

DEPARTMENT OF EMPLOYMENT AND LABOUR

NO. R. 422

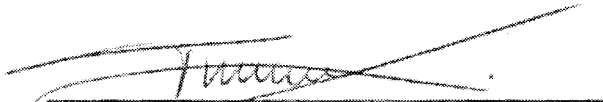
14 May 2021

PUBLICATION OF THE OCCUPATIONAL HEALTH AND SAFETY AMENDMENT  
BILL, 2020

1. I, **THEMBELANI WALTERMADE NXESI**, Minister of Employment and Labour, hereby give notice in terms of Rule 276(1)(b) of the Rules of the National Assembly that I intend to introduce the Occupational Health and Safety 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 Occupational Health and Safety Act, 1993, so as to delete, substitute and insert certain definitions; to effect certain technical corrections; to make further provision in respect of the health and safety of persons at work and for the health and safety of persons in connection with the use of plant and machinery; to further regulate the protection of persons other than persons at work against hazards to health and safety arising out of or in connection with the activities of persons at work; to further regulate the composition of an advisory council for occupational health and safety; and to provide for matters connected therewith.

A copy of the Bill can be found on the website 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).



MR TW NXESI, MP  
MINISTER OF EMPLOYMENT AND LABOUR  
DATE: 13/04/2021

**REPUBLIC OF SOUTH AFRICA**

**OCCUPATIONAL HEALTH AND SAFETY AMENDMENT BILL**

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

**[B - 2020]**

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**GENERAL EXPLANATORY NOTE:**

[            ] Words in bold type in square brackets indicate omissions from existing enactments.  
\_\_\_\_\_ Words underlined in solid line indicate insertions in existing enactments.

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**BILL**

To amend the Occupational Health and Safety Act, 1993, so as to delete, substitute and insert certain definitions; to effect certain technical corrections; to make further provision in respect of the health and safety of persons at work and for the health and safety of persons in connection with the use of plant and machinery; to further regulate the protection of persons other than persons at work against hazards to health and safety arising out of or in connection with the activities of persons at work; to further regulate the composition of an advisory council for occupational health and safety; 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 85 of 1993 as amended by section 1 of Act 181 of 1993**

1. (1) Section 1 of the Occupational Health and Safety Act, 1993(Act No. 85 of 1993) (hereinafter referred to as the principal Act) is hereby amended—

(a) by the substitution for the definition of “approved inspection authority” of the following definition:

**“approved inspection authority”** means an accredited organisation approved by the chief inspector as an inspection authority with respect to any particular service in terms of this Act;

(b) by the substitution for the definition of “danger” of the following definition:

**“ ‘danger’** means anything which may cause injury, adverse health effects or damage to persons or property.”;

(c) by the substitution for the definition of “Department” of the following definition:

**“ ‘Department’** means the Department of **[Manpower]** Employment and Labour.”;

(d) by the substitution for the definition of “employee” of the following definition:

**“ ‘employee’** means[, **subject to the provisions of subsection (2),**] any person who is employed by or works for an employer and who receives or is entitled to receive any remuneration **[or]** and who works under the direction or supervision of an employer **[or any other person]**.”;

(e) by the substitution for the definition of “employer” of the following definition:

" 'employer' means any person, institution or organisation, including government who employs and provides work to an employee, and supervises, remunerates or tacitly or expressly undertakes to remunerate such employee for services rendered by such employee. "

- (f) by the substitution for the definition of "employers' organisation" of the following definition:

" 'employers' organisation' means an employers' organisation as defined in section [1] 213 of the Labour Relations Act, [1956 (Act No. 28 of 1956)] 1995 (Act No. 66 of 1995);"

- (g) by the insertion after the definition of "hazard" of the following definition:

" 'hazardous substance' means a toxic, harmful, erosive, corrosive irritant or an asphyxiate substance or a mixture of such substances which creates a hazard to health;"

- (h) by the substitution for the definition of "incident" of the following definition:

" 'incident' means an [incident] occurrence as contemplated in section 24 (1);

- (i) by the deletion of the definition "industrial court";

- ji) by the substitution for the definition of "listed work" of the following definition:

" 'listed work' means any work [declared to be listed work under section 11] which poses a risk to health and safety which requires specific precautionary measures to be implemented;"

- k) by the substitution for the definition of "local authority" of the following definition:

" 'local authority' means a local municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);"

- (l) by the substitution for the definition of "Minister" of the following definition:

" 'Minister' means the [Minister of Manpower] Cabinet member responsible for labour;"

- (m) by the insertion after the definition of "Minister" of the following definition:

" 'occupational disease' means occupational disease as defined in section 1 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);"

"occupational health standard" means a standard, which, if applied for the purposes of this Act, will promote the occupational health of employees or the health of any other person in terms of this Act;"

- (n) by the insertion after the definition of "occupational hygiene" of the following definition:

" 'occupational hygienist' means a person who is registered with a body recognised by the chief inspector and who has the knowledge, training, skills, experience and the required qualification in the field of occupational hygiene techniques, to assess and evaluate levels of health and safety hazards that an employee is or may be exposed to at work;"

- (o) by the deletion of the definition "office";

- (p) by the substitution for the definition of "officer" of the following definition:

" **'officer'** means an officer or employee as defined in section 1 (1) of the Public Service Act, **[1984 (Act No. 111 of 1984)] 1994** (Proclamation No. 103 of 1994);";

- (q) by the insertion after the definition of "organism" of the following definition:

" **'permanent disablement'** means the permanent disablement as defined in section 1 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);";

- (r) by the substitution for the definition of "risk" of the following definition:

" **'risk'** means the probability that personal injury, illness or the death of the employee or any other person or damage to property will occur;

- (s) by the insertion after the definition of "risk" of the following definitions:

" **'risk assessment'** means, the process of evaluating the risks to an employee's health and safety from workplace hazards and is a systematic assessment of all aspects of work that considers:

- (a) a complete hazard identification;
- (b) identification of all who may be affected by the hazard;
- (c) how the person is affected;
- (d) the analysis and evaluation of the risks; and
- (e) prioritisation of risks;

**'risk management'** means the identification and mitigation of risks by the application of appropriate control measures;";

- (t) by the insertion after the definition of "safe" of the following definitions:

" **'safety management system' or 'health and safety management system'** means, a co-ordinated, comprehensive set of interrelated or

interacting elements to establish occupational health and safety policy and objectives in order to optimally manage health and safety."

" 'safety standard' means any standard, which, if applied for the purposes of this Act, will promote the safety of employees or any other person in terms of this Act;

'SANAS' means the South African National Accreditation System;

"self-employed" means an individual who earns income through conducting profitable operations from a trade or business, which that individual operates directly;

(u) by the substitution for the definition of "standard" of the following definition:

" 'standard' means any provision occurring—

(a) in a specification, compulsory specification, code of practice or standard method as defined in section 1~~[(16)]~~ of the Standards Act, ~~[1993 (Act No. 3 of 1993(17))]~~ 2008 (Act No. 8 of 2008); or

(b) in any specification, code or any other directive having standardisation as its aim and issued by an institution or organisation inside or outside the Republic which, whether generally or with respect to any particular article or matter and whether internationally or in any particular country or territory, seeks to promote standardisation; Provided that, anything that is required to conform to this Act shall first be subjected to the required tests by SANAS accredited to do such tests to ensure conformance to a particular standard;"

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



" 'trade union' means a trade union as defined in section 213 of the Labour Relations Act, 1995 (Act No. 66 of 1995);";

- (w) by the substitution for the definition of "user" of the following definition:

" 'user' [in relation to plant or machinery], means a person who uses the premises, articles, substances, plant or machinery, for his or her own benefit or [who] has the exclusive right of control over the use of the premises, articles, substances, plant or machinery but does not include a lessor of, or any person employed in connection with that premises, articles, substances, plant or machinery.";

- (x) by the insertion after the definition of "user" of the following definition:

" 'volunteer' means a person, who willingly provides a service to an institution or organisation, including a government body or organisation, or a non-governmental organisation without being remunerated for services rendered.";

- (y) by the substitution for the definition of "work" of the following definition:

" 'work' means work as an employee or as a self-employed person and for such purpose an employee is deemed to be at work during the time that he or she is in the course of his or her employment, and a self-employed person is deemed to be at work during such time as he or she devotes to work as a self-employed person;

- (z) by the substitution for the definition of "workplace" of the following definition:

" 'workplace' means any premises or place where a person performs work in the course of [his] employment.";

- (aa) by the deletion of subsection (2);

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

"(a) a mine, a mining area or any works as defined in the **[Minerals Act, 1991 (Act No. 50 of 1991)]** Mines Health and Safety Act, 1996 (Act No. 29 of 1996), except in so far as that Act provides otherwise;" and

(cc) by the addition in subsection (3) of the following paragraphs:

"(c) aircraft as indicated in section 2 of the Civil Aviation Act, 2009 (Act No. 13 of 2009); and

(d) any nuclear installation as defined in the Nuclear Energy Act, 1993, (Act No. 131 of 1993)."

