
GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF LABOUR

NO. 1133

18 OCTOBER 2018

**PUBLICATION OF THE COMPENSATION FOR OCCUPATIONAL INJURIES AND
DISEASES AMENDMENT BILL, 2018**

(herein referred as COIDA Amendment Bill, 2018)

FOR PUBLIC COMMENT

I, **Mildred Nelisiwe Oliphant**, Minister of Labour, hereby publish the proposed amendments in the Compensation for Occupational Injuries and Diseases, 2018 for public comment.

Interested and affected parties are hereby invited to submit written representations on the proposed amendments in the Compensation for Occupational Injuries and Diseases Amendment Bill, 2018. The aforesaid representations must be marked for the attention of **Mr William Mogashoa** and hand delivered, sent by registered post or emailed, within 60 days of publication of this notice to the following addresses:

Compensation Fund

OR

P O Box 955

167 Thabo Sehume Street

Pretoria

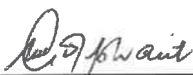
Pretoria

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Email addresses: William.mogashoa@labour.gov.za OR Harry.maphologela@labour.gov.za

A copy of the Compensation for Occupational Injuries and Diseases Amendment Bill, 2018 is attached hereto.



**MILDRED OLIPHANT, MP
MINISTER OF LABOUR**

DATE: 28/09/2018

REPUBLIC OF SOUTH AFRICA

COMPENSATION FOR OCCUPATIONAL INJURIES AND
DISEASES AMENDMENT BILL

(MINISTER OF LABOUR)

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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GENERAL NOTE

- (a) by the substitution for the word "commissioner", wherever it occurs in the Act, of the word "Commissioner";
- (b) by the substitution for the words "compensation fund", wherever it occurs in the Act, of the words "Compensation Fund";
- (c) by the substitution for the word "Director-General" wherever it occurs of the word "Commissioner", except where it occurs in the definition of "Director-General" in section 1 and where it occurs in section 38 (1), section 39 (1), (3) and (12), section 41, section 43, section 44, paragraph (b) of the proviso to section 50, paragraph (b) of the proviso to section 55, section 56 (1) and (3), paragraph (b) of the proviso to section 57 (1), section 64, section 65 (4), section 68, paragraph (b) of the proviso to section 69, section 74, section 80 (1), (2), (3) and (5), section 82(1) and (2), section 86, section 87 (4) and section 89 (3);

ACT

To amend the Compensation for Occupational Injuries and Diseases Act, 130 of 1993 so as to substitute, insert, delete and repeal certain sections and definitions; to provide coverage for domestic employees, to provide for rehabilitation, re-integration and return to work of occupationally injured and diseased employees; to regulate the use of health care services; to provide for the reopening of claims; to provide for criminal and administrative penalties; to regulate compliance and enforcement, to provide for no fault based compensation system and to provide for matters connected therewith.

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

Compensation for Occupational Injuries and Diseases Amendment Bill

CHAPTER 1

Amendment of section 1

1. Definitions

1. Section 1 of the Principal Act is hereby amended-

Section 1 of the Compensation for Occupational Injuries and Diseases Act,

- (a) by the substitution for the definition of "accident" of the following definition:
" 'accident' means an [accident] incident or occurrence arising out of and in the course of an employee's employment and resulting in a personal injury, illness, disease or the death of the employee;";
- (b) by the substitution for the definition of "actuary" of the following definition:
" '**actuary**' means any Fellow of an institute, faculty, society or chapter of actuaries approved by the [**Minister**] Actuarial Society of South Africa;";
- (c) by the substitution for the word "airman" of the word "air personnel" of the following definition:
"**['airman'] 'air personnel'** means an employee employed in any capacity in an aircraft; ";
- (d) by the substitution for the definition of "assessment" of the following definition:
" '**assessment**' means an assessment made in terms of section 83 or an assessment of disablement in terms of sections 47 and 49, or assessment of an employee in relation to rehabilitation in terms of section 70A of this Act, depending on the context;";
- (e) by the deletion of the definition "chiropractor"
- (f) by the substitution for the definition of "compensation" of the following definition:
" '**compensation**' means compensation for employees and their dependents in terms of this Act and includes medical[aid] costs or, constant attendance care allowance and funeral costs;";
- (g) by the substitution for the definition of "dependent" of the following definition:
"**dependant of an employee**' means—
(i)(a) a widow or widower who at the time of the employee's death was married to the employee according to civil law, civil union, customary law, life partner and any other marriages recognised in terms of any other law;

(ii)(b) [a widow or widower who at the time of the employee's death was a party to a marriage to the employee according to indigenous law and custom, if neither the husband nor the wife was a party to a subsisting civil marriage;]

(iii)(c) if there is no widow or widower referred to in paragraph (a) **[or (b)]**, a person with whom the employee was at the time of the employee's death living as husband and wife;

(iv)(d) a child of the employee who is under the age of 18 years or of the [employee or of his or her] spouse, and includes a posthumous child, step-child, an adopted child and a child born out of wedlock;

(v)(e) a child over the age of 18 years but below the age of 25 years, of the employee or **[of his or her] the spouse**, and includes a [parent or any person who in the opinion of the Director-General was acting in the place of a parent, a brother, a sister, a half-brother or half-sister, a grandparent or a grandchild of] posthumous child, step-child, an adopted child and a child born out of wedlock, who is a learner or who is wholly or partly financially dependent on the employee[.]; and

(vi)(f) a child who is 25 years old, a parent, a brother, a sister, a half-brother or half-sister, a grandparent, a grandchild or any other person who was in the opinion of the Commissioner at the time of the employee's death wholly or partly financially dependent on the employee; provided there is no widow or widower as referred to in paragraph (a) or a person as referred to in paragraphs (c) and (e) or a child as referred to in paragraph (d), [and who was in the opinion of the Director-General at the time of the employee's death wholly or partly financially dependent upon the employee;]";

(h) by the insertion after the definition of "disablement" of the following definition:

" 'disability' means for purposes of rehabilitation in terms of this Act, a permanent, long-term or recurring physical or mental disability which substantially limits the prospects of a person to obtain by virtue of any service, employment or profession, the means needed to enable that person to provide for maintenance;"

(i) by the substitution in the definition of "employee" for paragraphs (b) to (d) of the following paragraphs respectively:

"(b) a director or member of [a body corporate] legal person who has entered into a contract of [service] employment or of apprenticeship or learnership with the [body corporate], legal person in so far as he acts within the scope of employment in terms of such contract or a person in receipt of or entitled to receive benefits in terms of this Act, irrespective of whether he or she is still employed;

(c) a person provided by a **[labour broker] temporary employment services** against payment to a client for the rendering of a service or the

performance of work, and for which service or work such person is paid by the **[labour broker] temporary employment services**;

- (d) (i) a person, including a person in the employ of the State, performing Military service or undergoing training referred to in the Defence Act, **[1957] 2002**, (Act No. **[44] 42** of **[1957] 2002**), and who is not a member of the Permanent Force of the South African Defence Force;
- (ii) a member of the Permanent Force of the South African Defence Force while on 'service in defence of the Republic' as defined in section 1 of the Defence Act, **[1957] 2002**;
- (iii) a member of the South African Police Force while employed in terms of section 7 of the Police Act, 1958 (Act No. 7 of 1958), on 'service in defence of the Republic' as defined in section 1 of the Defence Act, 1957; and
- (iv) a person who contracts for the carrying out of work and himself engages other persons to perform such work;

