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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF MINERAL RESOURCES AND ENERGY

NO. 1086

15 June 2022

**PUBLICATION OF THE DRAFT MINE HEALTH AND SAFETY AMENDMENT BILL
2022 FOR PUBLIC COMMENT**

I, **SAMSON GWEDE MANTASHE, MP**, Minister of Mineral Resources and Energy, hereby publish the Draft Mine Health and Safety Amendment Bill 2022 for public comment.

Interested and affected parties are hereby invited to submit written representations on the Draft Mine Health and Safety Amendment Bill 2022 for public comment. The aforesaid representations must be marked for the attention of **Ms Stella Mamogale** and hand delivered, emailed or sent by post, on or before the **29 July 2022** to the following addresses:

70 Mentjies street
Sunnyside
0001

or

Private Bag X59
Arcadia
0007

Email address: Representations@dmre.gov.za

A copy of the Draft Mine Health and Safety Amendment Bill 2022 is attached hereto



Mr Samson Gwede Mantashe, MP
Department of Mineral Resources and Energy

Date: 14/06/2022

REPUBLIC OF SOUTH AFRICA

MINE HEALTH AND SAFETY AMENDMENT BILL, 2022

(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette No. of) (The English text is the official text of the Bill)

(MINISTER OF MINERAL RESOURCES AND ENERGY)

GENERAL EXPLANATORY NOTE:

| | Words in bold type in square brackets indicate omissions from existing enactments.

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

BILL

To amend the Mine Health and Safety Act, 1996, so as to streamline administrative processes; to strengthen enforcement provisions; to reinforce offences and penalties; to amend certain definitions; and to provide for matters connected therein.

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

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

1. Section 2 of the Mine Health and Safety Act, 1996 (herein referred to as the Principal Act) is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) if the *employer* is a [body corporate] company, and employs more than 50 *employees*, publish and distribute the report referred to in paragraph (c), in an appropriate form, to the [body corporate] company's shareholders or members.”

Amendment of section 2A of Act 29 of 1996, as inserted by section 2 of Act 72 of 1997 and amended by section 2 of Act 74 of 2008

2. Section 2A of the principal Act is hereby amended-

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

“(3) If the *employer* is a [body corporate] *company*, 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] *company* designated by the board.” and

(b) by the insertion of subsection (3)(A) after paragraph (3):

“(3)(A) the functions contemplated in terms of subsection (2) may be performed by the member of the board after approval by the board

(c) by the deletion of subsections 6.”

Insertion of section 2B in Act 29 of 1996

3. The following section is hereby inserted in the principal Act after section 2A:

“Appointment of Chief Executive Officer”

“2B. (1) The employer of every mine that is being worked must appoint a chief executive officer.

(2) The Chief Executive Officer must perform all functions of the employer, including making any appointments in terms of this Act.

(3) If the employer is a company, the Chief Executive Officer must be a member of the board of that company.

(4) The Chief Executive Officer must be responsible for the health and safety of employees and persons who are not employees but who may be directly affected by the activities at the mines.

(5) Where the employer is not a company, an owner of a mine must be responsible for the health and safety of employees and persons who are not employees but who may be directly affected by the activities at the mine.

(6) The employer must inform the Chief Inspector of Mines, in writing, within seven days of the appointment of the Chief Executive Officer.

(7) The information to the Chief Inspector of Mines must include the-

(i) name of the Chief Executive Officer;

(ii) nature of the Chief Executive Officer’s functions; and

(iii) names of the managers under the Chief Executive Officer ‘s control. ”

Amendment of section 3 of Act 29 of 1996

4. Section 3 of the principal Act is hereby amended by deletion of subsection (3)

Amendment of section 6 of the Act 29 of 1996, as amended by section 6 of Act 72 of 1997

5. Section 6 of the principal Act is hereby amended-

- (a) by the addition in the following subsection:

“(2) Every *employer* must ensure that suitable, and sufficient quantities of all necessary personal protective equipment are available to enable every employee who is required to use that equipment to be able to [do so] use such equipment effectively for personal protection;” and

- (b) by the addition of the following subsection:

“(4) All personal protective equipment supplied in terms of this section must be suitable in terms of -

- (a) size and fit;
- (b) type of workplace hazards;
- (c) purpose,
- (d) nature of work to be undertaken and
- (e) gender.

