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GENERAL NOTICE

NOTICE 1103 OF 2013

DEPARTMENT OF MINERAL RESOURCES

MINE HEALTH AND SAFETY ACT, 1996 (ACT NO 29 OF 1996)

PUBLICATION OF AND INVITATION TO COMMENT ON THE DRAFT MINE HEALTH AND SAFETY BILL, 2013

I, **Susan Shabangu**, Minister of the Department of Mineral Resources, hereby give notice that I intend introducing the **draft Mine Health and Safety Bill, 2013**, in Parliament.

The Mining and Minerals industry and interested and affected parties are hereby invited to submit written representations on the draft Bill. The aforesaid representations must be marked for the attention of **Mr. Andre Andreas** and must be hand delivered, emailed or sent by post, within **60 working days** of publication of this notice to the following address:

70 Mentjies Street

Private Bag x59

Sunnyside

or

Arcadia

0001

0007

Email address: Andre.Andreas@dmr.gov.za

A copy of the draft bill is attached hereto.



Ms S Shabangu
Minister of Mineral Resources

REPUBLIC OF SOUTH AFRICA

MINE HEALTH AND SAFETY AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory
summary of Bill published in Government Gazette No. of) (The English text
is the official text of the Bill)*

(MINISTER OF MINERAL RESOURCES)

[B—2013]

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To amend the Mine Health and Safety Act, 1996, so as to streamline administrative processes; to strengthen enforcement provisions; to reinforce offences and penalties; to amend certain definitions; and to provide for matters connected therewith.

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

Amendment of section 2 of Act 29 of 1996, as amended by section 1 of Act 72 of 1997

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

- "(d) if the employer is a **[body corporate]** company, and employs more than 50 employees, publish and distribute the report referred to in paragraph (c), in an appropriate form, to the **[body corporate's]** company's shareholders or members."

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

2. Section 2A of the principal Act is hereby amended—

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

"(3) If the employer is a **[body corporate] company**, 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] company** designated by the board."; and

(b) by the deletion of subsection (6).

Insertion of section 2B in Act 29 of 1996

3. The following section is hereby inserted in the principal Act after section 2A:

"Appointment of Chief Executive Officer

2B. (1) The employer of every mine that is being worked, must appoint a chief executive officer, if such employer is a company.

(2) The chief executive officer must perform all the functions of the employer, including making any appointments in terms of this Act.

(3) The chief executive officer must be—

(a) a member of a board of a company, designated by the board; and

(b) responsible for the health and safety of employees and persons who are not employees but who may be directly affected by the activities at the mines.

(4) Where the employer is not a company, the owner of a 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 at the mine.

(5) The employer must inform the Chief Inspector of Mines, in writing, within seven days of the appointment of the chief executive officer, of such appointment, and such information must include—

- (a) the name of the chief executive officer;
- (b) the nature of the chief executive officer's functions;
- (c) the area of responsibility of the chief executive officer; and
- (d) the names of the mine managers over whom the chief executive officer has control."

Amendment of section 3 of Act 29 of 1996

4. Section 3 of the principal Act is hereby amended by the deletion of subsection (3).

Amendment of section 6 of 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 substitution for subsection (2) of the following subsection:

"(2) Every employer must ensure that suitable, and sufficient quantities of all the necessary personal protective equipment are available to enable every employee who is required to use that equipment to be able to [do so] use such equipment effectively for personal protection."; and

(b) by the addition of the following subsection:

"(4) For the purposes of this section "suitable" means appropriate in terms of—

(a) size and fit;

(b) type of workplace hazards; and

(c) purpose and nature of work to be undertaken."

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

6. Section 7 of the principal Act is hereby amended by the addition of the following subsection:

"(6) If the employer appoints or employs a contractor to perform any work within the boundaries of the mining area, mine or works, as the case may be, such employer remains responsible for compliance with this

Act by such contractor, its employees, any of its subcontractors and their employees."

Amendment of section 10 of the Act 29 of 1996, as amended by section 3 of Act 74 of 2008

7. 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:

"[As far as reasonably practicable, every] Every employer must—";

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

"[As far as reasonably practicable, every] Every employer must ensure that every employee is **[properly] formally trained—"**; and

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

"(4) The employer must keep a record of all formal training provided for in respect of each employee in terms of subsection (2) readily available at the mine."