[(v) a domestic employee employed as such in a private household;]";

by the substitution for the definition of "employer" of the following definition:

- (j) " **'employer'** means any person **[or entity]**, including the State, who employs an employee, and includes—
- (a) any person controlling the business of an employer;
- (b) if the services of an employee are lent or let or temporarily made available to some other person by the employer, such employer for such period as the employee works for that other person;
- (c) a **[labour broker] temporary employment services** who against payment provides a person to a client for the rendering of a service or the performance of work, and for which service or work such person is paid by the **[labour broker] temporary employment services**";
- (k) by the substitution for the definition of "employer individually liable" of the following definition:
" **'employer individually liable'** means an employer who in terms of section 84(1)(a) and (b) is exempt from paying assessments to the compensation fund";
- (l) by the substitution for the definition of "employers' organization" of the following definition:
" **'employers [organization] organisation'** means an employers' **[organization] organisation** as defined in section 213 [section 1(11) of] of

the Labour Relations Act, [1956] 1995 (Act No. [28 of 1956] 66 of 1995);

- (m) by the substitution for the definition of "financial year" of the following definition:
" **'financial year'** means the period between the first day of [March] April in any year and the last day of [February] March in the following year, both dates included";
- (n) by the insertion after the definition of "financial year" of the following definitions:
" **'healthcare Provider Organisation'** means an organisation that provides health care services";
- (o) by the insertion after the definition of "healthcare provider organisation" of the following definitions:
" **'healthcare provider'** means a healthcare provider as defined in the National Health Act (Act No. 61 of 2003);
- (p) by the insertion after the definition of "healthcare provider " of the following definitions:
'licensee' means a legal person to whom a license has been issued in terms of section 30 of this Act"
- (q) by the deletion of the definition of "mandator";
- (r) by the insertion after the definition of "Minister" of the following definition:
" **'monthly pension'** means where it appears in the relevant items in Schedule 4, a pension payable monthly during the lifetime of the employee and which expires at the end of the month in which the employee dies or compensation payable to dependants when an employee dies as a result of occupational injury or disease or compensation for occupational disease or injury resulting in permanent disablement of more than 30 per cent";
- (s) by the substitution for the definition of "occupational disease" of the following definition:
" **'occupational disease'** means any disease contemplated in section 65(1)(a) or (b) and include post-traumatic stress disorder";
- (t) by the deletion of the definition of person under disability;
- (u) by the substitution for the word "seaman" of the word "sea personnel" of the following definition:
" **'[seaman] 'sea personnel'** means an employee employed in any capacity on board a ship by the owner or person in command of the ship;
- (v) by the deletion of the definition of "serious and wilful misconduct"; and

- (w) by the insertion after the definition of "regulation" of the following definitions:
"rehabilitation" means measures, services and facilities, also in the form of clinical, vocational and social rehabilitation provided for in chapter VIIA of the Act, provided with a view to the reintegration of employees exposed to an occupational injury or disease back into work and to enable them to attain and maintain where reasonable and practicable, maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life;
- (x) by the insertion after the definition of "rehabilitation" of the following definitions:
'remuneration' means allowances, subsidies and other allowances as determined by the Minister;
- (y) by the insertion after "South African ship" of the following definition
"sub-contractor" means a person referred to as a sub-contractor in section 89";
- (z) by the substitution for the definition of "trade union" of the following definition:
" 'trade union' means a trade union as defined in section [1(20)] 213 of the Labour Relations Act, [1956 (Act No. 28 of 1956)] 1995 (Act No. 66 of 1995), and includes an employees' organisation [recognised by law and functioning;]";

Chapter II

Amendment of chapter II of Act 130 of 1993

Chapter II of the principal Act is hereby amended –

Composition of Board:

Amendment of Section 11

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

- (a) by the substitution for subsection 1 of paragraphs (a) to (h) of the following paragraphs respectively:

- “(a) **the Director General or a n officer contemplated in section 2 (1)(a) or (b) designated by him or her, who shall act as chairperson;**
- (b) **two persons appointed by the Minister, one of whom shall be appointed after consultation with the Minister of Health;**
- (c) **the Chief Inspector of Occupational Health and Safety or his or her nominee;**

- (d) **one person as a member and one person as an alternate member appointed by the Minister from a list of the names of not more than three persons nominated –in order of preference by The Rand Mutual Assurance Company Limited;**
- (e) **one person as a member and one person as an alternate member appointed by the Minister from a list of the names of not more than three persons nominated in order of preference by the Federated Employers' Mutual Assurance Company Limited;**
- (f) **two persons as members and up to two persons as alternate members appointed by the Minister from a list of names of not more than six persons nominated in order preference by the South African Medical and Dental Council;**
- (g) **Three persons as members and up to three person as alternate members appointed by the Minister to represent the interests for all employers from a list of names of not more than ten persons ominated in order of preference by Employers' Organisations;**
- (h) **five persons as members and up to five persons as alternate members appointed by the Minister to represent the interest of all employees from a list of names of not more than sixteen persons nominated in order of preference by the employee's organisations.]**

“(1) The Board shall be appointed by the Minister as follows:

- (a) An independent chairperson who has no vote;
- (b) Fifteen voting members of which-;

- (i) Five members and two alternate members nominated by NEDLAC to represent organised labour;
- (ii) Five members and two alternate members nominated by NEDLAC to represent business;
- (iii) Five members and two alternate members appointed by the Minister to represent the interests of the state;.

(b) by the addition of subsections (4) and (5):

- (4) If a member of the board vacates office before expiry of his or her period of office, the Minister must fill the vacancy for the unexpired portion of that period;

- (5) The Minister may, on recommendation of the Board, appoint additional Board members with relevant qualifications, skills and expertise for efficient governance of the Fund."

Amendment of Section 12: Functions of Board

3. Section 12 of the principal Act is hereby amended-

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

"(2) The Board may at the request of the **[Director-General]** Commissioner advise him **[regarding]** or her on the performance of **[a particular]** any aspect of **[his]** the Commissioner's functions in terms of this Act."

the addition of subsection 3:

(3) The board must within 3 months after the appointment of its members, prepare and adopt a board charter".

Amendment of Section 13

4. Section 13 of the principal Act is hereby amended –

by the substitution for subsection (1)(2) and (3) of the following subsections

"Term of office [and remuneration of members] of Board

13. (1) The members of the Board appointed by the Minister shall be appointed for a period not exceeding four years [and on such conditions as the Minister may determine, but the Minister may at any time terminate the appointment of any member who—

(a) has been guilty of misconduct or neglect of duty; or

(b) is not able to perform his functions in terms of this Act properly.

(2) The Minister may—

(a) at the request of a mutual association referred to in section 11(1)(d) or (e) terminate the appointment of a member representing such association; and

(b) terminate the appointment of a member referred to in section 11 (1)(g) or (h) if in his opinion such member no longer represents the interests on the ground of which he was appointed.

