

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF EMPLOYMENT AND LABOUR

NO. R. 930

27 AUGUST 2020

PUBLICATION OF THE COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES AMENDMENT BILL, 2020

1. Notice is hereby given in terms of Rule 276(1)(b) of the Rules of the National Assembly that the Minister of Employment and Labour intends to introduce the Compensation for Occupational Injuries and Diseases Amendment Bill, 2020, in the National Assembly shortly.
2. The explanatory summary of the Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly.

The Bill seeks to amend the Compensation for Occupational Injuries and Diseases Act, 1993, so as to amend, substitute, insert, delete and repeal certain definitions and sections; to provide for matters pertaining to the Board and its members; to provide for the Commissioner to perform certain functions that were previously performed by the Director-General; to further provide for matters pertaining to the 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 Commissioner to review pension claims or awards; to provide for administrative penalties; to regulate compliance and enforcement and to provide for matters connected therewith.

3. A copy of the Bill can be found on the websites of the Department of Employment and Labour at <http://www.labour.gov.za/legislation/bills/proposed-amendment-bills> and that of the Parliamentary Monitoring Group at <http://www.pmg.org.za> and, after introduction, may also be obtained from: Government Printers: Cape Town (Telephone number: (021) 465-7531).

REPUBLIC OF SOUTH AFRICA

COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No. 35222
of 27 August 2020)*
(The English text is the official text of the Bill)

(MINISTER OF EMPLOYMENT AND LABOUR)

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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.

BILL

To amend the Compensation for Occupational Injuries and Diseases Act, 1993, so as to amend, substitute, insert, delete and repeal certain definitions and sections; to provide for matters pertaining to the Board and its members; to provide for the Commissioner to perform certain functions that were previously performed by the Director-General; to further provide for matters pertaining to the 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 Commissioner to review pension claims or awards; to provide for administrative penalties; to regulate compliance and enforcement and to provide for matters connected therewith.

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

Amendment of section 1 of Act 130 of 1993, as amended by section 1 of Act 61 of 1997

1. Section 1 of the Compensation for Occupational Injuries and Diseases Act, 1993 (hereinafter referred to as the principal Act) is hereby amended—

- (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 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;"
- (d) by the deletion of the definition "chiropractor";
- (e) 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, where applicable, includes medical **[aid]**

- or payment of the cost of such medical aid] costs or, constant attendance care allowance and funeral costs;";
- (f) by the substitution for the definition of "dependent of an employee" of the following definition:
- "**'dependant of an employee' means—**
- (a) a widow or widower who at the time of the employee's death was a life partner of the employee or who was married to the employee according to civil law, civil union, customary law, or any other marriage recognised in terms of any other law;
- (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;
- (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;
- (d) a child under the age of 18 years 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;
- (e) a child over the age of 18 years, but below the age of 25 years if the child is still receiving tertiary education, of the employee or his or her 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
- (f) a child who is 25 years old or older, a parent, a brother, a sister, a half-brother or half-sister, a grandparent, a grandchild or any other person,
- and who was in the opinion of the [Director-General] 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);";
- (g) by the substitution for the definition of "earnings" of the following definition:
- "**'earnings' means the remuneration [of an employee at the time of the accident or commencement of an occupational disease as calculated in terms of this] as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962), but does not include any amount paid or payable to an employee—**
- (a) by way of any pension, superannuation allowance or retiring allowance; and
- (b) which constitutes an amount contemplated in paragraphs (a), (cA), (d), (e) or (eA) of the definition of "gross income" in section 1 of the Income Tax Act, 1962;";
- (h) 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 or she acts within the scope of his or her 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) in the case of a deceased employee, his or her dependants, and in the case of an employee who is a person under disability, a curator acting on behalf of that employee.

but does not include—

- (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 (Act No. 44 of 1957)] 2002, (Act No. 42 of 2002), and who is not a member of the Permanent Force of the South African Defence Force; 5
- (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)] South African Police Service Act, 1995 (Act No. 68 of 1995); and 10
- (iv) a person who contracts for the carrying out of work and himself or herself engages other persons to perform such work; 15
- [(v) a domestic employee employed as such in a private household;]";
- (i) by the substitution for the definition of "employer" of the following definition: 20
 - "**'employer'** means any person or legal person, 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; 25
 - (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:" 30
- (j) 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] Compensation Fund"; 35
- (k) 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 [1] 213 of the Labour Relations Act, [1956 (Act No. 28 of 1956)] 1995 (Act No. 66 of 1995); 40
- (l) 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"; 45
- (m) by the insertion after the definition of "financial year" of the following definition:
 - "**'licensee'** means a legal person to whom a licence has been issued in terms of section 30 of this Act;" 50
- (n) by the deletion of the definition of "mandator";
- (o) 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 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;" 55
- (p) by the substitution for the definition of "occupational disease" of the following definition: 60
 - "**'occupational disease'** means any disease contemplated in section 65(1)(a) or (b) and include post-traumatic stress disorder;"
- (q) by the deletion of the definition of "person under disability";