Amendment of section 11 of the Act 29 of 1996, as amended by section 4 of Act 74 of 2008

8. Section 11 of the principal Act is hereby amended by the deletion of subsections (5), (5A), (5B), (6), (7) and (8).

Insertion of section 11A in Act 29 of 1996

9. The following section is hereby inserted in the principal Act after section 11:

"Investigation by employer

11A. (1) 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 with an investigation referred to in paragraph (a) within 10 days from the date of such accident, serious illness or health threatening occurrence, as the case may be;

(c) consult the health and safety committee on any investigation conducted in terms of this section; and

(d) conduct the investigation in co-operation with the health and safety representative responsible for the working place in which the investigation takes place.

(2) On completion of each investigation, the employer must prepare a report that—

(a) identifies the underlying causes of the accident, serious illness or health threatening occurrence;

(b) identifies any unsafe conditions, acts or procedures that contributed in any manner to the accident, serious illness or health threatening occurrence; and

(c) makes recommendations to prevent a similar accident, serious illness or health threatening occurrence.

(3) The employer must deliver a copy of the report referred to in subsection (2) within 30 days from the date of the accident, serious illness or health threatening occurrence being investigated to the Principal Inspector of Mines and the health and safety committee.

(4) 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 that has been investigated.

(5) An investigation in terms of subsection (1) must be completed within 30 days from start of the investigation of the accident, serious illness or health threatening occurrence, or such longer period as the Principal Inspector of Mines may permit, on request by the employer.

(6) The employer must notify the Principal Inspector of Mines of any accident or occurrence at a mine that results in—

(a) serious injury;

(b) serious 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 subsection (1).

(7) An investigation referred to in subsection (6) may be held jointly with an investigation conducted by an inspector in terms of section 60.

(8) If there is no health and safety committee at a mine, the consultations required in subsection (1)(c) must be held with—

(a) the health and safety representatives; or

(b) the employees at the mine if there is no health and safety representatives at the mine.

(9) In the event of an incident in which a person died or was seriously 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 on which the incident occurred or remove any article or substance involved in the incident: Provided that such article or substance is removed for the purpose of—

(a) preventing any further incident;

(b) removing the injured or the dead; or

(c) rescuing any person from danger."

Amendment of section 12 of the Act 29 of 1996

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

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

"The employer must **[engage the]** appoint on a part-time or full-time [services of] basis, a person qualified in occupational hygiene techniques **[to measure levels of exposure to hazards]**, to perform occupational hygiene services at the mine, including but not limited to

measurements, analysis, interpretation and reporting to the employer—

- (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 so]."**; and

(b) by the addition of the following subsection:

"(4) The employer must supply the person referred to in subsection (1) with the means to perform his or her functions."

Amendment of section 13 of the Act 29 of 1996, as amended by section 5 of Act 74 of 2008

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

- (a) by the substitution in subsection (3) (a) for the words preceding subparagraph (i) of the following words:

"[engage the] appoint on a part-time or full-time basis [services of]—";

- (b) by the addition in subsection (3)(a) of the following subparagraph:

"(ii) in so far as it is necessary, other Occupational Health Practitioners holding a qualification in occupational health recognised by the South African Nursing Council;";

- (c) by the substitution in subsection (4B) paragraphs (b) and (c) of the following paragraphs, respectively:

"(b) his or her [practice] professional registration number; and

- (c) whether the occupational medical practitioner is **[engaged]** appointed on a full-time or part-time basis [.];
- (d) by the addition in subsection (4B) of the following paragraph:
"(d) the confirmation of registration of the occupational medical practitioner's qualifications with the Health Professional Council of South Africa. "; and
- (e) by the insertion after subsection (4B) of the following subsection:
"(4C) An employer must ensure that the occupational medical practitioner issues a certificate of fitness for work in respect of an initial medical examination or periodic medical examinations conducted in terms of subsection (2)(c), as the case may be."

