



**mineral resources
& energy**

Department:
Mineral Resources and Energy
REPUBLIC OF SOUTH AFRICA



South African Institute of
Occupational Safety and Health

South African Institute of Occupational Safety and Health Comments

**Mine Health and Safety Amendment Bill 2022
Government Gazette 46546 NO. 1086 15 June 2022**

Current	Bill (New/Amended)	Comments	Proposal
2A. Chief executive officer charged with certain functions (1) Every chief executive officer must take reasonable steps to ensure that the functions of the employer as contemplated in this Act, are properly performed. (2) Without derogating from any responsibility or liability of the chief executive officer in terms of subsection (1), the chief executive officer may entrust any function contemplated in the said subsection to any person under the control of the chief executive officer, which person must act subject to the control and directions of the chief executive officer. (3) If the employer is a body corporate, the functions of the chief executive officer contemplated in subsections (1) and (2) may be performed by a member of the board of the body corporate designated by the board. (4) Subsections (1), (2) and (3) do not relieve an employer of any duty imposed on employers by this Act. (5) Every person appointed in terms of section 3 or 4 (1) must perform their functions subject to the control and direction of the chief executive officer or the person contemplated in subsection (3). (6) a) The employer must inform the Chief Inspector of Mines, in writing, within seven days of the appointment of the chief executive officer. (b) The information to the Chief Inspector of Mines include. (i) the name of the chief executive officer (ii) the nature of such person's function (iii) the name of persons who are managers under the supervision of the chief executive officer.	<u>Amendment</u> Amendment of section 2A of Act 29 of 1996, as inserted by section 2 of Act 72 of 1997 and amended by section 2 of Act 74 of 2008. <u>2, Section 2A of the principal Act is hereby amended-</u> a) <u>by the substitution for subsection (3) of the following subsection:</u> (3) <u>if the employer is a (body corporate) company, the function of the Chief Executive Officer contemplated in the subsection (1) and (2) may be performed by a member of the board of the (body Corporate) company, designated by the board.</u> b) <u>3(a) and by the insertion of subsection (3)(a) after paragraph (3)</u> (3) <u>the functions contemplated in terms of subsection (2) may be performed by the member of the board after approval by the board.</u> c) <u>by the deletion of subsections 6.</u> <u>Insertion</u> <u>2B. (1) The employer of every mine that is being worked must appoint a chief executive officer</u> (2) <u>The Chief Executive Officer must perform all functions of the employer, including making any appointments in terms of this act.</u> (3) <u>If the employer is a company, the chief executive officer must be a member of the board of that company.</u> (4) <u>The chief executive officer must be responsible for the health and safety of employees and persons who are not employees, but who may be directly affected by the activities of the mine.</u> (5) <u>Where the employer is not a company, an owner of the mine must be responsible for the health and safety of employees and persons who are not employees but who may be directly affected by the activities of the mine.</u> (6) <u>The employer must inform the Chief Inspector of mines, in writing, within seven says of the appointment of the Chief Executive Officer.</u> (7) <u>The information of the Chief Executive must include the -(ii) nature of the Chief Executive Officer's functions</u> (i) <u>name of the Chief Executive Officer</u> (ii) <u>nature of the Chief Executive Officer's functions</u> (iii) <u>nature of the Chief Executive Officer's functions</u>	(iv) <u>The Chief Executive Officer must perform all functions of the employer, including making any appointments, required in terms of this act.</u> <u>“The Chief Executive Officer must perform all functions of the employer”. The way that it is currently written is that each and every function that is required in terms of the Act has to be done by the CEO. Practically it is impossible that one person is able to carry out all of these functions as there isn't time in one persons day. Recommend that this sub-section is deleted or amended so that it is possible for the CEO to carry out the prescribed function.</u> <u>“including making any appointments, required in terms of this act”. The CEO must be directly responsible to make any appointments in terms of the act up until Section 3.1 appointees. It is practically possible for the CEO to do this. It is noted that it is not practically possible for the CEO to have knowledge and understanding of the functions carried out by all appointees, such as Section 7.2 or 7.4 appointees.</u>	
(3) Employer must appoint manager	<u>Amendment</u>		

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(1) The employer of every mine that is being worked must- a) appoint one or more managers with the qualifications as may be prescribed to be responsible for the day-to-day management and operation of the mine, and if more than one manager is appointed, ensure that the managers' functions do not overlap. b) supply the managers with the means to perform their functions. c) take reasonable steps to ensure that the managers perform their functions, (2) The appointment of a manager does not relieve the employer of any duty imposed on employers by this Act or any other law. (3) If no manager is appointed in terms of subsection (1), the employer must perform the functions of a manager in terms of this Act.	(4) Section 3 of the principal Act is hereby amended by deletion of subsection (3)		
(6) Employer to ensure adequate supply of health and safety equipment (1) Every employer must a) supply all necessary health and safety equipment and health and safety facilities to each employee; and b) maintain, as far as reasonably practicable, that equipment and those facilities in a serviceable and hygienic condition (2) Every employer must ensure that sufficient quantities of all necessary personal protective equipment are available so that every employee who is required to use that equipment is able to do so. (3) Every employer must take reasonable steps to ensure that all employees who are required to use personal protective equipment are instructed in the proper use, the limitations, and the appropriate maintenance of that equipment.	Amendment Amendment of section 6 of the Act 29 of 1996, as amended by section 6 of Act 72 of 1997 5, Section 6 of the principal Act is hereby amended- a) by the addition in the following subsection: (2) Every employer must ensure <u>suitable, and sufficient quantities of all necessary personal protective equipment are available to (do so) use such equipment effectively for personal protection</u> and b) by the additional of the following subsection: (4) <u>All personal protective equipment supplied in terms of this section must be suitable in terms of:</u> a) <u>size and fit</u> b) <u>type of workplace hazards</u> c) <u>purpose</u> d) <u>nature of work to be undertaken</u> e) <u>gender</u>	Use of the term “reasonably practicable” is selectively removed. Detailed comment is provided at the end of this document.	
(7) Employer to staff mine with due regard to health and safety (1) As far as reasonably practicable, every employer must- a) ensure that every employee complies with the requirements of this Act. b) institute the measures necessary to secure, maintain and enhance health and safety c) provide persons appointed under subsections (2) and (4) with the means to comply with the requirements of this Act and with any instruction given by an inspector	Amendment Amendment of section 7 of the Act 29 of 1996, as amended by section 7 of Act 72 of 1997 (6) <u>Section 7 of the principal Act is hereby amended by the following subsection: (6) Where this Act requires the employer or a manager to appoint any person to perform any functions contemplated in this Act and such appointment is not made, the employer, must ensure that the functions of the person who should have been appointed are performed.</u>	Use of the term “reasonably practicable” is selectively removed (note that in Section 7 reasonably practicable is retained – correctly so). Detailed comment is provided at the end of this document.	

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d) consider an employee's training and capabilities in respect of health and safety before assigning a task to that employee; and e) ensure that work is performed under the general supervision of a person trained to understand the hazards associated with the work and who has the authority to ensure that the precautionary measures laid down by the employer are implemented. (2) The employer may appoint any person with qualifications as may be prescribed to perform any function of the employer in terms of this Act. (3) The appointment of a person under subsection (2) does not relieve the employer of any duty imposed on employers by this Act (4) A manager may appoint any person with qualifications as may be prescribed to perform any function of the manager in terms of this Act (5) The appointment of a person under subsection (4) does not relieve the manager of any duty imposed on managers by this Act			
(9) Codes of practice a) Any employer may prepare and implement a code of practice on any matter affecting the health or safety of employees and other persons who may be directly affected by activities at the mine b) An employer must prepare and implement a code of practice on any matter affecting the health or safety of employees and other persons who may be directly affected by activities at the mine if the Chief Inspector of Mines requires it c) A code of practice required by the Chief Inspector of Mines must comply with guidelines issued by the Chief Inspector of Mines. d) The employer must consult with the health and safety committee on the preparation, implementation, or revision of any code of practice e) The employer must deliver a copy of every code of practice prepared in terms of subsection (2) to the Chief Inspector of Mines f) The Chief Inspector of Mines must review a code of practice of a mine if requested to do so by a registered trade union with members at the mine, or a health and safety committee or a health and safety representative at the mine g) At any time, an inspector may instruct an employer to review any code of practice within a specified period if that code of practice- a) does not comply with a guideline of the Chief Inspector of Mines; or (b) is inadequate to protect the health or safety of employees	Amendment <u>Amendment of section 9 of Act 29 of 1996</u>, as amended by section 7 of Act 72 of 1997 7, Section 9 is hereby amended by the insertion of subsection 8 after subsection 7: (8) Every employer must comply with the requirements of the code of practice by such employer, in terms of subsection (2) and (3).		
(10) Employer to provide health and safety training	Amendment		

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(1) As far as reasonably practicable, every employer must- a) provide employees with any information, instruction, training, or supervision that is necessary to enable them to perform their work safely and without risk to health; and b) (b) ensure that every employee becomes familiar with work-related hazards and risks and the measures that must be taken to eliminate, control and minimise those hazards and risks. (2) As far as reasonably practicable, every employer must ensure that every employee is properly trained- a) to deal with every risk to the employee's health or safety that- (i) is associated with any work that the employee has to perform; and (ii) has been recorded in terms of section 11. b) in the measures necessary to eliminate, control and minimise those risks to health or safety. c) in the procedures to be followed to perform that employee's work; and (d) in relevant emergency procedures. (3) In respect of every employee, the provisions of subsection (2) must be complied with- a) before that employee first starts work. b) at intervals determined by the employer after consulting the health and safety committee. c) before significant changes are introduced to procedures, mining and ventilation layouts, mining methods, plant or equipment and material; and d) before significant changes are made to the nature of that employee's occupation or work. (4) The employer must keep a record of all formal training provided in respect of each employee in terms of subsection (2). (5) All mines must submit a workplace skills plan and the annual training reports to the Mining Qualifications Authority.	Amendment of section 10 of the Act 29 of 1996, as amended by section 3 of Act 74 of 2008 8, Section 10 of the principal Act is hereby amended- a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words. (1) As far as reasonably practicable Every employer must – b) by the substitution for subsection (2) for the words preceding paragraph (a) of the following words. As far as reasonably practicable Every employer must ensure that every employee is properly trained, <u>the nature of which training must be determined by the employer having regard to the needs of the work to be performed.</u> c) by the substitution of subsection (4) of the following subsection: (4) The employer must keep a record of all formal training provided in respect of each employee on terms of subsection (2). <u>Readily available.</u>		
(11) Employer to assess and respond to risk (1) Every employer must- a) identify the hazards to health or safety to which employees may be exposed while they are at work. b) assess the risks to health or safety to which employees may be exposed while they are at work. c) record the significant hazards identified and risks assessed; and (d) make those records available for inspection by employees. (2) Every employer, after consulting the health and safety committee at the mine, must determine all	Amendment Amendment of section 11 of the Act 29 of 1996, as amended by section 4 of Act 74 of 2008 (9) Section 11 of the principal Act is hereby amended by the deletion of subsection (5), (5A), (5B), (6), (7) and (8). Insertion Insertion of section 11A in Act 29 of 1996 (10)The following section is hereby inserted in the principal Act after section 11,	Use of the term “reasonably practicable” is selectively removed [11(3)]. Detailed comment is provided at the end of this document.	

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measures, including changing the organisation of work and the design of safe systems of work, necessary to- a) eliminate any recorded risk. b) control the risk at source. c) minimise the risk; and d) in so far as the risk remains- (i) provide for personal protective equipment; and (ii) institute a programme to monitor the risk to which employees may be exposed (3) Every employer must, as far as reasonably practicable, implement the measures determined necessary in terms of subsection (2) in the order in which the measures are listed in the paragraphs of that subsection (4) Every employer must - a) periodically review the hazards identified and risks assessed, including the results of occupational hygiene measurements and medical surveillance, to determine whether further elimination, control and minimisation of risk is possible; and b) consult with the health and safety committee on the review (5) Every employer must - a) conduct an investigation into every- (i) accident that must be reported in terms of this Act. (ii) serious illness; and (iii) health-threatening occurrence. b) commence an investigation referred to in paragraph (a) within 10 days from the date of such accident, serious illness, or health threatening occurrence. b) consult the health and safety committee on investigations in terms of this section. c) conduct an investigation in co-operation with the health and safety representative responsible for the working place in which the investigation takes place. d) on completion of each investigation, prepare a report that- (i) identifies the causes and the underlying causes of the accident, serious illness, or health-threatening occurrence (ii) identifies any unsafe conditions, acts, or procedures that contributed in any manner to the accident, serious illness, or health-threatening occurrence; and (iii) makes recommendations to prevent a similar accident, serious illness, or health-threatening occurrence; and e) deliver a copy of the report referred to in paragraph (d) within 30 days from the date of the accident, serious illness or health-threatening	"Investigation by employer" <u>11A (1) Every Employer must:</u> a) <u>Conduct an investigation into every:</u> (i) <u>Accident that must be reported in terms of this Act.</u> (ii) <u>Serious illness and</u> (iii) <u>health threatening occurrence.</u> b) <u>commence with an investigation referred to in paragraph (a) within 10 days from the date of such accident, serious illness, or health threatening occurrence.</u> c) <u>consult the health and safety committee on any investigation in terms of this section:</u> d) <u>conduct the investigation in co-operation with the health and safety presentative responsible for the working place in which the investigation takes place.</u> (2) <u>On completion of each investigation, the employer must prepare a report that:</u> a) <u>Identifies the causes and underlying causes of the accident, serious illness, or health threatening occurrence.</u> b) <u>identifies any unsafe conditions, acts or procedures that contributed in any manner to the accident, serious illness, or health threatening occurrence.</u> c) <u>makes recommendations to prevent a similar accident, serious illness, health threatening occurrence.</u> (3) <u>The employer must deliver a copy of the report referred to in subsection (2) within 30 days from the start of the investigation of the accident, serious illness, or health threatening occurrence or such longer periods as permitted by the principal inspector pf mines under subsection (5).</u> (4) <u>If there is no health and safety committee the employer must deliver a copy report to the health and safety representative responsible for the working place that has been investigated.</u> (5) <u>An investigation in terms of subsection (1) must be completed within 30 days from the date of the accident, serious illness, health threatening occurrence being investigated or such longer period as the principal inspector of mines may permit on request of the employer.</u> (6) <u>The employer must notify the principal inspector of mines of any accident or occurrence at a mine that result in –</u> a) <u>serious injury</u> b) <u>serious illness</u> c) <u>death., of any person, in order to allow the principal inspector of mines to instruct an inspector to conduct an investigation</u>		

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occurrence being investigated to the Principal Inspector of Mines and the health and safety committee. If there is no health and safety committee the employer must deliver a copy of the report to the health and safety representative responsible for the working place (5A) An investigation in terms of subsection (5) must be completed within 30 days after the accident, serious illness or health-threatening occurrence being investigated or such longer period as the Principal Inspector of Mines may permit 5B) The employer must notify the Principal Inspector of Mines of any accident or occurrence at a mine that results in- a) the serious injury. b) illness; or c) death, of any person, in order to allow the Principal Inspector of Mines to instruct an Inspector to conduct an investigation simultaneously with the employer as required in section 11 (5) (a). (6) An investigation referred to in subsection (5) may be held jointly with an investigation conducted by an inspector in terms of section 60. (7) If there is no health and safety committee at a mine, the consultations required in this section must be held with- a) the health and safety representatives; or b) if there is no health and safety representative at the mine, with the employees. (8) In the event of an incident in which a person died, or was injured to such an extent that he or she is likely to die, or suffered the loss of a limb or part of a limb, no person may without the consent of the Principal Inspector of Mines disturb the site at which the incident occurred or remove any article or substance involved in the incident: Provided that an article or substance may only be removed if it is necessary to- a) prevent any further incident. b) remove the injured or dead; or c) rescue any person from danger.	<u>simultaneously with the employer as required in section (1).</u> d) <u>An investigation referred to in subsection (1) may be held jointly with an investigation conducted by an inspector in terms of section 6.</u> e) <u>If there is no health and safety committee at the mine, the consultations required in subsection (1) (c) must be held with:</u> a) <u>The health and safety representative</u> b) <u>the employees at the mine if there is no health and safety representative at the mine.</u> c) <u>In the event of an accident of an incident in which a person died or injured to such an extent that he or she is likely to die or suffered a loss of a limb or part of the limb, no person may without the consent of the principal inspector of mines disturb the scene where the incident occurred or remove any article or substance involved in the accident. Provided that an article or substance may only be removed for the purpose of:</u> a) <u>Preventing any further accidents</u> b) <u>(b) removing the injured or the dead</u> c) <u>(c) rescuing any person from danger.</u>		
(12) Employer to conduct occupational hygiene measurements (1) The employer must engage the part-time or full-time services of a person qualified in occupational hygiene techniques to measure levels of exposure to hazards at the mine- a) if required to do so by regulation or a notice in the Gazette; or b) if, after assessing risks in terms of section 11 (1), it is necessary to do so. (2) Every system of occupational hygiene measurements must-	Amendment Amendment of section 12 of the Act 29 of 1996 11, Section 12 of the principal Act in hereby amended – a) by the amending of the heading of the following section: <u>Employer to conduct provide mine environmental engineering and occupational hygiene measurements service.</u> b) by the subsection for (1) of the following subsection:		