Amendment of section 7 of the Act 29 of 1996, as amended by section 7 of Act 72 of 1997

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

“(6) Where this Act requires the employer or a manager to appoint any person to perform any functions contemplated in this Act and such appointment is not made, the employer must ensure that the functions of the person who should have been appointed are performed”.

Amendment of section 9 of Act 29 of 1996, as amended by section 7 of Act 72 of 1997

7. Section 9 is hereby amended by the insertion of subsection 8 after subsection 7:

“(8) Every employer must comply with the requirements of the code of practice by such employer, in terms of subsection (2) and (3).

Amendment of section 10 of the Act 29 of 1996, as amended by section 3 of Act 74 of 2008

8. Section 10 of the principal Act is hereby amended-

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

“(1) **[As far as reasonably practicable]** Every *employer* must-”;

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

“**[As far as reasonably practicable]** Every employer must ensure that every employee is properly trained, the nature of which training must be determined by the employer having regard to the needs of the work to be performed”.

(c) by the substitution for subsection (4) of the following subsection:

“(4) The employer must keep a record of all formal training provided in respect of each employee in terms of subsection (2) [.] readily available.”

Amendment of section 11 of the Act 29 of 1996, as amended by section 4 of Act 74 of 2008

9. Section 11 of the principal Act is hereby amended by the deletion of subsection (5), (5A), (5B), (6), (7) and (8).

Insertion of section 11A in Act 29 of 1996

10. The following section is hereby inserted in the principal Act after section 11:

“Investigation by employer

“11A. (1) 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*.
- (b) commence with an investigation referred to in paragraph (a) within 10 days from the date of such accident, *serious illness* or *health threatening occurrence*;
- (c) consult the *health and safety committee* on any investigation in terms of this section;
- (d) conduct the investigation in co-operation with the *health and safety representative* responsible for the working place in which the investigation takes place.

(2) On completion of each investigation, the employer must prepare a report that:

- (a) identifies the causes and underlying causes of the accident, *serious illness* or *health threatening occurrence*;

(b) identifies any unsafe conditions, acts or procedures that contributed in any manner to the accident, serious illness or health threatening occurrence;

(c) makes recommendations to prevent a similar accident, serious illness or health threatening occurrence.

(3) The employer must deliver a copy of the report referred to in subsection (2) within 30 days from the start of the investigation of the accident, serious illness or health threatening occurrence or such longer period as permitted by the Principal Inspector of Mines under subsection (5).

(4) If there is no health and safety committee the employer must deliver a copy report to the health and safety representative responsible for the working place that has been investigated.

(5) An investigation in terms of subsection (1) must be completed within 30 days from the date of the accident, serious illness or health threatening occurrence being investigated or such longer period as the Principal Inspector of Mines may permit on request of the employer.

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

- (a) serious injury;
- (b) serious 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 (1).

(7) An investigation referred to in subsection (1) may be held jointly with an investigation conducted by an Inspector in terms of section 60.

(8) If there is no health and safety committee at a mine, the consultations required in subsection (1)(c) must be held with-

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

(9) 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 a loss of a limb or part of the limb, no person may without the consent of the Principal Inspector of Mines disturb the scene where the incident occurred or remove any article or substance involved in the incident. Provided that an article or substance may only be removed for the purposes of-

- (a) preventing any further incident;
- (b) removing the injured or the dead; or
- (c) rescuing any person from danger.”

Amendment of section 12 of the Act 29 of 1996

11. Section 12 of the principal Act is hereby amended-

- (a) by the amending of the heading of the following section:

“Employer to [conduct] provide mine environmental engineering and occupational hygiene [measurements] services”

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

“(1) The employer must **[engage the]** appoint on a part-time or full-time [services of] basis, a person **[qualified in occupational techniques to measure levels of exposure to hazards at the mine]** to provide mine environmental engineering and occupational hygiene services at the mine, including but not limited to measuring and assessing levels of exposure to health hazards, recommending and monitoring the effectiveness of control measures, and reporting thereon to the employer”.