(3) A member of the Board shall be paid the prescribed remuneration and travelling and subsistence allowances out of the compensation fund].

b) by the insertion of subsections (2), (3) and (4)

(2) A member of the Board shall not serve for more than two terms.

(3) When a member of the Board vacates office for any reason, the Minister shall fill the vacancy in accordance with subsections (1) for the unexpired portion of that period.

(4) Members of the Board shall be paid the prescribed remuneration and travelling and subsistence allowance out of the finances of the Compensation Fund."

Insertion of Section 13A, B and C

The following sections are hereby inserted in the principal Act after section 13:

"Secretariat of Board

13A. The Commissioner shall provide after consultation with the Board the necessary resources and secretariat to enable the Board to fulfil its functions.

13B A person may not be appointed as or remain a member of the Board, as the case may be, if that person—

- (a) is an unrehabilitated insolvent or becomes insolvent and the insolvency results in the sequestration of that person's estate;
- (b) has been declared by a competent court to be mentally ill;
- (c) has been convicted, in the Republic or elsewhere, of theft, fraud, forgery, perjury or any other offence involving dishonesty;
- (d) has been convicted of any other offence, whether in the Republic or elsewhere, committed after the Constitution of the Republic of South Africa, 1996, took effect, and sentenced to imprisonment without the option of a fine;
- (e) has been, or is, removed from an office of trust on account of misconduct in respect of fraud or misappropriation of money;
- (f) is otherwise disqualified from serving as a member of a board in terms of the Companies Act, 2008 (Act No. 71 of 2008); or

(g) has or acquires an interest in a business or enterprise which may conflict or interfere with the proper performance of the functions of the Board.

Resignation and removal from office

13C. (1) A member of the Board may resign by giving the Minister—

- (a) one month's prior written notice; or
- (b) less than one month's written notice, with the approval of the Minister.

(2) The Minister may remove a member from the Board for any of the following reasons—

- (a) for serious misconduct;
- (b) for permanent incapacity;
- (c) for being absent from three consecutive meetings of the Board without prior permission of the Board unless just cause is shown by the member;
or
- (d) for engaging in any activity that has the potential to undermine the functions of the Board.

(3) The Minister shall prescribe the procedure for the removal of board members."

Amendment of Section 14

5. Section 14 of the Principal Act is hereby repealed

Amendment of Section 16

6. Section 16 of the principal Act is hereby amended-

(a) by the addition of the following paragraphs in subsection (1):

- "(i) rehabilitation in terms of this Act and life enhancement assistance to persons who have work-related injuries and diseases; and
- (j) the prescribed remuneration of the Board members, Commissioner and staff of the Compensation Fund."

Chapter III

Amendment of chapter III of Act 130 of 1993

Chapter III of the principal Act is hereby amended –

Amendment of Section 17

7. Section 17 of the principal Act is hereby amended-

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

"(1) The assets and liabilities of the **[compensation fund]** Compensation Fund shall from time to time, as the **[Director-General]** Commissioner may consider necessary, but in any event at intervals of not more than three years, be valued by an actuary appointed by the **[Minister]** Commissioner to determine the sufficiency of the **[fund]** Compensation Fund."

Amendment of Section 18

8. Section 18 of the principal Act is hereby amended-

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

"(2) The **[Director-General]** Commissioner may transfer any part of the **[moneys]** monies in the **[compensation fund]** Compensation Fund and the reserve fund to the **[Public Debt Commissioners]** Public Investment Corporation for investment."

Amendment of Section 20

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

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

"(1) The **[Director-General]** Commissioner shall keep such accounts, including an account with a bank contemplated in the Banks Act, 1990 (Act No. 94 of 1990), and records as are necessary for the exercise of proper control over the **[compensation fund]** Compensation Fund and the reserve fund, and shall prepare **[yearly balance sheets]** annual financial statements made up to the last day of the financial year, showing in all necessary detail the assets and liabilities and the revenue and expenditure of the funds;" and

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

"(3) The **[Director-General]** Commissioner shall[, as soon as possible after the completion of the balance sheets referred to in subsection (1)] submit [a

copy thereof and a copy of the report referred to in section 4 (1)(c)] to the Minister[, who must table such copies in Parliament within 30 days after receipt thereof, if Parliament is in ordinary session or, if Parliament is not in ordinary session, within 30 days of the commencement of its next ensuing ordinary session] the annual financial statement together with the annual report and any other relevant documentation as provided for in section 55 of the Public Finance Management Act, 1999 (Act No. 1 of 1999).".

Chapter IV

Amendment of chapter IV of Act 130 of 1993

Chapter IV of the principal Act is hereby amended –

Amendment of Section 22

10. Section 22 of the Principal Act is hereby amended—

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

"(3) **[If Notwithstanding that** an accident is attributable to the serious and wilful misconduct of the employee, **[no]** compensation shall be payable in terms of this Act **[, unless—**

-) the accident result in serious disablement; or
the employee dies in consequence thereof living a dependant wholly financially dependent upon him].;**

(b) by the deletion of subsection (3)(b); and

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

(5) For the purposes of this Act the conveyance of an employee by or on behalf of the employer **[free of charge]** to or from his or her place of employment or any place for the purposes of his or her employment by means of **[a vehicle driven by]** any mode of transportation in furtherance of the business of the employer **[himself or one of his employees and specially provided by his employer for the purpose of such conveyance]**, shall be deemed to take place in the course of such employee's employment."

Amendment of section 23

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

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

"(b) The **[amount of]** compensation contemplated in paragraph (a) shall be determined on the basis of the earnings which the employee, in the opinion of the **[Director-General]** Commissioner, would have received if he had remained in the Republic; and

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

(3) If an employer carries on business chiefly outside the Republic and an employee ordinarily employed outside the Republic, meets with an accident while temporarily employed in the Republic, such employee shall not be entitled to compensation unless the employer has previously agreed with the **[Director-General] Commissioner** that such employee shall be entitled to compensation and, where applicable, has paid the necessary assessments in respect of **[him] the employee.**".

Amendment of Section 25

12. Section 25 of the principal Act is hereby amended-

(a) by the addition of the following sub-paragraph

"(d) undergoing any work related training in furtherance and pursuance of the employer's business."

Amendment of Section 26

13. Section 26 of the principal Act is hereby amended-

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

"Special circumstances in which the **[Director-General] Commissioner** may refuse award

(b) by the substitution for paragraph (b) of the following paragraph:

(b) if, in the opinion of the **[Director-General] Commissioner** the death **[was caused,]** or the disablement was caused, prolonged or aggravated, by the **[unreasonable refusal or wilful neglect of the]** employee unreasonably refusing to submit to medical aid or rehabilitation programs in respect of any injury or disease, whether caused by the accident or existing before the accident."

