

REPUBLIC OF SOUTH AFRICA

MINE HEALTH AND SAFETY AMENDMENT BILL

*(As amended by the Portfolio Committee on Mineral and Energy Affairs,
(National Assembly))*

(MINISTER OF MINERALS AND ENERGY)

[B 107B—97]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP GESONDHEID EN VEILIGHEID IN MYNE

*(Soos gewysig deur die Portefeuljekomitee oor Mineraal- en Energiesake
(Nasionale Vergadering))*

(MINISTER VAN MINERALE EN ENERGIE)

[W 107B—97]

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GENERAL EXPLANATORY NOTE:

[] “ Words in **bold type in square** brackets indicate omissions from existing enactments.

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

BILL

To amend the Mine Health and Safety **Act**, 1996, so as to provide for a system of administrative fines; to further regulate the operation of the tripartite institutions; to provide for the participation of health and safety representatives responsible for a working place in an inquiry in respect of that working place; and to effect certain textual alterations; and to provide for matters connected therewith.

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

Amendment of section 2 of Act 29 of 1996

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

“(d) if the [owner] **employer** 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] body corporate’s shareholders or members.”. 10

Insertion of section 2A in Act 29 of 1996

2. The following section is hereby inserted after section 2:

“**Chief** executive officer charged with certain functions

2A. (1) Every *chief executive officer* must take reasonable steps to ensure that the functions of the employer as contemplated in *this Act*, are properly performed. 15

(2) Without derogating from any responsibility or liability of the *chief executive officer* in terms of subsection (1), the *chief executive officer* may entrust any function contemplated in the said subsection to any person under the control of the *chief executive officer*, which person must act 20 subject to the control and directions of the *chief executive officer*.

(3) If the *employer* is a body corporate, the functions of the *chief executive officer* contemplated in subsections (1) and (2) may be performed by a member of the board of the body corporate designated by the board.

(4) Subsections (1), (2) and (3) do not relieve an *employer* of any duty imposed on *employers* by *this Act*.

(5) Every person appointed in terms of section 3 or 4(1) must perform their functions subject to the control and direction of the *chief executive officer* or the person contemplated in subsection (3).”.

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Amendment of section 3 of Act 29 of 1996

3. Section 3 of the principal Act is hereby amended by the substitution for paragraph 10 (a) of subsection (1) of the following paragraph:

“(a) appoint one or more *managers* with the qualifications as may be *prescribed to be responsible for the day to day management and operation of the mine*, and if more than one *manager* is appointed, ensure that the *managers’* functions do not overlap; ”-.

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Amendment of section 4 of Act 29 of 1996

4. Section 4 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) An *[owner] employer* may appoint any person *except a manager* to perform any function entrusted to the *[owner] employer* by sections 2 and 3 of *this Act*.”.

Substitution of section 5 of Act 19 of 1996

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

“Employer to maintain healthy and safe mine environment

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

(2) [To the extent that is] *As far as reasonably practicable, every* [manager] *employer* must—

(a) identify the relevant *hazards* and assess the related *risks* to which [manager] *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] health* and *[safety] safety*.”.

Amendment of section 6 of Act 29 of 1996

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6. Section 6 of the principal Act is hereby amended—

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

“(1) Every *[manager] employer* must—

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

(b) [to the extent that is *reasonably practicable*] maintain, *as far as reasonably practicable*, that equipment and those facilities [and that equipment] in a serviceable and hygienic condition.”; and

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

“(3) Every *[manager] employer* must take reasonable [measures] *steps* to ensure that all *employees* who are required to use personal protective equipment are instructed in the proper use, the limitations and the appropriate maintenance of that equipment.”.

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Amendment of section 7 of Act 29 of 1996

7. Section 7 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 “[To the extent that it is] As far as reasonably practicable, every 5
[manager] employer must—”;
- (b) by the substitution for paragraph (c) of subsection (1) of the following paragraph:
 “(c) [appoint persons and] provide [them] persons appointed under
subsections (3) and (4) with the means to comply with the 10
requirements of this Act and with any instruction given by an
inspector;”;
- (c) by the substitution for subsection (2) of the following subsection:
 “(2) [A **manager**] The employer may appoint any person with
 qualifications as may be prescribed to perform any [aspect of the 15
 functions assigned to **managers** by] function of the employer in terms
of this Act.”; and
- (d) by the addition of the following subsections:
 “(4) A manager may appoint any person with qualifications as may be
prescribed to perform any function of the manager in terms of this Act. 20
 (5) The appointment of a person under subsection (4) does not relieve
the manager of any duty imposed on managers by this Act.”.