**Amendment of section 3 of Act 85 of 1993**

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

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

"(3) The Council may for the purposes of the performance of any of its functions, with the approval of the Minister, and with the concurrence of the Minister of **[State Expenditure Finance]**, enter into an agreement for the performance of a particular act or particular work or for the rendering of a particular service, on such conditions and at such remuneration as may be agreed upon, with anybody who in the opinion of the Council is fit to perform such act or work or to render such service."; and

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

"(4) (a) The chief inspector shall, with the approval of the Minister, appoint an officer or employee of the Department in terms of the Public Service Act, 1994(Proclamation No.103 of 1994), to assist the Council and its sub-committees in the performance of the Council's functions.

(b) The remuneration, allowances, benefits and other terms and conditions of employment of personnel appointed under subsection (1) shall be determined in terms of the Public Service Act, 1994."

#### **Substitution of section 4 of Act 85 of 1993**

4. The following section is hereby substituted for section 4 of the principal Act:

##### **"[Constitution] Composition of Council**

(1) The Council shall consist of **[20]** 23 members, namely—

(a) the chief inspector, **[ex officio, who shall be the chairman];**

(aA) the Chairperson;

(b) **[one officer serving in]** three persons nominated by the Department;

(c) the **[Workmen's]** Compensation Commissioner, or his or her nominee;

(d) one person nominated by the Minister **[for National]** of Health **[and Welfare];**

- (e) one person nominated by the Minister of **[Mineral and Energy]** Mineral Resources;
- (f) six persons to represent the interests of the employers from a list of the names of persons nominated by employers organisations or federations of employers organisations;
- (g) six persons to represent the interests of the employees from a list of the names of persons nominated by trade unions or federations of trade unions organisations;
- (h) one person who in the opinion of the Minister has extensive knowledge of occupational health and safety matters;
- (i) one person who in the opinion of the Minister has extensive knowledge of occupational medicine and **[was]** is recommended by the Minister **[for National Health and Welfare]** of Health;
- (j) one person who in the opinion of the Minister has extensive knowledge of occupational hygiene.

(2) The members referred to in subsection (1) **[(b) up to and including (j)]** shall be appointed in writing by the Minister."

#### **Amendment of section 5 of Act 85 of 1993**

5. Section 5 of the principal Act is hereby amended—

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

"(1) The members of the Council referred to in section 4(2), shall be appointed for a period of **[three]** five years, and on such

conditions as the Minister may determine with the concurrence of the Minister of **[State Expenditure] Finance**;

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

"(2) A member of the Council whose term of office has expired shall be eligible for reappointment for a further term, but not exceeding two terms.";

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

"(3) A member referred to in section 4 (1) **[(f), (g), (h), (i) or (j)]** who is not an officer may be paid from money appropriated for such purpose by Parliament, such allowances as the Minister may determine with the concurrence of the Minister of **[State Expenditure] Finance**.";

#### **Substitution of section 6 of Act 85 of 1993**

6. The following section is hereby substituted for section 6 of the principal Act:

#### **"Establishment of technical committees of Council and sectoral advisory forums**

6. (1) The Council may **[with the approval of the Minister]** establish one or more technical committees to advise the Council on any matter regarding the performance by the Council of its functions.

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(2) A member of a technical committee shall be appointed by the Council by **[reason of his knowledge]** virtue of his or her knowledge and experience for the matter for which the committee **[was]** is established, and such a member need not be a member of the Council.

(3) A meeting of a technical committee shall be held at such time and place as may be determined by the **[chairman]** chairperson of the **[Council]** technical committee and in accordance with rules approved by the Council.

(4) A member of a technical committee who is not an officer, may be paid from money appropriated for such purpose by Parliament, such allowances as the Minister may determine with the concurrence of the Minister of **[State Expenditure]** Finance.

(5) A person may not be nominated to serve on more than two technical committees at a given time.

(6) A sectoral advisory forum may be established by the chief inspector to advise the chief inspector on matters relating to any regulation made under section 43."

#### **Substitution of section 7 of Act 85 of 1993**

7. The following section is hereby substituted for section 7 of the principal Act:

**"Health and safety management system**

7. (1) The chief inspector may direct an employer or group of employers in writing to develop and implement a health and safety management system.

(2) A directive under subsection (1) shall be accompanied by guidelines concerning the contents of the health and safety management system concerned."

**Amendment of section 8 of Act 85 of 1993**

8. Section 8 of the principal Act is hereby amended—

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

"(1) Every employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of his or her employees.";

(b) by the substitution in subsection (2) for paragraphs (a), (b), (c), (d), (e), (f), (g), (i) and (j) of the following paragraphs:

"(a) conducting a workplace specific risk assessment and thereafter developing and implementing a risk management plan in writing, in respect of every risk identified;

(b) ensuring that the workplace specific risk assessment is conducted, by a person or persons who are competent to pronounce on all the risks associated with that workplace;

(c) ensuring that the workplace specific risk management plan is in place and is available at the workplace when requested by an inspector;

- (d) ensuring that no work is undertaken unless the control measures contained in the risk management plan are complied with;
- (e) providing **[such]** information, instructions, training and supervision as may be necessary to ensure, as far as is reasonably practicable, the health and safety at work of **[his]** employees;
- (f) **[as far as is reasonably practicable, not permitting any]** ensuring that no employee is permitted to do any work or to produce, process, use, handle, store or transport any article or substance or to operate any plant or machinery, unless the precautionary measures contemplated in paragraphs (b) and (d), or any other precautionary measures which may be prescribed, have been taken;
- (g) taking all necessary measures to ensure that the requirements of this Act are complied with by every **[person]** employee in his or her employment or by any person on premises under his or her control where plant or machinery is used;
- (i) ensuring that work is performed and that plant or machinery is used under the general supervision of a person trained to understand the hazards associated with it and who have the authority to ensure that precautionary measures taken by the employer are implemented; **[and]**
- (j) causing all employees to be informed regarding the scope of their authority **[as contemplated in section 37 (1) (b).]; and "**



(c) by the addition of the following paragraph:

"(k) ensuring communication of the relevant components of the risk management plan to every employee."

**Amendment of section 9 of Act 85 of 1993**

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

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

"(1) Every employer shall conduct [his] an undertaking in such a manner [as] to ensure [as far as is reasonably practicable that persons other than those in his employment who may be directly affected by his activities are not thereby exposed to hazards to their health or safety] that the risk posed by identified hazards to persons other than those in the direct employ of the organisation who may be directly affected by the organisation's activities are not thereby exposed to hazards to their health or safety and the risk is managed in line with the risk management plan contemplated in section 8(2)(a)."

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

"(2) Every self-employed person shall conduct [his] an undertaking in such a manner as to ensure [as far as is reasonably practicable that he and other persons who may be directly affected by his activities are not thereby exposed to hazards to their health or safety] that the risks posed by identified hazards to that self employed person and any other persons who may be directly

affected by the activities of the work performed on that premises, are managed in line with the specific risk management plan as contemplated in section 12(1)."

**Amendment of section 10 of Act 85 of 1993**

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

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

"(1) Any person who designs, manufactures, imports, sells, leases or supplies any article for use at work shall ensure, **[as far as is reasonably practicable,]** that—

(a) the article is safe and without risks to occupational health and safety when properly used;

(b) the article is accompanied by the instructions which include precautionary measures to be adhered to; and

(c) **[that]** it complies with all the prescribed requirements.

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

"Any person who **[manufactures,]** imports, sells or supplies any substance for use at work shall—";

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

"(4) A person who manufactures, imports, sells or supplies a substance for use at work shall ensure that the substance is classified, labelled and packaged, in the prescribed manner."

**Amendment of section 11 of Act 85 of 1993**

11. Section 11 of the principal act is hereby amended by—

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

"(a) Before the Minister declares any work to be listed work, he or she shall, after consultation with the Council, cause to be published in the *Gazette* a draft of his or her proposed notice and at the same time invite interested persons to submit to him or her in writing within a specified period, comments and representations in connection with the proposed notice.

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

"(4) A notice **[under]** referred to in subsection (1) may at any time be amended or withdrawn by like notice.

**Amendment of section 12 of Act 85 of 1993**

12. Section 12 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) (a) An employer shall conduct a risk assessment in relation to such listed work and develop and implement a risk management plan in respect of the risks identified for that work.

(b) A risk assessment conducted for that workplace, shall be conducted by a person or persons who are competent to pronounce

on all the risks associated with that work and where the risk is complex in nature, a risk assessment shall be conducted by specialists who are competent to pronounce on all the risks associated with that particular work.

(c) The employer shall ensure that a workplace specific risk management plan is in place and is available at the workplace when requested by an inspector.

