



employment & labour

Department:
Employment and Labour
REPUBLIC OF SOUTH AFRICA



South African Institute of
Occupational Safety and Health

South African Institute of Occupational Safety and Health Comments

Occupational Health and Safety Amendment Bill 2020 Government Gazette 44772 NO. R. 447 14 May 2021

Prepared by:

SaioSh Technical Committee Members

OCCUPATIONAL HEALTH & SAFETY ACT (85 OF 1993)	OHS AMENDMENT BILL 2020	PROPOSAL	MOTIVATION
1. Definitions –			
(1) In this Act, unless the context otherwise indicates-			
"Approved inspection authority" means an inspection authority Approved by the chief inspector: Provided that an inspection authority Approved by the chief inspector with respect to any particular service shall be an Approved inspection authority with respect to that service only;	by the substitution for the definition of "Approved inspection authority" of the following definition: " 'Approved inspection authority' <u>means an Accredited organisation, Approved by the chief inspector as an inspection authority with respect to any particular service in terms of the provision of this Act;</u> "	" 'Approved inspection authority' means a SANAS Accredited organisation, Approved by the chief inspector as an inspection authority with respect to any particular service in terms of the provision of this Act;"	There needs to be a delineation between the SAQA and SANAS accredited organisations. At the moment there is confusion for the general reader of the definition.
"biological monitoring" means a planned programme of periodic collection and analysis of body fluid, tissues, excreta or exhaled air in order to detect and quantify the exposure to or absorption of any substance or organism by persons;			
"building" includes-			
(a) any structure attached to the soil;			
(b) any building or such structure or part thereof which is in the process of being erected; or			
(c) any prefabricated building or structure not attached to the soil;			
"chief inspector" means the officer designated under section 27 as chief inspector, and includes any officer acting as chief inspector;			

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		“Competent person” means a person determined by the employer to have the relevant knowledge, experience and skill to carry out a particular task, or has a relevant qualification, which may be defined further in a regulation under this Act, or there is evidence demonstrating that the person has the required knowledge, experience and skill, and for all persons requisite levels of knowledge, experience and skill shall be commensurate with levels of risk;	Competent has been introduced as a requirement in several sections of the act, but a definition is not provided. Suggest that a general definition under the Act needs to be so wide to provide for all employers including jobs as wide as an admin worker of some sort or a domestic worker where it would be inappropriate to require SAQA qualification.
"Council" means the Advisory Council for Occupational Health and Safety established by section 2;			
"danger" means anything which may cause injury or damage to persons or property;	by the substitution for the definition of "danger" of the following definition: " ' danger ' means anything which may cause injury, <u>adverse health effects</u> or damage to persons or property;"		
"Department" means the Department of Manpower;	by the substitution for the definition of "Department" of the following definition: " ' Department ' means the Department of [Manpower] <u>Employment and Labour</u> ;"		
"employee" means, subject to the provisions of subsection (2), any person who is employed by or works for an employer and who receives or is entitled to receive any remuneration or who works	by the substitution for the definition of "employee" of the following definition: " ' employee ' means, [subject to the provisions of subsection (2),] any person who is employed by or works for an employer and who receives or is entitled	“employee” means, any person who is employed by or works for an employer and who receives or is entitled to receive any remuneration or who works under the direction or	It is critical that the word “or” is used as it creates confusion as to whether a volunteer is in fact an employee. Previously it was clear that a volunteer was not remunerated but was under the supervision of an employer. The change to “and” means that because the volunteer was not

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under the direction or supervision of an employer or any other person;	to receive any remuneration [or] and who works under the direction or supervision of an employer [or any other person] ;"		remunerated it would make them not an employee. This removes the duty of care provision for volunteers.
"employer" means, subject to the provisions of subsection (2), any person who employs or provides work for any person and remunerates that person or expressly or tacitly undertakes to remunerate him, but excludes a labour broker as defined in section 1 (1) of the Labour Relations Act, 1956 (Act No. 28 of 1956);	by the substitution for the definition of "employer" of the following definition: " 'employer' <u>means any person, institution or organisation, including government who employs and provides work to an employee, and supervises, remunerates or tacitly or expressly undertakes to remunerate such employee for services rendered by such employee.</u> ";		
"employers' organization" means an employers' organization as defined in section 1 of the Labour Relations Act, 1956 (Act No. 28 of 1956);	by the substitution for the definition of "employers' organisation" of the following definition: " 'employers' organisation' means an employers' organisation as defined in section [1] 213 of the Labour Relations Act, [1956 (Act No. 28 of 1956)] 1995 (Act No 66 of 1995);";		
"employment" or "employed" means employment or employed as an employee;			
"explosives" means any substance or article as listed in Class 1: Explosives in the South African Bureau of Standards Code of Practice for the Identification and Classification of Dangerous Substances and Goods, SABS 0228;		Refer to UN Transport of Dangerous Goods (Chapter 2.1).	This is an outdated code of practice and the definition should be aligned to the UN Transport of Dangerous Goods (Chapter 2.1). This is following the precedent that is used in the RHCA.
"hazard" means a source of or exposure to danger;			

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	" 'hazardous substance' means a <u>toxic, harmful, erosive, corrosive irritant or an asphyxiate substance or a mixture of such substances which creates a hazard to health;</u> ";	Change to definition of HCA.	This should be aligned to the UN GHS definition of HCA.
"health and safety committee" means a committee established under section 19;			
"health and safety equipment" means any article or part thereof which is manufactured, provided or installed in the interest of the health or safety of any person;			
"health and safety representative" means a person designated in terms of section 17 (1);			
"health and safety standard" means any standard, irrespective of whether or not it has the force of law, which, if applied for the purposes of this Act, will in the opinion of the Minister promote the attainment of an object of this Act;			
"healthy" means free from illness or injury attributable to occupational causes;			
"incident" means an incident as contemplated in section 24 (1);	by the substitution for the definition of "incident" of the following definition: " 'incident' means an <u>[incident] occurrence</u> as contemplated in section 24 (1);		
"industrial court" means the industrial court referred to in section 17 of the	by deletion of the definition "industrial court";		

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Labour Relations Act, 1956 (Act No. 28 of 1956);			
"inspection authority" means any person who with the aid of specialized knowledge or equipment or after such investigations, tests, sampling or analyses as he may consider necessary, and whether for reward or otherwise, renders a service by making special findings, purporting to be objective findings, as to-			
(a) the health of any person;			
(b) the safety or risk to health of any work, article, substance, plant or machinery, or of any condition prevalent on or in any premises; or			
(c) the question of whether any particular standard has been or is being complied with, with respect to any work, article, substance, plant or machinery, or with respect to work or a condition prevalent on or in any premises, or with respect to any other matter, and by issuing a certificate, stating such findings, to the person to whom the service is rendered;			
"inspector" means a person designated under section 28;			
"Listed Work" means any work declared to be Listed Work under section II;	by the substitution for the definition of "Listed Work" of the following definition: " 'Listed Work' means any work [declared to be Listed Work under section 11] <u>which poses a risk to health and safety which</u>	Change back to what is was.	The proposed change is so wide that it includes all types of work. There is no work that does not require specific precautionary measures to be implemented.

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	<u>requires specific precautionary measures to be implemented;</u> ";		
"local authority" means- (a) any institution or body contemplated in section 84 (1) (f) of the Provincial Government Act, 1961 (Act No. 32 of 1961);	by the substitution for the definition of "local authority" of the following definition: " ' local authority ' <u>means a local municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);</u> ";		
(b) any regional services council established under section 3 of the Regional Services Councils Act, 1985 (Act No. 109 of 1985);			
(c) any other institution or body or the holder of any office declared by the Minister by notice in the Gazette to be a local authority for the purposes of this Act;			
"machinery" means any article or combination of articles assembled, arranged or connected and which is used or intended to be used for converting any form of energy to performing work, or which is used or intended to be used, whether incidental thereto or not, for developing, receiving, storing, containing, confining, transforming, transmitting, transferring or controlling any form of energy;			
"major hazard installation" means an installation- (a) where more than the			

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prescribed quantity of any substance is or may be kept, whether permanently or temporarily; or (b) where any substance is produced, processed, used, handled or stored in such a form and quantity that it has the potential to cause a major incident;			
"major incident" means an occurrence of catastrophic proportions, resulting from the use of plant or machinery, or from activities at a workplace;			
"mandatary" includes an agent, a contractor or a subcontractor for work, but without derogating from his status in his own right as an employer or a user;			
"medical surveillance" means a planned programme or periodic examination (which may include clinical examinations, biological monitoring or medical tests) of employees by an occupational health practitioner or, in prescribed cases, by an occupational medicine practitioner;			
"Minister" means the Minister of Manpower;	by the substitution for the definition of "Minister" of the following definition: " ' Minister ' means the [Minister of Manpower] Labour; <u>Cabinet Member responsible for labour</u> ";		
	by the insertion after the definition of "Minister" of the following definition: " ' occupational disease ' means <u>occupational disease as defined in section</u>		

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	<u>1 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);";</u>		
	<u>'occupational health standard' means a standard, which, if applied for the purposes of this Act, will promote the occupational health of employees or the health of any other person in terms of this Act;";</u>	Delete definition.	The definition is not used in the ACT and is already provided for by the definition of standard.
"occupational health" includes occupational hygiene, occupational medicine and biological monitoring;			
		"occupational health and safety practitioner" - a person who is registered with a SAQA recognised professional body who has the knowledge, training, skills, experience, and the required qualification in the field of occupational health and safety, to assess and evaluate health and safety hazards that an employee is or may be exposed to at work.	To provide a definition for an occupational health and safety practitioner as prescribed by proposed section 7(3) to assist the employer to develop a health and safety management system.
"occupational health practitioner" means an occupational medicine practitioner or a person who holds a qualification in occupational health recognized as such by the South African Medical and Dental Council as referred to in the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974), or the South African Nursing Council as			

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referred to in the Nursing Act, 1978 (Act No. 50 of 1978);			
"occupational hygiene" means the anticipation, recognition, evaluation and control of conditions arising in or from the workplace, which may cause illness or adverse health effects to persons;			
	by the insertion after the definition of "occupational hygiene" of the following definition: " 'Occupational Hygienist' means a person <u>who is registered with a body recognised by the chief inspector and who has the knowledge, Training, skills, experience and the required qualification in the field of occupational hygiene techniques, to assess and evaluate levels of health and safety hazards that an employee is or may be exposed to at work;</u> ";	"occupational hygienist" – means a person who is registered with a SAQA recognised professional body who has the knowledge, training, skills, experience and the required qualification in the field of occupational hygiene, to identify hazardous agents; chemical, physical and biological; in the workplace that could cause disease or discomfort, evaluating the extent of the risk due to exposure to these hazardous agents, and the control of those risks to prevent ill-health in the long or short term.	The definition used is not a standard definition for occupational hygiene. Additionally, the Chief Inspector does not recognise bodies but rather SAQA performs this function.
"occupational medicine" means the prevention, diagnosis and treatment of illness, injury and adverse health effects associated with a particular type of work;			
"occupational medicine practitioner" means a medical practitioner as defined in the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974), who holds a qualification in occupational medicine or an equivalent qualification which qualification or			

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equivalent is recognized as such by the South African Medical and Dental Council referred to in the said Act;			
"office" means an office as defined in section 1 (1) of the Basic Conditions of Employment Act, 1983 (Act No. 3 of 1983);	by the deletion of the definition "office"		
"officer" means an officer or employee as defined in section 1 (1) of the Public Service Act, 1984 (Act No. 111 of 1984);	by the substitution for the definition of "officer" of the following definition: " 'officer' means an officer or employee as defined in section 1 (1) of the Public Service Act, [1984 (Act No. 111 of 1984)] <u>1994 (Proclamation No. 103 of 1994);</u> ";		
"organism" means any biological entity which is capable of causing illness to persons;			
	by the insertion after the definition of "organism" of the following definition: " 'permanent disablement' means the <u>permanent disablement as defined in section 1 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993;</u> ";		
"plant" includes fixtures, fittings, implements, equipment, tools and appliances, and anything which is used for any purpose in connection with such plant;			
"premises" includes any building, vehicle, vessel, train or aircraft;			
"prescribed" means prescribed by regulation;			

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"properly used" means used with reasonable care, and with due regard to any information, Instruction or advice supplied by the designer, manufacturer, importer, seller or supplier;			
"Reasonably Practicable" means practicable having regard to-			
(a) the severity and scope of the hazard or risk concerned;			
(b) the state of knowledge reasonably available concerning that hazard or risk and of any means of removing or mitigating that hazard or risk;			
(c) the availability and suitability of means to remove or mitigate that hazard or risk; and			
(d) the cost of removing or mitigating that hazard or risk in relation to the benefits deriving therefrom;			
"regulation" means a regulation made under section 43;			
"remuneration" means any payment in money or in kind or both in money and in kind, made or owing to any person in pursuance of such person's employment;			
"risk" means the probability that injury or damage will occur;	by the substitution for the definition of "risk" of the following definition: " ' risk ' means the probability that <u>personal injury, illness or the death of the employee or any other person or damage to property</u> will occur;"		

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	<p>by the insertion after the definition "risk" of the following definitions:</p> <p><u>" 'Risk Assessment' means, the process of evaluating the risks to an employee's health and safety from workplace hazards and is a systematic assessment of all aspects of work that considers: a complete hazard identification; identification of all who may be affected by the hazard; how the person is affected; the analysis and evaluation of the risks; and prioritisation of risks;</u></p>	<p>'Risk Assessment' means, the process of evaluating the potential risks to a person's health and safety from workplace hazards and is a systematic assessment of all aspects of work that considers:</p> <p>(a) the identification of the hazards to which persons may be exposed to;</p> <p>(b) an analysis and evaluation of the hazards and risks identified based on a documented method;</p>	<p>The OHSA was written as Self-Regulating legislation. The new definition of Risk Assessment does not provide for Self-Regulation. This proposed definition provides for one very specific type of risk assessment and this manifests in the following problems:</p> <ul style="list-style-type: none"> • There is almost infinite variation in appropriate forms of risk assessments. There are simple types of risk assessments that don't prioritise risks yet provide for very effective risk mitigation. E.g. A Total Safety Task Instruction (TSTI) risk assessment includes: BASIC JOB SEQUENCE, HAZARDS IDENTIFIED and HAZARD CONTROLS; • Any risk assessment that does not follow this prescriptive format is legally non-compliant and the 500+ DoEL inspectors could issue Spot Fines for employers who did not follow this risk format; • The proposed risk assessment methodology is not a standard form of risk assessment, but that said no single form of risk assessment type could provide for all assessments; • The risk methodology used clashes with the risk assessment types provided for in the regulations. Since regulations are subservient to the Act it means that this

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			prescribed risk methodology should be used in preference to the risk specific methodologies specified in the regulations. It is understood that this is not the intent, but it doesn't change the legal ramifications of the definition.
	'Risk Management' means the <u>identification and mitigation of risks by the application of appropriate control measures</u> ;;		
"safe" means free from any hazard;			
	by the insertion after the definition of "safe" of the following definitions: " 'Safety Management System' or 'health and Safety Management System' means, a <u>co-ordinated, comprehensive set of interrelated or interacting elements to establish occupational health and safety policy and objectives in order to optimally manage health and safety.</u> ";	Proposed change to 'Health and Safety Management System' means, a <u>co-ordinated, comprehensive set of interrelated or interacting elements to establish occupational health and safety policy and objectives in order to optimally manage health and safety.</u> ";	The reference to Safety Management System by definition excludes health and creates both confusion and diminishes the importance of health.
	'safety standard' means any standard, <u>which, if applied for the purposes of this Act, will promote the safety of employees or any other person in terms of this Act;</u>	Delete	The definition is not used in the ACT and is already provided for by the definition of standard.
	'SANAS' means the South African National Accreditation System;		
	'self-employed' means an individual who <u>earns income through conducting profitable operations from a trade or</u>	'self-employed' means an individual who earns income through conducting operations from a trade or business, which that individual operates directly.";	A self-employed person who is not profitable would not be included within the proposed definition. Surely this is not the intent of the legislator?

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	<u>business, which that individual operates directly.</u> :";		
"sell" includes- offer or display for sale or import into the Republic for sale; or exchange, donate, lease or offer or display for leasing;			
"shop" means a shop as defined in section I (1) of the Basic Conditions of Employment Act, 1983 (Act No. 3 of 1983);			
"standard" means any provision occurring-	by the substitution for the definition of "standard" of the following definition: " ' standard ' means any provision occurring-		
(a) in a specification, compulsory specification, code of practice or standard method as defined in section I of the Standards Act, 1993 (Act No. 29 of 1993); or	(a) in a specification, compulsory specification, code of practice or standard method as defined in section 1 [(16)] of the Standards Act, [1993 (Act No. 3 of 1993(17))] 2008 (Act No. 8 of 2008); or	(a) any specification, compulsory specification, code of practice or standard method required to conform to section 1 of the Standards Act, 2008 (Act No. 8 of 2008), shall first be subjected to the required tests by a SANAS Accredited inspection body, to ensure conformance to a particular standard; or	The reference to SANAS should be encapsulated within (a) as it does not relate to (b).
(b) in any specification, code or any other directive having standardization as its aim and issued by an institution or organization inside or outside the Republic which, whether generally or with respect to any particular article or matter and whether internationally or in any particular country	(b) in any specification, code or any other directive having standardisation as its aim and issued by an institution or organisation inside or outside the Republic which, whether generally or with respect to any particular article or matter and whether internationally or in any particular country or territory, seeks to promote	(b) in any specification, code or any other directive having standardisation as its aim and issued by an institution or organisation inside or outside the Republic which, whether generally or with respect to any particular article or matter and whether internationally or in any	The reference to SANAS should be encapsulated within (a) as it does not relate to (b).

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or territory, seeks to promote standardization;	standardisation: <u>Provided that, anything that is required to conform to this Act shall first be subjected to the required tests by SANAS Accredited to do such tests to ensure conformance to a particular standard;"</u> ;	particular country or territory, seeks to promote standardisation;	
"substance" includes any solid, liquid, vapour, gas or aerosol, or combination thereof;			
"this Act" includes any regulation;			
"Trade Union" means a Trade Union as defined in section 1 of the Labour Relations Act, 1956 (Act No. 28 of 1956);		"Trade Union" means a Trade Union as defined in section 1 of the Labour Relations Act, 1956 (Act No. 28 of 1956), and where the representative trade union means the trade union specified in the collective agreement;	<p>Section 20(1)(a) specifies that the "representative trade union" may declare a dispute. This is written as if there is one trade union for a workplace, where there are often multiple trade unions in the workplace. It is appropriate that the collective agreement specifies who the "representative trade union is). Without this it will lead to confusion as to where one or more trade unions may declare this dispute. Additionally, there is also a lack of clarity in respect to Section 4(g):</p> <p>(g) six persons to represent the interests of the employees from a list of the names of persons nominated by Trade Unions or federations of Trade Unions organisations;</p> <p>It is not clear how of which trade unions or federations of Trade Unions organisations will be decided. One of the options is to include a provision in this definition as to how this will be decided.</p>

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"user", in relation to plant or machinery, means the person who uses plant or machinery for his own benefit or who has the right of control over the use of plant or machinery, but does not include a lessor of, or any person employed in connection with, that plant or machinery;	by the substitution for the definition "user" of the following definition: " 'user' [in relation to plant or machinery] , means a person who uses <u>the premises, articles, substances,</u> plant or machinery, for his <u>or her</u> own benefit or [who] has the <u>exclusive</u> right of control over the use of <u>the premises, articles, substances,</u> plant or machinery but does not include a lessor of, or any person employed in connection with that <u>premises, articles, substances,</u> plant or machinery.";	'user', means a person who uses, plant or machinery, for his or her own benefit or has the exclusive right of control over the use of, plant or machinery but does not include a lessor of, or any person employed in connection with that, plant or machinery.";	By removing the scope in relation to plant and machinery, the definition now has essentially the same scope as "employer", meaning that there is now a lack of clarity of use for the definition.
	by the insertion after the definition of "user" of the following definition: " <u>'volunteer' means a person, who willingly provides a service to an institution or organisation, including a government body or organisation, or a non-governmental organisation without being remunerated for services rendered.</u> ";	Under the definition of "employee", use of the word "or" instead of the word "and", which removes the need for the definition of volunteer.	Volunteers were currently covered under the definition of employee.
"work" means work as an employee or as a self-employed person, and for such purpose an employee is deemed to be at work during the time that he is in the course of his employment, and a self-employed person is deemed to be at work during such time as he devotes to work as a self-employed person;	by the substitution for the definition of "work" of the following definition: " 'work' means work as an employee or as a self-employed person and for such purpose an employee is deemed to be at work during the time that he <u>or she</u> is in the course of his <u>or her</u> employment, and a self-employed person is deemed to be at work during such time as he <u>or she</u> devotes to work as a self-employed person;		

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"workplace" means any premises or place where a person performs work in the course of his employment.	by the substitution for the definition of "workplace" of the following definition: " ' workplace ' means any premises or place where a person performs work in the course of [his] employment.";		
(2) The Minister may by notice in the Gazette declare that a person belonging to a category of persons specified in the notice shall for the purposes of this Act or any provision thereof be deemed to be an employee, and thereupon any person vested and charged with the control and supervision of the said person shall for the said purposes be deemed to be the employer of such person.	by the deletion of subsection (2);		
(3) This Act shall not apply in respect of-			
(a) a mine, a mining area or any works as defined in the Minerals Act, 1991 (Act No. 50 of 1991), except in so far as that Act provides otherwise;	by the substitution in subsection (3) for paragraph (a) of the following paragraph: "(a) a mine, a mining area or any works as defined in the [Minerals Act, 1991 (Act No. 50 of 1991)] <u>Mines Health and Safety Act, 1996 (Act No. 29 of 1996)</u> , except in so far as that Act provides otherwise;" and		
(b) any load line ship (including a ship holding a load line exemption certificate), fishing boat, sealing boat and whaling boat as defined in section 2 (1) of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), or any floating crane, whether or not such ship, boat or crane is in or out of the water within any harbour in the Republic or			

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within the territorial waters thereof, (Date of commencement of para. (b) to be proclaimed.) or in respect of any person present on or in any such mine, mining area, works, ship, boat or crane.			
	by the addition in subsection (3) of the following paragraphs		
	<u>"(c) aircraft as indicated in section 2 of the Civil Aviation Act, 2009 (Act No. 13 of 2009); and</u>	(c) aircraft as defined in the Civil Aviation Act, 2009 (Act No. 13 of 2009); and	Aircraft is defined in Section 1 of the Act and not Section 2.
	<u>(d) any nuclear installation as defined in the Nuclear Energy Act, 1993, (Act No. 131 of 1993);".</u>		
2. Establishment of Advisory Council for Occupational Health and Safety There is hereby established an Advisory Council for Occupational Health and Safety.			
3. Functions of Council	Section 3 of the principal Act is hereby amended-		
(1) The Council shall-			
(a) advise the Minister with regard to- (i) matters of policy arising out of or in connection with the application of the provisions of this Act; (ii) any matter relating to occupational health and safety;			
(b) perform the functions assigned to it by this Act or referred to it by the Minister			

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(2) The Council may- .			
(a) with a view to the performance of its functions, do such research and conduct such investigations as it may deem necessary;			
(b) make rules relating to the calling of meetings of the Council, the determining of a quorum for and the procedure at such meetings, and generally relating to all matters which may be necessary for the effective performance of the functions of the Council or, subject to section 6, of a technical committee;			
(c) advise the Department concerning-			
(i) the formulation and publication of standards, specifications or other forms of guidance for the purpose of assisting employers, employees and users to maintain appropriate standards of occupational health and safety;			
(ii) the promotion of education and Training in occupational health and safety; and			
(iii) the collection and dissemination of information on occupational health and safety.			
(3) The Council may for the purposes of the performance of any of its functions, with the approval of the Minister, and with the concurrence of the Minister of State Expenditure, enter into an agreement for	(a) by the substitution for subsection (3) of the following subsection: "(3) The Council may for the purposes of the performance of any of its functions, with the approval of the Minister, and with		

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the performance of a particular act or particular work or for the rendering of a particular service, on such conditions and at such remuneration as may be agreed upon, with anybody who in the opinion of the Council is fit to perform such act or work or to render such service.	the concurrence of the Minister of [State Expenditure] <u>Finance</u> , enter into an agreement for the performance of a particular act or particular work or for the rendering of a particular service, on such conditions and at such remuneration as may be agreed upon, with anybody who in the opinion of the Council is fit to perform such act or work or to render such service."; and		
(4) Subject to the laws governing the Public Service, the Minister shall provide the Council with such personnel as he may deem necessary for the effective performance of the functions of the Council, and such persons shall perform their functions subject to the control and directions of the chief inspector.	(b) by the substitution for subsection (4) of the following subsection: "(4) (a) <u>The chief inspector shall, with the approval of the Minister, appoint an officer or employee of the Department in terms of the Public Service Act, 1994(Proclamation No. 103 of 1994), to assist the Council and its sub-committees in the performance of the Council's functions.</u>		
	<u>(b) The remuneration, allowances, benefits and other terms and conditions of employment of personnel appointed under subsection (1) shall be determined in terms of the Public Service Act, 1994."</u>		
4. Constitution of Council	Substitution of section 4 of Act 85 of 1993 4. The following section is hereby substituted for section 4 of the principal Act: " [Constitution] Composition of Council		
(1) The Council shall consist of 20 members, namely-	(1) The Council shall consist of [20] 23 members, namely-		

