

REPUBLIC OF SOUTH AFRICA

MINE HEALTH AND SAFETY AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No. 51390 of
14 October 2024)
(The English text is the official text of the Bill)*

(MINISTER OF MINERAL AND PETROLEUM RESOURCES)

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

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

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

“(2) Every employer must ensure that suitable and sufficient quantities of all necessary personal protective equipment are available to enable every employee who is required to use that equipment to use such equipment effectively for personal protection.”; and

(b) by the addition after subsection (3) of the following subsection:

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

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

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

5. Section 7 of the principal Act is hereby amended by the addition after subsection (5) of the following subsection:

“(6) Where an appointment as contemplated in subsections (2) and (4) is not made, the employer must ensure that the functions of the person who should have been appointed, are performed.”.

Amendment of section 8 of Act 29 of 1996, as amended by section 8 of Act 72 of 1997

6. Section 8 of the principal Act is hereby amended by the deletion in subsection (3) of the word “and” at the end of paragraph (a), the insertion after paragraph (b) of the expression “; and”, and the addition of the following paragraph:

“(c) ensure that employees are trained on the contents of the document.”.

Amendment of section 9 of Act 29 of 1996, as amended by section 47 of Act 72 of 1997

7. Section 9 of the principal Act is hereby amended—

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

“(3) A code of practice required by the Chief Inspector of Mines in terms of subsection (2) must comply with guidelines issued by the Chief Inspector of Mines.”;

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

“(4) The employer must consult with the health and safety committee or if there is no health and safety committee at the mine, with the health and safety representatives, on the preparation, implementation or revision of any code of practice.”; and

(c) by the addition after subsection (7) of the following subsection:

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

Amendment of section 10 of Act 29 of 1996, as amended by section 47 of Act 72 of 1997 and section 3 of Act 74 of 2008

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

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

“(1) [As far as reasonably practicable, every] Every employer must—”;

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

“(2) [As far as *reasonably practicable, every*] Every *employer* must ensure that every *employee* is [properly] adequately trained, having regard to the work to be performed and the *hazards and risks* associated with that work—”;

(c) by the substitution for subsection (4) of the following subsection: 5

“(4) The *employer* must keep and make available a record of all formal training [provided] to the *inspector* in respect of each *employee* in terms of subsection (2).”; and

(d) by the addition after subsection (5) of the following subsection:

“(6) The *employer* must consult with the *health and safety committee* or if there is no *health and safety committee* at the *mine*, the *health and safety representatives* regarding the training to be provided in terms of this section.”. 10

Amendment of section 11 of Act 29 of 1996, as amended by section 47 of Act 72 of 1997 and section 4 of Act 74 of 2008 15

9. Section 11 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“(2) Every *employer*, after consulting the *health and safety committee* at the *mine* or if there is no *health and safety committee* at the *mine*, the *health and safety representatives*, must determine all measures, including changing the organisation of work and the design of safe systems of work, necessary to—”. 20

Amendment of section 12 of Act 29 of 1996, as amended by section 47 of Act 72 of 1997

10. Section 12 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading: 25

“Employer to provide mine environmental engineering and occupational hygiene management systems”;

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

“(1) The *employer* of every *mine* must appoint—
a person or additional persons qualified in mine environmental control and *occupational hygiene* if required to do so after assessing the risks in terms of section 11(1), and the *Chief Inspector of Mines* issues a written instruction to this effect.”; 30

(c) by the insertion after subsection (1) of the following subsections:

“(1A) A person appointed in terms of subsection (1) must have the qualifications as may be *prescribed* to be responsible for the *mine*’s environmental engineering and occupational hygiene management systems, and if more than one person is appointed, the *employer* must ensure that their functions do not overlap. 35

(1B) A person appointed in terms of subsection (1) must provide *mine* environmental engineering and occupational hygiene management systems, including, but not limited to, measuring and assessing levels of exposure to hazards, recommending and monitoring the effectiveness of control measures, and reporting thereon to the *employer*. 40

(1C) The *employer* must supply a person appointed in terms of subsection (1) with the means to perform their functions.”; and 45

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

“(2) Every [system of] *mine* environmental engineering and *occupational hygiene* [measurements] management system must—”. 50

Amendment of section 13 of Act 29 of 1996, as amended by section 47 of Act 72 of 1997 and section 5 of Act 74 of 2008

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

(a) by the substitution in subsection (1) for words preceding paragraph (a) of the following words: 55

- “(1) The *employer* must establish **[and]**, maintain and implement a system of *medical surveillance* of *employees* exposed to *health hazards*—”;
- (b) by the substitution in subsection (3)(a) for the words preceding subparagraph (i) of the following words: 5
- “(a) **[engage the]** appoint on a [part-time or full-time services of] part time or full time basis—”;
- (c) by the addition in subsection (3)(a) after subparagraph (i) of the following subparagraph: 10
- “(ii) in so far as it is necessary, other *occupational health practitioners* holding a valid registration with the Health Professions Council of South Africa or the South African Nursing Council.” and
- (d) by the substitution for subsection (4B) of the following subsection: 15
- “(4B) The information submitted in terms of subsection (4A) must include—
- (a) the name of **[a]** an *occupational medical practitioner*;
- (b) his or her **[practice]** professional registration number; [and]
- (c) whether the occupational medical practitioner is **[engaged]** appointed on a full time or part time basis; and
- (d) the confirmation of the registration of an *occupational health practitioner* appointed in terms of subsection (3) with the Health Professions Council of South Africa or the South African Nursing Council.” 20