(d) An employer may not permit any listed work to be undertaken unless the control measures contained in the risk management plan are complied with."

#### **Amendment of section 13 of Act 85 of 1993**

13. Section 13 of the principal Act is hereby amended by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively:

"(a) **[as far as is reasonably practicable, cause]** ensure that every employee **[to be made]** is conversant with the **[hazards]** risks to his or her health and safety attached to—

- (i) any work which **[he]** that employee has to perform;
- (ii) any article or substance which he or she has to produce, process, use, handle, store or transport; and
- (iii) any plant or machinery which he or she is required or permitted to use,

as well as with the precautionary measures which should be taken and observed with respect to those hazards;

- (b) inform the health and safety representatives concerned beforehand of inspections, investigations or formal inquiries of which **[he]** the employer has been notified by an inspector, and of any application for exemption made by him or her in terms of section 40."

**Substitution of section 14 of Act 85 of 1993**

14. The following section is hereby substituted for section 14 of the principal Act:

**"General duties of employees at work**

14. Every employee shall at work—
- (a) take reasonable care for the employee's own health and safety **[of himself]** and of other persons who may be affected by his or her acts or omissions;
  - (b) as regards any duty or requirement imposed on his or her employer or any other person by this Act, co-operate with **[such]** the employer or other person to enable that duty or requirement to be performed or complied with;
  - (c) **[carry out any]** execute a lawful order given to him or her, and obey the health and safety rules and procedures laid down by his or her employer or by **[anyone]** a person authorised thereto by his or her employer, in the interest of health or safety;

- (d) **[if any situation which is unsafe or unhealthy comes to his attention]** when he or she becomes aware of an unsafe or unhealthy situation, as soon as practicable, report such situation to his or her employer or to the health and safety representative for his or her workplace or section thereof, as the case may be, who shall report it to the employer; and
- (e) **[if]** where he or she is involved in any incident which may affect his or her health or which has caused an injury to himself or herself, report such incident to his or her employer or to anyone authorised thereto by the employer, or to his or her health and safety representative, as soon as practicable but not later than the end of the particular shift during which the incident occurred, unless the circumstances were such that the reporting of the incident was not possible, in which case he or she shall report the incident as soon as it is reasonably practicable thereafter.

#### **Amendment of section 16 of Act 85 of 1993**

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

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

"(1) **[Every]** A chief executive officer shall **[as far as is reasonably practicable]** ensure that the duties of his or her employer as contemplated in this Act, are properly discharged".

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

"(1A) The chief executive officer shall develop, implement and continuously review the health and safety management system as the employer may be directed in terms of section 7(1);

(2) Without derogating from his or her responsibility or liability in terms of subsection (1) and (1A), a chief executive officer may **[assign]** in writing, delegate any duty contemplated in the said **[subsection]** subsections, to any person under his or her control, which person shall act subject to the control and direction of the chief executive officer, in the interest of occupational health and safety.";

(c) by the insertion after subsection (2) of the following subsection:

"(2A) A person so delegated in terms of subsection (2) may not further delegate the duty to any other person."; and

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

"(3) The provisions of subsection (1) shall not, **[subject to the provisions of section 37]**, relieve an employer of any responsibility, accountability or liability under this Act."

#### **Amendment of section 17 of Act 85 of 1993**

**16.** Section 17 of the principal Act is hereby amended—

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

"(1) Subject to the provisions of subsection (2), every employer who has more than 20 employees in his or her employment at any workplace, shall, within four months after the commencement of this Act or after commencing business, or from such time as the

number of employees exceeds 20, as the case may be, designate in writing for a specified period health and safety representatives for such workplace, or for different sections thereof.";

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

"(2) An employer and the representatives of his or her employees recognized by **[him]** such employer or, where there are no such representatives, the employees shall consult in good faith regarding the arrangements and procedures for the nomination or election, period of office and subsequent designation of health and safety representatives in terms of subsection (1): Provided that if such consultation fails, the matter shall be referred for arbitration to **[a person mutually agreed upon, whose decision shall be final:** **Provided further that if the parties do not agree within 14 days on an arbitrator, the employer shall give notice to this effect in writing to the President of the Industrial Court, who shall in consultation with the chief inspector designate an arbitrator, whose decision shall be final.]** the Commission for Conciliation, Mediation and Arbitration. ";

(c) by the deletion of subsection (3);

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

"(5) The number of health and safety representatives for a workplace or section thereof shall in the case of shops and offices be at least one health and safety representative for every 100 employees or part thereof, and in the case of all other workplaces at least one health and safety representative for every 50 employees or



part thereof: Provided that **[those employees]** an employee performing work at a workplace other than that where the employee ordinarily report for duty, shall be deemed to be working at the workplace where the employee so reports for duty;" and

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

"(6) If an inspector is of the opinion that the number of health and safety representatives for any workplace or section thereof, including a workplace or section with 20 or fewer employees, is inadequate, **[he]** the inspector may by notice in writing direct the employer to designate such number of employees as the inspector may determine as health and safety representatives for that workplace or section thereof in accordance with the arrangements and procedures referred to in subsection (2)."

#### **Amendment of section 18 of Act 85 of 1993**

17. Section 18 of the principal Act is hereby amended—

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

"A health and safety representative may perform the following functions in respect of the workplace **[or section of the workplace]** for which he or she has been designated, namely—";

(b) by the substitution in subsection (1) for paragraphs (c), (d), (f), (g), (i) and (j) with the following paragraphs:

- “(c) in collaboration with **[his]** the employer, examine the causes of incidents at the workplace;
  - (d) investigate complaints by **[any]** an employee relating to that employee's health or safety at work;
  - (f) make representations to the employer on general matters affecting the health or safety of **[the employees]** an employee at the workplace;
  - (g) inspect the workplace, including any article, substance, plant, machinery or health and safety equipment at that workplace with a view to the health and safety of employees, at such intervals as may be agreed upon with the employer: Provided that the health and safety representative shall give reasonable notice of **[his]** any intention to carry out such an inspection, to the employer, who may be present during the inspection;
  - (i) receive information from inspectors as contemplated in section 36[;] and where such information is not made available within 14 days of the inspection the information will be requested from the chief inspector;
  - (j) **[in his capacity as a health and safety representative]** attend meetings of the health and safety committee **[of which he is]** as a member, in connection with any of the above functions **[.];**  
and”;
- (c) by the addition of the following paragraph:
- “(k) report on instances of non compliance with this Act to the employer or health and safety committee.”;

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

"A health and safety representative shall, in respect of the workplace or section of the workplace for which he or she has been designated, be entitled to—

(a) visit the site of an incident or where an employee was directed to leave the workplace at all reasonable times and attend **[any]** an inspection in loco;"

"(aA) attend regular meetings with the employees at the workplace to:

(i) address health and safety in the workplace;

(ii) provide feedback information to the employees they represent;

(iii) discuss reports by the health and safety representatives on the performance of their functions; and

(iv) receive mandates from employees to be presented when attending the health and safety committee meetings;

(b) attend **[any]** an investigation or formal inquiry held in terms of this Act;"

(bA) attend a special meeting with employees they represent after an incident in order to—

(i) provide information on the incident;

(ii) inform employees regarding arrangements for undertaking the investigation of the incident;

(iii) gather information from employees relevant to the incident.

- (c) in so far as it is reasonably necessary for performing **[his]** the functions of a health and safety representative, inspect any document which the employer is required to keep in terms of this Act;
  - (d) accompany an inspector on any inspection;
  - (e) with the approval of the employer **[(which approval shall not be unreasonably withheld)]**, be accompanied by a technical adviser, on any inspection;
  - (f) participate in any internal health or safety audit;
  - (g) request and have access to inspect any document which the employer is required to keep in terms of this Act and where the document is not made available within 14 days of the inspection the information may be requested from the chief inspector subject to section 36;
  - (i) report on instances of non compliance with this Act to the employer or health and safety committee."; and
- (e) by the substitution for subsection (4) of the following subsection:
- "(4) A health and safety representative shall not incur any civil liability by reason of the fact only that he or she failed to do anything which he or she may do or is required to do in terms of this Act."