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(a) the chief inspector, ex officio, who shall be the chairman;	(a) the chief inspector, [ex officio, who shall be the chairman] ;		
	<u>(aA) the Chairperson</u>		
(b) one officer serving in the Department;	((b) [one officer serving in] <u>three persons</u> nominated by the Department;		
(c) the Compensation Commissioner, or his nominee;	(c) the [Workmen's] Compensation Commissioner, or his <u>or her</u> nominee;		
(d) one person nominated by the Minister for National Health and Welfare;	(d) one person nominated by the Minister [for National] of Health [and Welfare] ;		
(e) one person nominated by the Minister of Mineral and Energy Affairs; six persons to represent the interests of employers from a list of the names of persons nominated by employers' organizations or federations of employers' organizations;	(e) one person nominated by the Minister of [Mineral and Energy] <u>Mineral Resources</u> ;		
(f) six persons to represent the interests of employers from a list of the names of persons nominated by employers' organisations or federations of employers' organisations [Substituted by s. 2 of Act No. 181 of 1993]	(f) six persons to represent the interests of the employers from a list of the names of persons nominated by employers organisations or federations of employers organisations		
(g) six persons to represent the interests of employees from a list of the names of persons nominated by trade Unions or federations of Trade Unions ; [Para. (g) substituted by s. 2 of Act No. 181 of 1993.]	(g) six persons to represent the interests of the employees from a list of the names of persons nominated by Trade Unions or federations of Trade Unions organisations;		

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(h) one person who in the opinion of the Minister has knowledge of occupational safety matters;	(h) one person who in the opinion of the Minister has <u>extensive</u> knowledge of occupational health and safety matters;		
		<i>Add in requirement for:</i> one person who in the opinion of the Minister has <u>extensive</u> knowledge of process safety matters;	Process safety management is a separate “skill set” to occupational safety and so expertise for both MHI and other process safety regulations are needed to be guided by a person on the council with expertise in this area.
(i) one person who in the opinion of the Minister has knowledge of occupational medicine and who was recommended by the Minister for National Health and Welfare;	(i) one person who in the opinion of the Minister has <u>extensive</u> knowledge of occupational medicine and [was] is recommended by the Minister [for National Health and Welfare] of Health;		
(j) one person who in the opinion of the Minister has knowledge of occupational hygiene.	(j) one person who in the opinion of the Minister has <u>extensive</u> knowledge of occupational hygiene.		
(2) The members referred to in subsection (1) (b) up to and including (j) shall be appointed by the Minister.	(2) The members referred to in subsection (1) [(b) up to and including (j)] shall be appointed in writing by the Minister.”		
5. Period of office and remuneration of members of Council	5. Section 5 of the Act is hereby amended-		
(1) The members of the Council referred to in section 4 (2) shall be appointed for a period of three years, and on such conditions as the Minister may determine	by the substitution for subsection (1) of the following subsection: “(1) The members of the Council referred to in section 4(2), shall be appointed for a period of [three] five years, and on such		

OCCUPATIONAL HEALTH & SAFETY ACT (85 OF 1993)	OHS AMENDMENT BILL 2020	PROPOSAL	MOTIVATION
with the concurrence of the Minister of State Expenditure.	conditions as the Minister may determine with the concurrence of the Minister of [State Expenditure] Finance ";		
(2) Any person whose period of office as a member of the Council has expired shall be eligible for reappointment.	by the substitution for subsection (2) of the following subsection: "(2) <u>A member of the Council whose term of office has expired shall be eligible for reappointment for a further term, but not exceeding two terms.</u> ";		
(3) A member referred to in section 4 (1) (f), (g), (h), (i) or (j) who is not an officer may be paid from money appropriated for such purpose by Parliament such allowances as the Minister may determine with the concurrence of the Minister of State Expenditure.	by the substitution for subsection (3) of the following subsection: "(3) A member referred to in section 4 (1) [(f), (g), (h), (i) or (j)] who is not an officer may be paid from money appropriated for such purpose by Parliament, such allowances as the Minister may determine with the concurrence of the Minister of [State Expenditure] Finance. ";		
	Substitution of section 6 of Act 85 of 1993 6. The following section is hereby substituted for section 6 of the principal Act:		
6. Establishment of technical committees of Council	"Establishment of technical committees of Council <u>and sectoral advisory forums</u>		
(1) The Council may with the approval of the Minister establish one or more technical committees to advise the Council on any matter regarding the performance by the Council of its functions.	(1) The Council may [with the approval of the Minister] establish one or more technical committees to advise the Council on any matter regarding the performance by the Council of its functions.		

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(2) A member of a technical committee shall be appointed by the Council by reason of his knowledge of the matter for which the committee is established, and such a member need not be a member of the Council.	{2) A member of a technical committee shall be appointed by the Council by [reason of his knowledge] <u>virtue of his or her knowledge and experience</u> for the matter for which the committee [was] <u>is</u> established, and such a member need not be a member of the Council.		
(3) A meeting of a technical committee shall be held at such time and place as may be determined by the chairman of the Council, and in accordance with rules Approved by the Council.	(3) A meeting of a technical committee shall be held at such time and place as may be determined by the [chairman] <u>chairperson</u> of the [Council] <u>technical committee</u> and in accordance with rules Approved by the Council.		
(4) A member of a technical committee who is not an officer may be paid from money appropriated for such purpose by Parliament such allowances as the Minister may determine with the concurrence of the Minister of State Expenditure.	(4) A member of a technical committee who is not an officer, may be paid from money appropriated for such purpose by Parliament, such allowances as the Minister may determine with the concurrence of the Minister of [State Expenditure] <u>Finance</u> .		
	<u>(5) A person may not be nominated to serve on more than two technical committees at a given time.</u>		
	<u>(6) A sectoral advisory forum may be established by the chief inspector to advise the chief inspector on matters relating to any regulation made under section 43."</u>		
7. Health and safety policy	Substitution of section 7 of Act 85 of 1993 7. The following section is hereby substituted for section 7 of the principal		

OCCUPATIONAL HEALTH & SAFETY ACT (85 OF 1993)	OHS AMENDMENT BILL 2020	PROPOSAL	MOTIVATION																		
	Act: "Health and Safety Management System																				
(1) The chief inspector may direct- (a) any employer in writing; and (b) any category of employers by notice in the Gazette, to prepare a written policy concerning the protection of the health and safety of his employees at work, including a description of his organization and the arrangements for carrying out and reviewing that policy.	7. (1) <u>The chief inspector may direct an employer or group of employers in writing to develop and implement a health and Safety Management System.</u>	7. (1) The chief inspector may direct an employer or group of employers in writing to develop and implement a health and safety Management System including a policy concerning the protection of the health and safety of his or her employees at work; Remove Section 7 from Schedule 2.	<p>Point 1. Suggest that the requirement to develop a policy is not lost and it is included as part of the health and safety management system.</p> <p>Point 2. It is noted that administrative fines of up to R50 000 may be issued by inspectors for violation of Section 7. The problem with this is that this applies to whole sectors and so the scope of application is excessively wide. This has the effect of limiting the rights to Administrative Justice for those sectors included in the application of Section 7.</p> <p style="text-align: center;">SCHEDULE 2 Administrative fines</p> <table><tr><th>Column 1 Section contravened</th><th>Column 2 Maximum fine</th></tr><tr><td>7</td><td>R 50 000</td></tr><tr><td>19 (1);</td><td>R 50 000</td></tr><tr><td>20 (4);</td><td>R 50 000</td></tr><tr><td>21;</td><td>R 50 000</td></tr><tr><td>24(1):(2)</td><td>R 25 000</td></tr><tr><td>25;</td><td>R 50 000</td></tr><tr><td>29(3);</td><td>R 25 000</td></tr><tr><td>30(6)</td><td>R50 000</td></tr></table>	Column 1 Section contravened	Column 2 Maximum fine	7	R 50 000	19 (1);	R 50 000	20 (4);	R 50 000	21;	R 50 000	24(1):(2)	R 25 000	25;	R 50 000	29(3);	R 25 000	30(6)	R50 000
Column 1 Section contravened	Column 2 Maximum fine																				
7	R 50 000																				
19 (1);	R 50 000																				
20 (4);	R 50 000																				
21;	R 50 000																				
24(1):(2)	R 25 000																				
25;	R 50 000																				
29(3);	R 25 000																				
30(6)	R50 000																				
(2) Any direction under subsection (1) shall be accompanied by guidelines concerning the contents of the policy concerned.	<u>(2) A directive under subsection (1) shall be accompanied by guidelines concerning the contents of the health and Safety Management System concerned.</u>	(2) A directive under subsection (1) shall be accompanied by guidelines concerning the contents of the health and Safety Management System concerned; and																			
		(3) when directed to develop and implement a health and safety management system in terms of subsection (1), the employer may a appoint a part-time or full-time	This is in line with the Mine Health and Safety Act as well as the Construction Regulations 2014.																		

OCCUPATIONAL HEALTH & SAFETY ACT (85 OF 1993)	OHS AMENDMENT BILL 2020	PROPOSAL	MOTIVATION
		occupational health and safety practitioner in writing to assist in the development of the health and safety management system.	
(3) An employer shall prominently display a copy of the policy referred to in subsection (1), signed by the chief executive officer, in the workplace where his employees normally report for service.			
8. General duties of employers to their employees	Amendment of section 8 of Act 85 of 1993 8. Section 8 of the principal Act is hereby amended-		
(1) Every employer shall provide and maintain, as far as is Reasonably Practicable, a working environment that is safe and without risk to the health of his employees.	(a) by the substitution for subsection (1) of the following subsection:"(1) Every employer shall provide and maintain, as far as is Reasonably Practicable , a working environment that is safe and without risk to the health of his <u>or her</u> employees.";		
(2) Without derogating from the generality of an employer's duties under subsection (1), the matters to which those duties refer include in particular-	(b) by the substitution in subsection (2) for paragraphs (a), (b), (c), (d), (e), (f), (g), (i) and (paragraphs j) of the following:	(2) Without derogating from the generality of an employer's duties under subsection (1), the matters, as far as is reasonably practicable, to which those duties refer, include in particular-	By omitting the words 'reasonably practicable' which is universally accepted as a yardstick to judge whether an employer has properly discharged his or her duties, the Bill appears to venture into the area of strict liability which, in turn, has been consistently rejected by criminal courts including the Constitutional Court and Supreme Court of Appeal. Strict liability infers that an employer may be convicted of

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			<p>contraventions in the absence of the fault element (culpa or negligence).</p> <p>In 1997 the Constitutional Court ruled that in South Africa the principle of strict liability infringes negatively on the right to a fair trial provided for in section 35(3) of the Constitution, as well as with the right to freedom and security of the person provided for in section 12(1) of the Constitution of the Republic of South Africa, 1996. (See Coetzee 1997 (1) SACR 379 (CC) at 442h–Justice O'Regan; Magagula 2001 (2) SACR 123 (T) at 145–146, 146b).</p> <p>Repugnance to the notion of criminal liability without fault, is evidenced too in the reluctance of courts to interpret statutory provisions which contain no express <i>mens rea</i> (fault) requirement as not requiring <i>mens rea</i>. In <i>S v Arenstein</i> 1967 (3) SA 366 (A) at 381D–E, Van Winsen AJA held as follows:</p> <p><i>“In view of such general maximums as nulla poena sine culpa and actus non facit reum nisi mens sit rea, the Legislature, in the absence of clear and convincing indications to the contrary in the enactment in question, is presumed to have intended that violations of statutory prohibitions would not be punishable in the absence of mens rea in some degree or other.”</i></p>

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			Strict liability has no place in occupational health and safety legislation where negligence or culpa is the fault element as opposed to intention or dolus. The Consumer Protection Act (CPA) is an example of strict liability where the fault element is omitted. The Supreme Court of Appeal said that the CPA was designed to offer protection to the vulnerable consumer as well as to promote social and economic welfare of the consumers. However, unlike the Occupational Health and Safety Act, the CPA is not a criminal statute.
(a) the provision and maintenance of systems of work, plant and machinery that, as far as is Reasonably Practicable, are safe and without risks to health;	<u>"(a) conducting a workplace specific risk assessment and thereafter developing and implementing a Risk Management plan in writing, in respect of every risk identified;</u>	(a) conducting a workplace specific risk assessment and thereafter developing and implementing a Risk Management plan;	The scope of this section is so wide that it is unworkable. For example for a domestic worker the employer must have a written risk management plan in writing for every risk identified. This means for ironing, sweeping, housekeeping etc. If one of the approximately 500 DoEL inspectors visited the employer and found that employer did not comply with the requirement to have a written risk management plan for the domestic worker, this then under Section 38 Penalties Schedule 1, the employer may be fined up to R5000 000 and imprisoned for up to 5 years. With the advent of “work from home”, which is likely to extend far beyond COVID, this section has application to millions of employers. The proposed section is not self-regulating and is overly prescriptive. This broad-brush make it

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			inappropriate as a general requirement under the Act. Regulations under the act make provision for such prescriptive detail.
(b) taking such steps as may be Reasonably Practicable to eliminate or mitigate any hazard or potential hazard to the safety or health of employees, before resorting to personal protective equipment;	<u>(b) ensuring that the Workplace Specific Risk Assessment is conducted, by a person or persons who are Competent to pronounce on all the risks associated with that workplace;</u>		This sub-section is overly prescriptive and has moved away from self-regulation. The wording “competent to pronounce on all the risks associated with that workplace”. This is an impossible threshold to meet. There is no person at any professional level who is competent to pronounce on all risks within a workplace.
(c) making arrangements for ensuring, as far as is Reasonably Practicable, the safety and absence of risks to health in connection with the production, processing, use, handling, storage or transport of articles or substances;	<u>(c) ensuring that the workplace specific Risk Management plan is in place and is available at the workplace when requested by an inspector;</u>		
(d) establishing, as far as is Reasonably Practicable, what hazards to the health or safety of persons are attached to any work which is performed, any article or substance which is produced, processed, used, handled, stored or transported and any plant or machinery which is used in his business, and he shall, as far as is Reasonably Practicable, further establish what precautionary measures should be taken with respect to such work, article, substance, plant or machinery in order to protect the health and safety of persons,	<u>(d) ensuring that no work is undertaken unless the control measures contained in the Risk Management plan are complied with;</u>	(d) ensuring that no work is undertaken unless the control measures contained in the Risk Management plan are implemented and maintained;	There is a lack of clarity of what “are complied with” means.

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and he shall provide the necessary means to apply such precautionary measures;			
(e) providing such information, Instructions, Training and supervision as may be necessary to ensure, as far as is Reasonably Practicable, the health and safety at work of his employees;	(e) providing [such] information, Instructions, Training and supervision as may be necessary to ensure, as far as is Reasonably Practicable, the health and safety at work of [his] employees;		
(f) as far as is Reasonably Practicable , not permitting any employee to do any work or to produce, process, use, handle, store or transport any article or substance or to operate any plant or machinery, unless the precautionary measures contemplated in paragraphs (b) and (d), or any other precautionary measures which may be prescribed, have been taken;	[as far as is Reasonably Practicable, not permitting any] <u>ensuring that no</u> employee <u>is permitted</u> to do any work or to produce, process, use, handle, store or transport any article or substance or to operate any plant or machinery, unless the precautionary measures contemplated in paragraphs (b) and (d), or any other precautionary measures which may be prescribed, have been taken;	The existing wording is appropriate and legally correct, so revert to existing language.	By removing the language of reasonably practicable the DoEL is changing to a standard which is not aligned to the standards that are upheld in the courts, where this would be tested against the “reasonable person” / “negligence” definitions / thresholds. Rather this change makes it absolute and impossible for the employer to comply with. This has removed any potential for the employer to obtain compliance. If this section is enacted, it would be practically impossible for the employer to ever achieve compliance.
(g) taking all necessary measures to ensure that the requirements of this Act are complied with by every person in his employment or on premises under his control where plant or machinery is used;	(g) taking all necessary measures to ensure that the requirements of this Act are complied with by every [person] <u>employee</u> in <u>his or her</u> employment or <u>by any person</u> on premises under <u>his or her</u> control where plant or machinery is used;		
(h) enforcing such measures as may be necessary in the interest of health and safety;			

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(i) ensuring that work is performed and that plant or machinery is used under the general supervision of a person trained to understand the hazards associated with it and who have the authority to ensure that precautionary measures taken by the employer are implemented; and	(l) ensuring that work is performed and that plant or machinery is used under the general supervision of a person trained to understand the hazards associated with it and who have the authority to ensure that precautionary measures taken by the employer are implemented; [and]		
(j) causing all employees to be informed regarding the scope of their authority as contemplated in section 37 (1) (b).	(j) causing all employees to be informed regarding the scope of their authority [as contemplated in section 37 (1) (b).] ; <u>and</u> ";		
	(c) by the addition of the following paragraph: " <u>(k) ensuring Communication of the relevant components of the Risk Management plan to every employee.</u> "	(k) ensuring Communication of the relevant components of the Risk Management plan to relevant employees."	The provision should be limited to relevant and not all employees.
9. General duties of employers and self-employed persons to persons other than their employees	Amendment of section 9 of Act 85 of 1993 9. Section 9 of the principal Act is hereby amended-		
(1) Every employer shall conduct his undertaking in such a manner as to ensure, as far as is Reasonably Practicable, that persons other than those in his employment who may be directly affected by his activities are not thereby exposed to hazards to their health or safety.	(a) by the substitution for subsection (1) of the following subsection: "(1) Every employer shall conduct [his] an undertaking in such a manner [as] to ensure [,as far as is Reasonably Practicable that persons other than those in his employment who may be directly affected by his activities are not thereby exposed to hazards to their health or safety] <u>that the risk posed by identified</u>	(1) Every employer shall conduct an undertaking in such a manner as to ensure, as far as is reasonably practicable, that the risk posed by identified hazards to persons other than those in the direct employ of the organisation who may be directly affected by the organisation's activities are not thereby exposed to hazards to their health or safety and the risk is managed in line with the Risk	The reasoning for excluding 'reasonably practicable' in section 9 is unclear. Is it deliberate or an oversight? It is retained in section 8 but excluded in section 9 and is used in virtually all the developed countries' OHS legislation including the UK's Health and Safety at Work etc. Act 1974. In <i>Pikitup (SOC) Limited v South African Municipal Workers' Union obo members and others [2014]</i> (Labour Appeal

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	<p><u>hazards to persons other than those in the direct employ of the organisation who may be directly affected by the organisation's activities are not thereby exposed to hazards to their health or safety and the risk is managed in line with the Risk Management plan contemplated in section 8(2)(a).";</u></p>	<p>Management plan contemplated in section 8(2)(a).</p>	<p>Court), the definition was embraced and elaborated upon it.</p> <p>The Labour Appeal Court Judge stated that 'Sections 8 and 9 therefore place a duty on the employer to act proactively to avoid any harm or injury to its employees and others. There is no standard as to what is reasonably practicable. Each case will have to be determined on its own facts and circumstances. As can be seen from the definition of reasonably practicable it involves weighing different considerations from risk evaluation, means of removing or avoiding the risk, resource availability and a cost-benefit analysis'. Reference was also made to British legislation. In Edwards v National Coal Board, Lord Justice Asquith stated: "Reasonably practicable as traditionally interpreted, is a narrower term than 'physically possible' and implies that a computation must be made in which the quantum of risk is placed in one scale and the sacrifice, whether in money, time or trouble involved in the measure necessary to avert the risk is placed in the other; and that, if it is shown that there is a gross disproportion between them, the risk being insignificant in relation to the sacrifice, the person upon who the duty is laid discharges the burden of proving that compliance was not reasonably practicable."</p>

OCCUPATIONAL HEALTH & SAFETY ACT (85 OF 1993)	OHS AMENDMENT BILL 2020	PROPOSAL	MOTIVATION
			<p>The UK Health and Safety at Work etc. Act 1974 reads:</p> <p>General duties of employers and self-employed to persons other than their employees.</p> <p>(1) It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so <u>far as is reasonably practicable</u>, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.</p> <p>This definition to some degree echoes the test for negligence – the objective reasonable foreseeability test – and the element of fault (culpa) must be proved beyond a reasonable doubt when employers are prosecuted for failing in their duties.</p> <p>This is particularly true of parts (b) and (c) of the definition of ‘reasonably practicable’. (b) The state of knowledge reasonably available concerning that hazard or risk and of any means of removing or mitigating that hazard or risk and (c) the availability and suitability of means to remove or mitigate that hazard or risk.</p> <p>Negligence is judged by the reasonable person test. An accused is judged to have been negligent if his conduct deviates from the standard of conduct of a hypothetical reasonable person in the circumstances of the accused. The test for negligence in criminal law</p>

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			<p>is derived from the civil law of delict case of Kruger v Coetzee. In Kruger v Coetzee, Holmes JA (for a unanimous court) framed the test for negligence, for the purposes of delict, as follows: <i>‘For the purposes of liability culpa arises if—</i></p> <p><i>(a) a diligens paterfamilias [the diligent father of the family] in the position of the defendant—</i></p> <p><i>(i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and</i></p> <p><i>(ii) would take reasonable steps to guard against such occurrence; and</i></p> <p><i>(b) the defendant failed to take such steps.’</i></p> <p>Holmes JA went on to observe that the test for negligence had been conceived in these terms for the past fifty years. This test for negligence, as stated by Holmes JA, has been translated from the civil law of delict, into criminal law, and remains the test for negligence in criminal law today.</p> <p>By omitting the terms ‘reasonably practicable’, employers may not be able to argue that the severity and scope of the hazard or risk concerned was a consideration in determining whether employers discharged their statutory duties. Equally so, the availability and suitability of means to remove or mitigate that hazard or risk and the cost of removing or mitigating that hazard or risk in relation to the benefits deriving therefrom. The test for negligence appears</p>

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			<i>narrower and focuses primarily on objective foreseeability test coupled with inaction.</i>
(2) Every self-employed person shall conduct his undertaking in such a manner as to ensure, as far as is Reasonably Practicable, that he and other persons who may be directly affected by his activities are not thereby exposed to hazards to their health or safety.	(b) by the substitution for subsection (2) of the following subsection: "(2) Every self-employed person shall conduct [his] an undertaking in such a manner as to ensure [, as far as is Reasonably Practicable that he and other persons who may be directly affected by his activities are not thereby exposed to hazards to their health or safety] <u>that the risks posed by identified hazards to that self-employed person and any other persons who may be directly affected by the activities of the work performed on that premises, are managed in line with the specific Risk Management plan as contemplated in section 12(1)."</u>	(2) Every self-employed person shall conduct an undertaking in such a manner as to ensure, as far as is Reasonably Practicable that the risks posed by identified hazards to that self-employed person and any other persons who may be directly affected by the activities of the work performed on that premises, are managed in line with the specific Risk Management plan as contemplated in section 12(1)."	Same reasons as provided for Section 9(1).
10. General duties of manufacturers and others regarding articles and substances for use at work	Amendment of section 10 of Act 85 of 1993 10. Section 10 of the principal Act is hereby amended- (a) by the substitution for subsection (1) of the following subsection :		
(1) Any person who designs, manufactures, imports, sells or supplies any article for use at work shall ensure, as far as is Reasonably Practicable, that the article is safe and without risks to health when	"(1) Any person who designs, manufactures, imports, sells, <u>leases</u> or supplies any article for use at work shall ensure, [as far as is Reasonably Practicable,] that- <u>(a)</u> the article is safe and without risks to	Propose: (1) Any person who designs, manufactures, imports, sells, leases or supplies any article for use at work shall ensure, as far as is Reasonably Practicable, that- (a) the article is safe and without risks to	It is noted that the removal of Reasonably Practicable deviates from the Mine Health and Safety Act, which still retains this definition. The MHSA was a product of negotiations between NEDLAC, employers and Government. It is the

OCCUPATIONAL HEALTH & SAFETY ACT (85 OF 1993)	OHS AMENDMENT BILL 2020	PROPOSAL	MOTIVATION
properly used and that it complies with all prescribed requirements.	<u>occupational health and safety</u> when properly used; <u>(b) the article is accompanied by the Instructions which include precautionary measures to be adhered to;</u> and <u>(c) [that]</u> it complies with all the prescribed requirements.";	occupational health and safety when properly used; (b) the article is accompanied by the Instructions which include precautionary measures to be adhered to; and (c) it complies with all the prescribed requirements;	<p>first piece of OHS legislation aligned with the Constitution of South Africa.</p> <p>MHS Act.</p> <p>Section 21. Manufacturer's and supplier's duty for health and safety. (edited)</p> <p>(1) Any person who -</p> <p>(a) designs, manufactures, repairs, imports or supplies any article for use at a mine must ensure, as far as reasonably practicable -</p> <p>(i) that the article is safe and without risk to health and safety when used properly; and</p> <p>(ii) that it complies with all the requirements in terms of this Act;</p> <p>(2) Any person who bears a duty in terms of subsection (1) is relieved of that duty to the extent that is reasonable in the circumstances, if -</p> <p>(a) that person designs, manufactures, repairs, imports or supplies an article for or to another person; and</p> <p>(b) that other person provides a written undertaking to take specified steps sufficient to ensure, as far as reasonably practicable, that the article will be safe and without risk to health and safety when used properly and that it complies with all prescribed requirements.</p> <p>UK legislation</p> <p>In terms of UK OHS legislation an equivalent provision to section 10 also provides for a written undertaking of a recipient for use at work. In (s.6(8)) of the Act, a person may rely</p>

