PRESIDENT'S OFFICE

No. 967.
14 June 1996

NO. 29 OF 1996: MINE HEALTH AND SAFETY ACT, 1996.

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

ACT

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

to promote a culture of health and safety;

to provide for the enforcement of health and safety measures;

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

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

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

to promote training and human resources development;

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

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

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

and to provide for matters connected therewith.

(English text signed by the President.)
(Assented to 30 May 1996.)

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

ARRANGEMENT OF ACT

CHAPTER 1

OBJECTS OF ACT

1. Objects of Act

CHAPTER 2

HEALTH AND SAFETY AT MINES

2. Owner to ensure safety

3. Owner must appoint manager

4. Owner may entrust functions to another person

5. Manager to maintain healthy and safe mine environment
6. Manager to ensure adequate supply of health and safety equipment
7. Manager to staff mine with due regard to health and safety
8. Manager must establish health and safety policy
9. Codes of practice
10. Manager to provide health and safety training
11. Manager to assess and respond to risk
12. Manager to conduct occupational hygiene measurements
13. Manager 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. Negotiation and consultation 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. Duties of permanent committees

45. Mining Qualifications Authority

46. Mining Qualifications Authority's functions

CHAPTER 5

INSPECTORATE OF MINE HEALTH AND SAFETY

47. Inspectorate established

48. Chief Inspector

49. Chief Inspector's functions

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. Inspectors' power to deal with dangerous conditions

55. Inspectors' power to order compliance

56. Instructions to be posted at mine

57. Right to appeal inspectors' decisions

58. Right to appeal Chief Inspector's decision

59. Appeal does not suspend decision

60. Initiating investigations

61. Chief Inspector may designate assistant in investigation

62. Duty to answer questions in investigation

63. Enhancing effectiveness of investigation

64. Reports on investigations

65. Initiating inquiries

66. Investigation may be converted into inquiry

67. Chief Inspector 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 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

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 the tripartite institutions

SCHEDULE 3

Amendment of Laws

SCHEDULE 4

Transitional provisions

PLEASE NOTE!
WORDS OR PHRASES ARE DEFINED IN SECTION 102 OF THIS ACT.

CHAPTER 1

OBJECTS OF ACT

Objects of Act

1. 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

Owner to ensure safety

2. (1) The owner 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 owner is a body corporate, and the mine employs more than 50 employees, publish and distribute the report referred to in paragraph (c), in an appropriate form, to the mine's shareholders.

(2) The owner of a mine that is not being worked, but in respect of which a closure certificate in terms of the Minerals 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.

Owner must appoint manager

3. (1) The owner of every mine that is being worked must

(a) appoint one or more managers with the qualifications as may be prescribed, and if more than one manager is appointed, ensure that the managers' functions do not overlap;

(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 owner of any duty imposed on owners by this Act or any other law.

(3) If no manager is appointed in terms of subsection (1), the owner must perform the functions of a manager in terms of this Act.

Owner may entrust functions to another person

4. (1) An owner may appoint any person to perform any function entrusted to the owner by this Act.

(2) An owner who appoints a person under subsection (1) must notify the Chief Inspector of that appointment within seven days, and must include in that notice-

4(2)-The Chief Inspector is appointed in terms of s. 48; and the Chief Inspector's functions are set out in s. 49, beginning on the same page.

(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 owner 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 owner of any duty imposed on owners by this Act or any other law.

Manager to maintain healthy and safe mine environment

5. (1) To the extent that it is reasonably practicable, every manager must provide and maintain a working environment that is safe and without risk to the health of employees.

(2) To the extent that it is reasonably practicable, every manager must -

(a) identify the relevant hazards and assess the related risks to which persons who are not employees may be exposed; and

(b) ensure that persons who are not employees, but who may be directly

affected by the activities at the mine, are not exposed to any hazards to their health and safety.

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

Manager to ensure adequate supply of health and safety equipment

6. (1) Every manager must -

(a) supply all necessary health and safety facilities and equipment to each employee; and

(b) to the extent that is reasonably practicable, maintain those facilities and that equipment in a serviceable and hygienic condition.

(2) Every manager 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 manager must take reasonable measures 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.

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

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

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

Manager to staff mine with due regard to health and safety

7. (1) To the extent that it is reasonably practicable, every manager must -

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

(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) appoint persons and provide them with the means to comply with the requirements of this Act and with any instruction given by an inspector;

(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 manager are implemented.

(2) A manager may appoint any person with qualifications as may be prescribed to perform any aspect of the functions assigned to managers by this Act.

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

Manager must establish health and safety policy

8. (1) Every manager 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 are directly affected by mining activities; and

(d) outlines the arrangements for carrying out and reviewing policies.

(2) The manager must consult with the health and safety committee on the preparation or revision of the document and policies referred to in subsection (1).

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

(3) The manager 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.

Codes of practice

9. (1) Any manager 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) A manager 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 requires it.

(3) A code of practice required by the Chief Inspector must comply with guidelines issued by the Chief Inspector

(4) The manager must consult with the health and safety committee on the preparation, implementation or revision of any code of practice.

(5) The manager must deliver a copy of every code of practice prepared in terms of subsection (2) to the Chief Inspector

(6) The Chief Inspector 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 a manager 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; or

(b) is inadequate to protect the health or safety of employees.

Manager to provide health and safety training

10. (1) As far as reasonably practicable, every manager must -

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

(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 manager 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 manager after consulting the health and safety committee;

(c) before significant changes are introduced to procedures, mining and ventilation layouts, mining methods, plant or equipment and material; and

(d) before significant changes are made to the nature of that employee's occupation or work.

Manager to assess and respond to risk

11. (1) Every manager 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 manager, 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 manager 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 manager 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 manager 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) 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) whenever possible, identifies the causes and the underlying causes of the accident, serious illness or health-threatening occurrence;

(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) to the health and safety committee. If there is no health and safety committee the manager must deliver a copy of the report to the health and safety representative responsible for the working place.

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

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

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

(a) the health and safety representatives; or

(b) if there is no health and safety representative at the mine, with the employees.

Manager to conduct occupational hygiene measurements

12. (1) The manager 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 manager 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 manager 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.

Manager to establish system of medical surveillance

13. (1) The manager 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 manager 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 manager 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) in so far as it is necessary, other practitioners holding a qualification in occupational medicine recognised by the Interim National Medical and Dental Council of South Africa or the South African Interim Nursing Council;

(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) A manager may engage the services of a medical practitioner to perform the functions of an occupational medical practitioner in terms of this Act until the services of an occupational medical practitioner can be obtained.

