  - (a) the different views of the members on the matter so resolved; and
  - (b) which members supported each view.
- (4) No resolution nor any act authorised by the Authority or any committee is invalid merely because of a vacancy on the Authority or that committee or because any person not entitled to sit as a member sat at such meeting at the time the resolution was taken or the act was authorised if a quorum was constituted by the rest of the members present at the meeting and entitled to sit as members at the meeting.
- (5) The chairperson of a committee has no voting right.

## **19. Funds of Authority**

- (1) The funds of the Authority consist of -
  - (a) moneys appropriated by Parliament to perform its functions;
  - (b) moneys which accrue to the Authority in terms of regulations made under this Act or in terms of any other applicable law;
  - (c) revenue obtained from investments;
  - (d) fees obtained from services provided by the Authority;
  - (e) donations received from any person, body, government or administration; and
  - (f) any other money received from any other source.

[19(1) - In terms of Section 98(3)(d) the Minister, after consulting the Mining Qualifications Authority, by notice in the Gazette, may make regulations to provide for the funding of the Mining Qualifications Authority including the manner in which such funds may be raised.]

- (2) Moneys appropriated by Parliament must be used for -

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- (a) the payment to members who are not in the full-time service of the State of such remuneration and allowances as the Minister may determine with the agreement of the Minister of Finance;
- (b) the payment of salaries, allowances, subsidies and other benefits as approved by the Minister with the agreement of the Minister of Finance to the executive officer and other employees of the Authority; and

[19(2)(a) and (b) - The regulations under section 98(3)(d) require the agreement of the Minister of Finance for the provision of funds for the administration of the Authority and its committees from public funds.]

- (c) the payment for administrative functions of the Authority.

(3) Moneys referred to in subitem (1)(b), (c), (d) or (f) may be -

- (a) used as contemplated in this Act;
- (b) invested with any bank registered as such under the Banks Act, 1990 (Act No. 94 of 1990), or invested in such other manner as may be determined, by the Minister with the agreement of the Minister of Finance; and
- (c) used to register or utilise any intellectual property of the Authority.

(4) Moneys referred to in subitem (1)(e) must be utilised in accordance with the conditions, if any, imposed by the donor of such moneys.

(5) The chairperson of the Authority must for each financial year, submit a statement of estimated income and expenditure during such financial year to the Minister who, with the agreement of the Minister of Finance, must approve the budget for -

- (a) the first financial year, before the first meeting of the Authority; and
- (b) every other financial year, before the beginning of such financial year.

## **20. Accounting**

- (1) The executive officer is the accounting officer of the Authority.
- (2) The accounting officer is responsible for all moneys received and payments made by the Authority.
- (3) The financial year of the Authority ends on 31 March in each year.



- (4) The accounting officer must cause records to be kept in accordance with the Generally Accepted Accounting Principles that are necessary to represent fairly the state of affairs and business of the Authority and to explain the transactions and financial position of the Authority.
- (5) Annual financial statements must be prepared in respect of every financial year. The statement must consist of -
  - (a) a balance sheet dealing with the state of affairs of the Authority;
  - (b) a return of income received and expenses incurred by the Authority;
  - (c) a statement of cash flow information.
- (6) The books of account, statements of account and annual financial statements of the Authority must be audited annually by the Auditor-General. The Auditor-General must compile a report on the audit and submit a copy of it to the Minister and the chairperson of the Authority.
- (7) The executive officer of the Authority must supply each member of the Authority with a copy of the report of the Auditor-General.
- (8) As soon as practicable after the report of the Auditor-General has been submitted to the Minister in terms of subitem (6), the Minister must table it in Parliament.

[20 - Section 46(2)(h) provides that the Mining Qualifications Authority may administer and control its financial affairs.]

## 21. Abolition of Authority and committees

- (1) The Authority may be abolished by an Act of Parliament.
- (2) The Authority may at any time abolish any committee.
- (3) A permanent or ad hoc committee may at any time abolish any subcommittee established by that committee.

## 22. Limitation of liability

- (1) A member does not incur any civil liability only because of doing or failing to do something which such member may do or is required to do in terms of this Act.
- (2) The Authority does not incur any civil liability only because a member or employee of the Authority took an action or failed to take an action under or in terms of this Act, and in taking or failing to take that action such person acted without negligence and in good faith.