- (r) 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:"

"**'remuneration'** means allowances, subsidies and other allowances as determined by the Minister:"

- (s) by the substitution for the definition "seaman" 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:

- (t) by the deletion of the definition of "serious and wilful misconduct";

- (u) 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:"

- (v) by the substitution for the definition of "trade union" of the following definition:

"**'trade union'** means a trade union as defined in section [1] 213 of the Labour Relations Act, [1956 (Act No. 28 of 1956)] 1995 (Act No. 66 of 1995), and includes an employees' [organization recognized by law and functioning] organisation:"

Amendment of section 4 of Act 130 of 1993, as amended by section 4 of Act 61 of 1997

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

- (a) by the addition of the following subsection:

"(3) The Commissioner shall—

- (a) receive notices of accidents and occupational diseases, claims for compensation, medical reports and accounts, objections, applications, return of earnings and payments due to the Compensation Fund; and

- (b) by notice in the Gazette prescribe the rules referred to in section 56(3)(c), as well as the forms to be used and the particulars to be furnished in connection with notice of occupational injuries and diseases, claims for compensation or any other form or matter which he or she may deem necessary for the administration of this Act:"

Amendment of section 11 of Act 130 of 1993, as substituted by section 8 of Act 61 of 1997

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

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

"(1) The Board shall be appointed by the Minister and shall consist of—

- (a) an independent chairperson who has no vote; and

- (b) sixteen 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;

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- (iii) five members and two alternate members appointed by the Minister to represent the interests of the state; and
- (iv) the Commissioner by virtue of his or her office;"; and
- (b) by the addition of the following subsections:
 - "(4) If a member of the Board vacates office before the expiry of his or her period of office, the Minister must appoint another member to fill the vacancy for the unexpired portion of that period; 5
 - (5) The Minister may, on the recommendation of the Board, appoint additional Board members with relevant qualifications, skills and expertise for the efficient governance of the Fund." 10

Amendment of section 12 of Act 130 of 1993

- 4. Section 12 of the principal Act is hereby amended—
 - (a) by the substitution for subsection (2) of the following subsection: 15
 - "(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."; and
 - (b) by the addition of subsection 3: 20
 - "(3) The Board must within three months after the appointment of its members, prepare and adopt a Board Charter.".

Substitution of section 13 of Act 130 of 1993

- 5. The following section is hereby substituted for section 13 of the principal Act:

"Term of office of Board 25

- 13. (1) The members of the Board appointed by the Minister shall—
 - (a) be appointed for a period not exceeding four years; and
 - (b) not serve for more than two terms.
- (2) When a member of the Board vacates office for any reason, the Minister shall fill the vacancy in accordance with subsection (1) for the unexpired portion of that period. 30
- (3) 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 sections 13A, 13B and 13C in Act 130 of 1993 35

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

"Secretariat of Board

- 13A. The Commissioner shall in consultation with the Board, provide the necessary resources and secretariat to enable the Board to fulfil its functions. 40

Disqualifications of Board members

- 13B. A person may not be appointed as a member of the Board, or remain a member of the Board, if that person—
 - (a) is an unrehabilitated insolvent or becomes insolvent and the insolvency results in the sequestration of that person's estate; 45
 - (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 act 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 50

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 or any other offence involving dishonesty;
- (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 has the potential to 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 reasons relating to—

- (a) serious misconduct;
- (b) permanent incapacity;
- (c) 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) the engagement 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.”

Repeal of section 14 of Act 130 of 1993

7. Section 14 of the principal Act is hereby repealed.

Amendment of section 16 of Act 130 of 1993

8. Section 16 of the principal Act is hereby amended by the addition in subsection (1) of the following paragraphs:

- “(i) the 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.”

Amendment of section 17 of Act 130 of 1993

9. 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 of Act 130 of 1993

10. Section 18 of the principal Act is hereby amended 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 of Act 130 of 1993, as amended by section 10 of Act 61 of 1997

11. 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 the Public Finance Management Act, 1999 (Act No. 1 of 1999), 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)(n)] to the Minister, who shall 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).”.

Amendment of section 22 of Act 130 of 1993

12. 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—**

- (i) the accident result in serious disablement; or
- (ii) the employee dies in consequence thereof leaving a dependant wholly financially dependent upon him);

(b) by the deletion in subsection (3) of paragraph (b);

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

“(5) For the purposes of this Act the conveyance of an employee **[free of charge] by or on behalf of the employer** 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.”; and

(d) by the addition of the following subsection:

“(6) Conveyance shall be deemed to commence once an employee reaches the place designated by the employer for pick-up and cease on drop off at place as so designated by the employer.”.