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a) be appropriate, considering the hazards to which the employees are or may be exposed; and b) be designed so that it provides information that the employer can use in determining measures to eliminate, control and minimise the health risks and hazards to which employees are or may be exposed. (3) The employer must keep a record of all occupational hygiene measurements in terms of subsection (1) in a manner that can be linked as far as practicable to each employee's record of medical surveillance.	(1) The employer must engage the <u>appoint on a part-time or full-time service of basis a person qualified in occupational techniques to measure levels of exposure to hazards at the mine to provide mine environmental engineering and occupational hygiene services at the mine, including but not limited to measuring and assessing levels of exposure to health hazards, recommending, and monitoring the effectiveness of control measures and reporting thereon to the employer.</u> (a) if required to do so by regulation or notice in the gazette: or b) if after assessing risk in terms of section 11(1) it is necessary to do so and c) by the addition of the following subsection. (1) <u>The employer must supply the person referred to in subsection (1) with the means to perform his or her functions.</u>		
(13) Employer to establish system of medical surveillance (1) The employer must establish and maintain a system of medical surveillance of employees exposed to health hazards- a) if required to do so by regulation or a notice in the Gazette; or b) if, after assessing risks in terms of section 11 (1), it is necessary to do so. (2) Every system of medical surveillance must- a) be appropriate, considering the health hazards to which the employees are or may be exposed. b) be designed so that it provides information that the employer can use in determining measures to- (i) eliminate, control, and minimise the health risk and hazards to which employees are or may be exposed; or (ii) prevent, detect, and treat occupational diseases; and 1. consist of an initial medical examination and other medical examinations at appropriate intervals. a. Every employer who establishes or maintains a system of medical surveillance must - a) engage the part-time or full-time services of- (i). an occupational medical practitioner; and (ii). b) supply the practitioners with the means to perform their functions; and c) keep a record of medical surveillance for each employee exposed to a health hazard ii. (4A) The employer must inform the Principal Inspector of Mines, in writing, within seven days of the appointment of the occupational medical practitioner. (4B) The information submitted in terms of subsection (4A) must include-	Amendment Amendment of section 13 of the Act 29 of 1996, as amended by section 13 of Act 74 of 2008 12), Section 13 of the principal Act is hereby amended – a) by the substitution in subsection (3) (a) for the preceding subparagraph (i) of the following words: Engage the <u>appoint on a part-time or full-time basis service of</u> b) by the addition in subsection (3)(a) of the following subparagraph. (ii) <u>in so far as it is necessary, other Occupational Health practitioners who are registered with Health Professional Council of South Africa, South African Nursing Council, or any other relevant professional body and who holds a qualification in occupational health.</u> c) by the substitution in subsection(4b) paragraphs (b) and (c) of the following paragraph: (b) his or her practice professional registration number and (c) whether the occupational medical practitioner is engaged <u>appointed on a full-time or part-time basis</u> d) by the addition in subsection (4b) of the following subsection (d) <u>the conformation of registration of the Occupational medical practitioner's qualification with the health professional council of South Africa</u> and e) by the insertion of subsection (4c) after subsection(4b)		

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a) the name of a occupational medical practitioner. b) his or her practice number; and c) whether the occupational medical practitioner is engaged full time or part time iii. An occupational medical practitioner must take every measure that is reasonably practicable to- (a) promote the health and safety of employees at the mine; and (b) assist employees in matters related to occupational medicine (6) If any employee is declared unfit to perform work as a result of an occupational disease, the employer must conduct an investigation in terms of section 11 (5). (7) If an employee is temporarily unfit to perform work as a result of any occupational disease, but there is a reasonable expectation that the employee's health will improve so that the employee can return to work, the occupational medical practitioner must record that fact and notify both the employer and employee of it (8) The employer must- a) retain the records referred to in sections 12 (3), 13 (3) (c) and 14 (1) until the mine closes; and b) when the mine closes, deliver those records to the Medical Inspector	<u>(4c) An employer must ensure that the occupational medical practitioner issues a Certificate of fitness for work every medical examination conducted in terms of subsection (2) (c).</u> Insertion Insertion of section 13A in Act 29 of 1996 (13) The following section is hereby inserted in the principal Act after section 13, Findings of unfitness to work (1) <u>13A The Occupational medical practitioner must, within seven days of deciding that en employee is unfit to perform any category of work, in writing inform the employee that he or she has been found unfit to perform work and that the employee has the right to appeal against the decision to the Medical Inspector within a period of 30 days of the decision.</u> (2) <u>The employer must in the prescribed form and manner report to the medical inspector any dismissal by the employer of an employee on grounds of unfitness to perform work.</u>		
(14) Record of hazardous work (1) The employer at every mine must keep a service record, in the prescribed form, of employees at the mine who perform work in respect of which medical surveillance is conducted in terms of section 13. (2) The employer must deliver to the Medical Inspector a copy of the relevant part of the record kept in terms of subsection (1)- a) when an employee whose name appears in that record ceases to be employed at that mine; or b) when required to do so by the Chief Inspector of Mines.			
(15) Record of medical surveillance (1) An employee's record of medical surveillance kept in terms of section 13 (3)(c) must be kept confidential and may be made available only- a) in accordance with the ethics of medical practice. b) if required by law or court order; or c) if the employee has consented, in writing, to the release of that information. (2) Any person required to maintain an employee's record of medical surveillance must- a) store it safely; and b) not destroy it or dispose of it, or allow it to be destroyed or disposed of, for 40 years from the last date of the medical surveillance of that employee.			

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(16) Annual medical reports (1) Every occupational medical practitioner at a mine must compile an annual report covering employees at that mine, giving an analysis of the employees' health based on the employees' records of medical surveillance, without disclosing the names of the employees. (2) The annual report compiled in terms of subsection (1) must be given to the employer, who must deliver one copy of the report to each of a) b) the health and safety committees, or if there is no health and safety committee, the health and safety representatives; and (c) the Medical Inspector			
(17) Exit certificates (1) If an employee was subject to, or was required to be subject to, medical surveillance in terms of this Act and such employee's employment at a mine is terminated for any reason, the employer must arrange an exit medical examination of the employee. (2) The examination referred to in subsection (1) must be held before, or within 30 days after, termination of employment. (3) The employee must attend the examination. (4) The occupational medical practitioner conducting the examination must- a) produce an exit certificate with respect to that employee indicating the results of all medical surveillance and the presence or absence of any occupational disease; and b) enter a copy of the exit certificate into the employee's record of medical surveillance.	Amendment Amendment of section 17 of Act 29 of 1996 14, Section 17 of the principal Act is hereby amended a) by the addition of the following subsection after paragraph (4)(b). <u>(4) (c) Within 7 days of producing an exit certificate, in writing inform the employee that the employee has the right to appeal and decision or finding in the exit certificate to the medical inspector within 30 days.</u>		
(18) Costs of examination The employer must pay the costs of all clinical examinations and medical tests performed in terms of this Act unless this Act expressly provides otherwise.			
(19) Employees' right to information (1) An employee may request, and the employer must then provide, a copy of the record or of any part of it that- a) is being kept in terms of sections 12 (3) and 13 (3) (c); and (b) relates to that employee. (2) The occupational medical practitioner conducting an examination in terms of section 17 must provide the employee with a copy of the exit certificate prepared as a result of that examination.			
(20) Employee may dispute finding of unfitness to perform work	Amendment		

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(1) An employee may appeal to the Medical Inspector against- a) a decision that the employee is unfit to perform any particular category of work; or b) any finding of an occupational medical practitioner contained in an exit certificate prepared in terms of section 17. (2) An appeal under subsection (1) must- a) be lodged with the Medical Inspector within 30 days of the relevant decision or finding, or such further period as may be prescribed: and b) state the grounds of the appeal (3) When the Medical Inspector receives an appeal under subsection (1), the Medical Inspector must choose a medical practitioner who is not employed by the employer of the employee and arrange for that employee to be re-examined by that medical practitioner, at the cost of the Chief Inspector of Mines. (4) The medical practitioner referred to in subsection (3) must report to the Medical Inspector, who must then consider the appeal and- a) confirm, set aside, or vary the decision or finding of the occupational medical practitioner; or b) substitute any other decision or finding for that decision or finding. (5) Nothing in this section precludes an employee from- a) obtaining and paying for a medical opinion from any other medical practitioner; or b) pursuing any other legal remedy. (6) For the purposes of this section, 'employee' includes any applicant for employment who has previously been employed at a mine. (7) An employee lodging an appeal under subsection (1) may not be dismissed on any grounds relating to unfitness to perform work, pending the outcome of the appeal	Amendment of section 20 of the Act 29 of 1996, as amended by section 11 of Act 72 of 1997 and section 7 of Act 74 of 2008, 15, Section 20 of the principal Act is hereby amended. a) by the insertion after subsection (2) of the following subsection: <u>(2A) The Medical Inspector must, after receiving an appeal lodged under subsection</u> (1) <u>within 7 days confirm receipt of the appeal and inform the employer of such appeal.</u> b) by the insertion after subsection 2A of the following subsection: <u>(2b) The employer must within 7 days of receipt of a notification under subsection (2A) provide the medical inspector with the reasons for the decision or finding appealed against.</u> c) by the insertion of the following subsection. <u>Employers' duty to report dismissal based on fitness to perform work.</u> <u>(2c) The employer must in the prescribed form and manner report the medical inspector and dismissal by the employer of an employee on grounds of unfitness to perform work relating to disability, injury, or illness attributable to occupational causes.</u> (d) by the substitution for subsection (4) of the following subsection: <u>(4) The medical practitioner referred to subsection (3) must report to the medical inspector, who must the consider the appeal and within 60 days after the lodging of the appeal -</u> a) Confirm, set aside, and vary the decision or finding of the occupational medical practitioner b) substitute any other decision or finding for that decision or finding <u>and notify the employer and employee who has lodged the appeal of such decision or finding</u>		
(21) Manufacturer's and supplier's duty for health and safety (1) Any person who- a) designs, manufactures, repairs, imports, or supplies any article for use at a mine must ensure, as far as reasonably practicable- (i) that the article is safe and without risk to health and safety when used properly; and (ii) that it complies with all the requirements in terms of this Act b) erects or installs any article for use at a mine must ensure, as far as reasonably practicable, that nothing about the manner in which it is erected or installed makes it unsafe or creates a risk to health and safety when used properly; or			

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c) designs, manufactures, erects, or installs any article for use at a mine must ensure, as far as reasonably practicable, that ergonomic principles are considered and implemented during design, manufacture, erection, or installation. (2) Any person who bears a duty in terms of subsection (1) is relieved of that duty to the extent that is reasonable in the circumstances, if- a) that person designs, manufactures, repairs, imports, or supplies an article for or to another person; and b) that other person provides a written undertaking to take specified steps sufficient to ensure, as far as reasonably practicable, that the article will be safe and without risk to health and safety when used properly and that it complies with all prescribed requirements. (3) Any person who designs or constructs a building or structure, including a temporary structure, for use at a mine must ensure, as far as reasonably practicable, that the design or construction is safe and without risk to health and safety when used properly (4) Every person who manufactures, imports, or supplies any hazardous substance for use at a mine must- a) ensure, as far as reasonably practicable, that the substance is safe and without risk to health and safety when used, handled, processed, stored, or transported at a mine in accordance with the information provided in terms of paragraph (b). b) provide adequate information about- (i) the use of the substance. (ii) the risks to health and safety associated with the substance. (iii) any restriction or control on the use, transport, and storage of the substance, including but not limited to exposure limits. (iv) the safety precautions to ensure that the substance is without risk to health or safety. (v) the procedure to be followed in the case of an accident involving excessive exposure to the substance, or any other emergency involving the substance; and (vi) the disposal of used containers in which the substance has been stored and any waste involving the substance; and c) ensure that the information provided in terms of paragraph (b) complies with the provisions of the Hazardous Substances Act, 1973 (Act 15 of 1973)			
(22) Employees' duties for health and safety Every employee at a mine, while at that mine, must-			

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a) take reasonable care to protect their own health and safety. b) take reasonable care to protect the health and safety of other persons who may be affected by any act or omission of that employee. c) use and take proper care of protective clothing, and other health and safety facilities and equipment provided for the protection, health or safety of that employee and other employees. d) report promptly to their immediate supervisor any situation which the employee believes presents a risk to the health or safety of that employee or any other person, and with which the employee cannot properly deal. e) co-operate with any person to permit compliance with the duties and responsibilities placed on that person in terms of this Act; and (f) comply with prescribed health and safety measures			
(23) employees' right to leave dangerous working place (1) The employee has the right to leave any working place whenever- a) circumstances arise at that working place which, with reasonable justification, appear to that employee to pose a serious danger to the health or safety of that employee; or b) the health and safety representative responsible for that working place directs that employee to leave that working place. (2) Every employer, after consulting the health and safety committee at the mine, must determine effective procedures for the general exercise of the rights granted by subsection (1), and those procedures must provide for notification of supervisors and health and safety representatives of dangers which have been perceived and responded to in terms of subsection (1); (b) participation by representatives of employer and representatives of the employees in endeavouring to resolve any issue that may arise from the exercise of the right referred to in subsection (1); (c) participation, where necessary, by an inspector or technical adviser to assist in resolving any issue that may arise from the exercise of the right referred to in subsection (1) (d) where appropriate, the assignment to suitable alternative work of any employee who left, or refuses to work in, a working place contemplated in subsection (1); and (e) notification to any employee who has to perform work or is requested to perform work in a working place contemplated in subsection (1) of the fact that another employee has refused to work there and of the reason for that refusal			

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(3) If there is no health and safety committee at a mine, the consultation required in subsection (2) must be held with- a) the health and safety representatives; or b) if there is no health and safety representative at the mine, with the employees. (4) The Minister, by notice in the Gazette, must determine minimum requirements for the procedures contemplated in subsection (2).			
(24) Employees not to pay for safety measures No person may make any deduction from an employee's wages, or permit an employee to make any payment to any person, in respect of anything which the employer is obliged to provide or to do in terms of this Act in the interest of the health and safety of an employee			
Chapter 3			
(25) Health and safety representatives and committees (1) Every mine with 20 or more employees must have a health and safety representative for each shift at each designated working place at the mine. (2) Every mine with 100 or more employees must have one or more health and safety committees. (3) A health and safety representative or a member of a health and safety committee does not incur any civil liability only because of doing or failing to do something which a health and safety representative or a member of a health and safety committee may do or is required to do in terms of this Act.			
(26) Negotiations and consultations before appointment of representatives. a) The employer of any mine where there must be a health and safety representative in terms of section 25 must meet, within the prescribed period, with the representative trade union of the mine to enter into negotiations to conclude a collective agreement concerning- (a) the designation of working place. (b) the number of full-time health and safety representatives. (c) the election or appointment of health and safety representatives. (d) the terms of office of health and safety representatives and the circumstances and the manner in which they may be removed from office; (e) the manner in which vacancies are to be filled. (f) the manner in which health and safety representatives must perform their functions in terms of this Act. (g) the procedures for the effective exercise of the right to withdraw from serious danger in terms of section 23.			

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(h) circumstances and the manner in which meetings referred to in sections 30 (1) (i) and 31 (2) must be held. (i) the facilities and assistance that must be provided to a health and safety representatives in terms of section 31 (3); (j) the training of health and safety representatives. (k) a procedure that provides for the conciliation and arbitration of disputes arising from the application or the interpretation of the collective agreement or any provision of this Chapter (l) any prescribed matter; and (m) any other matter which the parties believe will promote health and safety at the mine or mines concerned (2) Before concluding a collective agreement referred to in subsection (1) with the representative trade union, the employer must consult on the matters referred to in that subsection with all other registered trade unions with members at that mine (3) A collective agreement referred to in subsection (1) may include two or more employers as parties to the agreement. Printed in 2018 (4) To the extent that an agreement concluded in terms of subsection (1) deals with any matter regulated by this Chapter or by any regulation regarding any matter regulated by this Chapter, the provisions of this Chapter or such regulation do not apply (5) The provisions applicable to collective agreements in terms of the Labour Relations Act, read with the changes required by the context, apply to agreements concluded in terms of subsection (1). (6) If there is no representative trade union at the mine, the employer must within the prescribed period- (a) consult with the registered trade unions with members at the mine on the matters referred to in subsection (1); and (b) endeavour to reach agreement on the number of full-time health and safety representatives at the mine. (7) If there is no registered trade union with members at the mine, the employer must, within the prescribed period- (a) consult with the employees or any elected representative of the employees on the matters referred to in subsection (1); and (b) endeavour to reach agreement on the number of full-time health and safety representatives at the mine. (8) A dispute exists if either- (a) no collective agreement in terms of subsection (1) is concluded on the number of full-time health and safety representatives at a mine; or (b) no agreement is reached in terms of either subsection (6) (b) or (7) (b).			

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(9) When a dispute exists in terms of subsection (8), any party to the dispute may refer it to the Commission. (10) When a dispute is referred to the Commission under subsection (9), the Commission must attempt to resolve it through conciliation (11) If a dispute remains unresolved, any party to the dispute may request that it be resolved through arbitration, in which case the Commission, taking into account the guidelines in Schedule 1, must determine the number of full-time health and safety representatives (12) Nothing in this section precludes the employer from consulting with any employee who is not a member of a registered trade union or any representative of those employees concerning the matters referred to in subsection (1			
(27) Designation of working places (1) If a collective agreement is concluded after the negotiations and consultations referred to in section 26, the employer must designate working places at the mine in accordance with that agreement. (2) If no collective agreement is concluded after the negotiations and consultations referred to in section 26, the employer must designate working places at the mine so that- a) every working place at the mine is designated. b) no health and safety representative is responsible for more than 100 employees: and c) no health and safety representative is responsible for more than 50 employees if the designated working place includes separate working places.			
(28) Qualifications of representatives (1) To qualify to serve as a health and safety representative referred to in section 25 (1) an employee must- a) be employed in a full-time capacity in the designated working place; and b) be acquainted with conditions and activities at the designated working place. (2) To qualify to serve as a full-time health and safety representative an employee must- a) be employed in full-time capacity at the mine. b) comply with any other qualifications which may be- (i) agreed by a health and safety committee. (ii) prescribed			
(29) Election and appointment of representatives (1) At a mine referred to in section 25 (1), the employees in a designated working place may elect from among themselves health and safety representatives.			