Amendment of section 17 of Act 26 of 1996

12. Section 17 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:
"Exit certificates and finding of unfitness to work"; and
- (b) by the addition of the following subsection:
"(5) The Occupational Medical Practitioner must, within a period of seven days of his or her decision that the employee is unfit to perform any category of work, or any finding contained in the exit certificate, inform in writing, the—

- (a) employee that he or she has been found unfit to perform work and that the employee has the right to appeal the decision or finding to the Medical Inspector within a period of 30 days of the decision or finding; and
- (b) Medical Inspector, of such a decision or finding and reasons therefor."

Amendment of section 20 of Act 26 of 1996, as amended by section 11 of Act 72 of 1997 and section 7 of Act 74 of 2008

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

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

"(2A) The Medical Inspector must, after receiving an appeal lodged under subsection (1), confirm receipt of the appeal and inform the employer of such appeal."

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

"(4) The medical practitioner referred to in subsection (3) must report to the Medical Inspector, who must then consider the appeal and, within 60 days after the lodging of the appeal—

(a) confirm, set aside or vary the decision or finding of the occupational medical practitioner; or

(b) substitute any other decision or finding for that decision or finding,

and notify the employer and the employee who has lodged the appeal, of such decision or finding."; and

- (c) by the substitution for subsection (7) of the following subsection:

"An employee lodging an appeal under subsection (1) may not be dismissed on **[any]** the grounds contemplated in this section relating to unfitness to perform work, pending the outcome of the appeal."

Amendment of section 41 of Act 29 of 1996, as amended by section 17 of Act 72 of 1997 and section 9 of Act 74 of 2008

14. Section 41 of the principal Act is hereby amended by the substitution in subsection (2) of the following subsection:

"(2) A Committee, ad hoc committee or subcommittee may when necessary be established, which committee may include the—

- (a) **[the]** Mining Regulation Advisory Committee;
- (b) **[the]** Mining Occupational Health Advisory Committee; and
- (c) **[the]** Safety and Health in Mines Research Advisory Committee."

Amendment of section 42 of Act 29 of 1996, as amended by section 18 of Act 72 of 1997 and section 10 of Act 74 of 2008

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

"(1) The Council consists of:

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

- (c) **[four members]** five persons representing departments of the State;
and
- (d) the Chief Inspector of Mines, who must chair the Council."

Amendment of section 43 of Act 29 of 1996, as amended by section 19 of Act 72 of 1997 and section 11 of Act 74 of 2008

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

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

"(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]**"; and

- (b) by the insertion, after paragraph (eA) of the following paragraphs:

"(eB) establish and control an administrative fund for the payment of fines imposed in terms of section 55B;

(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;

(eD) in its annual report, reflect the financial affairs of the fund; and"

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

17. Section 47 of the principal Act is hereby amended—

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

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

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

(b) by the addition of the following subsections:

"(3) The Minister must appoint an officer with
prescribed qualifications and appropriate experience as a Principal
Inspector of Mines, for each region contemplated in subsection (2).

(4) The Minister must—

(a) appoint an officer with prescribed qualifications and appropriate
experience as a Medical Inspector; and

(b) appoint officers with prescribed qualifications and appropriate
experience as inspectors.

(5) The Minister must furnish a prescribed certificate
to the Medical Inspector and to each inspector, appointed in terms of
subsection 4, respectively.

(6) To further the objectives of this Act, the Minister
may enter into written agreements with competent persons and
authorise such persons to perform any or all the functions of an
inspector.

(7) The Minister must furnish a prescribed certificate
to each person authorised in terms of subsection (6)."

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

18. Section 49 of the principal Act is hereby amended—
- (a) by the deletion in subsection (1) of paragraphs (b), (c), (l), (m) and (n); and
 - (b) by the deletion of subsections (2), (4) and (5).

Repeal of sections 49A and 49B of Act 29 of 1996

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

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

20. Section 54 of the principal Act is hereby amended—
- (a) by the substitution for subsections (5) and (6) of the following subsections, respectively:

"(5) Any instruction issued under subsection (1)(a) must either be confirmed, varied or set aside by the **[Chief Inspector of Mines]** Principal Inspector of Mines as soon as practicable.

(6) Any instruction issued under subsection (1)(a) is effective from the time fixed by the inspector and remains in force until set aside by the **[Chief Inspector of Mines]** Principal Inspector of Mines or until the inspector's instructions have been complied with."