OCCUPATIONAL HEALTH & SAFETY ACT (85 OF 1993)	OHS AMENDMENT BILL 2020	PROPOSAL	MOTIVATION
			on a written undertaking by another person to ensure the safety of an item.
(2) Any person who erects or installs any article for use at work on or in any premises shall ensure, as far as is Reasonably Practicable, that nothing about the manner in which it is erected or installed makes it unsafe or creates a risk to health when properly used.			
(3) Any person who manufactures, imports, sells or supplies any substance for use at work shall- .	(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: "Any person who [manufactures,] imports, sells or supplies any substance for use at work shall-";	Propose: "Any person who manufactures, imports, sells or supplies any hazardous chemical agent for use at work shall";	The reason for removing manufacturer is not understood. This would make it acceptable to manufacture something that was unsafe, but not to import, sell or supply that substance [hazardous chemical agent – this aligns to RHCA]. The reference to "substance" should be changed and aligned to "agent". Additionally, in line with the definition of HCA, the reference should only be limited to chemical agents that are hazardous and so the full reference to HCA should be used. Additionally, the MHSA retains reference to manufacturer.
(a) ensure, as far as is Reasonably Practicable, that the substance is safe and without risks to health when properly used; and			
(b) take such steps as may be necessary to ensure that information is available with regard to the use of the substance at work,			

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the risks to health and safety associated with such substance, the conditions necessary to ensure that the substance will be safe and without risks to health when properly used and the procedures to be followed in the case of an accident involving such substance			
		(c) ensure that the substance is classified, labelled in accordance with the UN Globally Harmonized System and packaged in accordance with the UN Transport of Dangerous Goods requirements;	The “prescribed manner” does not make it clear as it does not refer to the standards where the prescription is given. Suggest that this should align to the Regulations for Hazardous Chemical Agents, which is what is proposed.
(4) Where a person designs, manufactures, imports, sells or supplies an article or substance for or to another person and that other person undertakes in writing to take specified steps sufficient to ensure, as far as is Reasonably Practicable , that the article or substance will comply with all prescribed requirements and will be safe and without risks to health when properly used, the undertaking shall have the effect of relieving the first-mentioned person from the duty imposed upon him by this section to such an extent as may be reasonable having regard to the terms of the undertaking.	(c) by the substitution for subsection (4) of the following subsection: <u>"(4) A person who manufactures, imports, sells or supplies a substance for use at work shall ensure that the substance is classified, labelled and packaged, in the prescribed manner ."</u>	Propose retaining previous section without the inclusion of substance: (4) Where a person designs, manufactures, imports, sells or supplies an article for or to another person and that other person undertakes in writing to take specified steps sufficient to ensure, as far as is Reasonably Practicable, that the article will comply with all prescribed requirements and will be safe and without risks to health when properly used, the undertaking shall have the effect of relieving the first-mentioned person from the duty imposed upon him by this section to such an extent as may be reasonable having regard to the terms of the undertaking.	It is noted that Section 10(4) is still referred to in Section 22. At face value the removal of the provision for a Written Undertaking as envisaged in section 10(4), suggests that suppliers of articles for use at work are prohibited from supplying non-compliant / unsafe articles whereas it was previously permitted conditional upon the recipient undertaking in writing to bring the articles into compliance as per the instruction / advice of the supplier. An extension of this is that it there is a complete ban on the sale of all second hand articles and the donating of all articles, which must immediately cease on promulgation of this Bill. It also removes the general contractual principal of “voetstoets” which underpins the sale of all second hand

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			<p>articles such as forklifts, the sale of construction material or even the sale of a businesses.</p> <p>Generally where no business can ever be sold where there is no element of “voetstoets”. It is not clear whether this is the intent of the Department?</p> <p>The definition of ‘properly used’ is however retained in the Bill. “Properly used” means used with reasonable care, and with due regard to any information, instruction or advice supplied by the designer, manufacturer, importer, seller or supplier.</p> <p>The definition of ‘properly used’ appears to be aligned to the Written Undertaking since a recipient of an article is ‘compelled’ to use the article as per the information / instruction / advice supplied by the supplier. Although seemingly prohibited in the Bill, this could include information / instructions / advice of regarding its unsafe / non-compliant condition coupled with advice on how to render it safe /compliant in order for the article to be ‘used properly’ as defined. This could be done verbally resulting in no tangible proof that it was done by the supplier. A Written Undertaking aligns with the definition of ‘properly used’ and should be retained for this reason.</p> <p>It is interesting to note that a voetstoets clause in contract law allows a supplier to supply unsafe / non-compliant articles provided the defects are patent and disclosed. Yet a strict prohibition on</p>

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			<p>the supply of unsafe /non-compliant articles as envisaged in the Bill may result in criminal liability for the supplier despite a (contractual) voetstoets clause.</p> <p>“At face value the removal of the provision for a Written Undertaking as envisaged in section 10(4), suggests that suppliers of articles for use at work are prohibited from supplying non-compliant / unsafe articles whereas it was previously permitted conditional upon the recipient undertaking in writing to bring the articles into compliance as per the instruction / advice of the supplier.”</p> <p>For example look at a company who wants to get rid of old chairs or compressors or any plant or machinery which potentially could be used at another industry. In the past you could sell or even donate the above-mentioned, even if it did not comply, using the Section 10(4) agreement. In essence it served as an indemnity whereby using the example of a compressor, it could be sold or donated if it was disclosed what the defects were. Obviously, both the seller and buyer agrees and signs the agreement. In these cases it will have the effect of relieving the seller of any liability should the buyer cut off his fingers at the compressor because there was no guard on the said compressor.</p>
11. Listed Work	Amendment of section 11 of Act 85 of 1993		

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	11. Section 11 of the principal act is hereby amended by-		
(1) The Minister may, subject to the provisions of subsections (2) and (3), by notice in the Gazette declare any work, under the conditions or circumstances specified in the notice, to be Listed Work.			
(2) (a) Before the Minister declares any work to be Listed Work, he shall cause to be published in the Gazette a draft of his proposed notice and at the same time invite interested persons to submit to him in writing within a specified period, comments and representations in connection with the proposed notice.	(a) by the substitution in subsection (2) for paragraph (a) of the following paragraph: "(a) Before the Minister declares any work to be Listed Work, he <u>or she</u> shall, <u>after consultation with the Council</u> , cause to be published in the <i>Gazette</i> a draft of his <u>or her</u> proposed notice and at the same time invite interested persons to submit to him <u>or her</u> in writing within a specified period, comments and representations in connection with the proposed notice.		
(b) A period of not less than three months shall elapse between the publication of the draft notice and the notice under subsection (1).			
(3) The provisions of subsection (2) shall not apply- (a) if the Minister in pursuance of comments and representations received in terms of subsection (2) (a), decides to publish the notice referred to in subsection (1) in an amended form; and (b) to any declaration in terms of subsection (1) in respect of which the Minister is of the			

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opinion that the public interest requires that it be made without delay.			
(4) A notice under subsection (1) may at any time be amended or withdrawn by like notice.	(b) by the substitution for subsection (4) of the following subsection: "(4) A notice [under] referred to in subsection (1) may at any time be amended or withdrawn by like notice.		
12. General duties of employers regarding Listed Work	Amendment of section 12 of Act 85 of 1993 12.		
(1) Subject to such arrangements as may be prescribed, every employer whose employees undertake Listed Work or are liable to be exposed to the hazards emanating from Listed Work, shall, after consultation with the health and safety committee established for that workplace-	Section 12 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:		
(a) identify the hazards and evaluate the risks associated with such work constituting a hazard to the health of such employees, and the steps that need to be taken to comply with the provisions of this Act;	"(1) <u>(a) An employer shall conduct a Risk Assessment in relation to such Listed Work and develop and implement a Risk Management plan in respect of the risks identified for that work.</u>		
(b) as far as is Reasonably Practicable, prevent the exposure of such employees to the hazards concerned or, where prevention is not Reasonably Practicable, minimize such exposure; and	<u>(b) A Risk Assessment conducted for that workplace, shall be conducted by a person or persons who are Competent to pronounce on all the risks associated with that work and where the risk is complex in nature, a Risk Assessment shall be conducted by specialists who are</u>	(b) A Risk Assessment conducted for that workplace, shall be conducted by a person or persons who are competent to pronounce on the risks associated with that work;	The responsibility is on the employer to ensure that the person conducting the risk assessment is competent and by inferring, in the second part of the sentence that if the risk is complex in nature then a specialist is needed, it then infers that the persons conducting the assessment in the earlier part of the sentence was not competent. Just by having the requirement to

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	<u>Competent to pronounce on all the risks associated with that particular work.</u>		have competent persons, it means that automatically if the risks are complex then the requirement for competence increases in relation to the work.
(c) having regard to the nature of the risks associated with such work and the level of exposure of such employees to the hazards, carry out an occupational hygiene programme and biological monitoring, and subject such employees to medical surveillance.	<u>(c) The employer shall ensure that a workplace specific Risk Management plan is in place and is available at the workplace when requested by an inspector.</u>		
	<u>(d) An employer may not permit any Listed Work to be undertaken unless the control measures contained in the Risk Management plan are complied with."</u>	(d) An employer may not permit any Listed Work to be undertaken unless the control measures contained in the Risk Management plan are implemented and maintained;	There is a lack of clarity of what " <i>are complied with</i> " means.
(2) Every employer contemplated in subsection (1) shall keep the health and safety representatives designated for their workplaces or sections of the workplaces, informed of the actions taken under subsection (1) in their respective workplaces or sections thereof and of the results of such actions: Provided that individual results of biological monitoring and medical surveillance relating to the work of the employee, shall only with the written consent of such employee be made available to any person other than			

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an inspector, the employer or the employee concerned.			
13. Duty to inform Without derogating from any specific duty imposed on an employer by this Act, every employer shall-	Amendment of section 13 of Act 85 of 1993 13.		
(a) as far as is Reasonably Practicable, cause every employee to be made conversant with the hazards to his health and safety attached to	by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively: "(a) [as far as is <i>Reasonably Practicable</i> , cause] ensure that every employee [to be made] is conversant with the [hazards] risks to his or her health and safety attached to-	(a) as far as is Reasonably Practicable, ensure that every employee is conversant with the hazards to his or her health and safety attached to -	By removing "reasonably practicable" and substituting "hazard" for "risk", it will make it impossible for any employer to ever comply to this requirement. The reasons are the following: There is no such thing as absolute and total understanding of all risks, which is required by the removal of "reasonably practicable". Additionally, it is not possible to train every employee on "risks". Previously it was possible to train on all hazards, but the understanding of hazard /consequence x likelihood / exposure means that every employee does not just need to be trained on the hazards associated with that work, but also the likelihood of that hazard potential being realised. E.g. for driving a car the person must not just understand all the hazards associated with driving, but how likely this hazard potential is to be realised. The likelihood of realising the hazard potential of driving would be different for every journey the person would undertake (and since it is not as is reasonably practicable), if the person didn't understand these "risks" for every journey the employer would not have fulfilled the requirements of this section and could therefore be prosecuted.

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any work which he has to perform	(i) any work which [he] that employee has to perform;		
any article or substance which he has to produce, process, use, handle, store or transport and	(ii) any article or substance which he <u>or she</u> has to produce, process, use, handle, store or transport; and		
any plant or machinery which he is required or permitted to use, as well as with the precautionary measures which should be taken and observed with respect to those hazards;	(iii) any plant or machinery which he <u>or she</u> is required or permitted to use, as well as with the precautionary measures which should be taken and observed with respect to those hazards;		
(b) inform the health and safety representatives concerned beforehand of inspections, investigations or formal inquiries of which he has been notified by an inspector, and of any application for exemption made by him in terms of section 40; and	(b) inform the health and safety representatives concerned beforehand of inspections, investigations or formal inquiries of which [he] the employer has been notified by an inspector, and of any application for exemption made by him or her in terms of section 40."		
(c) inform a health and safety representative as soon as <i>Reasonably Practicable</i> of the occurrence of an incident in the workplace or section of the workplace for which such representative has been designated.			
14. General duties of employees at work	Substitution of section 14 of Act 85 of 1993 14. The following section is hereby substituted for section 14 of the principal Act: "General duties of employees at work		
Every employee shall at work-	14. Every employee shall at work-		

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(a) take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions;	(a) take reasonable care for the <u>employee's own</u> health and safety [of himself] and of other persons who may be affected by his <u>or her</u> acts or omissions;		
(b) as regards any duty or requirement imposed on his employer or any other person by this Act, co-operate with such employer or person to enable that duty or requirement to be performed or complied with;	(b) as regards any duty or requirement imposed on his <u>or her</u> employer or any other person by this Act, co-operate with [such] <u>the</u> employer or <u>other</u> person to enable that duty or requirement to be performed or complied with;		
(c) carry out any lawful order given to him, and obey the health and safety rules and procedures laid down by his employer or by anyone authorized thereto by his employer, in the interest of health or safety;	(c) [carry out any] <u>execute</u> a lawful order given to him <u>or her</u> , and obey the health and safety rules and procedures laid down by his <u>or her</u> employer or by [anyone] <u>a person</u> authorised thereto by his <u>or her</u> employer, in the interest of health or safety;	(c) carry out any lawful order given to him or her, and obey the health and safety rules and procedures laid down by his or her employer or by a person authorised thereto by his or her employer, in the interest of health or safety;	"Carry out" is simple language and not ambiguous. Suggest that the word "execute" is not commonly understood and is also ambiguous. There are different meanings and one of the common meanings is to put to death, which clearly isn't the intention of the word use. Common definitions: 1 : to carry out fully : put completely into effect execute a command. 2 : to do what is provided or required by execute a decree. 3 : to put to death especially in compliance with a legal sentence.
(d) if any situation which is unsafe or unhealthy comes to his attention, as soon as practicable report such situation to his employer or to the health and safety representative for his workplace or section thereof, as the case may be, who shall report it to the employer; and	(d) [if any situation which is unsafe or unhealthy comes to his attention] <u>when he or she becomes aware of an unsafe or unhealthy situation</u> , as soon as practicable, report such situation to his <u>or her</u> employer or to the health and safety representative for his <u>or her</u> workplace or section thereof, as the case may be, who shall report it to the employer; and		

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<p>(e) if he is involved in any incident which may affect his health or which has caused an injury to himself, report such incident to his employer or to anyone authorized thereto by the employer, or to his health and safety representative, as soon as practicable but not later than the end of the particular shift during which the incident occurred, unless the circumstances were such that the reporting of the incident was not possible, in which case he shall report the incident as soon as practicable thereafter.</p>	<p>(e) [if] <u>where</u> he <u>or she</u> is involved in any incident which may affect his <u>or her</u> health or which has caused an injury to himself <u>or herself</u>, report such incident to his <u>or her</u> employer or to anyone authorised thereto by the employer, or to his <u>or her</u> health and safety representative, as soon as practicable but not later than the end of the particular shift during which the incident occurred, unless the circumstances were such that the reporting of the incident was not possible, in which case he <u>or she</u> shall report the incident as soon as it is <u>reasonably practicable</u> thereafter.”</p>	<p>Propose: (e) where he or she is involved in any incident which may affect his or her health or which has caused an injury to himself or herself, report such incident to his or her employer or to anyone authorised thereto by the employer, or to his or her health and safety representative, as soon as practicable but not later than the end of the particular shift during which the incident occurred, unless the circumstances were such that the reporting of the incident was not possible, in which case he or she shall report the incident as soon as it is practicable thereafter.”</p>	<p>The definition of reasonably practicable is as follows: "reasonably practicable" means practicable having regard to-</p> <ul style="list-style-type: none"> a) the severity and scope of the hazard or risk concerned; b) the state of knowledge reasonably available concerning that hazard or risk and of any means of removing or mitigating that hazard or risk; c) the availability and suitability of means to remove or mitigate that hazard or risk; and d) the cost of removing or mitigating that hazard or risk in relation to the benefits deriving therefrom; <p>Is it to be now understood that the employee must now consider all aspects (a) to (d) in determining whether to report the incident and if the employee determines that it is not “reasonably practicable” then they do not need to report the incident? Surely this could not be the intent?</p>

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15. Duty not to interfere with, damage or misuse things			
No person shall intentionally or recklessly interfere with, damage or misuse anything which is provided in the interest of health or safety. [S. 15 substituted by s. 3 of Act No. 181 of 1993.]			
16. Chief executive officer charged with certain duties	Amendment of section 16 of Act 85 of 1993		
(1) Every chief executive officer shall as far as is Reasonably Practicable ensure that the duties of his employer as contemplated in this Act, are properly discharged.	15. Section 16 of the principal Act is hereby amended- (a) by the substitution for subsection (1) of the following subsection: "(1) [Every] <u>A</u> chief executive officer shall [as far as is Reasonably Practicable] ensure that the duties of his <u>or her</u> employer as contemplated in this Act, are properly discharged".	16. (1) A chief executive officer shall as far as is reasonably practicable ensure that the duties of his or her employer as contemplated in this Act, are properly discharged.	The section appears to have been incorrectly numbered. The removal of “reasonably practicable” makes compliance impossible to achieve and it means that every employer is held to an absolute standard and considering the implications of non-compliance this makes South Africa a “dangerous” place for businesses to operate. This further reduces the economic attractiveness of South Africa as a place to do business and is not well aligned with the objectives of the Department of Trade and Industry.
	(b) by the insertion after subsection (1) of the following subsection: " <u>(1A) The chief executive officer shall develop, implement and continuously review the health and Safety Management System as the employer may be directed in terms of section 7(1);</u>	"(1A) The chief executive officer shall ensure that the duty of the employer to develop, implement and continuously review a health and safety management system is carried out, when directed to do so in terms of section 7(1);	Suggest that the change in grammar is needed to remove ambiguity in the sentence.

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(2) Without derogating from his responsibility or liability in terms of subsection (1), a chief executive officer may assign any duty contemplated in the said subsection, to any person under his control, which person shall act subject to the control and directions of the chief executive officer.	(2) Without derogating from his <u>or her</u> responsibility or liability in terms of subsection (1) <u>and (1A)</u> , a chief executive officer may [assign] <u>in writing, delegate</u> any duty contemplated in the said [subsection] <u>subsections</u> , to any person under his <u>or her</u> control, which person shall act subject to the control and direction of the chief executive officer, <u>in the interest of occupational health and safety.</u> ";		
	(c) by the insertion after subsection (2) of the following subsection: "(2A) A person so delegated in terms of subsection (2) may not further delegate the duty to any other person."; and		
(3) The provisions of subsection (1) shall not, subject to the provisions of section 37, relieve an employer of any responsibility or liability under this Act. (4) For the purpose of subsection (1), the head of department of any department of State shall be deemed to be the chief executive officer of that department.	(d) by the substitution for subsection (3) of the following subsection: "(3) The provisions of subsection (1) shall not, [subject to the provisions of section 37] , relieve an employer of any responsibility, <u>accountability</u> or liability under this Act."	Section 16(3). 'Except where specific written appointments are prescribed in terms of any regulation promulgated in terms of the Act and without derogating from his or her liability or responsibility or liability in terms of section 16(1) and section 16(2), a chief executive officer or a person appointed in terms of section 16(2) of the Act may in writing, appoint one or more competent persons to assist in discharging their duties as envisaged in the Act in the interests of occupational health and safety'.	The rationale behind this proposal is to address the vacuum currently experienced as regards so-called 'statutory' appointments. Save where written appointments are required in terms of the regulations e.g. General Machinery Regulations and Construction Regulations, the Bill is silent on managerial and supervisory appointments that cascade down and closer to the realities of the workplace. Managers and supervisors are an integral and essential part of an employer's health and safety management system and deserve statutory recognition. The CEO and 16(2) appointed persons are often too far removed from the realities of the workplace to properly discharge their statutory duties

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			<p>without managerial and supervisory assistance, resulting in employers having to resort to so-called 'in-house' appointments - often labelled Section 16(2) Assistants, section 8(2) appointments and section 8(2)(i) (supervisory) appointments. While it can be argued that these so-called 'in-house' appointments carry the same weight in law as the so-called 'statutory' appointments since they constitute a lawful order as envisaged in section 14(c) of the Act, managers and supervisors should be given statutory status along the lines of the construction regulations. This aligns with the Mine Health & Safety Act where provision is made for managerial and supervisory statutory appointments. Section 8 does also not provide for appointments and merely contains the duties of employers to their employees.</p> <p>The UK legislation also recognises the importance of such statutory appointments where, in the equivalent of section 8, it reads:</p> <p>'7.(1) Every employer shall appoint one or more competent persons to assist him in undertaking the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions.</p> <p>(2) Where an employer appoints persons in accordance with paragraph (1), he shall make</p>

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			<p>arrangements for ensuring adequate co-operation between them.</p> <p>(3) The employer shall ensure that the number of persons appointed under paragraph (1), the time available for them to fulfil their functions and the means at their disposal are adequate having regard to the size of his undertaking, the risks to which his employees are exposed and the distribution of those risks throughout the undertaking’.</p> <p>Managers are mentioned in section 37B under the heading ‘Criminal Liability’ without any previous reference to managers elsewhere in the Bill and the addition of section 16(3) will cure this issue.</p> <p>An employer, chief executive officer, (delete manager) (insert person envisaged in section 16(3)), agent or employee commits an offence</p>
17. Health and safety representatives	Amendment of section 17 of Act 85 of 1993		
(1) Subject to the provisions of subsection (2), every employer who has more than 20 employees in his employment at any workplace, shall, within four months after the commencement of this Act or after commencing business, or from such time as the number of employees exceeds 20, as the case may be, designate in writing for a specified period health and safety	<p>Section 17 of the principal Act is hereby amended-</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>"(1) Subject to the provisions of subsection (2), every employer who has more than 20 employees in his <u>or her</u> employment at any workplace, shall, within four months after the commencement of this Act or after</p>		

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representatives for such workplace, or for different sections thereof.	commencing business, or from such time as the number of employees exceeds 20, as the case may be, designate in writing for a specified period health and safety representatives for such workplace, or for different sections thereof.";		
(2) An employer and the representatives of his employees recognized by him or, where there are no such representatives, the employees shall consult in good faith regarding the arrangements and procedures for the nomination or election, period of office and subsequent designation of health and safety representatives in terms of subsection (1): Provided that if such consultation fails, the matter shall be referred for arbitration to a person mutually agreed upon, whose decision shall be final: Provided further that if the parties do not agree within 14 days on an arbitrator, the employer shall give notice to this effect in writing to the President of the Industrial Court, who shall in consultation with the chief inspector designate an arbitrator, whose decision shall be final. [Sub-s. (2) substituted by s. 4 of Act No. 181 of 1993.]	(b) by the substitution for subsection (2) of the following subsection: "(2) An employer and the representatives of his <u>or her</u> employees recognized by [him] <u>such employer</u> or, where there are no such representatives, the employees shall consult in good faith regarding the arrangements and procedures for the nomination or election, period of office and subsequent designation of health and safety representatives in terms of subsection (1): Provided that if such consultation fails, the matter shall be referred for arbitration to [a person mutually agreed upon, whose decision shall be final: Provided further that if the parties do not agree within 14 days on an arbitrator, the employer shall give notice to this effect in writing to the President of the Industrial Court, who shall in consultation with the chief inspector designate an arbitrator, whose decision shall be final.] <u>the Commission for Conciliation, Mediation and Arbitration.</u> ";		

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(3) Arbitration in terms of subsection (2) shall not be subject to the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965), and a failure of the consultation contemplated in that subsection shall not be deemed to be a dispute in terms of the Labour Relations Act , 1956 (Act No. 28 of 1956): Provided that the Minister may prescribe the manner of arbitration and the remuneration of the arbitrator designated by the President of the Industrial Court. [Sub-s. (3) substituted by s. 4 of Act No. 181 of 1993.]	(c) by the deletion of subsection (3):		
(4) Only those employees employed in a full-time capacity at a specific workplace and who are acquainted with conditions and activities at that workplace or section thereof, as the case may be, shall be eligible for designation as health and safety representatives for that workplace or section.			
(5) The number of health and safety representatives for a workplace or section thereof shall in the case of shops and offices be at least one health and safety representative for every 100 employees or part thereof, and in the case of all other workplaces at least one health and safety representative for every 50 employees or part thereof: Provided that those employees performing work at a	(d) by the substitution for subsection (5) of the following subsection: "(5) The number of health and safety representatives for a workplace or section thereof shall in the case of shops and offices be at least one health and safety representative for every 100 employees or part thereof, and in the case of all other workplaces at least one health and safety representative for every 50 employees or		

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workplace other than that where they ordinarily report for duty, shall be deemed to be working at the workplace where they so report for duty.	part thereof: Provided that [those employees] <u>an employee</u> performing work at a workplace other than that where the employee ordinarily report for duty, shall be deemed to be working at the workplace where the employee so reports for duty;"; and		
(6) If an inspector is of the opinion that the number of health and safety representatives for any workplace or section thereof, including a workplace or section with 20 or fewer employees, is inadequate, he may by notice in writing direct the employer to designate such number of employees as the inspector may determine as health and safety representatives for that workplace or section thereof in accordance with the arrangements and procedures referred to in subsection (2).	(e) by the substitution for subsection (6) of the following subsection: "(6) If an inspector is of the opinion that the number of health and safety representatives for any workplace or section thereof, including a workplace or section with 20 or fewer employees, is inadequate, [he] <u>the inspector</u> may by notice in writing direct the employer to designate such number of employees as the inspector may determine as health and safety representatives for that workplace or section thereof in accordance with the arrangements and procedures referred to in subsection (2)."		
(7) All activities in connection with the designation, functions and Training of health and safety representatives shall be performed during ordinary working hours, and any time reasonably spent by any employee in this regard shall for all purposes be deemed to be time spent by him in the carrying out of his duties as an employee.			