Amendment of section 8 of Act 29 of 1996

8. Section 8 of the principal Act is hereby amended by the substitution for paragraph (c) of subsection (1) of the following paragraph: 25
 “(c) establishes a policy concerning the protection of persons who are not
employees but who [are] may be directly affected by [mining] the activities at
the mine; and”.

Amendment of section 16 of Act 29 of 1996

9. Section 16 of the principal Act is hereby amended by the deletion of paragraph (a) 30
 of subsection (2).

Amendment of section 17 of Act 29 of 1996

10. Section 17 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
 “(1) If an employee was subject to, or was required to be subject to, medical 35
surveillance in terms of this Act and such employee’s employment at a mine is
terminated for any reason, the [manager] employer must arrange an exit medical
 examination of the employee.”.

Amendment of section 20 of Act 29 of 1996

11. Section 20 of the principal Act is hereby amended by the substitution for 40
 paragraph (a) of subsection (2) of the following paragraph:
 “(a) be lodged with the *Medical Inspector* within 30 days of the relevant decision
 or finding, or such further period as may be prescribed, and”.

Amendment of section 23 of Act 29 of 1996

12. Section 23 of the principal Act is hereby amended by the substitution for 45
 paragraph (d) of subsection (2) of the following paragraph:
 “(d) where appropriate, the assignment to suitable [alternate] alternative work of
 any employee who left, or refuses to work in, a working place contemplated in
 subsection (1): and”.

Amendment of section 26 of Act 29 of 1996

13. Section 26 of the principal Act is hereby amended—

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

“(k) a procedure that provides for the conciliation and arbitration of 5
disputes arising from the application or the interpretation of the
collective agreement or any [provisions] provision of this Chap-
ter;”; and

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

“(4) To the extent that an agreement concluded in terms of subsection 10
(1) deals with any matter regulated by this Chapter or by any regulation
regarding any matter regulated by this Chapter, the provisions of this
Chapter or such regulation do not apply.”.

Amendment of section 30 of Act 29 of 1996

14. Section 30 of the principal Act is hereby amended by the substitution for 15
paragraph (b) of subsection (1) of the following paragraph:

“(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] or
safety of that *employee*;”. 20

Amendment of section 33 of Act 29 of 1996

15. Section 33 of the principal Act is hereby amended—

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

“(h) a procedure that provides for the conciliation and arbitration of 25
disputes arising from the application or interpretation of the
collective agreement [in terms **of**] or any [provisions] provision of
this Chapter.”; and

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

“(4) To the extent that an agreement concluded in terms of subsection 30
(1) deals with any matter regulated by this Chapter or by any regulation
regarding any matter regulated by this Chapter, the provisions of this
Chapter or such regulation do not apply.”.

Amendment of section 39 of Act 29 of 1996

16. Section 39 of the principal Act is hereby amended by the substitution for 35
subsection (6) of the following subsection:

“(6) If the commissioner decides that the information is required and if it is
information contemplated in section 38(1)(a) or (b)(iii), the commissioner must
balance the harm that disclosure is likely to cause to an *employee* [or **owner**] or
employer [other than the **owner**] or any other person who employs employees, 40
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.”.

Amendment of section 41 of Act 29 of 1996

17. Section 41 of the principal Act is hereby amended— 45

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

“(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;”; and 50

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

“(c) [linking the qualifications framework for the mining industry

to] proposals for the registration of education and training standards and qualifications in the mining industry on the National Qualifications Framework referred to in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995).”.

Amendment of section 42 of Act 29 of 1996

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

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

“(2A) The Council may appoint ad hoc and subcommittees, for any period and on any conditions.”; and

(b) by the substitution for subsections (3) and (4) of the following subsections, 10 respectively:

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

(4) The Council may delegate any of its powers [or] and assign any of its duties by or under this Act [to any of its committees] in accordance with the constitution contemplated in section 97(3).”.