Insertion of section 55C in Act 29 of 1996

21. The following section is hereby inserted in the principal Act after section 55B:

"Payment of fines

55C. (1) Money received by the Principal Inspector of Mines in 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)."

Amendment of section 57 of Act 29 of 1996, as amended by sections 27 and 28 of Act 72 of 1997 and sections 21 and 22 of Act 74 of 2008

22. 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 or a decision of the Principal Inspector of Mines, except a decision contemplated in section 55B, may appeal against that decision to the Chief Inspector of Mines."; and

(b) by the addition of the following subsection:

"(4) 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."

Amendment of section 59 of Act 29 of 1996, as amended by section 29 of Act 72 of 1997

23. Section 59 of the principal Act is hereby amended—

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

"(2) Despite subsection (1)—

(a) an appeal in terms of section **[57A or]** 58 against a decision to impose the 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 of the Chief Inspector of Mines, pending the **[determination of the matter]** outcome of the appeal, if there are any reasonable grounds for doing so."

Amendment of section 75 of Act 29 of 1996

24. 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 may, 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.] ."; and

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

"(3) The Minister **[, after consulting the Council,] may amend or withdraw a notice under subsection (1) at any time."**

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

25. Section 76 of the principal Act is hereby amended—

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

"(1) The Minister may, 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.]"; and**
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"In connection with any health hazard, the Minister may, **[after consulting Council,]** by notice in the *Gazette* **[, may]**—".

Amendment of section 78 of Act 29 of 1996

26. Section 78 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The Minister **[, after consulting the Council]** may cancel an exemption granted under subsection (1) at any time."

Amendment of section 80 of Act 29 of 1996

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

"(1) **[After consulting the Council, the]** The Minister may, by notice in the *Gazette*, **[may]** declare that any provision of the Occupational Health and Safety Act, 1993 (Act No. 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 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

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

"(5) (a) Any person, other than an employer who is a company, 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 imprisonment for a period not exceeding the period mentioned in Column 2 of that Table opposite the number of that section.

"(b) Any employer who is a company convicted of an offence in terms of any section of this Act may be sentenced to a fine not exceeding 10% of the company's annual turnover for the period during which the company has failed to comply with the relevant provision, or to imprisonment not exceeding 10 years."

Amendment of section 96 of Act 29 of 1996, as amended by section 39 of Act 72 of 1997

29. Section 96 of the principal Act is hereby amended—

(a) by the substitution for subsections (1), (2), (3) and (4) of the following subsections, respectively:

"(1) The Minister may delegate any power conferred upon the Minister by or under this Act, except the power to make regulations, to the Director-General or the Chief Inspector of Mines.

(2) The Director-General or the Chief Inspector of Mines may delegate any power or assign the performance of any duty conferred or imposed upon the Director-General or 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 Director-General or 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, Director-General or the 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, Director-General or the Chief Inspector of Mines, as the case may be."

(b) by the addition of the following subsection:

"(5) The Minister, Director-General or Chief Inspector of Mines may at any time—

(a) withdraw a delegation or assignment made in terms of subsection (1) or (2), as the case may be; and

(b) withdraw or amend any decision made by a person exercising a power or performing a duty delegated or assigned in terms of subsection (1) or (2), as the case may be."

Amendment of section 97 of Act 29 of 1996, as amended by section 40 of Act 72 of 1997 and section 29 of Act 31 of 2003

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

(a) by the substitution for subsections (1), (2), (5) and (6) of the following subsections, respectively:

"(1) The Minister may, **[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 may, **[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.

(5) The Minister may, **[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 may, **[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 No. 78 of 1973), except in relation to the determination or payment of compensation."