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(2) The employees at the mine may elect from among themselves any full-time health and safety representatives that may be agreed or determined in terms of section 26. (3) The elections referred to in subsections (1) and (2) must be conducted in the prescribed manner (4) The employee selected as representatives in terms of this section must be appointed by the employer in the prescribed manner.			
(30) Rights and powers of representatives (1) A health and safety representative may- a) represent employees on all aspects of health and safety. b) direct any employee to leave any working place whenever circumstances arise at that working place which, with reasonable justification, appears to the health and safety representative to pose a serious danger to the health or safety of that employee c) assist any employee who has left a working place in terms of section 23; d) identify potential hazards and risks to health or safety. e) make representations or recommendations to the employer or to a health and safety committee on any matter affecting the health or safety of employees. f) inspect any relevant document which must be kept in terms of this Act. g) request relevant information and reports from an inspector. h) with the approval of the employer, be assisted by or consult an adviser or technical expert who may be either another employee or any other person. i) attend any meeting of a health and safety committee- (i) of which that representative is a member; or (ii) which will consider a representation or recommendation made by that representative. j) request- (i) an inspector to conduct an investigation in terms of section 60; or (ii) the Chief Inspector of Mines to conduct an inquiry in terms of section 65. k) participate in consultations on health and safety with- (i) the employer or person acting on behalf of the employer; or (ii) an inspector. l) participate in any health and safety inspection by- (i) the employer or person acting on behalf of an employer; or			

Current	Bill (New/Amended)	Comments	Proposal
(ii) an inspector. m) inspect working places with regard to the health and safety of employees at intervals agreed with the employer. n) participate in any internal health or safety audit. o) investigate complaints by any employee relating to health and safety at work. p) examine the causes of accidents and other dangerous occurrences in collaboration with the employer or person acting on behalf of the employer. q) visit the site of an accident or dangerous occurrence at any reasonable time. r) attend a post-accident inspection. s) co-operate with the employer in the conducting of investigations in terms of section 11 (5); t) participate in an inquiry held in terms of section 65; and u) perform the functions- (i) agreed by the health and safety committee; or (ii) prescribed (2) The rights and powers referred to in subsection (1) apply to health and safety representatives referred to in section 25 (1) only in respect of the working places for which they are responsible. (3) If a health and safety representative requests information or reports under subsection (1) (g), the inspector must supply the representative with the information or reports in their possession. (4) An employer may not unreasonably withhold the approval required in terms of subsection (1) (h) (5) A health and safety representative intending to exercise the right to inspect working places under subsection (1) (m) must- a) give the employer reasonable notice of the inspection; and (b) permit the employer to participate in the inspection. (6) Health and safety representatives are entitled to perform their functions and to receive training during ordinary working hours. (7) Any time reasonably spent by a health and safety representative for a purpose referred to in subsection (6) must be considered for all purposes to be time spent carrying out the employment duties of that representative			
(31) Duty to compensate and assist representatives (1) The employer must pay every full-time health and safety representative appropriate remuneration at least equal to the remuneration the representative earned immediately before being appointed as a full-time health and safety representative. (2) The employer must provide reasonable time and facilities for employees to meet monthly with their			

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health and safety representatives in order to consider- a) health and safety in their working places; and b) reports by the representatives on the performance of their functions. (3) The employer must provide health and safety representatives with- a) the facilities and assistance reasonably necessary to perform their functions. b) training that is reasonably required to enable them to perform their functions; and c) time off from work, without loss of remuneration, to attend any training course that is agreed or prescribed. (4) Unless otherwise agreed, the assistance referred to in subsection (3) (a) does not include any costs associated with advisers or independent experts contemplated in either section 30 (1) (h) or section 36 (1) (g). (5) On the completion of a term of office as a full-time health and safety representative, the health and safety representative is entitled to- a) employment in the same position held immediately before being appointed as a full-time health and safety representative; or b) employment in a position that is at least as favourable as the position held immediately before being appointed a full-time health and safety representative			
(32) Duty to inform representatives Every employer must notify the health and safety representatives concerned and, if there is a health and safety committee, the employee co-chairperson of that committee- a) in good time, of inspections, investigations, or inquiries of which an inspector has notified the employer; and b) as soon as practicable, of any accident, serious illness or health threatening occurrence, or other dangerous event.			
(33) Negotiation and consultation on establishment of committees (1) The employer of any mine in respect of which a health and safety committee must be established in terms of section 25 (2), must meet, within the prescribed period, with the representative trade union at the mine to enter into negotiations to conclude a collective agreement concerning- a) the number of health and safety committees to be established at the mine and the working places for which they will be responsible. b) the number of employer and employee representatives on the committees.			

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c) the election and appointment of members of health and safety committees d) the terms of office of members of the health and safety committee and the circumstances and the manner in which the members may be removed from office. e) The manner in which vacancies are to be filled f) the circumstances and the manner in which meetings may be held. g) the facilities and assistance which must be provided to health and safety committees in terms of section 37 (a); and h) a procedure that provides for the conciliation and arbitration of disputes arising from the application or interpretation of the collective agreement or any provision of this Chapter. (2) Before concluding a collective agreement referred to in subsection (1) with the representative trade union, the employer must consult on the matters referred to in that subsection with all other registered trade unions with members at that mine. (3) A collective agreement referred to in subsection (1) may include two or more employers as parties to the agreement. (4) To the extent that an agreement concluded in terms of subsection (1) deals with any matter regulated by this Chapter or by any regulation regarding any matter regulated by this Chapter, the provisions of this Chapter or such regulation do not apply. (5) The provisions applicable to collective agreements in terms of the Labour Relations Act, read with the changes required by the context, apply to agreements concluded in terms of subsection (1). (6) If there is no representative trade union at the mine, the employer must consult, within the prescribed period, with the registered trade unions with members at the mine on the matters referred to in subsection (1). (7) If there is no registered trade union with members at the mine, the employer must, within the prescribed period, consult with the employees or any elected representatives of the employees on the matters referred to in subsection (1). (8) The negotiations and consultations referred to in this section may be held at the same time as those referred to in section 26.			
(34) Establishment of health and safety committees (1) If a collective agreement is concluded in terms of section 33 (1), health and safety committees must be established in terms of that agreement.			

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(2) If no collective agreement is concluded in terms of section 33 (1), the employer must establish health and safety committees after the consultation referred to in section 33 (6) or (7) and in accordance with this section and the regulations (3) A health and safety committee must consist of- (a) at least four employee representatives; and (b) a number of employer representatives equal to or less than the number of employee representatives. (4) The health and safety representatives must appoint the employee representatives on the health and safety committee. The employee representatives must be- a) broadly representative of the working places at the mine; and b) employees at that mine. (5) No more than two of the employee representatives may be appointed from fulltime employees who are not health and safety representatives unless all of the health and safety representatives have been appointed to the committee and there are still employee committee positions to be filled. (6) The employer must appoint the employer representatives on the health and safety committee. The persons appointed must include persons who have authority to develop and implement health and safety policies at the mine			
(35) Committee procedures (1) The employee and employer representatives on a health and safety committee must each elect a chairperson from their number. Unless otherwise agreed by the committee, the two chairpersons must alternate as the presiding chairperson of the committee. (2) Unless otherwise agreed by a health and safety committee, the committee must meet at least once a month. (3) A health and safety committee may determine its own rules and procedures. (4) Persons other than employee or employer representatives may be invited to attend meetings of the health and safety committee and to participate in its proceedings.			
(36) Rights and powers of health and safety committee (1) A health and safety committee may- a) represent employees on all aspects of health and safety. b) participate in consultations on any health and safety matter listed in the schedule referred to in section 97 (2).			

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c) request the Chief Inspector of Mines to review any code of practice. d) request relevant information from any person who is required, in terms of this Act, to provide that information to the committee. e) agree on additional qualifications or functions of health and safety representatives f) request- (i) an inspector to conduct an investigation in terms of section 60; or (ii) the Chief Inspector of Mines to conduct an inquiry in terms of section 65. g) with the approval of the employer, be assisted by or consult an adviser or a technical expert who may be either another employee or any other person. h) take reasonable time to prepare for each meeting of the committee; and i) take reasonable time to report on meetings of the committee to the health and safety representatives at the mine (2) No employer may unreasonably withhold the approval required in terms of subsection (1) (g). (3) Members of health and safety committees are entitled to perform their functions and to receive training during ordinary working hours (4) Any time reasonably spent by a member of a health and safety committee for a purpose referred to in subsection (3) must be considered for all purposes to be time spent carrying out the employment duties of that member.			
(37) Duty to support committee The employer must- a) provide the health and safety committee with the facilities and assistance reasonably necessary to perform its functions. b) supply the health and safety committee with the annual report referred to in section 2 (1) (c) and any information necessary to perform its functions.			
(38) Disclosure of information (1) Whenever an employer, inspector or a person who conducts an inquiry in terms of section 65, is required by the provisions of this Chapter to supply information or reports to a health and safety representative or to the health and safety committee, that employer, inspector, or person a) must not disclose any information that is private personal information relating to an employee, unless the employee consents in writing to the disclosure of that information; and b) is not required to supply any information- (i) that is legally privileged.			

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(ii) that the employer, inspector, or person could not disclose without contravening a prohibition imposed upon the employer by any law or court order; or (iii) that is confidential and, if disclosed, may cause substantial harm to an employee or the employer. (2) No employee may unreasonably withhold the consent required in terms of subsection (1) (a)			
(39) Disputes concerning disclosure of information (1) If there is a dispute about what information is required to be disclosed in terms of the provisions of this Chapter, any party to the dispute may refer the dispute in writing to the Commission. (2) The party who refers a dispute to the Commission must satisfy it that a copy of the referral has been served on all the other parties to the dispute (3) The Commission must attempt to resolve the dispute through conciliation. (4) If the dispute remains unresolved, any party to the dispute may request that the dispute be resolved through arbitration. (5) A commissioner appointed to arbitrate a dispute must first decide whether or not the information is required to be supplied in terms of the provisions of this Chapter. (6) If the commissioner decides that the information is required and if it is information contemplated in section 38 (1) (a) or (b) (iii), the commissioner must balance the harm that disclosure is likely to cause to an employee or employer or any other person who employs employees, against the harm that the failure to disclose the information is likely to cause to the ability of health and safety representatives or members of the health and safety committee to perform their functions effectively (7) If the commissioner decides that the balance of harm favours the disclosure of the information, the commissioner may order the disclosure of the information on terms designed to limit the harm likely to be caused to the employee or the employer. (8) When making an order under subsection (7), the commissioner must take into account any previous breach of confidentiality in respect of information disclosed in terms of the provisions of this Chapter and may refuse to order the disclosure of the information or any other confidential information which might otherwise be disclosed for a period specified in the arbitration award.			

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(9) In any dispute about an alleged breach of confidentiality, the commissioner may order that the right to disclosure of information in terms of the provisions of this Chapter be withdrawn for a period specified in the arbitration award.			
(40) Disputes concerning this Chapter (1) Any party to a dispute about the interpretation or application of any provision of this Chapter, other than a dispute contemplated in section 26 (8) or 39, may refer the dispute in writing to the Commission. (2) The party who refers a dispute to the Commission must satisfy it that a copy of the referral has been served on all the other parties to the dispute. (3) The Commission must attempt to resolve the dispute through conciliation. (4) If the dispute remains unresolved, any party to the dispute may request that the dispute be resolved through arbitration as soon as possible. (5) The provisions relating to arbitration in the Labour Relations Act, read with changes required by the context, apply to an arbitration referred to in sections 26 (11) and 39 and subsection (4).			
Chapter 4			
(42) Mine Health and Safety Council (1) The Council consists of- a) five members representing employers in the mining industry. b) five members representing employees in the mining industry; (c) four members representing departments of the State; and (d) the Chief Inspector of Mines, who must chair the Council. (2) The Minister must appoint the members of the Council in accordance with the regulations. (2A) The Council may appoint members to committees, ad hoc, subcommittees and other committees, for any period of time and on any conditions. (2B) The structure and functions of any committee contemplated in subsection (2A) must be provided for in the constitution contemplated in section 97 (3) (3) The Council and its committees must govern themselves in accordance with the constitution contemplated in section 97 (3). (4) The Council may delegate any of its powers and assign any of its duties by or under this Act in accordance with the constitution contemplated in section 97 (5) A delegation or an assignment under subsection (4)-	Amendment Amendment of section 42 of Act 29 of 1996, as amended by section 19 of Act 1997 and section 11 of Act 74 of 2008 16, section 42 of the principal Act is hereby amended: a) by the subsection in paragraph (1) for the following paragraph (1) The Council consist of. a) five members <u>persons</u> representing in the mining industry. b) <u>five</u> members <u>persons</u> representing in the mining industry. c) four members <u>five</u> persons representing the Department of state and		

Current	Bill (New/Amended)	Comments	Proposal
a) must be in writing. b) may be subject to such conditions and restrictions as the Council may determine; and c) does not prevent the exercise of that power or the performance of that duty by the Council (6) Members of the Council, or of a committee of the Council, are each entitled to have their views reflected in any report of the Council or committee, as the case may be. (7) Each year, the Minister, with the agreement of the Minister of Finance, must provide sufficient funds for the administration of the Council, and committees of the Council, from public funds.			
(43) Council's duties The Council must- a) advise the Minister on health and safety at mines including, but not limited to, any legislation on mine rehabilitation in so far as it concerns health and safety b) co-ordinate the activities of its committees, receive reports from the committees and liaise with the Mining Qualifications Authority on matters relating to health and safety c) liaise with any other statutory bodies concerned with matters relating to health and safety. d) promote a culture of health and safety in the mining industry. e) at least once every two years arrange and co-ordinate a tripartite summit to review the state of health and safety at mines. (eA) annually advise the Minister on relevant research relating to health and safety at mines; and f) perform every duty imposed upon the Council in terms of this Act.	Amendment Amendment of section 43 of Act 29 of 1996, as amended by section 19 of Act of 1997 and section 11 of Act 74 of 2008 17, section 43 of the principal Act is hereby amended a) by substitution in paragraph (a) for the following: (a) advise the minister of health and safety at mines, including but not limited to any legislation on mine rehabilitation in so far as it concerns health and safety. b) by the insertion, after paragraph (eA) of the following paragraph <u>(eB) establish and control an administrative fine fund for the fines imposed in terms of section 55B.</u> <u>(eC) subject to the approval of the minister, use the monies collected in terms of section 55B for the promotion of health and safety in the mining industry</u> <u>(eD) in its annual report, reflect the financial affairs of the fund.</u>		
(44) ...			
(45) Mining Qualifications Authority (1) The Mining Qualifications Authority consists of- a) five members representing employers in the mining industry. b) five members representing employees in the mining industry. c) four members representing departments of State; and d) the Chief Inspector of Mines, who must chair the Mining Qualifications Authority. (2) The members of the Mining Qualifications Authority must be appointed in accordance with the constitution contemplated in section 97 (4). (3) The Mining Qualifications Authority and its committees must govern themselves in accordance with the constitution contemplated in section 97 (4).			
(46) Mining Qualifications Authority's functions			

Current	Bill (New/Amended)	Comments	Proposal
a) The Mining Qualifications Authority must- a) seek registration in terms of the South African Qualifications Act, 1995 (Act 58 of 1995), as a body responsible for generating education and training standards and qualifications as contemplated in section 5 (1) (a) (ii) (aa) of that Act. b) seek accreditation in terms of the South African Qualifications Act, 1995 (Act 58 of 1995), as a body responsible for monitoring and auditing achievements as contemplated in section 5 (1) (a) (ii) (bb) of that Act. c) propose education and training standards and qualifications to bodies registered with that Authority and responsible for developing education and training standards. d) generate education and training standards and qualifications in the mining industry. e) monitor and audit achievement in terms of those standards and qualifications; and f) perform the functions of a sector education and training authority in terms of the Skills Development Act, 1998 (Act 97 of 1998). b) The Mining Qualifications Authority a) may appoint committees and ad hoc committees, and subcommittees, for any period and on any conditions. b) must administer and control its financial affairs in accordance with the Skills Development Act, 1998 (Act 97 of 1998); and c) may do anything necessary to achieve its objectives c) The Mining Qualifications Authority may delegate any of its powers or assign any of its duties by or under this Act in accordance with the constitution contemplated in section 97 (4). d) A delegation or an assignment under subsection (3)- a) must be in writing. b) may be subject to such conditions and restrictions as the Authority may determine; and c) does not prevent the exercise of that power or the performance of that duty by the Authority. e) In performing its functions, the Mining Qualifications Authority must comply with the policies and criteria formulated by the South African Qualifications Authority in terms of section 5 (1) (a) (ii) of the South African Qualifications Authority Act, 1995 (Act 58 of 1995).			
Chapter 5			
(47) Inspectorate established	Amendment		