Amendment of section 14 of Act 29 of 1996, as amended by section 47 of Act 72 of 1997 25

12. Section 14 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

- “(2) The *employer* must **[deliver to the *Medical Inspector* a copy of the relevant part of the record kept]** enter the information recorded in terms of subsection (1) into the *employee*’s record of medical surveillance and deliver a copy of that record to the *Medical Inspector*—” 30

Amendment of section 17 of Act 29 of 1996, as amended by section 47 of Act 72 of 1997 and section 6 of Act 74 of 2008

13. Section 17 of the principal Act is hereby amended by the deletion in subsection (4) of “and” at the end of paragraph (a), the insertion of the expression “; and” at the end of paragraph (b), and the addition of the following paragraph: 35

- “(c) immediately inform the *employee*, in writing, of the right to appeal to the *Medical Inspector* within 30 days against any decision or finding.”

Insertion of section 19A in Act 29 of 1996

14. The following section is hereby inserted in the principal Act after section 19: 40

“Findings of unfitness to work

19A. The *employer* must, within seven days of any decision that an *employee* is unfit to perform any category of work, notify the *employee*, in writing, that he or she has been found unfit to perform work and that the *employee* has the right to lodge an appeal against the decision with the *Medical Inspector* within a period of 30 days after receiving notice of the decision.” 45

Amendment of section 20 of Act 29 of 1996, as amended by sections 11 and 47 of Act 72 of 1997 and section 7 of Act 74 of 2008

15. Section 20 of the principal Act is hereby amended— 50

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

“(2A) The *Medical Inspector* must, within seven days after receiving an appeal as contemplated in subsection (1), confirm receipt of the appeal to the *employee* and notify the *employer*, in writing, of such appeal.

(2B) The *employer* must, within 10 working days after a notification of an appeal, submit, in consultation with the *occupational medical practitioner*, a report to the *Medical Inspector* in the *prescribed* form and manner detailing the reasons for declaring the *employee* unfit in terms of section 19A.”;

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

“(3) When the *Medical Inspector* receives an appeal [under] as contemplated in subsection (1), the *Medical Inspector* [must] may choose a suitably qualified independent [medical health practitioner who is not employed by the employer of the employee, and arrange for that employee to be re-examined by that medical practitioner] health professional for assessment, at the cost of the *Chief Inspector of Mines*.”;

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

“(4) The [medical practitioner] health professional 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, and notify the *employer* and *employee* of such decision or finding.”;

(d) by the substitution in subsection (5) for paragraph (a) of the following paragraph:

“(a) obtaining and paying for a medical opinion from any other [medical practitioner] health professional; or”;

(e) by the insertion after subsection (5) of the following subsection:

“(5A) A health professional consulted by an employee at own cost must provide reports of their findings to the Medical Inspector in line with subsection (4), subject to prior consent by the employee.”.

Amendment of section 29 of Act 29 of 1996

16. Section 29 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) At a *mine* referred to in section 25(1), the *employees* in a designated *working place* [may] must elect from among themselves *health and safety representatives*.”.

Amendment of section 42 of Act 29 of 1996, as amended by sections 18 and 47 of Act of 1997 and section 10 of Act 74 of 2008

17. Section 42 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The *Council* consists of—

(a) five [members] persons representing *employers* in the mining industry;

(b) five [members] persons representing *employees* in the mining industry;

(c) four [members] persons representing departments of the State; and

(d) the *Chief Inspector of Mines*, who must chair the *Council*.”.

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

18. Section 47 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1)[(a) A juristic person to be known as the] The Mine Health and Safety Inspectorate is hereby established.

[(b) The Public Finance Management Act, 1999 (Act No. 1 of 1999), applies to the Inspectorate.]”.

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

19. Section 49 of the principal Act is hereby amended—
- (a) by the deletion in subsection (4) of paragraphs (f), (g), (k) and (l); and
 - (b) by the addition after subsection (6) of the following subsection: 5
 - “(7) The *Chief Inspector of Mines* may issue instructions or directives on any matter affecting the *health* and *safety* of—
 - (a) employees at the *mines*; or
 - (b) any persons who are not *employees*, but who may be directly affected by the activities at the *mines*.”. 10

Repeal of sections 49A and 49B of Act 29 of 1996, as inserted by section 15 of Act 74 of 2008

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

Amendment of section 50 of Act 29 of 1996, as amended by section 47 of Act 72 of 1997 and section 16 of Act 74 of 2008 15