(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 manager must conduct an investigation In terms of section 11(5).

13(6)-Employees have the right to challenge a decision that they are unfit to perform work. See s. 20.

(7) If an employee is temporarily unfit to perform work as a result of any occupational disease, but there is a reasonable expectation that the employee's health will improve so that the employee can return to work, the occupational medical practitioner must record that fact and notify both the employer and employee of it.

(8) The manager 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

Record of hazardous work

14. (1) The manager 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 manager 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.

Record of medical surveillance

15. (1) An employee's record of medical surveillance kept in terms of section 13(3)(c) must be kept confidential and may be made available only -

(a) in accordance with the ethics of medical practice;

(b) if required by law or court order; or

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

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

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

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

(a) store it safely; and

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

Annual medical reports

16. (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 manager, who must deliver one copy of the report to each of

(a) the owner;

(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.

Exit certificates

17. (1) If an employee's employment at a mine is terminated for any reason, the manager must arrange an exit medical examination of the employee.

(2) The examination referred to in subsection (1) must be held before, or as soon as possible after, termination of employment.

(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.

Costs of examination

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

Employees' right to information

19. (1) An employee may request, and the manager 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.

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

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

(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.

Employee may dispute finding of unfitness to perform work

20. (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; 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.

(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.

Manufacturer's and supplier's duty for health and safety

21. (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.

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

(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 which the substance has been stored and any waste involving the substance; and

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

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

Employees' duties for health and safety

22. Every employee at a mine, while at that mine, must -

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

(a) take reasonable care to protect their own health and safety;

(b) take reasonable care to protect the health and safety of other persons who may be affected by any act or omission of that employee;

(c) use and take proper care of protective clothing, and other health and safety facilities and equipment provided for the protection, health or safety of that employee and other employees;

22(c)-Employers have a duty to provide

personal protective equipment for employees. See s.6.

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

(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.

Employees' right to leave dangerous working place

23. (1) The employee has the right to leave any working place whenever -

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

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

(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 manager, 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 management 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 alternate work of any employee who left, or refuses to work in, a working place contemplated in subsection (1); and

(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.

Employees not to pay for safety measures

24. No person may make any deduction from an employees wages, or permit an employee to make any payment to any person, in respect of anything which the manager 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

Health and safety representatives and committees

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

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

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

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

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

Negotiations and consultations before appointment of representatives

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

(a) the designation of working places;

(b) the number of full-time health and safety representatives;

(c) the election or appointment of health and safety representatives;

(d) the terms of office of health and safety representatives and the circumstances and the manner in which they may be removed from office;

(e) the manner in which vacancies are to be filled;

(f) the manner in which health and safety representatives must perform their functions in terms of this Act;

(g) the procedures for the effective exercise of the right to withdraw from

serious danger in terms of section 23;

(h) circumstances and the manner in which meetings referred to in sections 30(1)(i) and 31(2) must be held;

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

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

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

(j) the training of health and safety representatives;

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

(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 manager 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 owners 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, the provisions of this Chapter do not apply.

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

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

(6) If there is no representative trade union at the mine, the manager 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 manager 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 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 manager 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).

Designation of working places

27. (1) If a collective agreement is concluded after the negotiations and consultations referred to in section 26, the manager 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 manager 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.

Qualifications of representatives

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

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

(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.

Election and appointment of representatives

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

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

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

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

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

Rights and powers of representatives

30. (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 and safety of that employee;

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

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

(d) identify potential hazards and risks to health or safety;

(e) make representations or recommendations to the manager 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 manager, be assisted by or consult an adviser or technical expert who may be either another employee or any other person;

(i) attend any meeting of a health and safety committee -

(i) of which that representative is a member; or

(ii) which will consider a representation or recommendation made by that representative;

(j) request -

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

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

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

(k) participate in consultations on health and safety with -

(i) the manager or person acting on behalf of the manager; or

(ii) an inspector;

(l) participate in any health and safety inspection by

(i) the manager or person acting on behalf of a manager; or

(ii) an inspector;

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

(m) inspect working places with regard to the health and safety of employees at intervals agreed with the manager;

(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 manager or person acting on behalf of the manager;

(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 manager in the conducting of investigations in terms of section 11(5);

30(1)(s)-Section 11(5), requires every manager working in co-operation with a

health and safety representative to investigate health threatening situations. Section 11(6) provides that this investigation may be conducted jointly with an inspector.

(t) participate in an inquiry held in terms of section 65; and

(u) perform the functions

(i) agreed by the health and safety committee; or

(ii) prescribed.

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

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

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

(4) A manager 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 working places under subsection must

(a) give the manager reasonable notice of the inspection; and

(b) permit the manager 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.

Duty to compensate and assist representatives

31. (1) The manager 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 manager 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 their working places; and

(b) reports by the representatives on the performance of their functions.

(3) The manager must provide health and safety representatives with

(a) the facilities and assistance reasonably necessary to perform their

functions;

(b) training that is reasonably required to enable them to perform their functions; and

(c) time off from work, without loss of remuneration, to attend any training course that is agreed or prescribed.

(4) Unless otherwise agreed, the assistance referred to in subsection (3)(a) does not include any costs associated with advisers or independent experts contemplated in either section 30(1)(h) or section 36(1)(g).

(5) On the completion of a term of office as a full-time health and safety representative, the health and safety representative is entitled to -

(a) employment in the same position held immediately before being appointed as a full-time health and safety representative; or

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

Duty to inform representatives

32. Every manager 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 manager; and

(b) as soon as practicable, of any accident, serious illness or health-threatening occurrence, or other dangerous event.

Negotiation and consultation on establishment of committees

33. (1) The owner 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 -

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

(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 management 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 in terms of any provision of this Chapter.

(2) Before concluding a collective agreement referred to in subsection (1) with the representative trade union, the manager 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 owners 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, the provisions of this Chapter do not apply.

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

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

(6) If there is no representative trade union at the mine, the manager 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 manager 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.

Establishment of health and safety committees

34. (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 manager 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 management 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 manager must appoint the management 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.

Committee procedures

35. (1) The employee and management 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 management representatives may be invited to attend meetings of the health and safety committee and to participate in its proceedings.

