

REPUBLIC OF SOUTH AFRICA

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# MINE HEALTH AND SAFETY AMENDMENT BILL

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*(As amended by the Portfolio Committee on Minerals and Energy (National Assembly))  
(The English text is the official text of the Bill)*

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(MINISTER OF MINERALS AND ENERGY)

**[B 54B—2008]**

ISBN 978-1-77037-432-4

No. of copies printed ..... 800

**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.

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## **BILL**

**To amend the Mine Health and Safety Act, 1996, so as to review and strengthen enforcement provisions; to simplify the administrative system for the issuing of fines; to reinforce offences and penalties; to substitute, add and remove ambiguities in certain definitions and expressions; and to effect certain amendments necessary to ensure consistency with other laws, particularly the Mineral and Petroleum Resources Development Act, 2002; and to provide for matters connected therewith.**

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

**Amendment of section 2 of Act 29 of 1996, as amended by section 1 of Act 72 of 1997**

1. Section 2 of the Mine Health and Safety Act, 1996 (hereinafter referred to as the principal Act), is hereby amended by the substitution for subsection (2) of the following subsection: 5

“(2) The *employer* of a *mine* that is not being worked, but in respect of which a closure certificate in terms of the [**Minerals Act**] *Minerals and Petroleum Resources and Development Act* 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*.” 10

**Amendment of section 2A of Act 29 of 1996, as amended by section 2 of Act 72 of 1997**

2. Section 2A of the principal Act is hereby amended by the addition of the following subsection: 15

“(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*. 20

### Amendment of section 10 of Act 29 of 1996

3. Section 10 of the principal Act is hereby amended by the addition of the following subsections:

- “(4) The employer must keep a record of all formal training provided in respect of each employee in terms of subsection (2). 5
- “(5) All mines must submit a workplace skills plan and the annual training reports to the Mining Qualifications Authority.”.

### Amendment of section 11 of Act 29 of 1996

4. Section 11 of the principal Act is hereby amended—

- (a) by the insertion in subsection (5) after paragraph (a) of the following paragraph: 10
- “(aA) commence an investigation referred to in paragraph (a) within 10 days from the date of such accident, serious illness or health threatening occurrence;”;
- (b) by the substitution in subsection (5)(d) for subparagraph (i) of the following subparagraph: 15
- “(i) **[whenever possible,]** identifies the causes and the underlying causes of the accident, *serious illness or health-threatening occurrence;*”;
- (c) by the substitution in subsection (5) for paragraph (e) of the following paragraph: 20
- “(e) deliver a copy of the report referred to in paragraph (d) **[to the Health and Safety committee]** 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*.”; 25
- (d) by the insertion after subsection (5) of the following subsections: 30
- “(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.
- (5B) The employer must notify the *Principal Inspector of Mines* of any accident or occurrence at a mine that results in— 35
- (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).”; and 40
- (e) by the addition of the following subsection: 45
- “(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— 50
- (a) prevent any further incident;
- (b) remove the injured or dead; or
- (c) rescue any person from danger.”

### Amendment of section 13 of Act 29 of 1996

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

- (a) by the deletion in subsection (3)(a) of subparagraph (ii); 55
- (b) by the deletion of subsection (4); and

(c) by the insertion after subsection (4) of the following subsections:

“(4A) The *employer* must inform the *Principal Inspector of Mines*, in writing, within seven days of the appointment of the *occupational medical practitioner*.

(4B) The information submitted in terms of subsection (4A) must include—

(a) the name of a *occupational medical practitioner*;

(b) his or her practice number; and

(c) whether the occupational medical practitioner is engaged full time or part time.”.

**Amendment of section 17 of Act 29 of 1996, as amended by section 10 of Act 72 of 1997**

6. Section 17 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The examination referred to in subsection (1) must be held before, or [as soon as possible] within 30 days after, termination of employment.”.

**Amendment of section 20 of Act 29 of 1996, as amended by section 11 of Act 72 of 1997**

7. Section 20 of the principal Act is hereby amended by the addition of the following subsection:

“(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.”.

**Amendment of section 23 of Act 29 of 1996, as amended by section 12 of Act 72 of 1997**

8. Section 23 of the principal Act is hereby amended by the addition of the following subsection:

“(4) The *Minister*, by notice in the *Gazette*, must determine minimum requirements for the procedures contemplated in subsection (2).”.

**Amendment of section 41 of Act 29 of 1996, as amended by section 17 of Act 72 of 1997**

9. Section 41 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“[The following permanent committees of the Council are hereby established] A committee, ad hoc committee or subcommittee may when necessary be established, which committee may include—”.