21. Section 50 of the principal Act is hereby amended—
- (a) by the substitution for subsection (7A) of the following subsection:
 - “(7A) An inspector may, in order to collect or secure evidence for purposes of an investigation in terms of section 60 or an inquiry in terms of section 65—
 - (a) impose a prohibition on the functioning of any site at a mine where—
 - (i) a person has died;
 - (ii) a *serious injury* or *serious illness* to a person has occurred; or
 - (iii) a *health* threatening occurrence has occurred; and
 - (b) block, bar, barricade or cordon off the site in such a manner as the *inspector* may consider necessary.”; and
 - (b) by the insertion after subsection (7A) of the following subsections: 20
 - “(7B) An inspector may— 25
 - (a) impose the prohibition contemplated in subsection (7A) orally or in writing; or
 - (b) revoke the prohibition if the *inspector* has reason to believe that—
 - (i) the necessary evidence has been collected or secured; and
 - (ii) the investigation or inquiry will not be jeopardised by the further functioning of the site.
 - “(7C) If the prohibition is issued orally, the *inspector* must confirm it in writing to a person contemplated in section 54(2).”.

Amendment of section 54 of Act 29 of 1996, as amended by sections 23 and 47 of Act 72 of 1997 and section 17 of Act 74 of 2008 40

22. Section 54 of the principal Act is hereby amended by the substitution for subsections (5) and (6) of the following subsections, respectively:
- “(5) Any instruction issued under subsection (1)(a) must either be confirmed, varied or set aside by the [*Chief Inspector of Mines*] *Principal Inspector of Mines* as soon as practicable. 45
 - (6) Any instruction issued under subsection (1)(a) is effective from the time fixed by the *inspector* and remains in force until set aside by the [*Chief Inspector of Mines*] *Principal Inspector of Mines* or until the *inspector's* instructions have been complied with.”.

Amendment of section 57 of Act 29 of 1996, as amended by section 27 of Act 72 of 1997 and section 21 of Act 74 of 2008 50

23. Section 57 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:

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

(b) by the addition after subsection (3) of the following subsection: 5

“(4) Subject to section 7(2)(c) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), a person may not apply to the Labour Court for the review of an administrative decision in terms of this Act, except a decision contemplated in section 55B, until that person has exhausted the appeal process contemplated in this section.”. 10

Amendment of section 72 of Act 29 of 1996, as amended by section 47 of Act 72 of 1997

24. Section 72 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The *Chief Inspector of Mines* may submit a copy of the report to the appropriate [Attorney-General] Deputy Director of Public Prosecutions.”. 15

Amendment of section 75 of Act 29 of 1996

25. Section 75 of the principal Act is hereby amended by the substitution in subsection 1(b) for subparagraph (i) of the following subparagraph:

“(i) published a draft of the proposed notice [at least three months previously]; and”. 20

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

26. Section 76 of the principal Act is hereby amended by the substitution in subsection 1(b) for subparagraph (i) of the following subparagraph: 25

“(i) published a draft of the proposed notice [at least three months previously]; and”.

Amendment of section 85 of Act 29 of 1996

27. Section 85 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading: 30

“**Juvenile employment in [underground] mines prohibited**”; and

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

“(1) No person may cause or permit [an employee] any person under the age of 18 years to work [underground] at a mine. 35

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

(3) Despite subsections (1) and (2), [an employee] any person under the age of 18 years, but over the age of 16 years, may [work underground] participate for a limited period in an internship programme at a mine as part of vocational education or training: Provided that the employer must provide additional safety measures to ensure the environment at a mine is appropriate and safe for such person.”. 40

Substitution of section 86A of Act 29 of 1996, as inserted by section 26 of Act 74 of 2008 45

28. The following section is hereby substituted for section 86A of the principal Act:

“**Criminal liability**

86A. (1) An employer commits an offence if the employer contravenes or fails to comply with a duty in terms of Chapter 2, which results in— 50

(a) a person’s death;

- (b) serious injury or *serious illness* to a person; or
- (c) *health-threatening occurrence*.

(2) An *employer* commits an offence in terms of subsection (1) even if the act or omission fell within the scope of the authority or employment of the *chief executive officer, manager, agent or employee* concerned, if the *employer*—

- (a) conspired with the *chief executive officer, manager, agent or employee* concerned in the action or omission; or
- (b) did not take all reasonable steps to prevent the act or omission, and thereby causing the death, injury, illness or occurrence, as the case may be.

(3) For the purposes of subsection (2)—

- (a) the fact that the *employer* issued instructions prohibiting the act or omission is not in itself sufficient proof that all reasonable steps were taken to prevent the act or omission; and
- (b) where the offence is committed by an *employee*, unless it is proved that—
 - (i) in the act or omission, the *employee* was acting without the connivance or permission of the *employer*;
 - (ii) the act or omission, whether lawful or unlawful, was outside the scope of the authority of the *employee*; and
 - (iii) all reasonable steps were taken by the *employer* to prevent any act or omission of the kind in question,
 it is sufficient proof that the *employer* committed the offence.”.