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

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

(a) by the insertion after the definition of "biological monitoring" of the following definition:

" **'board'** means a board of directors of a company as defined in the Companies Act, 2008 (Act No. 71 of 2008);"

(b) by the insertion after the definition "Commission" of the following definition:

" **'company'** means a company as defined in the Companies Act, 2008 (Act No. 71 of 2008);"

- (c) by the substitution for the definition of "Department" of the following definition:
" **'Department'** means the Department of **[Minerals and Energy Mineral Resources]**;"
- (d) by the insertion after the definition of "Department" of the following definition:
" **'Director-General'** means the **Director-General of the Department**;"
- (e) by the substitution for the definition of "employee" of the following definition:
" **'employee'** means any person who is employed **[or]** by the employer or owner of a mine and who is working at a mine;"
- (f) by the insertion after the definition "engine" of the following definition:
" **'formal training'** means any relevant training contemplated in section 10(2), which must be properly structured and assessable;"
- (g) by the substitution for the definition of "inspector" of the following definition:
" **'inspector'** means an officer appointed in terms of section **[49(1)(c),] 47(4)(b) [a Medical Inspector and any Principal Inspector of Mines]**;"
- (h) by the substitution for the definition of "Medical Inspector" of the following definition:
" **'Medical Inspector'** means **[a Medical Inspector]** an officer appointed in terms of section [49(1)(b)] 47(4)(a);"
- (i) by the substitution for the definition of "mineral" of the following definition:
" **'mineral'** means any substance, **[excluding water but including sand, stone, rock, gravel and clay, as well as soil, other than top soil—**
(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] whether in solid, liquid or gaseous form, occurring naturally in or on the earth or in or under water and which was formed by or subjected to a geological process, and includes sand, stone, rock, gravel, clay, soil and any mineral occurring in residue stockpiles or in residue deposits, but excludes—**

(a) water, other than water taken from land or sea for the extraction of any mineral from such water;

(b) petroleum; or

(c) peat;"

(j) by the substitution for the definition of "mining area" of the following definition:

" **'mining area'** in relation to—

(a) a mining right or a mining permit means the area for which that right or permit is granted;

(b) any environmental, health, social, and labour matter and any latent or other impact thereto, includes—

(i) any adjacent or non adjacent surface of land on which the extraction of any mineral and petroleum has not been authorized in terms of Minerals and Petroleum Resources Development Act, but upon which related or incidental operations are being undertaken and including—

- (aa) any area connected to such an area by means of any road, railway line, power line, pipeline cable way or conveyor belt; and
- (bb) any surface of land on which such road, railway line, power line, pipeline cable way or conveyor belt is located; and
- (ii) all buildings, structures, machinery mine dumps or objects situated on or in that area or land in question;";
- (k) by the substitution for the definition of "Minister" of the following definition:
- " **'Minister'** means the Minister of **[Minerals and Energy]** Mineral Resources;"
- (l) by the insertion after the definition "occupational health" of the following definition:
- " **'Occupational Health Practitioner'** means an Occupational Medical Practitioner or a person who holds a qualification in occupational health recognised by the South African Nursing Council;"
- (m) by the substitution for the definition of "owner" of the following definition:
- " **'owner'**—
- (a) in relation to a mine, means—
- (i) the holder of a prospecting right, mining right or mining permit issued under the Mineral and Petroleum Resources Development Act;
- (ii) if a prospecting right, mining right or mining permit does not exist, the person for whom the activities contemplated

in paragraph (b) of the definition of "mine" are

undertaken; or

(b) in relation to works, means the person who is undertaking the activities contemplated in the definition of "works";";

(n) by the substitution for the definition of "Principal Inspector of Mines" of the following definition:

" **'Principal Inspector of Mines'** means an officer appointed by the **[Chief Inspector of Mines] Minister** to be in charge of health and safety in any region established in terms of section 47(2);";

(o) by the deletion of the definition of "Public Finance Management Act"; and

(p) 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);".

Repeal of Section 104 of amendment Act 29 of 1996

32. Section 104 of the principal Act is hereby repealed.

Amendment of Schedule 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

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

Amendment of item 1 of Schedule 6 to Act 29 of 1996

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

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

Amendment of item 5 of Schedule 6 to Act 29 of 1996

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

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

"The Safety and Health in Mines Research Advisory Committee must advise the Council on—"; and

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

"The Safety and Health in Mines Research Advisory Committee must prepare the programme for relevant health and safety research for the Council to consider. The programme must include—".

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

36. Schedule 8 to the principal Act is hereby amended by the substitution in Column 1 for line 22 of the following line:

"**[87,]** 88, 89, 90 (b)(ii) (c)(i)".