Amendment of Section 30

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

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

"[Mutual associations] License to carry out Business of Compensation Fund";

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

(1) The Minister may, for such period and subject to such conditions as he or she may determine, issue a licence to carry on the business of insurance of employers against their liabilities to employees in terms of this Act to a **[mutual association which was licensed on the date of commencement of this Act in terms of section 95 (1) of the Workmen's Compensation Act] licensee**: Provided that the Minister may, from time to time, order that, **[in addition to any securities deposited in terms of the Insurance Act, 1943 (Act No. 27 of 1943), and the Workmen's Compensation Act,] the licensee deposit** securities considered by the Director-General to be sufficient to cover the liabilities of the **[mutual association] licensee** in terms of this Act **[be deposited with the Director-General 1or his or her nominee].;**

(c) by the substitution for subsections (4) and (5) of the following subsections respectively:

(4) If the Minister is satisfied that the whole or any portion of such security is no longer necessary and that the **[association] licensee** concerned is not in a position to incur a liability payable therefrom, **[hethe Minister shall cause such security, or portion thereof, to be returned to such [association] licensee.**

(5) If an **[association] licensee** has deposited with the **[Director-General or his or her nominee] Compensation Fund** any such security and thereafter fails to meet in full any of its liabilities in terms of this Act, or is placed in liquidation, then, notwithstanding the provisions of any other law, such security shall vest in the **[Director-General] Compensation Fund** for the purpose of the liabilities of the **[association] licensee** in terms of this Act.; and

(d) by the addition of the following subsections:

(7) Any licensee issued with a license in terms of this Act shall be accountable to the Minister.

(8) All such securities mentioned in subsections (1) and (2) shall be deposited with the Compensation Fund or its nominee."

Amendment of section 32

14. Section 32 of the principal Act is hereby amended-

(a) by the addition of the following subsection:

"(3) Where the court has appointed a curator, compensation may be paid to that curator."

Amendment of Section 36

15. Section 36 of the principal Act is hereby amended by-

(a) the addition of the following subsections:

"(5) For the purposes of this section, the Road Accident Fund shall not be a third party from which the Compensation Fund can recover damages or compensation paid in terms of this Act.

(6) In the event where an employee is involved in an accident on a road not arising out of and in the course of an employee's employment at the time of the accident, the employee shall not be entitled to compensation in terms of this Act."

Chapter V

Amendment of chapter V of Act 130 of 1993

Chapter V of the principal Act is hereby amended –

Amendment of Section 39

16. Section 39 of the principal Act is hereby amended—

(a) by the substitution for subsections(6),(8) and (9) of the following subsections respectively:

"(6) An employer, excluding an employer referred to in section 84 subsection (1)(a)(i),(ii) and (iii)who fails to comply with subsection 1 shall be [guilty of an offence] liable to a penalty of 10% of the declared annual earnings of that particular year.

(8) If an employer, excluding an employer referred to in section 84(1)(a)(i),(ii) and (iii), fail to report in the prescribed manner an accident which has happened to an employee in his, her or its service within seven days after having received notice thereof or having learnt thereof in some other manner, the **[Director-General] Commissioner** may impose a **[fine] penalty equal to the full amount of compensation payable plus interest from the date of the accident [of not more than a full amount of the compensation payable in respect of such accident upon him, her or it in addition to any other penalty to which he, she or it may be liable].**

(9) If a fine is in terms of subsection (8) imposed upon an employer referred to in section 84(1)(b) and is paid to the **[Director-General] Commissioner** or recovered by him, such fine shall be paid over to the [mutual association] licensee concerned".

Amendment of Section 40

17. Section 40 of the principal Act is hereby amended—

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

"Inquiry by [Director General] Commissioner into accident

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

(1) The **[Director-General] Commissioner** shall, after having received notice of an accident or having learned in some other way that an employee has met with an accident, make such inquiry as he or she may deem necessary **[to enable him to decide upon any claim or] for purposes of determining liability in terms of this Act.**

(c) by the substitution for subsections (3) and (4), of the following subsections respectively:

(3) The **[Director-General] Commissioner** shall, at the request of an injured employee or **[his] the employer**, furnish such information **[as the Director-General may deem necessary] to the Commissioner** to enable that employee or employer to comply with the provisions of this Act.

(4) An employer who fails to comply with the provisions of this section shall be **[guilty of an offense] liable to a penalty equal to the full amount of compensation payable plus interest.**"

Amendment of Section 41

18. Section 41 of the principal Act is hereby amended-

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

"(1) An employee who has met with an accident shall, when reporting the accident or thereafter at the request of the employer or **[commissioner]** Commissioner, furnish such information and documents as **[may be]** prescribed [or as the employer or commissioner may direct.] and any such documents that may be requested.

(b) by the insertion of subsection 3:

(3) if the employee independently obtained medical report in terms of this section at his/her own costs, the Commissioner shall reimburse such medical expenses in full where the Commissioner accepts the report".

Amendment of Section 42

19. Section 42 of the principal Act is hereby amended—

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

"Employee to submit to medical examination and rehabilitation;

(b) by the insertion after subsection (1) of the following subsection:

(1A) An employee contemplated in subsection (1), shall if required to do so, submit himself or herself to an examination for purposes of rehabilitation.; and

(c) by the substitution for subsections (2) and (3) of the following subsections respectively:

(2) Such expenses incurred by the employee to comply with the provisions of this section as the Director-General Commissioner may deem necessary and reasonable, and the prescribed remuneration for a medical examination or rehabilitation in terms of this section, shall be paid by the party requiring the examination.

(3) If, **[in the opinion of any]** according to the determination of a designated medical practitioner, the employee is not [capable of calling upon] able to attend to the medical examination or rehabilitation in terms of subsection (1) and (1A) such designated medical practitioner, or the employee shall inform the party requiring the examination thereof [or cause him to be so informed,] and the designated medical practitioner shall then examine the employee at a time and place as agreed upon."

Amendment of Section 43

20. Section 43 of the principal Act is hereby amended-

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

"[Claim] Lodging of claim for compensation".

Amendment of Section 45

21. Section 45 of the principal Act is hereby amended—

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

"(4) Upon application by a person who in the opinion of the [Director-General] Commissioner has a sufficient interest in the subject of a formal hearing, the [Director-General] Commissioner shall issue a subpoena for the appearance of a person [except if he is of] who in the opinion [that such person cannot] of the Commissioner will further the investigation [, in which case the Director-General must issue a subpoena only if the party applying therefor deposits with the Director-General a sum sufficient to cover the necessary expenses to be incurred by the witness as well as the cost of the service of such subpoena].; and

(b) by the substitution for subsection (7) of the following subsection:

(7) The [Director-General] Commissioner shall keep [or cause to be kept] a record of the proceedings at a formal hearing, and upon payment of the prescribed fees any person may obtain a copy of such record."

Amendment of Section 46

22. Section 46 of the principal Act is hereby amended—

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

"(2) No person other than [an advocate or] a practising attorney or a practising advocate shall be entitled to any fees or remuneration except such necessary expenses as the [Director-General] Commissioner may allow.

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

(a) The [Director-General] Commissioner may of his or her own motion or on an ex parte application by a party to a claim for compensation, order any

attorney or an advocate employed by such party **[or a representative]** who has allegedly, contrary to subsection (2), claimed fees or remuneration, to submit to him or her a statement showing what he or she has received or contracted to receive from his or her client, and to submit for taxation his or her bill of costs, **including attorney and client costs**, against such client.; and

(c) by the addition of the following subsection:

(7) Costs in connection with a formal hearing shall only be awarded at magistrate court tariffs."