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18. Functions of health and safety representatives	Amendment of section 18 of Act 85 of 1993 Section 18 of the principal Act is hereby amended-		
(1) A health and safety representative may perform the following functions in respect of the workplace or section of the workplace for which he has been designated, namely-	(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:		
	"A health and safety representative may perform the following functions in respect of the workplace [or section of the workplace] for which he <u>or she</u> has been designated, namely-";	"A health and safety representative may perform the following functions in respect of the workplace or section of the workplace for which he or she has been designated, namely-";	The change to the definition brings less clarity not more as in relation to the definition of workplace it is not clear whether the person should be appointed for the whole premises and not part of it.
(a) review the effectiveness of health and safety measures;			
(b) identify potential hazards and potential major incidents at the workplace;			
(c) in collaboration with his employer, examine the causes of incidents at the workplace;	"(c) by the substitution in subsection (1) for paragraphs (c), with the following paragraph: in collaboration with [his] the employer, examine the causes of incidents at the workplace;		
(d) investigate complaints by any employee relating to that employee's health or safety at work;	(d) by the substitution in subsection (1) for paragraph (d), with the following paragraph: investigate complaints by [any] an employee relating to that employee's health or safety at work;		

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(e) make representations to the employer or a health and safety committee on matters arising from paragraphs (a), (b), (c) or (d), or where such representations are unsuccessful, to an inspector;			
(f) make representations to the employer on general matters affecting the health or safety of the employees at the workplace;	<i>(f) by the substitution</i> in subsection (1) for paragraph <i>(f)</i> , with the following paragraph: make representations to the employer on general matters affecting the health or safety of [the employees] <u>an employee</u> at the workplace;		
(g) inspect the workplace, including any article, substance, plant, machinery or health and safety equipment at that workplace with a view to, the health and safety of employees, at such intervals as may be agreed upon with the employer: Provided that the health and safety representative shall give reasonable notice of his intention to carry out such an inspection to the employer, who may be present during the inspection;	<i>(g) by the substitution</i> in subsection (1) for paragraph (g) with the following paragraph: inspect the workplace, including any article, substance, plant, machinery or health and safety equipment at that workplace with a view to the health and safety of employees, at such intervals as may be agreed upon with the employer: Provided that the health and safety representative shall give reasonable notice of [his] <u>any</u> intention to carry out such an inspection, to the employer, who may be present during the inspection;		
(h) participate in consultations with inspectors at the workplace and accompany inspectors on inspections of the workplace;			

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(i) receive information from inspectors as contemplated in section 36; and	(i) by the substitution in subsection (1) for paragraph (i) with the following paragraph: receive information from inspectors as contemplated in section 36 [;] and <u>where such information is not made available within 14 days of the inspection the information will be requested from the chief inspector</u> ;	(i) by the substitution in subsection (1) for paragraph (i) with the following paragraph: receive information from inspectors as contemplated in section 36 and where such information is not made available by the inspector within 14 days of the inspection the information may be requested from the chief inspector;	<i>Clarity of the provision was needed.</i>
(j) in his capacity as a health and safety representative attend meetings of the health and safety committee of which he is a member, in connection with any of the above functions.	(j) by the substitution in subsection (1) for paragraph (j) with the following paragraph: [in his capacity as a health and safety representative] attend meetings of the health and safety committee [of which he is] <u>as</u> a member, in connection with any of the above functions [.] <u>and</u> ";		
	by the addition of the following paragraph: " <u>(k) report on instances of non-compliance with this Act to the employer or health and safety committee.</u> ";		
(2) A health and safety representative shall, in respect of the workplace or section of the workplace for which he has been designated be entitled to-	by the substitution for subsection (2) of the following subsection: "A health and safety representative shall, in respect of the workplace or section of the workplace for which he <u>or she</u> has been designated, be entitled to-		
(a) visit the site of an incident at all reasonable times and attend any inspection in loco;	(a) visit the site of an incident <u>or where an employee was directed to leave the workplace</u> at all reasonable times and attend [any] <u>an</u> inspection <i>in loco</i> ;"		

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	<p><u>"(aA) attend regular meetings with the employees at the workplace to:</u></p> <p><u>(i) address health and safety in the workplace;</u></p> <p><u>(ii) provide feedback information to the employees they represent;</u></p> <p><u>(iii) discuss reports by the health and safety representatives on the performance of their functions; and</u></p> <p><u>(iv) receive Mandates from employees to be presented when attending the health and safety committee meetings;</u></p>	<p>Propose: "(aA) convene regular meetings with the employees at the workplace to:</p> <p>(i) address health and safety in the workplace;</p> <p>(ii) provide feedback information to the employees they represent;</p> <p>(iii) discuss reports by the health and safety representatives on the performance of their functions; and</p> <p>(iv) receive mandates from employees to be presented when attending the health and safety committee meetings;</p>	<p>Use of the word "attend", makes it sound like the H&S reps attend a meeting which has been set up by others. Convene is a more powerful concept where the H&S reps have the right to convene / set up meetings.</p>
(b) attend any investigation or formal inquiry held in terms of this Act;	(b) attend [any] <u>an</u> investigation or formal inquiry held in terms of this Act;"		
	<p><u>(bA) attend a special meeting with employees they represent after an incident in order to-</u></p> <p><u>(i) provide information on the incident;</u></p> <p><u>(ii) inform employees regarding arrangements for undertaking the investigation of the incident;</u></p> <p><u>(iii) gather information from employees relevant to the incident.</u></p>		
(c) in so far as it is reasonably necessary for performing his functions, inspect any document which the employer is required to keep in terms of this Act;	(c) in so far as it is reasonably necessary for performing [his] <u>the functions of a health and safety representative</u> , inspect any document which the employer is required to keep in terms of this Act;		
(d) accompany an inspector on any inspection;	(d) accompany an inspector on any inspection;		

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(e) with the approval of the employer (which approval shall not be unreasonably withheld), be accompanied by a technical adviser, on any inspection; and	(e) with the approval of the employer [(which approval shall not be unreasonably withheld)] , be accompanied by a technical adviser, on any inspection;		
(f) participate in any internal health or safety audit. [Sub-s. (2) substituted by s. 5 of Act No. 181 of 1993.]	(f) participate in any internal health or safety audit;		
	<u>(g) request and have access to inspect any document which the employer is required to keep in terms of this Act and where the document is not made available within 14 days of the inspection the information may be requested from the chief inspector subject to section 36;</u>	(g) request and have access to inspect any document which the employer is required to keep in terms of this Act and where the document is not made available within 14 days of the inspection the non-conformance may be reported to the chief inspector subject to section 36, who will instruct the employer to provide the requested information;	Change to provide clarity.
	<u>(h) report on instances of non-compliance with this Act to the employer or health and safety committee."</u> ; and		
(3) An employer shall provide such facilities, assistance and Training as a health and safety representative may reasonably require and as have been agreed upon for the carrying out of his functions.			
(4) A health and safety representative shall not incur any civil liability by reason of the fact only that he failed to do anything which he may do or is required to do in terms of this Act.	(e) by the substitution for subsection (4) of the following subsection: "(4) A health and safety representative shall not incur any civil liability by reason of the fact only that he <u>or she</u> failed to do		

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	anything which he <u>or she</u> may do or is required to do in terms of this Act."		
19. Health and safety committees	Amendment of section 19 of Act 85 of 1993 Section 19 of the principal Act is hereby amended-		
(1) An employer shall in respect of each workplace where two or more health and safety representatives have been designated, establish one or more health and safety committees and, at every meeting of such a committee as contemplated in subsection (4), consult with the committee with a view to initiating, developing, promoting, maintaining and reviewing measures to ensure the health and safety of his employees at work.	(a) by the substitution for subsection (1) of the following subsection: "(1) <u>A workplace with one or more health and safety representatives designated shall establish one or more health and safety committee.</u> ";		
(2) A health and safety committee shall consist of such number of members as the employer may from time to time determine: Provided that-	(b) by the substitution in subsection (2) for the words preceding the proviso of the following words: "(2) A health and safety committee shall consist of [such] <u>the number of members [as the employer may from time to time determine] in accordance with a Collective Agreement, where one exists or as may be determined by the employer and employees or the employee representatives, for the efficient and effective operation of the health and Safety Management System:</u> ";		

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<p>(a) if one health and safety committee has been established in respect of a workplace, all the health and safety representatives for that workplace shall be members of the committee;</p> <p>(b) if two or more health and safety committees have been established in respect of a workplace, each health and safety representative for that workplace shall be a member of at least one of those committees; and</p> <p>(c) the number of persons nominated by an employer on any health and safety committee established in terms of this section shall not exceed the number of health and safety representatives on that committee.</p>			
<p>(3) The persons nominated by an employer on a health and safety committee shall be designated in writing by the employer for such period as may be determined by him, while the health and safety representatives shall be members of the committee for the period of their designation in terms of Section 17(1).</p>	<p>(c) by the substitution for subsection (3) of the following subsection: "(3) The persons nominated by an employer on a health and safety committee shall be designated in writing by the employer for such period as may be determined by [him] <u>that employer</u>, while the health and safety representatives shall be members of the committee for the period of their designation [terms of section 17 (1)] <u>in accordance with their Collective Agreement, only where one exists or as shall be determined between employer and employees.</u>";</p>		

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(4) A health and safety committee shall hold meetings as often as may be necessary, but at least once every three months, at a time and place determined by the committee: Provided that an inspector may by notice in writing direct the members of a health and safety committee to hold a meeting at a time and place determined by him: Provided further that, if more than 10 per cent of the employees at a specific workplace has handed a written request to an inspector, the inspector may by written	(d) by the substitution for subsection (4) of the following subsection: "(4) A health and safety committee shall hold meetings as often as may be necessary, but at least once every [three] <u>two</u> months, at a time and place determined by the committee: Provided that an inspector may by notice in writing direct the members of a health and safety committee to hold a meeting at a time and place determined by him <u>or her</u> : Provided further that, if more than 10 per cent of the employees at a specific workplace has handed a written request to an inspector, the inspector may by written notice direct that such a meeting be held.";		
(5) The procedure at meetings of a health and safety committee shall be determined by the committee.			
(6) (a) A health and safety committee may co-opt one or more persons by reason of his or their particular knowledge of health or safety matters as an advisory member or as members of the committee. (b) An advisory member shall not be entitled to vote on any matter before the committee.	(e) by the substitution in subsection (6) for paragraph (a) of the following paragraph: "(a) A health and safety committee may co-opt one or more persons by reason of his <u>or her</u> or, their particular knowledge of health or safety matters as an advisory member or as advisory members of the committee.";		
(7) If an inspector is of the opinion that the number of health and safety committees established for any particular workplace is	(f) by the substitution for subsection (7) of the following subsection: "(7) If an inspector is of the opinion that		

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inadequate, he may in writing direct the employer to establish for such workplace such number of health and safety committees as the inspector may determine.	the number of health and safety committees established for any particular workplace is inadequate, he <u>or she</u> may in writing direct the employer to establish for such workplace such number of health and safety committees as the inspector may determine."		
20. Functions of health and safety committees	Amendment of section 20 of Act 85 of 1993 Section 20 of the principal Act is hereby amended-		
(1) A health and safety committee-	(a) by the substitution for subsection (1) of the following subsection: "(1) A health and safety committee-		
(a) may make recommendations to the employer or, where the recommendations fail to resolve the matter, to an inspector regarding any matter affecting the health or safety of persons at the workplace or any section thereof for which such committee has been established;	(a) may make recommendations to the employer or, where the recommendations fail to resolve the matter, to an inspector regarding any matter affecting the health or safety of persons at the workplace or any section thereof for which such committee has been established <u>or to the representative Trade Union, in which event</u> - <u>(i) the inspector shall attend to the matter in terms of section 29; or</u> <u>(ii) the representative Trade Union may declare a dispute in accordance with the Collective Agreement where one exists;</u>	(a) may make recommendations to the employer and after implementation of the recommendations the matter still remains unresolved, refer the matter to an inspector who shall attend to the matter in terms of section 29 and where there is still not adequate resolution refer the matter to the representative trade union and inspector, in which event - (i) the inspector shall attend to the matter in terms of section 29; or (ii) the representative Trade Union may declare a dispute in accordance with the Collective Agreement where one exists;	The proposed change did not make it clear that there was a stepwise process to be followed in that it was an option not to first reach resolution with the inspector before referring the matter to the representative trade union. Rather it is less confusing for opportunity for the inspector to first try and resolve the matter and only if this route were unsuccessful then to refer to both the trade union and inspector together.
(b) shall discuss any incident at the workplace or section thereof in which or in consequence of which any person was	(b) shall discuss any incident at the workplace or section thereof in which or in consequence of which person was injured,		

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injured, became ill or died, and may in writing report on the incident to an inspector; and	became ill or died, and may in writing report on the incident to an inspector any; [and]		
(c) shall perform such other functions as may be prescribed.	(c) [shall perform such other functions as may be prescribed.] shall identify all occupational health and safety regulations that are relevant to the workplace activities or substances;	(c) shall identify all occupational health and safety regulations that are relevant to the workplace activities or hazardous chemical agents;	The change in the RHCS to RHCA means that agent should be referred to.
	(d) shall ensure that the relevant information, Training assessment, monitoring and recording provisions are in place;	(d) shall review the relevant information, training, assessment, monitoring and recording provisions are in place;	As it is currently written “ensure” is a duty of the employer and not the H&S committee. By changing the word to “review” it aligns it with the usual understanding of functions of health and safety committees.
	(e) shall make recommendation for inclusion in a workplace the health and Safety Management System and safe work procedures;	(e) shall make recommendations for inclusion into the workplace health and safety management system and health and safety work procedures;	This change aligns from the RHCS to RHCA. Suggest that “as spelt out” is not typical legal wording and “as provided” or similar is more conventional legal language.
	(f) shall review the Training and information provided to employees regarding any hazardous substance or condition as spelt out in the regulations; and	Propose: (f) shall review the training and information provided to employees regarding any hazardous chemical agent or condition as provided for in the regulations; and	This change aligns from the RHCS to RHCA. Suggest that “as spelt out” is not typical legal wording and “as provided” or similar is more conventional legal language.
	(g) shall perform such other functions as may be prescribed or agreed to in a Collective Agreement, where such agreement exists.”;		
(2) A health and safety committee shall keep record of each recommendation made to an employer in terms of subsection (1) (a) and of any report made			

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to an inspector in terms of subsection (1) (b).			
(3) A health and safety committee or a member thereof shall not incur any civil liability by reason of the fact only that it or he failed to do anything which it or he may or is required to do in terms of this Act.	(b) by the substitution for subsection (3) of the following subsection: "(3) A health and safety committee or a member thereof shall not incur any civil liability by reason of the fact only that it or he <u>or she</u> failed to do anything which it or he <u>or she</u> may or is required to do in terms of this Act."		
(4) An employer shall take the prescribed steps to ensure that a health and safety committee complies with the provisions of section 19 (4) and performs the duties assigned to it by subsections (1) and (2).			
21. General prohibitions	Amendment of section 21 of Act 85 of 1993 Section 21 of the principal Act is hereby amended-		
(1) The Minister may by notice in the Gazette declare- (a) that no employer shall require or permit any employee belonging to a category of employees specified in the notice to perform work on or in any premises on or in which an activity specified in the notice is carried out which in the opinion of the Minister is an activity which threatens or is likely to threaten the health or safety of an employee belonging to that category of employees, or that no			

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<p>employer shall require or permit any such employee to perform any work on or in such premises otherwise than on the conditions specified in the notice;</p> <p>(b) that no employer shall require or permit any employee to perform any work in connection with the carrying out of a process specified in the notice which in the opinion of the Minister is a process which threatens or is likely to threaten the health or safety of an employee, or that no employer shall require or permit an employee to perform any work in connection with the carrying out of such a process otherwise than on the conditions specified in the notice; and</p> <p>(c) that no employer shall require or permit any employee, otherwise than on the conditions specified in the notice, to perform any work on or in any premises where an article or substance specified in the notice is produced, processed, used, handled, stored or transported which in the opinion of the Minister is an article or substance which threatens or is likely to threaten the health or safety of an employee.</p>			
<p>(2) (a) The Minister shall, before he publishes a notice under subsection (1), cause a draft of his proposed notice to be published in the Gazette and at the same</p>	<p>(a) by the substitution for subsection (2) of the following subsection:</p> <p>"(2) (a) The Minister shall before he <u>or she</u> publishes a notice under subsection (1),</p>		

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time invite interested persons to submit to him in writing, within a specified period, comments and representations in connection with the proposed notice.	<u>consult with the Council and</u> cause a draft of [his] the proposed notice to be published in the <i>Gazette</i> and at the same time invite interested persons to submit to him or her in writing, within a specified period, comments and representations in connection with the proposed notice.		
(b) The provisions of paragraph (a) shall not apply if the Minister, in pursuance of comments and representations received, decides to publish the notice referred to in subsection (1) in an amended form.	(b) The provisions of paragraph (a) shall not apply if the Minister, in pursuance of comments and representations received, decides to publish the notice referred to in subsection (1) in an amended form.";		
(3) A notice under subsection (1) may at any time be amended or withdrawn by like notice.	(c) by the substitution for subsection (3) of the following subsection: "(3) A notice [under] <u>referred to in</u> subsection (1) may at any time be amended or withdrawn by like notice.";		
(4) A notice shall not be issued under subsection (1) or (3) unless the Minister for National Health and Welfare and the Council have been consulted.	(d) by the substitution for subsection (4) of the following subsection: "(4) A notice shall not be issued under subsection (1) or (3) unless the Minister [for National Health and Welfare] <u>of Health</u> and the Council have been consulted."		
(5) A notice issued or deemed to have been issued under section 13 of the Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), and which was in force immediately prior to the commencement of this Act, shall be	(e) by the deletion of subsection (5).		

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deemed to have been issued under this section.			
22. Sale of certain articles prohibited Subject to the provisions of section 10 (4), if any requirement (including any health and safety standard) in respect of any article, substance, plant, machinery or health and safety equipment or for the use or application thereof has been prescribed, no person shall sell or market in any manner whatsoever such article, substance, plant, machinery or health and safety equipment unless it complies with that requirement.			Refer to motivation under Section 10(4). The definition of 'sell' is also retained "sell" includes- offer or display for sale or import into the Republic for sale; or exchange, donate, lease or offer or display for leasing. The MHS Act provides for a Written Undertaking in section 21(2)(b) including the term 'reasonably practicable'.
23. Certain deductions prohibited	Amendment of section 23 of Act 85 of 1993 as amended by section 6 of Act 181 of 1993		
No employer shall in respect of anything which he is in terms of this Act required to provide or to do in the interest of the health or safety of an employee, make any deduction from any employee's remuneration or require or permit any employee to make any payment to him or any other person. [S. 23 substituted by s. 6 of Act No. 181 of 1993.]	Section 23 of the principal Act is hereby amended by the substitution for section 23 of the following section: "No employer shall in respect of anything which [he] <u>the employer</u> is in terms of this Act required to provide or to do, in the interest of the health or safety of an employee, make [any] <u>a</u> deduction from [any] <u>an</u> employee's remuneration or require or permit [any] <u>an</u> employee to make [any] <u>a</u> payment to [him or any other] <u>another person.</u> "		

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24. Report to inspector regarding certain incidents (1) Each incident occurring at work or arising out of or in connection with the activities of persons at work, or in connection with the use of plant or machinery, in which, or in consequence of which-	Amendment of section 24 of Act 85 of 1993 Section 24 of the principal Act is hereby amended by-		
(a) any person dies, becomes unconscious, suffers the loss of a limb or part of a limb or is otherwise injured or becomes ill to such a degree that he is likely either to die or to suffer a permanent physical defect or likely to be unable for a period of at least 14 days either to work or to continue with the activity for which he was employed or is usually employed;	the substitution in subsection (1) for paragraph (a) of the following paragraph " (a) any person dies, becomes unconscious, suffers the loss of a limb or part of a limb or is otherwise injured or becomes ill to such a degree that [he] the person is likely either to die or to suffer a permanent physical defect or likely to be unable for a period of at least 14 days either to work or to continue with the activity for which [he] the person was employed or is usually employed;		
(b) a major incident occurred; or	the substitution in subsection (1) for paragraph (b) of the following paragraph " (b) [a major incident occurred;] <u>in the course of an employee's employment, an incident occurred which resulted in personal injury, illness or death of the employee:</u> or	(b) a major incident occurred; or	1(b) seems to replicate 1(a), which leads to confusion. The threshold for reporting seems to have been removed where all incidents leading to a form of injury seem to need to be reported. For example: A paper cut at an office would need to be reported. If a domestic worker sustains a minor cut to their finger whilst preparing food it would be similarly reportable. Surely this would lead to the inspectorate being

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			overwhelmed with all of the incidents reported and the screening system which effectively was in place would make it difficult for the inspectorate to determine the severity of the incident? Additionally, it is not clear why the DoEL would not want major incidents to be reported? It is noted that the definition of major incident has not been removed.
(c) the health or safety of any person was endangered and where-	the substitution in subsection (1) for paragraph (c) of the following paragraph " (c) the health or safety of any person was endangered and where		
(i) a dangerous substance was spilled;	(i) a [dangerous] <u>hazardous</u> substance <u>or biological agent</u> was spilled <u>or released</u> ;	(i) a hazardous chemical agent was spilled or released ;	The inclusion of a "biological agent" would make it a requirement to report every flu case which occurred at work under section 24. Influenza is an HBA and so if the virus were breathed out at a workplace it would be released and so make it a requirement to report.
(ii) the uncontrolled release of any substance under pressure took place;	(ii) the uncontrolled release of any substance under pressure took place		
(iii) machinery or any part thereof fractured or failed resulting in flying, falling or uncontrolled moving objects; or	(iii) machinery or any part thereof fractured or failed resulting in flying, falling or uncontrolled moving objects; or		
(iv) machinery ran out of control, shall, within the prescribed period and in the prescribed manner, be reported to an inspector by the employer or the user of the plant or machinery concerned, as the case may be	(iv) machinery ran out of control, shall, within the prescribed period and in the prescribed manner, be reported to an inspector by the employer or the user of the plant or machinery concerned, as the case may be.";		

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(2) In the event of an incident in which a person died, or was injured to such an extent that he is likely to die, or suffered the loss of a limb or part of a limb, no person shall without the consent of an inspector disturb the site at which the incident occurred or remove any article or substance involved in the incident therefrom: Provided that such action may be taken as is necessary to prevent a further incident, to remove the injured or dead, or to rescue persons from danger.			
(3) The provisions of subsections (1) and (2) shall not apply in respect of-	(b) the substitution for subsection (3) of the following subsection: "(3) The provisions of subsections (1) and (2) shall not apply in respect of-		
(a) a traffic accident on a public road;	(a) a traffic incident on a public road.		
(b) an incident occurring in a private household, provided the householder forthwith reports the incident to the South African Police; or	(b) an incident occurring in a private household, provided the householder forthwith reports the incident to the South African Police; or		
(c) any accident which is to be investigated under section 12 of the Aviation Act, 1962 (Act No. 74 of 1962).	(c) any incident which is to be investigated under section [12 of the Aviation Act, 1962 (Act No. 74 of 1962)] 39 of the Civil Aviation Act, 2009(Act No.13 of 2009)."		
(4) A member of the South African Police to whom an incident was reported in terms of subsection (3) (b), shall forthwith notify an inspector thereof.	(c) the substitution for subsection (4) of the following subsection: "(4) A member of the South African Police Service to whom an incident was reported in terms of [subsection (3) (b)] this Act		

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	shall forthwith notify an inspector thereof.” and		
	(d) the addition of the following subsection:		
	<u>(5) (a) The employer or user or self-employed person shall provide the Department with a copy of Incident Statistics annually, on the first day of March of each year.</u>		
	<u>(b) The Incident Statistics referred to in paragraph (a) shall be provided in the prescribed format.</u>		
	<u>(c) The Incident Statistics shall include statistics for Contractors that occurred while working on the employer premises: Provided that, the contractors are required to provide Incident Statistics to the Department as well.”</u>	Delete this sub-section.	<p>There are a number of significant issues with this new section:</p> <ol style="list-style-type: none"> 1. Under section 37 it speaks of mandatories and not “contractors”, where it is assumed that mandatories and contractors are the same class of employer. Contractor is not defined but it is suggested that the existing term of mandatories is referred to in order to maintain consistency. 2. The section seems to clash with Section 37(2), where every mandatory is an employer in their own right. The wording in this section undermines this thinking and seems to remove their status as an “employer”. “ Provided that, the contractors are required to provide Incident Statistics to the Department as well”. Does this mean

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			that the contractor is not an employer? Propose that this section is aligned to the thinking provided in Section 37(2).
25. Report to chief inspector regarding occupational disease Any medical practitioner who examines or treats a person for a disease described in the Second Schedule to the Workmen's Compensation Act, 1941 (Act No. 30 of 1941), or any other disease which he believes arose out of that person's employment, shall within the prescribed period and in the prescribed manner report the case to the person's employer and to the chief inspector, and inform that person accordingly. [S. 25 substituted by s. 7 of Act No. 181 of 1993.]	Amendment of section 25 of Act 85 of 1993 as substituted by section 7 of Act 181 of 1993 The following section is hereby substituted for section 25 of the principal Act: "Report to chief inspector regarding occupational disease 25. [Any] A medical practitioner who examines or treats a person for a disease described in the [Second Schedule to the Workmen's Compensation Act, 1941 (Act No. 30 of 1941)] <u>Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993)</u> , or any other disease which [he] the medical practitioner believes arose out of that person's employment, shall within the prescribed period and in the prescribed manner report the case to the person's employer and to the chief inspector, and inform that person accordingly."	25 A medical practitioner who examines or treats a person for a disease described in the Third Schedule to the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), or any other disease which the medical practitioner believes arose out of that person's employment, shall within the prescribed period and in the prescribed manner report the case to the person's employer and to the chief inspector, and inform that person accordingly."	Schedule 3 under the COIDA lists applicable diseases and needs to be mentioned in order to provide both scope and clarity to the requirement. Suggest, having reference to the COIDA alone is not sufficient.
26. Victimization forbidden 1) No employer shall dismiss an employee, or reduce the rate of his remuneration, or alter the terms or conditions of his employment to terms or conditions less favourable to him, or alter his position relative to other employees employed by	Substitution of section 26 of Act 85 of 1983 as amended by 58 of Act 181 of 1993 The following section is hereby substituted for section 26 of the principal act: " [Victimization] Victimisation forbidden 26. (1) An employer may not discriminate	Leave the section the way it was.	The new section 26(1) and (2) seem to give less protection against issues of reduction of pay and suchlike than the proposed regulation provides.