Amendment of section 43 of Act 29 of 1996

19. Section 43 of the principal Act is hereby amended—

(a) by the substitution for paragraph (a) of the following paragraph: 20

“(a) advise the Minister on *health and safety at mines* including, but not limited to, any [regulations] legislation on *mine* rehabilitation in so far as [they concern] it concerns health and safety;”;

(b) by the substitution for paragraph (e) of the following paragraph:

“(e) at least once every two years arrange and co-ordinate a tripartite 25 summit to review the state of *health and safety at mines* [at least once every two years; and]”; and

(c) by the insertion of the following paragraph after paragraph (e):

“(eA) annually consider an overall programme for relevant health and safety research for approval as prescribed and deliver a copy to the Minister of Finance for consideration; and”.

Amendment of section 44 of Act 29 of 1996

20. Section 44 of the principal Act is hereby amended—

(a) by the substitution for paragraph (b) of subsection (3) of the following 35 paragraph:

“(b) the need for research into *health* [or] and safety at mines;”;

(b) by the substitution in subsection (4) for the first sentence of the following sentence:

“[Each year the] The Safety in Mines Research Advisory Committee must prepare [an] the overall programme for relevant health and safety research for the Council to consider.”; and

(c) by the deletion of subsection (5).

Amendment of section 45 of Act 29 of 1996

21. Section 45 of the principal Act is hereby amended—

(a) by the substitution for paragraph (d) of subsection (1) of the following 45 paragraph:

“(d) the *Chief Inspector of Mines*, who must chair the [meetings] Mining Qualifications Authority.”; and

(b) by the substitution of subsection (3) of the following subsection:

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

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Amendment of section 46 of Act 29 of 1996

22. Section 46 of the principal Act is hereby amended—

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

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

(b) by the substitution for paragraphs (c) and (d) of subsection (1) of the following paragraphs, respectively:

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

(d) [set educational] generate education and training standards [or] and qualifications in the mining industry; and”;

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

“(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] in accordance with the constitution contemplated in section 97(4).”.

Amendment of section 54 of Act 29 of 1996

23. Section 54 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“If an *inspector* [believes] has reason to believe that any occurrence, practice or condition at a *mine* endangers or may endanger the *health* or *safety* of any person at the *mine*, the *inspector* may give any instruction necessary to protect the *health* or *safety* of persons at the *mine*, including but not limited to an instruction that—”.

Amendment of section 55 of Act 29 of 1996

24. Section 55 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“If an *inspector* [**believes**] has reason to believe that an [**owner or manager**] **employer** has failed to comply with [the provisions] any provision of this Act, the *inspector* may instruct that [**owner or manager**] **employer** in writing to take any steps that the *inspector*—”.

Insertion of sections 55A to 55H in Act 29 of 1996

25. The following sections are hereby inserted in the principal Act after section 55:

“-Inspector’s powers to recommend fine

55A. (1) An *inspector* who has reason to believe that an *employer* has contravened or failed to comply with any provision contemplated in section 91(1B), may make a recommendation in writing to the *Principal Inspector of Mines* that a fine be imposed on the *employer*.

(2) An *inspector* who does not make a recommendation in circumstances contemplated in subsection (1), must record in writing the reasons for not making a recommendation and submit them to the *Principal Inspector of Mines*, if—

(a) the contravention or failure—

(i) poses or posed a high risk of harm to employees or to persons who are not **employees**, but who may be directly affected by the activities at the *mine*; or

(ii) concerns a category of non-compliance contemplated in the guidelines issued in terms of section 55G; or

(b) the *employer* has—

- (i) knowingly exposed *employees*, or persons who are not *employees*, but who may be directly affected by activities at the *mine*, to a serious *hazard* that has arisen; or
 - (ii) previously failed to comply with any provision of *this Act*.
- (3) The *inspector* concerned must provide a copy of the recommendation or record contemplated in subsection (1) or (2) to—
- (a) the *employer*;
 - (b) the *health and safety committee*, or if there is no *health and safety committee*, to any *health and safety representative* responsible for the *working place* in question; and
 - (c) the *representative trade union*, or if there is no *representative trade union*, to every *registered trade union* with members at the *mine*.

Principal Inspector of Mines may give further instructions

55B. The *Principal Inspector of Mines* may, after considering a record contemplated in section 55A(2), return the matter to the *inspector* concerned together with instructions that the *inspector* must recommend a fine as contemplated in section 55A(1), in which case section 55A(3), read with the changes required by the context, applies.