[(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.] and

(c) by the addition of the following subsection:

“(4) The employer must supply the person referred to in subsection (1) with the means to perform his or her functions.”

Amendment of section 13 of the Act 29 of 1996, as amended by section 13 of Act 74 of 2008

12. Section 13 of the principal Act is hereby amended-

(a) by the substitution in subsection (3) (a) for the words preceding subparagraph (i) of the following words:

“[engage the] appoint on a part-time or full-time basis [services of]-

(b) by the addition in subsection (3)(a) of the following subparagraph:

“(ii) in so far as it is necessary, other Occupational Health Practitioners who are registered with Health Professional Council of South Africa, South African Nursing Council or any other relevant professional body and who holds a qualification in occupational health.

(c) by the substitution in subsection (4B) paragraphs (b) and (c) of the following paragraph:

“(b) his or her **[practice] professional registration** number; and”

(c) whether the occupational medical practitioner is **[engaged] appointed on a full-time or part-time basis[.]**”;

(d) by the addition in subsection (4B) of the following subsection:

“(d) the confirmation of registration of the Occupational Medical Practitioner’s qualifications with the Health Professional Council of South Africa; and”

(e) by the insertion of subsection (4C) after subsection (4B):

“(4C) An employer must ensure that the occupational Medical Practitioner issues a Certificate of fitness for work for every medical examination conducted in terms of subsection (2)(c).”

Insertion of section 13A in Act 29 of 1996

13. The following section is hereby inserted in the principal Act after section 13:

“Findings of unfitness to work”

“13A (1) The Occupational Medical Practitioner must, within seven days of deciding that an employee is unfit to perform any category of work, in writing inform the employee that he or she has been found unfit to perform work and that the employee has the right to appeal against the decision to the Medical Inspector within a period of 30 days of the decision.

(2) The employer must in the prescribed form and manner report to the Medical Inspector any dismissal by the employer of an employee on grounds of unfitness to perform work.”

Amendment of section 17 of Act 29 of 1996

14. Section 17 of the principal Act is hereby amended –

(a) by the addition of the following subsection after paragraph (4)(b)

“(4)(c) within 7 days of producing an exit certificate, in writing inform the employee that the employee has the right to appeal any decision or finding in the exit certificate to the medical inspector within 30 days”.

Amendment of section 20 of Act 29 of 1996, as amended by section 11 of Act 72 of 1997 and section 7 of Act 74 of 2008

15. Section 20 of the principal Act is hereby amended-

(a) by the insertion after subsection (2) of the following subsection:

“(2A) The Medical Inspector must, after receiving an appeal lodged under subsection (1), within 7 days confirm receipt of the appeal and inform the employer of such appeal.”;

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

“(2B) The employer must, within 7 days of receipt of a notification under subsection (2A), provide the medical inspector with the reasons for the decision or finding appealed against.”

(c) by the insertion of the following subheading

“Employer’s duty to report dismissal based on unfitness to perform work”

“(2C) The employer must in the prescribed form and manner report to the Medical Inspector any dismissal by the employer of an employee on grounds of unfitness to perform work relating to disability, injury or illness attributable to occupational cause.”

(d) by the substitution for subsection (4) of the following subsection:

“(4) The medical practitioner referred to in subsection (3) must report to the Medical Inspector, who must then consider the appeal and, within 60 days after the lodging of the appeal –

- (a) confirm, set aside and vary the decision or finding of the occupational medical practitioner; or
- (b) substitute any other decision or finding for that decision or finding[,] and notify the employer and employee who has lodged the appeal of such decision or finding.”; and

Amendment of section 42 of Act 29 of 1996, as amended by section 19 of Act of 1997 and section 11 of Act 74 of 2008

16. section 42 of the principal Act is hereby amended;
- (a) by the substitution in paragraph (1) for the following paragraph

“(1) The *Council* consists of-

- (a) five [members] persons representing employers in the mining industry;
- (b) five [members] persons representing employees in the mining industry;
- (c) [four members] five persons representing Departments of the State; and”

Amendment of section 43 of Act 29 of 1996, as amended by section 19 of Act of 1997 and section 11 of Act 74 of 2008

17. Section 43 of the principal Act is hereby amended-

- (a) by substitution in paragraph (a) for the following paragraph:
 “(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) by the insertion, after paragraph (eA) of the following paragraphs:
“(eB) establish and control an administrative fine fund for the fines imposed in terms of section 55B.
(eC) subject to the approval of the *Minister*, use the monies collected in terms of section 55B for the promotion of *health and safety* in the mining industry;
(eD) in its annual report, reflect the financial affairs of the fund; and”.