Rights and powers of health and safety committee

36. (1) A health and safety committee may -

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

(b) participate in consultations on any health and safety matter listed in the Schedule referred to in section 97(2);

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

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

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

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

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

(f) request -

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

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

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

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

(g) with the approval of the manager, 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 manager 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.

Duty to support committee

37. The manager must -

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

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

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

Disclosure of information

38. (1) Whenever a manager, inspector or a person who conducts an inquiry in information or reports to a health and safety representative or to the health and safety committee, that manager, 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 manager, inspector or person could not disclose without contravening a prohibition imposed upon the owner or an employer by any law or court order; or

(iii) that is confidential and, if disclosed, may cause substantial harm

to an employee or the owner or an employer.

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

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

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

Disputes concerning disclosure of information

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

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

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

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

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

(6) If the commissioner decides that the information is required and if it is information contemplated in section 38(a) or (b)(iii), the commissioner must balance the harm that disclosure is likely to cause to an employee or owner or employer other than the owner, 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.

(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 owner 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.

Disputes concerning this Chapter

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

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

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

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

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

(5) The provisions relating to arbitration in the Labour Relations Act, read with changes required by the context, apply to an arbitration referred to in sections 26(11) and 39 and subsection (4).

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

CHAPTER 4

TRIPARTITE INSTITUTIONS

Establishment of tripartite institutions

41. (1) A Mine Health and Safety Council is hereby established to advise the Minister on health and safety at mines.

(2) The following permanent committees of the Council are hereby established -

(a) the Mining Regulation Advisory Committee;

(b) the Mining Occupational Health Advisory Committee; and

(c) the Safety in Mines Research Advisory Committee.

(3) A Mining Qualifications Authority is hereby established to advise the Minister on -

(a) the creation of a framework for 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) linking the qualifications framework for the mining industry to the National Qualifications Framework referred to in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995).

41(3)(c)-The South African Qualifications Authority Act provides for a National Qualifications Framework which aims to

enhance the quality of education and training.

Mine Health and Safety Council

42. (1) The Council consists of -

(a) five members representing owners 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, who must chair the Council.

(2) The Minister must appoint the members of the Council and the permanent committees of the Council in accordance with the regulations.

(3) The Council, and the permanent committees of the Council, must govern themselves in accordance with the constitution contemplated in section 97(3).

42(3)-Section 97(3), empowers the Minister, after consulting the Council and by notice in the Gazette, to add a Schedule containing the constitution of the Council and its permanent committees.

(4) The Council may delegate any of its powers or assign any of its duties by or under this Act to any of its committees.

(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.

Council's duties

43. The Council must -

(a) advise the Minister on health and safety at mines including, but not limited to, any regulations on mine rehabilitation in so far as they concern health and safety;

(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) arrange and co-ordinate a tripartite summit to review the state of health and safety at mines at least once every two years; and

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

Duties of permanent committees

44. (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 other committee of the Council;

(c) guidelines for codes of practice; and

(d) standards approved by the South African Bureau of Standards.

(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.

(3) The Safety in Mines Research Advisory Committee must advise the Council on -

(a) criteria for determining the funding of health and safety research;

(b) the need for research into health or 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.

(4) Each year the Safety in Mines Research Advisory Committee must prepare an overall 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 a committee of the Council;

(c) the focus of health and safety research and priorities for the different sectors of mining; and

(d) an estimate of the cost of the programme.

(5) The Council must deliver a copy of the programme referred to in subsection (4) to the Minister of Finance for consideration.

Mining Qualifications Authority

45. (1) The Mining Qualifications Authority consists of -

(a) five members representing owners 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, who must chair the meetings.

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

(3) The Mining Qualifications Authority must govern itself in accordance with the constitution contemplated in section 97(4).

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

Mining Qualifications Authority's functions

46. (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 establishing education and training standards or qualifications as contemplated in section 5(1)(a)(ii)(aa) of that Act;

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

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

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

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

(d) set educational and training standards or qualifications in the mining industry; and

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

(2) The Mining Qualifications Authority may

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

(b) administer and control its financial affairs; and

(c) do anything necessary to achieve its objectives.

(3) The Mining Qualifications Authority may delegate any of its powers or assign any of its duties by or under this Act to any of its committees.

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

(a) must be in writing;

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

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

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

CHAPTER 5

INSPECTORATE OF MINE HEALTH AND SAFETY

Inspectorate established

47. (1) A Mine Health and Safety Inspectorate is hereby established.

(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.

Chief Inspector

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

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

(3) The Chief Inspector may perform any of the functions of an inspector

Chief Inspector's functions

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

(a) ensure that the provisions of this Act are complied with and enforced and that every duty imposed upon the Chief Inspector, the Medical Inspector or inspectors in terms of any other law is performed;

(b) appoint an officer with the prescribed qualifications and experience as the Medical Inspector;

(c) appoint officers with the prescribed qualifications and experience as inspectors;

(d) administer the Mine Health and Safety Inspectorate;

(e) determine and implement policies to promote the health and safety of persons at mines and any person affected by mining activities;

(f) consult with the Council before issuing guidelines on the form, content and distribution of codes of practice referred to in section 9;

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

(g) collect, process and distribute information relating to health and safety;

(h) advise the Minister on health or safety matters at mines;

(i) each year, after consulting the Council and with the approval of the Minister, publish and distribute a plan of action for the activities of the Mine Health and Safety Inspectorate;

(j) complete a report on health and safety at mines and the activities of the Mine Health and Safety Inspectorate for each year and submit the report to the Minister within three months of the end of the year concerned; and

(k) perform any duties relating to health or safety at mines that the Minister directs or prescribes.

(2) The Chief Inspector must furnish a prescribed certificate to the Medical Inspector and to each inspector

(3) Despite the provisions of the Minerals Act, the Chief Inspector -

(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 officer appointed in terms of section 4 of the Minerals Act concerning the exercise of those powers.

49(3)(b)-Section 4 of the Minerals Act deals with the appointment and functions of Directors: Mineral Development under the Department of Mineral and Energy Affairs.

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

(a) enter into agreements with other persons; and

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

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

Inspectors' powers

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

(a) enter any mine at any time without warrant or notice;

(b) enter any other place after obtaining the necessary warrant in terms of subsection (7); and

(c) bring into and use at any mine, or at any place referred to in paragraph (b), vehicles, equipment and material as necessary to perform any function in terms of this Act.