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<p>that employer to his disadvantage, by reason of the fact, or because he suspects or believes, whether or not the suspicion or belief is justified or correct, that that employee has given information to the Minister or to any other person charged with the administration of a provision of this Act which in terms of this Act he is required to give or which relates to the terms, conditions or circumstances of his employment or to those of any other employee of his employer, or has complied with a lawful prohibition, requirement, request or direction of an inspector, or has given evidence before a court of law or the industrial court, or has done anything which he may or is required to do in terms of this Act or has Refused to do anything which he is prohibited from doing in terms of this Act.</p>	<p><u>against an employee for exercising a right conferred in terms of this Act.</u></p>		
<p>(2) No employer shall unfairly dismiss an employee, or reduce the rate of his remuneration, or alter the terms or conditions of his employment to terms or conditions less favourable to him or alter his position relative to other employees employed by that employer to his disadvantage, by reason of the information that the employer has obtained regarding the results contemplated in section 12 (2) or by reason of a report made to the</p>	<p><u>(2) No person shall do, or threaten to do, anything that -</u></p>		

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employer in terms of section 25. [Sub-s. (2) added by s. 8 of Act No. 181 of 1993.]			
	<u>(a) requires an employee not to exercise a right conferred in terms of this Act;</u>		
	<u>(b) prevents an employee from exercising a right conferred in terms of this Act; or</u>		
	<u>(c) prejudices an employee because of a past or present-</u> <u>(i) failure or refusal to do anything that an employer may not lawfully permit or require an employee to do;</u> <u>(ii) disclosure of information that the employee is lawfully entitled or required to give to another person; or</u> <u>(iii) exercise of a right conferred in terms of this Act.</u>		
	<u>(3) No employer shall favour, or promise to favour, an employee in exchange for the employee not to exercise a right conferred in terms of this Act."</u>		
27. Designation and functions of chief inspector	Amendment of section 27 of Act 85 of 1993 25. Section 27 of the principal Act is hereby amended by:		
(1) The Minister shall designate an officer serving in the Department as chief inspector for the purposes of this Act.			
(2) The chief inspector shall perform his functions subject to the control and supervision of the Director General of the	<u>(a) the substitution for subsection (2) of the following subsection:</u> <u>"(2) The chief inspector shall perform [his] any functions prescribed subject to the</u>		

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Department and may perform any function assigned to an inspector by this Act.	control and supervision of the Director-General of the Department and may perform any function assigned to an inspector by this Act;"		
(3) (a) The chief inspector may delegate any power conferred upon him by this Act, excluding a power referred to in section 35 (1) or delegated to him under section 42, to any other officer or authorize any such officer to perform any duty assigned to him by this Act.	(b) the substitution for subsection (3) of the following subsection: "(3) (a) The chief inspector may delegate any power conferred upon him <u>or her</u> by this Act, excluding a power referred to in section 35(1) or delegated to him <u>or her</u> under section 42, to any other officer or authorise any such officer to perform any duty assigned to him <u>or her</u> by this Act.";		
(b) No delegation of a power under paragraph (a) shall prevent the exercise of such power by the chief inspector himself.	"(b) No delegation of [a] power under paragraph (a) shall prevent the exercise of such power by the chief inspector [himself] .";		
(4) Whenever the chief inspector is absent or unable to perform his functions as chief inspector or whenever the designation of a chief inspector is pending, the Minister may designate any other officer serving in the Department to act as chief inspector during the chief inspector's absence or incapacity or until a chief inspector is designated.	(c) the substitution for subsection (4) of the following subsection: "(4) Whenever the chief inspector is absent or unable to perform his <u>or her</u> functions as chief inspector or whenever the designation of a chief inspector is pending, the Minister may designate any other officer serving in the Department to act as chief inspector during the chief inspector's absence or incapacity or until a chief inspector is designated.";		
(5) Any person who immediately prior to the commencement of this Act was designated as chief inspector under	and ADD by the deletion of subsection (d) by the deletion of subsection (5)		

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section 19 of the Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), shall be deemed to have been designated as chief inspector under subsection (1) of this section.			
28. Designation of inspectors by Minister	Amendment of section 28 of Act 85 of 1993 Section 28 of the principal Act is hereby amended by:		
1) The Minister may designate any person as an inspector to perform, subject to the control and directions of the chief inspector, any or all of the functions assigned to an inspector by this Act.	(a) the substitution of subsection (1) of the following subsection: "(1) The Minister may designate <u>permanently or temporarily</u> any person as an inspector to perform, subject to the control and directions of the chief inspector, any or all of the functions assigned to an inspector by this Act.		
(2) Each inspector designated under subsection (1) shall be furnished with a certificate signed by or on behalf of the Minister and stating that he has been designated as an inspector: Provided that if his designation as inspector is limited to any particular function or functions, his certificate shall state such limitation.	(b) the substitution of subsection (2) of the following subsection: "(2) [Each] <u>An</u> inspector designated [under] <u>in terms of</u> subsection (1) shall be furnished with a [certificate] <u>card</u> signed by or on behalf of the Minister [and stating] <u>stipulating that [he] the bearer of the card</u> has been designated as an inspector [: Provided that if his designation as inspector is limited to any particular function or functions, his certificate shall state such limitation] .";		
	(c) the insertion after subsection (2) of the following subsection:		

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	"(2A) The card shall include- <u>(a) the name;</u> <u>(b) a unique number;</u> <u>(c) an identity number;</u> <u>(d) a photo of the bearer; and</u> <u>(e) a designation.</u> ";		
(3) Whenever an inspector designated under subsection (1) performs a function under this Act in the presence of any person affected thereby the inspector shall on demand by such person produce to him the certificate referred to in subsection (2).	(d) the substitution of subsection (3) of the following subsection: "(3) Whenever an inspector designated under subsection (1) performs a function under this Act in the presence of [any] a person affected thereby, the inspector shall on demand by such person, produce to [him] <u>that person</u> the [certificate] <u>card</u> referred to in subsection (2)."; and		
(4) Any officer who immediately prior to the commencement of this Act was designated as an inspector under section 20 of the Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), shall be deemed to have been designated as an inspector under subsection (1) of this section.	(e) the deletion of subsection 4.		
29. Functions of inspectors	Amendment of section 29 of Act 85 of 1993 Section 29 of the principal Act is hereby amended by:		
(1) An inspector may, for the purposes of this Act-	(a) the substitution of subsection (1) of the following subsection: "(1) An inspector may, for the purposes of this Act—		

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(a) without previous notice, at all reasonable times, enter any premises which are occupied or used by an employer or on or in which an employee performs any work or any plant or machinery is used, or which he suspects to be such premises;	(a) without previous notice, at all reasonable times, enter [any] <u>the</u> premises which [are] is occupied or used by an employer or on or in which an employee performs any work or any plant or machinery is used, or which [he] <u>the inspector</u> suspects to be such premises;		
(b) question any person who is or was on or in such premises, either alone or in the presence of any other person, on any matter to which this Act relates;	(b) question any person who is or was on or in such premises, either alone or in the presence of any other person, on any matter to which this Act relates;		
(c) require from any person who has control over or custody of a book, record or other document on or in those premises, to produce to him forthwith, or at such time and place as may be determined by him, such book, record or other document;	(c) require from any person who has control over or custody of a book, record or other document on or in those premises, to produce to [him] <u>the inspector</u> forthwith, or at such time and place as may be determined by [him] <u>the inspector</u> , such book, record or other document;		
(d) examine any such book, record or other document or make a copy thereof or an extract therefrom;	(d) examine any such book, record or other document or make a copy thereof or an extract there from;		
(e) require from such a person an explanation of any entry in such book, record or other document;	(e) require from such a person an explanation of any entry in such book, record or other document;		
(f) inspect any article, substance, plant or machinery which is or was on or in those premises, or any work performed on or in those premises or any condition prevalent on or in those premises or remove for examination or analysis any article,	(f) inspect any article, substance, plant or machinery which is or was on or in those premises, or any work performed on or in those premises or any condition prevalent on or in those premises or remove for examination or analysis any article,		

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substance, plant or machinery or a part or sample thereof;	substance, plant or machinery or a part or sample thereof;		
(g) seize any such book, record or other document or any such article, substance, plant or machinery or a part or sample thereof which in his opinion may serve as evidence at the trial of any person charged with an offence under this Act or the common law: Provided that the employer or user of the article, substance, plant or machinery concerned, as the case may be, may make copies of such book, record or document before such seizure;	(g) seize any such book, record or other document or any such article, substance, plant or machinery or a part or sample thereof which in [his] <u>the opinion of the inspector</u> may serve as evidence at the trial of any person charged with an offence under this Act or the common law: Provided that the employer or user of the article, substance, plant or machinery concerned, as the case may be, may make copies of such book, record or document before such seizure;		
(h) direct any employer, employee or user, including any former employer, employee or user, to appear before him at such time and place as may be determined by him and question such employer, employee or user either alone or in the presence of any other person on any matter to which this Act relates;	(h) direct any employer, employee or user, including any former employer, employee or user, to appear before [him] <u>the inspector</u> at such time and place as may be determined by [him] <u>the inspector</u> and question such employer, employee or user either alone or in the presence of any other person on any matter to which this Act relates;		
(i) perform any other function as may be prescribed.	(i) [perform any other function as may be prescribed] <u>issue an administrative Fine in terms of section 37(A) as indicated by Schedule 2; and;</u>	Remove this proposed section.	<p>Since the inspector can levy the fine directly on the employer without any review process, it has the following effects:</p> <ul style="list-style-type: none"> Removal of administrative justice in terms of Promotion of Administrative Justice Act, Act 3 of 2000, (the review process of the courts is missing). This problem is compounded by the removal of reasonably

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			<p>practicable, effectively enforcing strict liability, where in the courts the employer would still be tested against the definition of negligence (effectively reasonably practicable), whereas now for any infraction of the law across specified sections including whole sectors (section 7), the employer could now be fined without this legal fairness contained in law and which would be available to the employer if they had been taken to court.</p> <ul style="list-style-type: none"> • Opening up unacceptable opportunity for corruption between employers and inspectors. Noting further that there are only offences for corruption for the employer and not inspectors Section 37C.(1)(c) “persuades an inspector to accept a bribe” and this violates the Prevention and Combating of Corrupt Activities Act and Regulations (12/2004). <p>If Administrative fines are to be introduced it should be under the same structure as under the MHSA, Section 55A., noting:</p> <ul style="list-style-type: none"> • In terms of 55A.(1), The inspector recommends to the Principal Inspector of Mines for an Admin Fine, this provides a review process and so the process delivers acceptable administrative justice; • 55A.(3), the recommendation has to serve the copy of recommendation on not only the employer, but also to the health and safety committee and representative trade union;

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			<ul style="list-style-type: none"> There is opportunity to make written representations to the Principal Inspector of Mines within 30 days of the recommendation. This is missing in Section 55A. Inspector's powers to recommend fine <p>(1) An inspector may make a recommendation in writing to the Principal Inspector of Mines that a fine be imposed on an employer who has failed to comply with any provision contemplated in section 91(1B).</p> <p>(3) The inspector concerned must serve a copy of the recommendation on -</p> <p>(a) the employer;</p> <p>(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</p> <p>(c) the representative trade union, or if there is no representative trade union, to every registered trade union with members at the mine.</p> <p>(4) The employer may make written representations to the Principal Inspector of Mines within 30 days of the recommendation.</p> <p>(5) A representation made in terms of this section may not be used against the employer in any criminal or civil proceedings in respect of the same set of facts.</p>

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	<u>(j) when so required, take photographs or make audio-visual recordings of any workplace, anything or any person within the workplace which may be relevant to an inspection or an investigation being conducted by the inspector."</u> ;	(j) when so required, take photographs or make audio-visual recordings of any workplace, anything or any person within the workplace which may be relevant to an inspection or an investigation being conducted by the inspector, provided that taking the photographs or making audio-visual recordings in the workplace will not endanger the health or safety of any persons;	Most electronic recording devices are not intrinsically safe and so may pose a source of ignition when used in environments where there is a danger of fire / explosion. If this proviso was not added it would cause conflict with Section 8 where it would be outside of the scope of control of the employer to maintain a work environment that was safe and without risks to the health and safety of persons.
	(c) the substitution of subsection (3) of the following subsection: (d) the substitution of subsection (4) of the following subsection: "(4) When an inspector removes or seizes any article, substance, plant, machinery, book, record or other document as contemplated in subsection (1) (f) or (g), [he] <u>the inspector</u> shall issue a receipt to the owner or person in control thereof [.]: <u>Provided that the inspector shall as soon as reasonably possible or at the conclusion of any proceedings in terms of this Act, return whatever he or she has seized."</u> ;		
(2) (a) An interpreter, a member of the South African Police or any other assistant may, when required by an inspector, accompany him when he performs his functions under this Act	(b) the substitution of subsection (2) of the following sub section: "(2) [(a)] An interpreter, a member of the South African Police Services or any other assistant may, when required by an inspector, accompany [him when he		

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	performs] the inspector to perform his or her functions under this Act[.], where the assistance is reasonably required.		
(b) For the purposes of this Act an inspector's assistant shall, while he acts under the Instructions of an inspector, be deemed to be an inspector.	[(b) For the purposes of this Act an inspector's assistant shall, while he acts under the Instructions of an inspector, be deemed to be an inspector.]"		
(3) When an inspector enters any premises under subsection (1) the employer occupying or using those premises and each employee performing any work thereon or therein and any user of plant or machinery thereon or therein, shall at all times provide such facilities as are reasonably required by the inspector to enable him and his assistant (if any) to perform effectively and safely his or their functions under this Act.	the substitution of subsection (3) of the following subsection: "(4) When an inspector enters any premises under subsection (1), the employer occupying or using those premises and each employee performing any work thereon or therein and any user of plant or machinery thereon or therein, shall at all times provide such facilities as are reasonably required [by the inspector] to enable [him] the inspector and [his] the inspector's assistant, [(if any)], to perform effectively and [safely his or their] in a safe and healthy manner their functions under this Act.";		
(4) When an inspector removes or seizes any article, substance, plant, machinery, book, record or other document as contemplated in subsection (1) (f) or (g), he shall issue a receipt to the owner or person in control thereof.	(d) the substitution of subsection (4) of the following subsection: "(4) When an inspector removes or seizes any article, substance, plant, machinery, book, record or other document as contemplated in subsection (1) (f) or (g), [he] <u>the inspector</u> shall issue a receipt to the owner or person in control thereof [.]: <u>Provided that the inspector shall as soon as</u>		

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	<u>reasonably possible or at the conclusion of any proceedings in terms of this Act, return whatever he or she has seized."</u> ;		
	(e) by the addition of the following subsection: <u>"(5) Subject to section 40, when an inspector has undertaken an inspection, the inspector shall provide a copy of the inspection report or copies of any notice and correspondence that was issued during the inspection to—</u> <u>(a) the employer, the health and safety representatives and</u> <u>the representative Trade Union for that workplace; and</u> <u>(b) in the case of construction site, the construction client, principal contractor; any other contractor on site, if applicable and all persons in paragraph (a)."</u>		
30. Special powers of inspectors	Amendment of section 30 of Act 85 of 1993 Section 30 of the principal Act is hereby amended by:		
(1) (a) Whenever an employer performs an act or requires or permits an act to be performed, or proposes to perform an act or to require or permit an act to be performed, which in the opinion of an inspector threatens or is likely to threaten the health or safety of any person, the inspector may in writing prohibit that			

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employer from continuing or commencing with the performance of that act or from requiring or permitting that act to be continued or commenced with, as the case may be. .			
(b) Whenever a user of plant or machinery uses or proposes to use any plant or machinery, in a manner or in circumstances which in the opinion of an inspector threatens or is likely to threaten the health or safety of any person who works with such plant or machinery or who is or may come within the vicinity thereof, the inspector may in writing prohibit that user from continuing or commencing with the use of such plant or machinery or in that manner or those circumstances, as the case may be.			
(c) An inspector may in writing prohibit an employer from requiring or permitting an employee or any employee belonging to a category of employees specified in the prohibition to be exposed in the course of his employment for a longer period than a period specified in the prohibition, to any article, substance, organism or condition which in the opinion of an inspector threatens or is likely to threaten the health or safety of that employee or the employee belonging to that category of employees, as the case may be.	(a) the substitution in subsection (1) for paragraph (c) of the following paragraph: "(c) An inspector may in writing prohibit an employer from requiring or permitting an employee or any employee belonging to a category of employees specified in the prohibition to be exposed in the course of [his] employment for a longer period than a period specified in the prohibition, to any article, substance, organism or condition which in the opinion of an inspector threatens or is likely to threaten the health or safety of that employee or the		

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	employee belonging to that category of employees, as the case may be.";		
(d) A prohibition imposed under paragraph (a), (b) or (c) may at any time be revoked by an inspector in writing if arrangements to the satisfaction of the inspector have been made to dispose of the threat which gave rise to the imposition of the prohibition			
(2) In order to enforce a prohibition imposed under subsection (1) (a) or (b), an inspector may block, bar, barricade or fence off that part of the workplace, plant or machinery to which the prohibition applies, and no person shall interfere with or remove such blocking, bar, barricade or fence.			
(3) Whenever an inspector is of the opinion that the health or safety of any person at a workplace or in the course of his employment or in connection with the use of plant or machinery is threatened on account of the refusal or failure of an employer or a user, as the case may be, to take reasonable steps in the interest of such person's health or safety, the inspector may in writing direct that employer or user to take such steps as are specified in the direction within a specified period.	(b) the substitution for subsection (3) of the following subsection: "(3) Whenever an inspector is of the opinion that the health or safety of any person at a workplace or in the course of [his] <u>that person's</u> employment or in connection with the use of plant or machinery is threatened on account of the refusal or failure of an employer or a user, as the case may be, to take reasonable steps in the interest of such person's health or safety, the inspector may in writing direct that employer or user to take		

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	such steps as are specified in the direction within a specified period.";		
(4) Whenever an inspector is of the opinion that an employer or a user has failed to comply with a provision of a regulation applicable to him, the inspector may in writing direct that employer or user to take within a period specified in the direction such steps as in the inspector's opinion are necessary to comply with the said provision, and are specified in the direction.	(c) the substitution for subsection (4) of the following subsection: "(4) Whenever an inspector is of the opinion that an employer or a user has failed to comply with a [provision of a] regulation applicable to him <u>or her</u> the inspector may in writing direct that employer or user to take, within a period specified in the direction, such steps as in the inspector's opinion are necessary to comply with the said [provision] <u>regulation</u> , and are specified in the direction.";		
(5) A period contemplated in subsection (3) or (4) may at any time be extended by an inspector by notice in writing to the person concerned.	(d) the substitution for subsection (5) of the following subsection: "(5) A period contemplated in subsection (3) or (4) may at any time be extended <u>for a specified period</u> by an inspector by notice in writing to the person concerned.";		
(6) An employer shall forthwith bring the contents of a prohibition, direction or notice under this section to the attention of the health and safety representatives and employees concerned.	(e) the substitution for subsection (6) of the following subsection: "(6) An employer <u>or user</u> shall forthwith bring the contents of a prohibition, direction or notice under this section to the attention of the health and safety representatives and employees <u>or any other affected person</u> concerned."		

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31. Investigations	Amendment of section 31 of Act 85 of 1993		
<p>(1) An inspector may investigate the circumstances of any incident which has occurred at or originated from a workplace or in connection with the use of plant or machinery which has resulted, or in the opinion of the inspector could have resulted, in the injury, illness or death of any person in order to determine whether it is necessary to hold a formal investigation in terms of section 32.</p>	<p>Section 31 of the principal Act is hereby amended by:</p> <p>(a) the substitution for subsection (1) of the following subsection:</p> <p>"(1) An inspector [may] shall investigate the circumstances of any incident which has occurred at or originated from a workplace or in connection with the use of plant or machinery which has resulted, or in the opinion of the inspector could have resulted, in the injury, illness or death of [any] a person [in order to determine whether it is necessary to hold a formal investigation in terms of section 32] .";</p> <p>the insertion after subsection (1) of the following subsection:</p> <p><u>"(1A) For the purposes of an investigation referred to in subsection (1), an inspector may subpoena any person to-</u></p> <p><u>(a) appear before the inspector concerned on a day and at a place specified in the subpoena; and</u></p> <p><u>(b) give evidence or to produce any book, document or item which in the opinion of the inspector has a bearing on the subject of the investigation."</u></p> <p>(c) the substitution for subsection (2) of the following subsection:</p> <p>"(2) After completing the investigation in</p>	<p>31. Investigations</p> <p>(1) An inspector may investigate the circumstances of any incident which has occurred at or originated from a workplace or in connection with the use of plant or machinery which has resulted, or in the opinion of the inspector could have resulted, in the injury, illness or death of a person and in the case of a death the inspector must conduct an enquiry;</p> <p>(1A) For the purposes of an investigation referred to in subsection (1), an inspector may subpoena any person to—</p> <p>(a) appear before the inspector concerned on a day and at a place specified in the subpoena; and</p> <p>(b) give evidence or to produce any book, document or item which in the opinion of the inspector has a bearing on the subject of the investigation.</p> <p>(c) A person referred to in section 1A may be legally represented.</p> <p>(2) After completing the investigation in terms of subsection (1), the presiding inspector shall submit a written report thereon, together with all relevant sworn statements, documents and information gathered during the investigation to the</p>	<p>There are a number of issues with the proposal.</p> <p>Changing from “may” to “shall”, surely makes it impossible for DoEL to conduct investigations for every incident including an incident which “could have resulted, in the injury, illness or death”. This effectively means that inspectors must investigate every incident at every workplace including near misses? It is unclear how this is possible. It is noted that every death must be investigated and the language in the Act must reflect this.</p> <p>The manner in which section 31 investigations are usually conducted is unconstitutional as it flouts, <i>inter alia</i>, section 33 of the Bill of Rights including the <i>audi alteram partem</i> rule. Although provision is made for oral evidence, testing of oral evidence <i>via</i> cross-examination seldom occurs and legal representation is curtailed. Employers and other interested parties are deprived of the inspector’s report while the NPA is afforded the opportunity to decide a matter <u>prior</u> to the employer accessing the inspector’s report. This can result in a summons being issued and, only then will an employer be given access to the inspector’s report and relevant statements. If successful representations are made by the employer post the serving of a summons, an appearance in court is necessary</p>

