LEGAL LIABILITY FOR SUPERVISORS (MHS ACT)

LEARNER GUIDE
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LEGAL LIABILITY FOR SUPERVISORS (MHS ACT)

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<td>Demonstrate knowledge of the Mine Health and Safety Act, regulations and definitions</td>
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LEARNING OUTCOMES

Learners, who have completed the training, will:

- Have a clear understand of the aims of the MHS Act, 29 of 1996
- Be able to explain the aspects of the MHS Act, 29 of 1996
- Be able to explain the aspects of the Regulations
- Understand the content of various definitions
- Understand his/her roles and responsibilities with regard to compliance with the MHS Act

THE STATUTES

These are the statutes on which this course is primarily based:

1. The Mine Health and Safety Act 29 of 1996 and Regulations
2. The Minerals Act 50 of 1991 and Regulations

Reference will also be made to other legislation that could have an impact on the dominant theme of this course, namely Health and safety in the mining industry, the most notable legislation would be the Occupational Health and Safety Act 85 of 1993 and Regulations and the Labour Relations Act 66 of 1995.
INTRODUCTION TO THE MINE HEALTH AND SAFETY ACT

The Mine Health and Safety Act 29 of 1996 (MHSA) is a very complex statute regulating health and safety at the workplaces. It thus reflects the standards society expects when it comes to workplace health and safety.

It is commonly accepted that there will always be some form of ‘risk’ exposure at the workplace, and the Act accordingly recognizes this. It however expects every person at a workplace to do all that they can to minimize the chance of an accident or incident at the workplace. In short, it expects every person to act like a reasonable person when it comes to the maintenance of health and safety at their workplace.

Health and Safety at a workplace is a team effort involving everyone from top level management to the lower rank employees. Experience has shown that many employees still believe that health and safety is only the problem of senior management. The legal view is that this is not what one would expect of a reasonable employee, and any employee holding such a belief risks being penalised in terms of the Act.

WHY THE NEED FOR LEGISLATION?

A reasonable employer (i.e. a normal employer) would accept that he has an obligation to continuously protect his employees against unnecessary hazards that may endanger their health and safety. This would be a social as well as a moral norm. But why the need for legislative control?

1. The Act Creates a Standard

The health and safety at a workplace is definitely a team effort and could only be achieved when all the players involved ensure that they know the legal rules and play accordingly. The legal rules and penalties for disobeying the rules create a standard that everyone can and should be aware of. Without such a standard, one’s approach to health and safety would be subjective and this would create confusion among the players. Not all the employers or employees share the same values with regard to occupational health and safety and the Act has been necessary in the past, to bring irresponsible employers and employees to justice.

2. Society Demands the Act

Unfortunately major disasters stimulate the public and employee’s awareness of occupational health and safety. Tragically this happens often in South Africa’s mining industry. The Vaal Reefs disaster of May 1995, in which 104 lives were lost, as the result of a locomotive crashing through its safety barriers, and down the shaft, invoked greater public outcry than any previous mine accident. Therefore the state, which is a representative of the public, has to act on such public outcry by for example drafting legislation designed to prevent workplace disasters.
3. If There Were No Act

The following statement made by the Judge in [Barker v Union Government] may serve as an indication of the possible consequences if there were no act:

“Absolute safety under all circumstances is not guaranteed to the labourer by the contract of employment. The employer is not an insurer. He is not bound to furnish the safest machinery, or to provide the best possible means for its operation, in order to relieve him from responsibility.”

4. Normal Legal Remedies Are Not Adequate

The employment contract of the employee itself would not provide him/her with much recourse against his/her employer for an injury sustained at work. He/she could consider bringing a civil claim for the injuries against his employer but to do so he would have to prove, on a balance of probabilities that his employer’s negligence resulted in his injuries.

This situation could cause many employees to not bother because the employee pursuing a civil remedy could possibly be exposed to victimization, or the threat of losing his job.

Such a scenario would not necessarily motivate the employer to take all reasonable steps to safeguard the health and safety of his employees. Thus the need for legislation that makes an irresponsible attitude towards workplace health and safety a criminal offence.

BACKGROUND OF THE MINERALS ACT

The statutory regulation of health and safety in the mining industry can be traced back to the Mines and Works Act 27 of 1956. The Mines and Works Act consisted of the Act and several regulations. The Act itself consisted of only 21 sections. The regulations were made to regulate specific problems and situations that occurred in the mining industry, most issues were addressed in these regulations.

The Mines and Works Act, No 27 of 1956 got repealed by the Minerals Act on 1 January 1992 with the exception of Section 9, which was a restriction on Sunday work and other relevant definitions. The Minerals Act did however not repeal all the regulations made in terms of the Mines and Works Act, most of the well known regulations is still in place.
1. Individual liability

The concept of individual liability for workplace incidents were created by the Mines and Works Act.

The owner of the Mine or Works could now do an appointment in writing for a manager in terms of Regulation 2.5.1 because provision was made for this. Regulation 2.5.1 stated that each mine and works should be under a manager who would be responsible for the control, management and direction of the mine or works. Insofar as responsibility for health and safety was concerned, the manager had the following functions:

- He had to take all reasonable measures to comply with and enforce the requirements of the Minerals Act as well as with the orders given by inspectors in the interests of health and safety and to ensure that employees observe them.

- He had to take all reasonable measures to provide for the safety and proper discipline of the employees.

- He had to prevent the employment of incompetent workmen for dangerous work. (This provision is however still in force under the Minerals Act).

The Minerals Act had in essence retained the most important and sufficient of the above, although the duties and responsibilities of the mine manager, which was now provided for, in terms of section 31 of the Act itself, were more strongly formulated. Section 31 forms part of the now repealed Chapter 5 of the Minerals Act.

The Mines and Works Act also provided for the appointment of subordinate managers in terms of Regulation 2.6.1. The Minerals Act retains this provision. A subordinate manager is appointed to assist the manager in the control, management and direction of a mine or works and has the same responsibilities as the manager, but for a reduced area of responsibility.

The manager’s responsibilities were redefined with the enactment of the Minerals Act, as were the responsibilities of a subordinate manager. This was done to demonstrate that more was expected from management with regard to occupational health and safety.

Notwithstanding the above, the Engineer in charge was effectively the person held responsible for what occurred at a workplace. The reasoning behind this is that by virtue of his background, he is the most competent person to explain, for example why a particular installation has failed.

The problem therefore was that the manager still controlled the provision of health and safety resources, and because the inspectors did not really hold him accountable, he was, invariably, not inspired to be generous in the provision of such resources. The reformulation of the Manager’s duties and responsibilities, as mentioned above, was intended to address this issue.
2. Administration

The Government Mining Engineer Deputy and Assistant Government Mining Engineer, inspectors of mines and inspectors of machinery supervised the Mines and Works Act. The inspectors were the officials that practically administered and policed the Act at the workplace.

They had wide ranging powers and even had jurisdiction, under certain circumstances, to convict and sentence contraveners of regulations and/or special rules. The inspector could, however, impose a fine only and not a jail sentence. The employer had the right to withhold payment of wages from a contravener who failed to pay his fine, and to pay the amount over to the inspector. There was a special provision requiring an inspector to pay all fines received over to the State Revenue Fund.

The Minerals Act was, in turn, administered by the Director-General of the Department of Mineral and Energy Affairs. The application of the Act's provisions was done under the direction of and was subject to the instructions of a deputy director (generally known as the Government Mining Engineer).

Regional Directors were appointed on a regional basis and were to a great extent autonomous in their regions. They had a multitude of functions and were assisted by a Regional Mining Engineer and other officers.

