

**MINE HEALTH AND SAFETY ACT
NO. 29 OF 1996**

[View Regulation]

[ASSENTED TO 30 MAY, 1996]
[DATE OF COMMENCEMENT: 15 JANUARY, 1997]

(Unless otherwise indicated)

(*English text signed by the President*)

This Act has been updated to *Government Gazette* 32226 dated 12 May, 2009.

as amended by

Mine Health and Safety Amendment Act, No. 72 of 1997

Skills Development Amendment Act, No. 31 of 2003
[with effect from 14 November, 2003]

Mineral and Petroleum Resources Development Act, No. 28 of 2002

Mine Health and Safety Amendment Act, No. 74 of 2008

pending amendment by

Mine Health and Safety Amendment Act, No. 74 of 2008
(provisions mentioned not yet proclaimed)

GENERAL NOTE

In terms of s. 47 of Act No. 72 of 1997, the expressions in the principal Act are amended by—

- (a) the substitution for the expression “Chief Inspector”, of the expression “Chief Inspector of Mines”;**
- (b) the substitution for the expression “Government Gazette”, of the expression “Gazette”;**
- (c) 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”, of the expression “employer”;**
- (d) the substitution for the expressions “owners” and “owners, employers and managers”, of the expression “employers”;**
- (e) the substitution for the expression “manager”, except in sections 3 and 4, of the expression “employer”;**
- (f) the substitution for the expression “a manager”, except in sections 3 and 4, of the expression “an employer”; and**
- (g) the substitution for the expression “managers, ”, except in sections 3 and 4 of the expression “employers, ”.**

In terms of s. 34 of Act No. 74 of 2008, the expressions in the principal Act are amended by—

- (a) the substitution for the expression “permanent committee(s)”, of the expression “committee(s)”;**
- (b) the substitution for the expression “Minerals Act”, of the expression “Mineral and Petroleum Resources Development Act, 2002”.**

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.

ARRANGEMENT OF SECTIONS

CHAPTER 1 OBJECTS OF ACT

1. Objects of Act

CHAPTER 2 HEALTH AND SAFETY AT MINES

2. Employer to ensure safety
- 2A. Chief executive officer charged with certain functions
3. Employer must appoint manager
4. Employer may entrust functions to another person
5. Employer to maintain healthy and safe mine environment
6. Employer to ensure adequate supply of health and safety equipment
7. Employer to staff mine with due regard to health and safety
8. Employer must establish health and safety policy
9. Codes of practice
10. Employer to provide health and safety training
11. Employer to assess and respond to risk
12. Employer to conduct occupational hygiene measurements
13. Employer to establish system of medical surveillance
14. Record of hazardous work
15. Record of medical surveillance
16. Annual medical reports
17. Exit certificates
18. Costs of examination
19. Employees' right to information
20. Employee may dispute finding of unfitness to perform work
21. Manufacturer's and supplier's duty for health and safety
22. Employees' duties for health and safety
23. Employees' right to leave dangerous working place
24. Employees not to pay for safety measures

CHAPTER 3 HEALTH AND SAFETY REPRESENTATIVES AND COMMITTEES

25. Health and safety representatives and committees
26. Negotiations and consultations before appointment of representatives
27. Designation of working places
28. Qualifications of representatives
29. Election and appointment of representatives
30. Rights and powers of representatives
31. Duty to compensate and assist representatives
32. Duty to inform representatives
33. Negotiation and consultation on establishment of committees
34. Establishment of health and safety committees
35. Committee procedures

36.	Rights and powers of health and safety committee
37.	Duty to support committee
38.	Disclosure of information
39.	Disputes concerning disclosure of information
40.	Disputes concerning this Chapter

CHAPTER 4

TRIPARTITE INSTITUTIONS

41.	Establishment of tripartite institutions
42.	Mine Health and Safety Council
43.	Council's duties
44.
45.	Mining Qualifications Authority
46.	Mining Qualifications Authority's functions

