

REPUBLIC OF SOUTH AFRICA

OCCUPATIONAL DISEASES IN MINES AND WORKS AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No 23696 of 8 August 2002)
(The English text is the official text of the Bill)*

(MINISTER OF HEALTH)



[B 39—2002]

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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 Occupational Diseases in Mines and Works Act, 1973, so as to provide that if a person was medically examined within a period of 24 months immediately preceding an application for medical examination, the Director of the Medical Bureau for Occupational Diseases may refuse that person's application for medical examination; and to provide for matters incidental thereto.

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

Amendment of section 32 of Act 78 of 1973

1. Section 32 of the Occupational Diseases in Mines and Works Act, 1973 (hereinafter referred to as the principal Act), is amended by the substitution for subsection (3) of the following subsection: 5

“(3) The director may [**in his discretion**] refuse such application if the person concerned was medically examined under this Act within the period of [**six**] 24 months immediately preceding the date on which such application is received, unless the application is supported in writing by a medical practitioner.”. 10

Amendment of section 36A of Act 78 of 1973, as amended by section 11 of Act 208 of 1993

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

“(1) The owner of a controlled mine or a controlled works shall for a period of not more than two years from the date of the commencement of a compensatable disease pay the reasonable cost incurred by or on behalf of a person in his or her service, or who was in his or her service at the commencement of a compensatable disease, in respect of medical aid necessitated by such disease.”. 15

Amendment of section 124 of Act 78 of 1973, as amended by section 43 of Act 208 of 1993 20

3. Section 124(1) of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) Any person who—
(a) knowingly makes a false statement or misrepresentation or conceals any fact of material importance with intent to obtain for himself or herself, or assist 25

any other person to obtain, a certificate of fitness or any other document or advantage under this Act; [or]

- (b) forges, or alters with intent to deceive, any certificate of fitness or any other document for which provision was made in the previous Act or is made in this Act, or which was issued under the previous Act or this Act[,]; or 5
- (c) in exchange for services rendered in respect of assistance in claiming any benefit in terms of this Act, charges a fee or claims remuneration from a person who is claiming such benefit in terms of this Act which is in excess of 0,5% of the benefit awarded to such person or any amount stipulated by the Director-General, 10
- shall be guilty of an offence and liable on conviction to any penalty which may in law be imposed on a conviction of fraud.”.

Amendment of Act 78 of 1973

4. The principal Act is amended by the addition—

- (a) after “he”, wherever it appears in the Act, of “or she”; 15
- (b) after “him”, wherever it appears in the Act, of “or her”; and
- (c) after “himself”, wherever it appears in the Act, of “or herself”,
unless the context indicates otherwise.

Short title

5. This Act is called the Occupational Diseases in Mines and Works Amendment Act, 20 2002.

MEMORANDUM ON THE OBJECTS OF THE OCCUPATIONAL DISEASES IN MINES AND WORKS AMENDMENT BILL, 2002

1. SCOPE OF AMENDMENT BILL

The Occupational Diseases in Mines and Works Amendment Bill, 2002 (hereinafter referred to as "the amendment bill"), proposes amendments to the Occupational Diseases in Mines and Works Act, 1973 (Act No. 78 of 1973) (hereinafter referred to as "the principal Act").

2. AMENDMENTS TO PRINCIPAL ACT

(1) Amendment of section 32(3) of principal Act

(a) Current position

Currently section 32(3) of the principal Act provides that a director may refuse an application if the person concerned was medically examined within the period of 6 months immediately preceding the date on which such application is received, unless the application is supported in writing by a medical practitioner.

(b) New position

Section 32(3) of the principal Act is amended by extending the period from 6 months to 24 months.

(c) Reason

Occupational diseases that are currently compensatable in terms of the principal Act are:

- * Pneumoconiosis (section 1 of principal Act);
- * the joint condition of pneumoconiosis and tuberculosis (section 1 of principal Act);
- * tuberculosis which in the opinion of the certification committee is attributable to the performance of risk work..... (section 1 of principal Act);
- * permanent obstruction of the airways which in the opinion of the certification committee is attributable to the performance of risk work (section 1 of principal Act);
- * any other permanent disease of the cardio-respiratory organs which in the opinion of the certification committee is attributable to the performance of risk work (section 1 of principal Act);
- * progressive systemic sclerosis which in the opinion of the certification committee is attributable to the performance of risk work (section 1 of principal Act); and
- * platinum salt sensitivity (platinoisis) (Notice. No. 1209 of 9 June 1989).