Current	Bill (New/Amended)	Comments	Proposal
(1) a) A juristic person to be known as the Mine Health and Safety Inspectorate is hereby established. b) The Public Finance Management Act, 1999 (Act 1 of 1999), applies to the Inspectorate. (2) The Minister, by notice in the Gazette, may establish regions of the country for the purpose of administering this Act through regional offices of the Mine Health and Safety Inspectorate	Amendment of section 47 of Act 29 of 1996, as amended by section 13 of Act 74 of 2008 18, Section 47 of the principal Act is hereby amended- a) by the substitution for subsection (1) of the following subsection: (1) a juristic person to be known as a the health and safety inspectorate is hereby established. b) The public finance Management Act, 1999 (Act no 1 of 1999, applies to the inspectorate. (b) by the addition of the following subsections: (3) <u>The minister must appoint an officer with prescribed qualification and appropriate experience as principal inspector of mines, for each region contemplated in subsection (2)</u> (4) <u>The minister must</u> a) <u>appoint an officer with prescribed qualifications and experience as a medical inspector.</u> b) <u>appoint officers with prescribed Certificate and appropriate experience as inspectors</u> (5) <u>The minister must furnish a prescribed Certificate to the medical inspector and to each inspector appointed in terms of subsection 4, respectively</u> (6) <u>To further the objectives of this minister may enter into written agreements with competent persons and authorize such persons to perform any or all functions of an inspector.</u> (7) <u>The Minister must furnish a prescribed Certificate to each person authorized under subsection (6)</u>		
(48) Chief Inspector of Mines (1) The Minister must appoint an officer, with suitable mining qualifications and appropriate experience in health and safety at mines, to be Chief Inspector of Mines (2) Subject to the control and direction of the Minister, the Chief Inspector of Mines must perform the functions entrusted to the Chief Inspector of Mines by this Act. (3) The Chief Inspector of Mines may perform any of the functions of an inspector			
(49) Chief Inspector of Mines' functions (1) Without limiting any statutory duty of any other person in terms of this Act, the Chief Inspector of Mines must- a) ensure that the provisions of this Act are complied with and enforced and that every duty imposed upon the Chief Inspector of Mines, the Medical Inspector, or inspectors in terms of any other law is performed. b) appoint an officer with the prescribed qualifications and experience as the Medical Inspector. c) appoint officers with the prescribed qualifications and experience as inspectors.	Amendment Amendment of section 49 of the Act 29 of 1996, as amended by section 14 of Act 74 of 2008 19, section 49 of the principal Act is hereby amended - a) by the deletion in subsection (1) of paragraph (b) (c) and (n) b) by the deletion of subsection (2) c) by the deletion in subsection (4) of paragraph (a)(b)(c)(f)(g)(h)(i)(j)(k)(l)(m) d) The substitution of subsection (5) for the following subsection (5) The Chief inspector of mines must furnish a prescribed certificate to each person authorized under		

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d) administer the Mine Health and Safety Inspectorate. e) determine and implement policies to promote the health and safety of persons at mines and any person affected by mining activities. f) consult with the Council before issuing guidelines on the form, content, and distribution of codes of practice referred to in section 9. g) collect, process, and distribute information relating to health and safety. h) advise the Minister on health or safety matters at mines. i) each year, after consulting the Council and with the approval of the Minister, publish and distribute a plan of action for the activities of the Mine Health and Safety Inspectorate. j) complete a report on health and safety at mines and the activities of the Mine Health and Safety Inspectorate for each year and submit the report to the Minister within three months of the end of the year concerned k) perform any duties relating to health or safety at mines that the Minister directs or prescribes. l) develop and maintain an integrated mine health and safety database and reporting system m) conduct or commission relevant research and evaluate and publish the results of the research; and n) provide logistical, administrative, and technical support to the Council. (2) The Chief Inspector of Mines must furnish a prescribed certificate to the Medical Inspector and to each inspector. (3) Despite the provisions of the Minerals and Petroleum Resources Development Act or any other law, the Chief Inspector of Mines- a) has the power to monitor and control those environmental aspects at mines that affect, or may affect, the health or safety of employees or other persons; and b) must consult with the appropriate officer appointed in terms of the Minerals and Petroleum Resources Development Act concerning the exercise of those powers (4) To further the objectives of this, Act the Chief Inspector of Mines may- a) enter into agreements with other persons. b) authorise a competent independent person to perform any or all the functions of an inspector. c) perform any act, whether in the Republic or elsewhere, that is calculated, directly or indirectly, to enhance the value of the services which the Mine Health and Safety Inspectorate renders or perform any prescribed act.	subsection (4)(b) the chief inspector of mines may issue instructions or directives on any matter affecting health and safety of employees at the mines or any person who are not employees but may be directly affected by the activities at the mines. (e) the deletion of subsection (6)		

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d) require all mines or groups of mines to prepare and implement a health and safety management system for mines. e) require all mines or groups of mines to prepare and implement a hazard management system for significant hazards mentioned under section 11. f) in consultation with the Minister and the Minister of Finance acquire or dispose of immovable property. g) hire, purchase or otherwise acquire any movable property and proprietary right, and lease or dispose of property. h) collaborate with any other body or institution or establish and control facilities for the collection and dissemination of scientific and technical information relating to health and safety at mines i) collaborate with any educational, governmental or scientific body or institution in connection with the provision of instruction for, or the training of, persons required by the Mine Health and Safety Inspectorate. j) provide financial or other assistance in connection with the training of persons in so far as is necessary to ensure that a sufficient number of trained persons are available to enable the Mine Health and Safety Inspectorate to perform its functions efficiently. k) insure the Mine Health and Safety Inspectorate against any loss, damage, risk, or liability. l) invest any of the money of the Mine Health and Safety Inspectorate; and (m) institute or defend any legal action. (5) The Chief Inspector of Mines must furnish a prescribed certificate to each person authorised under subsection (4) (b). (6) The Chief Inspector of Mines must issue guidelines by notice in the Gazette.			
(49A) Financial and judicial management of Mine Health and Safety Inspectorate (1) The funds of the Mine Health and Safety Inspectorate consist of- a) money appropriated by Parliament. b) any donations made to the Mine Health and Safety Inspectorate. c) revenue made on investments; and d) money raised and received in terms of this Act. (2) The Mine Health and Safety Inspectorate must utilise its funds to defray expenses incurred by it in the performance of its functions. (3) The Chief Inspector of Mines must, after consultation with the Council, use the monies collected in terms of section 55B for the promotion of health and safety in the mining industry.	Repeal of sections 49A and 49B of Amendment Act 29 of 1996 20, Section 49A and 49B of the principal Act 74 of 2008 are hereby repealed.		

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(4) The Chief Inspector of Mines as the accounting authority of the Inspectorate must- a) open a bank account in the name of the Mine Health and Safety Inspectorate with an institution registered as a bank in terms of the Banks Act, 1990 (Act 94 of 1990); and b) deposit therein all money received in terms of subsection (1). (5) The Mine Health and Safety Inspectorate may invest any of its funds not immediately required- a) subject to any investment policy that may be prescribed; and (b) in such a manner as may be approved by the Minister. (6) The Mine Health and Safety Inspectorate's financial year is from 1 April in any year to 31 March in the following year. (7) The report of the Chief Inspector of Mines referred to in section 49 (1) (j) must reflect the financial affairs of the Mine Health and Safety Inspectorate. (8) Despite any other law, the Mine Health and Safety Inspectorate may not be placed under judicial management or in liquidation except if authorised by an Act of Parliament adopted especially for that purpose			
(49B) Co-operative governance (1) The Chief Inspector of Mines must co-ordinate the exercise of the functions of the Mine Health and Safety Inspectorate with other organs of state in respect of regulating and promoting occupational health and safety, in accordance with the principles of co-operative governance contemplated in Chapter 3 of the Constitution. (2) The Chief Inspector of Mines may conclude co-operative agreements with relevant organs of state to give effect to the co-operation contemplated in subsection (1).			
(50) Inspectors' powers (1) An inspector may for the purposes of monitoring or enforcing compliance with this Act- a) enter any mine at any time without warrant or notice. b) enter any other place after obtaining the necessary warrant in terms of subsection (7); and c) bring into and use at any mine, or at any place referred to in paragraph (b), vehicles, equipment, and material as necessary to perform any function in terms of this Act (2) While the inspector is at any mine or place referred to in subsection (1), the inspector may, for the purposes of monitoring or enforcing compliance with this Act-	Amendment Amendment of section 50, as amended by section 16 of Act 74 of 2008 21, section 50 of the principal Act is hereby amended by subsection (7A) with the following: <u>(7A) An inspector may, in order to collect or secure evidence for purpose of an investigation in terms of section 60 or an inquiry in terms of section 65-</u> a) <u>impose a prohibition on the functioning of any site at a mine where -</u> (i) <u>a person has died</u> (ii) <u>a serious injury or illness to a person has occurred</u> (iii) <u>a health threatening occurrence has occurred</u>	7(B) The issuing of a Prohibition notice is “an administrative act”. The extending of the powers of an inspector needs to be written in a way which is both subject to the Constitution as well as the Promotion of Administrative Justice Act (PAJA). It follows that the serving of this prohibition notice needs to be administrated in a way that is reasonable. The keeping of a prohibition notice in place indefinitely without cause is not reasonable. The serving of an “oral” prohibition notice allows for uncertainty in what both the inspector and the employer “said”. Additionally, it is not necessary as an inspector to have this power. The reason for this is that an inspector should always be carrying their prohibition notice on their	(7B) An inspector <i>shall</i>: c) <u>impose the prohibition contemplated in subsection (7A) orally or in writing</u> d) <u>revoke the prohibition if the inspector has reason to believe that</u> (iii) <u>the necessary evidence has been collected or secured</u> (iv) <u>the investigation or injury will not be jeopardized by the further functioning of the site.</u> (7C) If the prohibition is issued orally, the inspector must confirm it in writing and give it to a person contemplated in section 54 (2) at the earliest opportunity.

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a) question any person on any matter to which this Act relates. b) require any person who has control over, or custody of, any document, including but not limited to, a plan, book, or record to produce that document to the inspector immediately or at any other time and place that the inspector requires. c) require from any person referred to in paragraph (b) an explanation of any entry or non-entry in any document over which that person has custody or control. d) examine any document produced in terms of paragraph (b), and make a copy of it or take an extract from it. e) inspect- (i) any article, substance, or machinery. (ii) any work performed; or (iii) any condition. f) inspect arrangements made by the employer for medical surveillance of employees g) seize any document, article, substance or machinery or any part or sample of it; and h) perform any other prescribed function c) An inspector may instruct any employer, employee or any other person who performs an activity regulated by this Act or any former employer or employee or person who formerly performed an activity regulated by this Act, to appear before the inspector to be questioned on any matter to which this Act relates. d) Before an inspector may seize any document under subsection (2) (g), the employer of the mine may copy it. e) An inspector may remove any article, substance or machinery or any part or sample of it from any mine or place referred to in subsection (1) for examination or analysis. f) When an inspector seizes or removes any item under this section, the inspector must issue a receipt for that item to the employer of the mine or place involved. g) A magistrate may issue a warrant contemplated in subsection (1) (b) only on written application by an inspector setting out under oath or affirmation the need to enter a place other than a mine to monitor or enforce compliance with this Act. (7A) The Inspector may impose a prohibition on the further functioning of the site where- a) a person's death. b) serious injury or illness to a person; or c) a health threatening occurrence, has occurred by blocking, barring, or barricading the site in	b) <u>Block, bar, Barricade, or cordon off the site in such a manner as the inspector may deem necessary.</u> <u>(7B) An inspector may:</u> a) <u>impose the prohibition contemplated in subsection (7A) orally or in writing</u> b) <u>revoke the prohibition if the inspector has reason to believe that</u> (i) <u>the necessary evidence has been collected or secured</u> (ii) <u>the investigation or injury will not be jeopardized by the further functioning of the site.</u> <u>(7C) If the prohibition is issued orally, the inspector must confirm it in writing and give it to a person contemplated in section 54 (2) at the earliest opportunity.</u>	person and the serving of the notice can be done in “real time”. 7(C) The term “earliest opportunity” is excessively subjective and has no link to the concept of “reasonableness” and violates the Promotion of Administrative Justice Act (PAJA).	

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such a manner as the Inspector may deem necessary. h) For the purpose of this section, 'mine' does not include any home, or residential quarters, situated at the mine.			
(51) Inspector may be accompanied When performing any function under this Act, an inspector may be accompanied by an interpreter, or any other person reasonably required to assist the inspector.			
(52) Duty to assist inspector and answer questions (1) When an inspector enters any mine or place referred to in section 50 (1), the employer and each employee performing any work there must provide any facility that the inspector reasonably requires. (2) Persons questioned by an inspector under section 50 (2) (a) or (c) or (3) must answer each question to the best of their ability, but no person is required to answer any question if the answer may be self-incriminating.			
(53) Duty to produce documents required by inspector Any person who holds or should hold a permit, licence, permission, certificate, authorisation, or any other document issued in accordance with this Act or the Mineral and Petroleum Resources Development Act, must produce it at the request of the Chief Inspector of Mines or any inspector.			
(54) Inspector's power to deal with dangerous conditions (1) If an inspector has reason to believe that any occurrence, practice, or condition at a mine endangers or may endanger the health or safety of any person at the mine, the inspector may give any instruction necessary to protect the health or safety of persons at the mine, including but not limited to an instruction that- a) operations at the mine or a part of the mine be halted. b) the performance of any act or practice at the mine or a part of the mine be suspended or halted and may place conditions on the performance of that act or practice. c) the employer must take the steps set out in the instruction, within the specified period, to rectify the occurrence, practice, or condition; or d) all affected persons, other than those who are required to assist in taking steps referred to in paragraph (c), be moved to safety (2) An instruction under subsection (1) must be given to the employer or a person designated by the employer or, in their absence, the most	Amendment Amendment of section 54 of Act 29 of 1996, as amended by section 23 of Act 74 of 1997 and section 17 of Act 74 of 2008 22, section 54 of the principal Act is hereby amended a) by the substitution (1) of the following subsection: (1) if any inspector has reason to belief <u>observes</u> that any occurrence, practice, or condition at a mine, endangers or may endanger the health and safety of any person at the mine, the inspector may give any instruction necessary to protect the health and safety of any person at the mine, including but not limited to: b) by the substitution in subsection (5) and (6) of the following subsections respectively: (5) Any instruction issued under subsection (1) (a) must either be confirmed varied or set aside by the Chief Inspector of mines <u>principal inspector of mines</u> as soon as practicable. (6) Any instruction issued under subsection (1)(a) is effective from the time fixed by the inspector and remains in force until set aside by the Chief Inspector of	1. The wording 'has reason to believe', has an objective (reasonable) criteria and the word '<u>observe</u>' is subjective. There is sound and extensive case law from the courts supporting the use and application of 'has reason to believe', whereas this is not the case with '<u>observe</u>'. 2. Any decision made in terms of section 54 and/or 55 clearly constitutes administrative action for the purposes of the Promotion of Administrative Justice Act (PAJA). An order or instruction is therefore subject to review under section 6 of PAJA. It is appropriate that reference to PAJA is incorporated into Section 54. More detailed comment is made at the end of this document. <u>The Constitution.</u> Section 33 of the Bill of Rights. Just administrative action. Everyone has the right to administrative action that is lawful, reasonable and procedurally fair. Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.	(1) if any inspector 'has reason to believe' that any occurrence, practice, or condition at a mine, endangers or may endanger the health and safety of any person at the mine, the inspector may, '<u>subject to Section 6 of the Promotion of Administrative Justice Act</u>', give any instruction necessary to protect the health and safety of any person at the mine, including but not limited to:

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senior employee available at the mine to whom the instruction can be issued. (3) An inspector may issue an instruction under subsection (1) either orally or in writing. If it is issued orally, the inspector must confirm it in writing and give it to the person concerned at the earliest opportunity. (4) If an instruction issued under subsection (1) is not issued to the employer, the inspector must give a copy of the instruction to the employer at the earliest opportunity. (5) Any instruction issued under subsection (1) (a) must either be confirmed, varied or set aside by the Chief Inspector of Mines as soon as practicable. (6) Any instruction issued under subsection (1) (a) is effective from the time fixed by the inspector and remains in force until set aside by the Chief Inspector of Mines or until the inspector's instructions have been complied with (7) ... (8) ... (9) ... (10) ...	the mine's <u>principal inspector of mines</u> or until the inspectors' instructions have been complied with.	An administrative action means any decision taken, or any failure to take a decision, by- a) an organ of state, when- i) exercising a power in terms of the Constitution or a provincial constitution; or ii) exercising a public power or performing a public function in terms of any legislation. <u>2. Promotion of Administrative Justice Act No. 3 of 2000 (PAJA)</u> PREAMBLE WHEREAS section 33(1) and (2) of the Constitution provides that everyone has the right to administrative action that is lawful, <u>reasonable</u> and procedurally fair and that everyone whose rights have been adversely affected by administrative action has the right to be given written reasons. IN ORDER TO— * promote an efficient administration and good governance; and * create a culture of accountability, openness and transparency in the public administration or in the exercise of a public power or the performance of a public function, by giving effect to the right to just administrative action. Anglogold Ashanti Limited v Mbonambi & others [2016] (LC) "Although section 58 (of the MHS Act) establishes a right of appeal against a decision made by a chief inspector (a remedy that the applicant has elected to invoke), <u>any decision made in terms of section 54 and/or 55 clearly constitutes administrative action for the purposes of the Promotion of Administrative Justice Act (PAJA). An order or instruction is therefore subject to review under section 6 of PAJA.</u>	
(55) Inspectors' power to order compliance (1) If an inspector has reason to believe that an employer has failed to comply with any provision of this Act, the inspector may instruct that employer in writing to take any steps that the inspector- a) considers necessary to comply with the provision; and b) specifies in the instruction. (2) When issuing an instruction under subsection (1), an inspector must specify the period within which the specified steps must be taken. A period specified in an instruction may be extended by an inspector at any time by giving notice in writing to the person concerned.			
(55A) Inspector's powers to recommend fine (1) An inspector may make a recommendation in writing to the Principal Inspector of Mines that a			