Amendment of section 47 of Act 29 of 1996, as amended by section 13 of Act 74 of 2008.

18. Section 47 of the principal Act is hereby amended-

- (a) by the substitution for subsection (1) of the following subsection:
 “(1) [(a) a juristic person to be known as a] 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.**]
- (b) by the addition of the following subsections:
“(3) The *Minister* must appoint an *officer* with prescribed qualifications and appropriate experience as *Principal Inspector of Mines*, for each region contemplated in subsection (2)”
“(4) The *Minister* must:
(a) appoint an *officer* with prescribed qualifications and experience as a *Medical Inspector*; and
(b) appoint *officers* with prescribed qualifications and appropriate experience as *Inspectors*.”
“(5) The *Minister* must furnish a prescribed Certificate to the *Medical Inspector* and to each *Inspector* appointed in terms of subsection 4, respectively;
“(6) To further the objectives of this Act the *Minister* may enter into written agreements with competent persons and authorize such persons to perform any or all the functions of an *inspector*.”
“(7) The *Minister* must furnish a prescribed Certificate to each person authorized under subsection (6).”

Amendment of section 49 of the Act 29 of 1996, as amended by section 14 of Act 74 of 2008

19. Section 49 of the principal Act is hereby amended-

- (a) by the deletion in subsection (1) of paragraphs (b), (c), and (n);
- (b) by the deletion of subsections (2),
- (c) by the deletion in subsection (4) of paragraphs (a),(b), (c), (f),(g) (h), (i), (j), (k), (l) and (m),
- (d) the substitution of subsection (5) for the following subsection

“(5) [The Chief Inspector of Mines must furnish a prescribed certificate to each person authorized under subsection (4) (b).] The Chief Inspector of Mines may issue instructions or directives on any matter affecting health and safety of employees at the mines or any persons who are not employees but who may be directly affected by the activities at the mines; and”

- (e) the deletion of subsection (6).

Repeal of sections 49A and 49B of Amendment Act 29 of 1996

20. Sections 49A and 49B of the principal Act 74 of 2008 are hereby repealed.

Amendment of Section 50, as amended by section 16 of the Act 74 of 2008

21. Section 50 of the principal Act is hereby amended by substituting subsection (7A) with the following:

“(7A) An inspector may, in order to collect or secure evidence for purposes of an investigation in terms of section 60 or an inquiry in terms of section 65-

(a) impose a prohibition on the functioning of any site at a mine where-

- (i) a person has died;
- (ii) a serious injury or serious illness to a person has occurred; or
- (iii) a health threatening occurrence has occurred; and

(b) block, bar, barricade or cordon off the site in such a manner as the inspector may deem necessary.”

“(7B) An inspector may-

(a) impose the prohibition contemplated in subsection (7A) orally or in writing;

(b) revoke the prohibition if the inspector has reason to believe that-

- (i) the necessary evidence has been collected or secured; and

(ii) the investigation or inquiry will not be jeopardized by the further functioning of the site”

“7C) If the prohibition is issued orally, the inspector must confirm it in writing and give it to a person contemplated in section 54(2) at the earliest opportunity”.

Amendment of section 54 of Act 29 of 1996, as amended by section 23 of Act 72 of 1997 and section 17 of Act 74 of 2008

22. Section 54 of the principal Act is hereby amended-

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

“(1) If an *Inspector* [**has reason to believe**] observes 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 any persons at the mine, including but not limited to:

(b) by the substitution in subsection (5) and (6) of the following subsections respectively:

“(5) Any instruction issued under subsection (1) (a) must either be confirmed, varied or set aside by the [**Chief Inspector of Mines**] Principal Inspector of Mines as soon as practicable.