Principal Inspector of **Mines** may refer matter to attorney-general

- 55C.** (1) The *Principal Inspector of Mines* may, after consultation with an attorney-general who has jurisdiction, refer a matter that forms the subject of a recommendation contemplated in section 55A and all other relevant information to the attorney-general if it appears that the *employer* has committed an *offence* in terms of *this Act* or the common law.
- (2) The *Principal Inspector of Mines* must in writing inform the *employer*, committee or a representative and the trade union as contemplated in section 55A(3) of any referral under subsection (1).
- (3) An *employer* may not be fined in terms of section 55D if the matter that forms the subject of a recommendation has been referred to an attorney-general in terms of this section or has formed the basis of a prosecution instituted against the *employer*.
- (4) No prosecution concerning a matter that forms the subject of a recommendation may be instituted against an *employer* unless it has been referred to an attorney-general in terms of this section.
- (5) No representations made by an *employer* in terms of section 55D may be used in any criminal or civil proceedings against such *employer*.

Principal Inspector of Mines may impose fine

- 55D.** (1) If the *Principal Inspector of Mines* does not refer a matter that forms the subject of a recommendation to an attorney-general, the *Principal Inspector of Mines* must—
- (a) disregard the recommendation; or
 - (b) invite the *employer*, committee or a representative and the trade union as contemplated in section 55A(3) and the *inspector* concerned to make representations within the *prescribed* period.
- (2) After considering the representations as contemplated in subsection (1)(b), the *Principal Inspector of Mines* must—
- (a) disregard the recommendation; or
 - (b) impose a fine not exceeding R200 000,00 on an *employer* in accordance with the guidelines issued in terms of section 55G.
- (3) The *Principal Inspector of Mines* must provide a copy of any decision made in terms of subsection (1)(a) or (2) to the *Chief Inspector of Mines* and to the *employer*, committee or a representative and the trade union as contemplated in section 55A(3).

Determination of employer's liability

- 55E.** (1) In determining for the purposes of sections 55A and 55D whether or not an *employer* has contravened or failed to comply with any provision contemplated in section 91(1 B), the obligations placed on the *employer* by—
- (a) sections 2(1)(a) and (b), 5(1) and (2), 6(1)(b), 7(1), 10(1) and (2), 11(3), 21(1)(a), (b) and (c) and 21(3) and (4) must be regarded as excluding the limitation that the *employer* must only comply with the obligations as far as *reasonably practicable*; and
 - (b) sections 2(2), 3(1)(c), 4(3)(b) and 6(3) must be regarded as excluding the limitation that the *employer* is only required to take reasonable steps to comply with the obligations.
- (2) Subject to subsection (1), a fine may only be imposed under section 55D if it is established on a balance of probabilities that the *employer* **contravened**, or failed to comply with, a provision contemplated in section 91(1 B).
- (3) A recommendation to impose a fine under section 55A must be disregarded and a fine imposed under section 55D must be set aside, if it is established on a balance of probabilities that—
- (a) in respect of a section referred to in, and as construed by, section 1(1)(a), the *employer* had done what was *reasonably practicable* to comply with the section in question;
 - (b) in respect of a section referred to in, and as construed by, section 1(1)(b), the *employer* had taken reasonable steps to comply with the section in question;
 - (c) in respect of any provision contemplated in section 91(1 B)(a), except for a provision referred to in subsection (1)(a) or (b) of this section, the *employer's* failure to comply with the provision was not due to negligence on the part of the *employer*; or
 - (d) in respect of any provision contemplated in section 91(1 B)(b), unless the provision provides otherwise, the *employer's* failure to comply with the provision was not due to negligence on the part of the *employer*.

Employer must pay fine

- 55F.** (1) An *employer* must pay any fine imposed in terms of section 55D to the *Principal Inspector of Mines* within the *prescribed* period.
- (2) If the *employer* fails to pay the fine within the *prescribed* period, the *Principal Inspector of Mines* may apply to the *Labour Court* for the fine to be made an order of that Court.