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fine be imposed on an employer who has failed to comply with any provision contemplated in section 91 (1B (2) ... (3) The inspector concerned must serve a copy of the recommendation on- a) the employer. b) the health and safety committee, or if there is no health and safety committee, to any health and safety representative responsible for the working place in question; and c) the representative trade union, or if there is no representative trade union, to every registered trade union with members at the mine (4) The employer may make written representations to the Principal Inspector of Mines within 30 days of the recommendation (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.			
(55B) Principal Inspector of Mines may impose fines (1) The Principal Inspector of Mines, after considering the recommendation and any representations made in accordance with section 55A, may- a) disregard the recommendation. b) impose a fine not exceeding the maximum amount mentioned in Table 2 of Schedule 8; or c) refer the matter to the prosecuting authority for a decision as to whether the employer should be charged with an offence. (2) The Principal Inspector of Mines must notify the employer, committee, representative and trade union contemplated in section 55A (3), as the case may be, of any decision made in terms of subsection (1). (3) An employer must pay any fine imposed in terms of this section within 30 days of the imposition of the fine. (4) If the employer fails to pay the fine within the specified period, the Chief Inspector of Mines may apply to the Labour Court for the fine to be made an order of that court (55C) ... Insertion of section 25 of act no 72 of 1997 and repealed by section 20 of act 74 of 2008. (55D) Insertion of section 25 of act no 72 of 1997 and repealed by section 20 of act 74 of 2008. (55E) ... Insertion of section 25 of act no 72 of 1997 and repealed by section 20 of act 74 of 2008.	Insertion Insertion section 55C in Act 29 of 1996 23, the following section is hereby inserted in the principal Act after section 55 B. <u>Payment of fines</u> <u>55C (1) Payment of fines imposed in terms of section 55B must be paid to the administrative fund established by the Council in terms of section 43(eB)</u>		

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(55F) ... Insertion of section 25 of act no 72 of 1997 and repealed by section 20 of act 74 of 2008. (55G) ... Insertion of section 25 of act no 72 of 1997 and repealed by section 20 of act 74 of 2008. (55H) ... Insertion of section 25 of act no 72 of 1997 and repealed by section 20 of act 74 of 2008.			
(56) Instructions to be posted at mine The employer of a mine must- a) promptly supply a copy of any instruction of an inspector to- (i) the health and safety representative representing the employees affected by the instruction; and (ii) the health and safety committee responsible for those employees; and b) promptly publicise the instruction by- (i) prominently and conspicuously displaying copies of the instruction to the employees whose interests may be affected; and (ii) causing its contents to be communicated orally to those employees.			
(57) Right to appeal inspectors' decisions (1) Any person adversely affected by a decision of an inspector, except a decision contemplated in section 55B, may appeal against that decision to the Chief Inspector of Mines. (2) An appeal under subsection (1) must- a) be lodged with the Chief Inspector of Mines within 30 days of the decision, or such further period as may be prescribed: and b) set out the grounds of appeal. (3) After considering the grounds of the appeal and the inspector's reasons for the decision, the Chief Inspector of Mines must as soon as practicable- a) confirm, set aside, or vary the decision; or b) substitute any other decision for the decision of the inspector (57A) ...	Amendment Amendment of section 57 of Act 29 of 1996, as amended by sections 27 and 28 of Act 72 of 1997 and section 21 and 22 of Act 74 of 2008 24, section 57 of the principal Act is hereby amended - a) by substitution for subsection (1) of the following subsection: (1) Any person adversely affected by a decision of an inspector <u>or a decision of the principal inspector of mines</u>, except a decision contemplated in section 55B may appeal that decision to the chief inspector of mines. b) by the addition of the following subsection: (4) <u>No person may apply to the labour court for the review of an administrative decision, except a decision contemplated in section 55B, until that person has exhausted the appeal process contemplated in this section.</u>		
(58) Right to appeal Chief Inspector of Mines' decision (1) Any person adversely affected by a decision of the Chief Inspector of Mines, either in terms of section 57 (3) or in the exercise of any power under this Act, may appeal against the decision to the Labour Court. (2) An appeal under subsection (1), must be lodged with the registrar of the Labour Court in accordance with the rules of the Labour Court, within 60 days of the date that the Chief Inspector of Mines' decision was given.			

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(3) The Labour Court must consider the appeal and confirm, set aside, or vary the decision.			
(59) Appeal does not suspend decision (1) An appeal against a decision under either section 57, 57A or 58 does not suspend the decision. (2) Despite subsection (1)- a) an appeal in terms of section 57A or 58 against a decision to impose a fine suspends the obligation to pay the fine, pending the outcome of the appeal; and b) the Labour Court may suspend the operation of the decision, pending the determination of the matter, if there are reasonable grounds for doing so.	Amendment Amendment of section 59 of Act 29 of 1996, as amended by section 29 of Act 1997 25, Section 59 of the principal Act is hereby amended- a) by the substitution in subsection (1) of the following subsection: (1) An appeal against a decision under either section 57, (57A) or 58 does not suspend the decision. b) by the substitution in subsection (2) of the following subsection: a) Despite subsection (1)- a) an appeal in term of section (57A of 58) against a decision to impose the fine suspends the obligation to pay the fine, pending the outcome of the appeal. b) The labour court may suspend the operation of the decision, <u>of the Chief Inspector of mines</u>, pending the determination of the matter, <u>outcome of the appeal</u>, if there are any reasonable grounds for doing so.		
(60) Initiating investigations (1) The Chief Inspector of Mines must instruct an inspector to investigate any accident or occurrence at a mine that results in the death of any person. (2) At any time, an inspector may investigate- a) any accident or occurrence at a mine that results in the serious injury or serious illness of any person. b) any occurrence, practice or condition concerning health or safety of persons at one or more mines; or c) any actual or suspected contravention of, or failure to comply with, any provision of this Act (3) If there is cause for concern on health or safety grounds, an inspector must investigate any matter referred to in subsection (2), if- (a) instructed to do so by the Chief Inspector of Mines; or (b) requested to do so by- (i) a registered trade union with members at the mine or mines. (ii) a health and safety representative or health and safety committee at the mine; or (iii) if there is no health and safety representative, an employee at the mine			
(61) Chief Inspector of Mines may designate assistant in investigation At any time before or during an investigation, the Chief Inspector of Mines may designate one or more persons to assist the inspector holding the investigation.			

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(62) Duty to answer questions during investigation Persons questioned during an investigation must answer every question to the best of their ability, but no person is required to answer any question if the answer may be self-incriminating.			
(63) Enhancing effectiveness of investigation a) For the purpose of enhancing the effectiveness of an investigation in terms of section 60 the National Prosecuting Authority, after receiving representations from the Chief Inspector of Mines, may issue a certificate that no prosecution may be instituted in respect of any contravention of, or failure to comply with, a provision of this Act related to the event being investigated. b) If a certificate is issued, no fine in terms of section 55B or disciplinary action related to the event investigated may thereafter be imposed on or taken against any person (2) The Chief Inspector of Mines must communicate in writing the protection afforded under subsection (1) to all persons questioned during the investigation. (3) Persons questioned during the investigation who are afforded protection under this section must answer every question to the best of their ability and may not refuse to answer any question on the grounds that the answer may be self-incriminating.			
(64) Reports on investigations (1) After completing an investigation, an inspector must prepare a written report of the findings, recommendations, and any remedial steps. (2) The inspector- a) must submit a copy of the report referred to in subsection (1) to the Chief Inspector of Mines. b) must supply a copy of the report to the employer and to the health and safety representative, health and safety committee, registered trade union or employee that requested the investigation; and c) may instruct the employer of the mine concerned to prominently and conspicuously display a copy of the report or portion of it for employees to read.			
(65) Initiating inquiries (1) Unless the provisions of section 63 have been invoked, the Chief Inspector of Mines must direct an inspector to conduct an inquiry into any accident or occurrence at a mine that results in the death of any person.			

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(2) Unless the provisions of section 63 have been invoked, the Chief Inspector of Mines may direct an inspector to conduct an inquiry into- a) any accident or occurrence at a mine that results in the serious injury or serious illness of any person. b) any occurrence, practice or condition concerning health or safety of persons at one or more mines; or c) any actual or suspected contravention of, or failure to comply with, any provision of this Act. (3) If there is cause for concern on health or safety grounds and if the provisions of section 63 have not been invoked, the Chief Inspector of Mines may direct an inspector to conduct an inquiry into any matter referred to in subsection (2) if requested in writing to do so by- a) a registered trade union with members at the mine or mines. b) a health and safety representative or health and safety committee at the mine; or c) if there is no health and safety representative at the mine, an employee (4) This section does not limit any other law regulating the holding of an inquest or other inquiry into the death of a person.			
(66) Investigation may be converted into inquiry (1) At any time during an investigation, the Chief Inspector of Mines may convert it into an inquiry. (2) The provisions of sections 68 to 71 relating to attendance and examination of witnesses at inquiries apply equally to a converted investigation (3) Any person instructed or summoned to give evidence at an inquiry that was converted from an investigation is not entitled to refuse to give evidence only on the grounds that a statement had previously been given, or documents previously been adduced, during the investigation. (4) This section does not preclude or limit holding an inquiry after an investigation has been completed.			
(67) Chief Inspector of Mines may designate assistant in inquiry At any time before or during an inquiry the Chief Inspector of Mines may designate one or more persons to assist in the inquiry or to preside at the inquiry			
(68) Inquiry to be public (1) An inquiry must be held in public. (2) Despite subsection (1) the person presiding at an inquiry may of that person's own accord or at the			

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request of a witness exclude members of the public or specific persons or categories of persons from attending the proceedings or part of the proceedings when the proper conduct of the inquiry requires. (3) The person presiding at an inquiry may make any order necessary to ensure that employees at the mine and members of the public have access to the premises in which the inquiry is held.			
(69) Right to participate in inquiry The persons listed in this section may participate in an inquiry and, either personally or through a representative, may put questions to witnesses and inspect any book, plan, record or other document or item presented at the inquiry. The persons entitled to participate are- a) any person who has a material interest in the inquiry. b) a representative of any registered trade union with members at the mine in respect of which the inquiry is being held; and c) any health and safety representative responsible for the working place in respect of which the inquiry is being held.			
(70) Powers of person presiding at inquiry The person presiding at an inquiry may- a) instructors summon any person to appear at any specified time and place. b) question any person under oath or affirmation. c) instruct any person- (i) to produce any book, plan, record or other document or item necessary for the purposes of the inquiry; or (ii) to perform any other act in relation to this Act necessary for the purpose of the inquiry			
(71) Duty of persons summoned or instructed (1) Subject to subsection (2), every person giving evidence at an inquiry must answer any relevant question. (2) The law regarding a witness's privilege in a court of law applies equally to any person being questioned at an inquiry. (3) The person presiding at an inquiry may direct that any evidence given by a person during an inquiry may not be used in any criminal or disciplinary proceedings against that person except in criminal proceedings on a charge of perjury against that person (4) When a directive has been issued under subsection (3), the person involved is not entitled to refuse to answer any relevant question only on the grounds that the answer could expose that			

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person to a criminal charge, disciplinary proceedings, or a recommendation under section 55A (5) A person instructed in terms of section 70 (c) must comply with that instruction unless the person has sufficient cause for not doing so			
(72) Inquiry records and reports (1) A person presiding at an inquiry must- a) record the evidence given at the inquiry, including any evidence given with the assistance of an interpreter. b) at the conclusion of the inquiry, prepare a written report of the findings, recommendations, and any remedial steps c) submit a copy of the report and the record of the inquiry to the Chief Inspector of Mines. d) supply a copy of the report and the record of the inquiry to the employer and to any health and safety representative, health and safety committee or registered trade union that requested the inquiry; and e) on request, supply a copy of the report and the record of the inquiry to any person who has a material interest in the inquiry (2) An inspector may instruct the employer of the mine concerned to prominently and conspicuously display a copy of the report or any portion of it for employees to read. (3) The Chief Inspector of Mines may submit a copy of the report to the appropriate Attorney-General.	Amendment Amendment of section 72 of Act 29 of 1996, as amended by section 38 of Act 72 of 1997, 26, Section 72 of the following Act is hereby amended- a) by the substitution of subsection 3 for the following subsection: (3) The Chief Inspector of mines may submit a copy of the report to the appropriate Attorney-General <u>Deputy Director of public prosecutions</u>.		
(73) Chief Inspector of Mines may order further inquiry Upon considering the evidence and the report referred to in section 72, the Chief Inspector of Mines may require that the matter be inquired into further.			
(74) Inquiry and inquest may be conducted jointly (1) An inquiry in terms of this Act into the death of a person may be held jointly with an inquest in terms of the Inquests Act, 1959 (Act 58 of 1959). (2) The judicial officer contemplated in the Inquests Act, 1959 (Act 58 of 1959), must preside at a joint inquiry referred to in subsection (1) and the person instructed to hold the inquiry in terms of this Act must be deemed to be an assessor appointed in terms of the Inquests Act, 1959. (3) The provisions of the Inquests Act, 1959 (Act 58 of 1959), apply to a joint inquiry. (4) The assessor referred to in subsection (2) must- a) prepare a report contemplated in section 72 (1) (b); and b) submit the report and the record of the joint inquiry to the Chief Inspector of Mines.			
Chapter 6			

Current	Bill (New/Amended)	Comments	Proposal
(75) Minister may prohibit or restrict work (1) For any reason relating to health or safety, the Minister, by notice in the Gazette, may prohibit or restrict any work or any exposure of a person to a substance or an environmental condition, if- a) the Minister has consulted the Council on the prohibition or restriction; and b) unless the Minister believes that the public interest requires the notice to be published immediately, the Minister has- (i) published a draft of the proposed notice at least three months previously; and (ii) at that time invited interested persons to submit comments and representations concerning the proposed notice within a specified period. (2) The Minister may attach any conditions to a prohibition or restriction by specifying them in the published notice. (3) The Minister, after consulting the Council, may amend or withdraw a notice under subsection (1) at any time.	Amendment Amendment of section 75 of Act 29 of 1996 27, Section 75 of the principal Act is hereby amended- a) By the substitution for subsection (1) of the following subsection: (1) For any reason relating to health and safety, the Minister <u>may</u>, by notice in the Gazette, may prohibit or restrict any work or any exposure of a person to substance or an environmental condition, if a) the Minister has consulted the Council on the prohibition or restriction and b) Unless the Minister believes that the public interest requires the notice to be published immediately, the Minister has: (i) Published a draft of the notice at least three months previously (ii) at the time invited interested persons to submit comments and representations concerning the proposed notice within a specified period.		
(76) Minister may declare health hazards (1) The Minister, by notice in the Gazette, may declare that an environmental condition or a substance present at a mine is a health hazard to employees who are or may be exposed to that condition or substance, if- a) the Minister has consulted the Council on the issuing of the declaration; and b) unless the Minister believes that the public interest requires the notice to be published immediately, the Minister has- (i) published a draft of the proposed notice at least three months previously; and (ii) at that time invited interested persons to submit comments and representations concerning the proposed notice within a specified period. (2) In connection with any health hazard, the Minister, after consulting the Council, by notice in the Gazette, may- a) impose conditions on the performance of work by employees exposed to the health hazard. b) stipulate the standards of fitness for an employee to perform work involving exposure to the health hazard c) require employers to take measures to eliminate, control and minimise health risks associated with the health hazard d) require employers to conduct specified occupational hygiene measurements e) require employers to conduct specified medical surveillance in respect of employees exposed to the health hazard; and	Amendment Amendment of section 76 of Act 29 of 1996, as amended by section 25 of Act 74 of 2008 28, Section 76 of the principal Act is hereby amended- a) by the substitution of subsection (1) for the following paragraph: (1) The Minister <u>may</u> be notice in the Gazette, may declare that an environmental condition or a substance present at a mine is a health hazard to employees who are or may be exposed to that condition of substance. If (a) The minister has consulted the Council on the issuing of the declaration and b) Unless the Minister believes that the public interest requires the notice to be published immediately, the Minister has: (i) published a draft of the proposed notice at least three months previously and (ii) at the time invited interested persons to submit comments and representations concerning the proposed notice within a specified period. (b) By the deletion of subsection 3: (3) The Minister may enter any mine at any time only for the purposes of health hazard.		