CHAPTER 5

INSPECTORATE OF MINE HEALTH AND SAFETY

47.	Inspectorate established
48.	Chief Inspector of Mines
49.	Chief Inspector of Mines' functions
49A.	Financial and judicial management of Mine Health and Safety Inspectorate
49B.	Co-operative governance
50.	Inspectors' powers
51.	Inspector may be accompanied
52.	Duty to assist inspector and answer questions
53.	Duty to produce documents required by inspector
54.	Inspector's power to deal with dangerous conditions
55.	Inspectors' power to order compliance
55A.	Inspector's power to recommend fine
55B.	Principal Inspector of Mines may impose fines
55C.
55D.
55E.
55F.
55G.
55H.
56.	Instructions to be posted at mine
57.	Right to appeal inspectors' decisions
57A.
58.	Right to appeal Chief Inspector of Mines' decision
59.	Appeal does not suspend decision
60.	Initiating investigations
61.	Chief Inspector of Mines may designate assistant in investigation
62.	Duty to answer questions during investigation
63.	Enhancing effectiveness of investigation
64.	Reports on investigations
65.	Initiating inquiries
66.	Investigation may be converted into inquiry
67.	Chief Inspector of Mines may designate assistant in inquiry
68.	Inquiry to be public
69.	Right to participate in inquiry
70.	Powers of person presiding at inquiry
71.	Duty of persons summoned or instructed
72.	Inquiry records and reports
73.	Chief Inspector of Mines may order further inquiry
74.	Inquiry and inquest may be conducted jointly

CHAPTER 6

MINISTER'S POWERS

75.	Minister may prohibit or restrict work
76.	Minister may declare health hazards
77.	Application of Minister's notice
78.	Exemption from Minister's notice
79.	Exemption from all or part of this Act
80.	Minister may apply other laws to mine
81.	Minister to table annual report

CHAPTER 7

LEGAL PROCEEDINGS AND OFFENCES

82.	Jurisdiction of Labour Court
83.	No discrimination against employees who exercise rights
84.	Safety equipment not to be interfered with
85.	Juvenile employment underground prohibited
86.	Negligent act or omission
86A.	Criminal liability
87.	Breach of confidence
88.	Hindering administration of this Act
89.	Falsifying documents
90.	Failure to attend when summoned
91.	Failure to comply with this Act
92.	Penalties
93.	Magistrate's court has jurisdiction to impose penalties
94.	Serving of documents
95.	Proof of facts

CHAPTER 8 GENERAL PROVISIONS	
96.	Delegation and exercise of power
97.	Minister's power to add and change Schedules
98.	Regulations
99.	Amendment of laws
100.	Transitional arrangements
101.	Interpretation
102.	Definitions
103.	Occupational Health and Safety Act, 1993, not applicable
104.	Civil liability of State
105.	Act binds State
106.	Short title and commencement
Schedule 1	Guidelines for determining the number of full-time health and safety representatives
Schedule 2	Nomination and appointment of members to tripartite institutions
Schedule 3	Amendment of laws
Schedule 4	Transitional provisions
Schedule 5	Suspension and variation of application of Occupational Diseases in Mines and Works Act, 1973 (Act No. 78 of 1973)
Schedule 6	Constitution of the Mine Health and Safety Council
Schedule 7	Constitution of Mining Qualification Authority <ul style="list-style-type: none"> 1. Establishment of Authority and committees 2. Legal status 3. Objects of Authority 4. Functions of Authority 5. Functions of <i>committees</i> 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
Schedule 8	Maximum fines or period of imprisonment that can be imposed for offences

[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.

[Para. (d) substituted by s. 1 of Act No. 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 *Mineral 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*.

[Sub-s. (2) substituted by s. 1 of Act No. 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*.
[S. 2A inserted by s. 2 of Act No. 72 of 1997. Sub-s. (6) added by s. 2 of Act No. 74 of 2008.]

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;

[Para. (a) substituted by s. 3 of Act No. 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*.