## 23. Amendments to constitution

- (1) If the Minister or the Authority wants to amend the constitution, the Minister or the Authority, as the case may be, must serve a proposal containing such amendments to the chairperson of the Council who must convene a meeting to consider the proposal.
- (2) At such meeting the Council after consulting the Authority must consider the proposal and resolve either to -
  - (i) support the proposal as it is; or
  - (ii) support the proposal with certain amendments; or
  - (iii) oppose the proposal.
- (3) The Council must submit its resolution and the comments on the proposal of the Authority, as the case may be, to the Minister.
- (4) If the Council resolves to support the proposal with certain amendments or to oppose the proposal, the motivation for such resolution and the amendments, if any, must be included in the submission to the Minister.
- (5) If the Authority wants the constitution to be amended -
  - (a) the proposal by the Authority is deemed to be consultation by the Council with the Authority contemplated in subitem (2); and
  - (b) the resolution of the Council on the proposal by the Authority is deemed to be consultation by the Minister with the Council as contemplated in section 97(1).
- (6) If the Minister is not satisfied with the amendments or the motivation for the amendments, the Minister may refer the proposal back to the Council for further consideration.

[23 - Section 97(1) read with 97(4) of this Act authorises the Minister to add to, change or replace this Constitution, after consultation with the Council and the Mining Qualifications Authority, by publication in the Gazette.]

## 24. Interpretation

Unless the context indicates otherwise –

**"alternate"** means any person appointed as an alternate to a member under item 8(10);

**"Authority"** means the Mining Qualifications Authority established by section 41(3);

**"chairperson"** means any person who chairs any meeting of the Authority or a committee;

**"clear day"** means any day of the week except Sundays and public holidays;

**"committee"** means any committee, ad hoc committee or subcommittee of the Authority;

**"consensus"** means unanimous agreement;

**"education and training standards"** means registered statements of desired education and training outcomes and their associated assessment criteria as defined in section 1 of the SAQA Act;

**"establishing Authority"** means -

- (i) in the case of the Authority, Parliament by legislation;
- (ii) in the case of a permanent or ad hoc committee, the Authority; and
- (iii) in the case of a subcommittee, the Authority or any permanent or ad hoc committee that establishes the subcommittee;

**"executive officer"** means the executive officer appointed in terms of item 10(1) or designated in terms of item 10(4);

**"learning"** means a process by which a person gains skills, knowledge and values;

**"member"** means any member of the Authority or any committee and includes any alternate designated by such member to attend a meeting of the Authority or any committee on behalf of such member:

**"National Qualifications Framework"** means the National Qualifications Framework as defined in section 1 of the SAQA Act;

**"other committee"** means -

- (a) an ad hoc committee established for a limited term to perform any function of the Authority which is not a function of any committee; and
- (b) a subcommittee established by -
  - (i) the Authority to perform a function which is not assigned by or under this Act to a committee; and

- (ii) a permanent or an ad hoc committee to perform any function of that committee;

"party" means employers, employees, or the State, as the case may be;

"qualification" means the formal recognition of the achievement of the required number and range of credits and such other requirements at specific levels of the National Qualifications Framework as may be proposed by the Mining Qualifications Authority and determined by the South African Qualifications Authority as defined in section 1 of the SAQA Act; and

"SAQA Act" means the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995).

[If a function of the Authority needs to be performed on a permanent basis by a committee, the Authority may either delegate or assign the function to a committee or establish a new committee to perform the function.]

*(Schedule 7 added by GNR 612 of 1998)*

## SCHEDULE 8

Table 1

### MAXIMUM FINES OR PERIOD OF IMPRISONMENT THAT CAN BE IMPOSED FOR OFFENCES

Column 1 Section under which Convicted	Column 2 Maximum fine and term of imprisonment
2	R1 000 000 or 5 yrs imprisonment
2A	R1 000 000 or 5 yrs imprisonment
3	R1 000 000 or 5 yrs imprisonment
5	R1 000 000 or 5 yrs imprisonment
6	R1 000 000 or 5 yrs imprisonment
7(1)	R1 000 000 or 5 yrs imprisonment
10	R1 000 000 or 5 yrs imprisonment
11	R1 000 000 or 5 yrs imprisonment
15	R500 000 or five years imprisonment
16	R500 000 or five years imprisonment
21(1), (3) or (4)	R500 000 or five years imprisonment
22	R200 000 or two years imprisonment
24	R500 000 or five years imprisonment
52	R200 000 or two years imprisonment
53	R200 000 or two years imprisonment
62	R200 000 or two years imprisonment
66(3)	R200 000 or two years imprisonment

70	R200 000 or two years imprisonment
71	R200 000 or two years imprisonment
84	R200 000 or two years imprisonment
85	R200 000 or two years imprisonment
87, 88, 89, 90	R50 000 or six months imprisonment
88	R300 000 or three years imprisonment

**TABLE 2**

**MAXIMUM FINES THAT CAN BE IMPOSED FOR CONTRAVENTIONS CONTEMPLATED IN SECTION 55B**

The maximum fine that can be imposed in terms of section 55B may not exceed an amount of R1 000 000.

*(Schedule 8 added by section 33 of Act 74 of 2008)*