Current	Bill (New/Amended)	Comments	Proposal
f) provide for any other matter that the Minister considers necessary to protect employees exposed to the health hazard (3) The Minister may enter any mine at any time only for the purposes of health hazards			
(77) Application of Minister's notice A notice under either section 75 or 76 may differentiate between mines, types of mines, parts of a mine, occupations, and types of work.			
(78) Exemption from Minister's notice (1) A notice under either section 75 or 76 may exempt a particular person or group of persons from compliance with that notice if the Minister is satisfied that any of the following conditions exists- a) in the circumstances the exemption is desirable. b) the performance of the work by that person or group of persons is temporary; or c) the risk to which that person or group of persons is exposed is negligible. (2) The Minister, after consulting the Council, may cancel an exemption granted under subsection (1) at any time.			
(79) Exemption from all or part of this Act (1) The employer of a mine may request an exemption from the Minister, and if satisfied that the employer has consulted appropriately with the affected employees or their representatives, the Minister may exempt the employer from any or all the provisions of this Act or from a notice or instruction issued under this Act. An exemption may be- a) general or particular. b) for any period; and c) on any conditions that provide the same overall protection which would result from the full application of this Act. (2) When an exemption is granted under subsection (1), the Minister must issue a certificate of exemption to the employer, specifying the scope, period, and conditions of the exemption. (3) The Minister may amend or withdraw a certificate of exemption at any time. (4) The employer must prominently and conspicuously display any exemption granted, or deemed to have been granted, under this section to the employees to read.			
(80) Minister may apply other laws to mine (1) After consulting the Council, the Minister, by notice in the Gazette, may declare that any provision of the Occupational Health and Safety Act, 1993 (Act 181 of 1993), or any regulation made under that Act, or the provisions of any other Act or regulations, must apply to a mine.	Amendment Amendment of section 80 of Act 29 of 1996 29, The following section is hereby interesting the principal Act after section 80:		

Current	Bill (New/Amended)	Comments	Proposal
(2) A declaration in terms of subsection (1) may differentiate between mines, types of mines, parts of a mine, occupations, and types of work.	(1) <u>80A The Minister may act in terms of this Chapter 6, without consulting the council where required to do so, if the delay caused by the consultation would be detrimental to the public interest</u> (2) <u>If the Minister acts in terms of subsection (1) the Minister must within 30 days thereafter inform the Council of the reason for doing so.</u>		
(81) Minister to table annual report (1) Within 30 days of receiving the annual report of the Chief Inspector of Mines, the Minister must table it in Parliament. (2) If Parliament is not in session at the end of the period referred to in subsection (1), the Minister must table the report within 14 days of the beginning of the next session of Parliament.			
Chapter 7			
Legal Proceedings and Offences (82) Jurisdiction of Labour Court (1) The Labour Court has exclusive jurisdiction to determine any dispute about the interpretation or application of any provision of this Act except where this Act provides otherwise. (2) The Labour Court has no jurisdiction in respect of offences in terms of this Act.			
(83) No discrimination against employees who exercise rights (1) No person may discriminate against any employee for- a) exercising a right in terms of this Act or in terms of a collective agreement contemplated in this Act. b) doing anything that the employee is entitled to do in terms of this Act or in terms of a collective agreement contemplated in this Act. c) refusing to do anything that the employee is entitled to refuse to do in terms of this Act or in terms of a collective agreement contemplated in this Act. d) refusing to do anything that the employee is prohibited from doing in terms of this Act or in terms of a collective agreement contemplated in this Act; and e) standing for election, or performing any function, as a health and safety representative or a member of a health and safety committee. (2) For the purposes of this section- a) 'discriminate' means to dismiss an employee or to engage in any other conduct which has the effect of prejudicing or disadvantaging the employee, or which prejudices or disadvantages the employee relative to other employees; and b) employee' includes any applicant for employment who has previously been employed at a mine.			

Current	Bill (New/Amended)	Comments	Proposal
(84) Safety equipment not to be interfered with Unless specifically authorised by the employer, no person- a) other than an inspector acting in terms of section 50, may remove personal protective equipment from a mine, or cause that equipment to be removed. b) other than an inspector acting in terms of section 50, may remove anything that is provided in the interest of health or safety, or cause that equipment to be removed; or c) may alter, damage, misuse, render ineffective or interfere with anything that is provided in the interest of health or safety, or cause that equipment to be altered, damaged, misused, rendered ineffective or interfered with.			
(85) Juvenile employment underground prohibited (1) No person may cause or permit an employee under the age of 18 years to work underground at a mine. (2) No employee under the age of 18 years may work underground at a mine (3) Despite subsections (1) and (2), an employee under the age of 18 years but over the age of 16 years may work underground as part of vocational education or training	Amendment <u>Amendment of section 85 of Act 29 of 1996</u> 30, Section 85 of the principal Act is hereby mended - a) by the substitution of the heading for the following: Juvenile employment in (underground) <u>mines</u> prohibited b) By the substitution of subsection (1)(2)(3) for the following paragraph: (1) No person may cause or permit (an employee) any person under the age of 18 years to work (underground) <u>at a mine</u> (2) No (employee) <u>person</u> under the age of 18 years may work (Underground) at a mine. (3) Despite subsection (1) and (2) an employee any person under the age of 18 years but over the age of 16 years may work (underground) <u>at a mine</u> as part of vacation education or training.		
(86) Negligent act or omission (1) Any person who, by a negligent act or by a negligent omission, causes serious injury or serious illness to a person at a mine, commits an offence (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. (3)	Amendment <u>Amendment of section 86 of Act 29 of 1996, as amended by section 26 of the Act 74 of 2008</u> 31, The following section is hereby inserted in the principal Act after section 86, (1) <u>86A An employer commits an offence if the employer contravenes or fails the comply with a duty in terms of Chapter 2 of this Act which result in-</u> a) <u>a person's death</u> b) <u>Serious injury or illness to a person.</u> (2) <u>If a Chief executive officer, manager, agent or employee of the employer commits an offence by performing or perform an act and such performance or omission would have constituted an offence had it been done by the employer, that employer is equally committing an offence if the act</u>	Section 86A. is a controversial provision in that it creates, <i>inter alia</i>, a <u>statutory</u> homicide offence. Homicide offences, where negligence (culpa) is the fault element, is solely within the jurisdiction of the NPA since it constitutes 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, an inspector is of the opinion that the employer contravened a provision of the MHS Act, the NPA would use the statutory contravention to establish the required negligence for culpable homicide. This amendment will allow inspectors to propose a (new) homicide offence to the NPA. This is problematic as it encroaches on an historical approach to homicide crimes. Together with the OHS Amendment Bill, it would be the first time in SA's long jurisprudence history, that a new statutory offence is created, which in turn will be a lesser offence than the common law crime of culpable homicide. This raises the question: Why would the NPA	(86) Negligent act or omission (1) <u>86A An employer commits an offence if the employer contravenes or fails the comply with a duty in terms of Chapter 2 of this Act which results in serious injury or serious illness to a person.</u> (4)-(b) it is not a defence that the death of a person, injury or illness was caused by the act or omission of an employee of the employer if the act or omission fell within the scope of the authority or employment of the employee. (delete).

Current	Bill (New/Amended)	Comments	Proposal
	<u>or omission fell within the scope of the authority or employment of the chief executive officer, manager, agent or employee concerned and employer.</u> a) <u>connived with or permitted the act or omission by the chief executive officer, manager, agent, or employee concerned</u> b) <u>did not take all reasonable steps to prevent the act or omission</u> (3) <u>for the purpose of subsection (2) the fact that the employer issued instructions prohibiting the act or omission is not in itself sufficient proof that all reasonable steps were taken to prevent the act or omission.</u> (4) <u>For the purpose of subsection (1)</u> a) <u>the fact that the employer issued instructions prohibiting the act or omission is not in itself sufficient proof that all reasonable steps were taken to prevent the act or omission.</u> b) <u>it is not a defence that the death of a person, injury or illness was caused by the act or omission of an employee of the employer if the act or omission fell within the scope of the authority or employment of the employee.</u>	prosecute a person / entity for a (lesser) contravention of section 86A of the MHS Act when countless court precedents have analysed and pronounced on the common law crime of culpable homicide? The NPA would, in any case, escalate the charge to one of culpable homicide. While there is nothing preventing an inspector from recommending that the NPA consider a charge of culpable homicide, an inspector cannot currently 'officially' recommend such a charge and it should not fall within their scope of authority to do so. The dictates of section 332 of the Criminal Procedure Act will guide the NPA as to whether the potential accused, is a company or individual or both. It is probable that this provision will be found to be unconstitutional as only the Constitutional Court can develop or alter the common law. It is submitted that any attempt to introduce into the MHS Act strict liability or limit defences such as those proposed in section 86A(4) or generally to limit access to courts will not pass the constitutional muster if challenged. 86(4)(b) It is established law that negligence and a Nexus are elements of a crime and any attempt to limit these elements would be unconstitutional.	
(86A) Criminal liability (1) An employer, chief executive officer, manager, agent, or employee commits an offence if he or she contravenes or fails to comply with the provisions of this a) Act thereby causing- (a) a person's death; or b) serious injury or illness to a person. (2) If a chief executive officer, manager, agent or employee of the employer commits an offence by performing or omitting to perform an act and such performance or omission would have constituted an offence had it been done by the employer, that employer is equally committing an offence if the act or omission fell within the scope of the authority or employment of the chief executive officer, manager, agent or employee concerned and the employer- a) connived at or permitted the performance or an omission by the chief executive officer, manager, agent, or employee concerned; or b) did not take all reasonable steps to prevent the performance or an omission. (3) For the purposes of subsection (1) the- a) fact that the person issued instructions prohibiting the performance or an omission is not in itself sufficient proof that all reasonable steps were taken to prevent the performance or an omission b) defence of ignorance or mistake by any person accused cannot be admitted; or			

Current	Bill (New/Amended)	Comments	Proposal
c) defence that the death of a person, injury, illness or endangerment was caused by the performance or an omission of an act falling within the scope of the authority or employment of any individual within the employ of the employer may not be admitted.			
NB: s. 86A has been inserted by s. 26 of the Mine Health and Safety Amendment Act 74 of 2008, a provision which will be put into operation by proclamation.]			
(87) Breach of confidence (1) Any person who discloses any information that they acquired in the performance of a function in terms of this Act and that relates to the financial and business affairs of an employer or any other person who employs employees, commits an offence. (2) Subsection (1) does not apply if the information- a) was disclosed to enable a person to perform a function in terms of this Act. b) must be disclosed in terms of this Act, any other law, or an order of court; or c) was disclosed to a health and safety representative or health and safety committee in terms of Chapter 3.			
(88) Hindering administration of this Act Any person who hinders, opposes, obstructs, or unduly influences any person who is performing a function in terms of this Act commits an offence.			
(89) Falsifying documents Any person who obtains or attempts to obtain a prescribed certificate of competency by means of fraud, dishonesty, false pretences or the presentation or submission of a false or forged document commits an offence.			
(90) Failure to attend when summoned A person commits an offence who, having been instructed or summoned to attend an inquiry- a) without sufficient cause fails- (i) to appear at the time and place specified; or (ii) to remain in attendance until excused by the person presiding at the inquiry. b) attends as required, but without sufficient cause- (i) fails to comply with an instruction in terms of section 70 (c) (i); or (ii) refuses to be sworn or to make an affirmation; or c) attends as required and having been sworn or having made an affirmation- (i) without sufficient cause fails to answer any question fully and to the best of that person's ability; or			

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(ii) gives evidence, knowing or believing it to be false			
(92) Penalties (1) Any person convicted of an offence in terms of section 87, may be sentenced to a fine or to imprisonment to be determined by the court. (2) Any person convicted of an offence in terms of section 90 (a) or (b) (i), may be sentenced to the penalty applicable to a similar offence in a magistrate's court (3) Any person convicted of an offence in terms of section 90 (c) (ii), may be sentenced to any penalty that may be imposed in law for perjury. (4) Any person convicted of an offence in terms of this Act for which no penalty is otherwise expressly determined, may be sentenced to a fine or to imprisonment for a period not exceeding six months. (5) Any person convicted of an offence in terms of any section mentioned in Column 1 of Table 1 of Schedule 8 may be sentenced to a fine or to imprisonment for a period not exceeding the period mentioned in Column 2 of that Table opposite the number of that section (6) Any owner convicted of an offence in terms of section 86 or 86A may be sentenced to- a) withdrawal or suspension of the permit; or b) a fine of three million rands or a period of imprisonment not exceeding five years or to both such fine or imprisonment (7) In the event of a conviction, the court may, in addition to imposing a sentence in respect of the offence and making an order, order the person convicted to- a) repair any damage caused to the satisfaction of the Chief Inspector of Mines; and b) comply with a provision of this Act within a specified period of time.	Amendment Amendment of section 92 of Act 29 of 1996, as amended by section 38 of Act 72 of 1997 and section 28 of Act 74 of 2008 32, Section 92 of the principal Act is hereby amended by the substitution of subsections (1)(2)(3)(4)(5) of the following subsection: (1) Any person convicted of an offence in terms of section 87, may be sentenced to a fine or to imprisonment to be determined by the court. (2) Any person convicted of an offence in terms of section 90 (a) or (b) (i) may be sentenced to the penalty applicable to a similar offence in a magistrate's court. (3) Any person convicted of an offence in terms of section 90 (c) (ii) may be sentenced to any penalty that may be imposed in law for perjury. (4) Any person convicted of an offence in terms of this act for which no penalty is otherwise expressly determined, may be sentenced to a fine or to imprisonment for a period not exceeding six months. (5) Any person convicted of an offence in terms of any section mentioned in column 1 of table 1 of schedule 8 may be sentenced to a fine or to imprisonment for a period not exceeding the period mentioned in column 2 of that table opposite the number of that section. (1) <u>Any employer or company convicted of an offence in terms of any section of this Act may be sentenced to a fine not exceeding 10% of the employer's annual turnover in the preceding financial year as reflected in the last available financial statements, in the Republic and the employer's exports from Republic, whichever is greater or to imprisonment determined by a competent court.</u>		
(93) Magistrate's court has jurisdiction to impose penalties Despite anything to the contrary contained in any other law, a magistrate's court has jurisdiction to impose any penalty provided for in this Act.	Amendment Amendment of section 93 of Act 29 of 1996 33, Section 93 of the principal Act is hereby amended- a) by the substitution of the heading for the following: A Magistrate's <u>competent</u> Court has jurisdiction to impose penalties. b) by the substitution of the section for the following: Despite anything to the contrary contained in any other law, a magistrate's <u>competent</u> court has jurisdiction to impose any penalty for in this Act.		
(94) Serving of documents			

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Unless otherwise provided in this Act, a notice, order or other document which, in terms of this Act, must be served on or delivered to a person, will have been properly served or delivered if it has been either- a) served on or delivered to that person; or b) sent by registered post to that person's last known address; or c) published in the Gazette.			
(95) Proof of facts In any legal proceedings in terms of this Act- a) if it is alleged that a person at a mine is or was an employee, that person is presumed to be an employee at that mine, unless the contrary is proved. b) if it is proved that a false statement, entry or information appears in or on a book, plan, record or other document, the person who kept that document is presumed to have made, entered, recorded or stored that statement, entry, record or information, unless the contrary is proved; and c) subject to the provisions of sections 63 (1), 63 (3) and 71 (2), any statement, entry or information in or on any book, plan, record or other document is admissible in evidence as an admission of the facts in or on it by the person who made, entered, recorded or stored it unless it is proved that that person did not make, enter, record or store it within the scope of their functions			
Chapter 8			
General provision's (96) Delegation and exercise of power (1) The Minister may delegate any power conferred upon the Minister by or under this Act, except the power to make regulations, to the Chief Inspector of Mines. (2) The Chief Inspector of Mines may delegate any power or assign the performance of any duty conferred or imposed upon the Chief Inspector of Mines by or under this Act, or any other law, to- a) any inspector. b) any other person with appropriate knowledge and experience who is under the control of the Chief Inspector of Mines; or c) any other person, after consulting the Council (3) A delegation or assignment under subsection (1) or (2) must be in writing and may be subject to any conditions or restrictions determined by the Minister or Chief Inspector of Mines, as the case may be. (4) A delegation under subsection (1) or (2) does not prevent the exercise of that power by the Minister or Chief Inspector of Mines, as the case may be	Amendment Amendment of section 96 of Act 29 of 1996, as amended by section 39 of 72 of 1997 34, Section 96 of the principal Act is hereby amended- a) by the substitution for subsection (1)(2)(3) and (4) of the following subsections, respectively. (i) The Minister may delegate any power conferred upon the Minister by or under this Act, except the power of making regulations to the <u>Director General</u> or Chief inspector of mines. (2) The <u>Director General or</u> the Chief inspector of mines may delegate any power or assign the performance of any duty conferred upon the <u>Director General or</u> Chief inspector of mines by or under this Act or any other law to: a) any inspector b) any other person with appropriate knowledge and experience who is under the control of <u>the Director General or</u> the Chief inspector of mines or: c) any other person, after consulting the council. (3) A delegation or assignment under subsection (1) or (2) must be in writing and may be subject to any		