[Sub-s. (1) substituted by s. 4 of Act No. 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.

(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*.

[S. 5 substituted by s. 5 of Act No. 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.

[Sub-s. (1) substituted by s. 6 (a) of Act No. 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.

[Sub-s. (3) substituted by s. 6 (b) of Act No. 72 of 1997.]

7. Employer to staff mine with due regard to health and safety.—(1) As far as *reasonably practicable*, every *employer* must—

(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*;
[Para. (c) substituted by s. 7 (b) of Act No. 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.
[Sub-s. (1) amended by s. 7 (a) of Act No. 72 of 1997.]

(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*.

[Sub-s. (2) substituted by s. 7 (c) of Act No. 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*.

[Sub-s. (4) added by s. 7 (d) of Act No. 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*.

[Sub-s. (5) added by s. 7 (d) of Act No. 72 of 1997.]

8. Employer must establish health and safety policy.—(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
[Para. (c) substituted by s. 8 of Act No. 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).

(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*.

(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 lay-outs, 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).

[Sub-s. (4) added by s. 3 of Act No. 74 of 2008.]

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

[Sub-s. (5) added by s. 3 of Act No. 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*;
 [Para. (aA) inserted by s. 4 (a) of Act No. 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*;
 [Sub-para. (i) substituted by s. 4 (b) of Act No. 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*.
 [Para. (e) substituted by s. 4 (c) of Act No. 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.

[Sub-s. (5A) inserted by s. 4 (d) of Act No. 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).

[Sub-s. (5B) inserted by s. 4 (d) of Act No. 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.

(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.

[Sub-s. (8) added by s. 4 (e) of Act No. 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)

[Sub-para. (ii) deleted by s. 5 (a) of Act No. 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)

[Sub-s. (4) deleted by s. 5 (b) of Act No. 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*.

[Sub-s. (4A) inserted by s. 5 (c) of Act No. 74 of 2008.]

(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.

[Sub-s. (4B) inserted by s. 5 (c) of Act No. 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).

(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.

(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)

[Para. (a) deleted by s. 9 of Act No. 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*.

[Sub-s. (1) substituted by s. 10 of Act No. 72 of 1997.]

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

[Sub-s. (2) substituted by s. 6 of Act No. 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
- (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

(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.

[Sub-s. (7) added by s. 7 of Act No. 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).

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*;
- (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.

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*.

(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
[Para. (d) substituted by s. 12 of Act No. 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).

[Sub-s. (4) added by s. 8 of Act No. 74 of 2008.]

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*.

(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.

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;
- (i) the facilities and assistance that must be provided to *health and safety representatives* in terms of section 31 (3);
- (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;
[Para. (k) substituted by s. 13 (a) of Act No. 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.
[Sub-s. (4) substituted by s. 13 (b) of Act No. 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).

- (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*.

(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.

(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*;
[Para. (b) substituted by s. 14 of Act No. 72 of 1997.]
- (c) assist any *employee* who has left a *working place* in terms of section 23;
- (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
 - (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*;
- (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);
- (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.

(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 reasonable 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.

[Para. (h) substituted by s. 15 (a) of Act No. 72 of 1997.]

(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.

[Sub-s. (4) substituted by s. 15 (b) of Act No. 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).

(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);
- (c) request the *Chief Inspector of Mines* to review any code of practice;
- (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
 - (ii) the *Chief Inspector of Mines* to conduct an inquiry in terms of section 65;
- (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.

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).

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 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.

(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.

[Sub-s. (6) substituted by s. 16 of Act No. 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*.

(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).

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—

- (a) the Mining Regulation Advisory Committee;
- (b) the Mining Occupational Health Advisory Committee; and
- (c) the Safety in Mines Research Advisory Committee.

[Sub-s. (2) amended by s. 9 of Act No. 74 of 2008.]

(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;

- (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).

[Para. (c) substituted by s. 17 (b) of Act No. 72 of 1997.]

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*.