**Amendment of section 42 of Act 29 of 1996, as amended by section 18 of Act 72 of 1997**

10. Section 42 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection: 40

“(2) The *Minister* must appoint the members of the *Council* [and the permanent committees of the Council] in accordance with the regulations.”;

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

“(2A) The *Council* may appoint members to committees, ad hoc [and], subcommittees [,] and other committees, for any period of time and on any conditions.”; and

(c) by the insertion after subsection (2A) of the following subsection:

“(2B) The structure and functions of any committee contemplated in subsection (2A) must be provided for in the constitution contemplated in section 97(3).”.

**Amendment of section 43 of Act 29 of 1996, as amended by section 19 of Act 72 of 1997**

11. Section 43 of the principal Act is hereby amended by the substitution for subparagraph (eA) of the following paragraph:

“(eA) annually **[consider an overall programme for]** advise the Minister on relevant [health and safety] research [for approval as prescribed and deliver a copy to the Minister of Finance for consideration] relating to *health and safety at mines*; and”.

**Repeal of section 44 of Act 29 of 1996**

12. Section 44 of the principal Act is hereby repealed. 10

**Amendment of section 47 of Act 29 of 1996**

13. Section 47 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(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.”.

**Amendment of section 49 of Act 29 of 1996**

14. Section 49 of the principal Act is hereby amended—

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

“(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; **[and]**”;

(b) by the substitution in subsection (1) for paragraph (k) of the following paragraph:

“(k) perform any duties relating to *health* or *safety at mines* that the *Minister* directs or prescribes[.];”;

(c) by the addition to subsection (1) of the following paragraphs: 30

“(l) develop an implementation plan for the effective implementation of this Act;

(m) develop and maintain an integrated *mine health and safety* database and reporting system;

(n) conduct or commission relevant research and evaluate and publish the results of the research; and 35

(o) provide logistical, administrative and technical support to the *Council.*”;

(d) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 40

“Despite the provisions of the **[Minerals Act]** *Minerals and Petroleum Resources Development Act* or any other law, the *Chief Inspector of Mines—*”;

(e) by the substitution in subsection (3) for paragraph (b) of the following paragraph: 45

“(b) must consult with the appropriate officer appointed in terms of **[section 4 of the Minerals Act]** the *Minerals and Petroleum Resources Development Act* concerning the exercise of those powers.”;

(f) by the substitution for subsection 4 of the following subsection: 50

“(4) To further the objectives of this Act the *Chief Inspector of Mines* may—

(a) enter into agreements with other persons;**[and]**

- (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; 5
- (d) grant, amend, suspend or revoke *health* and *safety* permits;
- (e) require all *mines* or groups of *mines* to prepare and implement a *health* and *safety* management system for *mines*;
- (f) require all *mines* or groups of *mines* to prepare and implement a hazard management system for significant hazards mentioned under section 11; 10
- (g) in consultation with the *Minister* and the Minister of Finance acquire or dispose of immovable property;
- (h) hire, purchase or otherwise acquire any movable property and proprietary right, and lease or dispose of property; 15
- (i) 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*;
- (j) 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; 20
- (k) 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; 25
- (l) insure the Mine Health and Safety Inspectorate against any loss, damage, risk or liability;
- (m) invest any of the money of the Mine Health and Safety Inspectorate; and 30
- (n) institute or defend any legal action.”; and
- (g) by the addition of the following subsection:
  - “(6) The *Chief Inspector of Mines* must issue guidelines by notice in the *Gazette*.”. 35

#### Insertion of sections 49A and 49B in Act 29 of 1996

15. The following sections are hereby inserted in the principal Act after section 49:

#### **“Financial and judicial management of Mine Health and Safety Inspectorate**

- 49A.** (1) The funds of the Mine Health and Safety Inspectorate consist of— 40
- (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*. 45
- (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. 50
- (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 55
  - (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 fund.

(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.

### Co-operative governance

**49B.** (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)."

### Amendment of section 50 of Act 29 of 1996

**16.** Section 50 of the principal Act is hereby amended by the insertion after subsection (7) of the following subsection:

“(7A) The *Inspector* must 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.”.

### Amendment of section 55A of Act 29 of 1996, as inserted by section 25 of Act 72 of 1997

**17.** Section 55A of the principal Act is hereby amended—

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

“(1) An *inspector* [who has reason to believe that an employer has contravened or failed to comply with any provision contemplated in section 91(1B),] may make a recommendation in writing to the *Principal Inspector of Mines* that a fine be imposed on [the] an employer who has failed to comply with any provision contemplated in section 91(1B).”;

(b) by the deletion of subsection (2);

(c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“The *inspector* concerned must [provide] serve a copy of the recommendation [or record contemplated in subsection (1) or (2) to] on—”; and

(d) by the addition of the following subsections:

“(4) The employer may make written representations to the Principal Inspector of Mines within 30 days of the recommendation.