3. Offences and Penalties

The Mines and Works Act made a person guilty of an offence if he, by his act or his omission, caused serious bodily injury to any other person. The maximum fine was R 1 000 and only if he failed to pay this fine, could he be sentenced to jail for a period not exceeding twenty four months i.e. a jail sentence was not really a threat as long as he had enough funds to pay the R 1000 fine.

The Minerals Act had a similar provision although it added the requirement of negligence. The fine was R 15000 initially, but the Minerals Amendment Act did away with these limits. What is important though, is that the Minerals Act provided that a jail sentence of 2 years could be imposed without the option of first paying a fine.

NATURE AND CONTENT OF THE MINERALS ACT

Health and safety forms an integral part of most of the provisions of the Act, although health and safety is now addressed primarily by the Mine Health and Safety Act. For example, the chapter on authorization to prospect and to mine may, when first considered, have very little to do with health and safety, but it plays an important role in the assessment of the boundaries of a mining area i.e. to ascertain which health and safety legislation is applicable.
The Minerals Act is now intended to regulate the issues of mining which do not necessarily deal with health and safety, as is summed up in the revised objective:

“...To regulate the prospecting for, and the optimal exploitation, processing and utilization of minerals;

... To regulate the orderly utilization and the rehabilitation of the surface of land during and after prospecting and mining operations; and

... To provide for matters connected therewith....”

INDEX TO THE MINERALS ACT

Chapter 1: Definitions:

Chapter 2: Administration of the Act

Sections 2 to 4 provide for the division of the republic into regions for administration purposes, as well as the appointment of Directors: Mineral Development (previously regional directors).

Chapter 3: Authorization to Prospect and To Mine

Sections 5 to 16 regulate the right to prospect and to mine, the issuing of prospecting permits, the issuing of mining authorization, etc. An in-depth knowledge of these provisions is not needed.

Chapter 4: Optimal Exploitation and Utilization of Minerals

Sections 17 to 25. These provisions have very little to do with health and safety as this chapter has, as its primary aim the protection and optimal use of our natural resources.

Chapter 5: Safety and Health

Sections 26 to 37. This chapter was previously of prime importance for the purposes of health and safety. This chapter was, however, repealed by the promulgation of the Mine Health and Safety Act, which not only addresses health and safety issues previously included in this chapter, but also additional health and safety requirements.

Chapter 6: Rehabilitation of Surface

Sections 38 to 42. This chapter was extensively revised by the Minerals Amendment Act, 1993. Issues addressed include rehabilitation, environmental management, and the removal of buildings.
Chapter 7: Transitional Provisions

Sections 43 to 50. The issues dealt with include the continuation of prospecting rights, the deproclamation of land, the continuation of mining rights, etc. The right to certain diamonds is vested in the state.

Chapter 8: General and Miscellaneous Provisions

SOME IMPORTANT DEFINITIONS

<table>
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<th><strong>Hazard</strong></th>
<th>Is something that has the potential to cause loss, harm or detriment to people, equipment or the environment. (A condition or practice with the potential for harm)</th>
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<td><strong>Risk</strong></td>
<td>Risk is the likelihood of a hazard occurring and the consequences thereof</td>
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<td><strong>Hazardous Area</strong></td>
<td>Is an work area in which there is a potential for loss or harm to people, the environment or equipment, occurs</td>
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<td><strong>Waiting Place</strong></td>
<td>For the requirements of the Regulations. Awaiting place means waiting places provided by the manager for persons prior to entering any workplace, and by means approved by the principle inspector in writing, prevent persons entering a workplace until being instructed to do so by the miner after declaring the workplace safe</td>
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<td><strong>Self Propelled Machinery</strong></td>
<td>Means any self propelled mobile machine that is used for the purpose of performing mining, transport or associated operations underground or on surface at a mine and is mobile by virtue of its movement on wheels, skids, tracks, mechanical shoes or any other device fitted to the machine, but excludes rail bound equipment, scraper winches, mono rail installations, static winches, draglines, winding machinery installations, track mounted conveyors and any equipment attached thereto;</td>
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<td><strong>Explosion Protected Apparatus</strong></td>
<td>Explosion protected apparatus means any apparatus designed for use in a hazardous area and includes Flameproof Apparatus, Intrinsically Safe Apparatus and Increased Safety Apparatus</td>
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<td><strong>Ventilation District</strong></td>
<td>Means a section having its own independent intake airway commencing from the main intake airway, and its own independent return airway terminating in the main return airway</td>
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<td><strong>Accessible Working</strong></td>
<td>Means any place in or on a mine where access can be gained and has not been permanently sealed off or where caving has taken place</td>
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2. BACKGROUND TO THE MINE HEALTH AND SAFETY ACT

*Chapter 5* of the Minerals Act previously regulated health and safety at a mine. It was however felt that Chapter 5 did not deal with this issue sufficiently enough. Certainly, the frequency and seriousness of mining disasters seemed to support this view. In particular, the Merriespruit disaster of 1994, in which the wall of a slimes dam collapsed, moved the Government to appoint a commission of inquiry into health and safety in the mining industry. This commission was under the chairmanship of Mr. Justice R.N. Leon.

The commission's mandate was to investigate all aspects of the legal regulation of health and safety in the mining industry as defined in the Minerals Act No 50 of 1991, and it subsequently made recommendations to the State President on possible improvements to existing regulatory legislation and the implementation of these changes, in the light of prevailing circumstances within the mining industry.

1. **Recommendations Of The commission**

The recommendations of the commission not only related to amendments to be made in the Minerals Act 50 of 1991, but also to the drafting of a new Act. The recommendations were as follows:

1. A new Act, devoted to health and safety in the mining industry only, should be drafted.

2. The existing regulations under the supervision of the Mining Regulation Advisory Committee (MRAC) should be upgraded.

3. New regulations should be drafted concerning the following:
   - Accidents caused by falls of ground.
   - Accidents from Haulage and Transport Underground.
   - Occupational Health.
   - Coal Mine Explosions and Respirable Dust.
   - Restructuring of the Department of Mineral and Energy Affairs.

4. Regulations dealing with occupational health in mines should be promulgated as soon as possible. These regulations require, inter alia, that
   - the mine owners provide medical surveillance for the diseases on the mine; and
   - the mine manager ensures that the owner's surveillance scheme is properly operated, and that adequate records are kept, and supplied (subject to medical ethics).
5 A Mine Health and Safety Council must be established to advise the Minister on all matters relating to health and safety in mines, the relevant legislation and the enforcement thereof.

6 The owner must appoint those persons slotting in between the manager and the owner in the hierarchy, e.g. consulting engineers.

7 A system of health and safety representatives should be established at each mine, with at least one representative per 100 non-managerial employees. The manager, in consultation with the workforce should facilitate their election, and define the workplaces to be covered.

8 One or more Mine Health and Safety Committee(s) should be established by the manager at each mine, after consultation with workplace representatives.

9 The mining industry should develop a methodology for assessing the most serious hazards at the workplace.

2. Drafting of the new Act

During 1995 the Parliamentary Mineral and Energy Affairs Portfolio Committee supported the recommendation for the drafting of a new Act and shortly thereafter the Cabinet approved the implementation of this recommendation.

The Mine Health and Safety Bill was subsequently drafted by MRAC. MRAC is a tripartite body comprising of members of the state, employers and employees that was established on a voluntary basis. The main objects of the Bill were to promote and protect the health and safety of all persons employed or working at mines.

THE ACT: A NEW APPROACH

The main goals and features of the Act are as follows:

- To promote a culture of health and safety;
- To provide for the enforcement of health and safety measures;
- To provide for appropriate systems of employee, employer, and State participation in health and safety matters;
- To establish representative tripartite institutions to review legislation, promote health and enhance properly targeted research;
- To provide for effective monitoring systems and inspections, investigations and inquiries to improve health and safety;
To promote training and human resources development;

To regulate employers’ and employees’ duties to identify hazards and eliminate, control and minimize the risk to health and safety;

To entrench the right to refuse to work in dangerous conditions; and

To give effect to the public international law obligations of the Republic relating to minimizing health and safety.