Chief Inspector of Mines must issue guidelines

- 55G.** (1) The *Chief Inspector of Mines* must, after consulting the *Council*, issue guidelines regarding—
- (a) the referral for criminal prosecution of any offence in terms of *this Act* or the common law;
 - (b) the recommendation of fines by an *inspector* in terms of section 55A; and
 - (c) the imposition of fines and the appropriate levels of fines to be imposed in terms of section 55D.
- (2) The guidelines contemplated in subsection (1)(b) and (c) must—
- (a) provide that the effect of the *employer's* conduct in respect of *health* and *safety* matters on the amount of a fine imposed in terms of section 55D, must be indicated, including the extent to which—
 - (i) the *employer's* compliance *record*, *health* and *safety* *record* or inadequate or no steps taken to rectify the problem has resulted in an increase of the fine; and

- (ii) the implementation of a *health* and *safety* policy by the *employer*, the *employer's* compliance **record**, **health** and *safety record* or adequate steps taken to rectify the problem has resulted in a decrease of the fine; and
- (b) determine categories of non-compliance by *employers* for the purposes of section 55A(2). 5
- (3) In determining the categories contemplated in subsection (2)(b), the *Chief Inspector of Mines* may differentiate between *mines*, types of *mines*, parts of a **mine**, occupations and types of work.

Use of Fines 10

- 55H.** (1) Money received by the *Principal Inspector of Mines* in payment of fines **imposed** in terms of section 55D must be paid to a fund established and controlled by the *Council*.
- (2) The *Council* must, with the agreement of the *Minister*, use the money in the fund for the promotion of *health* and *safety* in the mining industry. 15
- (3) The report of the *Chief Inspector of Mines* referred to in section 49(1)(j) must reflect the financial affairs of the fund.

Amendment of section 57 of Act 29 of 1996

27. Section 57 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection: 20
- “(1) Any person who is the subject of a decision of an *inspector*, or at whose instance a decision of an *inspector* was taken, except a decision contemplated in section 55A, may appeal against that decision to the *Chief Inspector of Mines*.”; and
- (b) by the substitution for paragraph (a) of subsection (2) of the following paragraph: 25
- “(a) be lodged with the *Chief Inspector of Mines* within 30 days of the decision, or such further period as may be prescribed and”.

Insertion of section 57A in Act 29 of 1996

28. The following section is hereby inserted in the principal Act after section 57: 30

“Right to appeal against Principal Inspector of Mines’ decision

- 57A.** (1) Any person adversely affected by a decision of the *Principal Inspector of Mines* in terms of section 55D(1)(a) or (2) may appeal against that decision to the *Chief Inspector of Mines*, and section 57(2) and (3), read with the charges required by the context, applies to the appeal. 35
- (2) For the purposes of this section, a person contemplated in subsection (1) includes—
- (a) the *employer*;
- (b) the *health and safety committee*;
- (c) any *health and safety representative* responsible for the *working place* in question; and 40
- (d) any registered trade union with members at the mine.

Substitution of section 59 of Act 29 of 1996

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

“**Appeal** does not suspend decision 45

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

(2) Despite subsection (1)—

- (a) an appeal in terms of section 57A or 58 against a decision to impose a fine suspends the obligation to pay the fine, pending the outcome of the appeal; and 50

(b) the *Labour Court* may suspend the operation of the decision, pending the determination of the matter, if there are reasonable grounds for doing so.”.

Amendment of section 60 of Act 29 of 1996

30. Section 60 of the principal Act is hereby amended by the substitution for 5 subsections (1) and (2) of the following subsections, respectively:

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

(2) At any time an *inspector* may investigate— 10

(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

[(b)](c) any actual or suspected contravention of, or failure to comply with, any 15 provision of *this Act*.”.

Amendment of section 63 of Act 29 of 1996

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

“(1) For the purpose of enhancing the effectiveness of an investigation in terms 20 of section 60 the *Chief Inspector of Mines*, in consultation with the appropriate Attorney-General, may issue a certificate that no prosecution may be instituted in respect of any [offence arising from] contravention of, or failure to comply with, a provision of this Act related to the event being investigated. If a certificate is issued, no fine in terms of section 55D or disciplinary action [arising from] related 25 to the event investigated may thereafter be imposed on or taken against any person.”.

Amendment of section 69 of Act 29 of 1996

32. Section 69 of the principal Act is hereby amended by the substitution for 30 paragraph (c) of the following paragraph:

“(c) [a] any health and safety representative responsible for the *working place* in respect of which the inquiry is being held.”.