**Amendment of section 19 of Act 85 of 1993**

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

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

"(1) A workplace with one or more health and safety representatives designated shall establish one or more health and safety committee.";

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

"(2) A health and safety committee shall consist of **[such]** the number of members **[as the employer may from time to time determine]** in accordance with a collective agreement, where one exists or as may be determined by the employer and employees or the employee representatives, for the efficient and effective operation of the health and safety management system.";

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

"(3) The persons nominated by an employer on a health and safety committee shall be designated in writing by the employer for such period as may be determined by **[him]** that employer, while the health and safety representatives shall be members of the committee for the period of their designation **[terms of section 17 (1)]** in accordance with their collective agreement, only where one exists or as shall be determined between employer and employees.";

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

"(4) A health and safety committee shall hold meetings as often as may be necessary, but at least once every **[three]** two months, at a time and place determined by the committee: Provided

that an inspector may by notice in writing direct the members of a health and safety committee to hold a meeting at a time and place determined by him or her: Provided further that, if more than 10 per cent of the employees at a specific workplace has handed a written request to an inspector, the inspector may by written notice direct that such a meeting be held.";

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

"(a) A health and safety committee may co-opt one or more persons by reason of his or her or, their particular knowledge of health or safety matters as an advisory member or as advisory members of the committee.";

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

"(7) If an inspector is of the opinion that the number of health and safety committees established for any particular workplace is inadequate, he or she may in writing direct the employer to establish for such workplace such number of health and safety committees as the inspector may determine.".

#### **Amendment of section 20 of Act 85 of 1993**

**19.** Section 20 of the principal Act is hereby amended—

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

"(1) A health and safety committee—

- (a) may make recommendations to the employer or, where the recommendations fail to resolve the matter, to an inspector regarding any matter affecting the health or safety of persons at the workplace or any section thereof for which such committee has been established or to the representative trade union, in which event —
- (i) the inspector shall attend to the matter in terms of section 29; or
- (ii) the representative trade union may declare a dispute in accordance with the collective agreement where one exists;
- (b) shall discuss any incident at the workplace or section thereof in which or in consequence of which any person was injured, became ill or died, and may in writing report on the incident to an inspector; **[and]**
- (c) **[shall perform such other functions as may be prescribed.]**  
shall identify all occupational health and safety regulations that are relevant to the workplace activities or substances;
- (d) shall ensure that the relevant information, training assessment, monitoring and recording provisions are in place;
- (e) shall make recommendation for inclusion in a workplace the health and safety management system and safe work procedures;

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(f) shall review the training and information provided to employees regarding any hazardous substance or condition as spelt out in the regulations; and

(g) shall perform such other functions as may be prescribed or agreed to in a collective agreement, where such agreement exists."; and

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

"(3) A health and safety committee or a member thereof shall not incur any civil liability by reason of the fact only that it or he or she failed to do anything which it or he or she may or is required to do in terms of this Act."

#### **Amendment of section 21 of Act 85 of 1993**

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

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

"(2) (a) The Minister shall before he or she publishes a notice under subsection (1), consult with the Council and cause a draft of **[his]** the proposed notice to be published in the *Gazette* and at the same time invite interested persons to submit to him or her in writing, within a specified period, comments and representations in connection with the proposed notice.

(b) The provisions of paragraph (a) shall not apply if the Minister, in pursuance of comments and representations



received, decides to publish the notice referred to in subsection (1) in an amended form.";

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

"(3) A notice **[under]** referred to in subsection (1) may at any time be amended or withdrawn by like notice.";

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

"(4) A notice shall not be issued under subsection (1) or (3) unless the Minister **[for National Health and Welfare]** of Health and the Council have been consulted.".

(e) by the deletion of subsection (5).

**Amendment of section 23 of Act 85 of 1993 as amended by section 6 of Act 181 of 1993**

21. Section 23 of the principal Act is hereby amended by the substitution for section 23 of the following section:

"No employer shall in respect of anything which **[he]** the employer is in terms of this Act required to provide or to do, in the interest of the health or safety of an employee, make **[any]** a deduction from **[any]** an employee's remuneration or require or permit **[any]** an employee to make **[any]** a payment to **[him or any other]** another person".

**Amendment of section 24 of Act 85 of 1993**

22. Section 24 of the principal Act is hereby amended by—

(a) the substitution in subsection (1) for paragraphs (a), (b) and (c) of the following paragraphs:

"(a) any person dies, becomes unconscious, suffers the loss of a limb or part of a limb or is otherwise injured or becomes ill to such a degree that **[he]** the person is likely either to die or to suffer a permanent physical defect or likely to be unable for a period of at least 14 days either to work or to continue with the activity for which **[he]** the person was employed or is usually employed;

- (b) **[a major incident occurred;]** in the course of an employee's employment, an incident occurred which resulted in personal injury, illness or death of the employee; or
- (c) the health or safety of any person was endangered and where—
  - (i) a **[dangerous]** hazardous substance or biological agent was spilled or released ;
  - (ii) the uncontrolled release of any substance under pressure took place;
  - (iii) machinery or any part thereof fractured or failed resulting in flying, falling or uncontrolled moving objects; or
  - (iv) machinery ran out of control,
 shall, within the prescribed period and in the prescribed manner, be reported to an inspector by the employer or the user of the plant or machinery concerned, as the case may be.”;
- (b) the substitution for subsection (3) of the following subsection:
 

“(3) The provisions of subsections (1) and (2) shall not apply in respect of—

  - (a) a traffic incident on a public road.
  - (b) an incident occurring in a private household, provided the householder forthwith reports the incident to the South African Police; or
  - (c) any incident which is to be investigated under section **[12 of the Aviation Act, 1962 (Act No. 74 of 1962)]** 39 of the Civil Aviation Act, 2009(Act No.13 of 2009).”.
- (c) the substitution for subsection (4) of the following subsection:

"(4) A member of the South African Police Service to whom an incident was reported in terms of **[subsection (3) (b)]** this Act shall forthwith notify an inspector thereof." and

(d) the addition of the following subsection:

(5) (a) The employer or user or self-employed person shall provide the Department with a copy of incident statistics annually, on the first day of March of each year.

(b) The incident statistics referred to in paragraph (a) shall be provided in the prescribed format.

(c) The incident statistics shall include statistics for Contractors that occurred while working on the employer premises: Provided that, the contractors are required to provide incident statistics to the Department as well."

**Amendment of section 25 of Act 85 of 1993 as substituted by section 7 of Act 181 of 1993**

23. The following section is hereby substituted for section 25 of the principal Act:

**"Report to chief inspector regarding occupational disease**

25. **[Any] A** medical practitioner who examines or treats a person for a disease described in the **[Second Schedule to the Workmen's Compensation Act, 1941 (Act No. 30 of 1941)]** Compensation for

Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), or any other disease which [he] the medical practitioner believes arose out of that person's employment, shall within the prescribed period and in the prescribed manner report the case to the person's employer and to the chief inspector, and inform that person accordingly."

**Substitution of section 26 of Act 85 of 1983 as amended by 58 of Act 181 of 1993**

24. The following section is hereby substituted for section 26 of the principal act:

**"[Victimization] Victimisation forbidden**

26. (1) An employer may not discriminate against an employee for exercising a right conferred in terms of this Act.

(2) No person shall do, or threaten to do, anything that —

(a) requires an employee not to exercise a right conferred in terms of this Act;

(b) prevents an employee from exercising a right conferred in terms of this Act; or

(c) prejudices an employee because of a past or present—

(i) failure or refusal to do anything that an employer may not lawfully permit or require an employee to do;

(ii) disclosure of information that the employee is lawfully entitled or required to give to another person; or

(iii) exercise of a right conferred in terms of this Act.

(3) No employer shall favour, or promise to favour, an employee in exchange for the employee not to exercise a right conferred in terms of this Act."

**Amendment of section 27 of Act 85 of 1993**

25. Section 27 of the principal Act is hereby amended by:

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

"(2) The chief inspector shall perform **[his]** any functions prescribed subject to the control and supervision of the Director-General of the Department and may perform any function assigned to an inspector by this Act;"

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

"(3) (a) The chief inspector may delegate any power conferred upon him or her by this Act, excluding a power referred to in section 35(1) or delegated to him or her under section 42, to any other officer or authorise any such officer to perform any duty assigned to him or her by this Act.";

"(b) No delegation of **[a]** power under paragraph (a) shall prevent the exercise of such power by the chief inspector **[himself]**.";

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

"(4) Whenever the chief inspector is absent or unable to perform his or her functions as chief inspector or whenever the designation of a chief inspector is pending, the Minister may designate any other officer serving in the Department to act as chief inspector during the chief inspector's absence or incapacity or until a chief inspector is designated."; and ADD by the deletion of subsection (d) by the deletion of subsection (5).

**Amendment of section 28 of Act 85 of 1993**

26. Section 28 of the principal Act is hereby amended by:

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

"(1) The Minister may designate permanently or temporarily any person as an inspector to perform, subject to the control and directions of the chief inspector, any or all of the functions assigned to an inspector by this Act.