Current	Bill (New/Amended)	Comments	Proposal
	conditions or restrictions determined by the Minister, <u>Director General or</u> Chief inspector of mines as the case may be. (4) A delegation under subsection (10 and (2) does not prevent the exercise of that power by the Minister, Director General, Chief inspector of mines, as the case may be. b) by the addition of the following subsection: (5) <u>The Minister, Director General, Chief inspector of mines may at any time:</u> a) <u>withdraw a delegation or assignment made in terms of subsection (1) and (2) as the case maybe and</u> b) <u>withdraw or amend any decision made by a person exercising a power or performing a duty delegated or assigned in terms of subsection (1) and (2) as the case may be.</u>		
(97) Minister's power to add and change Schedules (1) The Minister, after consulting the Council, by notice in the Gazette may add to, change, or replace any Schedule to this Act other than Schedules 2, 3 and 7 and, subject to subsection (5), Schedule 4 (2) The Minister, after consulting the Council, by notice in the Gazette may add to this Act a further Schedule containing matters in respect of which health and safety committees may consult (3) The Minister, after consulting the Council, by notice in the Gazette, may add to this Act a further Schedule containing the constitution of the Council and its committees. (4) The Minister, after consulting the Council and the Mining Qualifications Authority, by notice in the Gazette may add to this Act a further Schedule containing the constitution of the Mining Qualifications Authority and its committees. (5) The Minister, after consulting the Council, by notice in the Gazette may add to Schedule 4 further items containing transitional provisions necessary for the implementation of this Act. (6) The Minister, after consulting the Council and in consultation with the Minister of Health, by notice in the Gazette may add to this Act a further Schedule to suspend or vary the application of the Occupational Diseases in Mines and Works Act, 1973 (Act 78 of 1973), except in relation to the determination or payment of compensation. (7) The Minister may add to, change, or replace any page header or sidenote by notice in the Gazette.			
(98) Regulations (1) The Minister, after consulting the Council, by notice in the Gazette may make regulations regarding- a) health and safety of persons at mines.	Amendment Amendment of section 98 of the principal Act		

Current	Bill (New/Amended)	Comments	Proposal
b) health and safety standards, codes of practice and the provision of protective clothing, equipment and facilities in connection with health and safety at mines. c) the performance of work by employees exposed to a health hazard and the measures to eliminate, control, and minimise health risks. d) health and safety employer systems at mines. e) orderly operations at mines. f) the powers, duties, functions, and responsibilities of employees at mines and of the employers. g) the issuing of permits for the use of machinery, equipment and material at mines and the accreditation of persons to test machinery, equipment, and material for these purposes. h) the conditions under which machinery, equipment or material may be erected or used at mines. i) the elimination, control and minimisation of health and safety hazards. j) requirements for the safe use, handling, processing, storage, transport, and disposal of hazardous substances used in the mining process and waste produced at the mine. k) the transport, handling, storage and use of explosives and the mixing of substances to make explosives at a mine. l) the protection of equipment, structures, water sources and the surface of land. m) the conditions in which equipment, structures, water sources or the surface of land may be used, and the prohibition on, or restriction of, the erection of equipment and structures and the use of water sources or the surface of land in the vicinity of the working places at a mine. n) the making safe of undermined ground and of dangerous excavations, tailings, waste dumps, ash dumps and structures of whatever nature made in the course of prospecting or mining operations, or which are connected with those operations. o) the monitoring and control as contemplated in section 49 (3) (a) of those environmental aspects at mines which affect, or may affect, the health and safety of employees or other persons. p) standards of housing and nutrition of employees who are accommodated at the mine. q) initial standards of fitness to perform work involving exposure to a health hazard, standards of fitness to continue performing such work and the conditions under which employees may be withdrawn either temporarily or permanently from such work. r) standards of occupational hygiene measurement techniques, the frequency and manner in which measurements must be made, the manner of	35, amend section 98(1) by adding the following paragraph after paragraph (1) (ZP) as follows. <u>(1)(ZP) the form and manner of reporting to the medical inspector on dismissals contemplated in section 20A.</u>		

Current	Bill (New/Amended)	Comments	Proposal
record keeping, and reporting of occupational hygiene measurements made at mines; s) standards of medical tests or biological monitoring used in medical surveillance, the persons who may carry out those tests and that monitoring, the interpretation of results of medical surveillance, the frequency for carrying out periodic medical surveillance, the keeping of records of medical surveillance and the reporting of confidential extracts from records of medical surveillance. t) the manner of reporting prescribed accidents and health matters at mines, the keeping of records and statistics in relation to accidents and health matters and the provision of emergency medical treatment after an accident or in connection with a health matter u) the manner of reporting prescribed occupational diseases at mines, the keeping of records in relation to occupational diseases and the control and provision of medical services in connection with occupational diseases. v) the form of an exit certificate and the content of medical examinations associated with an exit certificate. w) the form of any application to be made in terms of this Act and of any consent or document required to be submitted with an application, and the information or details which must accompany an application. x) the form of any register, record, notice, sketch plan or information to be kept, given, published, or submitted in terms of or for the purposes of this Act, and the manner in which a register, record, notice, sketch plan or information is to be kept, given, published or submitted. y) the drawing up and keeping of mine plans and the submission of statistical and other reports in relation to minerals, mines, and machinery. z) negotiations and consultations in terms of sections 26 and 33 and the time periods within which the negotiations and consultations must be completed (ZA) qualifications for appointment as a health and safety representative, the election and terms of office of representatives, the circumstances in which a representative must vacate office, the circumstances in which a representative may be removed from office, the manner in which vacancies may be filled, the functions of representatives, the manner in which the functions of representatives must be conducted, the facilities and assistance that must be provided to representatives and the training of representatives; (zB) the establishment of health and safety committees, the election and appointment of members to a committee, the terms of office of members of a committee, the circumstances in which a member must			

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vacate office, the circumstances in which a member may be removed from office, the manner in which vacancies may be filled, meetings of the committees, the rules and procedures of the committees, the facilities and assistance that must be provided to committees and the training of the members of committees; (zC) the appointment of members to the Council in accordance with the provisions of Schedule 2, the functions of the Council, the payment of allowances to members, the funding of the Council and its committees, and any other matter the regulation of which, in the opinion of the Minister, may be necessary for the proper functioning of the Council and its committees. (zD) the appointment of members of the Mining Qualifications Authority in accordance with Schedule 2. (zE) qualifications for inspectors. (ZF) the establishment of one or more accounts and the control of those accounts by the Chief Inspector of Mines with a view to funding- (i) research and surveys regarding, and for the promotion of health and safety at mines; and (ii) the administration costs of the overall programme for relevant health and safety research. (zG) the manner in which the presence of witnesses at inquiries must be obtained in terms of section 71, and the procedures to be followed at inquiries. (zH) procedures to be followed in respect of appeals to the Chief Inspector of Mines or Medical Inspector under this Act. (zI) fees payable in relation to applications, appeals and documents. (zJ) the payment of levies by mines on the basis of health and safety risk for- (i). research and surveys regarding, and for the promotion of health and safety at mines; and (ii). the administration costs of the overall programme for relevant health and safety research zK) the imposition of monetary and other obligations in connection with safe-making referred to in paragraph (n) on persons who- (i) are or were responsible for the undermining of any ground or the making of any excavations, tailings, waste dumps, ash dumps or structures or for the dangerous condition of any of them. (ii) will benefit from that safe making. (zL) the assumption by the State of responsibility for safe making referred to in paragraph (n) in particular cases. (zM) the use of plain language in documents that are required to be published, displayed or distributed in terms of this Act; and (zN) any other matter the regulation of which may be necessary or desirable in order to achieve the objects of this Act;			

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(zO) the system of fines contemplated in sections 55A and 55B including regulations regarding forms and documents, periods of time, procedures, records to be kept and the payment of fines; and (ZP) minimum standards for the establishment, functioning, training, equipping and staffing of rescue services at mines and reporting by employers in respect of rescue services (2) No regulation may be made relating to- a) State revenue or expenditure except with the concurrence of the Minister of Finance. b) ny health matter, except after consultation with the Minister for Health (3) the Minister, after consultation with the Mining Qualifications Authority, by notice in the Gazette, may make regulations to provide for- a) the qualifications for employment in any occupation. b) conditions for acceptance as a candidate for examinations. c) the issuing of certificates of competency in respect of any occupation. d) the funding of the Mining Qualifications Authority including the manner by which such funds may be raised e) procedures for assessing competency. f) the accreditation of assessors. g) the establishment of examination bodies. h) the appointment of examiners and moderators. i) the monitoring and administration of examinations. j) the setting of examination fees. k) the accreditation of providers of training. l) the establishment of quality assurance procedures. m) the issue of qualifications. n) the registering of qualifications; and o) any other matter, the regulation of which may be necessary or desirable in order to promote the activities of the Mining Qualifications Authority. (4) Regulations made in terms of subsection (3) must be in accordance with the National Qualifications Framework approved in terms of the South African Qualifications Authority Act, 1995 (Act 58 of 1995). (5) The Minister may incorporate all or part of any health and safety standard, without restating the text of it, in a regulation by referring to the number, title and year of issue of that health and safety standard or, to any other particulars by which that health and safety standard is sufficiently identified (6) The Minister must consult the Council before incorporating a health and safety standard in a regulation.			

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(7) The Minister, after consulting the Council, by notice in the Gazette may make regulations imposing any function of an employer on any person, other than the employer, who employs employees. (8) For the purposes of this Act, any health and safety standard referred to in subsection (5) incorporated in a regulation is deemed to be a regulation, in so far as it is not repugnant to any regulation made under subsection (1). (9) Whenever a health and safety standard which has been incorporated in a regulation is subsequently amended or substituted by the competent authority, the regulation referred to in subsection (5) incorporating that health and safety standard is deemed to refer to that health and safety standard as so amended or substituted, unless a contrary intention is stated in the notice. (10) The Chief Inspector of Mines must keep a register of particulars of- a) every amendment or substitution of a health and safety standard incorporated in the regulations. b) the publication of any amendment or substitutions. c) every publication in which a health and safety standard that has been incorporated in the regulations under subsection (5) was published; and d) the place in the Republic where each of those standards and publications is obtainable or otherwise available for inspection. (11) The Chief Inspector of Mines must allow any person to inspect the register kept in terms of subsection (9) and to make an extract from it. (12) The provisions of section 31 of the Standards Act, 1993 (Act 29 of 1993), do not apply to any incorporation of a health and safety standard or to any amendment or substitution of a health and safety standard under this section			
(99) Amendment of laws (1) Each of the laws referred to in Schedule 3 is hereby amended to the extent specified in that Schedule.			
(100) Transitional arrangements (1) The amendment of laws referred to in Schedule 3 does not affect any transitional arrangement made in Schedule 4. (2) The transitional arrangements in Schedule 4 must be read and applied as substantive provisions of this Act			
(101) Interpretation (1) (2) Subject to sections 26 and 33, no agreement may affect any-			

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a) provision of this Act. b) condition, notice, order, instruction, prohibition, authorisation, permission, consent, exemption, certificate, or document determined, given, issued, promulgated or granted by or under this Act by the Minister, Chief Inspector of Mines, inspector or any other person authorised under this Act; or c) any condition contained in any exemption. (3) Subsection (2) applies to any agreement whether entered before or after the commencement of this Act or before or after the issuing of the documents referred to in subsection (2). (4) Any notice, order or any other document issued in good faith in terms of this Act, is valid according to its terms, despite any want of form or lack of power on the part of any person to issue or authenticate it, provided the necessary power is subsequently conferred upon that person			
(102) Definitions In this Act, unless the context otherwise indicates- biological monitoring' means a planned programme of periodic collection and analysis of body fluid, tissues, excreta, or exhaled air in order to detect and quantify the exposure to or absorption of any substance or organism. chief executive officer' means the person who is responsible for the overall management and control of the business of an employer. Chief Inspector of Mines' means the officer appointed in terms of section 48 (1) and includes any officer acting in that capacity. Commission' means the Commission for Conciliation, Mediation and Arbitration established in terms of section 112 of the Labour Relations Act. Constitution' means the Constitution of the Republic of South Africa, 1996. [Definition of 'Constitution' inserted by s. 30 (a) of Act 74 of 2008.] Council' means the Mine Health and Safety Council established by section 41 (1); Department' means the Department of Minerals and Energy. [Definition of 'Department' substituted by s. 43 (b) of Act 72 of 1997.] employee' means any person who is employed or working at a mine. employer' means an owner. engine' means any appliance or combination of appliances by which power, other than human or animal power, can be applied to do mechanical work. hazard' means a source of or exposure to danger. health' refers to occupational health at mines.	Amendment Amendment of section 102 of Act 29 of 1996, as amended by section 43 of Act 72 of 1997, section 110 of Act 28 of 2002 and section 30 of Act 74 of 2008, 36, Section 102 of the principal Act is hereby amended- a) by the insertion after the definition "biological monitoring" of the following definition. <u>"board" means a board of directors of a company as defined in the companies Act. No 71 of 2008</u> b) by the insertion after the definition "Commission" of the following definition: <u>"company" means the company as defined in the Companies Act 71 of 2008.</u> (c) by the substitution for the definition pf "Department" of the following definition. "Department" means the Department of minerals and Energy <u>responsible for mineral resources.</u> (d) by the insertion after the definition of "Department" of the following definition: <u>"Director General" means the Director General of the department.</u> (e) by the substitution for the definition of "employee" of the following definition: "employee "means any person that employed <u>or by the employer or owner of a mine and who is working at the mine</u>" (f) by the insertion after the definition "engine" of the following definition:		

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health and safety committee' means a health and safety committee established in terms of section 34. health and safety equipment' means an article or part of an article that is manufactured, provided, or installed in the interest of the health or safety of any person. health and safety representative' means an employee elected and appointed in terms of section 29. health and safety standard' means any standard, irrespective of whether or not it has the force of law, which, if applied for the purposes of this Act, will in the opinion of the Minister promote the attainment of an object of this Act. health hazard' means any physical, chemical or biological hazard to health, including anything declared to be a health hazard by the Minister. health-threatening occurrence' means any occurrence that has or may have the potential to cause serious illness or damage to health. healthy' means free from illness or injury attributable to occupational causes. inspector' means an officer appointed in terms of section 49 (1) (c), a Medical Inspector and any Principal Inspector of Mines. Labour Court' means the Labour Court established by section 151 of the Labour Relations Act. Labour Relations Act' means the Labour Relations Act, 1995 (Act 66 of 1995). machinery' means any engine, boiler or appliance or any combination of them, which is situated at a mine and used or intended to be used- (a) for generating, developing, receiving, storing, converting, transforming, transmitting or distributing any form of power or energy; or (b) for conveying persons, material or minerals. manager' means any competent person appointed in terms of section 3 (1) (a); 'Medical Inspector' means a Medical Inspector appointed in terms of section 49 (1) (b). medical practitioner' means a medical practitioner as defined in the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act 56 of 1974). medical surveillance' means a planned programme of periodic examination, which may include clinical examinations, biological monitoring or medical tests, of employees by an occupational health practitioner or by an occupational medical practitioner contemplated in section 13; 'mine' means, when- (a) used as a noun- (i) any borehole, or excavation, in any tailings or in the earth, including the portion of the earth that is under the sea or other water, made for the purpose of searching for or winning a mineral, whether it is being worked or not; or	"Formal training" means any <u>relevant training contemplated in section 10(2) which must be properly structured, documented and assessed.</u> (g) by the substitution for the definition of "inspector" "of the following definition: "Inspector" means an officer appointed in terms of section <u>(49(1)(c) 47(4)(b)</u> a medical inspector and principal inspector of mines. (h) by the substitution for the definition of "Medical Inspector" of the following definition: "Medical Inspector" means an officer appointed in terms of section <u>(49(1)(b) / 47(4)(a).</u> (i) by the substitution for the definition of "mining areas" of the following definition: "Mining areas" means - a) <u>the area comprising the subject of any prospecting right, retention permit, mining right, mining permit, exploration right or production right issued or granted under the Mineral and Petroleum Resources Development Act.</u> b) <u>any land adjacent or non-adjacent to an area referred to in paragraph (a)on which mining related operations or operations incidental to mining are being undertaken by, on behalf of ,or under the authorization of the owner , but excluding operations where the mineral in used in a manufacturing or beneficiation process.</u> c) <u>any area connected to an area referred to in paragraph (a) or (b) by means of any road, railway line, power line, pipeline, cable way or conveyor belt, which area-</u> (i) <u>is under the control of the holder of any prospecting right, retention permit, mining right, mining permit, exploration right or production right issued under the mineral and petroleum resourced development Act</u> (ii) <u>such holder is entitled to use in connection with the operations performed or to be performed under such right or permit.</u> d) <u>the land on which such road, railway line, power line, cableway or conveyor belt is located.</u> e) <u>the buildings, structures, machinery, residue deposits, residue stockpiles or objects situated on or in such area or land contemplated in paragraphs (a) and (b) above.</u> (j) by the substitution for the definition of "Minister" of the following definition: "Minister" "means the minister of "Minerals and Energy" <u>the department responsible for mineral resources.</u> k) by the insertion after definition "occupational health" of the following definition:		