Amendment of section 23 of Act 130 of 1993

13. 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 in subsection (3) for paragraph (a) of the following paragraph:

“(a) If an employer carries on business chiefly outside the Republic and an employee [of his] 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 of Act 130 of 1993

14. Section 25 of the principal Act is hereby amended by the insertion after paragraph (b) of the following paragraph:

“(bA) undergoing any work related training in furtherance and pursuance of the employer's business; or”.

Amendment of section 26 of Act 130 of 1993

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

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

“**Special circumstances in which the [Director-General] Commissioner may refuse award**”; and

- (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 of Act 130 of 1993, as amended by section 11 of Act 61 of 1997

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

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

“**[Mutual associations] Licence 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 or 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, [he] the Minister shall cause such security, or portion thereof, to be returned to such [association] licensee.

(5) If [an association] a 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] Compen-

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sation 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 licence 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 of Act 130 of 1993, as amended by section 12 of Act 61 of 1997

17. Section 32 of the principal Act is hereby amended 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 of Act 130 of 1993, as amended by section 13 of Act 61 of 1997

18. Section 36 of the principal Act is hereby amended by 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 or licensee 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.”.

Amendment of section 39 of Act 130 of 1993, as amended by section 14 of Act 61 of 1997

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

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

“(6) An employer, excluding an employer referred to in section 84(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 per cent of the actual or estimated annual earnings of that particular year.”; and

(b) by the substitution for subsections (8) and (9) of the following subsections respectively:

“(8) If an employer, excluding an employer referred to in section 84(1)(a)(i), (ii) and (iii), fails 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 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] penalty equal to the full amount of compensation payable plus interest from the date of the accident.

(9) If a [fine] penalty 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 or her, such [fine] penalty shall be paid over to the [mutual association] licensee concerned.”.

Amendment of section 40 of Act 130 of 1993

20. 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 5
purposes of determining liability in terms of this Act.”; and
- (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]** Commissioner may deem necessary to enable that employee or employer to comply with the provisions of this Act. 10
 (4) An employer who fails to comply with the provisions of this section shall be [guilty of an offence] liable to a penalty of 10 per cent plus interest on actual earnings declared to the Compensation Fund.” 15

Amendment of section 41 of Act 130 of 1993, as amended by section 15 of Act 61 of 1997

21. 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 20
 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.”; and
- (b) by the addition of the following subsection: 25
 “(3) If the employee independently obtained a medical report in terms of this section at his or her own costs, the Commissioner must reimburse such medical expenses in full, where the Commissioner has received and accepted the report.”

Amendment of section 42 of Act 130 of 1993

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22. 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 35
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 40
 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 or rehabilitation.
 (3) If, [in the opinion of any] according to the determination of a 45
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 50
 shall then examine the employee at a time and place as agreed upon.”

Amendment of section 43 of Act 130 of 1993

23. Section 43 of the principal Act is hereby amended by the substitution for the heading of the following heading:

“[Claim] Lodging of claim for compensation”.

Substitution of section 44 of Act 130 of 1993

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24. The following section is hereby substituted for section 44 of the principal Act:

“Prescription

44. [A] Notwithstanding any provision in this Act, a right to benefits in terms of this Act shall lapse if the accident in question is not brought to the attention of the [commissioner or of the employer or mutual association concerned, as the case may be], Commissioner within [12 months after] 3 years from the date of such accident.” 10

Amendment of section 45 of Act 130 of 1993

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

(a) by the substitution for subsection (4) of the following subsection: 15

“(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 off] who in the opinion [that such person cannot] of the Commissioner will further the investigation [, in which case the Director-General shall 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 20

(b) by the substitution for subsection (7) of the following subsection: 25

“(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.”. 30

Amendment of section 46 of Act 130 of 1993, as amended by section 16 of Act 61 of 1997

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

(a) by the substitution for subsection (2) of the following subsection: 35

“(2) [No person other than an advocate or attorney] Only a legal practitioner as defined in section 1 of the Legal Practice Act, 2014 (Act No. 28 of 2014), shall be entitled to any fees or remuneration except such necessary expenses as the [Director-General] Commissioner may allow.”. 40

(b) by the substitution in subsection (4) for paragraph (a) of the following paragraph: 40

“(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] legal practitioner 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 45

(c) by the addition of the following subsection: 50

“(7) Costs in connection with a formal hearing in terms of this section and section 91 shall only be awarded at magistrate court tariffs.”.

Substitution of heading to Chapter VI of Act 130 of 1993

27. The following heading is hereby substituted for the heading to Chapter VI of the principal Act:

"Determination and calculation of compensation and assessment of disablement".