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

29. Section 92 of the principal Act is hereby amended—

- (a) by the insertion after subsection (6) of the following subsection:

“(6A) An *employer* who is convicted of an offence in terms of section 86 or 86A, may be sentenced to a fine not exceeding 10% of the *employer’s* annual turnover.”; and

- (b) by the addition after subsection (7) of the following subsection:

“(8) Notwithstanding the penalties in this Act, any *employer* convicted of an offence in terms of any section of this Act may be sentenced to a fine not exceeding 10% of the *employer’s* annual turnover in the preceding financial year as reflected in the last available financial statements, in the Republic, or the *employer’s* exports from the Republic, whichever is greater, or to imprisonment, taking into consideration factors, including, but not limited to, the interest of justice, nature and extent of the offence, repeat offence or previous non-compliance.”.

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

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

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

“‘**board**’ means a board of directors of a company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008);”;

- (b) by the insertion after the definition of “Commission” of the following definition:

“‘**company**’ means a company as defined in section 1 of the Companies Act, 2008;”;

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

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

- (d) by the substitution for the definition of “employee” of the following definition:

“**‘employee’** means any person who is employed by the *employer* or *owner* of a reconnaissance permission, prospecting right, mining right or mining permit, and who is entitled to receive remuneration, and includes any *employee* working at or in a *mine*, including any person working for an independent contractor;”;

- (e) by the substitution for the definition of “employer” of the following definition:

“**‘employer’** means

(a) in relation to a *mine*—

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

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

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

(b) in relation to works, the person who is undertaking the activities contemplated in the definition of ‘works’, but excluding an independent contractor;”;

- (f) by the insertion after the definition of “engine” of the following definition:
 “**‘formal training’** means any relevant training contemplated in section 10(2), which must be properly structured, documented and assessed, and is aimed at achieving adequate levels of *safety* and *health*;”;

- (g) by the substitution for the definition of “inspector” of the following definition:

“**‘inspector’** means an *officer* appointed in terms of section 49(1)(c) [, a **Medical Inspector and any Principal Inspector of Mines**];”;

- (h) by the insertion after the definition of “mine” of the following definition:
 “**‘mine environmental engineer’** means a competent person qualified in *mine* environmental control techniques, appointed in terms of section 12(1) of this Act;”;

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

“**‘mining area’** means—

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

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

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

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

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

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

(e) the buildings, structures, machinery, residue deposits, residue stockpiles or objects situated on or in such area or land contemplated in paragraphs (a) and (b);”;

- (j) by the substitution for the definition of “Minister” of the following definition:
 “**‘Minister’** means the Minister [**of Minerals and Energy**] responsible for mineral and petroleum resources”;
- (k) by the insertion after the definition of “occupational health” of the following definitions, respectively: 5
 “**‘occupational health practitioner’** means a person who holds a qualification in *occupational health* recognised by the South African Nursing Council;
‘occupational hygiene officer’ means a competent person qualified in *occupational hygiene* techniques, appointed in terms of section 12(1);” 10
- (l) by the substitution for the definition of “Principal Inspector of Mines” of the following definition:
 “**‘Principal Inspector of Mines’** means [**the**] an officer appointed by the [**Chief Inspector of Mines**] Minister to be in charge of *health* and *safety* in any region established in terms of section 47(2);” 15
- (m) by the deletion of the definition of “Public Finance Management Act”; and
- (n) by the insertion after the definition of “serious illness” of the following definition:
 “**‘South African Nursing Council’** means the South African Nursing Council referred to in section 2 of the Nursing Act, 2005 (Act No. 33 of 2005);” 20

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

31. Schedule 4 to the principal Act is hereby amended by the deletion of item 7.

Amendment of item 1 of Schedule 6 to Act 29 of 1996, as added by Government Notice No. R.1317 in Government Gazette 19352 of 10 October 1997, amended by Government Notice No. R.1575 in Government Gazette 24168 of 13 December 2002, and amended by section 34 of Act 74 of 2008 25

32. Item 1 of Schedule 6 to the principal Act is hereby amended by the substitution for subitem (1) of the following subitem: 30

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

Amendment of item 5 of Schedule 6 to Act 29 of 1996, as added by Government Notice No. R.1317 in Government Gazette 19352 of 10 October 1997, amended by Government Notice No. R.1575 in Government Gazette 24168 of 13 December 2002, and amended by section 34 of Act 74 of 2008 35

33. Item 5 of Schedule 6 to the principal Act is hereby amended—

(a) by the substitution in subitem (3) for the words preceding paragraph (a) of the following words: 40

“(3) The Safety and Health in Mines Research Advisory Committee must advise the *Council* on—”; and

(b) by the substitution in subitem (4) for the words preceding paragraph (a) of the following words: 45

“(4) The Safety and Health in Mines Research Advisory Committee must prepare the programme for relevant *health* and *safety* research for the *Council* to consider. The programme must include—”.