“(6) Any instruction issued under subsection (1)(a) is effective from the time fixed by the *Inspector* and remains in force until set aside by the [**Chief Inspector of Mines**] Principal Inspector of Mines or until the *Inspector’s* instructions have been complied with.”

Insertion section 55C in Act 29 of 1996

23. The following section is hereby inserted in the principal Act after section 55 B:

“Payment of fines

55C. (1) Payment of fines imposed in terms of section 55B must be paid to the administrative fund established by the Council in terms of section 43(eB).”

Amendment of section 57 of Act 29 of 1996, as amended by sections 27 and 28 of Act 72 of 1997 and sections 21 and 22 of Act 74 of 2008

24. Section 57 of the principal Act is hereby amended-

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

“(1) Any person adversely affected by a decision of an *Inspector* or a decision of the *Principal Inspector of Mines*, except a decision contemplated in section 55B, may appeal that decision to the Chief Inspector of Mines.”; and

- (b) by the addition of the following subsection:

“(4) No person may apply to the Labour Court for the review of an administrative decision, except a decision contemplated in section 55B, until that person has exhausted the appeal process contemplated in this section.”

Amendment of section 59 of Act 29 of 1996, as amended by section 29 of Act 72 of 1997

25. Section 59 of the principal Act is hereby amended-

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

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

- (b) by the substitution in subsection (2) of the following subsection:

“(2) Despite subsection (1)-

- (a) an appeal in terms of section [57A or 58] 58 against a decision to impose the 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, of the *Chief Inspector of Mines*, pending the [determination of the matter] outcome of the appeal, if there are any reasonable grounds for doing so.”

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

26. section 72 of the principal Act is hereby amended-

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

“(3) The *Chief Inspector of Mines* may submit a copy of the report to the appropriate [Attorney-General] Deputy Director of Public Prosecutions.”

Amendment of section 75 of Act 29 of 1996

27. Section 75 of the principal Act is hereby amended-

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

“(1) For any reason relating to health and safety, the Minister may, 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;**
 (ii) **at that time invited interested persons to submit comments and representations concerning the proposed notice within a specified period.]”**

Amendment of section 76 of Act 29 of 1996, as amended by section 25 of Act 74 of 2008

28. Section 76 of the principal Act is hereby amended–

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

“(1) The Minister may, 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.]”**

(b) By the deletion of subsection 3:

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

Amendment of section 80 of Act 29 of 1996

29. The following section is hereby inserted in the principal Act after section 80:

“80A (1) The Minister may act in terms of this Chapter 6, without consulting the Council where required to do so, if the delay caused by the consultation would be detrimental to the public interest.

(2) If the Minister acts in terms of subsection (1), the Minister must within 30 days thereafter inform the Council of the reasons for doing so”.

Amendment of section 85 of Act 29 of 1996

30. section 85 of the principal Act is hereby mended

(a) by the substitution of the heading for the following:

“Juvenile employment in [underground] mines prohibited”

(b) By the substitution of subsections (1)(2)(3) for the following paragraphs:

“ (1) No person may cause or permit [an employee] any person under the age of 18 years to work [underground] at a mine.

(2) No [employee] person under the age of 18 years may work [underground] at a mine.

(3) Despite subsections (1) and (2), [an employee] any person under the age of 18 years but over the age of 16 years may work [underground] at a mine as part of vocational education or training.

Amendment of Section 86 of Act 29 of 1996, as amended by section 26 of the Act 74 of 2008

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

“86A (1) An employer commits an offence if the employer contravenes or fails to comply with a duty in terms of Chapter 2 of this Act which results in -

- 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 with or permitted the act or omission by the chief executive officer, manager, agent or employee concerned; or

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

(3) For the purposes of subsection (2) the fact that the employer issued instructions prohibiting the act or omission is not in itself sufficient proof that all reasonable steps were taken to prevent the act or omission

(4) For the purposes of subsection (1) —

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

(b) it is not a defense that the death of a person, injury or illness was caused by the act or omission of an employee of the employer if the act or omission fell within the scope of the authority or employment of the employee.”