The most important feature of the Act is the style of drafting. The traditional method of drafting long hard-to-understand paragraphs has been replaced by more reader friendly language.

NATURE AND CONTENT OF THE MINE HEALTH AND SAFETY ACT

This Act is dedicated solely to health and safety within the mining industry, which was not the case with the amended Minerals Act. The promulgation of the Mine Health and Safety Act did not have the effect of repealing the Minerals Act. It did however repeal the chapter devoted to Health and Safety in the Minerals Act (Chapter 5), thereby creating a "New Minerals Act", dealing only with the prospecting of minerals, their utilization and processing, rehabilitation of land and matters connected therewith. The Mine Health and Safety Act consist of 106 sections, which are divided into 8 chapters.

Chapter 1  Objects of Act
Chapter 2  Health and Safety at Mines
Chapter 3  Health and Safety Representatives and Committees.
Chapter 4  Tripartite Institutions
Chapter 5  Inspectorate of Mine Health and Safety
Chapter 6  Minister’s Powers
Chapter 7  Legal Proceedings and Offences
Chapter 8  General Provisions
NATURE AND MINE HEALTH AND SAFETY ACT REGULATIONS

The Mine Health and Safety Regulations were originally mostly derived from the Minerals Act 50 of 1991. Regulations of the Minerals Act that deals with health and safety matters are continuously being repealed and incorporated into the Mine Health and Safety Act. In addition, a number of new regulations, unique to the MHS Act, have been promulgated in the last few years and will continue to be promulgated from time to time.

The result of this state of affairs is that it is now crucial that management always keeps up to date with what is published in the Government gazette.

Index to the Regulations:

Chapter 1 - Appointments and Administration
Chapter 2 - Duties and Responsibilities
Chapter 3 - Electricity
Chapter 4 - Explosives
Chapter 5 - Fires and Explosions
Chapter 6 - Health and Safety Representatives and Committees
Chapter 7 - Inspectorate of Mine Health and Safety
Chapter 8 - Machinery and Equipment
Chapter 9 - Mine Environmental Engineering and Occupational Hygiene.
Chapter 10 - Miscellaneous and General Provisions
Chapter 11 - Occupational Medicine
Chapter 12 - Offshore Installations
Chapter 13 - Outlets, Ladder ways and Travelling Ways
Chapter 14 - Protection of the Surface and the Workings
Chapter 15 - Qualifications and Competencies
Chapter 16 - Rescue, First Aid and Emergency Preparedness and Response.
Chapter 17 - Surveying, Mapping and Mine Plans
Chapter 18 - Tripartite Institutions
Chapter 19 - Underwater Mining
Chapter 20 - Definitions
Chapter 21 - Forms
Chapter 22 - Schedules
Chapter 23 - Reporting of Accidents and Dangerous Occurrences
ADVISORY COUNCIL ON THE MINE HEALTH AND SAFETY ACT

Essentially 3 parties have a role in giving effect to the mining legislation:

a) **Department of Minerals and Energy**
   
   It implements and administers the legislation. It appoints the Inspectorate which has the role of “policeman” i.e. checking compliance with the Acts.

b) **Employer and Employees**
   
   They are responsible for carrying out compliance with the legislation.

c) **Mine Health and Safety Council**

The Tripartite setup

*Chapter 4* of the Mine Health and Safety Act provides for the establishment of an advisory council consisting out of:

- Five members representing employers in the mining industry;
- Five members representing the employees in the mining industry;
- Four members representing departments of the State; and
- The Chief Inspector of Mines who must chair the council.

These 15 members represent management, workers and the state. The Mine Health and Safety Council advises the Minister on health and safety matters. It consists of three permanent committees:

i) **Mining Regulation Advisory Committee.** (MRAC)

ii) **Mining Occupational Health Advisory Committee.** (MOHAC)

iii) **Safety in Mines Research Advisory Committee.** (SIMRAC)

*Sections 45 and 46* of the Mine Health and Safety Act provide for the establishment of the **Mining Qualifications Authority.** Like the abovementioned Council, it consists of 15 members from management, workers and the state. This council’s functions are mainly as follows:

- They seek registration as a body responsible for generating education and training standards and qualifications;
- They seek accreditation as a body responsible for monitoring and auditing achievements;
- They propose education and training standards and qualifications to bodies;
- They generate education and training standards and qualifications;
- They also monitor and audit achievements in terms of the standards and qualifications;
- and they perform the function of a sector education and training authority.
WHERE THE MINING LEGISLATION APPLIES

The Occupational Health and Safety Act (OHSA) apply as a general rule, except in respect of:

- **mine** (both the place and the activity)
- **mining area**
- **works**

The mining legislation applies to these three zones and any person who enters them. These could be described in the following manner:

**“Mine”** (verb)
- making excavations or boreholes, or exploitation of any mineral in any other way for the purpose of winning a mineral
- **prospecting** in connection with winning a mineral (i.e. looking beyond the area where a mineral is being won)

**“Prospecting”**
- intentionally searching for any mineral (this involves disturbing the earth by excavations or drilling)

**“Mine”** (noun)
- excavation in the earth (this includes earth under the sea or other water)
- boreholes (except boreholes drilled for water)
- any other area where a mineral is being exploited
- includes all structures, machinery and roads found in such an area of excavation, and used for the purpose of extracting minerals

**“Mining area”**
- includes the area adjacent to the mine
- also includes non-adjacent areas, provided that
  - they are **connected** to the mine by means of a road, railway, conveyor belt etc. which is owned by the mine, and is continuous;
  - they are **under the control** of the person/body who has authorization to mine;
  - they are used in connection with the mining operation.
- includes the land on which the continuous connection is situated
“Works”
Any place, excluding a mine, where the following will be carried out:

- training and central rescue station
- the transmission and distribution of power to a consumer
- any operation connected to the above

These definitions are not comprehensive, and the Minerals Act and Mine Health and Safety Acts should be consulted. The important thing is to know whether an operation can fall into any of these definitions. Examples of where OHSA would apply include:

- housing on the mining area;
- mining hospitals and clinics adjacent to the mining operational area;
- schools on the mining area; and
- recreational facilities on the mining area
- central research laboratories in the neighbouring town

(Provided that these areas are not used in direct connection with mining activities).

“Only if as these areas are connected to a mine by a public road”

OHSA NOT EXCLUDED BY THE DEFINITIONS

Section 103 - The Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), is not applicable to any matter in respect of which any provision of this Act is applicable.

Note, however, that in terms of Section 80 (1) the Minister may declare any provision of this Act to be applicable to the mines. Furthermore, the Act has certain regulations that could be used as precedents, e.g.

- the format of a material safety data sheet (GAR 7)
- construction regulations
- housekeeping and facilities regulations
OBJECTIVE OF THE MHS ACT (Chapter 1)

The objects of this Act are-

(a) to protect the health and safety of persons at mines;
(b) to require employers and employees to identify hazards and eliminate, control and minimise the risks relating to health and safety at mines;
(c) to give effect to the public international law obligations of the Republic that concern health and safety at mines;
(d) to provide for employee participation in matters of health and safety through health and safety representatives and the health and safety committees at mines;
(e) to provide for effective monitoring of health and safety conditions at mines;
(f) to provide for enforcement of health and safety measures at mines;
(g) to provide for investigations and inquiries to improve health and safety at mines; and
(h) to promote -
   (i) a culture of health and safety in the mining industry;
   (ii) training in health and safety in the mining industry; and
   (iii) co-operation and consultation on health and safety between the State, employers, employees and their representatives.