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

"(2) **[Each]** An inspector designated **[under]** in terms of subsection (1) shall be furnished with a **[certificate]** card signed by or on behalf of the Minister **[and stating]** stipulating that [he] the bearer of the card has been designated as an inspector **[:** **Provided that if his designation as inspector is limited to any particular function or functions, his certificate shall state such limitation]**.";

(c) the insertion after subsection (2) of the following subsection:

"(2A) The card shall include—

- (a) the name;
- (b) a unique number;
- (c) an identity number;
- (d) a photo of the bearer; and
- (e) a designation.”;

(d) the substitution of subsection (3) of the following subsection:

“(3) Whenever an inspector designated under subsection (1) performs a function under this Act in the presence of **[any]** a person affected thereby, the inspector shall on demand by such person, produce to **[him]** that person the **[certificate]** card referred to in subsection (2).”; and

(e) the deletion of subsection 4.

#### **Amendment of section 29 of Act 85 of 1993**

**27.** Section 29 of the principal Act is hereby amended by:

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

“(1) An inspector may, for the purposes of this Act—

(a) without previous notice, at all reasonable times, enter **[any]** the premises which **[are]** is occupied or used by an employer or on or in which an employee performs any work or any plant or machinery is used, or which **[he]** the inspector suspects to be such premises;



- (b) question any person who is or was on or in such premises, either alone or in the presence of any other person, on any matter to which this Act relates;
- (c) require from any person who has control over or custody of a book, record or other document on or in those premises, to produce to **[him]** the inspector forthwith, or at such time and place as may be determined by **[him]** the inspector, such book, record or other document;
- (d) examine any such book, record or other document or make a copy thereof or an extract there from;
- (e) require from such a person an explanation of any entry in such book, record or other document;
- (f) inspect any article, substance, plant or machinery which is or was on or in those premises, or any work performed on or in those premises or any condition prevalent on or in those premises or remove for examination or analysis any article, substance, plant or machinery or a part or sample thereof;
- (g) seize any such book, record or other document or any such article, substance, plant or machinery or a part or sample thereof which in **[his]** the opinion of the inspector may serve as evidence at the trial of any person charged with an offence under this Act or the common law: Provided that the employer or user of the article, substance, plant or machinery concerned, as the case may be, may make copies of such book, record or document before such seizure;

- (h) direct any employer, employee or user, including any former employer, employee or user, to appear before **[him]** the inspector at such time and place as may be determined by **[him]** the inspector and question such employer, employee or user either alone or in the presence of any other person on any matter to which this Act relates;
  - (i) **[perform any other function as may be prescribed]** issue an administrative fine in terms of section 37(A) as indicated by Schedule 2; and;
  - (j) when so required, take photographs or make audio-visual recordings of any workplace, anything or any person within the workplace which may be relevant to an inspection or an investigation being conducted by the inspector."
- (b) the substitution of subsection (2) of the following sub section:
- "(2) **[(a)]** An interpreter, a member of the South African Police Services or any other assistant may, when required by an inspector, accompany **[him when he performs]** the inspector to perform his or her functions under this Act[.], where the assistance is reasonably required.
- [(b) For the purposes of this Act an inspector's assistant shall, while he acts under the instructions of an inspector, be deemed to be an inspector.]"**
- (c) the substitution of subsection (3) of the following subsection:
- "(4) When an inspector enters any premises under subsection (1), the employer occupying or using those premises and

each employee performing any work thereon or therein and any user of plant or machinery thereon or therein, shall at all times provide such facilities as are reasonably required **[by the inspector]** to enable **[him]** the inspector and **[his]** the inspector's assistant, **[if any]**, to perform effectively and **[safely his or their]** in a safe and healthy manner their functions under this Act.";

(d) the substitution of subsection (4) of the following subsection:

"(4) When an inspector removes or seizes any article, substance, plant, machinery, book, record or other document as contemplated in subsection (1) (f) or (g), **[he]** the inspector shall issue a receipt to the owner or person in control thereof **[.]**Provided that the inspector shall as soon as reasonably possible or at the conclusion of any proceedings in terms of this Act, return whatever he or she has seized.";

(e) by the addition of the following subsection:

"(5) Subject to section 40, when an inspector has undertaken an inspection, the inspector shall provide a copy of the inspection report or copies of any notice and correspondence that was issued during the inspection to—

(a) the employer, the health and safety representatives and the representative trade union for that workplace; and

(b) in the case of construction site, the construction client, principal contractor, any other contractor on site, if applicable and all persons in paragraph (a)."

**Amendment of section 30 of Act 85 of 1993**

28. Section 30 of the principal Act is hereby amended by:

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

"(c) An inspector may in writing prohibit an employer from requiring or permitting an employee or any employee belonging to a category of employees specified in the prohibition to be exposed in the course of **[his]** employment for a longer period than a period specified in the prohibition, to any article, substance, organism or condition which in the opinion of an inspector threatens or is likely to threaten the health or safety of that employee or the employee belonging to that category of employees, as the case may be.";

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

"(3) Whenever an inspector is of the opinion that the health or safety of any person at a workplace or in the course of **[his]** that person's employment or in connection with the use of plant or machinery is threatened on account of the refusal or failure of an employer or a user, as the case may be, to take reasonable steps in the interest of such person's health or safety, the inspector may in writing direct that employer or user to take such steps as are specified in the direction within a specified period.";

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

"(4) Whenever an inspector is of the opinion that an employer or a user has failed to comply with a **[provision of a]** regulation applicable to him or her the inspector may in writing direct

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that employer or user to take, within a period specified in the direction, such steps as in the inspector's opinion are necessary to comply with the said **[provision]** regulation, and are specified in the direction.";

(d) the substitution for subsection (5) of the following subsection:

"(5) A period contemplated in subsection (3) or (4) may at any time be extended for a specified period by an inspector by notice in writing to the person concerned.";

(e) the substitution for subsection (6) of the following subsection:

"(6) An employer or user shall forthwith bring the contents of a prohibition, direction or notice under this section to the attention of the health and safety representatives and employees or any other affected person concerned.".

**Amendment of section 31 of Act 85 of 1993**

29. Section 31 of the principal Act is hereby amended by:

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

"(1) An inspector **[may]** shall investigate the circumstances of any incident which has occurred at or originated from a workplace or in connection with the use of plant or machinery which has resulted, or in the opinion of the inspector could have resulted, in the injury, illness or death of **[any]** a person **[in order to determine whether it is necessary to hold a formal investigation in terms of section 32]**.";

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

"(1A) For the purposes of an investigation referred to in subsection (1), an inspector may subpoena any person to—

(a) appear before the inspector concerned on a day and at a place specified in the subpoena; and

(b) give evidence or to produce any book, document or item which in the opinion of the inspector has a bearing on the subject of the investigation."

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

"(2) After completing the investigation in terms of subsection (1), the presiding inspector shall submit a written report thereon, together with all relevant sworn statements, documents and information gathered **[by him,]** during the investigation to the **[attorney-general within whose area of jurisdiction such incident occurred and he shall at the same time submit a copy of the report, statements and documents to the chief inspector]** provincial control inspector within whose area of jurisdiction such incident occurred , who will, after consultation with the chief inspector, submit the report to the National Prosecution Authority."

(d) the substitution for subsection (3) of the following subsection:

"(3) Upon receipt of a report referred to in subsection (2), the **[attorney-general]** National Prosecuting Authority shall deal therewith in accordance with the provisions of the Inquests Act, 1959 (Act No. 58 of 1959) **[or]** and the Criminal Procedure Act, 1977 (Act No. 51 of 1977) **[as the case may be]."**

(e) the substitution for subsection (4) of the following subsection:

"(5) An inspector **[holding]** conducting an investigation shall not incur any civil liability by virtue of anything contained in the report referred to in subsection (2).".

**Amendment of section 32 of Act 85 of 1993**

30. Section 32 of the principal Act is hereby amended by:

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

**"32. Formal **[inquiries]** inquiry;**

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

"(1) The chief inspector may, and **[he]** shall when so requested, by a person producing prima facie evidence of an offence, **[direct an]** appoint a presiding inspector to conduct a formal inquiry into any incident which has occurred at or originated from a workplace or in connection with the use of plant or machinery which has resulted, or in the opinion of the chief inspector could have resulted, in the injury, illness or death of any person;"

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

"(2) For the purposes of an inquiry referred to in subsection (1), **[an]** a presiding inspector may subpoena any person to appear **[before him on a day and]** at a predetermined place on a day specified in the subpoena and to give evidence or to produce any book, document or thing which in the opinion of the inspector has a bearing on the subject of the inquiry.";

- (d) the substitution for subsection (4) of the following subsection:

"(4) Any inquiry under this section shall be held in public: Provided that the presiding inspector may exclude from the place where the inquiry is held, **[any]** a person whose presence is, in **[his]** the opinion of the presiding inspector, undesirable or not in the public interest.";

- (e) the substitution for subsection (7) of the following subsection:

"(7) An affidavit made by any person in connection with the incident in respect of which the inquiry is held, shall at the discretion of the presiding inspector upon production, be admissible as proof of the facts stated therein, and the presiding inspector may, **[at his discretion,]** if so required, subpoena the person who made such an affidavit to give oral evidence at the inquiry or may submit written interrogatories to **[him]** that person for reply, and such interrogatories and any reply thereto purporting to be a reply from such person shall likewise be admissible in evidence at the inquiry: Provided that the presiding inspector shall afford any person present at the inquiry the opportunity to refute the facts stated in such document, evidence or reply.