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	<p>terms of subsection (1), the <u>presiding</u> inspector shall submit a written report thereon, together with all relevant <u>sworn</u> statements, documents and information gathered [by him,] during the investigation to the [attorney-general within whose area of jurisdiction such incident occurred and he shall at the same time submit a copy of the report, statements and documents to the chief inspector] provincial control inspector within whose area of jurisdiction such incident occurred , who will, after consultation with the chief inspector, submit the report to the National Prosecution Authority.";</p> <p>(d) the substitution for subsection (3) of the following subsection:</p> <p>"(3) Upon receipt of a report referred to in subsection (2), the [attorney-general] National Prosecuting Authority shall deal therewith in accordance with the provisions of the Inquests Act, 1959 (Act No. 58 of 1959) [or] and the Criminal Procedure Act, 1977 (Act No. 51 of 1977) [as the case may be] .";</p> <p>(e) the substitution for subsection (4) of the following subsection:</p> <p>"(5) An inspector [holding] conducting an investigation shall not incur any civil liability by virtue of anything contained in the report referred to in subsection (2)."</p>	<p>provincial control inspector within whose area of jurisdiction such incident occurred, who will, after consultation with the chief inspector, submit the report to the National Prosecution Authority and shall simultaneously supply a copy of the written report of the investigation, statements, documents and information gathered during the investigation to the employer and to any health and safety representative, health and safety committee or registered trade union and on request, supply a copy of the report and the record of the investigation to any person who has a material interest in the inquiry.</p> <p>(3) Upon receipt of a report referred to in subsection (2), the National Prosecuting Authority shall deal therewith in accordance with the provisions of the Inquests Act, 1959 (Act No. 58 of 1959) [or] and the Criminal Procedure Act, 1977 (Act No. 51 of 1977)</p> <p>(4) An inspector conducting an investigation shall not incur any civil liability by virtue of anything contained in the report referred to in subsection (2).</p>	<p>causing prejudice to the employer. The inspectors' report is in my view an administrative action and failure to simultaneously provide the NPA and the employer with the report adversely affects the employer's rights. DEL's insistence / policy that PAIA must be used to access the inspector's report has been declared unconstitutional and invalid in the judgement in Industrial Health Resource Group and others v Minister of Labour and others [2015] (GP). Although the court dealt with a section 32 Formal Inquiry, the same principles must apply to a section 31 investigation.</p> <p>MATOJANE J: ordered</p> <p><i>1. It is declared that the persons referred to in section 32(5)(c) of the Occupational Health and Safety Act 85 of 1993 ("OHSA"), are entitled, on request to the presiding inspector, to be furnished with a copy of the report contemplated in section 32(9) of OHSA, into any inquiry held in terms of section 32 of OHSA.</i></p> <p><i>2. It is declared that the policy of the Department of Labour to refuse access to a section 32 inquiry report in all instances and without regard to the circumstances of each case once the report is referred to the National Prosecuting Authority is inconsistent with OHSA, the Promotion of Access to Information Act 2 of 2000, and the Constitution of the Republic of South Africa, 1996, and is accordingly unlawful and invalid.</i></p>

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			<p><i>3. The Minister of Labour is directed to provide, within five days of this Court order, the second to tenth applicants with access to the presiding inspector's section 32 inquiry report, into the fire that occurred at the Paarl Print facility, in Paarl, on 17 April 2009.</i></p> <p>Section 33 of the Bill of Rights. Just administrative action.</p> <p>1. Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.</p> <p>2. Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.</p> <p>An administrative action means any decision taken, or any failure to take a decision, by-</p> <p>a) an organ of state, when-</p> <p>i) exercising a power in terms of the Constitution or a provincial constitution; or</p> <p>ii) exercising a public power or performing a public function in terms of any legislation; or</p> <p>b) a natural or juristic person, other than an organ of state, when exercising a public power</p>

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			or performing a public function in terms of an empowering provision, which adversely affects the rights of any person and which has a direct, external legal effect.
(2) After completing the investigation in terms of subsection (1) the inspector shall submit a written report thereon, together with all relevant statements, documents and information gathered by him, to the attorney-general within whose area of jurisdiction such incident occurred and he shall at the same time submit a copy of the report, statements and documents to the chief inspector.	(c) the substitution for subsection (2) of the following subsection: "(2) After completing the investigation in terms of subsection (1), the <u>presiding</u> inspector shall submit a written report thereon, together with all relevant <u>sworn</u> statements, documents and information gathered [by him,] during the investigation to the [attorney-general within whose area of jurisdiction such incident occurred and he shall at the same time submit a copy of the report, statements and documents to the chief inspector] provincial control inspector within whose area of jurisdiction such incident occurred , who will, after consultation with the chief inspector, submit the report to the National Prosecution Authority. ";		
(3) Upon receipt of a report referred to in subsection (2), the attorney-general shall deal therewith in accordance with the provisions of the Inquests Act, 1959 (Act No. 58 of 1959), or the Criminal Procedure Act, 1977 (Act No. 51 of 1977), as the case may be.	(d) the substitution for subsection (3) of the following subsection: "(3) Upon receipt of a report referred to in subsection (2), the [attorney-general] <u>National Prosecuting Authority</u> shall deal therewith in accordance with the provisions of the Inquests Act, 1959 (Act No. 58 of 1959) [or] <u>and</u> the Criminal		

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	Procedure Act, 1977 (Act No. 51 of 1977) [as the case may be] .";		
(4) An inspector holding an investigation shall not incur any civil liability by virtue of anything contained in the report referred to in subsection (2).	(e) the substitution for subsection (4) of the following subsection: "(5) An inspector [holding] <u>conducting</u> an investigation shall not incur any civil liability by virtue of anything contained in the report referred to in subsection (2)."		
32. Formal inquiries	Amendment of section 32 of Act 85 of 1993 Section 32 of the principal Act is hereby amended by: (a) the substitution for the heading of the following heading: "32. Formal [inquiries] inquiry;		
(1) The chief inspector may, and he shall when so requested by a person producing prima facie evidence of an offence, direct an inspector to conduct a formal inquiry into any incident which has occurred at or originated from a workplace or in connection with the use of plant or machinery which has resulted, or in the opinion of the chief inspector could have resulted, in the injury, illness or death of any person.	(b) the substitution for subsection (1) of the following subsection: "(1) The chief inspector may, and [he] shall when so requested, by a person producing prima facie evidence of an offence, [direct an] <u>appoint a presiding</u> inspector to conduct a formal inquiry into any incident which has occurred at or originated from a workplace or in connection with the use of plant or machinery which has resulted, or in the opinion of the shall at the discretion of the presiding inspector of any person;"	(b) the substitution for subsection (1) of the following subsection: "(1) The chief inspector may, and shall when so requested, by a person producing prima facie evidence of an offence, or in the case of a death where there is prima facie evidence on an offence from the investigation conducted in 31, appoint a presiding inspector to conduct a formal inquiry into any incident which has occurred at or originated from a workplace or in connection with the use of plant or machinery which has resulted, or	See motivation under Section 31.

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		in the opinion of the shall at the discretion of the presiding inspector of any person;";	
(2) For the purposes of an inquiry referred to in subsection (1) an inspector may subpoena any person to appear before him on a day and at a place specified in the subpoena and to give evidence or to produce any book, document or thing which in the opinion of the inspector has a bearing on the subject of the inquiry.	the substitution for subsection (2) of the following subsection: "(2) For the purposes of an inquiry referred to in subsection (1), [an] a presiding inspector may subpoena any person to appear [before him on a day and] at a predetermined place on a day specified in the subpoena and to give evidence or to produce any book, document or thing which in the opinion of the inspector has a bearing on the subject of the inquiry.";		
(3) Save as is otherwise provided in this section, the law governing criminal trials in magistrates' courts shall mutatis mutandis apply to obtaining the attendance of witnesses at an inquiry under this section, the administering of an oath or affirmation to them, their examination, the payment of witness fees to them and the production by them of books, documents and things.			
(4) Any inquiry under this section shall be held in public: Provided that the presiding inspector may exclude from the place where the inquiry is held, any person whose presence is, in his opinion, undesirable or not in the public interest.	(d) the substitution for subsection (4) of the following subsection: "(4) Any inquiry under this section shall be held in public: Provided that the presiding inspector may exclude from the place where the inquiry is held, [any] a person whose presence is, in [his] the opinion of		

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	the presiding inspector, undesirable or not in the public interest.";		
<p>(5) (a) The presiding inspector may designate any person to lead evidence and to examine any witness giving evidence at a formal inquiry.</p> <p>(b) Any person who has an interest in the issue of the formal inquiry may personally or by representative, advocate or attorney put such questions to a witness at the inquiry to such extent as the presiding inspector may allow.</p> <p>(c) The following persons shall have an interest as referred to in paragraph (b), namely-</p> <p>(i) any person who was injured or suffered damage as a result of the incident forming the subject of the inquiry;</p> <p>(ii) the employer or user, as the case may be, involved in the incident;</p> <p>(iii) any person in respect of whom in the opinion of the presiding inspector it can reasonably be inferred from the evidence that he could be held responsible for the incident;</p> <p>(iv) a Trade Union recognized by the employer concerned or any Trade Union of which a person referred to in subparagraph (i) or (iii) is a member;</p> <p>(v) any owner or occupier of any premises where the said incident occurred;</p>			

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(vi) any other person who, at the discretion of the presiding inspector, can prove such interest.			
<p>(6) (a) An inquiry may, if it is necessary or expedient, be adjourned at any time by the presiding inspector.</p> <p>(b) An inquiry adjourned under paragraph (a) may at any stage be continued by an inspector other than the inspector before whom the inquiry commenced, and may after an adjournment again be continued by the inspector before whom the inquiry commenced.</p>			
<p>(7) An affidavit made by any person in connection with the incident in respect of which the inquiry is held, shall at the discretion of the presiding inspector upon production be admissible as proof of the facts stated therein, and the presiding inspector may, at his discretion, subpoena the person who made such an affidavit to give oral evidence at the inquiry or may submit written interrogatories to him for reply, and such interrogatories and any reply thereto purporting to be a reply from such person shall likewise be admissible in evidence at the inquiry: Provided that the presiding inspector shall afford any person present at the inquiry the opportunity to refute the facts stated in such document, evidence or reply.</p>	<p>(e) the substitution for subsection (7) of the following subsection: "(7) An affidavit made by any person in connection with the incident in respect of which the inquiry is held, shall at the discretion of the presiding inspector upon production, be admissible as proof of the facts stated therein, and the presiding inspector may, [at his discretion,] if so required, subpoena the person who made such an affidavit to give oral evidence at the inquiry or may submit written interrogatories to [him] that person for reply, and such interrogatories and any reply thereto purporting to be a reply from such person shall likewise be admissible in evidence at the inquiry: Provided that the presiding inspector shall afford any person</p>		

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	present at the inquiry the opportunity to refute the facts stated in such document, evidence or reply.		
<p>(8) (a) Whenever in the course of any inquiry it appears to the presiding inspector that the examination of a witness is necessary and that the attendance of such witness cannot be procured without a measure of delay, expense or inconvenience which in the circumstances would be unreasonable, the presiding inspector may dispense with such attendance and may appoint a person to be a commissioner to take the evidence of such witness, whether within or outside the Republic, in regard to such matters or facts as the presiding inspector may indicate.</p> <p>(b) Any person referred to in subsection (5) (b) may in person or through a representative, advocate or attorney appear before such commissioner in order to examine the said witness.</p> <p>(c) The evidence recorded in terms of this subsection shall be admissible in evidence at the inquiry.</p>			
(9) At the conclusion of an inquiry under this section, the presiding inspector shall compile a written report thereon.			
(10) The evidence given at any inquiry under this section shall be recorded and a	(f) the substitution for subsection (10) of the following subsection:		

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copy thereof shall be submitted by the presiding inspector together with his report to the chief inspector, and in the case of an incident in which or as a result of which any person died or was seriously injured or became ill, the inspector shall submit a copy of the said evidence and the report to the attorney-general within whose area of jurisdiction such incident occurred.	"(10) The evidence given at any inquiry under this section shall be recorded and a copy thereof shall be submitted by the presiding inspector together with his or her report to the chief inspector, and in the case of an incident in which or as a result of which any person died or was seriously injured or became ill, the <u>presiding</u> inspector shall submit a copy of the said evidence and the report to the [attorney-general within whose area of jurisdiction such incident occurred] <u>chief inspector</u> .";		
	(g) the insertion after subsection (10) of the following subsection: <u>"(10A) The chief inspector shall submit the report to the National Prosecuting Authority within whose area of jurisdiction such incident occurred, within 90 days of the conclusion of the inquiry;"</u> ;		
(11) Nothing contained in this section shall be construed as preventing the institution of criminal proceedings against any person or as preventing any person authorized thereto from issuing a warrant for the arrest of or arresting any person, whether or not an inquiry has already commenced.			
(12) Upon receipt of a report referred to in subsection (10), the attorney-general shall deal therewith in accordance with the	(h) the substitution for subsection (12) of the following subsection: "(12) Upon receipt of a report referred to		

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provisions of the Inquests Act, 1959 (Act No. 58 of 1959), or the Criminal Procedure Act, 1977 (Act No. 51 of 1977), as the case may be.	in subsection (10), the [attorney-general] <u>National Prosecution Authority</u> shall deal therewith in accordance with the provisions of the Inquests Act, 1959 (Act No. 58 of 1959), or the Criminal Procedure Act, 1977 (Act No. 51 of 1977), as the case may be.”		
(13) An inspector presiding at any formal inquiry shall not incur any civil liability by virtue of anything contained in the report compiled in terms of subsection (9).			
33. Joint inquiries			
(1) The provisions of section 32 shall not affect the provisions of any law requiring and regulating inquests or other inquiries in case of death resulting from other than natural causes, and in respect of each incident referred to in that section in which or in consequence of which any person has died there shall be held, in addition to an inquiry under the said section, such inquest or inquiry as is required by any such law, but an inquiry under the said section and an inquest held by a judicial officer under the Inquests Act, 1959 (Act No. 58 of 1959), may be held jointly.			
(2) At such a joint inquiry and inquest the judicial officer shall preside and thereupon the provisions of the Inquests Act, 1959, shall apply, but the inspector and the			

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judicial officer shall each make the report required of them by section 32 (9) and that Act, respectively.			
34. Obstruction of Investigation to Render Assistance or presiding inspector or failure to render assistance	Amendment of section 34 of Act 85 of 1993		
No person shall, in relation to any investigation or inquiry held in terms of section 31 or 32- (a) without reasonable justification fail to comply with any lawful direction, subpoena, request or order issued or given by the presiding inspector;	Section 34 of the principal Act is hereby amended by- (a) the substitution in subsection (1) for paragraphs (a) (b), (c), (d), (e) and (f) of the following paragraphs: "(a) without reasonable justification, fail to comply with [any] a lawful direction, subpoena, request or order issued or given by the <u>inspector or</u> presiding inspector;		
(b) Refuse or fail to answer to the best of his knowledge any question lawfully put to him by or with the concurrence of the presiding inspector: Provided that no person shall be obliged to answer any question whereby he may incriminate himself;	(b) Refuse or fail to answer [to the best of his knowledge] any question lawfully put to him or her by or with the concurrence of the inspector or presiding inspector: Provided that no person shall be obliged to answer any question whereby he or she may incriminate himself or herself;	(b) Refuse or fail to answer to the best of their knowledge any question lawfully put to him or her by or with the concurrence of the inspector or presiding inspector: Provided that no person shall be obliged to answer any question whereby he or she may incriminate himself or herself;	Removing the wording " <i>to the best of his knowledge</i> " removes the right to administrative justice provided for in terms of the Promotion of Administrative Justice Act, Act 3 of 2000. for the employer and the current wording should be retained. Under 37E(1)(c)(i) it states: (i) without sufficient cause, fails to answer any question fully and to the best of that person's knowledge and ability :Provided that the person is made aware of the law relating to privilege; or. This is correctly written and indicates for consistency that this section should not have been changed.
(c) in any manner whatsoever advise, encourage, incite, order or persuade any	(c) in any manner whatsoever advise, encourage, incite, order or persuade any		

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person who has been directed, subpoenaed, requested or ordered to do something by the presiding inspector, not to comply with such direction, subpoena, request or order or in any manner prevent him from doing so;	person who has been directed, subpoenaed, requested or ordered to do something by the presiding inspector, not to comply with such direction, subpoena, request or order or in any manner prevent [him] any person from doing so;		
(d) Refuse or fail, when required thereto by the presiding inspector, to furnish him with the means or to render him the necessary assistance for holding such inquiry;	(d) Refuse or fail, when required thereto by the presiding inspector, to furnish [him or her] the presiding inspector with the means or to render [him or her] the necessary assistance for holding such inquiry;		
(e) Refuse or fail, when required thereto by the presiding inspector, to attend an inquiry; or	(e) Refuse or fail, when required thereto by the inspector or presiding inspector, to attend a meeting, an investigation or an inquiry; [or] ";		
(f) intentionally insult the presiding inspector or his assistant or intentionally interrupt the proceedings thereof.	(f) intentionally insult the <u>inspector or presiding inspector or [his] an assistant or intentionally interrupt the proceedings thereof [.]</u> ; or:		
	the addition of the following paragraph "(g) Refuse or fail, when required thereto by the inspector or presiding inspector, to provide any information or produce a book, item, document or item which is within a person's possession or control." or	(g) Refuse or fail, when required thereto by the inspector or presiding inspector, to provide any information or produce a book, item, document or item which is within a person's possession or control, subject to the Promotion of Access to Information Act 2 of 2000	All legislation must be aligned with the bill of rights under Section 36 of the Constitution of South Arica and CHAPTER 4 GROUNDS FOR REFUSAL OF ACCESS TO RECORDS under the Promotion of Access to Information Act. Any Act which did not comply with this would be ultra vires.
35. Appeal against decision of inspector	Amendment of section 35 of Act 85 of 1993		

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(1) Any person aggrieved by any decision taken by an inspector under a provision of this Act may appeal against such decision to the chief inspector, and the chief inspector shall, after he has considered the grounds of the appeal and the inspector's reasons for the decision, confirm, set aside or vary the decision or substitute for such decision any other decision which the inspector in the chief inspector's opinion ought to have taken.	Section 35 of the principal Act is hereby amended by: (a) the substitution for subsection (1) of the following subsection: "(1) [Any] A person aggrieved by [any] a decision taken by an inspector in relation to a notice or and a directive served, under a provision of this Act, may appeal against such decision to the chief inspector [and the chief inspector shall, after he has considered the grounds of the appeal and the inspector's reasons for the decision, confirm, set aside or vary the decision or substitute for such decision any other decision which the inspector in the chief inspector's opinion ought to have taken] .";	Propose: "(1) A person aggrieved by a decision taken by an inspector under a provision of this Act, may appeal against such decision to the chief inspector;	To limit the health and safety representative, employer or any other persons right to appeal to the Chief Inspector to only a "notice or and a directive served", is to remove the right to administrative justice provided for in terms of the Promotion of Administrative Justice Act, Act 3 of 2000. Specifically, Section 3 Procedurally fair administrative action affecting any person (2)(ii), which provides for a reasonable opportunity to make representations. It is further noted that by limiting the appeals to only notice or and a directive it makes it unclear whether this extends to the right to appeal Administrative Fines issued by an inspector.
(2) Any person who wishes to appeal in terms of subsection (1), shall within 60 days after the inspector's decision was made known, lodge such an appeal with the chief inspector in writing, setting out the grounds on which it is made.	(b) the substitution for subsection (2) of the following subsection: "(2) [Any] A person who wishes to appeal in terms of subsection (1), shall within [60] 14 days after the delivery of the inspector's decision [was made known] , lodge [such] an appeal with the chief inspector in writing, setting out clearly the grounds on which [it] the appeal is [made] based." ;		
	(c) the insertion after subsection (2) of the following subsection: <u>"(2A) The chief inspector shall, after considering the grounds of the appeal and the inspector's reasons for the decision, -</u> (a) confirm, set aside or vary the decision;		

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	<u>or</u> <u>(b) substitute the decision with any other decision deemed appropriate under the circumstances;"</u> ;		
(3) Any person aggrieved by a decision taken by the chief inspector under subsection (1) or in the exercise of any power under this Act, may appeal against such decision to the industrial court, and the industrial court shall inquire into and consider the matter forming the subject of the appeal and confirm, set aside or vary the decision or substitute for such decision any other decision which the chief inspector in the opinion of the industrial court ought to have taken.	(d) the deletion of subsections (3), (4) and (5).		
(4) Any person who wishes to appeal in terms of subsection (3), shall within 60 days after the chief inspector's decision was given, lodge such appeal with the registrar of the industrial court in accordance with the rules of the industrial court.	(d) the deletion of subsections (3), (4) and (5).		
(5) An appeal under subsection (1) or (3) in connection with a prohibition imposed under section 30 (1) (a) or (b) shall not suspend the operation of such prohibition.	(d) the deletion of subsections (3), (4) and (5).		
	"Right to review decision of chief inspector 35A. (1) A person aggrieved by a decision taken by the chief inspector under section		It is noted that this process does not include investigations or any other action by the inspector other than a notice or directive. This removes the opportunity for administrative justice and refer to comment on Section 35(1).

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	<p><u>35 or in the exercise of any power under this Act, may apply for such decision to be reviewed, by the High Court.</u></p> <p><u>(2) The High Court may confirm, set aside or vary the decision or substitute the decision with another decision.</u></p> <p><u>(3) A person who wishes to review a decision referred to in subsection (1), shall, within 60 days after the delivery of the chief inspector's decision, lodge the application with the registrar of the High Court in accordance with the rules of the High Court."</u></p>		
	<p><u>Appeal does not suspend decision of chief inspector</u></p> <p><u>35B. (1) An appeal or review under section 35 (1) or 35A (1), in connection with a prohibition imposed under section 30(1)(a); (b) or (c) does not suspend the operation of such</u></p> <p><u>against, pending the determination of the matter, if there are reasonable grounds for doing so."</u> prohibition.</p> <p><u>(2) Despite subsection (1), the High Court may suspend the operation of the decision being appealed</u></p>		
36. Disclosure of information	<p>Substitution of section 36 of Act 85 of 1993</p> <p>The following section is hereby substituted for section 36 of the principal Act:</p>		

OCCUPATIONAL HEALTH & SAFETY ACT (85 OF 1993)	OHS AMENDMENT BILL 2020	PROPOSAL	MOTIVATION
No person shall disclose any information concerning the affairs of any other person obtained by him in carrying out his functions in terms of this Act, except- (a) to the extent to which it may be necessary for the proper administration of a provision of this Act; (b) for the purposes of the administration of justice; or (c) at the request of a health and safety representative or a health and safety committee entitled thereto.	"Disclosure of information 36. (1) Subject to the provisions of the Promotion of Access to Information Act, 2000 (Act No 2 of 2000), whenever an inspector performs any function in terms of section 31 or the presiding inspector conducts an inquiry in terms of section 32 and is required by the provision of this Act to supply information or report to a health and safety representative, health and safety committee or third party, the inspector or presiding inspector-	"Disclosure of information 36. (1) Subject to the provisions of the Promotion of Access to Information Act, 2000 (Act No 2 of 2000), whenever an inspector performs any function in terms of section 31 or the presiding inspector conducts an inquiry in terms of section 32 and is required by the provision of this Act to supply information or report to a health and safety representative, representative trade union, health and safety committee or third party, the inspector or presiding inspector-	Since trade unions are included in a number of sections including Section 20, it is appropriate that they be included in the disclosure of information.
	<u>(a) shall not disclose information that is private or personal information relating to an employee, unless the employee consents in writing to the disclosure of the information; and</u>		
	<u>(b) is not required to supply any information that is-</u> <u>(i) legally privileged; and</u> <u>(ii) confidential and, if disclosed, may cause substantial harm to an employee or the employer.</u> <u>by a court;".</u>		
	<u>(2) No person shall disclose any information concerning the affairs of [any other] another person obtained [by him] in carrying out [his] specified functions in terms of this Act, except-</u>		

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	(a) [to the extent to which it may be necessary for the proper administration of a provision of this Act] if the information is disclosed in compliance with the provisions of any law;		
	(b) for the purposes of the administration of justice; [or]		
	(c) at the request of a health and safety representative or a health and safety committee entitled thereto <u>[.]</u> <u>where such request is made in writing, clearly specifying the reasons for the request;</u>		
	(d) <u>where the information is disclosed to enable a person to perform any function in terms of this Act; or</u>		
	(e) <u>where the person is ordered to disclose the information</u>		
37. Acts or omissions by employees or mandataries			
(1) Whenever an employee does or omits to do any act which it would be an offence in terms of this Act for the employer of such employee or a user to do or omit to do, then, unless it is proved that-	Amendment of section 37 of Act 85 of 1993 Section 37 of the principal Act is hereby amended by-		
(a) in doing or omitting to do that act the employee was acting without the connivance or permission of the employer or any such user;			

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(b) it was not under any condition or in any circumstance within the scope of the authority of the employee to do or omit to do an act, whether lawful or unlawful, of the character of the act or omission charged; and			.
(c) all reasonable steps were taken by the employer or any such user to prevent any act or omission of the kind in question, the employer or any such user himself shall be presumed to have done or omitted to do that act, and shall be liable to be convicted and sentenced in respect hereof; and the fact that he issued Instructions forbidding any act or omission of the kind in question shall not, in itself, be accepted as sufficient proof that he took all reasonable steps to prevent the act or omission.	(a) the substitution in subsection (1) for paragraph (c) of the following paragraph: "(c) all reasonable steps were taken by the employer or any such user to prevent any act or omission of the kind in question, the employer or any such user [himself] shall be presumed to have done or omitted to do that act, and shall be liable to be convicted and sentenced in respect hereof; and the fact that he or she issued instructions forbidding any act or omission of the kind in question shall not, in itself, be accepted as sufficient proof that he or she took all reasonable steps to prevent the act or omission."; and		
(2) The provisions of subsection (1) shall mutatis mutandis apply in the case of a mandatory of any employer or user, except if the parties have agreed in writing to the arrangements and procedures between them to ensure compliance by the mandatory with the provisions of this Act.			
(3) Whenever any employee or mandatory of any employer or user does or omits to do an act which it would be an offence in	(b) the deletion of subsections (3), (4), (5) and (6).		