Chapter VI

Amendment of chapter VI of Act 130 of 1993

Chapter VI of the principal Act is hereby amended –

Amendment of Section 47

23. Section 47 of the principal Act is hereby amended-

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

"Determination [and], calculation of compensation and assessment of disability.

(b) by the substitution in subsection (3) for paragraph b and (c) of the following paragraph:

(b) after the expiry of the said three months, compensation paid by such employer shall be repaid to the employer, by the **[Director General Compensation Commissioner or [mutual association] licensee]** concern, as the case may be;

(c) An employer who fails to comply with paragraph (a) shall be **[guilty of an offense] liable to a penalty equal to double the full amount of three (3) months compensation payable plus interest."**

Amendment of Section 48

24. Section 48 of the principal Act is hereby amended-

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

"(a)[upon the termination of such disablement or] if the employee [resumes the] is declared medically fit to resume work upon which he was

employed at the time of the accident or occupational disease, or resumes any other work at the same or greater earnings."

Amendment of Section 49

25. Section 49 of the principal Act is hereby amended—

(a) by the deletion of subsection (4); and

(b) by the addition of the following subsection:

"(4) The Commissioner may, at any time, review pension awards for the purpose of re-assessing permanent disablement."

Amendment of Section 54

26. Section 54 of the principal Act is hereby amended—

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

"[Amount] Payment of compensation if employee dies; and

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

(1) If an employee dies as a result of an occupational disease or injury caused by an accident, compensation must be payable as follows:"

Amendment of Section 56

27. Section 56 of the principal Act is hereby amended—

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

"(d) of an engineer appointed to be in general charge of the machinery, or of a person appointed to assist such engineer in terms of any regulation made under the [Minerals Act, 1991 (Act No. 50 of 1991)] Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

(b) by the substitution in subsection (13) for paragraph (c) of the following paragraph:

(c) The provisions of sections 6, 7, 45 **[and]**, 46 and 93D shall **[, subject to such rules as the commissioner may prescribe for the facilitation of the]** in consideration of applications in terms of this section, apply with alteration in respect of such an application.; and

(c) by the substitution for subsection (6) of the following subsection:

(6) The presiding officer may in any proceedings in terms of this section make such an order as to costs **[and the payment thereof as he may deem fit]** subject to provisions of section 46(7) of this Act."

Amendment of Section 57

28. Section 57 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) The Minister may, on the recommendation of the Director-General and Board and by notice in the *Gazette* increase the monthly pensions payable in terms of sections 49 and 54 by such percentage as he or she may so determine, Provided that at least 30 days before any such increase a notice shall be published in the *Gazette*."

Amendment of Section 59

29. Section 59 of the principal Act is hereby amended-

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

"(c) paid to the Master of the **[Supreme Court] High Court**, a trustee or any other person to be applied in accordance with such conditions as may be determined by the **[Director-General] Commissioner**;"

Amendment of Section 64

30. Section 64 of the principal Act is hereby amended-

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

"(1) Any employer who deducts from the earnings of an employee any amount or receives any amount from him to compensate the employer directly or indirectly for any amount which the employer is liable to pay in terms of this Act, shall be guilty of an offence and be liable to a fine specified in subsection (2)."

Chapter VII

Amendment of chapter VII of Act 130 of 1993

Chapter VII of the principal Act is hereby amended –

Amendment of Section 65

31. Section 65 of the principal Act is hereby amended—

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

"(a) that the employee has contracted a disease mentioned in **[the first column of]** Schedule 3 and that such disease has arisen out of and in the course of his or her employment; or;

- (b) by the substitution for subsection (2) of the following subsection:

(2) If an employee has contracted a disease referred to in subsection (1) and the **[Director-General] Commissioner** is of the opinion that the recovery of the employee is being delayed or that temporary total disablement is being prolonged by reason of some other disease of which the employee is suffering, **[he] the Commissioner** may approve medical **[aid] costs** also for such other disease for so long as he may deem necessary.

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

(5) For the purposes of this Act the commencement of a disease referred to in subsection (1) shall be deemed to be the date on which a medical practitioner diagnosed that disease for the first time or such earlier date as the **[Director-General] Commissioner** may determine if it is more favourable to the employee."

Amendment of Section 67

32. Section 67 of the principal Act is hereby amended-

- (a) by the substitution for subsections (1) and (2) of the following subsections respectively:

"(1) Compensation for a disease referred to in section 65(1) shall be calculated on the basis of the earnings of the employee calculated **[mutatis mutandis]** in accordance with the provisions of section 63 and the disablement of the employee at the time of the commencement of the disease or such earlier date as the Director-General may determine, if it is proved to satisfaction his that the employee was suffering from the disease at an earlier

date, whichever earnings are favourable to the employee.

(2) If an employee is no longer in employment at the time of the commencement of the said disease, **[his] the employees** earnings shall be calculated on the basis of the earnings that **[he] the employee** would probably have been earning had the employee still been **[working] employed.**"

Amendment of Section 69

33. Section 69 of the principal Act is hereby amended-

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

"The Minister may on the recommendation of the Director-General, and after consultation with the Board and the chairpersons of the medical advisory panels, amend Schedule 3 by notice in the *Gazette*, **[also with retrospective effect,]** in respect of the description of the diseases and work: Provided that at least 30 days before any such amendment a notice shall be published in the *Gazette*—"

Amendment of Section 70

34. Section 70 of the Principal Act is hereby amended-

(a) by the substitution in subsections (4) for paragraph (b) of the following paragraph:

"(b) is not able to perform his or her functions **[in terms of this Act, properly] satisfactorily.**

(b) by the insertion of the following chapter in the principal Act after Chapter VII:

CHAPTER VIIA

REHABILITATION AND RE-INTEGRATION

Compensation Fund to provide rehabilitation

70A. (1) **Subject to the provisions of this Act, the Compensation Fund may provide, as the case may be, facilities, services and benefits aimed at rehabilitating employees suffering from occupational injuries or diseases to return to their work and to reduce any disability resulting from their injuries or diseases.**

(2) The rehabilitation benefits provided in subsection (1) may consist of—

- (a) clinical rehabilitation and the provision of assistive devices for the purpose of physical and psychological recovery of the employee and to reduce any disability resulting from an occupational injury or disease;
- (b) vocational rehabilitation to assist an employee to maintain employment, obtain employment, regain or acquire vocational independence; and
- (c) social rehabilitation to assist in restoring an employee's independence and social integration to the maximum extent practicable."

Chapter VIII

Amendment of chapter VIII of Act 130 of 1993

Chapter VIII of the principal Act is hereby amended –

Amendment of Section 72

35. Section 72 of the principal Act is hereby amended—

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

"Conveyance of injured and diseased employee.

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

(2) The **[Director-General]** Commissioner or the employer individually liable or **[mutual association]** licensee concerned, as the case may be, **[shall]** may pay the reasonable cost (as determined by the Director-General) incurred in respect of that conveyance.

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

(3) Any employer who fails to comply with subsection (1) shall be **[guilty of an offence]** liable to a fine equal to full cost of conveyance."

Amendment of Section 73

36. Section 73 of the principal Act is hereby amended —

(a) by the addition of the following subsections:

"(3) Notwithstanding the provision of subsection (2) the medical practitioner may after the claim has been finalised or the period referred to in subsection (1) has lapsed, apply for reopening of the claim and payment of further medical costs.