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(ii) any other place where a mineral deposit is being exploited, including the mining area and all buildings, structures, machinery, mine dumps, access roads or objects situated on or in that area that are used or intended to be used in connection with searching, winning, exploiting or processing of a mineral, or for health and safety purposes. But, if two or more excavations, boreholes or places are being worked in conjunction with one another, they are deemed to comprise one mine, unless the Chief Inspector of Mines notifies their employer in writing that those excavations, boreholes or places comprise two or more mines: or (iii) a works; and (b) used as a verb, the making of any excavation or borehole referred to in paragraph (a) (i), or the exploitation of any mineral deposit in any other manner, for the purpose of winning a mineral, including prospecting in connection with the winning of a mineral. mineral' means any substance, excluding water, but including sand, stone, rock, gravel and clay, as well as soil, other than topsoil- (a) whether that substance is in solid, liquid or gaseous form (b) that occurs naturally in or on the earth, in or under water or in tailings; and (c) that has been formed by or subjected to a geological process Mineral and Petroleum Resources Development Act' means the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002) Minerals Act' mining area' means a prospecting area, mining area, retention area, exploration area and production area as defined in section 1 read with section 65 (2) (b) of the Petroleum and Mineral Resources Development Act, 2002 (Act 28 of 2002). Minister' means the Minister of Minerals and Energy. occupational disease' means any health disorder including a compensable disease as contemplated by the Occupational Diseases in Mines and Works Act, 1973 (Act 78 of 1973), and an occupational disease contemplated by the Compensation for Occupational Injuries and Diseases Act, 1993 (Act 130 of 1993); occupational health' includes occupational hygiene and occupational medicine. occupational health practitioner' occupational hygiene' means the anticipation, recognition, evaluation and control of conditions at the mine, that may cause illness or adverse health effects to persons. occupational medicine' means the prevention, diagnosis and treatment of illness, injury and adverse health effects associated with a particular type of work. occupational medical practitioner' means a medical practitioner who holds a qualification in occupational	"Occupational health practitioner" means the persons <u>who holds a qualification in occupational health recognized by the South African Nursing Council"</u> l) by the substitution and addition for the definition of "Owner" of the following definition: "Owner - means a) <u>in relation to a mine.</u> (i) <u>the holder of any prospecting right, retention permit, mining right, mining permit, exploration right or production right issued under the Mineral and petroleum resources development Act.</u> <u>(ii)if a right or permit referred to in subparagraph (i) does not exist, the person by whom or for whom the activities contemplated in paragraph (b) of the definition of mine are undertaken but excluding an independent contractor.</u> <u>(iii) If neither subparagraph (i) or (ii) is applicable, the last person who worked the mine or where such last person no longer exists, that successor in title.</u> b) <u>In relation to a works, the person who is undertaking the activities contemplated in the definition of works but excluding an independent contractor.</u> m) by the substitution for the definition of "Principal inspector of mines" of the following definition. Principal inspector of mines" means the officer appointed by the Chief Inspector of mines" <u>Minister</u> to be in charge of health and safety in any region established in terms of section 47(2). n) by the deletion of the definition of "public finance management Act" o) by the insertion after the definition of "serious illness" of the following definition: "South African Nursing Council" means the South African Nursing Council referred to in section 2 of the Nursing Act 2005 (Act No 33 of 2005)		

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medicine, or an equivalent qualification, recognised by the Health Professions Council of South Africa officer' means a woman or man who has been appointed permanently despite the fact that such appointment may be on probation to a post contemplated in section 8 (1) (a) of the Public Service Act, 1994 (Proclamation 103 of 1994), and includes a woman or man contemplated in section 8 (1) (b) or 8 (3) (c) of that Act. contemplated in section 8 (1) (b) or 8 (3) (c) of that Act. organism' means any biological entity which is capable of causing illness to persons; 'owner'- (a) in relation to a mine, means— (i) the holder of a prospecting permit or mining authorisation issued under the Mineral and Petroleum Resources Development Act. (ii) if a prospecting permit or mining authorisation does not exist, the person for whom the activities contemplated in paragraph (b) of the definition of 'mine' are undertaken, but excluding an independent contractor; or (iii) if neither (i) or (ii) is applicable, the last person who worked the mine or that person's successor in title; and (b) in relation to a works, means the person who is undertaking the activities contemplated in the definition of 'works', but excluding an independent contractor. prescribed' means prescribed by regulation. Principal Inspector of Mines' means the officer appointed by the Chief Inspector of Mines to be in charge of health and safety in any region established in terms of section 47 (2); processing' means the recovering, extracting, concentrating, refining, calcining, classifying, crushing, milling, screening, washing, reduction, smelting or gasification of any mineral, and 'process' has a similar meaning. prospecting' means intentionally searching for any mineral by means that disturb any tailings or the surface of the earth, including the portion of the earth that is under the sea or under other water, by means of excavation or drilling, but does not include mine as a verb. Public Finance Management Act' means the Public Finance Management Act, 1999 (Act 1 of 1999); reasonably practicable' means practicable having regard to- (a) the severity and scope of the hazard or risk concerned. (b) the state of knowledge reasonably available concerning that hazard or risk and of any means of removing or mitigating that hazard or risk. (c) the availability and suitability of means to remove or mitigate that hazard or risk; and (d) the costs and the benefits of removing or mitigating that hazard or risk.			

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record' includes information contained in or on a computer printout, tape or disc or any other computer storage medium. record of medical surveillance' means a record kept in terms of section 13 (3). registered trade union' means a trade union registered in terms of the Labour Relations Act. regulation' means a regulation made under section 98 or in force in terms of item 4 of Schedule 4. representative trade union' means a registered trade union, or two or more registered trade unions acting jointly, that have as members the majority of employees at a mine. risk' means the likelihood that occupational injury or harm to persons will occur. safety' means safety at mines. serious injury' means any injury which is reportable under this Act; serious illness' means any illness resulting from occupational exposure that affects the health of a person to the extent that it incapacitates the affected person from resuming that person's normal or similar occupation for four days or more; 'standard' means any provision occurring. (a) in a specification, compulsory specification, code of practice or standard method as defined in section 1 of the Standards Act, 1993 (Act 29 of 1993); or (b) in any specification, code or any other directive having standardisation as its aim and issued by an institution or organisation inside or outside the Republic which, whether generally or with respect to any particular article or matter and whether internationally or in any particular country or territory, seeks to promote standardisation. substance' includes any solid, liquid, vapour, gas or aerosol, alone or in any combination; 'this Act' includes- (a) the section numbers, but not the page headers, headings or sidenotes. (b) the Schedules (a) the regulations; and (b) any condition, suspension, notice, order, instruction, prohibition, authorisation, permission, consent, exemption, certificate or document determined, given, issued, promulgated or granted by or under this Act by the Minister, Chief Inspector of Mines, an inspector, any person authorised under section 49 (4) or any person to whom a power has been delegated or the performance of a duty has been assigned under section 96; topsoil' means topsoil as defined in section 1 of the Mineral and Petroleum Resources Development Act; working place' means any place at a mine where employees travel or work. works' means any place, excluding a mine, where any person carries out- (a) the transmitting and distributing to another consumer of any form of power from a mine, by			

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the employer thereof, to the terminal point of bulk supply or where the supply is not in bulk, to the power supply meter on any such other consumer's premises; or (b) training at any central rescue station; or (c) the making, repairing, re-opening or closing of any subterranean tunnel; or (d) any operations necessary or in connection with any of the operations listed in this paragraph.			
(103) Occupational Health and Safety Act, 1993, not applicable The Occupational Health and Safety Act, 1993 (Act 85 of 1993), is not applicable to any matter in respect of which any provision of this Act is applicable.			
104) Civil liabilities of State The State Liability Act, 1957 (Act 20 of 1957), applies with the changes required by the context in respect of the Mine Health and Safety Inspectorate, and in such application a reference in that Act to the Minister of a department concerned must be construed as a reference to the Chief Inspector of Mines			
(105) Act binds State The provisions of this Act bind the State except in so far as any criminal liability is concerned.			
(106) Short title and commencement (1) This Act is called the Mine Health and Safety Act, 1996. (2) This Act comes into operation on a date fixed by the President by proclamation in the Gazette			
Amendment of Schedule 4 (4) Employer may entrust functions to another person a) An employer may appoint any person except a manager to perform any function entrusted to the employer by sections 2 and 3 of this Act b) An employer who appoints a person under subsection (1) must notify the Chief Inspector of Mines of that appointment within seven days, and must include in that notice a) the name of the person appointed b) (b) the nature of the person's functions. c) (c) the names of the manager or managers over whom that person has control c) An employer who appoints a person under subsection (1) must- a) supply each person appointed with the means to perform their functions; and b) (b) take reasonable steps to ensure that they perform their functions.	Amendment Amendment of section 4 to Act 29 of 1996, as amended by section 46 of Act 72 of 1997 and amended by section 32 of Act 74 of 2008, 37, Schedule 4 to the principal Act is hereby amended by: a) the deletion of item 7 and b) replacing all references to the " <u>Minister and petroleum Resources Development Act with references to the "Minerals Act"</u>		

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The appointment of a person under subsection (1) does not relieve the employer of any duty imposed on employers by this Act or any other law.			
	Amendment of Item 1 of Schedule 6 of Act 29 of 1996 38. Item 1 of Schedule 6 to the principal Act is hereby amended by subsection for sub item (1) of the following sub – item: (1) The Council and committees of the Council, the mining regulatory advisory Committee, the mining Occupational Health Advisory Committee and the Safety <u>and Health Research</u> Advisory Committee are established by section 41(1) and (2) of this Act.		
(5) Employer to maintain healthy and safe mine environment (1) As far as reasonably practicable, every employer must provide and maintain a working environment that is safe and without risk to the health of employees (2) As far as reasonably practicable, every employer must- a) identify the relevant hazards and assess the related risks to which persons who are not employees may be exposed; and (b) ensure that persons who are not employees, but who may be directly affected by the activities at the mine, are not exposed to any hazards to their health and safety	Amendment Amendment if item 5 of schedule 6 to Act 29 of 1996 39, item 5 schedule 6 to the principal Act is hereby amended- (a)by the substitution (3) for the words preceding paragraph (a)of the following words: The safety and health in mines research advisory committee must advice the council on- (b) by the substitution in subitem (4) for the words preceding paragraph (a)of the following words: The safety and health in mines research advisory committee must prepare the programme for relevant health and safety research for the council to consider. The programme must include:		
(8) Employer must establish health and safety policy (2) Every employer must prepare a document that. a) describes the organisation of work. b) (b) establishes a policy concerning the protection of employees' health and safety at work c) (c) establishes a policy concerning the protection of persons who are not employees but who may be directly affected by the activities at the mine; and d) (d) outlines the arrangements for carrying out and reviewing policies. (3) The employer must consult with the health and safety committee on the preparation or revision of the document and policies referred to in subsection (4) The employer must a) prominently and conspicuously display a copy of the document referred to in subsection (1) for employees to read; and give each health and safety representative a copy of the document.	Amendment Amendment of schedule 8 to Act 29 of 1996, as inserted by section 33 of Act 74 of 2008 40, Schedule 8 to the principal Act is hereby deleted Short title and commencement 41. This Act is called the Mine Health and Safety Amendment Act and takes effect on the date to be determined by the president by proclamation in the Gazette.		
(41) Establishment of tripartite institutions	short title and commencement		

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(1) A Mine Health and Safety Council is hereby established to advise the Minister on health and safety at mines (2) A committee, ad hoc committee or subcommittee may when necessary be established, which committee may include- a) the Mining Regulation Advisory Committee. b) the Mining Occupational Health Advisory Committee; and (c) the Safety in Mines Research Advisory Committee. (3) A Mining Qualifications Authority is hereby established to advise the Minister on- a) qualifications and learning achievements in the mining industry to improve health and safety standards through proper training and education. b) standards and competency setting, assessment, examinations, quality assurance and accreditation in the mining industry; and proposals for the registration of education and training standards and qualifications in the mining industry on the National Qualifications Framework referred to in the South African Qualifications Authority Act, 1995 (Act 58 of 1995	41, This Act is called the Mine Health and safety Amendment Act and takes effect on the date to be determent by the president by proclamation in the Gazette.		
	Amendment Amendment of item 1 of schedule 6 to Act 29 of 1996 38, Item 1of schedule 6 to the principal Act is hereby amended by the substitution for sub item (1) of the following sub-item. The council and the committees of the Council, the mining Regulatory advisory committee, the mining Occupational health advisory committee and she safety and health research advisory committee are established by section 41(1) and (2) of this Act.		

REASONABLY PRACTICABLE

By selectively 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 contraventions in the absence of the fault element (*culpa* or negligence). 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).

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 *mens rea* requirement as not requiring mens rea. In *S v Arenstein* 1967 (3) SA 366 (A) at 381D–E, Van Winsen AJA held as follows:
'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.'

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 MHS Act, the CPA is not a criminal statute.

In *Pikitup (SOC) Limited v South African Municipal Workers' Union obo members and others* [2014] (Labour Appeal Court (LAC) the court 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. 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."*

It is submitted that, although reference is made to OHASA (Occupational Health & Safety Act) in the above Labour Appeal Court case, (the equivalent of the Supreme Court of Appeal), the same principle applies duties placed on employers in the MHS Act. More so since the duties imposed upon employers in various other unamended sections of the Act routinely 'temper' employer duties with reasonability and practicability. Consistency is required in legislation. Examples:

Section 5. Employer to maintain healthy and safe mine environment

(1) As far as is reasonably practicable, every employer must provide and maintain a working environment that is safe and without risk to the health of employees.

(2) As far as is reasonably practicable, every employer must -

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

(b) ensure that persons who are not employees, but who may be directly affected by the activities at the mine, are not exposed to any hazards to their health and safety.

Section 7. Employer to staff mine with due regard to health and safety

(1) As far as is reasonably practicable, every employer must -

(a) ensure that every employee complies with the requirements of this Act;

(b) institute the measures necessary to secure, maintain and enhance health and safety;

(c) provide persons appointed under subsections (2) and (4) with the means to comply with the requirements of this Act and with any instruction given by an inspector.

Section 11. Employer to assess and respond to risk. Section 11(3) Every employer must, as far as reasonably practicable, implement the measures determined necessary in terms of subsection (2) in the order in which the measures are listed in the paragraphs of that subsection.

The Court held in **Anglogold Ashanti Limited v Mbonambi & others [2016] (LC)** *that 'the starting point in the determination of any reasonable grounds for the suspension of the instructions concerned was the standard of safety prescribed by the (MHS) Act. The standard was one of reasonable practicality. In the present case, no circumstances existed on the inspected level of the mine which rendered the whole mining operation unsafe, or on which the third respondent could rely to infer that not only the relevant level but the whole mine was unsafe. Therefore, the instructions insofar as they related to a prohibition across the entire mine in respect of explosives and training were out of all proportion to the issues identified by the third respondent. Consequently, there were reasonable grounds for the Court to suspend the operation of the instructions'.*

Various other employer duties such as those placed manufacturers and suppliers, (sections 21) remain 'tempered' with 'reasonability and practicability' as defined. It is also submitted that any deliberate attempt to hold employers to a higher standard by removing 'reasonably practicable' is irrational and ultimately doomed to be overturned by the Constitutional Court which in 2021 endorsed the principle of '*Lex non cogit ad impossibilia*'. This common law principle completely aligns with various elements of the definition of 'reasonability and practicability'. **In van Zyl v RAF CC 2021)** the court stated, '**Against this backdrop, the impossibility principle flourishes**. Variations of the concept of impossibility, like *nemo tenetur ad impossibilia* (nobody must keep a commitment to do impossible things) and *impotentia excusat legem* (impossibility excuses the law), are related and frequently interlinked concepts, emanating from the underlying principles of not only justice and equity, but also science, reality, reasonableness and fairness which suffuse our legal system. The rights to human dignity and access to courts are engaged in the case of the affected persons. If the impossibility principle can be used to provide equitable relief in this instance, the prelude to section 23(1) cannot implicitly exclude this relief. This is because the impossibility principle is distinguishable from "any law"; it is, instead, right reason to which all law aspires. It lives through expressions of public policy and the principles of equity and fairness. To conclude that the preamble to section 23(1) implicitly excludes the application of the impossibility principle would be a perversion of justice. A legislative provision seeking to exclude the precepts of the impossibility principle would have to do so explicitly and constitutionally. Without an express exclusion, an interpretation that favours an implicit exclusion would conflict with the Constitution'.

Lex non cogit ad impossibilia means the law does not compel a man to do anything impossible or to do something which he cannot possibly perform. It is an umbrella 'defence' which will override any legislation which seeks to expand upon an employer's potential criminal liability. Other common law principles endorsed by the Constitutional Court and which emphasise this point are '*Nemo tenetur ad impossibilia*' (nobody must keep a commitment to do impossible things), '*Impotentia excusat legem*' (Also known as impossibility excuses the law). '*Nulla poena sine culpa*' (no punishment without fault).

DANGEROUS CONDITIONS “SAFETY STOPPAGES”

Anglogold Ashanti Limited v Mbonambi & others [2016] (LC) "Although section 58 (of the MHS Act) establishes a right of appeal against a decision made by a chief inspector (a remedy that the applicant has elected to invoke), any decision made in terms of section 54 and/or 55 clearly constitutes administrative action for the purposes of the Promotion of Administrative Justice Act (PAJA). An order or instruction is therefore subject to review under section 6 of PAJA. This is mentioned because the applicant's primary submission in the present application is that the respondents failed correctly to identify dangerous conditions at the mine and respond to them proportionally. Proportionality, of course, is an element of the right to reasonable administrative action established by section 33(1) of the Constitution. Prof Hoexter, in *Administrative Law in South Africa* (2ed) Juta & Co 2012 describes the essential elements of proportionality as balance, necessity and suitability, the latter referring

to the use of lawful and appropriate means to establish the administrator's objective. In other words, it is the notion that one ought not to use a sledgehammer to crack a nut. For present purposes, given the nature of the present application, (a disproportionate safety stoppage) it is not necessary for me to say any more about precisely how the principle of proportionality ought to be applied in the present instance. With reference to the judgment in **Bert's Bricks (Pty) Ltd and another v Inspector of Mines, North West Region and others [2012] ZAPPHC** this principle was applied in the context of a challenge to an instruction purportedly issued under section 54(1) of the MHSA. The court held that section 54(1)(a) and (b) of the MHSA meant that:

"(1) objectively a state of affairs must exist which would lead a reasonable man to believe that it may endanger the health or safety of any person at the mine;

(2) the inspector may only give an instruction which is necessary to protect the health or safety of that person."

The court concluded that there were no objective facts which would lead a reasonable person to believe that damage caused to a single trackless mobile vehicle necessitated the suspension of the operation of all trackless mobile machinery".