Amendment of section 92 of Act 29 of 1996, as amended by section 38 of Act 72 of 1997 and section 28 of Act 74 of 2008

32. Section 92 of the principal Act is hereby amended by the substitution of subsections (1)(2)(3)(4)(5) of the following subsection:

“(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.]”

“(1) Any employer or company convicted of an offence in terms of any section of this Act may be sentenced to a fine not exceeding 10% of the employer’s annual turnover in the preceding financial year as reflected in the last available financial statements, in the Republic, and the employer’s exports from the Republic, whichever is greater or to imprisonment determined by a competent court.”

Amendment of section 93 of Act 29 of 1996

33. Section 93 of the principal Act is hereby amended-

(a) by the substitution of the heading for the following:

“A [Magistrate’s] competent Court has jurisdiction to impose penalties”

(b) by the substitution of the section for the following:

“Despite anything to the contrary contained in any other law, a [magistrate’s] competent court has jurisdiction to impose any penalty provided for in this Act.”

Amendment of section 96 of Act 29 of 1996, as amended by section 39 of Act 72 of 1997

34. Section 96 of the principal Act is hereby amended-

(a) by the substitution for subsection (1), (2), (3) and (4) of the following subsections, respectively:

“(1) The *Minister* may delegate any power conferred upon the *Minister* by or under *this Act*, except the power of making regulations to the *Director General or Chief Inspector of Mines*”.

“(2) The *Director General or the Chief Inspector of Mines* may delegate any power or assign the performance of any duty conferred upon the *Director General or 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 *Director General or the Chief Inspector of Mines*; or

(c) ***[any other person, after consulting the Council.]***

(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, Director General 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, Director General or Chief Inspector of Mines*, as the case may be.”

(b) by the addition of the following subsection:

“(5) The Minister, Director General or Chief Inspector of Mines may at any time:

(a) withdraw a delegation or assignment made in terms of subsection (1) or (2), as the case maybe; and

- (b) withdraw or amend any decision made by a person exercising a power or performing a duty delegated or assigned in terms of subsection (1) or (2), as the case may be.

Amendment of section 98 of the principal Act

35. Amend section 98(1) by adding the following paragraph after paragraph (1) (ZP) as follows

“(1)(ZQ) the form and manner of reporting to the medical inspector on dismissals contemplated in section 20A”.

Amendment of section 102 of Act 29 of 1996, as amended by section 43 of Act 72 of 1997, section 110 of Act 28 of 2002 and section 30 of Act 74 of 2008.

36. Section 102 of the principal Act is hereby amended-

- (a) by the insertion after the definition “ **biological monitoring** ” of the following definition:
“‘board’ means a board of directors of a company as defined in the Companies Act, No. 71 of 2008;”
- (b) by the insertion after the definition “ **Commission** ” of the following definition:
“ ‘company’ means a company as defined in the Companies Act, No. 71 of 2008 ”
- (c) by the substitution for the definition of “ **Department** ” of the following definition:
“ ‘Department’ means the Department [of Minerals and Energy] responsible for mineral resources; ”
- (d) by the insertion after the definition of “ **Department** ” of the following definition:
“ ‘Director General’ means the Director General of the Department; ”
- (e) by the substitution for the definition of “ **employee** ” of the following definition:
“ ‘employee’ means any person who is employed [or] by the employer or owner of a mine and who is working at a mine; ”
- (f) by the insertion after the definition “ **engine** ” of the following definition:
“ ‘formal training’ means any relevant training contemplated in section 10(2), which must be properly structured, documented and assessed; ”
- (g) by the substitution for the definition of “ **inspector** ” of the following definition:
“ **Inspector**’ means an officer appointed in terms of section [49(1)(c)] 47(4)(b) [a Medical Inspector and any Principal Inspector of Mines]; ”
- (h) by the substitution for the definition of “ **Medical Inspector** ” of the following definition:
“ **Medical Inspector**’ means an officer appointed in terms of section [49(1)(b)] 47(4)(a); ”

- (i) by the substitution for the definition of “**mining area**” of the following definition:

“**mining area**’ means –

(a) the area comprising the subject of any prospecting right, retention permit, mining right, mining permit, exploration right or production right issued or granted under the Mineral and Petroleum Resources Development Act;

(b) any land adjacent or non-adjacent to an area referred to in paragraph (a) on which mining related operations or operations incidental to mining are being undertaken by, on behalf of, or under the authorization of, the owner; but excluding operations where the mineral is used in a manufacturing or beneficiation process;

(c) any area connected to an area referred to in paragraph (a) or (b) by means of any road, railway line, power line, pipeline, cable way or conveyor belt, which area –

(i) is under the control of the holder of any prospecting right, retention permit, mining right, mining permit, exploration right or production right issued under the Mineral and Petroleum Resources Development Act; and

(ii) such holder is entitled to use in connection with the operations performed or to be performed under such right or permit;

(d) the land on which such road, railway line, power line, pipeline, cableway or conveyor belt is located; and

(e) The buildings, structures, machinery, residue deposits, residue stockpiles or objects situated on or in such area or land contemplated in paragraphs (a) and (b) above.

- (j) by the substitution for the definition of “**Minister**” of the following definition:

“ **Minister**’ means the Minister of [Minerals and Energy] the Department responsible for mineral resources;”

- (k) by the insertion after the definition “**occupational health**” of the following definition:

“ **Occupational Health Practitioner**’ means a person who holds a qualification in occupational health recognized by the South African Nursing Council”

- (l) by the substitution and addition for the definition of “**Owner**” of the following definition:

“ ‘**Owner**’- means –

(a) in relation to a mine –

(i) the holder of any prospecting right, retention permit, mining right, mining permit, exploration right or production right issued under the Mineral and Petroleum Resources Development Act;

(ii) if a right or permit referred to in subparagraph (i) does not exist, the person by whom or for whom the activities contemplated in paragraph (b) of the definition of 'mine' are undertaken, but excluding an independent contractor; or

(iii) if neither subparagraph (i) or (ii) is applicable, the last person who worked the mine or, where such last person no longer exists, that person's successor in title; and

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

(m) by the substitution for the definition of “**Principal Inspector of Mines**” of the following definition:

“**Principal Inspector of Mines**’ means an officer appointed by the [*Chief Inspector of Mines*] *Minister* to be in charge of *health* and *safety* in any region established in terms of section 47(2);”

(n) by the deletion of the definition of “**Public Finance Management Act**”

(o) by the insertion after the definition of “**serious illness**” of the following definition:

“**South African Nursing Council**’ means the South African Nursing Council referred to in section 2 of the Nursing Act, 2005 (Act No.33 of 2005);”.

Amendment of Schedule 4 to Act 29 of 1996, as amended by section 46 of Act 72 of 1997 and amended by section 32 of Act 74 of 2008

37. Schedule 4 to the principal Act is hereby amended by:

(a) the deletion of item 7; and

(b) replacing all references to the “Mineral and Petroleum Resources Development Act” with references to the “Minerals Act.”

Amendment of Item 1 of Schedule 6 to Act 29 of 1996

38. Item 1 of Schedule 6 to the principal Act is hereby amended by the substitution for sub item (1) of the following sub-item:

“(1) The Council and the committees of the Council, the Mining Regulatory Advisory Committee, the Mining Occupational Health Advisory Committee and the Safety and Health Research Advisory Committee are established by section 41(1) and (2) of this Act.”.

Amendment of Item 5 of Schedule 6 to Act 29 of 1996

39. Item 5 of Schedule 6 to the principal Act is hereby amended –

- (a) by the substitution in subitem (3) for the words preceding paragraph (a) of the following words:
“The Safety and Health in Mines Research Advisory Committee must advise the Council on –”; and
- (b) by the substitution in subitem (4) for the words preceding paragraph (a) of the following words:
“The Safety and Health in Mines Research Advisory Committee must prepare the programme for relevant health and safety research for the Council to consider. The programme must include-“.

Amendment of Schedule 8 to Act 29 of 1996, as inserted by section 33 of Act 74 of 2008

40. Schedule 8 to the principal Act is hereby deleted

Short title and commencement

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

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