5

Amendment of section 47 of Act 130 of 1993, as amended by section 17 of Act 61 of 1997

28. Section 47 of the principal Act is hereby amended by the substitution in subsection (3) for paragraphs (b) and (c) of the following paragraphs respectively:

"(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** concerned, as the case may be.

10

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

15

Amendment of section 48 of Act 130 of 1993

29. Section 48 of the principal Act is hereby amended 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:"

20

Amendment of section 49 of Act 130 of 1993, as amended by section 18 of Act 61 of 1997

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30. 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:

"(5) The Commissioner may, at any time, review pension claims or awards in terms of section 90 for the purpose of re-assessing permanent disablement."

30

Insertion of section 49A in Act 130 of 1993

31. The following section is hereby inserted in the principal Act after section 49:

"Commencement of monthly pension

49A. Notwithstanding any provision in this Act, monthly pension shall commence from the date on which a medical practitioner certifies that an employee has reached the maximum medical intervention."

35

Amendment of section 54 of Act 130 of 1993, as amended by section 21 of Act 61 of 1997

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

40

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

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

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

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

45

Amendment of section 56 of Act 130 of 1993, as amended by section 23 of Act 61 of 1997

33. 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); or”;

(b) by the substitution in subsection (3) 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 the provisions of section 46(7).”.

Amendment of section 57 of Act 130 of 1993

34. Section 57 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The Minister may [on the recommendation of the Director-General] after consultation with the Commissioner and the Board, and by notice in the Gazette increase the monthly pensions payable in terms of sections 49 and 54 by such per centage as he or she may so determine: Provided that at least [60] 30 days before any such increase a notice shall be published in the Gazette—”.

Amendment of section 59 of Act 130 of 1993

35. Section 59 of the principal Act is hereby amended 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; or”.

Substitution of section 64 of Act 130 of 1993

36. The following section is hereby substituted for section 64 of the principal Act:

“Certain compensation to employers prohibited

64. (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] liable to a penalty specified in subsection (2).

(2) [Any court convicting an employer of contravening subsection (1)] The Commissioner shall, in addition to any penalty [it] he or she may impose, [order] direct the employer to pay to the [commissioner] Commissioner within a specified period and in instalments or otherwise as the [court] Commissioner may determine, such amount as he has received contrary to provisions of subsection (1).

(3) The [commissioner] Commissioner shall pay the amount received by him or her in terms of [such an order] subsection (2) to the employee from whose earnings that amount has been deducted or from whom the amount has been received.

(4) Upon [application] request by the employer the [court] Commissioner may at any time, on good cause shown, extend the period within which the amount referred to in subsection (2) is payable or amend the amount of the instalments.

(5) [An order made under this section shall have the effect of a civil judgment of a magistrate's court in favour of the commissioner] The provisions of section 93E shall apply with necessary alterations to an employer who does not comply with the provisions of this section.”. 5

Amendment of section 65 of Act 130 of 1993, as amended by section 24 of Act 61 of 1997

37. Section 65 of the principal Act is hereby amended— 10

(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: 15

“(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 his or her 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 or she may deem necessary.”; and 20

(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.”. 25

Substitution of section 67 of Act 130 of 1993 30

38. The following section is hereby substituted for section 67 of the principal Act:

“Calculation of compensation

67. (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*] with necessary changes required by the context, 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 his satisfaction that the employee was suffering from the disease at an earlier date, whichever earnings are favourable to the employee. 35

(2) If an employee is no longer in employment at the time of the commencement of the said disease, [his] the employee's 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.”. 40 45

Amendment of section 69 of Act 130 of 1993, as amended by section 25 of Act 61 of 1997

39. Section 69 of the principal Act is hereby amended 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] 60 days before any such amendment a notice shall be published in the Gazette—”. 50 55

Amendment of section 70 of Act 130 of 1993, as amended by section 26 of Act 61 of 1997

40. Section 70 of the principal Act is hereby amended by the substitution in subsection (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.” 5

Insertion of Chapter VIIA in Act 130 of 1993

41. The following chapter is hereby inserted in the principal Act, after Chapter VII:

“CHAPTER VIIA**REHABILITATION AND RE-INTEGRATION** 10**Compensation Fund to provide rehabilitation**

70A. (1) Subject to the provisions of this Act, the Compensation Fund, employer individually liable or licensee 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 or to reduce any disability resulting from their injuries or diseases. 15

(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; 20

(b) vocational rehabilitation to assist an employee to maintain employment, obtain employment, regain or acquire vocational independence; and 25

(c) social rehabilitation to assist in restoring an employee's independence and social integration to the maximum extent practicable.”.