Amendment of section 71 of Act 29 of 1996

33. Section 71 of the principal Act is hereby amended by the substitution for 35 subsections (3) and (4) of the following subsections, respectively:

“(3) The person presiding at an inquiry may direct that any evidence given by a person during an inquiry may not be used for the purposes of sections 55A to 55D, or any appeal relating to those sections, or in any criminal or disciplinary proceedings against that person except in criminal proceedings on a *charge* of perjury against that person. 40

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

Amendment of section 80 of Act 29 of 1996

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34. Section 80 of the Afrikaans text of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Die *Minister* kan, na oorlegpleging met die *Raad*, by kennisgewing in die Staatskoerant, verklaar dat enige bepaling van die Wet op Beroepsgesondheid en Veiligheid, 1993 (Wet No. [181] 85 van 1993), of enige regulasie daarkragtens, of 50 die bepalings van enige ander wet of regulasie van toepassing is op “n *myn*.”.

Amendment of section 86 of Act 29 of 1996

35. Section 86 of the principal Act is hereby amended—

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

“(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 or serious illness* to a person at a *mine*. commits an offence.”;

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

“(2) Any person, ~~other than an employer or employee who, by a negligent act or by a negligent omission, endangers the health or safety~~ of a person at a *mine*. commits an offence.”; and

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

Amendment of section 87 of Act 29 of 1996

36. Section 87 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(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 or any other person who employs employees. commits an offence.”.

Amendment of section 91 of Act 29 of 1996

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

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

“(1) Any person, other than an employer, commits an offence who contravenes, or fails to comply with, any—

(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** determines, given, issued, promulgated or granted by or under *this Act* by the *Minister, Chief Inspector of Mines, inspector,* [or] any [other] person authorised under [*this Act*] section- 49(4) or any person to whom any power has been delegated or the performance of any duty has been assigned under section 96.”;

(b) the insertion after subsection (1) of the following subsections:

“(1A) Any employer who contravenes, or fails to comply with, section 62, 63(3), 71, 85, 86, 88, 89 or 90 commits an offence.

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

(a) provision of *this Act*, other than a provision referred to in subsection (1A), or any provision of Chapter 3 or section 83;

(b) *regulation*; or

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

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

- (a) the *standard* exceeds any compulsory *standard* in any relevant guideline issued by the *Chief Inspector of Mines*; and
- (b) the conduct constituting the contravention or failure complies with the compulsory *standard* in any relevant guideline issued by the *Chief Inspector of Mines*.”; and
- (c) by the addition of the following subsection:
- “(4) Any *chief executive officer* or member of the board contemplated in section 2A who performs a function in terms of section 2A(1) or (3) commits an offence if that person fails to take reasonable steps in performing that function.”.

Amendment of section 92 of Act 29 of 1996

38. Section 92 of the principal Act is hereby amended by the substitution in subsection (5) for the Table of the following Table:

“TABLE—MAXIMUM TERMS OF IMPRISONMENT

Column 1 Section under which convicted	Column 2 Maximum term of imprisonment
<u>15</u>	<u>2 years</u>
<u>16</u>	<u>1 year</u>
<u>21(1), (3) or (4)</u>	<u>2 years</u>
<u>22</u>	<u>2 years</u>
<u>24</u>	<u>1 year</u>
<u>52</u>	<u>2 years</u>
<u>53</u>	<u>2 years</u>
<u>62</u>	<u>2 years</u>
<u>66(3)</u>	<u>2 years</u>
<u>70</u>	<u>2 years</u>
<u>71</u>	<u>2 years</u>
<u>84</u>	<u>2 years</u>
<u>85</u>	<u>1 year</u>
<u>86</u>	<u>3 years</u>
<u>88</u>	<u>2 years</u>
<u>89</u>	<u>1 year</u>
<u>90(b)(ii) or (c)(i)</u>	<u>2 years</u> ”

Amendment of section 96 of Act 29 of 1996

39. Section 96 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

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

Amendment of section 97 of Act 29 of 1996

40. Section 97 of the principal Act is hereby amended—

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

“(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* and the *Mining Qualifications Authority*, by notice in the Gazette may add to *this Act* a further Schedule containing the constitution of the Mining Qualifications Authority and its committees.”; and

(b) by the substitution in the Afrikaans text for subsection (6) of the following subsection:

“(6) Die *Minister* kan, na oorlegpleging met die *Raad* en in oorleg met 10 die *Minister* van Gesondheid, by kennisgewing in die Staatskoerant ‘n verdere Bylae tot *hierdie Wet* byvoeg om die toepassing van die *Wet* op Bedryfsiektes in Myne en Bedrywe, 1973 (Wet No. 78 van 1973), te wysig of op te skort, behalwe met betrekking tot die bepaling of betaling van vergoeding.”.