- (f) the substitution for subsection (10) of the following subsection:

"(10) The evidence given at any inquiry under this section shall be recorded and a copy thereof shall be submitted by the presiding inspector together with his or her report to the chief inspector, and in the case of an incident in which or as a result of which any



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person died or was seriously injured or became ill, the presiding inspector shall submit a copy of the said evidence and the report to the **[attorney-general within whose area of jurisdiction such incident occurred]** chief inspector.”;

(g) the insertion after subsection (10) of the following subsection:

“(10A) The chief inspector shall submit the report to the National Prosecuting Authority within whose area of jurisdiction such incident occurred, within 90 days of the conclusion of the inquiry.”;

(h) the substitution for subsection (12) of the following subsection:

“(12) Upon receipt of a report referred to in subsection (10), the **[attorney-general]** National Prosecution Authority shall deal therewith in accordance with the provisions of the Inquests Act, 1959 (Act No. 58 of 1959), or the Criminal Procedure Act, 1977 (Act No. 51 of 1977), as the case may be.”.

#### **Amendment of section 34 of Act 85 of 1993**

**31.** Section 34 of the principal Act is hereby amended by—

(a) the substitution in subsection (1) for paragraphs (a) (b), (c), (d), (e) and (f) of the following paragraphs:

“(a) without reasonable justification, fail to comply with **[any]** a lawful direction, subpoena, request or order issued or given by the inspector or presiding inspector;

(b) refuse or fail to answer **[to the best of his knowledge]** any question lawfully put to him or her by or with the concurrence of

the inspector or presiding inspector: Provided that no person shall be obliged to answer any question whereby he or she may incriminate himself or herself;

- (c) in any manner whatsoever advise, encourage, incite, order or persuade any person who has been directed, subpoenaed, requested or ordered to do something by the presiding inspector, not to comply with such direction, subpoena, request or order or in any manner prevent **[him]** any person from doing so;
- (d) refuse or fail, when required thereto by the presiding inspector, to furnish **[him or her]** the presiding inspector with the means or to render **[him or her]** the necessary assistance for holding such inquiry;
- (e) refuse or fail, when required thereto by the inspector or presiding inspector, to attend a meeting, an investigation or an inquiry; **[or]**";
- (f) intentionally insult the inspector or presiding inspector or **[his]** an assistant or intentionally interrupt the proceedings thereof~~["]~~;  
or

(c) the addition of the following paragraph:

"(g) refuse or fail, when required thereto by the inspector or presiding inspector, to provide any information or produce a book, item, document or item which is within a person's possession or control." or

**Amendment of section 35 of Act 85 of 1993**

32. Section 35 of the principal Act is hereby amended by:

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

"(1) **[Any]** A person aggrieved by [any] a decision taken by an inspector in relation to a notice or and a directive served under a provision of this Act, may appeal against such decision to the chief inspector [and the chief inspector shall, after he has considered the grounds of the appeal and the inspector's reasons for the decision, confirm, set aside or vary the decision or substitute for such decision any other decision which the inspector in the chief inspector's opinion ought to have taken].";

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

"(2) **[Any]** A person who wishes to appeal in terms of subsection (1), shall within [60] 14 days after the delivery of the inspector's decision [was made known], lodge [such] an appeal with the chief inspector in writing, setting out clearly the grounds on which [it] the appeal is [made] based.";

(c) the insertion after subsection (2) of the following subsection:

"(2A) The chief inspector shall, after considering the grounds of the appeal and the inspector's reasons for the decision, —  
(a) confirm, set aside or vary the decision; or  
(b) substitute the decision with any other decision deemed appropriate under the circumstances;";

(d) the deletion of subsections (3), (4) and (5).

**Insertion of sections 35A and 35B in Act 85 of 1993**

33. The following sections are inserted in the principal Act after section 35:

**"Right to review decision of chief inspector**

**35A.** (1) A person aggrieved by a decision taken by the chief inspector under section 35 or in the exercise of any power under this Act, may apply for such decision to be reviewed, by the High Court.

(2) The High Court may confirm, set aside or vary the decision or substitute the decision with another decision.

(3) A person who wishes to review a decision referred to in subsection (1), shall, within 60 days after the delivery of the chief inspector's decision, lodge the application with the registrar of the High Court in accordance with the rules of the High Court."

**Appeal does not suspend decision of chief inspector**

**35B.** (1) An appeal or review under section 35 (1) or 35A (1), in connection with a prohibition imposed under section 30(1)(a); (b) or (c) does not suspend the operation of such prohibition.

(2) Despite subsection (1), the High Court may suspend the operation of the decision being appealed against, pending the determination of the matter, if there are reasonable grounds for doing so."

**Substitution of section 36 of Act 85 of 1993**

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

**"Disclosure of information**

36. (1) Subject to the provisions of the Promotion of Access to Information Act, 2000 (Act No 2 of 2000), whenever an inspector performs any function in terms of section 31 or the presiding inspector conducts an inquiry in terms of section 32 and is required by the provision of this Act to supply information or report to a health and safety representative, health and safety committee or third party, the inspector or presiding inspector—

(a) shall not disclose information that is private or personal information relating to an employee, unless the employee consents in writing to the disclosure of the information; and

(b) is not required to supply any information that is—

(i) legally privileged; and

(ii) confidential and, if disclosed, may cause substantial harm to an employee or the employer.

(2) No person shall disclose any information concerning the affairs of **[any other]** another person obtained **[by him]** in carrying out **[his]** specified functions in terms of this Act, except—

- (a) **[to the extent to which it may be necessary for the proper administration of a provision of this Act]** if the information is disclosed in compliance with the provisions of any law;
- (b) for the purposes of the administration of justice;**[or]**
- (c) at the request of a health and safety representative or a health and safety committee entitled thereto**[.]**, where such request is made in writing, clearly specifying the reasons for the request;
- (d) where the information is disclosed to enable a person to perform any function in terms of this Act; or
- (e) where the person is ordered to disclose the information by a court;".

#### **Amendment of section 37 of Act 85 of 1993**

**35.** Section 37 of the principal Act is hereby amended by—

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

"(c) all reasonable steps were taken by the employer or any such user to prevent any act or omission of the kind in question, the employer or any such user **[himself]** shall be presumed to have done or omitted to do that act, and shall be liable to be convicted and sentenced in respect hereof; and the fact that he or she issued instructions forbidding any act or omission of the kind in question shall

not, in itself, be accepted as sufficient proof that he or she took all reasonable steps to prevent the act or omission."; and

(b) the deletion of subsections (3), (4), (5) and (6).

### **Insertion of sections 37A to 37F in Act 85 of 1993**

36. The following sections are hereby inserted in the principal Act after section 37:

#### **"Administrative fines**

37A. (1) If a person commits a breach of this Act, the inspector may by written notice to that person impose an administrative fine in accordance with Schedule 2.

(2) An administrative fine may, instead of a criminal prosecution, be imposed on a person who becomes liable to prosecution for any breach of this Act.

(3) An inspector shall serve a copy of the written notice contemplated on subsection (2) on the employer, self-employed person or person who conducts a business or undertaking concerned.

(4) The amount of the fine stipulated in the notice referred to in subsection (2) may not exceed the amount—

(a) prescribed for the offence; and

(b) which a court would presumably have imposed in the circumstances.

(5) An administrative fine imposed in terms of subsection (1) shall be paid to the Director-General of the Department of Labour on or before a date stated in the notice referred to in that subsection.

(6) Sections 56, 57 and 57A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) apply, subject to such modifications as the context may require, to the written notice referred to in this section."

**"Criminal liability**

37B. (1) An employer, chief executive officer, manager, agent or employee commits an offence by contravening or failing to comply with a provision of this Act, thereby causing a person's—

(a) death;

(b) permanent disablement; or

(c) illness.

(2) The chief executive officer, manager, agent or employer of the employee commits an offence by performing or omitting to perform an act, if the act or omission falls within the scope of the authority or employment of the employer or employee concerned."

**"Hindering of administration of justice**

37C. (1) A person who—

(a) hinders or obstructs an inspector in the performance of the inspector's functions;



(b) refuses or fails to comply with any requirement or request made by an inspector in the performance of the inspector's functions;

(c) persuades an inspector to accept a bribe; or

(d) assaults or swears or victimises an inspector in the performance of the inspector's functions,

commits an offence.

(2) No person may prevent an inspector from entering the premises where work is being performed, during normal working hours.

#### **Furnishing false information**

37D. A person who wilfully furnishes a record, information, application or other document or makes a statement, which is false in any material respect, under this Act, commits an offence.