[Sub-s. (2) substituted by s. 10 (a) of Act No. 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.

[Sub-s. (2A) inserted by s. 18 (a) of Act No. 72 of 1997 and substituted by s. 10 (b) of Act No. 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).

[Sub-s. (2B) inserted by s. 10 (c) of Act No. 74 of 2008.]

(3) The *Council* and its committees must govern themselves in accordance with the constitution contemplated in section 97 (3).

[Sub-s. (3) substituted by s. 18 (b) of Act No. 72 of 1997.]

(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).

[Sub-s. (4) substituted by s. 18 (b) of Act No. 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*;

[Para. (a) substituted by s. 19 (a) of Act No. 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*;

[Para. (e) substituted by s. 19 (b) of Act No. 72 of 1997.]

- (eA) annually advise the *Minister* on relevant research relating to *health and safety at mines*; and

[Para. (eA) inserted by s. 19 (c) of Act No. 72 of 1997 and substituted by s. 11 of Act No. 74 of 2008.]

- (f) perform every duty imposed upon the *Council* in terms of *this Act*.

44.

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.

[Para. (d) substituted by s. 21 (a) of Act No. 72 of 1997.]

(2) The members of the Mining Qualifications Authority must be appointed in accordance with the constitution contemplated in section 97 (4).

[Sub-s. (2) substituted by s. 27 of Act No. 31 of 2003.]

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

[Sub-s. (3) substituted by s. 21 (b) of Act No. 72 of 1997.]

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;
[Para. (a) substituted by s. 22 (a) of Act No. 72 of 1997.]
- (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;
- (c) propose education and training standards and qualifications to bodies registered with that Authority and responsible for developing education and training standards;
[Para. (c) substituted by s. 22 (b) of Act No. 72 of 1997.]
- (d) generate education and training standards and qualifications in the mining industry;
[Para. (d) substituted by s. 22 (b) of Act No. 72 of 1997.]
- (e) monitor and audit achievement in terms of the standards and qualifications; and
- (f) perform the functions of a sector education and training authority in terms of the Skills Development Act, 1998 (Act No. 97 of 1998).
[Para. (f) added by s. 28 (a) of Act No. 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.
[Sub-s. (2) substituted by s. 28 (b) of Act No. 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).

[Sub-s. (3) substituted by s. 22 (c) of Act No. 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).

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.
[Sub-s. (1) substituted by s. 13 of Act No. 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;
- (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;

[Para. (j) substituted by s. 14 (a) of Act No. 74 of 2008.]

- (k) perform any duties relating to *health or safety* at *mines* that the *Minister* directs or prescribes;
[Para. (k) substituted by s. 14 (b) of Act No. 74 of 2008.]

- (l) develop and maintain an integrated *mine health and safety* database and reporting system;
[Para. (l) added by s. 14 (c) of Act No. 74 of 2008.]

- (m) conduct or commission relevant research and evaluate and publish the results of the research; and
[Para. (m) added by s. 14 (c) of Act No. 74 of 2008.]

- (n) provide logistical, administrative and technical support to the *Council*.
[Para. (n) added by s. 14 (c) of Act No. 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 *Mineral and Petroleum Resources Development Act* or any other law, the *Chief Inspector of Mines*—

- (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 *Mineral and Petroleum Resources Development Act* concerning the exercise of those powers.

[Sub-s. (3) amended by s. 14 (d) of Act No. 74 of 2008. Para. (b) substituted by s. 14 (e) of Act No. 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.

[Sub-s. (4) substituted by s. 14 (f) of Act No. 74 of 2008.]

(5) The *Chief Inspector* 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*.

[Sub-s. (6) added by s. 14 (g) of Act No. 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.

[S. 49A inserted by s. 15 of Act No. 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).

[S. 49B inserted by s. 15 of Act No. 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 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.

(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.

(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.

(Pending amendment: Sub-s. 7A to be inserted by s. 16 of Act No. 74 of 2008 and takes effect on a date to be determined by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement 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.