Amendment of item 8 of Schedule 6 to Act 29 of 1996, as added by Government Notice No. R.1317 in Government Gazette 19352 of 10 October 1997, amended by Government Notice No. R.1575 in Government Gazette 24168 of 13 December 2002, and amended by section 34 of Act 74 of 2008 50

34. Item 8 of Schedule 6 to the principal Act is hereby amended—

(a) by the substitution for subitems (1) and (2) of the following subitems, respectively: 55

- “(1) The *Council* consists of—
- (a) five **[members]** persons representing *employers* in the mining industry;
 - (b) five **[members]** persons representing *employees* in the mining industry; 5
 - (c) four **[members]** persons representing departments of State; and
 - (d) The *Chief Inspector of Mines*, who must chair the *Council*.
- (2) Every *committee* consists of—
- (a) five **[members]** persons representing *employers* in the mining industry; 10
 - (b) five **[members]** persons representing *employees* in the mining industry;
 - (c) four **[members]** persons representing departments of State; and
 - (d) an *officer* of the Mine Health and Safety Inspectorate who must chair the committee.”; and 15
- (b) by the addition after subitem (4) of the following subitem:
- “(5) Persons appointed in the *Council* and their alternatives must serve for a period of three years, which is renewable only once for another period of three years.”.
- 20

Insertion of item 8A in Schedule 6 to Act 29 of 1996, as added by Government Notice No. R.1317 in *Government Gazette* 19352 of 10 October 1997, amended by Government Notice No. R.1575 in *Government Gazette* 24168 of 13 December 2002, and amended by section 34 of Act 74 of 2008 25

35. The following item is hereby inserted in Schedule 6 to the principal Act after item 8:

“Qualifications of Members 30

8A. A member of the *Council* must—

- (a) be a fit and proper person to hold office;
- (b) possess appropriate skills, experience and relevant industry knowledge; 35
- (c) meet the diversity requirements relating to the composition of the *Council*; and
- (d) possess the ability to act in the public interest.”.

Amendment of Schedule 8 to Act 29 of 1996, as inserted by section 33 of Act 74 of 2008 40

36. Schedule 8 to the principal Act is hereby amended by the substitution for Table 1 of the following Table: 45

“Number	Column 1 Section under which convicted	Column 2 Maximum fine and term of imprisonment	
<u>1.</u>	2	R[1]4 000 000 or [5 yrs] <u>five years</u> imprisonment	50
<u>2.</u>	2A	R4 000 000 or [5 yrs] <u>five years</u> imprisonment	
<u>3.</u>	3	R4 000 000 or [5] <u>five years</u> imprisonment	
<u>4.</u>	5	R4 000 000 or [5 yrs] <u>five years</u> imprisonment	55
<u>5.</u>	6	R4 000 000 or [5 yrs] <u>five years</u> imprisonment	
<u>6.</u>	7(1)	R4 000 000 or [5 yrs] <u>five years</u> imprisonment	
<u>7.</u>	10	R4 000 000 or [5 yrs] <u>five years</u> imprisonment	60
<u>8.</u>	11	R4 000 000 or [5 yrs] <u>five years</u> imprisonment	

<u>“Number</u>	Column 1 Section under which convicted	Column 2 Maximum fine and term of imprisonment	
<u>9.</u>	<u>11A</u>	<u>R4 000 000 or five years imprisonment</u>	5
<u>10.</u>	15	R500 000 or five years imprisonment	
<u>11.</u>	16	R500 000 or five years imprisonment	
<u>12.</u>	<u>19A</u>	<u>R1 000 000 or five years imprisonment</u>	10
<u>13.</u>	21(1), (3) or (4)	R500 000 or five years imprisonment	
<u>14.</u>	22	R200 000 or two years imprisonment	
<u>15.</u>	<u>23</u>	<u>R200 000 or two years imprisonment</u>	15
<u>16.</u>	24	R500 000 or five years imprisonment	
<u>17.</u>	52	R200 000 or two years imprisonment	20
<u>18.</u>	53	R200 000 or two years imprisonment	
<u>19.</u>	62	R200 000 or two years imprisonment	
<u>20.</u>	66(3)	R200 000 or two years imprisonment	25
<u>21.</u>	70	R200 000 or two years imprisonment	
<u>22.</u>	71	R200 000 or two years imprisonment	
<u>23.</u>	<u>83</u>	<u>R200 000 or two years imprisonment</u>	30
<u>24.</u>	84	R200 000 or two years imprisonment	
<u>25.</u>	85	R200 000 or two years imprisonment	35
<u>26.</u>	87, 88, 89 and 90	[R50 000] <u>R130 000</u> or six months imprisonment	
<u>27.</u>	88	[R300 000 or six months imprisonment] <u>Individual offender R 800 000 or three years imprisonment</u> <u>In case of a corporation as an offender R8 000 000</u>	40

Short title and commencement

45

37. (1) This Act is called the Mine Health and Safety Amendment Act, 2026, and takes effect on a date to be determined by the President by proclamation in the *Gazette*.

(2) Different dates may be determined in respect of the coming into operation of different sections in the Mine Health and Safety Amendment Act, 2026.