Amendment of section 72 of Act 130 of 1993

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

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

“**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.”; and 35

(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 penalty equal to the full cost of conveyance.”. 40

Amendment of section 73 of Act 130 of 1993

43. Section 73 of the principal Act is hereby amended 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. 45

(4) Any provision of any agreement existing at the commencement of this Act or concluded thereafter 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.”. 50

Amendment of section 74 of Act 130 of 1993

44. Section 74 of the principal Act is hereby amended 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.”. 5

Amendment of section 75 of Act 130 of 1993

45. Section 75 of the principal Act is hereby amended by the substitution for the heading of the following heading:

“**[Director-General] Commissioner to decide on need for, and nature and sufficiency of, medical aid**”. 10

Amendment of section 76 of Act 130 of 1993

46. Section 76 of the principal Act is hereby amended 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 **[those associations]** the Health Professions Council of South Africa and registered Medical Associations.”. 15

Amendment of section 78 of Act 130 of 1993

47. Section 78 of the principal Act is hereby amended 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 or her assessment to such an extent as he or she may deem equitable.”. 20 25

Substitution of section 79 of Act 130 of 1993

48. The following section is hereby substituted for section 79 of the principal Act:

“**Consultation of [representative] representatives of medical authorities by [Director-General] Commissioner**” 30

79. 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.”. 35 40

Amendment of section 80 of Act 130 of 1993

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

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

“**Employer to register with [commissioner] Compensation Fund and to furnish [him with] particulars**”; and 45

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

“(5) Any person not resident in the Republic or any **[body corporate] legal person** not registered in terms of any law governing the registration of **[bodies corporate] legal person** in the Republic, and carrying on business in the Republic or engaged in, on or above the continental shelf 50

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, her or its head office and the name and address of his, 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.”.

Substitution of section 81 of Act 130 of 1993, as amended by section 28 of Act 61 of 1997

50. The following section is hereby substituted for section 81 of the principal Act: 10

“Employer to keep record

81. (1) An employer shall keep a register or other record of the earnings and other prescribed particulars of all **[the]** their 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 and Chapter XA for inspection. 15

(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. 20

(3) An employer who fails to comply with a provision of this section shall be guilty of an offence and be liable to a penalty not exceeding 10 per cent 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.”. 25 30

Amendment of section 83 of Act 130 of 1993, as amended by section 30 of Act 61 of 1997 35

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

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

“(5) If 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 or her assessment accordingly.”; and 40

(b) by the substitution in subsection (6) for paragraphs (b) and (c) of the following paragraphs respectively:

“(b) impose upon and recover from the employer a **[fine not exceeding]** penalty of 10 per cent of the amount assessed; 45

(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]** penalty on such difference, as contemplated in paragraph (b); and”.

Amendment of section 85 of Act 130 of 1993

52. Section 85 of the principal Act is hereby amended 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.”.

Substitution of section 86 of Act 130 of 1993, as amended by section 32 of Act 61 of 1997

53. The following section is hereby substituted for section 86 of the principle Act:

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

86. (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.

(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 of Act 130 of 1993

54. Section 87 of the principal Act is hereby amended by the substitution for subsections (1), (2), (3) and (4) of the following subsections respectively:

“(1) If an employer fails to pay an assessment in accordance with section 86, the [Director-General] Commissioner may impose a [fine at the prescribed percentage] penalty of 10 per cent of actual or estimated earnings of that year or on the outstanding amount upon [him] such employer.

(2) (a) If an employer fails to comply with the provisions of section 80(1) and an employee in his or her employ meets with an accident, the [Director-General] Commissioner may, in addition to any other penalty to which such employer may be liable, impose a [fine not exceeding] penalty of the full amount of the compensation payable in respect of such accident upon [him] such employer.

(b) If the [Director-General] Commissioner is of the opinion that such failure was not wilful or was due to some cause over which the employer had no control, or that payment of the full amount of the capitalised value of a pension payable as compensation to the employee would probably lead to the insolvency of that employer or, in the case where the employer is a company, to its liquidation, the [Director-General] Commissioner may—

- (i) waive in whole or in part any [fine] penalty imposed by him or her;
- (ii) allow the employer to pay the penalty in such instalment as he or she may determine.

(3) An employer who refuses or fails to pay any assessment, instalment or [fine] penalty referred to in this section or any other money payable in terms of this Act, shall be [guilty of an offence] liable to a penalty of 10 per cent of actual or estimated earnings of that year.

(4) (a) If an employer fails to pay any amount due to the [commissioner] Commissioner, the [commissioner] Commissioner may [issue an order in the prescribed form for the payment thereof] deal with such employer's failure in terms of sections 93F and 93G.

(b) The commissioner shall send a certified copy of the order referred to in paragraph (a) to the clerk of the magistrate's court of the district in which that employer is resident or where he has his place of business, and thereupon such

order shall have the effect of a civil judgment of that magistrate's court, and the commissioner shall have all the powers of a judgment creditor.]”.