(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 *Minerals and Petroleum Resources Development Act*, must produce it at the request of the *Chief Inspector of Mines* or any *inspector*.

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—

- (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*.

[Sub-s. (1) amended by s. 23 of Act No. 72 of 1997.]

(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* or until the *inspector's* instructions have been complied with.

(7)

[Sub-s. (7) deleted by s. 17 of Act No. 74 of 2008.]

(8)

[Sub-s. (8) deleted by s. 17 of Act No. 74 of 2008.]

(9)

[Sub-s. (9) deleted by s. 17 of Act No. 74 of 2008.]

(10)

[Sub-s. (10) deleted by s. 17 of Act No. 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*—

- (a) considers necessary to comply with the provision; and
- (b) specifies in the instruction.

[Sub-s. (1) amended by s. 24 of Act No. 72 of 1997.]

(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).

[Sub-s. (1) substituted by s. 18 (a) of Act No. 74 of 2008.]

(2)

[Sub-s. (2) deleted by s. 18 (b) of Act No. 74 of 2008.]

(3) The *inspector* concerned must serve a copy of the recommendation on—

- (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*.

[Sub-s. (3) amended by s. 18 (c) of Act No. 74 of 2008.]

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

[Sub-s. (4) added by s. 18 (d) of Act No. 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.

[S. 55A inserted by s. 25 of Act No. 72 of 1997. Sub-s. (5) added by s. 18 (d) of Act No. 74 of 2008.]

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.

[S. 55B inserted by s. 25 of Act No. 72 of 1997 and substituted by s. 19 of Act No. 74 of 2008.]

55C.

[S. 55C inserted by s. 25 of Act No. 72 of 1997 and repealed by s. 20 of Act No. 74 of 2008.]

55D.

[S. 55D inserted by s. 25 of Act No. 72 of 1997 and repealed by s. 20 of Act No. 74 of 2008.]

55E.

[S. 55E inserted by s. 25 of Act No. 72 of 1997 and repealed by s. 20 of Act No. 74 of 2008.]

55F.

[S. 55F inserted by s. 25 of Act No. 72 of 1997 and repealed by s. 20 of Act No. 74 of 2008.]

55G.

[S. 55G inserted by s. 25 of Act No. 72 of 1997 and repealed by s. 20 of Act No. 74 of 2008.]

55H.

[S. 55H inserted by s. 25 of Act No. 72 of 1997 and repealed by s. 20 of Act No. 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*.

[Sub-s. (1) substituted by s. 27 (a) of Act No. 72 of 1997 and by s. 21 of Act No. 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

[Para. (a) substituted by s. 27 (b) of Act No. 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.

[S. 57A inserted by s. 28 of Act No. 72 of 1997 and repealed by s. 22 of Act No. 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.—(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.

[S. 59 substituted by s. 29 of Act No. 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.

[Sub-s. (1) substituted by s. 30 of Act No. 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*.

[Sub-s. (2) substituted by s. 30 of Act No. 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.

[Sub-s. (1) substituted by s. 31 of Act No. 72 of 1997 and by s. 23 of Act No. 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* 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.

[Para. (c) substituted by s. 32 of Act No. 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.

[Sub-s. (3) substituted by s. 33 of Act No. 72 of 1997 and by s. 24 of Act No. 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.

[Sub-s. (4) substituted by s. 33 of Act No. 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.

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).

(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 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*.
[Sub-s. (3) added by s. 25 of Act No. 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*.

(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the phrase "Act No. 181 of 1993" is intended to be "Act No. 85 of 1993")

(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.

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.

[Sub-s. (1) substituted by s. 35 (a) of Act No. 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.

[Sub-s. (2) substituted by s. 35 (b) of Act No. 72 of 1997.]

(Date of commencement s. 86: 15 January, 1998.)

(3)

[Sub-s. (3) deleted by s. 35 (c) of Act No. 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.