50

55

60

MEMORANDUM ON THE OBJECTS OF THE MINE HEALTH AND SAFETY AMENDMENT BILL, 2026

1. BACKGROUND

- 1.1 The setting, monitoring and enforcement of health and safety standards within the South African mining industry are regulated under the Mine Health and Safety Act, 1996 (Act No. 29 of 1996) (the “MHSA”). The Department of Mineral and Petroleum Resources (the “DMPR”) has embarked on a process of reviewing and proposing amendments to the MHSA. The MHSA has been amended by the Mine Health and Safety Amendment Act, 1997 (Act No. 72 of 1997) and the Mine Health and Safety Amendment Act, 2008 (Act No. 74 of 2008), respectively. The MHSA promotes the objective of protecting the health and safety of persons at mines.
- 1.2 The MHSA is premised on the principle that the responsibility for health and safety in mines lies with the employers who are the owners of the mines, hence the outcome-based approach, which focuses on outputs (results) rather than a rule driven and prescriptive approach of the previous regulatory system under the now repealed Minerals Act, 1991 (Act No. 50 of 1991).
- 1.3 The enforcement and ordering of compliance within the MHSA forms the core business of the Mine Health and Safety Inspectorate (the “MHSI”), a core branch within the DMPR. In enforcing the MHSA, the Chief Inspector of Mines and various other inspectors have wide statutory powers. Inspectors are empowered to enter a mine at any time and conduct inspections for the purpose of monitoring or enforcing compliance. If the conditions do not meet the requirements of the MHSA, they may order compliance and request that conditions be improved. It is further within their powers to recommend prosecution when an offence has been committed.

2. OBJECTS OF BILL

- 2.1 The Mine Health and Safety Amendment Bill, 2026 (the “Bill”), seeks to further amend the MHSA so as to substitute, amend and add certain definitions and expressions to remove ambiguities, and to effect certain amendments necessary to ensure consistency with other laws, particularly the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002). It also seeks to amend and review the enforcement provisions, simplify the fine system and strengthen offences and penalties to ensure that they serve as deterrent for non-compliance.
- 2.2 The Bill further seeks to harmonise the administrative processes in the MHSA with sound administrative practices, taking into consideration the objects of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

3. SUMMARY OF BILL

- 3.1 Occupational health and safety policy, prevention, research and enforcement arrangements within the mining industry in South Africa are regulated under the MHSA. The MHSA is administered by the DMPR through the MHSI.
- 3.2 The MHSA was published in the Government *Gazette* No. 17242 of June 1996, commenced on 15 January 1997 and has been in place for a period of over 10 years. Over the years, with the developments in the industry, some challenges and shortcomings relating to the enforcement of the MHSA had been identified.
- 3.3 The Bill is of high priority to the DMPR and Government in general, especially in light of the challenges relating to health and safety and the urgent need to improve health and safety standards in order to curb the high number of fatalities that the industry experiences from time to time. The amendment is essential to ensure the effective implementation, enforcement and

improvement of health and safety standards at mines, thereby reducing fatality rates and occupational diseases.

- 3.4 The purpose of the Bill is therefore to address not only the provisions relating to offences and penalties, but to align the MHSA to other pieces of legislation enacted post 1996 and that impact on the implementation of the MHSA, such as the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), and the Companies Act, 2008 (Act No. 71 of 2008), to name a few.

3.5 **DISCUSSION OF CLAUSES**

3.5.1 **CLAUSE 1**

Clause 1 amends section 2 of the MHSA by the insertion of the word “company”, in order to align the MHSA with the Companies Act, 2008.

3.5.2 **CLAUSE 2**

Clause 2 amends section 2A of the MHSA to provide for the appointment of a Chief Executive Officer.

3.5.3 **CLAUSE 3**

Clause 3 amends section 3 of the MHSA by the deletion of subsection (3). This is to ensure that the employer must perform the function of the manager in terms of the Act, if the manager is not appointed.

3.5.4 **CLAUSE 4**

Clause 4 amends section 6 of the MHSA to ensure that employers provide a variety of personal protective equipment for employees to accommodate all the staff, including women.

3.5.5 **CLAUSE 5**

Clause 5 amends section 7 of the MHSA to provide that the employer must ensure that if no manager or person is appointed to perform functions, the employer has a responsibility to perform those duties.

3.5.6 **CLAUSE 6**

Clause 6 proposes an amendment to section 8 of the MHSA to ensure that the employer prominently and conspicuously displays the document that contains information regarding the organisation of work and the protection of employees’ health and safety.

3.5.7 **CLAUSE 7**

Clause 7 proposes an amendment to section 9 of the MHSA to ensure that the employer prepares and implements a code of good practice in respect of health and safety matters at a mine.

3.5.8 **CLAUSE 8**

Clause 8 amends section 10 of the MHSA in order to place an obligation on employers to prioritise the provision of health and safety training at mines.

3.5.9 CLAUSE 9

Clause 9 amends section 11 of the MHSa to ensure that a consultation process is followed by the employer prior to making a determination on the organisation of work and the design of safe systems of work.