(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.”.

**Substitution of section 55B of Act 29 of 1996, as inserted by section 25 of Act 72 of 1997**

18. The following section is hereby substituted for section 55B of the principal Act:

**“Principal Inspector of Mines may impose fines**

**55B.** (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 an appropriate court for the fine to be made an order of that court.”.

**Repeal of sections 55C to 55H of Act 29 of 1996**

19. Sections 55C, 55D, 55E, 55F, 55G and 55H of the principal Act are hereby repealed.

**Amendment of section 57 of Act 29 of 1996, as amended by section 27 of Act 72 of 1997**

20. Section 57 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person **[who is the subject of a decision of an inspector, or at whose instance a decision of an inspector was taken, except a decision contemplated in section 55A]** 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*.”.

**Repeal of section 57A of Act 29 of 1996**

21. Section 57A of the principal Act is hereby repealed.

**Substitution of section 58 of Act 29 of 1996**

22. The following section is hereby substituted for section 58 of the principal Act:

**“Right to appeal Chief Inspector of Mines’ decision**

**58.** (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 of the *Chief Inspector of Mines* to **[the Labour Court]** a court having jurisdiction.

(2) An appeal under subsection (1) must be lodged with the registrar or clerk of the [Labour Court] court having jurisdiction in accordance with the rules of **[the Labour Court]** that court, within 60 days of the date that the *Chief Inspector of Mines*’ decision was given.

(3) The **[Labour Court]** court having jurisdiction must consider the appeal and confirm, set aside or vary the decision.”.

**Substitution of section 59 of Act 29 of 1996, as substituted by section 29 of Act 72 of 1997**

23. The following section is hereby substituted for section 59 of the principal Act:

**“Appeal does not suspend decision**

**59.** (1) An appeal against a decision under either section 57 [, 57A] or 58 5  
does not suspend the decision.

(2) Despite subsection (1) [—

(a) **an appeal in terms of section 57A or 58 against a decision to 10  
impose a fine suspends the obligation to pay the fine, pending the  
outcome of the appeal; and**

(b) **the Labour Court], the court may suspend the operation of the 10  
decision made in terms of section 57 or 58, pending the [determina-  
tion of the matter, if there are reasonable grounds for doing so]  
finding of the court.”.**

**Amendment of section 63 of Act 29 of 1996, as amended by section 31 of Act 72 of 15  
1997**

24. Section 63 of the principal Act is hereby amended by the substitution for  
subsection (1) of the following subsection:

“(1) (a) For the purpose of enhancing the effectiveness of an investigation in  
terms of section 60 the [**Chief Inspector of Mines in consultation with** 20  
**Prosecuting Authority, after receiving representations from the [appropriate  
Attorney-General] 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 [**55D**] **55B** or disciplinary 25  
action related to the event investigated may thereafter be imposed on or taken  
against any person.”.

**Amendment of section 71 of Act 29 of 1996, as amended by section 33 of Act 72 of  
1997**

25. Section 71 is hereby amended by the substitution for subsection (3) of the 30  
following subsection:

“(3) The person presiding at an inquiry may direct that any evidence given by a  
person during an inquiry may not be used [**for the purposes of sections 55A to  
55D, or any appeal relating to those sections, or]** in any criminal or disciplinary  
proceedings against that person except in criminal proceedings on a charge of 35  
perjury against that person.”.

**Amendment of section 76 of Act 29 of 1996**

26. Section 76 of the principal Act is hereby amended by the addition of the following  
subsection:

“(3) The *Minister* may enter any *mine* at any time only for the purposes of *health 40  
hazards*.”.

**Insertion of section 86A in Act 29 of 1996**

27. The following section is hereby inserted in the principal Act after section 86:

**“Criminal liability**

**86A.** (1) An *employer, chief executive officer, manager, agent or 45  
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 any individual within the employ of the *employer* may not be admitted.”.