(2) While the inspector is at any mine or place referred to in subsection (1), the inspector may, for the purposes of monitoring or enforcing compliance with this Act -

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

(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 manager 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 owner, manager, employee or any other person who performs an activity regulated by this Act or any former owner, manager or employee or person who formerly performed an activity regulated by this Act, to appear before the inspector to be questioned on any matter to which this Act relates.

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

(4) Before an inspector may seize any document under subsection (2)(g), the owner or manager 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 owner or manager 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.

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

Inspector may be accompanied

51. 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.

Duty to assist inspector and answer questions

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

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

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

Duty to produce documents required by inspector

53. 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 Act, must produce it at the request of the Chief Inspector or any inspector.

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

Inspector's power to deal with dangerous conditions

54. (1) If an inspector believes 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 -

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

(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 manager 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.

(2) An instruction under subsection (1) must be given to the manager or a person designated by the manager 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 manager, the inspector must give a copy of the instruction to the manager at the earliest opportunity.

(5) Any instruction issued under subsection (1)(a) must either be confirmed, varied or set aside by the Chief Inspector 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) Before giving any instruction under subsection (1)(a) the inspector must allow the manager or the manager's representative and the representatives of employees a reasonable opportunity to make representations.

(8) For the purposes of subsection (7), the representatives of the employees are -

(a) representatives designated in accordance with a collective agreement concluded in terms of section 26;

(b) if paragraph (a) does not apply, full-time health and safety representatives responsible for the mine or part of the mine which will be affected by the instruction;

(c) if paragraphs (a) and (b) do not apply, the health and safety representatives responsible for the working places which will be affected by the instruction; or

(d) if paragraphs (a), (b) and (c) do not apply, the employees who will be affected by the instruction or an employee or employees nominated or elected by them.

(9) If an inspector has reason to believe that the delay caused by allowing representations could endanger the health or safety of any person, the inspector is not required to allow representations before issuing an

instruction under subsection (1)(a).

(10) Before giving any instruction under subsection (1)(b) to (d), the inspector must allow such opportunity to make representations as may be prescribed.

Inspectors' power to order compliance

55. (1) If an inspector believes that an owner or manager has failed to comply with the provisions of this Act, the inspector may instruct that owner or manager in writing to take any steps that the inspector -

(a) considers necessary to comply with the provision; and

(b) specifies in the instruction.

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

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

Instructions to be posted at mine

56. The manager 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.

Right to appeal inspectors' decisions

57. (1) Any person who is the subject of a decision of an inspector, or at whose instance a decision of an inspector was taken, may appeal against that decision to the Chief Inspector.

(2) An appeal under subsection (1) must

(a) be lodged with the Chief Inspector within 30 days of the decision; and

(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 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.

Right to appeal Chief Inspector's decision

58. (1) Any person adversely affected by a decision of the Chief Inspector, 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's decision was given.

(3) The Labour Court must consider the appeal and confirm, set aside or vary the decision.

Appeal does not suspend decision

59. (1) An appeal against a decision under either section 57 or 58 does not suspend the decision.

(2) Despite subsection (1), the Labour Court may suspend the operation of the decision, pending the determination of the matter, if there are reasonable grounds for doing so.

Initiating investigations

60. (1) The Chief Inspector must instruct an inspector to investigate any accident or occurrence at a mine that results in serious injury, serious illness or death of any person.

(2) At any time an inspector may investigate

(a) any occurrence, practice or condition concerning health or safety of persons at one or more mines; or

(b) 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, an inspector must investigate any matter referred to in subsection (2), if -

(a) instructed to do so by the Chief Inspector; 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.

Chief Inspector may designate assistant in investigation

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

Duty to answer questions during investigation

62. 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.

Enhancing effectiveness of investigation

63. (1) For the purposes of enhancing the effectiveness of an investigation in terms of section 60 the Chief Inspector, in consultation with the appropriate Attorney-General, may issue a certificate that no prosecution may be instituted in respect of any offence arising from the event being investigated. If a certificate is issued, no disciplinary action arising from the event investigated may thereafter be taken against any person.

(2) The Chief Inspector 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.

Reports on investigations

64. (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;

(b) must supply a copy of the report to the manager 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 manager of the mine concerned to prominently and conspicuously display a copy of the report or portion of it for employees to read.

Initiating inquiries

65. (1) Unless the provisions of section 63 have been invoked, the Chief Inspector 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 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.

Investigation may be converted into inquiry

66. (1) At any time during an investigation, the Chief Inspector 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.

Chief Inspector may designate assistant in inquiry

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

Inquiry to be public

68. (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.

Right to participate in inquiry

69. 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) a health and safety representative responsible for the working place in respect of which the inquiry is being held.

Powers of person presiding at inquiry

70. 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.

Duty of persons summoned or instructed

71. (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.

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

(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.

(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.

Inquiry records and reports

72. (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,

(d) supply a copy of the report and the record of the inquiry to the manager 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 manager 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 may submit a copy of the report to the appropriate Attorney-General.

Chief Inspector may order further inquiry

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

Inquiry and inquest may be conducted jointly

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

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

(2) The judicial officer contemplated in the Inquests Act, 1959 (Act No. 58 of 1959), must preside at a joint inquiry referred to in subsection (1) and the person instructed to hold the inquiry in terms of this Act must be deemed to be an assessor appointed in terms of the Inquests Act, 1959.

(3) The provisions of the Inquests Act, 1959 (Act No. 58 of 1959), apply to a joint inquiry.

(4) The assessor referred to in subsection (2) must -

(a) prepare a report contemplated in section 72(1)(b); and

(b) submit the report and the record of the joint inquiry to the Chief Inspector

CHAPTER 6

MINISTER'S POWERS

Minister may prohibit or restrict work

75. (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.

Minister may declare health hazards

76. (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 managers to take measures to eliminate, control and minimise health risks associated with the health hazard;

(d) require managers to conduct specified occupational hygiene measurements;

(e) require managers 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.

Application of Minister's notice

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

Exemption from Minister's notice

78. (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.

Exemption from all or part of this Act

79. (1) The manager of a mine may request an exemption from the Minister, and if satisfied that the manager has consulted appropriately with the affected employees or their representatives, the Minister may exempt the manager 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 manager, 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 manager must prominently and conspicuously display any exemption granted, or deemed to have been granted, under this section to the employees to read.

Minister may apply other laws to mine

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

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

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

Minister to table annual report

81. (1) Within 30 days of receiving the annual report of the Chief Inspector, 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

Jurisdiction of Labour Court

82. (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.