Amendment of section 88 of Act 130 of 1993

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

- (a) by the substitution for the heading of the following heading: 5
 “Contributions by employers individually liable and [mutual associations] licensee”;
- (b) by the substitution for subsection (1) of the following subsection: 10
 “(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.”; and 15
- (c) by the substitution in subsection (2) for paragraph (d) of the following paragraph: 20
 “(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 or she may determine, such portion of the said loss as he or she may deem equitable.”.

Substitution of section 89 of Act 130 of 1993

56.

The following section is hereby substituted for section 89 of the principle Act:

“[Mandators] Contractors and [contractors] sub-contractors 25

89. (1) (a) If a [person (the mandator)] contractor in the course of or for the purposes of his or her business enters into an agreement with [any other person (the contractor)] a sub-contractor for the execution by [or under] the [supervision of the contractor] sub-contractor of the whole or any part of any work undertaken by [the mandator,] the contractor, the sub-contractor shall, in respect of [his] 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. 30

(b) If a [contractor] sub-contractor fails [so] to register or pay any assessment, the said employees of the [contractor] sub-contractor shall be deemed to be the employees of the [mandator] contractor, and the [mandator] contractor shall pay the assessments in respect of those employees. 35

(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] sub-contractor. 40

(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 [by him] against [his] the debt to the [contractor] sub-contractor. 45

(4) Notwithstanding the provisions of this section, the [Director-General] Commissioner may recover compensation from the [contractor] sub-contractor 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. 50

(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.”. 55

Amendment of section 90 of Act 130 of 1993 57.

Section 90 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:
 "[Review] Variation of decisions by [Director-General] Commissioner"; and 5
- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 "The [Director-General] Commissioner 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 10
 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 of Act 130 of 1993, as amended by section 33 of Act 61 of 1997 15

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

- (a) by the substitution for the heading of the following heading:
 "Objections and appeal against the decisions of [Director-General] Commissioner"; 20
- (b) by the substitution for subsection (1) of the following subsection: 20
 "(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] 12 months after such decision, lodge an objection against that decision with the Commissioner in the prescribed manner."; 25
- (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 30
 an assessor representing employees, [and] one an assessor representing employers and a medical assessor."; 30
- (d) by the deletion in subsection (2) of paragraph (b);
- (e) by the substitution in subsection (3) for paragraph (a) of the following paragraph: 35
 "(a) After considering an objection the presiding officer shall, provided that at least [one] two of the assessors, [excluding any medical assessor,] agrees with him or her, confirm the decision in respect of which the objection was lodged or give such other decision as he or she may deem equitable."; 40
- (f) by the substitution for subsection (4) of the following subsection: 45
 "(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)."; 45
 and 45
- (g) by the addition of the following subsection: 50
 "(8) Notwithstanding the provisions of subsection (1), the Commissioner may extend the period by a further period of 6 months on good cause shown why the objection was not lodged within the prescribed period.".

Insertion of chapter XA in Act 130 of 1993

59. 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 Commissioner 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 Commissioner.

(3) The Commissioner 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.

Functions of inspectors

93B. (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 their functions under this Act.

Powers of entry

93C. (1) An inspector may enter a home or any other 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 and 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.

Powers to question and inspect

93D. (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.

Co-operation with inspectors

93E. (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.

Compliance orders

93F. (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.

Compliance order made an order of court

93G. The Commissioner may apply to the Labour Court for a compliance order to be made an order of court if the employer has not complied.”

Amendment of section 97 of Act 130 of 1993, as amended by section 35 of Act 61 of 1997

60. Section 97 of the principal Act is hereby amended by the addition to subsection (1) of the following paragraphs:

- “(i) the rehabilitation, reintegration and return to work;
- (j) the inspection, compliance and enforcement of this Act;
- (k) the determination and calculation of permanent disablement; and
- (l) the appointment of assessors, presiding officers and interpreters.”

Substitution of section 99 of Act 130 of 1993

61. The following section is hereby substituted for section 99 of the principle Act:

“Penalties

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

Substitution of certain expressions in Act 130 of 1993

62. The principal Act is hereby amended—

- (a) by the substitution for the expression of "airman" wherever it occurs in the Act, of the expression "air personnel";
- (b) by the substitution for the expression "commissioner", wherever it occurs in the Act, of the word "Commissioner"; 5
- (c) by the substitution for the expression "compensation fund", wherever it occurs in the Act, of the words "Compensation Fund";
- (d) by the substitution for the expression "Director-General" wherever it occurs of the word "Commissioner", except where it occurs in the definition of "Director-General" in section 1 and section 18, section 30, section 50, section 55 and section 69; 10
- (e) by the substitution for the expression "provisional or local division of the Supreme Court", wherever it occurs in the Act, of the word "Labour Court"; and 15
- (f) by the substitution for the expression "Appellate Division of the Supreme Court", wherever it occurs in the Act, of the word "Labour Appeal Court".