#### **Failure to attend meeting, inspection, investigation, inquiry when directed or summoned**

37E. (1) A person who, having been directed or summoned to attend a meeting, inspection, investigation or inquiry given in terms of section 34, respectively—

(a) without sufficient cause, fails—

(i) to appear at the time and place specified; or

- (ii) to remain in attendance until excused by the inspector or presiding inspector at the meeting, inspection, investigation or inquiry;
  - (b) attends as required, but without sufficient cause—
    - (i) fails to comply with an instruction in terms of section 31(1A); or
    - (ii) refuses to be sworn in or to make an affirmation; or
  - (c) attends as required and having been sworn in or having been affirmed—
    - (i) without sufficient cause, fails to answer any question fully and to the best of that person's knowledge and ability :Provided that the person is made aware of the law relating to privilege; or
    - (ii) gives evidence, knowing or believing it to be false,
- commits an offence.

**Failure to comply with provisions of this Act**

- 37F.** (1) A person, commits an offence, if that person, contravenes or fails to comply with, any—
- (a) provision of this Act;
  - (b) condition of an exemption in terms of section 40(1);
  - (c) requirement to produce a book, item, document or thing under the person's control; and
  - (d) request to answer to the best of the person's knowledge and ability any question which an inspector may put to the person;
- (2) A person commits an offence when the person—

- (a) wilfully furnishes to an inspector information which is false or misleading;
- (b) presents himself or herself as an inspector;
- (c) tampers with or discourages, threatens, deceives or in any way unduly influences any person with regard to evidence to be given;
- (d) fails to produce a book, item, document or thing before an inspector or presiding inspector in terms of section (31), (32), (33) or (34);
- (e) prejudices or influences the proceedings or findings of an investigation or inquiry in terms of sections (31) or (32);
- (f) tampers with or misuses any health and safety equipment installed or provided to any person by an employer or user;
- (g) fails to use any safety equipment at a workplace or in the course of employment or in connection with the use of plant or machinery, which was provided by an employer or such a user; and
- (h) willfully or recklessly does anything at a workplace or in connection with the use of plant or machinery which threatens the health or safety of any person."

**Substitution of section 38 of Act 85 of 1993**

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

**"Penalties**

"38. (1) A person convicted of an offence in terms of a section indicated in Schedule 1, may be sentenced to a fine or to imprisonment for a period not exceeding the period mentioned in the Schedule 1.

(2) A person convicted of an offence in terms of this Act for which no penalty is otherwise or expressly determined, may be sentenced to a fine of R100 000 or to imprisonment for a period not exceeding one year, or to both."

**Amendment of section 39 of Act 85 of 1993**

**38.** Section 39 of the principal Act is hereby amended by:

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

"(1) Whenever in any legal proceedings in terms of this Act, it is proved that **[any]** a person was present on or in any premises, that person shall, unless the contrary is proved, be presumed to be an employee in terms of section 83A of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997).";

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

"(2) In the absence of satisfactory proof of age, the age of **[any]** a person shall, in any legal proceedings in terms of this Act, be presumed to be that stated as an opinion by an inspector to be **[in his opinion]** the probable age of the person; but any person having an

interest who is dissatisfied with that statement of opinion may, at **[his own]** that person's expense, require that the person whose age is in question appear before and be examined by a district surgeon, and a statement contained in a certificate by a district surgeon who examined that person as to what in **[his]** the district surgeon's opinion is the probable age of that person shall, but only for the purpose of the said proceedings, be conclusive proof of the age of that person;"

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

"(3) In any legal proceedings in terms of this Act, **[any]** a statement or entry contained in any book or document kept by any employer or user or by **[his]** the employee or mandatory, or found on or in any premises occupied or used by that employer or user, and any copy or reproduction of any such statement or entry, shall be admissible in evidence against **[him]** such person as an admission of the facts set forth in that statement or entry, unless it is proved that that statement or entry was not made by that employer or user or by any employee or mandatory of that employer or user within the scope of **[his]** such person's authority;"

- (d) the substitution for subsection (4) of the following subsection:

"(4) Whenever in any legal proceedings in terms of this Act it is proved that any untrue statement or entry is contained in any record kept by **[any]** a person, he or she shall be presumed, until the contrary is proved, wilfully to have falsified that record."

- (e) the substitution in subsection(5) for paragraph (a) of the following paragraph:

" (a) Whenever at the trial of **[any]** a person charged with a contravention of section 22 it is proved that the accused sold or marketed any article, substance, plant, machinery or health and safety equipment contemplated in that section, it shall be presumed, until the contrary is proved, that **[such]** the article, substance, plant, machinery or health and safety equipment did not at the time of the sale or marketing thereof comply with the said requirements.";

(f) the substitution for subsection (6) of the following subsection:

"(6) Notwithstanding the provisions of section **[31 or 33(3)]** 28 of the Standards Act, **[1993 (Act No. 29 of 1993)]** 2008 (Act No.8 of 2008), whenever in any legal proceedings in terms of this Act the question arises whether any document contains the text of a health and safety standard incorporated in the regulations under section 44, any document purporting to be a statement by a person who in that statement alleges that **[he]** the person is an inspector and that a particular document contains the said text, shall on its mere production at those proceedings by any person be *prima facie* proof of the facts stated therein."; and

(g) the substitution for subsection (7) of the following subsection:

"(7) The records to be kept by a health and safety committee in terms of section 20 (2), including any document purporting to be certified by an inspector as a true extract from any such records, shall on **[their]** the mere production at any legal proceedings by any person be admissible as evidence of the fact that a

recommendation or report recorded in such records was made by a health and safety committee to an employer or inspector concerned."

### **Amendment of section 40 of Act 85 of 1993**

39. Section 40 of the principal Act is hereby amended by—

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

"(1) The Minister may, for such period and on such conditions as may be determined by him or her exempt **[any]** an employer or user or **[any]** a category of employers or users, generally or with respect to **[any]** a particular employee or category of employees or users or with respect to any matter, from **[any of or all the provisions]** a provision of this Act or **[the]** a provision of a notice or direction issued under this Act.";

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

"(3) An exemption under subsection (1) shall —

(a) in the case of the exemption of a particular employer or user, be granted by issuing to **[such]** the employer or user a certificate of exemption in which **[his]** the employer's name and the scope, period and conditions of the exemption are specified;

"(b) in the case of the exemption of a category of employers or of a category of such users, be granted by the publication in the *Gazette* of a notice in which that category of employers or users

is described and the scope, period and conditions of the exemption are specified:

Provided that the Minister may grant exemption—

- (i) to an organisation of employers or an organisation of users in accordance with the requirements of either paragraph (a) or paragraph (b); or
  - (ii) from **[any]** a health and safety standard incorporated in the regulations under section 44, in any manner which **[he] the Minister** may deem expedient.";
- (c) the substitution for subsection (6) of the following subsection:
- "(6) An application for exemption shall be finalised within 30 days."

**Substitution of section 41 of Act 85 of 1993**

40. The following section is hereby substituted for section 41 of the principal Act:

**"This Act not affected by agreements**

41. (1) **[Subject to the provisions of sections 10 (4) and 37 (2), a]** A provision of this Act or a condition specified in any notice or direction issued thereunder or subject to which exemption was granted to any person under section 40, shall not be affected by any condition of any agreement, whether such agreement was entered into before or after the commencement



of this Act or before or after the imposition of any such condition, as the case may be.

**Amendment of section 42 of Act 85 of 1993**

**41.** Section 42 of the Principal Act is hereby amended by—

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

"(1) The Minister may delegate any power conferred  
[upon him] to the Minister by or under this Act, except the power  
contemplated in section 43, to an officer.";

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

"(2) A delegation under subsection (1) shall not prevent  
the exercise of the relevant power by the Minister [himself]."; and

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

"(4) An [authorization] authorisation under subsection  
(3) shall not prevent the performance of the relevant function by the  
Minister, the chief inspector or an inspector, as the case may be.".

**Amendment of section 43 of Act 85 of 1993**

**42.** Section 43 of the principal Act is hereby amended by—

(a) the substitution in subsection (1) for paragraph (b)(iii),(iv) and (v) of the following subparagraphs:

"(iii) the training, safety equipment or facilities to be provided by  
[employers] an employer or [users] user, the [persons] person

to whom and the circumstances in which **[they are]** it is to be provided and the application thereof;"

"(iv) the health or safety measures to be taken by **[employers]** an employer or **[users]** user;"

"(v) the occupational hygiene measures to be taken by **[employers]** an employer or **[users]** user;

(i) the addition of the following paragraphs:

"(l) the classification and labelling of hazardous chemical substances in the workplace;

(m) the consultations and negotiations to conclude collective agreements between an employer, employees and representative trade unions on matters of health and safety."