No discrimination against employees who exercise rights

83. (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.

Safety equipment not to be interfered with

84. Unless specifically authorised by the manager, no person

(a) other than an inspector acting in terms of section 50, may remove personal protective equipment from a mine, or cause that equipment to be removed;

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

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

84(1)-Section 50, outlines the inspector's powers which includes entering any mining area and questioning persons and examining documents and

machinery.

Juvenile employment underground prohibited

85. (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.

Negligent act or omission

86. (1) Any person who, by a negligent act or by a negligent omission, endangers the health or safety of a person at a mine or causes serious injury to a person at a mine, commits an offence.

(2) An owner or a manager must be convicted of an offence in terms of subsection
(1) if the State proves that -

(a) the health or safety of a person at the mine was endangered or that a person was seriously injured at the mine;

(b) the working environment at the mine was not safe and was not without risk to the health of employees; and

(c) the danger or injury was due, either wholly or partly, to the condition of the working environment at the mine.

(3) Despite subsection (2), the owner or manager may not be so convicted if it is proved that the owner or manager did what was reasonably practicable to provide and maintain a working environment at the mine that was safe and without risk to the health of employees.

Breach of confidence

87. (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 owner or employer, commits an offence.

(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.

Hindering administration of this Act

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

Falsifying documents

89. 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.

Failure to attend when summoned

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

(a) without sufficient cause fails -

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

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

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

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

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

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

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

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

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

Failure to comply with this Act

91. (1) Any person commits an offence who contravenes, or fails to comply with -

(a) a provision of this Act;

(b) a regulation made under this Act; or

(c) 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, inspector or any other person authorised under this Act.

(2) Despite subsection (1)(a), a contravention of the provisions of Chapter 3 or section 83 does not constitute an offence.

91 (2) - Chapter 3 deals with health and safety representatives and committees.

(3) A person appointed under section 4(1) to perform any function entrusted to an owner by this Act commits an offence if that person fails to exercise reasonable care in performing that function.

Penalties

92. (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 I of the Table below, 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.

TABLE-MAXIMUM TERMS OF IMPRISONMENT

Column 1 Section under which convicted	Column 2 Maximum term of imprisonment
2(1)(a) or (b)	2 years
2(2)	2 years
3(1)	2 years
4(2)	1 year
4(3)	2 years
5	2 years
6	2 years
7	2 years
8	1 year
9(2)	2 years
9(3), (4) or (5)	1 year
10	2 years
11(1)	2 years
11(2)	2 years
11(3)	1 year
11(4)(a)	2 years
11(4)(b)	1 year
11(5)(a)	2 years
11(5)(b)	1 year
11(5)(d)	2 years
11(8)	1 year
12	2 years
13(1), (2), (3), (4) or (6)	2 years
14	2 years
15	2 years
16(1)	1 year
17	2 years
21(1), (3) or (4)	2 years
22	2 years
24	1 year
32(2) or (3)	1 year
52	2 years
53	2 years
54(1)	2 years
55(1)	2 years
62	2 years
66(4)	2 years
70	2 years
71	2 years
84	2 years

85	1 year
86	3 years
88	2 years
89	1 year
90(b)(ii) or (c)(i)	2 years

Magistrate's court has jurisdiction to impose penalties

93. 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.

Serving of documents

94. 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.

Proof of facts

95. In any legal proceedings in terms of this Act -

(a) if it is alleged that a person at a mine is or was an employee, that person is presumed to be an employee at that mine, unless the contrary is proved;

(b) if it is proved that a false statement, entry or information appears in or on a book, plan, record or other document, the person who kept that document is presumed to have made, entered, recorded or stored that statement, entry, record or information, unless the contrary is proved; and

(c) subject to the provisions of sections 63(1), 63(3) and 71(2), any statement, entry or information in or on any book, plan, record or other document is admissible in evidence as an admission of the facts in or on it by the person who made, entered, recorded or stored it unless it is proved that that person did not make, enter, record or store it within the scope of their functions.

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

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

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

CHAPTER 8

GENERAL PROVISIONS

Delegation and exercise of power

96. (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.

(2) The Chief Inspector may delegate any power or assign the performance of any duty conferred or imposed upon the Chief Inspector by or under this Act to -

(a) any inspector; or

(b) any other person with appropriate knowledge and experience who is under the control of the Chief Inspector.

(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, 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, as the case may be.

Minister's power to add and change Schedules

97. (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, subject to subsection (5), Schedule 4.

(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 permanent committees.

(4) The Minister, after consulting the Council, by notice in the Gazette may add to this Act a further Schedule containing the constitution of the Mining Qualifications Authority.

(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 Government Gazette.

Regulations

98. (1) The Minister, after consulting the Council, by notice in the Gazette may make regulations regarding -

(a) health and safety of persons at mines;

(b) health and safety standards, codes of practice and the provision of protective clothing, equipment and facilities in connection with health and safety at mines;

(c) the performance of work by employees exposed to a health hazard and the measures to eliminate, control and minimise health risks;

(d) health and safety management systems at mines;

(e) orderly operations at mines;

(f) the powers, duties, functions and responsibilities of employees at mines and of the owners, employers and managers;

(g) the issuing of permits for the use of machinery, equipment and material at mines and the accreditation of persons to test machinery, equipment and material for these purposes;

(h) the conditions under which machinery, equipment or material may be erected or used at mines;

(i) the elimination, control and minimisation of health and safety hazards;

(j) requirements for the safe use, handling, processing, storage, transport and disposal of hazardous substances used in the mining process and waste produced at the mine;

(k) the transport, handling, storage and use of explosives and the mixing of substances to make explosives at a mine;

(l) the protection of equipment, structures, water sources and the surface of land;

(m) the conditions in which equipment, structures, water sources or the surface of land may be used, and the prohibition on, or restriction of, the erection of equipment and structures and the use of water sources or the surface of land in the vicinity of the working places at a mine;

(n) the making safe of undermined ground and of dangerous excavations, tailings, waste dumps, ash dumps and structures of whatever nature made in the course of prospecting or mining operations or which are connected with those operations;

(o) the monitoring and control as contemplated in section 49(3)(a) of those environmental aspects at mines which affect, or may affect, the health and safety of employees or other persons;

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

(p) standards of housing and nutrition of employees who are accommodated at the mine;