CHAPTER 2

Section 2 - Employer to ensure safety

1)(a) The employer must ensure that as far as is reasonably practicable, that the mine is designed, constructed and equipped
   • to provide a healthy and safe working environment, and
   • with a system of communication, and mechanical/electrical equipment that will achieve this purpose.

(b) The employer must ensure that as far as is reasonably practicable, the mine is operated (from commissioning to decommissioning) in a way that employees can work without danger to their health and safety and that of others.
   (i) The employer must compile an annual health and safety, and medical report.
   (ii) The employer must compile an annual report to shareholders, incorporating the abovementioned reports.

2) The employer of a mine that is not being worked, but in respect of which a closure certificate has not been issued, must take reasonable steps to continuously prevent injuries, ill-health, and loss of life or damage of any kind from occurring at or because of the mine.
The Mine Health and Safety Act defines “Chief Executive Officer” as:

the person who is responsible for the overall management and control of the business of the employer

The Mine Health and Safety Act defines employer as “owner”;

The Mine Health and Safety Act defines “owner” as (in relation to a mine):

- the holder of a prospecting permit or mining authorization issued under the Minerals Act, if a permit or authorization does not exist, the person for whom the activities of a mine are undertaken, but excludes an independent contractor
- if neither of the above, the last person who worked that mine or that person’s successor in title

Sections 2 (1) and (2) would be regarded as the duties of the employer, summarized in a few paragraphs. These paragraphs represent what the employer would be undertaking, as his active contribution towards maintaining health and safety.

Section 2 (1) (a) (ii) requires an effective communication system i.e. it is not merely a practical requirement, but has legal prescription. In this regard, it is essential that the employer maintain structured liaison with the mines - and that this liaison be documented (as proof of compliance). Flow diagrams tend to be a useful aid.

Sections 2 (1) (c) and (d) require the employer to compile an annual medical report. No guidelines have ever been issued by the Medical Inspector as to the format, or even what content these reports should have. The ultimate aim of these reports is to assist the Mine Health and Safety Council (notably MOHAC) in compiling a general dossier of the state of health in the mining industry.

Section 2 (a) (2) highlights the fact that statutory liability for a mine, in terms of the mining legislation, only ceases where the closure of the mine has been formalized by the issue of a closure certificate. Thus, where a mine ceases to operate, and the cessation is intended to be permanent, it would be expedient to arrange the closure certificate as soon as possible thereafter.
Section 5 - Employer to maintain a healthy and safe mine environment

1) The employer must, as far as is reasonably practicable, provide a working environment that is safe and without risk to employees’ health.

2) The employer must as far as is reasonably practicable:
   - identify the hazards and assess the risks to persons other than employees, and
   - ensure that persons other than employees who may be directly affected by the activities of the mine are not exposed to health and safety risks.

Although Section 5 refers to "employer", the general duties are equally applicable to all persons who help him run a mine - including the employer. After all, the general duties would be too much for one person to cope with.

Section 5 could be seen as the overall requirements of the Mine Health and Safety Act summarized in a few sentences. Section 5 must be cross-read with the objectives of Section 1, especially:

- Section 1 (d) - “provide for employee participation …”
- Section 1 (h) (l) - “a culture of health and safety …”

The employer must note the value of indemnities that visitors are required to sign. The employer will be responsible for their health and safety while they are present on the site. If negligence can be proved by the visitor, an indemnity will not protect the employer against a civil action.

What is regarded as healthy and safe is not left completely to the discretion of the employer and the Mine Health and Safety Act requires him/it to co-operate with, and give feedback to, the Mine Health and Safety Council and Inspectorate.

Note Section 5 (2) widens the statutory duty of ensuring health and safety to include persons other than employees, e.g. the residents, visitors and even trespassers on the mines. This means risk assessment exercises must include a focus on visitors and the community at large, e.g. slime dams and nearby villages.
4. THE DUTIES AND RIGHTS OF EMPLOYEES

These are set out in *Section 22 & 23 of the Act* and are as follows:

**DUTIES:**

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<tr>
<th>a) Take reasonable care to protect their own health and safety.</th>
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Examples include:

- wearing the PPE issued to them
- not taking chances or shortcuts when doing the work
- not coming to work intoxicated

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<th>b) Take reasonable care to protect the health and safety of other persons who may be affected by any act or omission of that employee.</th>
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Examples include:

- ensuring no unauthorized person comes close to machinery that is being tested
- warning visitors of on-site hazards and not letting them wander about unescorted
- reminding employees to wear their PPE

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<th>c) Use, and take proper care of the protective clothing, equipment and facilities provided for their health and safety.</th>
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Examples include:

- properly using a lockout procedure
- not using safety shoes as soccer boots on weekends
- not vandalizing machine guards or symbolic signs

**Note:** The instruction given to an employee must be reasonable, and have the purpose of ensuring health and safety. Ordering the employee to do something dangerous would be unreasonable, and also unlawful in terms of MHSA. (Refer to Section 83(1))
d) Immediately report any situation which they believe to be a health and safety risk to their immediate supervisor, and which they cannot sort out themselves.

Situations to report on would include:
- damaged machine safeguards
- faulty machinery
- design flaws in a modified tipper truck

e) Co-operate with any person to help him comply with his duties and responsibilities in terms of the Act.

Examples include:
- carrying out proper Planned Task Observations
- reporting design flaws in the plant or machinery
- reporting problems encountered with a safe work procedure

f) Comply with any prescribed health and safety measure.

Examples include:
- following safe work procedures
- wearing the prescribed PPE and obeying symbolic signs
- not ignoring barricades provided for a machine

Notwithstanding the fact that employees are to comply with the stated duties, no employee can comply with these duties if he is unaware thereof. This situation immediately places the onus on the employer and supervisor to ensure that all employees are instructed and trained in these duties prior to being permitted to perform work at the mine. The supervisor, for his part, would have to continuously check that the employees understand and remember their duties.
EMPLOYEES RIGHTS:

Section 23 - Employees’ right to leave a dangerous working place.

1) The employee has the right to leave any the workplace whenever -
   - he believes, with reasonable justification, that there is a danger to health and safety, and/or
   - the Health and Safety Representative orders him to do so.

2) The Employer must in consultation with the Health and Safety Committee draft a procedure dealing with the following:
   - The notification to supervisors and Health and Safety Representatives of the danger
   - Employee participation in resolving the workplace danger
   - Inspector participation
   - Alternative work for the employee
   - Warnings to other employees who work in the same workplace

Regulation 8.3.2 of the Minerals Act Regulations has always had such a provision. This regulation, however, did not provide the employee with the right to leave the workplace, but placed the responsibility on the employee to report the dangerous situation to his immediate supervisor.

This Regulation, clearly, did not provide the employee with the right to make his own decision as to the safety of the workplace.

Although the legislators of the Mine Health and Safety Act provide employees with the right to decide to leave a dangerous working place, it is realized that employees could easily abuse this right. The provision has thus been made that the mine employer is to consult with the established health and safety committee in order to determine effective procedures for the effective exercise of this right.
PROCEDURE WHEN HEALTH AND SAFETY IS ENDANGERED

WORKER HAS REASON TO BELIEVE WORK IS LIKELY TO ENDANGER HIMSELF OR ANOTHER PERSON

WORKER
Promptly reports circumstances to supervisor, remain in safe place

SUPERVISOR
Investigate in presence of the worker and an H & S committee member

DISAGREEMENT
Worker continues to refuse
Worker has reasonable grounds to believe work still likely to endanger himself or another worker

WORKER
Remains in safe place unless assigned to reasonable alternative work or given other directions pending investigation and decision

SUPERVISOR
Notifies plant loss control manager
Disputed equipment or workplace not to be used pending investigation and decision

PLANT LOSS CONTROL MANAGER
Investigate in presence of employee, supervisor and employee representative

PLANT LOSS CONTROL MANAGER
Gives decision to employee and supervisor as soon as is practicable

RETURN TO WORK
CORRECT PROBLEM
5. APPOINTMENTS AND COMPETENCIES

The mining legislation requires that all employees are competent, especially the appointees. If they are not competent then their appointment would have very little value anyway. Ineffective appointments will result in undue exposure for the manager, an inefficient health and safety system and a real possibility that the Act's provisions may unknowingly be contravened, (note Regulation 2.10.2 which provides that the manager must not allow incompetent/inexperienced persons to perform work where persons' health and safety may depend on proper performance.)