(Pending amendment: Sub-s. 86A to be inserted by s. 26 of Act No. 74 of 2008 and takes effect on a date to be determined by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement 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.

[Sub-s. (1) substituted by s. 36 of Act No. 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. Hinderin 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
 - (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*.

[Sub-s. (1) substituted by s. 37 (a) of Act No. 72 of 1997 and by s. 27 (a) of Act No. 74 of 2008.]

(1A)

[Sub-s. (1A) inserted by s. 37 (b) of Act No. 72 of 1997 and deleted by s. 27 (b) of Act No. 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—

- (a) provision of *this Act*;
 - [Para. (a) substituted by s. 27 (d) of Act No. 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 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.

[Sub-s. (1B) inserted by s. 37 (b) of Act No. 72 of 1997 and amended by s. 27 (c) of Act No. 74 of 2008.]

(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—

- (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*.

[Sub-s. (1C) inserted by s. 37 (b) of Act No. 72 of 1997 and amended by s. 27 (e) of Act No. 74 of 2008.]

(2)

[Sub-s. (2) deleted by s. 27 (f) of Act No. 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.

[Sub-s. (4) added by s. 37 (c) of Act No. 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.

[Sub-s. (5) substituted by s. 28 (a) of Act No. 74 of 2008. Table substituted by s. 38 of Act No. 72 of 1997 and deleted by s. 28 (b) of Act No. 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.

[Sub-s. (6) added by s. 28 (c) of Act No. 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.

[Sub-s. (7) added by s. 28 (c) of Act No. 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.

CHAPTER 8
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.

[Sub-s. (2) substituted by s. 39 of Act No. 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.

[Sub-s. (1) substituted by s. 29 of Act No. 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.

[Sub-s. (3) substituted by s. 40 (a) of Act No. 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.

[Sub-s. (4) substituted by s. 40 (a) of Act No. 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 No. 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 employment 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;
- (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;
[Para. (zF) substituted by s. 41 (a) of Act No. 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;

(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.
[Para. (zJ) substituted by s. 41 (b) of Act No. 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*;

(zN) any other matter the regulation of which may be necessary or desirable in order to achieve the objects of *this Act*;
[Para. (zN) substituted by s. 29 (a) of Act No. 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;
[Para. (zO) added by s. 41 (c) of Act No. 72 of 1997 and substituted by s. 29 (b) of Act No. 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.
[Para. (zP) added by s. 29 (c) of Act No. 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 re-stating 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*.

[Sub-s. (7) substituted by s. 41 (d) of Act No. 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 safe standard* as so amended or substituted, unless a contrary intention is stated in the notice.

(10) The *Chief Inspector* 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)

[Sub-s. (1) deleted by s. 42 of Act No. 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.

(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*;

"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 South Africa;

[Definition of "Constitution" inserted by s. 30 (a) of Act No. 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 s. 43 (b) of Act No. 72 of 1997.]

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

"employer" means an *owner*;

[Definition of "employer" substituted by s. 43 (c) of Act No. 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 s. 43 (d) of Act 72 of 1997.]

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

"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 s. 30 (b) of Act No. 74 of 2008.]

"Minerals Act"

[Definition of "Minerals Act" deleted by s. 30 (c) of Act No. 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 s. 110 of Act No. 28 of 2002.]

(Editorial Note: The reference to section 65 (2) (b) of the Mineral and Petroleum Resources Development Act, 2002, in the definition above, is incorrect as there is no such section in that Act. It is suggested that section 1 of the Mineral and Petroleum Resources Development Act, 2002, was intended. It is our policy to publish as per *Gazette*, but we have notified the relevant Government Department and await their response.)

"Minister" means the Minister of Minerals and Energy;

[Definition of "Minister" substituted by s. 43 (e) of Act No. 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 s. 43 (f) of Act No. 72 of 1997.]