Short title and commencement

63. (1) This Act is called the Compensation for Occupational Injuries and Diseases Amendment Act, 2020, and takes effect on a date fixed by the President by proclamation in the *Gazette*. 20

(2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.

**MEMORANDUM ON THE OBJECTS OF THE COMPENSATION
FOR OCCUPATIONAL INJURIES AND DISEASES AMENDMENT
BILL, 2020**

1. PURPOSE

- 1.1 The Compensation for Occupational Injuries and Diseases Amendment Bill, 2020 ("the Bill"), seeks to amend the Compensation Injuries and Diseases Act 1993 (Act No. 130 of 1993) ("the Act").
- 1.2 The amendments seek to—
- (a) extend the coverage for occupational injuries and diseases to previously excluded vulnerable workers as well as the improvement of compensation benefits to employees;
 - (b) link to key target Chapters 10 and 11 of the National Development Plan 2030;
 - (c) align the Act with the requirements of other legislation and to remove ambiguities on some of the provisions of the Act;
 - (d) empower the National Economic Development and Labour Council to nominate persons from whom members of the Board, may be appointed by the Minister to represent the interests of organised business, organised labour and the State;
 - (e) provide for the term of office of a Board Member to be limited to two terms;
 - (f) provide for the disqualification from membership of Board Members, resignation, and removal from office; and
 - (g) introduce rehabilitation, re-integration and return to work in order to address the tendency on part of some employers to dismiss employees on the basis of occupational injuries and or diseases.

2. CLAUSE BY CLAUSE ANALYSIS

2.1 Clause 1

Clause 1 seeks to amend section 1 of the Act to—

- (a) amend the definition of "assessment" by linking assessment of employees to the new section that requires employee rehabilitation after an injury on duty;
- (b) amend the definition of "dependant of an employee" to include life partners of the employee in the definition and limits the age of children who are able to claim dependant benefits to 25 years;
- (c) amend the definition of "earnings" to link it to Income Tax Act, 1962 (Act No. 58 of 1962);
- (d) amend the definition of an "employee" to remove the exclusion of the domestic employees from the definition which seeks to solve the unfair problem of excluding domestic workers from the protection of the Act; and
- (e) insert a definition for "rehabilitation" of workers to facilitates their re-integration and return to work after injuries or diseases.

2.2 Clause 2

Clause 2 seeks to amend section 4 by inserting in the section an additional function for the Commissioner in dealing with claims and to enable the Commissioner to introduce forms that are needed to claim for compensation.

2.3 Clauses 3, 5 and 6

Clause 3 seeks to amend section 11 by substituting subsection 1 with a new section 1 that makes it clear that the chairperson of the Board must be independent and that the Board Members must be appointed through a transparent NEDLAC process. Clauses 5 and 6 prescribes the term of office of

the Board, the disqualification of Board members and the resignation and removal of a member of the Board from office.

2.4 Clause 8

This clause seeks to amend section 16 of the Act by adding a subsection to enable the payment of cost for rehabilitation and payment of Board members, Commissioner and staff from the budget of the Compensation Fund.

2.5 Clause 12

Cause 12 seeks to amend section 22(5) by adding an additional clause that clarifies when conveyance commences and ceases. This will eliminate unnecessary disputes on claims.

2.6 Clause 16

Clause 16 seeks to amend section 30 of the Act by substituting mutual associations with licensees.

2.7 Clause 18

Clause 18 seeks to amend section 36 of the Act in order to exclude employees who get involved in an accident on a public road. These employees will be entitled to claim from the Road Accident Fund. This will assist to avoid double dipping.

2.8 Clause 21

Clause 21 seeks to amend section 41 of the Act by inserting a subsection to provide for employees who independently obtains a medical report a right to claim for a refund from the Commissioner for the cost of such medical report.

2.9 Clause 30

Clause 30 seeks to amend section 49 to provide for the review of pension claims every 24 months for reassessing permanent disablement. It further clarifies the date on which pension shall commence. There are current pension cases where the pensioners have fully recovered from their permanent disablement but continue to receive a monthly pension. Some of them are even engaged in active gainful employment.

2.10 Clause 41

Clause 41 seeks to insert Chapter VIIA in the Act in order to provide for the rehabilitation, re-integration and the return to work, in order to address the tendency of some employers to dismiss employees on the basis of occupational injuries and or diseases. Chapter VIIA seeks to introduce the concept of multi-disciplinary based process of rehabilitation and reintegration of injured or employees who contracted occupational diseases. This means an employer will have to exhaust all rehabilitation and reintegration processes before laying off an employee. Employers will be incentivised for full compliance with the provisions of this chapter by way of rebates on their annual assessments.