**Amendment of section 91 of Act 29 of 1996, as amended by section 37 of Act 72 of 1997**

28. Section 91 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
  - “(1) Any person, **[other than]** including an *employer*, **[commits an offence]** 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 **[determines]** determined, given, issued, **[promulgated]** 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.**”;
- (b) by the deletion of subsection (1A);
- (c) by the substitution in subsection (1B) for the words preceding paragraph (a) of the following words:
  - “Any *employer* is liable to a fine in terms of section **[55D]** 55B if the *employer* contravenes, or fails to comply with, any—”;
- (d) by the substitution in subsection (1B) for paragraph (a) of the following paragraph:
  - “(a) provision of *this Act*, **[other than a provision referred to in subsection (1A), or any provision of Chapter 3 or section 83]**”;
- (e) by the substitution in subsection (1C) for the words preceding paragraph (a) of the following words:
  - “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 **[55D]** 55B if—”;
  - and
- (f) by the deletion of subsection (2).

**Amendment of section 92 of Act 29 of 1996, as amended by section 38 of Act 72 of 1997**

29. Section 92 of the principal Act is hereby amended—

- (a) by the substitution for subsection (5) for the following subsections:
  - “(5) Any person convicted of an offence in terms of any section mentioned in Column 1 of **[the Table below]** 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.

(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.

(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.”; and

(b) by the deletion of the table.

### Amendment of section 98 of Act 29 of 1996, as amended by section 41 of Act 72 of 1997

30. Section 98 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) of the following paragraph:  
 “(zN) any other matter the *regulation* of which may be necessary or desirable in order to achieve the objects of *this Act*; **[and]**”;
- (b) by the substitution in subsection (1) of the following paragraph:  
 “(zO) the system of fines contemplated in sections 55A **[to H,]** and 55B including *regulations* regarding forms and documents, periods of time, procedures, *records* to be kept and the payment of fines~~[.]~~”; and
- (c) by the addition to subsection (1) of the following paragraph:  
 “(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.”.

### Amendment of section 102 of Act 29 of 1996, as amended by section 43 of Act 72 of 1997

31. Section 102 of the principal Act is hereby amended—

- (a) by the insertion after the definition of “Commission” of the following definition:  
 “ ‘**Constitution**’ means the Constitution of the Republic of South Africa, 1996;”;
- (b) by the insertion after the definition of “**mineral**” of the following definition:  
 “ ‘**Mineral and Petroleum Resources Development Act**’ means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);”;
- (c) by the deletion of the definition of “**Minerals Act**”;
- (d) by the deletion of the definition of “**occupational health practitioner**”;
- (e) by the substitution for the definition of “**occupational medical practitioner**” of the following definition:  
 “ ‘**occupational medical practitioner**’ means a *medical practitioner* who holds a qualification in *occupational medicine*, or an equivalent qualification, recognised by the **[Interim National Medical and Dental Council of South Africa]** Health Professions Council of South Africa;”;
- (f) by the substitution in paragraph (a) of the definition of “**owner**” for subparagraph (i) of the following subparagraph:  
 “(i) the holder of a prospecting permit or mining authorisation issued under the **[Minerals Act]** *Mineral and Petroleum Resources Development Act*;”;
- (g) by the insertion after the definition of “**prospecting**” of the following definition:  
 “ ‘**Public Finance Management Act**’ means the Public Finance Management Act, 1999 (Act No. 1 of 1999);”;

- (h) by the substitution for the definition of “**topsoil**” of the following definition:  
 “ ‘**topsoil**’ means topsoil as defined in section 1 of the [Minerals Act] *Mineral and Petroleum Resources Development Act*.”.

#### Substitution of section 104 of Act 29 of 1996

32. The following section is hereby substituted for section 104 of the principal Act: 5

##### “Civil liability of State

**104.** 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*.” 10

#### Amendment of Schedule 4 to Act 29 of 1996, as amended by section 46 of Act 72 of 1997

33. Schedule 4 to the principal Act is hereby amended by the addition of the following item: 15

“7. The Mine Health and Safety Inspectorate continues to exist as a juristic person and the *Chief Inspector of Mines* is its accounting authority.”.

#### Insertion of Schedule 8 in Act 29 of 1996

34. The following Schedule is hereby inserted in the principal Act after Schedule 7:

#### SCHEDULE 8 20

##### 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	
<u>2</u>	R1 000 000 or 5 yrs imprisonment	25
<u>2A</u>	R1 000 000 or 5 yrs imprisonment	
<u>3</u>	R1 000 000 or 5 yrs imprisonment	30
<u>5</u>	R1 000 000 or 5 yrs imprisonment	
<u>6</u>	R1 000 000 or 5 yrs imprisonment	
<u>7(1)</u>	R1 000 000 or 5 yrs imprisonment	
<u>10</u>	R1 000 000 or 5 yrs imprisonment	
<u>11</u>	R1 000 000 or 5 yrs imprisonment	35
<u>15</u>	R500 000 or five years imprisonment	
<u>16</u>	R500 000 or five years imprisonment	
<u>21(1), (3) or (4)</u>	R500 000 or five years imprisonment	
<u>22</u>	R200 000 or two years imprisonment	
<u>24</u>	R500 000 or five years imprisonment	40
<u>52</u>	R200 000 or two years imprisonment	
<u>53</u>	R200 000 or two years imprisonment	