Currently in terms of section 32(1) of the Act a person, whether he or she works or has worked at a mine or works, may apply to the director to be medically examined in order to determine—

- (a) whether he is suffering from a compensatable disease; or
- (b) if he or she has previously been found to be suffering from such a disease, the degree of such disease.

Currently section 32(3) of the principal Act determines that the director can refuse an application referred to in subsection (1) if the person concerned was medically examined within a period of 6 months immediately preceding the date on which such application is received by the director. The reason for the minimum period of 6 months was that compensatable diseases take a long time to develop and consequently take a long time before changing a person's degree of disability.

Since 1973 section 32 of the principal Act has not been amended. Research, WHO guidelines on public health surveillance and International Labour Organisation standards have indicated that the period of 6 months is, however, too short and needs to be extended to 24 months due to—

- (a) the slow progression of compensatable diseases; and
- (b) the fact that X-rays are used to determine the degree of a compensatable disease and the frequent use of X-rays every 6 months negatively affects a person's health.

(2) Amendment of section 36A of the principal Act

(a) Current position

Currently section 36A of the principal Act provides that the owner of a controlled mine or a controlled works shall for a period of not more than two years from the date of the commencement of a compensatable disease pay the reasonable cost incurred by or on behalf of a person in his or her service in respect of medical aid necessitated by such disease.

(b) New position

Section 36A of the principal Act is amended to provide that the owner of a controlled mine or a controlled works shall for a period of not more than two years from the date of the commencement of a compensatable disease pay the reasonable cost incurred by or on behalf of a person in his or her service, or who was in his or her service at the commencement of a compensatable disease, in respect of medical aid necessitated by such disease.

(c) Reason

Currently in terms of section 36A(1) an owner of a controlled mine or works only has to pay for a period of not more than two years from the date of the commencement of a compensatable disease the reasonable costs incurred by or on behalf of a person who contracted a compensatable disease in that mine or works while such person is in the service of that mine or works. The expression "or who was in his or her service at the commencement of a compensatable disease" is inserted to ensure that even if a miner leaves the mine or works where he contracted a compensatable disease, such mine or works continues to pay the reasonable costs for such period.

(3) Amendment of section 124(1) of the principal Act

(a) Current position

Currently section 124(1) determines two acts that shall cause a person to be guilty of an offence.

(b) New position

Section 124(1) of the principal Act is amended by inserting an additional paragraph (c), which determines that a person who in exchange for services rendered in respect of assistance in claiming any benefit of this Act, charges a fee or claims a remuneration from a person who is claiming such benefits in terms of this Act which is in excess of 0,5% of the benefit awarded to such person or any amount stipulated by the Director-General, shall be guilty of an offence.

(c) Reason

Paragraph (c) is inserted due to problems experienced by the Compensation Commissioner with so-called commissioner or community representatives and attorneys who by assisting people in claiming benefits in terms of the Act end up taking the bulk of compensation money issued to such people.

Note: "benefit" is defined in section 1 of the principal Act to mean money which has been awarded or which is required to be awarded or money which has been paid or which is required to be paid or the payment of money or a claim for the payment of money, as the context may require, to or in respect of a person or to or in respect of the dependants of a person, on the ground that such person was under the previous Act found to be suffering from pneumoconiosis or tuberculosis, or has under this Act been

found to be suffering from a compensatable disease, but does not include money awarded under the previous Act or this Act to a person in the form of a special grant or in the form of assistance in connection with the training of any person.

Many people who have received benefits ended up receiving a small amount of such benefit due to so-called commissioner or community representatives and attorneys taking a large part of such benefit as a fee. The new paragraph (c) prohibits any person who assists in claiming any benefit from charging a fee or claiming remuneration in excess of 0,5% of the benefit awarded or any amount determined by the Director-General by notice in the *Gazette*.

3. FINANCIAL IMPLICATIONS FOR STATE

The amendment bill has no financial implications for the State in addition to the publication cost.

4. COMMUNICATIONS IMPLICATIONS

The amendment bill has no communication implications in addition to—

- (a) the commencement of the amendment bill as an Act of Parliament being published in the *Government Gazette*; and
- (b) informing all stakeholders of the publication of the amendment bill as an Act of Parliament and the commencement thereof.

5. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The amendment bill has no organisational or personnel implications.

6. CONSULTATION

The following parties were consulted:

- * National Union of Mine Workers (NUM);
- * Mine Workers Union;
- * Chamber of Mines;
- * Department of Minerals and Energy; and
- * Compensation Commissioner for Occupational Diseases.

7. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Health are of the opinion that the amendment bill must be dealt with in accordance with section 75 of the Constitution.