(4) Cession or relinquishment of medical claim void, - any provision of an agreement existing at the commencement of this Act or concluded there after in terms of which a service provider cedes or purports to cede or relinquishes or purports to relinquish any rights to medical claim in terms of this Act, shall be void."

Amendment of Section 74

37. Section 74 of the principal Act is hereby amended-

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

"(5) A medical practitioner or **[chiropractor]** shall at the request of an employee or the dependent of an employee furnish such employee or dependent with a copy of the report referred to in **[subsection (1)]** this section."

Amendment of Section 76

38. Section 76 of the principal Act is hereby amended-

(a) The substitution for the heading of the section of the following heading:

" [Director General] Commissioner to decide on need for, and nature and sufficiency of, medical aid.

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

(2) The tariff of fees for medical aid **[affecting the Medical Association of South Africa, the Chiropractic Association of South Africa and the Dental Association of South Africa shall be determined after consultation with]** shall be determined after consultation with **[those associations]** Health Professions Council of South Africa and registered Medical Associations."

Amendment of Section 78

39. Section 78 of the principal Act is hereby amended-

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

"(c) the **[Director-General] Commissioner** may reimburse an employer who is not individually liable **[so much] such costs** out of the **[compensation fund] Compensation Fund** or reduce his assessment to such an extent as he may

deem equitable."

Amendment of Section 79

40. Section 79 of the principal Act is hereby amended-

(a) The substitution for the heading of the section of the following heading:

"Consultation of [representative] representatives of medical authorities by [Director General] Commissioner.

(b) Section 79 is hereby substituted for the following section:

The [**Director-General**] Commissioner may consult with the [**South African Medical and Dental**] Health Professions Council [referred to in the Medical, Dental and Supplementary Service Act, 1974 (Act No. 56 of 1974), the Medical Association] of South Africa, [**the Chiropractic Association of South Africa**] registered Medical Associations and any other representative medical authority concerning matters connected with or arising out of the application of the provisions of this Act with regard to medical aid, and may for that purpose disclose any information relating to a matter in respect of which the views of the Council, the Associations or other authority are required."

Chapter IX

Amendment of chapter IX of Act 130 of 1993

Chapter IX of the principal Act is hereby amended –

Amendment of Section 80

41. Section 80 of the principal Act is hereby amended—

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

"Employer to register with [commissioner] Compensation Fund and to furnish [him with] particulars.

(b) by the substitution for subsection (5) of the following subsection:

(5) Any person not resident in the Republic or anybody corporate not registered in terms of any law governing the registration of bodies corporate in the Republic, and carrying on business in the Republic or engaged in, on or above the continental shelf in activities in connection with surveys, research, sport, prospecting or exploitation of natural resources, and employing an employee in connection therewith, shall furnish the [**commissioner**]

Commissioner with the address of his or her or its head office and the name and address of his or her or its chief officer in the Republic, and that officer shall for the purposes of this Act be deemed to be the employer of the said employee."

Amendment of Section 81

42. Section 81 of the principal Act is hereby amended—

(a) The following section is hereby substituted for section 81 of the principal Act:

"(1) An employer shall keep a register or other record of the earnings and other prescribed particulars of all **[the]** employees, and shall at all reasonable times produce manual or electronic form of such register or record or a microfilm or other microform reproduction thereof on demand to **[an authorized]** the person referred to in section 7 for inspection.

(2) An employer shall retain the register, record or reproduction referred to in subsection (1) for a period of at least **[four]** five years after the date of the last entry in that register or record.

(3) An employer who fails to comply with a provision of this section shall be guilty of an offence and be liable to a fine not exceeding 10 percent of actual or estimated annual assessments for the period for which the employer failed to keep the record as required by this section.

(4) **[A health and safety representative elected in terms of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), or the Mine Health and Safety Act, 1996 (Act No. 29 of 1996), and a trade union representative elected in terms of section 14 of the Labour Relations Act, 1995 (Act No. 66 of 1995)]** Any authorised person in terms of this Act, shall have the right to inspect, and where appropriate bring to the attention of the **[commissioner]** Commissioner, any register, record or document which the employer shall maintain, keep or complete in terms of this Act."

Amendment of Section 83

43. Section 83 of the principal Act is hereby amended—

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

"(5) If the earnings actually paid by an employer in respect of a particular period differ from the current estimated earnings shown in respect of that period in the return concerned, the **[Director-General]** Commissioner shall adjust his assessment accordingly.

(a) by the substitution in subsection (6) for paragraph (c) of the following paragraph:

(c) where it later appears that the actual earnings were more than the earnings estimated under paragraph (a), recover the difference in the assessment from the employer, and may impose **[and recover]** a fine on such difference, as contemplated in paragraph (b); *and*"

Amendment of Section 85

44. Section 85 of the principal Act is hereby amended-

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

"(3) If the accident record of an employer during a particular period is in the opinion of the **[Director-General] Commissioner** more favourable than those employers in comparable businesses, or if the employer is participating in the rehabilitation of employees as prescribed, the **[Director-General] Commissioner** may give such employer a rebate on any assessment paid or payable by him."

Amendment of Section 86

45. Section 86 of the principle Act is hereby amended-

(a) by the substitution for the heading of the section of the following heading.

"Assessment to be paid by employer to [commissioner] Compensation Fund

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

(1) An assessment shall be paid by an employer to the **[commissioner] Compensation Fund** within 30 days after the date of the notice of assessment or, with the approval of the **[commissioner] Commissioner**, in such instalments and at such times and on such conditions as the **[commissioner] Commissioner** may determine.

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

(2) Interest is payable on an overdue assessment at a rate determined by the **[Director-General] Commissioner**, which shall not exceed the prevailing standard rate of interest as defined in **[section 1 of the Exchequer Act, 1975 (Act No. 66 of 1975)] the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975)**."

Amendment of Section 87

46. Section 87 of the principal Act is hereby amended-

- (a) by the substitution in subsection (4) for paragraph (b) of the following paragraph:

"(b) The **[commissioner]** Commissioner shall send a certified copy of the order referred to in paragraph (a) to the clerk or registrar of the **[magistrate's]** court **[of the district in which that employer is resident or]** where **[he]** the employer has his or her place of business, and thereupon such order shall have the effect of a civil judgment of that **[magistrate's]** court, and the **[commissioner]** Commissioner shall have all the powers of a judgment creditor."

Amendment of Section 88

47. Section 88 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the section of the following heading:

"Contributions by employers individually liable and [mutual associations] licensee.

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

(1) Notwithstanding any provision to the contrary contained in this Act, the employers individually liable and the **[mutual associations]** licensee shall pay annually to the **[Director-General]** Compensation Fund in such a manner and at such times as **[he]** the Director-General may determine, such portion of the expenditure incurred by **[him]** the Compensation Fund in the administration of the provisions of this Act as he or she may deem equitable.

- (c) by the substitution in subsection (2) for paragraph (d) of the following paragraph:

(d) The employers individually liable and the **[mutual associations]** licensee shall pay to the **[Director-General]** Compensation Fund, in such a manner and at such times as he may determine, such portion of the said loss as he or she may deem equitable."