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

"occupational health practitioner"

[Definition of "occupational health practitioner" deleted by s. 30 (d) of Act No. 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 s. 30 (e) of Act No. 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*;

[Sub-para. (i) substituted by s. 30 (f) of Act No. 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 s. 43 (g) of Act No. 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 s. 43 (h) of Act No. 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 s. 30 (g) of Act No. 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 print-out, 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;

[Para. (d) substituted by s. 43 (i) of Act No. 72 of 1997.]

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

[Definition of "topsoil" inserted by s. 43 (j) of Act No. 72 of 1997 and substituted by s. 30 (h) of Act No. 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*.

[S. 104 substituted by s. 31 of Act No. 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

[Schedule 2 amended by s. 44 of Act No. 72 of 1997.]

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
 - (bb) the rest are persons nominated by *employers' organisations* and appointed in accordance with the significance of the organisations concerned.

Schedule 3

AMENDMENT OF LAWS

[Schedule 3 amended by s. 45 of Act No. 72 of 1997.]

A. MINERALS ACT, 1991

1. Amends section 1 of the Minerals Act, No. 50 of 1991, as follows:—paragraph (a) deletes the definitions of "certificated", "engine", "investigating officer", "machinery", "employer", "mine safety committee", "peace officer", "regional director", "regional mining engineer", "serious bodily harm" and "works"; paragraph (b) inserts the definition of "Chief Inspector of Mines"; and paragraph (c) inserts the definition of "Director: Mineral Development".

2. Amends section 2 of the Minerals Act, No. 50 of 1991, by deleting subsection (2).

3. Amends section 8 of the Minerals Act, No. 50 of 1991, by substituting subsection (1).

4. Amends section 9 of the Minerals Act, No. 50 of 1991, as follows:—paragraph (a) substitutes subsection (3) (a); paragraph (b) substitutes subsection (3) (c); paragraph (c) substitutes subsection (5) (c); paragraph (d) deletes the word "and" at the end of subsection (5) (d) and substitutes subsection (5) (e); paragraph (e) adds subsection (5) (f); and paragraph (f) adds subsections (7) and (8).

5. Amends section 12 of the Minerals Act, No. 50 of 1991, by adding subsection (2), the existing section becoming subsection (1).

6. Substitutes section 15 of the Minerals Act, No. 50 of 1991.

7. Amends section 25 of the Minerals Act, No. 50 of 1991, by substituting subsection (2).

8. Repeals sections 26 to 27 of the Minerals Act, No. 50 of 1991.

9. Amends section 39 (3) of the Minerals Act, No. 50 of 1991, by substituting the words following paragraph (c).

10. Amends section 41 of the Minerals Act, No. 50 of 1991, by substituting subsection (1).

11. Amends section 51 (2) of the Minerals Act, No. 50 of 1991, as follows:—paragraph (a) substitutes paragraph (b); and paragraph (b) deletes paragraph (d).

12. Inserts sections 53A, 53B, 53C and 53D in the Minerals Act, No. 50 of 1991.

13. Amends section 54 of the Minerals Act, No. 50 of 1991, by substituting subsection (1).

14. Amends section 60 of the Minerals Act, No. 50 of 1991, as follows:—paragraph (a) substitutes subsection (1); and paragraph (b) substitutes subsection (2).

15. Amends section 61 (1) of the Minerals Act, No. 50 of 1991, by deleting paragraphs (d), (e) and (f).

16. Amends section 63 of the Minerals Act, No. 50 of 1991, as follows:—paragraph (a) deletes subsection (1) (a), (b), (h) (iv) and (v), (i), (j), (k), (l), (n), (u), (v), (w) and (x); paragraph (b) substitutes subsection (1) (m); paragraph (c) substitutes subsection (2); and paragraph (d) deletes subsection (3).

17. Substitutes the expression "Director: Mineral Development" for the expression "regional director", wherever it occurs in the Minerals Act, No. 50 of 1991.