3.5.10 CLAUSE 10

Clause 10 amends section 12 of the MHSa to place an obligation on the employer to provide mine environmental engineering and occupational hygiene services, and the amendment further expands on the appointment and functions of a person qualified in mine environmental control and occupational hygiene.

3.5.11 CLAUSE 11

Clause 11 amends section 13 of the MHSa to allow an employer to conduct medical surveillance in conjunction with an Occupational Medical Practitioner. The proposed amendment further seeks to substitute the requirement of a practice number with a professional registration number for uniformity. The proposed amendment further seeks to ensure that the employer issues a certificate of fitness during initial and exit medical examinations.

3.5.12 CLAUSE 12

Clause 12 amends section 14 of the MHSa to provide that the employer must enter the information recorded in the service record of an employee in terms of section 14(1) of the MHSa into the *employee's* record of medical surveillance and deliver a copy of that record to the Medical Inspector.

3.5.13 CLAUSE 13

Clause 13 amends section 17 of the MHSa to provide that the employer must immediately inform an employee in writing of the right to appeal a termination of his or her employment at a mine as a result of the outcome of medical surveillance. The clause further provides for the necessary timeframes in respect of the appeal process.

3.5.14 CLAUSE 14

Clause 14 inserts a new section 19A into the MHSa to provide for the employer to inform the employee of a finding of unfitness to work and the right to lodge an appeal against this decision within seven days.

3.5.15 CLAUSE 15

Clause 15 amends section 20 of the MHSa to provide for an employee to lodge an appeal of a finding of unfitness to work with the Medical Inspector and for the processing of the appeal.

3.5.16 CLAUSE 16

Clause 16 amends section 29 of the MHSa to make it mandatory for employees to elect a health and safety representative in a designated workplace.

3.5.17 CLAUSE 17

Clause 17 amends section 42 of the Act by the substitution of the word “members” with the word “persons” in the composition of the Mine Health and Safety Council.

3.5.18 CLAUSE 18

Clause 18 amends section 47 of the MHS Act by deleting provisions relating to the establishment of Mine Health and Safety Inspectorate (the “Inspectorate”) as juristic person. The juristic person was envisaged to improve the health and safety of mineworkers, reduce fatalities, injuries and occupational diseases through less red tape. However, the decision was never implemented and operationalised as the Department decided to retain the Inspectorate as a branch within the Department. The Director General is the accounting officer.

3.5.19 CLAUSE 19

Clause 19 amends section 49 of the MHS Act to further delete provisions relating to the establishment of Mine Health and Safety Inspectorate as juristic person, and to provide for the Chief inspector of Mines to issue instructions or directives on matters affecting the health and safety of employees at mines who are not employees, but who may be directly affected by the activities of mines. Currently the function envisaged to establish the MHSI as a juristic person is being realised by the MHSI within the Department.

3.5.20 CLAUSE 20

Clause 20 repeals sections 49A and 49B of the MHS Act, which provide for the financial and judicial management of the Mine Health and Safety Inspectorate and Cooperative governance, respectively. There were also no liabilities and assets, therefore no transitional arrangements required.

3.5.21 CLAUSE 21

Clause 21 amends section 50 of the MHS Act to enhance the powers of the inspector on investigations and inquiries to secure evidence collected on the site of the accident. Subsection (7A) is re-introduced after it was excluded in the Mine Health and Safety Amendment Act, 2008 (Act No. 74 of 2008), and a subsequent proposal was made to put it into operation by proclamation later.

3.5.22 CLAUSE 22

Clause 22 amends section 54 of the MHS Act. Section 54 is amended by substituting the expression “Chief Inspector of Mines” with the expression “Principal Inspector of Mines”, to clarify their respective roles.

3.5.23 CLAUSE 23

Clause 23 amends section 57 of the MHS Act to provide clarity in respect of the appeal process against administrative fine decisions.

3.5.24 CLAUSES 24, 25 AND 26

Clauses 24, 25 and 26 amend sections 72, 75 and 76 of the MHS Act, respectively, to provide for matters related to inquiries conducted in terms of the MHS Act, more specifically the manner in which a matter is referred to the Deputy Director of Public Prosecutions and the manner

in which the Minister is to publish a notice in situations where dangerous conditions or health hazards occurred.

3.5.25 CLAUSE 27

Clause 27 amends section 85 to prohibit the employment at mines of persons who are under the age of 18 years.

3.5.26 CLAUSE 28

Clause 28 substitutes the existing section 86A of the MHSA to provide clarity on an employer whose actions are regarded as a negligent act or omission. Section 86A is re-introduced after it was excluded from the amendments in the Mine Health and Safety Amendment Act, 2008, and a subsequent proposal was made to put it into operation by proclamation later.

3.5.27 CLAUSE 29

Clause 29 amends section 92 of the MHSA to strengthen the penalty provisions.

3.5.28 CLAUSE 30

Clause 30 amends section 102 of the MHSA by the insertion, addition and substitution of certain definitions to remove ambiguities and to provide legal certainty.

3.5.29 CLAUSE 31

Clause 31 amends Schedule 4 item 7 to the MHSA.