There are three main categories of competency:

- **Competency as defined in terms of Minerals Act Regulation 1.** Whenever the mining legislation refers to a competent person, it refers to “.... a person who :
  1) has the knowledge, training, skills and experience to organize the work.
  2) is familiar with the legal provisions which apply to the work.
  3) has been trained to recognize any potential or actual danger to health or safety in the work.
  4) has an appropriate certificate of competency where required by the regulations.”

- **Certificated competency** in terms of Section 1 means the holder of an appropriate certificate of competency issued in terms of Regulation 28 by the Director-General. Only certain appointments require a certificate of competency (notably, the engineering appointments).

- **Special competency** requirements referred to in the regulations require the nomination of specific appointees. This is usually the case where the regulations do not state that the appointee needs to be a competent person as defined, but it sets its own competency requirements that may or may not correspond with the definition of a competent person.

ACCOUNTABILITY

Being appointed in terms of the Mining legislation does not necessarily make an employee criminally liable. The Mining legislation makes any contravention of its provisions an offence which means that any employee, who contravenes the Act, can be held criminally liable. It is only when an appointee has failed to carry out a duty imposed on him in terms of his appointment, that he will be liable by virtue of his appointment.

FORMAT OF APPOINTMENTS

No appointment form can be comprehensive enough to include all the legal duties an appointee is expected to fulfil. This is true even where some sections or regulations may create the need for a specific appointment. One runs the risk of leaving out important specific and general duties by trying to list duties comprehensively in a letter of appointment.
REPORTABLE APPOINTMENTS

In certain cases a report must be made to the Principal Inspector of Mines (formerly known as the Regional Director) within three days of any appointment made. Copies of any appointment letters must accompany the report. The following appointments must be reported:

1) **Section 4(1)** Employer Representative - reported to the Chief Inspector of Mines
2) Mine Manager - reported to the Principal Inspector by the employer
3) Subordinate Manager
4) Engineer in General Charge
5) Mine Surveyor
6) All engineering appointments or related ‘competent persons’ appointments
7) Chief and Safety officers
8) Environmental control officer

**Schedule 4 - Transitional Provisions**

The importance of this schedule is that it makes any statutory duty/appointment, in terms of the Minerals Act and Regulations, a statutory duty/appointment in terms of the Mine Health and Safety Act as well.

Thus, an appointment in terms of these regulations is not merely done, as the wording in the regulations suggest, helping the manager comply with the regulations, but also to assist the employer in compliance with the Mine Health and Safety Act.

APPOINTMENTS PROVIDED FOR

**Representatives of the Chief Executive Officer**

**Section 2A - Chief Executive Officer’s (CEO) Duties**

1) The CEO must take reasonable steps to ensure that the employer’s functions in terms of this Act are properly discharged.

2) The CEO may entrust any of his functions to any person. This person would be under the control of the CEO and must act according to his instructions.

3) If the “employer” is a body corporate (company), the Board of Directors may nominate a person to perform the functions of a CEO in terms of this Act (i.e. where the nominated person is not the CEO himself).

4) Nominating such a person does not relieve the employer/Board of any liability in terms of this Act.

5) The nominated person must act according to the CEO or the Board’s instructions
This is the only Section where a clear reference is made to “Chief Executive Officer” (normally the human representative acting on behalf of the mining group). Elsewhere in the Act, where the various Sections refer to “employer”, the true meaning is that the CEO has the liability for ensuring compliance with the sections.

**Section 2A (3)** provides for the nomination of a person other than the normal CEO as the person ultimately responsible for ensuring compliance with the provisions of the mining legislation. This person must be a board member, and would become the “CEO” for the purposes of the Mine Health and Safety Act.

**Section 2A (4)**, is the adoption of the principle of vicarious liability (the employer is responsible for the actions of the employee), into the Mine Health Act. Generally, the principle of vicarious liability is a common law doctrine, and would not apply in a statute, unless the statute expressly provides for this to be the case.

**Section 4 – An employer may entrust functions to another person.**

1) **An employer of the mine may appoint any person, except a manager to perform any function entrusted to the employer in terms of Section 4 of this Act.**

2) **An employer must notify the Chief Inspector in writing within 7 days of**
   - the appointment of any person in terms of subsection (1);
   - the manager or managers over whom that person has control; and
   - the nature of that person’s functions.

3) **The employer must**
   - supply the persons appointed under subsection (1) with the means to perform their functions; and
   - take reasonable steps to ensure that they perform their functions.

4) **The appointment of a person under subsection (1) does not relieve the employer of any duty imposed on employers by this Act or any other law.**

The amendment to the Mine Health and Safety Act has resulted in the mine manager’s role being redefined to that of “day to day activities”. The responsibility for those activities, which would not be “day to day to day to day”, has shifted to the employer. Such activities would include providing the annual budget of a mine as well as major reconstruction work (i.e. Capital/Turnkey projects).
Section 4(1) enables the employer to appoint persons to assist him in ensuring compliance with the provisions of Sections 2 and 3 of the Mine Health and Safety Act. Sections 2 and 3, deal with, inter alia, the commissioning and construction of the mine, which would typically form part of the responsibility of a Group consulting Engineer or Metallurgist (a category of appointees the Department of Minerals and Energy intends to ‘target’ with statutory responsibility).

Section 7 – An employer must appoint staff to the mine with due regard to health and safety.

1) The Employer must, as far as is reasonably practicable to do the following:
   a) Ensure every employee obeys the requirements of the Act.
   b) Institute the necessary measures to ensure healthy and safety.
   c) Provide appointed persons with what they would need to carry out the requirements of the Act, or the Inspector.
   d) Evaluate the employee’s training and competence before allowing him to carry out a job function.
   e) Ensure an employee is supervised by a person who understands the risks involved in the job, and who would know what precautionary measures are required for the job.

2) The employer may appoint qualified persons to carry out a job function.

3) The employer remains potentially liable, even though he has appointed persons to carry out a job.

Section 7 gives the Employer the power to decide how many people he needs to help him run the mine. This power is not absolute. If the employer does not use it “reasonably” and ensure there is adequate staff, the Inspector could step in and decide how many persons he must appoint.

Section 7 (1) (a) means that an employee must obey any instruction given by the employer. In reality, it would be the supervisor who gives the instruction. Note, the instruction must be reasonable and in the interests of health and safety.

Section 7 (1) (d) basically repeats Minerals Act Regulation 2.10 which holds that the Employer must not allow incompetent persons to carry out a job. For the supervisor, who would help the Employer in this regard, this means a duty to carry out checks on a workplace to ensure that all the employees there know how to perform their job, and that they do so competently.
2. The Manager

Previously, the mine manager was deemed to be responsible for all operations taking place at a mine. Thus, notwithstanding that the Mine Health and Safety Act originally provided for the mine owner to be the person/body ultimately responsible for ensuring health and safety, the focus of statutory prosecution tended to remain with the manager.