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terms of this Act for the employer or any such user to do or omit to do, he shall be liable to be convicted and sentenced in respect thereof as if he were the employer or user.			
(4) Whenever any employee or mandatory of the State commits or omits to do an act which would be an offence in terms of this Act, had he been the employee or mandatory of an employer other than the State and had such employer committed or omitted to do that act, he shall be liable to be convicted and sentenced in respect thereof as if he were such an employer.	(b) the deletion of subsections (3), (4), (5) and (6).		
(5) Any employee or mandatory referred to in subsection (3) may be so convicted and sentenced in addition to the employer or user.	(b) the deletion of subsections (3), (4), (5) and (6).		
(6) Whenever the employee or mandatory of an employer is convicted of an offence consisting of a contravention of section 23, the court shall, when making an order under section 38 (4), make such an order against the employer and not against such employee or mandatory.	(b) the deletion of subsections (3), (4), (5) and (6).		
	Insertion of sections 37A to 37F in Act 85 of 1993 The following sections are hereby inserted in the principal Act after section 37:		
	<u>"Administrative Fines</u> <u>37A.</u>	(1) If a person commits an offence in terms of this, the inspector may by written	The wording "breach" is not commonly used and differs from an "offence".

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	<p><u>(1) If a person commits a breach of this Act, the inspector may by written notice to that person impose an administrative Fine in accordance with Schedule 2.</u></p> <p><u>(2) An administrative Fine may, instead of a criminal prosecution, be imposed on a person who becomes liable to prosecution for any breach of this Act.</u></p> <p><u>(3) An inspector shall serve a copy of the written notice contemplated on subsection (2) on the employer, self-employed person or person who conducts a business or undertaking concerned.</u></p> <p><u>(4) The amount of the Fine stipulated in the notice referred to in subsection (2) may not exceed the amount-</u></p> <p><u>(a) prescribed for the offence; and</u></p> <p><u>(b) which a court would presumably have imposed in the circumstances.</u></p> <p><u>(5) An administrative Fine imposed in terms of subsection (1) shall be paid to the Director-General of the Department of Labour on or before a date stated in the notice referred to in that subsection.</u></p> <p><u>(6) Sections 56, 57 and 57A of the Criminal Procedure Act, 1977(Act No. 51 of 1977) apply, subject to such modifications as the context may require, to the written notice referred to in this section."</u></p>	<p>notice to that person impose an administrative fine in accordance with Schedule 2.</p> <p>Propose removal of administrative fines.</p>	<p>See the motivation for removal of administrative fines under Section 29(1)(i).</p>
	<p>Criminal Liability</p> <p>37B. (1) An employer, chief executive</p>	<p>37B. (1) An employer, chief executive officer, person appointed in terms of</p>	<p>First point.</p>

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	<p><u>officer, manager, agent or employee commits an offence by contravening or failing to comply with a provision of this Act, thereby causing a person's-</u></p> <p><u>(a) death;</u></p> <p><u>(b) permanent disablement; or</u></p> <p><u>(c) illness.</u></p> <p><u>(2) The chief executive officer, manager, agent or employer of the employee commits an offence by performing or omitting to perform an act, if the act or omission falls within the scope of the authority or employment of the employer or employee concerned.</u></p>	<p>section 16(3) of the act or employee commits an offence by contravening or failing to comply with a provision of this Act thereby causing a person's-</p> <p>(a) serious injury; or</p> <p>(c) serious illness.</p>	<p>Section 37B. 'Statutory homicide', is a controversial provision in that it creates, <i>inter alia</i>, a statutory homicide offence. Traditionally homicide offences, where negligence is the fault element, was the sole domain of the NPA in the form of the common crime of culpable homicide. For example, if a fatal workplace incident occurs involving an employee and, after the conclusion of an investigation or formal inquiry, a DEL inspector is of the opinion that the employer was negligent, the inspector's report to the NPA would be limited to the OHS Act or the statutes. For example, section 8 of the OHS Act. (Failure to provide the deceased with a safe and healthy working environment).</p> <p>The negligent non-disabling injury of an employee would essentially be a contravention of section 8. or section 9. if a non-employee. Section 38(2) of the Act which punishes (mere) injury, has been omitted in the Bill.</p> <p>It follows that the NPA could use the negligence to escalate the charge to one of culpable homicide. While there is nothing preventing a DEL inspector from recommending that the NPA consider a charge of culpable homicide, an inspector cannot 'officially' recommend such a charge. This is the position in the MHS Act which is considered more constitutionally palatable. It</p>

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			<p>is also established that corporate bodies may be convicted of culpable homicide in terms of section 332 of the Criminal Procedure Act.</p> <p>The introduction of a statutory homicide offence based on untested evidence emanating from a section 31 Investigation is of concern. If such an offence is promulgated, it must be limited to section 32 formal inquiries in view of its serious ramifications.</p> <p>Additionally, it could have serious civil law implications where section 35 of the COID Act is not applicable. It also is improbable that the NPA would venture into homicide offences based on an untested version, emanating from a section 31 Investigation. This has been an issue for many years as the NPA has shown its reluctance to charge employers for culpable homicide based on section 31 Investigations. It is also common cause that the NPA has no appetite for OHS criminal matters - even where section 32 formal inquiries are held with cross-examination and the generation of a recorded transcript of evidence.</p> <p>It also must be accepted that a statutory homicide offence remains subservient to the more serious common law crime of culpable homicide. The NPA could still escalate such a (statutory) offence to that of culpable homicide</p>

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			<p>with resultant criminal record implications for natural persons.</p> <p>MHS Act. Section 86. Negligent act or omission <i>(1) Any person who, by a negligent act or by a negligent omission, causes <u>serious injury or serious illness</u> to a person at a mine, commits an offence.</i> <i>(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.</i></p> <p>It follows that it is recommended that reference to death in section 37B(1)(a) of the Bill be omitted. The common law is sufficient and the elements of the statutory offence would mirror that of culpable homicide. (1. Act / omission 2. Fault (culpa) 3. Causality 4. Result (death)</p> <p>Second point. This relates to the use of the wording manager and agent.</p> <p>References to managers and agents in section 37B(1)(a) has been addressed under section 16. The proposal is that Section 37B(1)(a) should read ‘ An employer, chief executive officer, person appointed in terms of section 16(3) of the act, employee commits an offence by</p>

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			contravening or failing to comply with a provision of this Act thereby causing a person's
	<p><u>Hindering of administration of justice</u> 37C. (1) A person who-</p> <p><u>(a) hinders or obstructs an inspector in the performance of the inspector's functions;</u></p> <p><u>(b) Refuses or fails to comply with any requirement or request made by an inspector in the performance of the inspector's functions;</u></p> <p><u>(c) persuades an inspector to accept a bribe; or</u></p> <p><u>(d) assaults or swears or victimises an inspector in the performance of the inspector's functions, commits an offence.</u></p> <p><u>(2) No person may prevent an inspector from entering the premises where work is being performed, during normal working hours.</u></p>	<p>37(C)(3). An inspector commits an offence if they ask for or accept a bribe.</p>	<p>In order to administer fair justice if it is an offence to persuade an inspector to accept a bribe it also needs to be an offence for an inspector to accept a bribe. This violates the Prevention and Combating of Corrupt Activities Act and Regulations (12/2004).</p>
	<p><u>Furnishing false information</u> 37D. A person who wilfully furnishes a record, information, application or other document or makes a statement, which is false in any material respect, under this Act, commits an offence.</p>		
	<p><u>Failure to attend meeting, inspection, investigation, inquiry when directed or summoned</u> 37E. (1) A person who, having been directed or summoned to attend a</p>		

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	<u>meeting, inspection, investigation or inquiry given in terms of section 34, respectively-</u> <u>(a) without sufficient cause, fails-</u> <u>(i) to appear at the time and place specified; or</u> <u>(ii) to remain in attendance until excused by the inspector or presiding inspector at the meeting, inspection, investigation or inquiry;</u> <u>(b) attends as required, but without sufficient cause-</u> <u>(i) fails to comply with an Instruction in terms of section 31(1A); or</u> <u>(ii) Refuses to be sworn in or to make an affirmation; or</u> <u>(c) attends as required and having been sworn in or having been affirmed-</u> <u>(i) without sufficient cause, fails to answer any question fully and to the best of that person's knowledge and ability :Provided that the person is made aware of the law relating to privilege; or</u> <u>(ii) gives evidence, knowing or believing it to be false, commits an offence.</u>		
	<u>Failure to comply with provisions of this Act</u> <u>37F. (1) A person, commits an offence, if that person, contravenes or fails to comply with, any-</u> <u>(a) provision of this Act;</u>		

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	<p><u>(b) condition of an exemption in terms of section 40(1);</u></p> <p><u>(c) requirement to produce a book, item, document or thing under the person's control; and</u></p> <p><u>(d) request to answer to the best of the person's knowledge and ability any question which an inspector may put to the person;</u></p> <p><u>(2) A person commits an offence when the person-</u></p> <p><u>(a) wilfully furnishes to an inspector information which is false or misleading;</u></p> <p><u>(b) presents himself or herself as an inspector;</u></p> <p><u>(c) tampers with or discourages, threatens, deceives or in any way unduly influences any person with regard to evidence to be given;</u></p> <p><u>(d) fails to produce a book, item, document or thing before an inspector or presiding inspector in terms of section (31), (32), (33) or (34);</u></p> <p><u>(e) prejudices or influences or the proceedings or findings of an investigation or inquiry in terms of sections (31) or (32);</u></p> <p><u>(f) tampers with or misuses any health and safety equipment installed or provided to any person by an employer or user;</u></p> <p><u>(g) fails to use any safety equipment at a workplace or in the course of employment</u></p>		

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	<p><u>or in connection with the use of plant or machinery, which was provided by an employer or such a user; and</u></p> <p><u>(h) willfully or recklessly does anything at a workplace or in connection with the use of plant or machinery which threatens the health or safety of any person."</u></p>		
38. Offences, penalties and special orders of court	<p>Substitution of section 38 of Act 85 of 1993</p> <p>The following section is hereby substituted for section 38 of the principal Act:</p> <p>" enalties</p>		
<p>(1) Any person who-</p> <p>(a) contravenes or fails to comply with a provision of section 7, 8, 9, 10 (1), (2) or (3), 12, 13, 14, 15, 16 (1) or (2), 17 (1), (2) or (5), 18 (3), 19 (1), 20 (2) or (4), 22, 23, 24 (1) or (2), 25, 26, 29 (3), 30 (2) or (6), 34 or 36;</p> <p>(b) contravenes or fails to comply with a direction or notice under section 17 (6), 19 (4) or (7), 21 (1) or 30 (1) (a), (b) or (c) or (3), (4) or (6);</p> <p>(c) contravenes or fails to comply with a condition of an exemption under section 40 (1);</p> <p>(d) in any record, application, statement or other document referred to in this Act wilfully furnishes information or makes a statement which is false in any material respect;</p>	<p>38. (1) <u>A person convicted of an offence in terms of a section indicated in Schedule 1, may be sentenced to a Fine or to imprisonment for a period not exceeding the period mentioned in the Schedule 1.</u></p>		

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<p>(e) hinders or obstructs an inspector in the performance of his functions; Refuses or fails to comply to the best of his ability with any requirement or request made by an inspector in the performance of his functions;</p> <p>(f) deleted</p> <p>(g) Refuses or fails to answer to the best of his ability any question which an inspector in the performance of his functions has put to him;</p> <p>(h) wilfully furnishes to an inspector information which is false or misleading;</p> <p>(i) gives himself out as an inspector;</p> <p>(j) having been subpoenaed under section 32 to appear before an inspector, without sufficient cause (the onus of proof whereof shall rest upon him) fails to attend on the day and at the place specified in the subpoena, or fails to remain in attendance until the inspector has excused him from further attendance;</p> <p>(k) having been called under section 32, without sufficient cause (the onus of proof whereof shall rest upon him)-</p> <p>(i) Refuses to appear before the inspector;</p> <p>(ii) Refuses to be sworn or to make affirmation as a witness after he has been directed to do so;</p> <p>(iii) Refuses to answer, or fails to answer to the best of his knowledge and belief,</p>			

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<p>any question put to him; or</p> <p>(iv) Refuses to comply with a requirement to produce a book, document or thing specified in the subpoena or which he has with him;</p> <p>(l) tampers with or discourages, threatens, deceives or in any way unduly influences any person with regard to evidence to be given or with regard to a book, document or thing to be produced by such a person before an inspector under section 32;</p> <p>(m) prejudices, influences or anticipates the proceedings or findings of an inquiry under section 32 or 33;</p> <p>(n) tampers with or misuses any safety equipment installed or provided to any person by an employer or user;</p> <p>(o) fails to use any safety equipment at a workplace or in the course of his employment or in connection with the use of plant or machinery, which was provided to him by an employer or such a user;</p> <p>(p) wilfully or recklessly does anything at a workplace or in connection with the use of plant or machinery which threatens the health or safety of any person, shall be guilty of an offence and on conviction be liable to a Fine not exceeding R50000 or to imprisonment for a period not exceeding one year or to both such Fine and such imprisonment.</p>			

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<p>(2) Any employer who does or omits to do an act, thereby causing any person to be injured at a workplace, or, in the case of a person employed by him, to be injured at any place in the course of his employment, or any user who does or omits to do an act in connection with the use of plant or machinery, thereby causing any person to be injured, shall be guilty of an offence if that employer or user, as the case may be, would in respect of that act or omission have been guilty of the offence of culpable homicide had that act or omission caused the death of the said person, irrespective of whether or not the injury could have led to the death of such person, and on conviction be liable to a Fine not exceeding R100 000 or to imprisonment for a period not exceeding two years or to both such Fine and such imprisonment.</p>	<p>Substitution of section 38 of Act 85 of 1993</p> <p>The following section is hereby substituted for section 38 of the principal Act:</p> <p><u>(2) A person convicted of an offence in terms of this Act for which no penalty is otherwise or expressly determined, may be sentenced to a Fine of R100 000 or to imprisonment for a period not exceeding one year, or to both."</u></p>		
<p>(3) Whenever a person is convicted of an offence consisting of a failure to comply with a provision of this Act or of any direction or notice issued thereunder, the court convicting him may, in addition to any punishment imposed on him in respect of that offence, issue an order requiring him to comply with the said provision within a period determined by the court.</p>	<p>The following section is hereby substituted for section 38 of the principal Act:</p>		

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(4) Whenever an employer is convicted of an offence consisting of a contravention of a provision of section 23, the court convicting him shall inquire into and determine the amount which contrary to the said provision was deducted from the remuneration of the employee concerned or recovered from him and shall then act with respect to the said amount mutatis mutandis in accordance with sections 28 and 29 of the Basic Conditions of Employment Act, 1983 (Act No. 3 of 1983), as if such amount is an amount underpaid within the meaning of those sections.	The following section is hereby substituted for section 38 of the principal Act:		
39. Proof of certain facts	Amendment of section 39 of Act 85 of 1993 Section 39 of the principal Act is hereby amended by:		
(1) Whenever in any legal proceedings in terms of this Act it is proved that any person was present on or in any premises, that person shall, unless the contrary is proved, be presumed to be an employee.	(a) the substitution for subsection (1) of the following subsection: "(1) Whenever in any legal proceedings in terms of this Act, it is proved that [any] a person was present on or in any premises, that person shall, unless the contrary is proved, be presumed to be an employee <u>in terms of section 83A of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997).</u> ";		
(2) In the absence of satisfactory proof of age, the age of any person shall, in any legal proceedings in terms of this Act, be	(b) the substitution for subsection (2) of the following subsection: "(2) In the absence of satisfactory proof of		

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presumed to be that stated by an inspector to be in his opinion the probable age of the person; but any person having an interest who is dissatisfied with that statement of opinion may, at his own expense, require that the person whose age is in question appear before and be examined by a district surgeon, and a statement contained in a certificate by a district surgeon who examined that person as to what in his opinion is the probable age of that person shall, but only for the purpose of the said proceedings, be conclusive proof of the age of that person.	age, the age of [any] a person shall, in any legal proceedings in terms of this Act, be presumed to be that stated as an opinion by an inspector to be [in his opinion] the probable age of the person; but any person having an interest who is dissatisfied with that statement of opinion may, at [his own] <u>that person's</u> expense, require that the person whose age is in question appear before and be examined by a district surgeon, and a statement contained in a certificate by a district surgeon who examined that person as to what in [his] the district surgeon's opinion is the probable age of that person shall, but only for the purpose of the said proceedings, be conclusive proof of the age of that person;";		
(3) In any legal proceedings in terms of this Act, any statement or entry contained in any book or document kept by any employer or user or by his employee or mandatary, or found on or in any premises occupied or used by that employer or user, and any copy or reproduction of any such statement or entry, shall be admissible in evidence against him as an admission of the facts set forth in that statement or entry, unless it is proved that that statement or entry was not made by that employer or user or by any employee or	(c) the substitution for subsection (3) of the following subsection: "(3) In any legal proceedings in terms of this Act, [any] a statement or entry contained in any book or document kept by any employer or user or by [his] the employee or mandatary, or found on or in any premises occupied or used by that employer or user, and any copy or reproduction of any such statement or entry, shall be admissible in evidence against [him] <u>such person</u> as an admission of the facts set forth in that statement or		

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mandatory of that employer or user within the scope of his authority.	entry, unless it is proved that that statement or entry was not made by that employer or user or by any employee or mandatory of that employer or user within the scope of [his] such person's authority;"		
(4) Whenever in any legal proceedings in terms of this Act it is proved that any untrue statement or entry is contained in any record kept by any person, he shall be presumed, until the contrary is proved, wilfully to have falsified that record.	(d) the substitution for subsection (4) of the following subsection: "(4) Whenever in any legal proceedings in terms of this Act it is proved that any untrue statement or entry is contained in any record kept by [any] a person, he or she shall be presumed, until the contrary is proved, wilfully to have falsified that record.";		
(5) (a) Whenever at the trial of any person charged with a contravention of section 22 it is proved that the accused sold or marketed any article, substance, plant, machinery or health and safety equipment contemplated in that section, it shall be presumed, until the contrary is proved, that such article, substance, plant, machinery or health and safety equipment did not at the time of the sale or marketing thereof comply with the said requirements.	(e) the substitution in subsection(5) for paragraph (a) of the following paragraph: "(a) Whenever at the trial of [any] a person charged with a contravention of section 22 it is proved that the accused sold or marketed any article, substance, plant, machinery or health and safety equipment contemplated in that section, it shall be presumed, until the contrary is proved, that [such] the article, substance, plant, machinery or health and safety equipment did not at the time of the sale or marketing thereof comply with the said requirements.";		
(b) At any trial any document purporting to be a certificate or statement by an			

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Approved inspection authority and in which it is alleged that the article, substance, plant, machinery or health and safety equipment forming the subject of the charge complies with the requirements prescribed in respect thereof or with any particular standard, shall on its mere production at that trial by or on behalf of the accused be accepted as prima facie proof of the facts stated therein.			
(6) Notwithstanding the provisions of section 31 (3) of the Standards Act, 1993 (Act No. 29 of 1993), whenever in any legal proceedings in terms of this Act the question arises whether any document contains the text of a health and safety standard incorporated in the regulations under section 44, any document purporting to be a statement by a person who in that statement alleges that he is an inspector and that a particular document contains the said text, shall on its mere production at those proceedings by any person be prima facie proof of the facts stated therein.	(f) the substitution for subsection (6) of the following subsection: "(6) Notwithstanding the provisions of section [31 or 33(3)] 28 of the Standards Act, [1993 (Act No. 29 of 1993)] 2008 (Act No.8 of 2008), whenever in any legal proceedings in terms of this Act the question arises whether any document contains the text of a health and safety standard incorporated in the regulations under section 44, any document purporting to be a statement by a person who in that statement alleges that [he] the <u>person</u> is an inspector and that a particular document contains the said text, shall on its mere production at those proceedings by any person be <i>prima facie</i> proof of the facts stated therein."; and.		
(7) The records to be kept by a health and safety committee in terms of section 20 (2), including any document purporting to	(g) the substitution for subsection (7) of the following subsection: "(7) The records to be kept by a health and		

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be certified by an inspector as a true extract from any such records, shall on their mere production at any legal proceedings by any person be admissible as evidence of the fact that a recommendation or report recorded in such records was made by a health and safety committee to an employer or inspector concerned.	safety committee in terms of section 20 (2), including any document purporting to be certified by an inspector as a true extract from any such records, shall on [their] the mere production at any legal proceedings by any person be admissible as evidence of the fact that a recommendation or report recorded in such records was made by a health and safety committee to an employer or inspector concerned."		
40. Exemptions	Amendment of section 40 of Act 85 of 1993 Section 40 of the principal Act is hereby amended by-		
(1) The Minister may, for such period and on such conditions as may be determined by him, exempt any employer or user or any category of employers or users, generally or with respect to any particular employee or category of employees or users or with respect to any matter, from any of or all the provisions of this Act or the provisions of a notice or direction issued under this Act.	(a) the substitution for subsection (1) of the following subsection: "(1) The Minister may, for such period and on such conditions as may be determined by him or her exempt [any] an employer or user or [any] a category of employers or users, generally or with respect to [any] a particular employee or category of employees or users or with respect to any matter, from [any of or all the provisions] a provision of this Act or [the] a provision of a notice or direction issued under this Act.";		
(2) The period for which exemption may be granted under subsection (1) may commence on a date earlier than the date			

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on which exemption is granted, but not earlier than the date on which application for such exemption was made to the Minister.			
<p>(3) An exemption under subsection (1) shall-</p> <p>(a) in the case of the exemption of a particular employer or user, be granted by issuing to such employer or user a certificate of exemption in which his name and the scope, period and conditions of the exemption are specified;</p> <p>(b) in the case of the exemption of a category of employers or of a category of such users, be granted by the publication in the Gazette of a notice in which that category of employers or users is described and the scope, period and conditions of the exemption are specified: Provided that the Minister may grant exemption-</p> <p>(i) to an organization of employers or an organization of users in accordance with the requirements of either paragraph (a) or paragraph (b);</p> <p>(ii) from any health and safety standard incorporated in the regulations under section 44, in any manner which he may deem expedient.</p>	<p>(b) the substitution for subsection (3) of the following subsection:</p> <p>"(3) An exemption under subsection (1) shall -</p> <p>(a) in the case of the exemption of a particular employer or user, be granted by issuing to [such] the employer or user a certificate of exemption in which [his] the employer's name and the scope, period and conditions of the exemption are specified;</p> <p>(b) in the case of the exemption of a category of employers or of a category of such users, be granted by the publication in the <i>Gazette</i> of a notice in which that category of employers or users is described and the scope, period and conditions of the exemption are specified: Provided that the Minister may grant exemption-</p> <p>(i) to an organisation of employers or an organisation of users in accordance with the requirements of either paragraph (a) or paragraph (b);or</p> <p>(ii) from [any] a health and safety standard incorporated in the regulations under</p>		

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	section 44, in any manner which [he] the <u>Minister</u> may deem expedient.";		
(4) A certificate of exemption contemplated in subsection (3) (a) and a notice contemplated in subsection (3) (b) may at any time be amended or withdrawn by the Minister.			
(5) An exemption under subsection (1) shall lapse- (a) upon termination of the period for which it was granted; (b) upon withdrawal of the relevant certificate or notice under subsection (4).			
(6) Any exemption granted under section 32 of the Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), to the extent to which it grants exemption from the operation of a provision similar to a provision in respect of which exemption may be granted under subsection (1) of this section, which exemption has at the commencement of this Act not lapsed as contemplated in subsection (5) of the said section 32, shall be deemed to have been granted under this section.	(c) the substitution for subsection (6) of the following subsection: "(6) An application for exemption shall be finalised within 30 days."		
41. This Act not affected by agreements	Substitution of section 41 of Act 85 of 1993 The following section is hereby substituted for section 41 of the principal Act: "This Act not affected by agreements 41.		