18. Substitutes the long title of the Minerals Act, No. 50 of 1991.

B. REFERENCE TO GOVERNMENT MINING ENGINEER IN CERTAIN ACTS

Substitution for Government Mining Engineer

The following Acts are hereby amended by the substitution for the expression "Government Mining Engineer", wherever it occurs, of the expression "Chief Inspector of Mines 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 4
TRANSITIONAL PROVISIONS

[Schedule 4 amended by s. 46 of Act No. 72 of 1997 and by s. 32 of Act No. 74 of 2008.]

(Editorial Note: Please take note that s. 34 of Act No. 74 of 2008 substituted the expression of "Minerals Act", with the expression "Mineral and Petroleum Resources Development Act, 2002". We have carried out the amendment as per the original Government Gazette instruction however it is suggested that the expression referring to the "Minerals Act" should have been retained in this Schedule.)

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*.
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.

Schedule 5

SUSPENSION AND VARIATION OF APPLICATION OF OCCUPATIONAL DISEASES IN MINES AND WORKS ACT, 1973 (ACT NO. 78 OF 1973)

[Schedule 5 added by Government Notice No. R.848 of 21 June 1997.]

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 6

CONSTITUTION OF THE MINE HEALTH AND SAFETY COUNCIL

[Schedule 6 added by Government Notice No. R.1317 in *Government Gazette* 18352 of 10 October, 1997, amended by Government Notice No. R.906 in *Government Gazette* 23585 of 2 July, 2002, corrected by Government Notice No. R.1575 in *Government Gazette* 24168 of 13 December, 2002 (English only) and amended by s. 34 of Act No. 74 of 2008.]

[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*.

[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*.

[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;
- (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 considerations; and
- (i) perform every duty imposed upon the *Council* in terms of *this Act*.

[Section 43 (a) to (f) determine the duties of the *Council*.]

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.

[Section 44 (1) (a) to (d) determine the duties of the 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.

[Section 44 (2) (a) to (e) determine the duties of the 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*;

[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.

[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.

[The *Council* considers the overall program 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.

[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*.

[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**.

(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.

[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 re-appointed.

[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.

[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.

[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 *Chief Inspector of Mines* 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.

(2) If a secretary is not appointed for a sub-committee, 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** of 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, document 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 meetings; 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.

[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 sub item (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 resolution of the Council may only be amended or revoked by a special majority of, or the consensus of the *Council*.

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.

[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**.

[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 subitems (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 of 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.

21. Abolition of Council or committee.—(1) The *Council* and the **committees** may be abolished by an Act of establishment of the 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 sub-committee established by that committee.

[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.

(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.

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 resolutions 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.

[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 sub-committee, the *Council*, or any permanent or ad hoc committee that establishes the sub-committee;

“**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 7

CONSTITUTION OF MINING QUALIFICATION AUTHORITY

[Schedule 7 added by Government Notice No. R.612 of 24 April, 1998 and amended by s. 34 of Act No. 74 of 2008.]

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.]

1. Establishment of Authority and committees.—(1) The **Authority** is established by section 41 (3).

[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.]

(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.

[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

[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.

[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.

[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**.

[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.

[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 re-appointed.

[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—

[Mine Health and Safety Regulation 18 (6) deals with the filling of casual vacancies of the **Authority**.]

- (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.

(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.

(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.

[Sections 46 (3) and (4) enable the **Authority** to 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).]

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.

[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 sub-committee if the **establishing authority** so requires.

(2) If a secretary is not appointed for a sub-committee, 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.

(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.

[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—

- (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

[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**; and
- (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.

[Section 46 (2) (b) 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 sub-committee 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.

[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 *sub-committee* 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 sub-committee, the **Authority** or any permanent or ad hoc committee that establishes the sub-committee;

“**executive officer**” means the executive officer appointed in terms of item 10 (1) of 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 *sub-committee* 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**;

[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.]

“**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).

Schedule 8

Table 1

MAXIMUM FINES OR PERIOD OF IMPRISONMENT THAT CAN BE IMPOSED FOR OFFENCES

[Schedule 8 added by s. 33 of Act No. 74 of 2008.]

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

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.