The amendments to the Mine Health and Safety Act are primarily intended to redirect the focus of ultimate responsibility for compliance (and threat of statutory sanction) from the mine manager to the "employer" and his/its representatives, namely the Section 4(1) and 7(2) appointees.

As part of this amendment, the mine manager’s responsibility has been redefined as focusing on “day to day responsibilities”. This would include issues such as, the induction of employees, risk assessment and medical surveillance programs: all “normal” activities of mining.

Meaning of “Manager”

Mine Health and Safety Act Section 102 defines a Manager as:

"..... any competent person as defined in the regulations, appointed in terms of section 3(1)(a)"

Minerals Act defines a Manager as:

"..... the person appointed to be responsible for the control, management and direction of a mine or a works and includes the terms “General Manager”.

Functions, Duties and Responsibilities

The Manager's functions, duties and responsibilities in general are outlined in broad terms in Section 3. The effect of these is that a manager will:

a) Be responsible for the control and management of, and direction of the employees at the mine. The term "employee" includes an independent contractor. The manager will do so, by

- appointing prescribed competent persons
- dictating policy on health and safety aspects
- ensuring the existence of health and safety systems.
b) *Take all reasonable measures to ensure the safety and health of employees and proper discipline at the mine.* The manager will do this by

- installing systems which have a purpose to ensure, as far as reasonable, the safety and health of employees at the mine;
- appointing competent persons;
- incorporating health and safety in the disciplinary code.

(c) *Take all reasonable measures to ensure that the provisions of this Act are complied with in relation to his mine.* The manager will do this by ensuring the following:

- All employees are aware of the existence of the Acts and regulations.
- Non-compliance with the Acts is not tolerated.
- Competent persons have been delegated the duty to ensure that the requirements dictated by legislation are adhered to within their individual areas of responsibility.
- A sufficient number of *Regulation 2.9.2* assistants have been appointed to assist in ensuring compliance.

The need to make appointments

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<th>Section 7</th>
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A manager is required to make various appointments. Most of them are prescribed and a manager has no choice. Failure to make these appointments constitutes an offence and in addition the manager will be deemed to be responsible as if he is the prescribed appointee himself.

Provision has also been made for the manager to voluntarily appoint various people. If he fails to do so, it would not be an offence although he may still be deemed responsible for non-compliance of the regulations if no person was appointed to be responsible for compliance. It is advisable, to make use of regulation 2.6.1 and 2.9.2 and for the manager to appoint enough competent persons to assist him in his functions.
3. Subordinate Manager

**Minerals Act Regulation 2.6.1**

"The manager may appoint one or more competent persons as subordinate managers to assist him in the control, management and direction of the mine or works and every such person shall, to an extent to be clearly defined in his letter of appointment, have the same responsibilities under the regulations as the manager: Provided that the appointment of such persons shall not to be taken to relieve the manager of any personal responsibility under the regulations."

Functions, Duties and Responsibilities

A subordinate manager will have the same responsibilities as the manager, in relation to the subordinate manager’s area of responsibility. The manager retains responsibility for the mine as a whole. **Regulation 2.6.1** requires that the extent of a subordinate manager’s responsibility is clearly defined. A subordinate manager must assist the manager in the control, management and direction of the mine and will have the same responsibilities as the manager with regard to his area of responsibility.

4. Regulation 2.9.2 Assignees

**Regulation 2.9.2** enables the mine manager to appoint various employees to assist him "in enforcing such observations of the Regulations". These assistants are appointed so that compliance will be enforced. Although not a popular statement, they may be equated to policemen or traffic wardens.

With the above in mind, for an effective appointment, a Regulation 2.9.2 assistant should have the necessary authority to enforce compliance. Regulation 2.9.2 assistants were sometimes regarded as a junior subordinate manager. They were made responsible for almost anything in the Minerals Act ranging from the issuing of mining authorization to assisting the manager in forwarding all required statistical returns.

**Nature of the Regulation 2.9.2 Appointee**

The category of persons normally forms the middle-rank or supervisory level. They are usually considered the most crucial category of persons as far as implementing health and safety at a workplace is concerned because their general function is to translate vague or general directions as well as specific instructions from the managerial level into procedures or systems.
The Regulation 2.9.2 appointment is a general category i.e. mid-rank supervisory level with power to give instructions. As such, a wide variety of appointments are made in terms of this regulation. Typical examples include:

- Foreman - All Categories
- Metallurgists
- General Engineering Supervisors
- Assistant Plant Supervisors
- Technician Superintendents

Conversely, many appointments are made in terms of a specific regulation, with functions that are largely defined by the same set of regulations. Typical examples include:

- Safety Officers (Regulation 2.17.1)
- Mine Surveyors (Regulation 2.12.1)
- Subordinate Engineers (Regulations 2.13.3.1 and 2)
- Diving Supervisors (Regulation 30.3)
- Ambulance Officers (Regulation 24.5.1)

The general characteristics of a Regulation 2.9.2 Assignee (i.e. power to give instructions, ability to translate general directives into specific workplace procedures or instructions), are ideally suited to appointments such as the abovementioned. The normal practice, therefore, is to appoint such persons in terms of the prescribed regulation as well as in terms of Regulation 2.9.2 (the latter serving to confirm their mid-rank status and power to give instructions, as may be required by the other regulations under which they have been appointed.)

**Level of Competence Required**

Regulation 2.9.2 merely states that a manager shall appoint such persons as may be necessary.

It does not require the appointing of competent persons as defined. By implication, these appointees will have to be competent in the sense of possessing a good working knowledge of the Minerals Act and its provisions and the Mine Health and Safety Act. If they are not aware of or understand the provisions of the Acts, they cannot be expected to recognize non-compliance and enforce compliance.

Ideally, all Regulation 2.9.2 appointees must undergo training as it is very difficult to enforce compliance when ignorant of all the general provisions. Regulation 2.9.2 appointees are advised to make use of the expertise of the Chief and other Safety Officers.
Nature, Functions and Duties

As discussed above, a Regulation 2.9.2 assistant must assist the manager in enforcing compliance with the Act and Regulations. For this purpose, he will need to have a very good working knowledge of the Minerals Act and Regulations and Mine Health and Safety Act as this will be the standard against which he will identify non-compliance. He will also need to be vested with authority to either enforce compliance or to report contraveners to a senior manager if not to the mine manager himself.

5. Engineering Appointments

*Regulations 2.13.1* to *2.13.12* set out the requirements regarding the responsibility for machinery. Engineering appointees usually all qualify as competent persons as they are in possession of certificates of competency. A certificate of competency implies a good working knowledge of the provisions of the Mining legislation and knowledge of the Mine Health and Safety Act,

*Regulation 2.13.1* provides that at any mine or works where:

- the designated rating a machinery used in the generation of power combined with the power from external sources exceeds 2500Kw
- winding plants used for transporting persons are installed.

An Engineer in general charge must be appointed (the manager has no discretion, here.). This person must have a certificate of compliance. *Regulations 28.1.1* to *28.50* set out the requirements relating to certificates of competency in great detail. Of particular interest would be *Regulation 28.22.1* to *28.24* which relate to Mechanical and Electrical Engineers’ certificates.

*Regulation 2.13.3.1* provides that the Manager may appoint one or more subordinate (area) engineer/s to assist the Engineer in general charge.

- This person would report directly to the Engineer in general charge, or via a subordinate engineer (*Regulation 2.13.2* chief engineer), and
- Be responsible for carrying out the specific functions set out in his letter of appointment.

The appointment of this person does not relieve the Engineer in general charge, or the subordinate engineer appointed under *Regulation 2.13.3.2* of any potential liability.

An area engineer must also have a certificate, although a non-certificated, but competent person may assume his responsibility up to 60 days in a 6 month period.