Short title and commencement

37. This Act is called the Mine Health and Safety Amendment Act, 2013 and takes effect on the date to be determined by the President by proclamation in the *Gazette*.

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MEMORANDUM ON OBJECTS OF MINE HEALTH AND SAFETY AMENDMENT BILL, 2013**1. BACKGROUND**

1.1 The setting, monitoring and enforcement of health and safety standards within the South African mining industry is regulated under the Mine Health and Safety Act 1996, (Act No. 29 of 1996) (the Act). The Department of Mineral Resources (Department) embarked on a process of reviewing and proposing amendments to the Act. The Act promotes the objective of protecting the health and safety of persons at mines. The Act came into operation on 15 January 1997. Over the years, with the developments in the industry, some challenges and shortcomings relating to the enforcement of the Act have been identified.

1.2 The Act is premised on the principle that the responsibility of the health and safety lies with the employers or owners of the mines, hence the outcome based approach, which focuses on outputs (results) rather than rule driven and prescriptive approach of the previous regulatory system under the now repealed Minerals Act, 1991.

1.3 The enforcement and ordering of compliance within the Act forms the core business of the Mine Health and Safety Inspectorate, a core branch within the Department. In enforcing the Act, the Chief Inspector of Mines and various other inspectors have wide statutory powers. Inspectors are empowered to enter any mine at any time, conduct inspections for the purpose of monitoring or enforcing

compliance. If dissatisfied with the conditions, they may order compliance and request that conditions be improved. It is further within their powers to recommend prosecution when an offence has been committed.

2. OBJECTS OF BILL

2.1 The Mine Health and Safety Amendment Bill (Bill) seeks to amend the Act so as to review the enforcement provisions, simplify the fine system and strengthen offences and penalties. It also seeks to substitute, add certain definitions and expressions to remove ambiguities, effect certain amendments necessary to ensure consistency with other laws, particularly the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).

2.2 The Bill further seeks to harmonise the administrative processes in the Act with sound administrative practices taking into consideration the objects of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000).

2.3 Occupational health and safety policy, prevention, research and enforcement arrangements within the mining industry in South Africa are regulated under the Act. The Act is administered by the Department through the Mine Health and Safety Inspectorate.

2.4 The Bill is of high priority to the Department and Government in general especially in light of the challenges relating to health and safety and the urgent need to improve health and safety standards in order to curb the high number of fatalities

that the industry is currently experiencing. The amendment is essential to ensure the effective implementation, enforcement and improvement of health and safety standards at mines, thereby reducing fatality rates and occupational diseases.

2.5 The purpose of the Bill is therefore to address not only the provisions relating to offences and penalties but to align the Act to other pieces of legislation promulgated post 1996, that impact on the implementation of the Act such as the Mineral and Petroleum Resources Development Act.

3. CLAUSE BY CLAUSE ANALYSIS

3.1 Clauses 1 and 2

These clauses amend sections 2 and 2A of the Act in order to substitute the word "body corporate" with "company" to align the Act with the Companies Act, 2008 (Act No. 71 of 2008).

3.2 Clause 3

Clause 3 inserts a new section 2B to provide for the appointment of a chief executive officer.

3.3 Clause 4

Clause 4 amends section 3 in order to repeal subsection (3).

3.4 Clause 5

Clause 5 amends section 6 of the Act by the insertion of the word "suitable" to ensure that the employers provide a variety of personal protection equipment for employees to accommodate women. It also provides for the definition of "suitable".

3.5 Clause 6

Clause 6 inserts a new subsection (6) in section 7 of the Act, to make the employer who appoints a contractor ultimately responsible for compliance with the Act.

3.6 Clause 7

Clause 7 amends section 10 of the Act by the deletion of the word "reasonably practicable" in order to place an obligation on employers to prioritise the provision of health and safety training at the mines. This is further amended by insertion of the word "formal training".

3.7 Clause 8

Clause 8 amends section 11 of the Act by deleting subsections (5), (5A), (5B), (6), (7) and (8).

3.8 Clause 9

Clause 9 inserts section 11A in order to provide for an employer to conduct investigations, and make reports, into accidents, serious illness and health threatening occurrences at a mine.