3.5.30 CLAUSE 32

Clause 32 amends item 1 to Schedule 6 of the MHSA to amend the wording to reflect the establishment of the Mining Occupational Health Advisory Committee and the Safety and Health in Mines Research Advisory Committee, which replaces the Safety in Mines Research Advisory Committee by section 41(1) and (2) of the MHSA.

3.5.31 CLAUSE 33

Clause 33 amends item 5 of Schedule 6 to the MHSA to provide further for the Safety and Health in Mines Research Advisory Committee, which replaces the Safety in Mines Research Advisory Committee.

3.5.32 CLAUSE 34

Clause 34 amends item 8 of the Schedule 6 to the MHSA to provide for the amended composition of the Mine Health and Safety Council and the term of office of its members.

3.5.33 CLAUSE 35

Clause 35 inserts a new item 8A into Schedule 6 to the MHSA to provide for the qualifications of the members of the Mine Health and Safety Council.

3.5.34 CLAUSE 36

Clause 36 amends Tables 1 and 2 of Schedule 8 to the MHSA, respectively by providing for additional penalties.

4. DEPARTMENTS OR BODIES CONSULTED

The proposed amendment to the MHSA was consulted on with all stakeholders within the Department, and the amendments were fully supported. Government Departments were also consulted during the publication process especially those affected such as—

- Department of Forestry Fisheries and Environment
- National Treasury
- Economic Sector Employment and Infrastructure Cluster Departments
- Department of Labour and Employment
- Department of Education

The Amendment Bill was referred to NEDLAC. Other stakeholders within the mining and minerals sector were also consulted on the proposed amendment of the MHSA.

5. FINANCIAL IMPLICATIONS FOR STATE

The Bill will not have any organisational and personnel implications for the Department and does not create any financial liabilities to the state.

6. PARLIAMENTARY PROCEDURE

- 6.1 The Constitution regulates the manner in which legislation may be enacted by the legislature and thus prescribes the different procedures to be followed for such enactment. The national legislative process is governed by sections 73 to 77 of the Constitution. Furthermore, Schedules 4 and Schedule 5 to the Constitution list functional areas of concurrent national and provincial legislative competence and functional areas of exclusive provincial legislative competence, respectively. It must be emphasised that the tagging of Bills is dealt with either in terms of section 75 or section 76 of the Constitution, and these sections set out the process that must be followed when a Bill is submitted for approval.
- 6.2 In terms of section 44(1)(a)(ii) of the Constitution, the national legislative authority has concurrent competence with a provincial legislative authority within a functional area listed in Schedule 4 because it may pass legislation with regard to any matter, including a matter within a functional area listed in Schedule 4, but excluding, a matter within a functional area listed in Schedule 5 of the Constitution i.e. a functional area of exclusive provincial legislative competence.
- 6.3 Section 76(3) of the Constitution states that “[a] Bill must be dealt with in accordance with the procedure established by either subsection (1) or subsection (2) if it falls within a functional area listed in Schedule 4”.
- 6.4 The test for tagging is not concerned with determining the sphere of government that has competence to legislate on a matter, nor the process concerned with preventing interference in the legislative competence of another sphere of government.¹ In *Tongoane v Minister of Agriculture and Land Affairs* 2010 (6) SA 214 (CC), the Constitutional Court ruled on the test to be used when tagging a Bill. The Court held in paragraph 70 that the “*test for determining how a Bill is to be tagged must be broader than that for determining legislative competence*”.² *Whether a Bill is a section 76 Bill is determined in two ways. First by the explicit list of legislative matters in*

1. CCT 100/09 [2010] ZACC 10.

2. *Tongoane* at paragraph 59.

*section 76(3), and second by whether the provisions of a Bill in substantial measure fall within a concurrent legislative competence.*³ The Court held⁴ that the tagging test focuses on all provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4, and not on whether any of its provisions are incidental to its substance.

- 6.5 We observed that the Bill does not provide for the amendment of the Constitution or money matters, as stated in section 77 of the Constitution and therefore we do not regard it necessary, for the purposes of this opinion, to discuss section 74 and section 77 of the Constitution.
- 6.6 We have considered all the provisions in the Bill in light of Schedules 4 and 5 to the Constitution. The Bill seeks to amend the MHSA by streamlining administrative processes, strengthening enforcement provisions, offences and penalties, and inserting and substituting certain definitions. These matters concern the regulation of the mining industry, to ensure healthy and safe employment conditions. “Mining” or “employment” is not listed as a functional area of concurrent national and provincial legislative competence as contemplated in Schedule 4 to the Constitution, neither does it affect those matters in a substantial measure. It is our view that therefore this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution.
- 6.7 The State Law Advisers and the DMRE are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or section 76 of the Constitution applies.
- 6.8 Furthermore, the State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39 of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions pertaining to traditional or Khoi-San communities or pertaining to customary law or customs of traditional or Khoi-San communities, nor any matter referred to in section 154(2) of the Constitution.

3. At paragraph 72.

4. At paragraph 59.