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Subject to the provisions of sections 10 (4) and 37 (2), a provision of this Act or a condition specified in any notice or direction issued thereunder or subject to which exemption was granted to any person under section 40, shall not be affected by any condition of any agreement, whether such agreement was entered into before or after the commencement of this Act or before or after the imposition of any such condition, as the case may be.	<u>(1) [Subject to the provisions of sections 10 (4) and 37 (2), a] A</u> provision of this Act or a condition specified in any notice or direction issued thereunder or subject to which exemption was granted to any person under section 40, shall not be affected by any condition of any agreement, whether such agreement was entered into before or after the commencement of this Act or before or after the imposition of any such condition, as the case may be."	(1) Subject to the provisions of sections 10 (4) and 37 (2), a provision of this Act or a condition specified in any notice or direction issued thereunder or subject to which exemption was granted to any person under section 40, shall not be affected by any condition of any agreement, whether such agreement was entered into before or after the commencement of this Act or before or after the imposition of any such condition, as the case may be.	See motivation under Section 10 for retention of Section 10(4). In terms of Section 37(2), the employer can lawfully impose certain employer duties upon the mandatary, which are not prescribed in law. This promotes occupational health and safety compliance, where the removal of these sections negatively impacts OHS compliance.
42. Delegation and assignment of functions			
1) The Minister may delegate any power conferred upon him by or under this Act, except the power contemplated in section 43, to an officer.	Amendment of section 42 of Act 85 of 1993 Section 42 of the Principal Act is hereby amended by- (a) the substitution for subsection (1) of the following subsection: "(1) The Minister may delegate any power conferred [upon him] to the Minister by or under this Act, except the power contemplated in section 43, to an officer.";		
(2) A delegation under subsection (1) shall not prevent the exercise of the relevant power by the Minister himself.	(b) the substitution for subsection (2) of the following subsection: "(2) A delegation under subsection (1) shall not prevent the exercise of the relevant power by the Minister [himself] ."; and		

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(3) The Minister may authorize any provincial administration or local authority to perform any function referred to in this Act.			
(4) An authorization under subsection (3) shall not prevent the performance of the relevant function by the Minister, the chief inspector or an inspector, as the case may be.	(c) the substitution for subsection (4) of the following subsection: "(4) An [authorization] <u>authorisation</u> under subsection (3) shall not prevent the performance of the relevant function by the Minister, the chief inspector or an inspector, as the case may be."		
43. Regulations	Amendment of section 43 of Act 85 of 1993 Section 43 of the principal Act is hereby amended by-		
(1) The Minister may make regulations-	(a) the substitution in subsection (1) for paragraph (b)(iii),(iv) and (v) of the following subparagraphs:		
(a) as to any matter which in terms of this Act shall or may be prescribed;			
(b) which in the opinion of the Minister are necessary or expedient in the interest of the health and safety of persons at work or the health and safety of persons in connection with the use of plant or machinery, or the protection of persons other than persons at work against risks to health and safety arising from or connected with the activities of persons at work, including regulations as to-			

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(i) the planning, layout, construction, use, alteration, repair, maintenance or demolition of buildings;			
(ii) the design, manufacture, construction, installation, operation, use, handling, alteration, repair, maintenance or conveyance of plant, machinery or health and safety equipment;			
(iii) the Training , safety equipment or facilities to be provided by employers or users, the persons to whom and the circumstances in which they are to be provided and the application thereof;	(a) the substitution in subsection (1) for paragraph (b)(iii) of the following subparagraphs: "(iii) the Training , safety equipment or facilities to be provided by [employers] an employer or [users] user , the [persons] person to whom and the circumstances in which [they are] it is to be provided and the application thereof;		
(iv) the health or safety measures to be taken by employers or users;	(a) the substitution in subsection (1) for paragraph (b)(iv) of the following subparagraphs: (iv) the health or safety measures to be taken by [employers] an employer or [users] user ;		
(v) the occupational hygiene measures to be taken by employers or users;	(a) the substitution in subsection (1) for paragraph (b) (v) of the following subparagraphs: (v) the occupational hygiene measures to be taken by [employers] an employer or [users] user ;;		
(vi) any matter regarding the biological monitoring or medical surveillance of			

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<p>employees;</p> <p>(vii) the production, processing, use, handling, storage or transport of, and the exposure of employees and other persons to, hazardous articles, substances or organisms or potentially hazardous articles, substances or organisms, including specific limits, thresholds or indices of or for such exposure;</p> <p>viii) the performance of work in hazardous or potentially hazardous conditions or circumstances;</p> <p>(ix) the emergency equipment and medicine to be held available by employers and users, the places where such equipment and medicine are to be held, the requirements with which such equipment and medicine shall comply, the inspection of such equipment and medicine, the application of first-aid and the qualifications which persons applying first-aid shall possess;</p> <p>(x) the compilation by employers of health and safety directives in respect of a workplace, the matters to be dealt with in such directives and the manner in which such directives shall be brought to the attention of employees and other persons at such a workplace;</p> <p>(xi) the registration of persons performing hazardous work or using or handling plant</p>			

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<p>or machinery, the qualifications which such persons shall possess and the fees payable to the State in respect of such registration;</p> <p>(xii) the Accreditation, functions, duties and activities of Approved inspection authorities;</p> <p>(xiii) the consultations between an employer and employees on matters of health and safety;</p> <p>(xiv) subject to section 36, the provision of information by an employer or user to employees or the public on any matter to which this Act relates;</p> <p>(xv) the conditions under which any employer is prohibited from permitting any person to partake of food or to smoke on or in any premises where a specified activity is carried out;</p> <p>(xvi) the conditions under which the manufacture of explosives and activities incidental thereto may take place;</p>			
(c) as to the preventive and protective measures for major hazard installations with a view to the protection of employees and the public against the risk of major incidents;			
(d) as to the registration of premises where employees perform any work or where plant or machinery is used and the			

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fee payable to the State in respect of such registration;			
(e) whereby provision is made for the continuation of any registration under this Act;			
(f) as to the registration of plant and machinery and the fee payable to the State in respect of such registration;			
(g) as to the establishment of one or more committees for the administration of a provision of the regulations, the constitution of such committees, the functions of such committees, the procedure to be followed at meetings of such committees, the allowances which may be paid to members of such committees from money appropriated by Parliament for such purpose and the person by whom such allowances shall be fixed;			
(h) prescribing the records to be kept and the returns to be rendered by employers and users and the person or persons to whom such returns shall be rendered;			
(i) as to the designation and functions of health and safety representatives and health and safety committees and the Training of health and safety representatives;			
(j) as to the activities of self-employed persons; and			

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(k) as to any other matter the regulation of which is in the opinion of the Minister necessary or desirable for the effective carrying out of the provisions of this Act.			
	(i) the addition of the following paragraphs: " <u>(l) the classification and labelling of hazardous chemical substances in the workplace;</u>	(i) the addition of the following paragraphs: "(l) the classification and labelling of hazardous chemical agents in the workplace;	Substances have been changed to agents in the change from RHCS to RHCA.
	the addition of the following paragraphs: <u>(m) the consultations and negotiations to conclude Collective Agreements between an employer, employees and representative Trade Unions on matters of health and safety.</u> ;		
(2) No regulation shall be made by the Minister except after consultation with the Council, and no regulation relating to State income or expenditure or to any health matter shall be made by the Minister except after consultation also with the Minister of State Expenditure and the Minister for National Health and Welfare, respectively.	(k) the substitution for subsection (2) of the following subsection: "(2) No regulation shall be made by the Minister except after consultation with the Council and no regulation relating to State income or expenditure or to any health matter shall be made by the Minister except after consultation [also] with the Minister of [State Expenditure] Finance and the Minister [for National] of Health [and Welfare] , respectively.";		
(3) In making regulations the Minister may apply any method of differentiation that he may deem advisable: Provided that no differentiation on the basis of race or colour shall be made.	(n) the substitution for subsection (3) of the following subsection: "(3) In making regulations the Minister may apply any method of differentiation that [he] the Minister may deem		

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	advisable: Provided that no differentiation on the basis of race or colour shall be made.";																
(4) A regulation may in respect of any contravention thereof or failure to comply therewith prescribe a penalty of a Fine , or imprisonment for a period not exceeding 12 months, and, in the case of a continuous offence, not exceeding an additional Fine of R200 or additional imprisonment of one day for each day on which the offence continues: Provided that the period of such additional imprisonment shall not exceed 90 days.	(o) the substitution for subsection (4) of the following subsection: "(4) A regulation may in respect of any contravention thereof or failure to comply therewith, prescribe a penalty of a Fine [,] <u>to a maximum of R5 000 000.00</u> or imprisonment for a period not exceeding [12 months, and, in the case of a continuous offence, not exceeding an additional Fine of R200 or additional imprisonment of one day for each day on which the offence continues: Provided that the period of such additional imprisonment shall not exceed 90 days] <u>five years or both</u> ";	(o) the substitution for subsection (4) of the following subsection: "(4) A regulation may in respect of any contravention thereof or failure to comply therewith, prescribe a penalty of a fine to a maximum of R100 000 or imprisonment for a period not exceeding 12 months or both";	<p>Equating the penalties for violation of a regulation (approved by Minister), to the Act (approved by Parliament). This is supported by the penalties for some Sections of the Act provided for in Schedule 1 being less than for regulations.</p> <p style="text-align: center;">SCHEDULE 1 MAXIMUM FINES OR PERIOD OF IMPRISONMENT THAT CAN BE IMPOSED FOR OFFENCES</p> <table><tr><th>Column 1 Section under which convicted</th><th>Column 2 Maximum fine and period of imprisonment</th></tr><tr><td>2B</td><td>R 1 000 000 or 3 years imprisonment</td></tr><tr><td>8</td><td>R 5 000 000 or 5 years imprisonment</td></tr><tr><td>9</td><td>R 5 000 000 or 5 years imprisonment</td></tr><tr><td>10</td><td>R 1 000 000 or 3 years imprisonment</td></tr><tr><td>12</td><td>R 1 000 000 or 3 years imprisonment</td></tr><tr><td>13</td><td>R 200 000 or 2 years imprisonment</td></tr></table> <p>These penalties opens up a challenge on the rationality of this provision, where laws must be proportional and rational and not disproportional and irrational.</p> <p>Further evidence for this view is that violations under the Act would be removed from the jurisdiction of either district or regional magistrates courts, where the district courts may impose maximum fines of up to R100 000 and the district courts may impose maximum fines of up to R300 000. See Department of Justice website: https://www.justice.gov.za/about/sa-courts.html</p>	Column 1 Section under which convicted	Column 2 Maximum fine and period of imprisonment	2B	R 1 000 000 or 3 years imprisonment	8	R 5 000 000 or 5 years imprisonment	9	R 5 000 000 or 5 years imprisonment	10	R 1 000 000 or 3 years imprisonment	12	R 1 000 000 or 3 years imprisonment	13	R 200 000 or 2 years imprisonment
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			<p>This means that every violation of a regulation would have to be heard in a High Court, clogging up the justice system. It is proposed that this will have the effect of removing justice in the area of OHS and not raising levels of justice.</p> <p>Magistrates' Courts</p> <p>The Magistrates' Courts are the lower courts which deal with the less serious criminal and civil cases. They are divided into regional courts and district courts. In Criminal Courts the state prosecutes people for breaking the law. Criminal Courts can be divided into two groups:</p> <p>Regional Magistrate's Courts</p> <p>The Regional Magistrates' Courts at present only deal with criminal cases whereas the district Magistrates' Courts deal with criminal and civil cases. The magistrate makes the decisions in a Magistrate's Court sometimes with the support of lay assessors.</p> <p>Magistrate's Courts can be divided into either criminal courts or civil courts.</p> <p>The Regional Magistrates' Courts deal with more serious cases than the ordinary Magistrates' Courts - for example, murder, rape, armed robbery and serious assault.</p> <p>In terms of the Criminal Law (Sentencing) Amendment Act (No 38 of 2007) a Regional Magistrate's Court can sentence a person who has been found guilty of offences that include murder or rape to imprisonment for life. The Court can also sentence people who have been found guilty of certain offences such as armed robbery or stealing a motor vehicle to prison for a period up to 20 years. A Regional Magistrate's Court can impose a maximum fine of R300 000.</p> <p>The district courts try the less serious cases. They cannot try cases of murder, treason, rape, terrorism, or sabotage. They can sentence a person to a maximum of 3 years in prison or a maximum fine of R100 000.</p> <p>It is rational and proportionate to align maximum fines for Regulations to the maximum fines which can be levied under a district magistrates court, which is R100 000.</p> <p>Additionally, these provisions are extremely business unfriendly and provide a huge threat to Direct Foreign Investment.</p> <p>The R50 000 aligns to administrative fines and would fall in line with cases being able to be heard in district magistrate courts.</p>

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	<p>(p) the insertion after subsection (4) of the following subsection:</p> <p><u>"(4A) The Minister may by regulation specify offences in terms of this Act in respect of which alleged offenders may pay a prescribed admission of guilt Fine instead of being tried by a court for the offence."</u></p>		
(5) A regulation made under section 35 of the Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), which was in force immediately prior to the commencement of this Act and which could have been made under this section, shall be deemed to have been made under this section.			
44. Incorporation of health and safety standards in regulations	<p>Substitution of section 44 of Act 85 of 1993</p> <p>The following section is hereby substituted for section 44 of the principal Act:</p> <p>"Incorporation of health and safety standards in regulations</p>		
(1) The Minister may by notice in the Gazette incorporate in the regulations any health and safety standard or part thereof, without stating the text thereof, by mere reference to the number, title and year of issue of that health and safety standard or to any other particulars by which that health and safety standard is sufficiently identified.	<p>44. (1) The Minister may by notice in the Gazette incorporate in the regulations [any health and safety standard or part thereof, without stating the text thereof, by mere reference to the number, title and year of issue of that health and safety standard or to any other particulars by which that health and safety standard is sufficiently identified] a South African</p>		

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	<u>National Standard or any provision thereof that has been published in terms of section 28 of the Standards Act, 2008 (Act No. 8 of 2008) in respect of a commodity, product or service which may affect health or safety by referring to the title and number.</u>		
(2) No health and safety standard shall be incorporated in the regulations except after consultation with the Council.	(2) [No health and safety standard shall be incorporated in the regulations except after consultation with the Council] <u>If the South African National Standard or a provision thereof contemplated in subsection (1) is amended, the amended South African National Standard is deemed to be incorporated.</u>		
	<u>(2A) Any South African National Standard or any provision thereof incorporated in terms of subsection (1) may be withdrawn.</u>		
(3) Any health and safety standard incorporated in the regulations under subsection (1) shall for the purposes of this Act, in so far as it is not repugnant to any regulation made under section 43, be deemed to be a regulation, but not before the expiry of two months from the date of incorporation thereof.	(3) Any [health and safety standard] <u>South African National Standard or a provision incorporated in the regulations under subsection (1) shall for the purposes of this Act, in so far as it is not repugnant to any regulation made under section 43, be deemed to be a regulation, but not before the expiry of two months from the date of incorporation thereof.</u>		
(4) Whenever any health and safety standard is at any time after the incorporation thereof as aforesaid, amended or substituted by the Competent authority, the notice incorporating that	[(4) Whenever any health and safety standard is at any time after the incorporation thereof as aforesaid, amended or substituted by the Competent authority, the notice		

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health and safety standard shall, unless otherwise stated therein, be deemed to refer to that health and safety standard as so amended or substituted, as the case may be.	incorporating that health and safety standard shall, unless otherwise stated therein, be deemed to refer to that health and safety standard as so amended or substituted, as the case may be.]		
(5) The chief inspector shall keep a register of particulars of every publication in which a health and safety standard incorporated in the regulations under subsection (1), and every amendment or substitution of any such health and safety standard, was published, and also of the place in the Republic where such publication is obtainable or otherwise available for inspection, and he shall make that register or an extract therefrom available free of charge to persons having an interest, for inspection.	[(5) The chief inspector shall keep a register of particulars of every publication in which a health and safety standard incorporated in the regulations under subsection (1), and every amendment or substitution of any such health and safety standard, was published, and also of the place in the Republic where such publication is obtainable or otherwise available for inspection, and he shall make that register or an extract therefrom available free of charge to persons having an interest, for inspection.]		
(6) The provisions of section 31 of the Standards Act, 1993 (Act No. 29 of 1993), shall not apply to any incorporation of a health and safety standard or of any amendment or substitution of a health and safety standard under this section.	[(6) The provisions of section 31 of the Standards Act, 1993 (Act No. 29 of 1993), shall not apply to any incorporation of a health and safety standard or of any amendment or substitution of a health and safety standard under this section.]		
(7) Any safety standard which was immediately prior to the commencement of this Act incorporated under section 36 of the Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), in the regulations made under that Act, shall be	[(7) Any safety standard which was immediately prior to the commencement of this Act incorporated under section 36 of the Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), in the regulations made under that Act, shall be		


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deemed to be a health and safety standard incorporated under this section.	deemed to be a health and safety standard incorporated under this section.] ".		
	Insertion of section 44A into Act 85 of 1993 The following section is hereby inserted in the principal Act after section 44:		
	"Approved inspection authority 44A.		
	<u>(1) The chief inspector may in writing approve an organisation, that has been Accredited by the SANAS in terms of the Accreditation for Conformity Assessment, Calibration and Good Laboratory Practice Act, 2006 (Act No. 19 of 2006), as an Approved inspection authority for specifically defined work.</u>		
	<u>(2) An Approved inspection authority referred to in subsection (1) shall have specialised knowledge and equipment to-</u> <u>(a) conduct investigations, tests, sampling or analyses as the Approved inspection authority may consider necessary; and</u> <u>(b) make specific findings, purporting to be objective findings, as to-</u> <u>(i) the health of any person;</u> <u>(ii) the safety or risk to health of any work, article, substance, plant or machinery, or of any condition prevalent on or in any premises; or</u> <u>(iii) the question of whether a particular</u>		

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	<u>standard has been or is being complied with, with respect to any work, article, substance, plant or machinery, or with respect to work or a condition prevalent on or in any premises, or with respect to any other matter, and by issuing a report, stating such findings, to the person to whom the service is rendered.</u>		
	<u>(3) The chief inspector may at any time request information from an Approved inspection authority in a prescribed format for the purposes of the administration of this Act.</u>		
	<u>(4) An Approved inspection authority may be required to operate within a prescribed guideline as may be determined by the chief inspector from time to time.</u>		
	<u>(5) An Approved inspection authority shall be subjected to an annual audit by an inspector.</u>		
	<u>(6) An Approved inspection authority shall, in the prescribed format, report to the chief inspector every six months on all activities relating to the approval granted and all recommendations made to the employer.</u>		
	<u>(7) The chief inspector may, in writing, at any time withdraw the approval of an Approved inspection authority."</u>		
45. Serving of notices	45. The following section is hereby substituted for section 45 of the principal		

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	Act: "Serving of [notices] notice		
Unless another method is prescribed, a notice under this Act shall be served-	Unless another method is prescribed, a notice under this Act shall be served-		
(a) by delivering a copy thereof to the person upon whom it is to be served;	a) by delivering a copy thereof to the person upon whom it is to be served;		
(b) by leaving such a copy at the usual or last known place of residence or business of such a person; or	(b) by leaving such a copy at the usual [or last known] place of residence or business of such a person; or		
(c) by sending such a copy by registered post to the usual or last known place of residence or business of such a person.	(c) by sending [such] a copy by registered post to the usual [or last known] place of residence or		
46. Jurisdiction of magistrates' courts	Substitution of section 46 of Act 85 of 1993 46. The following section is hereby substituted for section 46 of the principal Act: "Jurisdiction of magistrates' court		In line with both Section 43(4), for violation of regulations and Schedule 2 for Sections, if the current penalties this Section would need to either be: <ul style="list-style-type: none"> Aligned to penalties which can be levied by district or regional magistrate courts; or The penalties encroach on the jurisdiction of the high court;
Notwithstanding anything to the contrary contained in any law-	(1) Notwithstanding anything to the contrary contained in any law		
(a) a magistrate's court shall have jurisdiction to impose any penalty or to make any order provided for in this Act;	[-(a)] a magistrate's court shall have jurisdiction to impose any penalty or to make any order provided for in this Act [:] .		
(b) no magistrate's court shall be Competent to pronounce upon the validity of any regulation made under this Act.	[(b) no magistrate's court shall be Competent to pronounce upon the validity of any regulation made under this Act.]		
	<u>(2) The Labour Court or High Court has exclusive jurisdiction to determine a</u>		

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	<u>particular dispute about the interpretation or application of any provision of this Act, except where this Act provides otherwise.</u>		
	<u>(3) The Labour Court has no jurisdiction in respect of offences in terms of this Act."</u>		
	Insertion of section 46A into Act 85 of 1993 The following section is hereby inserted in the principal Act after section 46: <u>"Stating of case to High Court 46A.</u>		
	<u>(1) If any question of law arises concerning the application of this Act, the Director-General may or at request of a party with sufficient interest in this matter, state a case for decision by the High Court.</u>		
	<u>(2) The Director-General shall set out in the stated case-</u> <u>(a) the facts that were found to be proved;</u> <u>and</u> <u>(b) the view of the law which was adopted in relation to those facts.</u>		
	<u>(3) If the Director-General has any doubt as to correctness of a decision given by the High Court, regarding a question of law, concerning the application of this Act, the Director-General may submit such a decision to the Supreme Court of Appeal."</u>		
47. State bound			
This Act shall bind the State.			

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48. Conflict of provisions			
In so far as any provision of the Explosives Act, 1956 (Act No. 26 of 1956), is repugnant to a provision of this Act the provisions of this Act shall apply.			
49. Repeal of laws			
The Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), the Machinery and Occupational Safety Amendment Act, 1989 (Act No. 40 of 1989), and the Machinery and Occupational Safety Amendment Act, 1991 (Act No. 97 of 1991), are hereby repealed.			
50. Short title and commencement	Short title and commencement		
(1) This Act shall be called the Occupational Health and Safety Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.	This Act is called the Occupational Health and Safety Amendment Act, 2019, and takes effect on a date to be determined by the President by proclamation in the <i>Gazette</i> .		
(2) Different dates may be so fixed in respect of different provisions of this Act.			
	Schedule 1	Align maximum fine to be levied to R300 000, which can be levied in the regional magistrates courts and maximum imprisonment to 2 years.	Violations under the Act would be removed from the jurisdiction of either district or regional magistrates courts, where the district courts may impose maximum fines of up to R100 000 and the district courts may impose maximum fines of up to R300 000. https://www.justice.gov.za/about/sa-courts.html

OCCUPATIONAL HEALTH & SAFETY ACT (85 OF 1993)	OHS AMENDMENT BILL 2020	PROPOSAL	MOTIVATION
			<p>This means that every violation of a section of the Act would have to be heard in a High Court, clogging up the justice system. It is proposed that this will have the effect of removing justice in the area of OHS and not raising levels of justice.</p> <p>If all cases have to go to the high court it is noted that the number of cases that could be successfully prosecuted would fall dramatically. So, counter-intuitively this would most likely reduce compliance levels as employers would understand the difficulty that the DoEL would have in taking every case to high court. Also because of the penalties every case would end up being challenged and all inspectors would have to be trained on the writing up of prosecutions to the level that could be presented in the high court.</p> <p>Magistrates' Courts</p> <p>The Magistrates' Courts are the lower courts which deal with the less serious criminal and civil cases. They are divided into regional courts and district courts. In Criminal Courts the state prosecutes people for breaking the law. Criminal Courts can be divided into two groups:</p> <p>Regional Magistrate's Courts</p> <p>The Regional Magistrates' Courts at present only deal with criminal cases whereas the district Magistrates' Courts deal with criminal and civil cases. The magistrate makes the decisions in a Magistrate's Court sometimes with the support of lay assessors.</p> <p>Magistrate's Courts can be divided into either criminal courts or civil courts.</p> <p>The Regional Magistrates' Courts deal with more serious cases than the ordinary Magistrates' Courts - for example, murder, rape, armed robbery and serious assault.</p> <p>In terms of the Criminal Law (Sentencing) Amendment Act (No 38 of 2007) a Regional Magistrate's Court can sentence a person who has been found guilty of offences that include murder or rape to imprisonment for life. The Court can also sentence people who have been found guilty of certain offences such as armed robbery or stealing a motor vehicle to prison for a period up to 20 years. A Regional Magistrate's Court can impose a maximum fine of R300 000.</p> <p>The district courts try the less serious cases. They cannot try cases of murder, treason, rape, terrorism, or sabotage. They can sentence a person to a maximum of 3 years in prison or a maximum fine of R100 000.</p> 

OCCUPATIONAL HEALTH & SAFETY ACT (85 OF 1993)	OHS AMENDMENT BILL 2020	PROPOSAL	MOTIVATION																		
			<p>It is appropriate that the maximum fine that should be levied should be R300 000 in line with maximum fines imposed in a regional magistrates court. In line with this it is proportional and rational that the maximum term of imprisonment be 2 years as the proposed 5 year term would not be in proportion to the fine of R300 000.</p> <p>Additionally, these provisions are extremely business unfriendly and provide a huge threat to Direct Foreign Investment.</p>																		
	Schedule 2	Remove Section 7.	<p>It is noted that administrative fines of up to R50 000 may be issued by inspectors for violation of Section 7. The problem with this is that this applies to whole sectors and so the scope of application is excessively wide. This has the effect of limiting the rights to Administrative Justice for those sectors included in the application of Section 7.</p> <p style="text-align: center;">SCHEDULE 2 Administrative fines</p> <table><tr><th>Column 1 Section contravened</th><th>Column 2 Maximum fine</th></tr><tr><td>7</td><td>R 50 000</td></tr><tr><td>19 (1);</td><td>R 50 000</td></tr><tr><td>20 (4);</td><td>R 50 000</td></tr><tr><td>21;</td><td>R 50 000</td></tr><tr><td>24(1);(2)</td><td>R 25 000</td></tr><tr><td>25;</td><td>R 50 000</td></tr><tr><td>29(3);</td><td>R 25 000</td></tr><tr><td>30(6)</td><td>R50 000</td></tr></table>	Column 1 Section contravened	Column 2 Maximum fine	7	R 50 000	19 (1);	R 50 000	20 (4);	R 50 000	21;	R 50 000	24(1);(2)	R 25 000	25;	R 50 000	29(3);	R 25 000	30(6)	R50 000
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