*Regulation 2.13.3.2* provides that the Manager may appoint subordinate (chief) engineers to assist the engineer in general charge in directing and controlling subordinate (area) engineers appointed in terms of *Regulation 2.13.3.1*. Such an engineer must at all times have a certificate. This engineer would have the same responsibility as the engineer in general charge although only for that area of responsibility demarcated to him.
As with all other prescribed appointments, an engineer's appointment must ideally not refer only to certain regulations. There are many provisions they need to be aware of, that have force of law but are not contained in the regulations. Some examples are: Codes of practice, permits, permissions, exemptions, directives, requirements relating to the supply and repair of machinery, etc.

Again, engineers should be clearly advised on their respective areas of responsibility. The reporting structure must also be clearly established and all the necessary systems and documents must be supplied to them to enable them to carry out their responsibilities.

Regulation 2.13.4.1 sets out the general responsibilities of the Engineer in general charge. The following would, in turn, be delegated to the subordinate engineers:

- safe installation and proper operation, running and maintenance of all machinery at the colliery
- safe erection and proper maintenance of all buildings, structures and tanks
- reasonable measures must be taken to ensure that
  - all appliances, mechanisms and guards are maintained in good condition
  - the Acts and Regulations relating to machinery are complied with
  - any apparatus which, while operating, poses a danger, is stopped.

Although all of the Regulations are important, the following chapters have particular relevance to his responsibility:

Chapter 6 - Outlets, Ladders and Travelling Ways
Chapter 16 - Winding
Chapter 17 - Elevators
Chapter 18 - Traction
Chapter 19 - Scraper Winch Installations
Chapter 20 - Machinery - Special Safety Measures
Chapter 21 - Electricity
Chapter 22 - Boilers
Chapter 23 - Pressure Vessels, Compressors and Refrigeration Plants

From a health and safety perspective, the chapters of particular importance are

Section 21 - Duties of the Manufacturer, Supplier
The Engineer’s responsibility mainly relates to machinery. **Machinery** is defined in **Section 1** of the Minerals Act as:

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"... any engine, boiler or appliance or a combination thereof which is situated on a Mines or Works and which is used or intended to be used:

a) For generating, receiving, storing, converting, transforming, transmitting or distributing any form of power or energy; or

b) For conveying persons, materials or minerals, in connection with operations falling under a mine or works."
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An **engine** is defined as:

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"... any appliance or combination of appliances whereby power, excluding man or animal power, can be applied to do mechanical work(.)"
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6. Production Foremen

**Regulation 2.13.12**, provides that persons with the permission of the Principal Inspector may control

- the proper running/operation of machinery and
- the installation and removal of machinery used for conveying persons.

Such persons need to familiarize themselves with the Regulations pertaining to machinery, especially **Chapter 20**. The following are some of the more important Regulations to be aware of:

- Regulation 20.1.2 - continuous supervision
- Regulation 20.2 - prohibition of entry to safeguarded and fenced off areas.
- Regulation 20.3.2 - no entry to areas of installation
- Regulation 20.3.1 - no entry to fenced off dangerous places
- Regulation 20.5 - fencing or guarding of dangerous parts
- Regulation 20.8 - safety precautions for persons working near machinery
- Regulation 20.9.3 - power supply to be locked out during repairs and parts to be secured during repairs or maintenance.
7. Shifts man

*Chapter 20* of the Minerals Act Regulations refers to special safety measures to be adopted in relation to machinery. It is sometimes the practice to appoint shifts men in terms of *Regulation 20.1.1*. The Regulation does not specifically provide that such a person has to be appointed. It merely states as fact that the operation of machinery shall be in the charge of a competent shifts man who will exercise effective control of any unskilled persons working under his direction.

8. Ganger / Miner in Charge (Regulation 2.9.2)

The Ganger or Miner in charge is the main person of responsibility where supervision of blasting operations is concerned (as per *Chapter 8* of the Minerals Act Regulations).

- His main duty is to ensure that a workplace where blasting is to occur is made as safe as possible before and after the blasting.
- He must also safeguard persons from dangerous areas, falling rocks, as well as remove the workers upon a complaint of danger by any worker.
- He must remain at the workplace until the shift has been removed.
- He must conduct regular inspections including tests for flammable gas.
- *Regulation 8.10* sets out the duties with regard to explosives, misfired holes.
- He must report any gassing to the Manager, Mine Overseer or Shift Boss.

*Chapter 9* of the Minerals Act Regulations deals with the handling of explosives. *Regulation 9.1.1* places this responsibility upon a competent person –“competent”, here, meaning holding a blasting certificate.

- Only this person is permitted to keep keys to the explosive’s container.
- He must register and count cases of explosives to be transported and ensure they are diligently transported.
- He must supervise cleaning of old explosives.
- Only he may open a container of explosives.
- Only he may conduct blasting operations.

The Manager also has certain duties as regards assisting the Ganger. They are as follows:

- Provide security personnel to check for unauthorized removal of explosives.
- Supply the explosives.
- Authorize the destruction of old explosives.
9. Mine Surveyor

In terms of Regulation 2.12.1 to 2.12.12, provision is made for the appointment of a mine surveyor or a competent person who will assume the responsibility of a mine surveyor.

- If more than 200 persons are employed in the workings of any mine, mine surveying will be under the general charge of a certificated mine surveyor appointed in writing by the manager.

- If there are less than 200 persons so employed, mine surveying will be under the charge of either a certificated mine surveyor or a competent person.

In terms of Regulation 2.12.7 the manager may appoint assistant certificated mine surveyors to assist the mine surveyor referred to in Regulation 2.12.1

Regulation 2.12.8 sets out the general duties of a surveyor. They are as follows:

- Inform the manager in writing when the face of a working area which is being advanced comes within an excavation, water, mine boundary or source of gas/ fumes

- Ensure the correct establishment of survey pegs and provide the manager with relevant survey data, in writing. The precautions must remain until a holding is effected or the face of the working recedes from the 15-meter distance.

- Keep a map of the underground workings, showing ventilation systems and airflow. The map shall never be more than 3 months out of date.

- In addition, the mine surveyor must familiarize himself with the provisions of Chapter 12, and sign the plans provided for in that chapter.

10. Environmental Control Officer

Regulation 2.16.1 requires, in various instances, the appointment of an environmental control officer who must be a competent person with a qualification in mine environmental control. The manager may appoint or shall appoint, if so required by the Principal Inspector (Director: Mineral Development), more than one competent person provided that each one's area of responsibility is clearly defined in his letter of appointment.

Regulation 2.16.1.3 sets out an environmental control officer's duties, functions and responsibilities. He must examine environmental conditions on the mine, and record the findings in a file or book. In addition, he must submit suggestions where unsatisfactory conditions are detected. He must sign this recording. The examination must cover the following areas:

- Air temperature and humidity
- The mine’s ventilated air
- Quantity of dust and gases in the air
- Noise and illumination levels
- Drinking and dust suppressing water
- Precautions against coal dust and flammable gas explosions
- Precautions against mine fires
11. Chief Safety Officer and Safety Officer

*Regulation 2.17.1* states that the mine manager shall, if there are more than 300 employees at a mine; appoint a safety officer who shall devote all his time to the functions assigned to a safety officer by or under the regulations. A safety officer has the following functions:

- Inspecting the workplace and machinery at regular intervals to ensure compliance with the Act,
- Ensuring that people are trained and qualified to work safely
- Ensuring the health and safety of all employees in general
- Reporting any threat or potential threat and, if necessary, taking preventative steps
- Maintaining an inspection register
- Investigating and reporting on certain accidents or occurrences
- Conducting meetings with safety representatives at least once a quarter
- Making recommendations on any matter relating to health and safety for submission by the manager to the Principal Inspector.