Amendment of Section 89

48. Section 89 of the principle Act is hereby amended-

- (a) by the substitution for the heading of the section of the following heading.

“[Mandators] Contractors and [contractors] sub-contractors”

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

(a) If a **[person (the mandator)] contractor** in the course of or for the purposes of his business enters into an agreement with **[any other person (]the [contractor)] subcontractor** for the execution by **[o under] the [supervision of the contractor] subcontractor** of the whole or any part of any work undertaken by **[the mandator,] the contractor, the subcontractor** shall, in respect of its employees employed in the execution of the work concerned, register as an employer in accordance with the provisions of this Act and pay the necessary assessments.

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

(b) If a **[contractor] subcontractor** fails **[so]** to register or pay any assessment, the said employees of the **[contractor] subcontractor** shall be deemed to be the employees of the **[mandator] contractor**, and the **[mandator] contractor** shall pay the assessments in respect of those employees.

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

(2) If a **[mandator] contractor** has paid an assessment or compensation for which he or she would not have been liable but for the provisions of subsection (1), such **[mandator] contractor** may recover that assessment or compensation from the **[contractor] subcontractor**.

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

(3) If a **[mandator] contractor** has in terms of this section paid an assessment **[or compensation]** to the **[commissioner, he] Compensation Fund**, the **contractor** may set off the amount so paid against **[his] the** debt to the **[contractor] subcontractor**.

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

(4) Notwithstanding the provisions of this section, the **[Director-General] Commissioner** may recover compensation from the **[contractor] subcontractor** instead of from the **[mandator] contractor**, and if the full amount cannot be recovered from the one, the shortfall can be recovered from the other.

(h) by the substitution for subsection(5) of the following subsection:

(5) A **[mandator] contractor** shall not be liable in terms of this section in respect of any accident which happened at a place which is not on or about the premises on which the **[mandator] contractor** undertook to execute the work, or which is not otherwise under his control or management."

Chapter X

Amendment of chapter X of Act 130 of 1993

Chapter X of the principal Act is hereby amended –

Amendment of Section 90

49. Section 90 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the section of the following heading
"[Review] Variation of decisions by [Director-General] Commissioner;
- (b) by the substitution for subsection (1) of the following subsection:

The Director-General may **[after notice, if possible, to the party concerned] on his or her own accord**, and after **[giving him an opportunity to submit representations,] notice to the affected party or on application by such party**, at any time **[review] vary** any decision in connection with a claim for compensation or the award of the compensation on the ground—".

Amendment of Section 91

50. Section 91 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the section of the following heading:
"Objection and appeal against the decisions of [Director General] Commissioner.
- (b) by the substitution for subsection (1) of the following subsection:

(1) Any person affected by a decision of the **[Director-General or trade union or employers' organization of which that person was a member at the relevant time] Commissioner** may, within **[180 days] 24 months** after such decision, lodge an objection against that decision with the Commissioner in the prescribed manner.

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

(a) An objection lodged in terms of this section shall be **[considered]** heard and decided by the presiding officer assisted by **[two]** three assessors designated by **[him]** the Commissioner, of whom one shall be an assessor representing employees, one an assessor representing employers and a medical assessor.

(d) by the deletion in subsection (2) of paragraph (b);

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

(a) After considering an objection the presiding officer shall, provided that at least **[one]** two of the assessors, **[excluding any medical assessor]**, agree with him, confirm the decision in respect of which the objection was lodged or give such other decision as may deem equitable.;

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

(4) The presiding officer may in connection with proceedings in terms of this section make such order as to costs **[and the payment thereof as he may deem equitable]** as contemplated in section 46(7).; and

(g) by the addition of the following subsection:

(8) Notwithstanding the provisions of subsection (1), the Commissioner may extend the period by a further period not exceeding 12 months if the Commissioner is satisfied that there is good cause for the late lodging of the objection of reason why the employee did not lodge an objection within that period ."

Insertion of chapter XA

51. The following chapter is hereby inserted in the principal Act after Chapter X:

"CHAPTER XA

Inspection, Compliance and Enforcement.

Appointment of inspectors

93A. (1) The Director-General may appoint any person as an inspector for purposes of this Act.

(2) Any person appointed under subsection (1) shall perform the functions in terms of this Act, subject to the direction and control of the Director-General.

(3) The Director-General shall provide each inspector with a signed certificate in the prescribed form stating—

- (a) that the person is an inspector;
- (b) which legislation that an inspector may monitor and enforce; and
- (c) which of the functions an inspector may perform.

93B. Functions of inspectors

(1) An inspector appointed in terms of this Act may promote, monitor and enforce compliance with this Act by—

- (a) advising employees and employers of their rights and obligations;
- (b) conducting inspections to ensure compliance;
- (c) investigating complaints made to the Director-General;
- (d) issuing compliance orders; and
- (e) performing any other function related to this Act.

93C. Powers of entry

(1) An inspector may enter a home or any place other than a place only—

- (a) with the consent of the owner or occupier; or
- (b) authorised to do so in writing in terms of subsection (2).

(2) The Labour Court may issue an authorisation contemplated in subsection (1)(b) only on written application on notice by an inspector who states under oath or affirmation the reasons for the need to enter a place in order to monitor or enforce compliance with this Act.

(3) If it is practical to do so, the employer and a trade union representative shall be notified that an inspector is present at a workplace and of the reason for the inspection.

93D. Powers to question and inspect

(1) In order to monitor or enforce compliance with this Act, an inspector may—

- (a) require a person to disclose any information, either orally or in writing,

- and either alone or in the presence of witnesses, and require that the disclosure be made under oath or affirmation;
- (b) inspect, and question any person about any record or document;
 - (c) copy any record or document referred to in paragraph (b), or remove them to make copies or extracts;
 - (d) require a person to produce or deliver to a place specified by an inspector any record or document referred to in paragraph (b) for inspection;
 - (e) inspect, question a person about, and if necessary remove any article, substance or machinery present at a workplace;
 - (f) inspect or question a person about any work performed; and
 - (g) perform any other function necessary for monitoring or enforcing compliance.

(2) An inspector may be accompanied by an interpreter, a member of the South African Police Services and any other person reasonably required to assist in conducting the inspection.

(3) An inspector shall—

- (a) produce on request the certificate referred to in section 93A(3);
- (b) provide a receipt for any record, document, article, item, substance or machinery removed in terms of subsection (1)(c) or (e); and
- (c) return anything removed within a month.

93E. Co-operation with inspectors

(1) Any person who is questioned by an inspector appointed in terms of this Act, shall answer all questions truthfully and honestly

(2) Every employer and employee shall co-operate with the inspectors to perform functions effectively.

93F. Compliance orders

(1) An inspector who has reasonable grounds to believe that an employer has not complied with a provision of this Act may issue a compliance order.

(2) A compliance order must set out—

- (a) the name of the employer, and the location of every workplace, to which it applies;
- (b) any provision of this Act that the employer has not complied with, and details of the conduct constituting non-compliance;
- (c) any steps that the employer is required to take including, if necessary, the cessation of the contravention in question and the period within which those steps must be taken; and
- (d) the maximum fine that may be imposed upon the employer for a failure to comply with a provision of this Act.