(q) initial standards of fitness to perform work involving exposure to a

health hazard, standards of fitness to continue performing such work and the conditions under which employees may be withdrawn either temporarily or permanently from such work;

(r) standards of occupational hygiene measurement techniques, the frequency and manner in which measurements must be made, the manner of record keeping and reporting of occupational hygiene measurements made at mines;

(s) standards of medical tests or biological monitoring used in medical surveillance, the persons who may carry out those tests and that monitoring, the interpretation of results of medical surveillance, the frequency for carrying out periodic medical surveillance, the keeping of records of medical surveillance and the reporting of confidential extracts from records of medical surveillance;

(t) the manner of reporting prescribed accidents and health matters at mines, the keeping of records and statistics in relation to accidents and health matters and the provision of emergency medical treatment after an accident or in connection with a health matter;

(u) the manner of reporting prescribed occupational diseases at mines, the keeping of records in relation to occupational diseases and the control and provision of medical services in connection with occupational diseases;

(v) the form of an exit certificate and the content of medical examinations associated with an exit certificate;

(w) the form of any application to be made in terms of this Act and of any consent or document required to be submitted with an application, and the information or details which must accompany an application;

(x) the form of any register, record, notice, sketch plan or information to be kept, given, published or submitted in terms of or for the purposes of this Act, and the manner in which a register, record, notice, sketch plan or information is to be kept, given, published or submitted;

(y) the drawing up and keeping of mine plans and the submission of statistical and other reports in relation to minerals, mines and machinery;

(z) negotiations and consultations in terms of sections 26 and 33 and the time periods within which the negotiations and consultations must be completed;

(zA) qualifications for appointment as a health and safety representative, the election and terms of office of representatives, the circumstances in which a representative must vacate office, the circumstances in which a representative may be removed from office, the manner in which vacancies may be filled, the functions of representatives, the manner in which the functions of representatives must be conducted, the facilities and assistance that must be provided to representatives and the training of representatives;

(zB) the establishment of health and safety committees, the election and

appointment of members to a committee, the terms of office of members of a committee, the circumstances in which a member must vacate office, the circumstances in which a member may be removed from office, the manner in which vacancies may be filled, meetings of the committees, the rules and procedures of the committees, the facilities and assistance that must be provided to committees and the training of the members of committees;

(zC) the appointment of members to the Council in accordance with the provisions of Schedule 2, the functions of the Council, the payment of allowances to members, the funding of the Council and its permanent 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 with a view to funding research and surveys regarding, and for the promotion of health and safety at mines, and the control of those accounts by the Chief Inspector;

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

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

(zH) procedures to be followed in respect of appeals to the Chief Inspector 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 research and surveys regarding, and for the promotion of, health and safety at mines;

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

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

(ii) will benefit from that safe-making;

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

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

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

(2) No regulation may be made relating to -

(a) State revenue or expenditure except with the concurrence of the Minister of Finance;

(b) any health matter, except after consultation with the Minister for Health.

(3) The Minister, after consultation with the Mining Qualifications Authority, by notice in the Gazette, may make regulations to provide for -

(a) the qualifications for employment in any occupation;

(b) conditions for acceptance as a candidate for examinations;

(c) the issuing of certificates of competency in respect of any occupation;

(d) the funding of the Mining Qualifications Authority including the manner by which such funds may be raised;

(e) procedures for assessing competency;

(f) the accreditation of assessors;

(g) the establishment of examination bodies;

(h) the appointment of examiners and moderators;

(i) the monitoring and administration of examinations;

(j) the setting of examination fees;

(k) the accreditation of providers of training;

(l) the establishment of quality assurance procedures;

(m) the issue of qualifications;

(n) the registering of qualifications; and

(o) any other matter, the regulation of which may be necessary or desirable in order to promote the activities of the Mining Qualifications Authority.

(4) Regulations made in terms of subsection (3) must be in accordance with the National Qualifications Framework approved in terms of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995).

(5) The Minister may incorporate all or part of any health and safety standard, without restating the text of it, in a regulation by referring to the number, title and year of issue of that health and safety standard or, to any other particulars by which that health and safety standard is sufficiently identified.

(6) The Minister must consult the Council before incorporating a health and safety standard in a regulation.

(7) The Minister, after consulting the Council, by notice in the Gazette, may make regulations imposing any function of an owner or manager on any employer other than the owner.

(8) For the purposes of this Act, any health and safety standard referred to in

subsection (5) incorporated in a regulation is deemed to be a regulation, in so far as it is not repugnant to any regulation made under subsection (1).

(9) Whenever a health and safety standard which has been incorporated in a regulation is subsequently amended or substituted by the competent authority, the regulation referred to in subsection (5) incorporating that health and safety standard is deemed to refer to that health and safety, standard as so amended or substituted, unless a contrary intention is stated in the notice.

(10) The Chief Inspector 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 obtainable or otherwise available for inspection.

(11) The Chief Inspector 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.

Amendment of laws

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

Transitional arrangements

100. (1) The amendment of laws referred to in Schedule 3 does no 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.

Interpretation

101. (1) The provisions of this Act bind the State except in so far as criminal liability is concerned.

(2) Subject to sections 26 and 33, no agreement may affect any -

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

(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, 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.

Definitions

102. 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 Inspector" 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;

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

"Department" means the Department of Mineral and Energy Affairs;

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

"employer" means any person who employs employees;

"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) and a Medical Inspector;

"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 notifies their owner 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;

"Minerals Act" means the Minerals Act, 1991 (Act No. 50 of 1991);

"mining area" means the mining area as defined in section I of the Minerals Act;

"Minister" means the Minister of Mineral and Energy Affairs;

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

"occupational health" includes occupational hygiene and occupational medicine;

"occupational health practitioner" means an occupational medical practitioner or a person who holds a qualification in occupational health recognised by the South African Interim Nursing Council;

"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 Interim National Medical and Dental Council of South Africa or a medical practitioner engaged in accordance with section 13(4);

"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" in relation to a mine, means

(a) the holder of a prospecting permit or mining authorisation issued under the Minerals Act; or

(b) if a prospecting permit or mining authorisation does not exist, the last person who worked the mine or that person's successor in title;

"prescribed" means prescribed by regulation;

"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;

"reasonably practicable" means practicable having regard to -

(a) the severity and scope of the hazard or risk concerned;

(b) the state of knowledge reasonably available concerning that hazard or risk and of any means of removing or mitigating that hazard or risk;

(c) the availability and suitability of means to remove or mitigate that hazard or risk; and

(d) the costs and the benefits of removing or mitigating that hazard or risk;

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

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

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

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

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

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

"safety" means safety at mines;

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

"serious illness" means any illness resulting from occupational exposure

that affects the health of a person to the extent that it incapacitates the affected person from resuming that person's normal or similar occupation for four days or more;

"standard" means any provision occurring -

(a) in a specification, compulsory specification, code of practice or standard method as defined in section I 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 to which any permit, licence, permission, consent, exemption, approval, notice, authorisation, environmental management programme or directive issued, given, granted or approved or deemed to be issued, given, granted or approved in terms of this Act;

"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 owner 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.