15

Amendment of section 98 of Act 29 of 1996

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

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

“(zF) the establishment of one or more accounts and the control of those 20 accounts by the *Chief Inspector of Mines* with a view to funding—
(i) research and surveys regarding, and for the promotion of health and safety at mines [and the control of these accounts by the *Chief Inspector*]; and
(ii) the administration costs of the overall programme for relevant 25 health and safety research.”;

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

“(zJ) the payment of levies by mines on the basis of health and safety risk for— 30
(i) research and surveys regarding, and for the promotion of health and safety at mines; and
(ii) the administration costs of the overall programme for relevant health and safety research.”;

(c) by the addition of the following paragraph to subsection (1): 35

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

(d) by the substitution for subsection (7) of the following subsection:

“(7) The *Minister*, after consulting the *Council*, by notice in the 40 Gazette may make regulations imposing any function of an [owner or manager] employer on any [employer] person, other than the [owner] employer, who employs employees.”.

Amendment of section 101 of Act 29 of 1996

42. Section 101 of the principal Act is hereby amended by the deletion of subsection 45 (1).

Amendment of section 102 of Act 29 of 1996

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

(a) by the insertion after the definition of “biological monitoring” of the following definition: 50

“ ‘chief executive officer’ means the person who is responsible for the overall management and control of the business of an employer.”;

(b) by the substitution for the definition of “Department” of the following definition:

“ ‘Department’ means the Department of [Mineral] Minerals and 55 Energy [Affairs];”;

- (c) by the substitution for the definition of “*employer*” of the following definition:
 “ ‘*employer*’ means [any person who employs employees] an owner;”;
- (d) by the substitution of the definition of “*inspector*” of the following definition: 5
 “ ‘*inspector*’ means an *officer* appointed in terms of section 49(1)(c), [and] a *Medical Inspector* and any *Principal Inspector of Mines*;”;
- (e) by the substitution for the definition of “*Minister*” of the following definition:
 “ ‘*Minister*’ means the Minister of [Mineral] Minerals and Energy [Affairs];”;
- (f) by the substitution for the definition of “*occupational disease*” of the following definition: 10
 “ ‘*occupational disease*’ means any *health* disorder including [an **occupational** disease] a compensatable disease as contemplated by the Occupational Diseases in Mines and Works Act, 1973 (Act No. 78 of 1973), [or] and an occupational disease contemplated by the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);”;
- (g) by the substitution for the definition of “*owner*” of the following definition: 20
 “ ‘*owner*’—
 (a) in relation to a *mine*, means—
 [(a)] (i) the holder of a *prospecting* permit or mining authorisation issued under the *Minerals Act*; [or]
 [(b)] (ii) if a *prospecting* permit or mining authorisation does not exist, the person for whom the activities contemplated in paragraph (b) of the definition of ‘mine’ are undertaken, but excluding an independent contractor; or
 (iii) if neither (i) or (ii) is applicable, the last person who worked the *mine* or that person’s successor in title; and
 (b) in relation to a *works*, means the person who is undertaking the activities contemplated in the definition of ‘works’, but excluding an independent contractor;”;
- (h) by the insertion after the definition of “*prescribed*” of the following definition: 30
 “ ‘*Principal Inspector of Mines*’ means the *officer* appointed by the Chief Inspector of Mines to be in charge of health and safety in any region established in terms of section 47(2);”;
- (i) by the substitution for paragraph (d) of the definition of “*this Act*” of the following paragraph: 35
 “(d) any condition, suspension, notice, order, instruction, prohibition, authorisation, permission, consent, exemption, certificate or document determined, given, issued, promulgated or granted by or under *this Act* by the *Minister, Chief Inspector of Mines, an inspector, any* person authorised under section 49(4) or any person to whom a power has been delegated or the Performance of a duty has been assigned under section 96;”;
- (j) by the insertion after the definition of “*this Act*” of the following definition: 40
 “ ‘*topsoil*’ means topsoil as defined in section 1 of the *Minerals Act*;”.