3.9 Clause 10

Clause 10 amends section 12 in order to effect certain technical changes and to add subsection (4).

3.10 Clause 11

Clause 11 amends section 13 in order to effect certain technical changes and to allow an Occupational Health Practitioner to conduct medical surveillance in conjunction with an Occupational Medical Practitioner and further substitute the requirement of a practice number with a professional registration number for uniformity.

3.11 Clause 12

This clause amends section 17 and provides that the Occupational Medical Practitioner must inform an employee in writing of any finding that the employee is unfit to work and also inform the employee of the right to appeal.

3.12 Clause 13

Clause 13 amends section 20 of the Act to compel the Medical Inspector to inform an employer of an appeal lodged by an employee and also inserts a period within which the Medical Inspector may consider the appeal. This amendment further puts timeframes on the medical appeal process in line with the Labour Relations Act, 1995 (Act No. 66 of 1995).

3.13 Clause 14

The clause provides for amendments to effect the new name "Safety and Health in Mines Research Advisory Committee".

3.14 Clause 15

Clause 14 amends section 42 in order to effect certain technical changes.

3.15 Clause 16

Clause 15 amends section 43 of the Act in order to insert certain paragraphs relating to the establishment and control of an administrative fund by the Council.

3.16 Clause 17

Clause 17 provides for the appointment of a Principal Inspector of Mines, Medical Inspector and inspectors, by the Minister, and also the appointment of other competent persons, to further the objectives of the Act.

3.17 Clause 18

Clause 18 amends section 49 of the Act in order to delete certain provisions.

3.18 Clause 19

Clause 19 repeals sections 49A and 49B.

3.19 Clause 20

Clause 20 amends section 54 of the Act in order to effect certain technical changes.

3.20 Clause 21

Clause 21 inserts section 55C in the Act in order to provide for the payment of moneys received in fines, into the administrative fund contemplated in section 43 (eB).

3.21 Clause 22

Clause 22 amends section 57 of the Act in order to provide clarity in respect of appeal process against administrative decision.

3.22 Clause 23

Clause 23 amends section 59 of the Act in order to effect certain technical changes.

3.23 Clauses 24, 25, 26, and 27

These clauses amend sections 75, 76, 78 and 80 of the Act in order to remove an obligation on the Minister to consult the Council on certain matters.

3.24 Clause 28

Clause 28 amends section 92 of the Act to allow for the strengthening of the penalty provisions in respect of a person who is convicted of an offence mentioned in Schedule 8 to the Act. Clause 28 also provides for the penalty that may be imposed to an employer who is a company, who is convicted of an offence in terms of any section of the Act.

3.25 Clause 29

This clause adds subsection (5) which provides for the withdrawal of a delegation or assignment by the Minister, Director-General and Chief Inspector of Mines made, in terms of this section.

3.26 Clause 30

Clause 30 amends section 97 of the Act in order to remove an obligation on the Minister to consult the Council when making additions or changes in the schedules.

3.27 Clause 31

Clause 31 amends section 102 of the Act in order to insert or substitute certain definitions to remove ambiguities and provide regulatory certainty.

3.28 Clause 32

Clause 32 repeals section 104 of the Act.

3.29 Clauses 33 and 34

Clauses 33 and 34 amend items 1 and 5 of schedule 6 to the Act in order to effect certain technical changes.

3.30 Clause 35

The clause provides for amendments to effect the new name "Safety and Health in Mines Research Advisory Committee".

3.31 Clause 36

Clause 36 amends Schedule 8 in respect of sections under which a person may be convicted.

4. DEPARTMENTS OR BODIES CONSULTED

The amendment has been canvassed with all the stakeholders within the Department and were fully supported. The stakeholders within the mining and minerals sector were consulted with regard to the proposed amendments of the Act.

5. FINANCIAL IMPLICATIONS FOR STATE

The proposals contained in the Bill does have financial implication for the State.

6. PARLIAMENTARY PROCEDURE

6.1 The State Law Advisers and the Department are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or section 76 of the Constitution applies.

6.2 Furthermore, the State Law Advisers are of the opinion that it is not necessary to refer this Draft Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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