Occupational Health and Safety Act, 1993, not applicable

103. 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.

Civil liability of State

104. The State does not incur any civil liability only because an officer took an action or failed to take an action that the officer may take or is required to take under or in terms of this Act, and in taking or failing to take that action the officer acted without negligence and in good faith.

Act binds State

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

Short title and commencement

106. (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 Government Gazette.

SCHEDULE 1

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

1. Introduction

(1) This Schedule contains guidelines for determining the number of full-time health and safety representatives.

(2) This Act places the highest value on agreement. The parties referred to in section 26 must refer to this Schedule, using its guidelines in a manner that best suits the particular mine.

(3) If agreement is not reached, the Commissioner appointed by the Commission must refer to this Schedule, using its guidelines in a manner that best suits the particular mine.

2. Minimum threshold

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

(a) the volume, size and physical location of the mine;

(b) the health and safety record of the mine;

(c) the number of designated working places; and

(d) the objects of this Act.

(2) The guidelines as to the size of the mine that should have a full-time health and safety representative is a mine with 500 employees.

3. Number of full-time health and safety representatives

(1) The formula for determining the number of full-time health and safety representatives should take into account -

(a) the nature, size and physical location of the mine;

(b) the health and safety record of the mine;

(c) the number of designated working places;

(d) the number of health and safety representatives;

(e) the number of shafts and the number of employees at the shaft; and

(f) the objects of this Act.

SCHEDULE 2

NOMINATION AND APPOINTMENT OF MEMBERS TO TRIPARTITE INSTITUTIONS

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

(a) members appointed to represent employees are either -

(i) all nominated by agreement between registered trade unions representing at least 75% of employees belonging to such trade unions in the mining industry; or

(ii) failing agreement in terms of subparagraph (i)

(aa) at least half are persons nominated by a registered trade union or unions representing the majority of employees belonging to such trade unions in the mining industry; and

(bb) the rest are persons nominated by registered trade unions and appointed in accordance with the significance of the trade unions concerned; and

(b) members appointed to represent owners 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 that 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.

GENERAL EXPLANATORY NOTE:

Words between double square brackets indicate omissions from existing enactments.

Words between double pointed brackets indicate insertions in existing enactments.

SCHEDULE 3

AMENDMENT OF LAWS

A: MINERALS ACT, 1991

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

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

(a) by the deletion of the definitions of "certificated", " engine", "investigating officer", "machinery", "manager", "mine safety committee", " peace officer", "regional director", "regional mining

engineer", "serious bodily harm" and "works";

(b) by the insertion before the definition of "Department" of the following definition:

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

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

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

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

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

Amendment of section 8 of Act 50 of 1991

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

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

Amendment of section 9 of Act 50 of 1991

4. Section 9 of the principal Act is hereby amended -

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

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

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

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

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

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

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

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

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

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

(f) by the addition of the following subsections:

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

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

Amendment of section 12 of Act 50 of 1991

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

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

Substitution of section 15 of Act 50 of 1991

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

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

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

rehabilitation.".

Amendment of section 25 of Act 50 of 1991

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

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

Repeal of sections 26 to 37 of Act 50 of 1991

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

Amendment of section 39 of Act 50 of 1991

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

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

Amendment of section 41 of Act 50 of 1991

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

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

Amendment of section 51 of Act 50 of 1991, as amended by section 20 of Act 103 of 1993

11. Section 51 of the principal Act is hereby amended -

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

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

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

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

12. The following sections are hereby inserted after section 53:

"Orders, suspensions and instructions

<<53A. (1) If an officer authorised by the Director-General is of the opinion that any contravention or suspected contravention of or any failure to comply with any provision of this Act or any condition to which any authorization, exemption, environmental management programme or permission granted or approved in terms of this Act, is subject, occurs at any mine or place presumed to be a mine, such officer may-

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

(b) order that the operations at such mine or place or part thereof be suspended, and give such instructions in connection therewith as he or she may deem desirable.

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

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

<<Inquiries

53B. (1) If any contravention or suspected contravention of or any failure or suspected failure to comply with any provision of this Act occurs at any mine or place presumed to be a mine, an inquiry may be held into any such matter by an officer designated by the Director-General.

(2) The Director-General may, either before the commencement or at any stage of an inquiry held in terms of subsection (1) or (4) designate one or more other officers to assist in the holding of such inquiry and may designate an officer to preside at such inquiry.

(3) Any investigating officer holding an inquiry into any matter in terms of this section shall, if necessary with the assistance of an interpreter, take down or record by mechanical means the evidence given thereat and submit a written copy thereof with a report thereon to the Director: Mineral Development, who shall transmit it to the Director-General, unless otherwise directed by the latter.

(4) Upon consideration of the evidence and report referred to in subsection (3) the Director-General may require that the matter concerned be inquired into further.>>

<<Attendance and examination of witnesses at inquiry

53C. (1) An investigating officer holding an inquiry in terms of section 53B(1)

or (4) into any matter or who is to preside or is presiding at such inquiry may, for the purposes of such inquiry -

(a) direct or summon any person to appear before him or her at such time and place as may be determined by him or her; or

(b) order any person present at the place where such inquiry is being held -

(i) to give evidence thereat;

(ii) to produce any document or thing which he or she may deem necessary for the proper disposal of such inquiry; or

(iii) to perform any other act in relation to this Act which he or she may direct.>>

<<(2)(a) If any person has reason to believe that he or she may be held liable for any matter which shall or may be inquired into in terms of section 53B(1) or (4), he or she shall have the right, but is, subject to subsection (1), not compelled, to be present at any such inquiry and to be assisted or represented by another person.