Amendment of Schedule 2 to Act 29 of 1996

44. Schedule 2 to the principal Act is hereby amended by the substitution for item (aa) 50
 of subparagraph (ii) of paragraph (b) the following item:
 “(aa) at least half are persons nominated by an *employers’* organisation or organisations [that] whose members employ the majority of the *employees* in the mining industry; and”.

Amendment of Schedule 3 to Act 29 of 1996

45. Schedule 3 to the principal Act is hereby amended by the insertion in Part B after the expression “Mines and Works Act, 1956 (Act No. 27 of 1956)” of the following expression:

“Atmospheric Pollution Act, 1965 (Act No. 45 of 1965)”.

5

Amendment of Schedule 4 to Act 29 of 1996

46. Schedule 4 to the principal Act is hereby amended by the substitution for item 4 of the following item:

“4. Any regulation made or deemed to be made under the *Minerals Act* that relates to *health* and *safety* issues that can be regulated under *this Act*, may be amended under *this Act* and remains in force until [amended or] repealed under *this Act*.”.

Substitution of certain expressions in Act 29 of 1996

47. The principal Act is hereby amended—

- (a) b-y the substitution for the expression “*Chief Inspector*”, wherever it occurs, 15 of the expression “*Chief Inspector of Mines*”;
- (b) by the substitution for the expression “Government *Gazette*”, wherever it occurs, of the expression “*Gazette*”;
- (c) by the substitution for the expressions “*owner*”, “*owner or an employer*”, “*owner or manager*”, “*owner or the employer*”, “*owner. manager*”, 20 “*management*” and “*an owner or employer*”, wherever they occur, of the expression “*employer*” ;
- (d) by the substitution for the expressions “*owners*” and “*owners. employers* and *managers*”, wherever they occur, of the expression “*employers*”;
- (e) by the substitution for the expression “*manager*”, wherever it occurs, except 25 in sections 3 and 4, of the expression “*employer*”;
- (f) by the substitution for the expression “*a manager*”, wherever it occurs, except in sections 3 and 4, of the expression “*an employer*”; and
- (g) by the substitution for the expression “*managers*’ “, wherever it occurs, except in sections 3 and 4 of the expression “*employers*’ “. 30

Short title and commencement

48. (1) This is the Mine Health and Safety Amendment Act, 1997, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) Section 46 must be regarded as having come into operation on 15 January 1997.

MEMORANDUM ON THE OBJECTS OF THE MINE HEALTH AND SAFETY AMENDMENT BILL

The provisions of section 86(2) of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996) ("the Act"), caused great concern and unhappiness amongst the mining fraternity and seriously threatened the co-operation to promote health and safety between the employer and employees in the mining industry, the promotion of which was the primary object of Government in adopting the Act. The implementation of section 86(2) and (3) was therefore postponed for a period of 12 months during which employers and employees had to come to an agreement on an alternative to the provisions of section 86(2), and which had to be acceptable to the tripartite stakeholders.

Representatives of employers and employees concluded an agreement to replace section 86(2) with a system of administrative fines similar to systems in operation in countries like British Columbia and the United States of America, but specifically adjusted to provide for mining attributes and circumstances peculiar to South Africa.

Certain other minor adjustments are also proposed to promote the administration of the Act and to make it consistent with other Acts which regulates relations between employers and employees.

The Bill is the result of proposals by the Mining Regulations Advisory Committee established by the Act and was accepted by the tripartite Mine Health and Safety Council which is also established by the Act.

The main objects of the Bill are—

- (a) to provide for the implementation of a system of administrative fines to elevate the promotion and protection of the health and safety of all persons working at a mine and the repeal of sections 86(2) and (3) which becomes redundant if such a system is implemented;
- (b) to bring the Act into line with other labour related Acts regarding employers and to provide for responsibilities regarding health and safety at mines for employers who are not the owner of a mine;
- (c) to transfer some of the responsibilities of managers to employers;
- (d) to provide for the liability of employers who are body corporate;
- (e) to restrict the obligation on employers to arrange for exit medical examinations of employees whose employment at a mine are terminated to those employees who were subject to medical surveillance; and
- (f) to provide that any regulation made or deemed to be made under the Minerals Act, 1991 (Act No. 50 of 1991), which relate to health and safety issues that can be regulated under the Act may be amended in terms of the Act and that any regulation so amended remains in force until it is repealed under the Act.

In the opinion of the Department and the State Law Advisers this Bill must be dealt with in terms of section 75 of the Constitution.