Column 1 Section under which convicted	Column 2 Maximum fine and term of imprisonment	
<u>62</u>	<u>R200 000 or two years imprisonment</u>	
<u>66(3)</u>	<u>R200 000 or two years imprisonment</u>	5
<u>70</u>	<u>R200 000 or two years imprisonment</u>	
<u>71</u>	<u>R200 000 or two years imprisonment</u>	
<u>84</u>	<u>R200 000 or two years imprisonment</u>	
<u>85</u>	<u>R200 000 or two years imprisonment</u>	
<u>87, 88, 89, 90</u>	<u>R50 000 or six months imprisonment</u>	10
<u>88</u>	<u>R300 000 or three years imprisonment</u>	

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.”.	15
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**Amendment of certain expressions in Act 29 of 1996**

**35.** (1) The principal Act is hereby amended by the substitution for the expression “permanent committee”, wherever it occurs, of an expression “*committee*” or “*committees*”.

(2) The principal Act is hereby amended by the substitution for the expression “*Minerals Act*” wherever it occurs, of the expression “*Mineral and Petroleum Resources Development Act*”.

**Short title and commencement**

**36.** This Act is called the Mine Health and Safety Amendment Act, 2008, and takes effect on a date to be determined by the President by proclamation in the *Gazette*.

## **MEMORANDUM ON THE OBJECTS OF THE MINE HEALTH AND SAFETY AMENDMENT BILL, 2008**

### **1. BACKGROUND**

1.1 The setting, monitoring and enforcement of health and safety standards within the South African mining industry is regulated under the Mine Health and Safety Act, 1996 (Act No. 29 of 1996), which came into force in 1996 (MHSA). The MHSA promotes the objective of protecting the health and safety of persons at mines.

1.2 The MHSA is premised on the principle that the responsibility for health and safety lies with the employers (owners of mines), hence the outcome-based approach, which focuses on outputs (results) rather than the rule-driven, prescriptive approach of the previous regulatory system under the now repealed Minerals Act, 1991 (Act No. 50 of 1991).

1.3 The enforcement and the ordering of compliance with the MHSA form the core business of the Mine Health and Safety Inspectorate (MHSI). In enforcing the MHSA the Chief Inspector of Mines and various other inspectors have wide statutory powers. Inspectors are empowered to enter any mine at any time, conduct inspections of places of work, question persons and examine documents. If dissatisfied with conditions at mines, inspectors may order compliance, issue instructions requiring the improvement of conditions within a specified time, conduct further investigations and where necessary recommend prosecution where an offence has been committed.

### **2. OBJECTS OF BILL**

2.1 The Bill seeks to amend the MHSA so as to review the enforcement provisions, simplify the system, tighten offences and strengthen penalties. It also seeks to substitute and remove ambiguities in certain definitions and expressions and effect certain amendments necessary to ensure consistency with other laws, particularly the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).

2.2 The Bill further seeks to harmonise the administrative processes in the MHSA with the sound administrative practices and the objects of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

2.3 The Bill further amends section 47 of the MHSA to allow for the continued existence of the Mine Health and Safety Inspectorate as a juristic person with powers to generate and administer its own funds in terms of the Public Finance Management Act, 1999 (Act No 1. of 1999).

### **3. CONSULTATION**

The amendments have been canvassed with all the stakeholders within the Department and were fully supported. The stakeholders within the mining and minerals sector were consulted with regard to the proposed amendment to the MHSA.

### **4. FINANCIAL IMPLICATIONS FOR STATE**

The Bill proposes the relocation of the Mine Health and Safety Act to be incorporated within the Mine Health and Safety Council. Relocation and operational costs will be required on commencement of the Act.

### **5. COMMUNICATION IMPLICATIONS**

The proposals contained in the Bill were canvassed with affected stakeholders within the industry, and it is envisaged that further communication will be dealt with in accordance with the departmental chains of command and parliamentary procedures.

**6. PARLIAMENTARY PROCEDURE**

6.1 The State Law Advisers and the Department of Minerals and Energy are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

6.2 The State Law Advisers are also of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

Printed by Creda Communications

ISBN 978-1-77037-432-4