(b) If at any inquiry held in terms of section 53B(1) or (4) evidence has been or is being given from which any person may reasonably infer that he or she may be charged with contravening any provision of this Act or failing to comply therewith or may be held responsible in any manner for the matter comprising the subject of such inquiry, he or she shall have the right, but is not compelled, to give evidence and, either personally or through a representative -

(i) to be heard;

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

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

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

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

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

(b) No person called as a witness at any inquiry held in terms of section 5313(1) or (4) shall, when he or she is requested thereto, refuse or fall to take an oath or, if he or she objects thereto, to make an affirmation.

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

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

(6) (a) Any inquiry or any part thereof held in terms of section 5313(1) or (4) shall, in so far as it is in the opinion of the investigating officer practically possible or desirable, be held in public.

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

<<Obstruction of inquiry or investigating officer or failure to render assistance

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

(a) without reasonable justification fail to comply with any direction, summons or order issued or given under section 53C(1) or by virtue of a request under section 53C(2)(b)(ii);

(b) refuse or fail to answer to the best of his or her knowledge any question lawfully put to him or her by or with the concurrence of the investigating officer: Provided that no person shall be obliged to answer any question whereby that person may incriminate himself or herself;

(c) in any manner whatsoever advise, encourage, incite, order or persuade any person who has been directed, summoned or ordered under section 53C(1) or by virtue of a request under section 53C(2)(b)(ii), not to comply with such direction, summons or order or in any manner prevent him or her from doing so;

(d) refuse or fail, when required thereto by the investigating officer, to furnish him or her with the means or to render him or her the necessary assistance for holding such inquiry;

(e) refuse or fail, when required thereto by the investigating officer, to attend an inquiry; or

(f) intentionally insult an investigating officer or intentionally interrupt the proceedings thereat.>>".

Amendment of section 54 of Act 50 of 1991

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

"(1) The holder of or applicant for any prospecting permit or mining authorization [[or the owner of a works]] shall, at least 14 days

before he <<□or she>>□ commences with any operations under any such a permit or authorization [[□or at a works]]□ or intends to cease such operations temporarily or permanently, notify the [[□regional director]]□ <<□Director: Mineral Development>>□ concerned <<□and the Chief Inspector>>□ in writing of any such intended commencement or cessation, and provide particulars in connection with the location, nature and extent of such operations.".

Amendment of section 60 of Act 50 of 1993

14. Section 60 of the principal Act is hereby amended -

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

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

(a) any provision of -

(i) section 5(2), 8(1), [[□31(1), (3) or (4), 37(a)]]□ 38(1), 39(1), 40, 41(2), 42(5), 52 or 54;

(ii) section 7(1) [[□31(5), 33(1) or 34(1)]]□;

(iii) section 19(1) or (2), [[□29(4)(b), 30(b), (c), (d), (e) or (f)]]□ 38(2)(a), <<□53C(4)(b), 53D(b), (c), (e) or (f)>>□ [[□58]]□ or 59;

(iv) [[□section 35(1) or 36]]□

(v) [[□section 32(1) or (2) or 34(3)]]□

(vi) [[□section 37(b)]]□

(vii) [[□section 29(4)(c)]]□ <<□53C(4)(c)>>□; or

(viii) [[□section 30(a)]]□ <<□53D(a)>>□; or

(b) any provision of -

(i) any direction, notice, suspension, order, instruction or condition issued, given or determined under section 22(1), 23(1), [[□27(1) or (5), 33(2), 34(2) or]]□ 38(2)(b) <<□or 53A(1)>>□;

(ii) any request referred to in section 51(3); or

(iii) any notice issued under section 25(1),

shall be guilty of an offence."; and

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

"(2) Any person who contravenes or fails to comply with a provision of this Act, a regulation or any condition, notice, order, instruction, prohibition, authorization, permission, consent, exemption, certificate or document determined, given, issued, promulgated or granted by or under this Act by the Director-General, [[□the Government Mining Engineer, a regional director, a regional mining

engineer]] <<a Director: Mineral Development>> or any other officer in the service of the Department duly authorized thereto ex officio or by the Director-General shall, if any such contravention or failure is not declared an offence elsewhere, be guilty of an offence.".

Amendment of section 61 of Act 50 of 1991, as amended by section 22 of Act 103 of 1993

15. Section 61 of the principal Act is hereby amended by the deletion of paragraphs (d), (e) and (f) of subsection (1).

Amendment of section 63 of Act 50 of 1991, as amended by section 24 of Act 103 of 1993

16. Section 63 of the principal Act is hereby amended -

(a) by the deletion of paragraphs (a), (b), (h)(iv) and (v), (i), (j), (k), (l), (n), (u), (v), (w) and (x) of subsection (1);

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

"(m) the manner in which the presence of witnesses at inquiries held in terms of section [[28(1), (2) or (5)]] <<53B(1) or (4)>> shall be obtained and procedures to be followed at such inquiries;";

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

"(2) No regulation relating to State revenue or expenditure [[or to any health matter]] shall be made by the Minister except with the concurrence of the Minister of Finance [[or the Minister of State Expenditure or after consultation with the Minister for National Health and Welfare, respectively]]"; and

(d) by the deletion of subsection (3).

Substitution of expression in Act 50 of 1991

17. The principal Act is hereby amended by the substitution for the expression "regional director", wherever it occurs in the Act, of the expression "Director: Mineral Development".

Substitution of long title of Act 50 of 1991

18. The following long title is hereby substituted for the long title of the principal Act:

"To regulate the prospecting for and the optimal exploitation, processing and utilization of minerals; [[to provide for the safety and health of persons concerned in mines and works]] to regulate the orderly utilization and the rehabilitation of the surface of land during and after prospecting and mining operations; and to provide for matters connected therewith.".

B: REFERENCE TO GOVERNMENT MINING ENGINEER IN CERTAIN ACTS

Substitution for Government Mining Engineer

The following Acts are hereby amended by the substitution for the expression "Government Mining Engineer", wherever it occurs, of the expression "Chief Inspector as contemplated in the Mine Health and Safety Act, 1996,":

Advertising on Roads and Ribbon Development Act, 1940 (Act No. 21 of 1940)

Rand Water Board Statutes (Private) Act, 1950 (Act No. 17 of 1950)

Mines and Works Act, 1956 (Act No. 27 of 1956)

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

1. Any health and safety standard which, immediately prior to the commencement of this Act, was incorporated under the provisions of the Minerals 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 Minerals Act that relate to health and safety issues that can be regulated under this Act remains in force until amended or 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 Minerals 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.