(3) An inspector shall deliver a copy of the compliance order to the employer named in it, and to each employee affected by it or, if this is impractical, a representative of the employees.

(4) An employer shall comply with the compliance order within the time period stated in the order.

93G. Compliance order made an order of Court

The Director-General may apply to the Labour Court for a compliance order to be made an order of court if the employer has not complied."

Chapter XI

Amendment of chapter XI of Act 130 of 1993

Chapter XI of the principal Act is hereby amended –

Amendment of section 97

52. Section 97 of the principal Act is hereby amended-

(a) By the insertion of paragraph (i), (j), (k) and (l) after paragraph (h):

(i) Rehabilitation, reintegration and return to work.

(j) Inspection, compliance and enforcement.

(k) Determination and calculation of permanent disablement.

(l) Appointment of assessors, presiding officers and interpreters.

Amendment of section 99

53. Section 99 of the principle Act is hereby substituted by the following section-

(a) "Any person who is convicted of an offence in terms of this Act or does not comply with the provisions of Section 39 , 40, 47, 64, 68, 81, 82, and 83 shall be liable to a [fine] penalty or penalties as specified in the said sections or imprisonment not exceeding one year as specified in those sections;"

Amendment of section 101 of Act 130 of 1993

54. Section 101 of the principal Act is hereby amended –

(a) Section 101 is substituted for the following section:

This Act shall be called Compensation for Occupational Injuries and Diseases Amendment Act,... and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.”

"SCHEDULE 3

| Diseases | Work |
|--|--|
| | (a) Any work involving the handling of or exposure to any of the following substances emanating from the workplace concerned: |
| Pneumoconiosis-fibrosis of the parenchyma of the lung | organic or inorganic fibrogenic dust |
| Pleural thickening causing significant impairment of function | Asbestos or asbestos dust |
| Bronchopulmonary disease | metal carbides (hard metals) |
| Byssinosis | flax, cotton or sisal |
| Occupational asthma | the sensitizing agents- (1) isocyanates (2) platinum, nickel, cobalt, vanadium or chromium salts (3) hardening agents, including epoxy resins (4) acrylic acids or derived acrylates (5) soldering or welding fumes (6) substances from animals or insects (7) fungi or spores (8) proteolytic enzymes (9) organic dust (10) vapours or fumes of formaldehyde, anhydrides, amines or diamines |
| Extrinsic allergic alveolitis | moulds, fungal spores or any other allergenic proteinaceous material, 2,4 toluene-diisocyanates |
| Any disease or pathological manifestations | Beryllium, cadmium, phosphorus, chromium, manganese, arsenic, mercury, lead, fluorine, carbon disulfide, cyanide, halogen derivatives of aliphatic or aromatic hydrocarbons, benzene or its homologues, nitro- and amino-derivatives of benzene or its homologues, nitroglycerine or other nitric acid esters, hydrocarbons, trinitrotoluol, alcohols, glycols or ketones, acrylamide, or any compounds of the aforementioned substances |
| Erosion of the tissues of the oral cavity or nasal cavity | irritants, alkalis, acids or fumes thereof |
| Dysbarism, including decompression sickness, barotrauma or osteonecrosis | abnormal atmospheric or water pressure |
| Any disease | ionising radiation from any source |
| Allergic or irritant contact dermatitis | Dust, liquids or other external agents or factors |
| Mesothelioma of the pleura or peritoneum or other malignancy of the lung | Asbestos or asbestos dust |

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|---|---|
| Malignancy of the lung, skin, larynx, mouth cavity or bladder | Coal-tar, pitch, asphalt or bitumen or volatiles thereof |
| Malignancy of the lung, mucous membrane of the nose or associated air sinuses | nickel or its compounds |
| Malignancy of the lung | hexavalent chromium compounds, or bis chloromethyl ether |
| Angiosarcoma of the liver | vinyl chloride monomer |
| Malignancy of the bladder | 4-amino-diphenyl, benzidine, beta naphthylamine, 4-nitro-diphenyl |
| Leukaemia | Benzene |
| Melanoma of the skin | polychlorinated biphenyls |
| Tuberculosis of the lung | (1) crystalline silica (alpha quartz) (2) mycobacterium tuberculosis or MOTTs (mycobacterium other than tuberculosis) transmitted to an employee during the performance of health care work from a patient suffering from active open tuberculosis |
| Brucellosis | Brucella abortus, suis or mellitensis transmitted through contact with infected animals or their products |
| Anthrax | bacillus anthracis transmitted through contact with infected animals or their products |
| Q-fever | coxiella burnet emanating from infected animals or their products |
| Bovine tuberculosis | mycobacterium bovid transmitted through contact with infected animals or their products |
| Rift Valley Fever | virus transmitted by infected animals or their products |
| | (b) Any work involving the handling of or exposure to any of the following: |
| Hearing impairment | excessive noise |
| Hand-arm vibration syndrome (Raynaud's phenomenon) | Vibrating equipment |
| Any disease due to overstraining of muscular tendinous insertions | Repetitive movements |

SCHEDULE 4***Manner of calculating compensation***

| (i) | (ii) | (iii) | (iv) | (v) |
|------|----------|---|---------------------|--|
| Item | Section | Nature and degree of disablement | Nature of benefits | Manner of calculating benefits |
| 1. | 47(1)(a) | Temporary total disablement | Periodical payments | 75 percent of an employee's monthly earnings at the time of the accident to a maximum compensation of <i>R6 064,50</i> per month |
| 2. | 49(1) | Permanent disablement of 30percent | Lump sum | 15 times the monthly earnings of the employee at the time of the accident to a minimum and a maximum compensation of <i>R12 375,00</i> and <i>R67 950, 00</i> , respectively |
| 3. | 49(1) | Permanent disablement of less than 30percent | Lump sum | An amount which bears to a lump sum calculated under item 2 the same proportion as the degree of permanent disablement to 30 percent |
| 4. | 49(1) | Permanent disablement of 100percent | Monthly pension | 75 percent of an employee's monthly earnings at the time of the accident to a minimum and a maximum compensation of <i>R618,75</i> and <i>R6 064,50</i> per month, respectively; |
| 5. | 49(1) | Permanent disablement of less than 100percent but more than 30percent | Monthly pension | A monthly pension which bears to a pension calculated under item 4 the same proportion as the degree of permanent disablement to 100 percent |
| 6. | 54(1)(a) | Fatal | Lump sum | Twice the employee's monthly pension that would have been payable to the employee under item 4 had he <u>or she</u> been totally permanently disabled |

| | | | | |
|-----|----------|-------|-----------------|--|
| 7. | 54(1)(b) | Fatal | Monthly pension | 40percent of the monthly pension that would have been payable to the employee under item 4 had he <u>or she</u> been totally permanently disabled |
| 8. | 54(1)(c) | Fatal | Monthly pension | 20percent of the monthly pension that would have been payable to the employee under item 4 had he <u>or she</u> been totally permanently disabled, to each child |
| 9. | 54(1)(e) | Fatal | Lump sum | Percentage dependence as portion of <i>R28 680,00</i> |
| 10. | 54(2) | Fatal | Funeral costs | A reasonable amount for funeral costs to a maximum of <i>R5 350,00</i> or the actual amount, whichever is the lesser |

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