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

"(2) No regulation shall be made by the Minister except after consultation with the Council and no regulation relating to State income or expenditure or to any health matter shall be made by the Minister except after consultation **[also]** with the Minister of **[State Expenditure]** Finance and the Minister **[for National]** of Health [and Welfare], respectively.";

(n) the substitution for subsection (3) of the following subsection:

"(3) In making regulations the Minister may apply any method of differentiation that **[he]** the Minister may deem advisable: Provided that no differentiation on the basis of race or colour shall be made.";

(o) the substitution for subsection (4) of the following subsection:

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"(4) A regulation may in respect of any contravention thereof or failure to comply therewith, prescribe a penalty of a fine[, ] to a maximum of R5 000 000.00 or imprisonment for a period not exceeding [12 months, and, in the case of a continuous offence, not exceeding an additional fine of R200 or additional imprisonment of one day for each day on which the offence continues: Provided that the period of such additional imprisonment shall not exceed 90 days] five years or both";

(p) the insertion after subsection (4) of the following subsection:

"(4A). The Minister may by regulation specify offences in terms of this Act in respect of which alleged offenders may pay a prescribed admission of guilt fine instead of being tried by a court for the offence."

#### **Substitution of section 44 of Act 85 of 1993**

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

#### **"Incorporation of health and safety standards in regulations**

44. (1) The Minister may by notice in the *Gazette* incorporate in the regulations [any health and safety standard or part thereof, without stating the text thereof, by mere reference to the number, title and year

of issue of that health and safety standard or to any other particulars by which that health and safety standard is sufficiently identified] a South African National Standard or any provision thereof that has been published in terms of section 28 of the Standards Act, 2008 (Act No. 8 of 2008) in respect of a commodity, product or service which may affect health or safety by referring to the title and number.

(2) **[No health and safety standard shall be incorporated in the regulations except after consultation with the Council]** If the South African National Standard or a provision thereof contemplated in subsection (1) is amended, the amended South African National Standard is deemed to be incorporated.

(2A) Any South African National Standard or any provision thereof incorporated in terms of subsection (1) may be withdrawn.

(3) Any **[health and safety standard]** South African National Standard or a provision incorporated in the regulations under subsection (1) shall for the purposes of this Act, in so far as it is not repugnant to any regulation made under section 43, be deemed to be a regulation, but not before the expiry of two months from the date of incorporation thereof.

**[(4) Whenever any health and safety standard is at any time after the incorporation thereof as aforesaid, amended or substituted by the competent authority, the notice incorporating that health and safety standard shall, unless otherwise stated therein, be deemed to refer to that health and safety standard as so amended or substituted, as the case may be.]**

[(5) The chief inspector shall keep a register of particulars of every publication in which a health and safety standard incorporated in the regulations under subsection (1), and every amendment or substitution of any such health and safety standard, was published, and also of the place in the Republic where such publication is obtainable or otherwise available for inspection, and he shall make that register or an extract therefrom available free of charge to persons having an interest, for inspection.]

[(6) The provisions of section 31 of the Standards Act, 1993 (Act No. 29 of 1993), shall not apply to any incorporation of a health and safety standard or of any amendment or substitution of a health and safety standard under this section.]

[(7) Any safety standard which was immediately prior to the commencement of this Act incorporated under section 36 of the Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), in the regulations made under that Act, shall be deemed to be a health and safety standard incorporated under this section.]".

**Insertion of section 44A into Act 85 of 1993**

44. The following section is hereby inserted in the principal Act after section 44:

**"Approved inspection authority**

44A. (1) The chief inspector may in writing approve an organisation, that has been accredited by the SANAS in terms of the Accreditation for Conformity Assessment, Calibration and Good Laboratory Practice Act, 2006 (Act No. 19 of 2006), as an approved inspection authority for specifically defined work.

(2) An approved inspection authority referred to in subsection (1) shall have specialised knowledge and equipment to—

(a) conduct investigations, tests, sampling or analyses as the approved inspection authority may consider necessary; and

(b) make specific findings, purporting to be objective findings, as to—

(i) the health of any person;

(ii) the safety or risk to health of any work, article, substance, plant or machinery, or of any condition prevalent on or in any premises; or

(iii) the question of whether a particular standard has been or is being complied with, with respect to any work, article, substance, plant or machinery, or with respect to work or a condition prevalent on or in any premises, or with respect to any other matter,

and by issuing a report, stating such findings, to the person to whom the service is rendered.

(3) The chief inspector may at any time request information from an approved inspection authority in a prescribed format for the purposes of the administration of this Act.

(4) An approved inspection authority may be required to operate within a prescribed guideline as may be determined by the chief inspector from time to time.

(5) An approved inspection authority shall be subjected to an annual audit by an inspector.

(6) An approved inspection authority shall, in the prescribed format, report to the chief inspector every six months on all activities relating to the approval granted and all recommendations made to the employer.

(7) The chief inspector may, in writing, at any time withdraw the approval of an approved inspection authority."

**Amendment of section 45 of Act 85 of 1993**

**45.** The following section is hereby substituted for section 45 of the principal Act:

**"Serving of [notices] notice**

**45.** Unless another method is prescribed, a notice under this Act shall be served—

- (a) by delivering a copy thereof to the person upon whom it is to be served;"
- (b) by leaving such a copy at the usual **[or last known]** place of residence or business of such a person; or
- (c) by sending **[such]** a copy by registered post to the usual **[or last known]** place of residence or business of such a person."

**Substitution of section 46 of Act 85 of 1993**

46. The following section is hereby substituted for section 46 of the principal Act:

**"Jurisdiction of magistrates' court**

46 (1) Notwithstanding anything to the contrary contained in any law [—

(a)] a magistrate's court shall have jurisdiction to impose any penalty or to make any order provided for in this Act[;].

[(b) no magistrate's court shall be competent to pronounce upon the validity of any regulation made under this Act.]

(2) The Labour Court or High Court has exclusive jurisdiction to determine a particular dispute about the interpretation or application of any provision of this Act, except where this Act provides otherwise.

(3) The Labour Court has no jurisdiction in respect of offences in terms of this Act."

**Insertion of section 46A into Act 85 of 1993**

47. The following section is hereby inserted in the principal Act after section 46:



**"Stating of case to High Court**

46A. (1) If any question of law arises concerning the application of this Act, the Director-General may or at the request of a party with sufficient interest in this matter, state a case for decision by the High Court.

(2) The Director-General shall set out in the stated case—  
(a) the facts that were found to be proved; and  
(b) the view of the law which was adopted in relation to those facts.

(3) If the Director-General has any doubt as to the correctness of a decision given by the High Court, regarding a question of law, concerning the application of this Act, the Director-General may submit such a decision to the Supreme Court of Appeal."

**Short title and commencement**

**48.** This Act is called the Occupational Health and Safety Amendment Act, 2019, and takes effect on a date to be determined by the President by proclamation in the *Gazette*.

**Insertion of Schedules 1 and 2 to Act 85 of 1993**

The principal Act is hereby amended by the insertion of the following Schedules:

**Schedule 1**

This Schedule sets out the maximum fine that may be imposed in terms of this Act for the contravention of certain provisions of this Act.

**SCHEDULE 1****MAXIMUM FINES OR PERIOD OF IMPRISONMENT THAT CAN BE IMPOSED FOR OFFENCES**

<b>Column 1 Section under which convicted</b>	<b>Column 2 Maximum fine and period of imprisonment</b>
2B	R 1 000 000 or 3 years imprisonment
8	R 5 000 000 or 5 years imprisonment
9	R 5 000 000 or 5 years imprisonment
10	R 1 000 000 or 3 years imprisonment
12	R 1 000 000 or 3 years imprisonment
13	R 200 000 or 2 years imprisonment
14	R 1 000 000 or 3 years imprisonment
15	R 1 000 000 or 3 years imprisonment
16	R 1 000 000 or 3 years imprisonment
17 (1) ; 17 (4)	R 1 000 000 or 3 years imprisonment
18 (3)	R 1 000 000 or 3 years imprisonment
22	R 500 000 or 3 years imprisonment
30 (2)	R 500 000 or 3 years imprisonment
31(1B)	R 1 000 000 or 3 years imprisonment
34	R 5 000 000 or 5 years imprisonment
36	R 500 000 or 3 years imprisonment
37	R 5 000 000 or 5 years imprisonment
38	R 5 000 000 or 5 years imprisonment
40	R 1 000 000 or 3 years imprisonment
41	R 1 000 000 or 3 years imprisonment
42	R 1 000 000 or 3 years imprisonment

:

**SCHEDULE 2****Administrative fines**

<b>Column 1 Section contravened</b>	<b>Column 2 Maximum fine</b>
7	R 50 000
19 (1);	R 50 000
20 (4);	R 50 000
21;	R 50 000
24(1);(2)	R 25 000
25;	R 50 000
29(3);	R 25 000
30(6)	R50 000