2.11 Clause 43

Clause 43 seeks to amend section 73 of the Act to expressly provide for the reopening of the claims after the expiry of two years from the date of accident and to provide that any provision of any agreement existing at the commencement of this Act or concluded thereafter 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.

2.12 Clause 57

This clause seeks to amend section 90 of the Act to provide for the variation of decisions. The word "review" has been substituted with the word "variation" in order to distinguish the internal review process under this section from the judicial review and to align it with the Labour Relations Act, 1995 (Act No. 66 of 1995).

2.13 Clause 59

Clause 59 seeks to insert Chapter XA to ensure compliance with the Act by providing for the appointment of inspectors who will specifically deal with all non-compliance issues. Inspectors will have the power to inspect and issue compliance orders, which will eventually be made orders of court.

2.14 Clause 60

Clause 60 seeks to amend section 97 to authorise the Minister to make regulations regarding the following additional matters:

- Rehabilitation, reintegration and return to work;
- inspections, compliance and enforcements;
- determination and calculation of permanent disablement; and
- appointment of assessors, presiding officers and interpreters.

2.15 Clause 61

Clause 61 seeks to amend section 99 by proposing to substitute offences for fines and penalties in the following sections: 39, 40, 47, 64, 68, 81, 82, and 83.

4. IMPLICATIONS FOR PROVINCES

None

5. FINANCIAL IMPLICATIONS FOR STATE

The costs for the implementation of the Bill are budgeted for through annual assessments levied on the employers in terms of section 83 of the Act.

6. PARLIAMENTARY PROCEDURE

- 6.1 The State Law Advisers and the Department of Employment and Labour are of the opinion that the Bill should be dealt with in accordance with procedure set out in section 75 of the Constitution, since it contains no provisions to which the procedure set out in section 74 or 76 of the Constitution applies. Section 75 of the Constitution sets out a procedure to be followed when the National Assembly passes a Bill other than a Bill to which the procedure set out in section 74 or 76 of the Constitution applies.
- 6.2 The Constitution regulates the manner in which legislation may be enacted by Parliament. It prescribes different procedures for different kinds of Bills. The Constitution distinguishes between four categories of bills as follows: Bills amending the Constitution (section 74); ordinary Bills not affecting provinces (section 75); ordinary Bills affecting provinces (section 76); and Money Bills (section 77). A Bill must be correctly classified or tagged, otherwise it would be constitutionally invalid.

- 6.3 In *Tongoane v Minister of Agriculture and others CCT 100/09* [2010] ZACC 10, at paragraph 56, the Constitutional Court confirmed and upheld the test for tagging that was formulated in *Ex Parte President of the Republic of South Africa: In re Constitutionality of the Liquor Bill* [1999] ZACC 15; 2000 (1) SA 732 (CC); 2000 (1) BCLR 1 (CC), where the Constitutional Court held that—
- “the heading of section 76, namely, ‘Ordinary Bills affecting provinces’ provides a strong textual indication that section 76(3) must be understood as requiring that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4, be dealt with under section 76”.*
- 6.4 At paragraph 58 of the judgement, the Constitutional Court held that:
- “What matters for the purposes of tagging is not the substance or the true purpose and effect of the Bill, rather, what matters is whether the provisions of the Bill in substantial measure fall within a functional area listed in Schedule 4”.*
- 6.5 At paragraph 72 of the judgment, the Constitutional Court stated that any Bill whose provisions substantially affect the interest of the provinces must be enacted in accordance with the procedure stipulated in section 76. This also includes Bills providing for legislation envisaged in the further provisions set out in section 76(3)(a) to (f), as well as Bills the main substance of which falls within the exclusive national competence, but the provisions of which nevertheless substantially affect the provinces. What must be stressed, however, is that the procedure envisaged in section 75 of the Constitution remains relevant to all Bills that do not in substantial measure affect the provinces.
- 6.6 We have considered the purpose and effect of the clauses in the Bill and we are of the view that the Bill in a substantial measure does not deal with any of the matters listed in Schedule 4 or Schedule 5 to the Constitution. Since the Bill does not in a substantial manner deal with a functional area listed in Schedule 4 or Schedule 5 to the Constitution, we are of the view that a procedure set out in section 76 of the Constitution cannot be applied and the Bill cannot be tagged as a section 76 Bill.
- 6.7 In the light of the above, we are of the opinion that the Bill must be tagged as a section 75 Bill and must be dealt with in accordance with the procedure set out in section 75 of the Constitution.
- 6.8 We are further of the opinion that it is not necessary to refer this 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.