*Regulation 2.17.4* provides for the appointment of a chief safety officer if more than one safety officer has been appointed. The chief safety officer must, in addition to the functions of a safety officer, perform the functions of a chief safety officer as prescribed below:

- Directing certain accidents or occurrences to a safety officer for investigation
- Submitting copies of accident/occurrence reports to the mine manager
- Recording all accidents which resulted in a shift loss
- Identifying critical areas regarding health and safety
- Ensuring that people are trained regarding safety and health requirements
- Ensuring that the safety and health requirements are implemented
- Ensuring that safety officers inspect the critical areas at least every 30 days and lower risk areas at least every 90 days
- Endorsing the safety officer’s records
- Reporting to the engineer on any matter requiring immediate attention
- Submitting, before the 15th of every month, a written report to the mine manager
- Conducting meetings with his safety officers at least once a quarter
Regulation 2.17.2 requires the following level of competence from the Chief Safety Officer and Safety Officers:

a) “By virtue of his training, knowledge and experience be able to identify any threat or potential threat to the safety or health of persons employed in or at the mine.;

b) Be conversant with the applicable requirements relating to the safety and health of employees, whether or not those requirements have the force of law.”

12. Fire Warden

Where the number of employees exceeds 50, an organization must be established for fire-prevention and fire-control. In addition, the manager must

- provide suitable and adequate fire-fighting equipment and material;
- enforce a code of practice, approved by him, for the organization of fire prevention, fire fighting and fire drill; and
- Appoint one or more competent persons, in writing, who must examine all the equipment and material provided for fire fighting.

This person must carry out his examinations at least monthly and record the results in a book provided specifying deviations. The report must be examined and signed by the manager within three days.

Regulation 5.1 (1) The employer must ensure that a competent person reports to the employer, at appropriate intervals determined in accordance with the mine’s risk assessment-

(a) the effectiveness of the precautionary measures taken to prevent or suppress explosions of coal dust or flammable gas; and

(b) the adequacy of measures in place to prevent, detect and combat the start and spread of mine fires.

Reference is made to the following Guidelines issued by the Chief Inspector of Mines in terms of section 9(2) of this Act:

(i) Guideline for the Compilation of a Mandatory Code of Practice for the Prevention of Coal Dust and Flammable Gas Explosions: Ref.: DME 16/3/2/1-A1

(ii) Guideline for the Compilation of a Mandatory Code of Practice for the Prevention of Flammable Gas Explosions in Mines Other than Coal DME 16/3/2/1-A2
Regulations 11.3 to 11.11 together with the relevant codes of practice (organization of fire-prevention, fire-fighting and fire-drill and installation, operation, maintenance and patrolling of the belt conveyor system) provide for precautions against fires at a mine.

The appointed person should examine on at least a monthly basis, all the equipment and material provided for fire-fighting and record his findings as above. It is also advisable to appoint this person in terms of Regulation 2.9.2 to assist in enforcing all provisions regarding precautions against fire. This can be done in the same letter of appointment.

13. TRACKLESS MOBILE MACHINES:

Regulations
Collisions between trackless mobile machines and pedestrians

8.10(1) The employer must take reasonably practicable measures to ensure that pedestrian are prevented from being injured as a result of collisions between trackless mobile machines and pedestrian. At any mine where there is a significant risk of such collisions, such measures must include at least the following;

8.10.(1)(1) All electrically or battery powered trackless mobile machines, excluding shovels, bucket wheel excavators and overburden drills, must be provided with means to automatically detect the presence of any pedestrian within its vicinity. Upon detecting the presence of a pedestrian, the operator of the trackless mobile machine and the pedestrian must be warned of each other’s presence by means of an effective warning. In the event where no action is taken to prevent potential collision, further means must be provided to retard the trackless mobile machine to a safe speed where after the brakes of the trackless mobile machine are automatically applied without human intervention.

All underground diesel powered trackless mobile machines must be provided with means:

8.10.(1)(2)(a) to automatically detect the presence of any pedestrian within its vicinity. Upon detecting the presence of a pedestrian, the operator of the diesel powered trackless mobile machine and the pedestrian shall be warned of each other’s presence by means of an effective warning; and

(b) in the event where no action is taken to prevent potential collision, further means shall be provided to retard the diesel powered trackless mobile machine to a safe speed where after the brakes of the diesel powered trackless mobile machine are automatically applied. The prevent potential collision system on the diesel powered trackless mobile machine must fail to safe without human intervention.
Collisions between diesel powered trackless mobile machines

8.10(2) The employer must take reasonably practicable measures to ensure that persons are prevented from being injured as a result of collisions between diesel powered trackless mobile machines. At any opencast or open pit mine where there is a significant risk of such collisions, such measures must include:

8.10.2(1) Every diesel powered trackless mobile machine must be provided with means to automatically detect the presence of any other diesel powered trackless mobile machine within its vicinity; and

8.10.2(1)(a) upon detecting the presence of another diesel powered trackless mobile machine, the operators of both diesel powered trackless mobile machines shall be warned of each other's presence by means of an effective warning; and

8.10.2.1(b) in the event where no action is taken to prevent potential collision, further means shall be provided to retard the diesel powered trackless mobile machine to a safe speed where after the brakes of the diesel powered trackless mobile machine are automatically applied. The prevent potential collision system on the diesel powered trackless mobile machine must "fail to safe" without human intervention.

Collisions between trackless mobile machines and rail bound equipment

8.10.(2)(2) The employer must take reasonably practicable measures to ensure that persons are prevented from being injured as a result of collisions between trackless mobile machines and rail bound equipment. At underground operations where there is a significant risk of such collisions, such measures must include warning the operators of the trackless mobile machine and the locomotive of each other's presence by means of an effective warning.

Trackless mobile machines running uncontrolled

8.10(3) The employer must take reasonably practicable measures to prevent trackless mobile machines running uncontrolled.

Overturning of any trackless mobile machine

8.10(4) The employer must take reasonably practicable measures to ensure that persons are prevented from being injured as a result of overturning of any trackless mobile machine. Roll overprotection structures must be fitted on trackless mobile machines if required in terms of the mine's risk assessment.

Objects falling onto operators and/or passengers of trackless mobile machines

8.10(5) The employer must take reasonably practicable measures to ensure that persons are prevented from being injured as a result of objects falling onto operators and/or passengers of trackless mobile machines. Trackless mobile machines must be fitted with falling object protection structures to protect operators and passengers from falling objects if required in terms of the mine's risk assessment.
Persons inadvertently falling out of or being ejected from trackless mobile machines.

8.10(6) The employer must take reasonably practicable measures to ensure that persons are prevented from being injured as a result of operators and/or passengers inadvertently falling out of or being ejected from any trackless mobile machine in motion.

Braking systems

8.10(7) The employer must take reasonably practicable measures to ensure that persons are prevented from being injured as a result of brake failure. Such measures must include ensuring:

8.10.(7)(1) that trackless mobile machines are operated with adequate and effective braking systems;
8.10.(7)(2) all braking systems are adequately and routinely tested for intended functionality;
8.10.(7)(3) all braking systems are regularly maintained; and
8.10.(7)(4) that where a combined braking system is used, the design of the braking system is such that it complies with the requirements for the separate systems and that it fails to safe.

8.10(8) Restricted operator visibility.

The employer must take reasonably practicable measures to ensure that persons are prevented from being injured as a result of restricted operator visibility.

Fatigue while operating a trackless mobile machine.

8.10(9) The employer must take reasonably practicable measures to ensure that persons are prevented from being injured as a result of fatigue of operators. Such measures must include a fatigue management procedure for operators.

Battery charging facilities

8.10(10) The employer must take reasonably practicable measures to ensure that battery charging facilities are ergonomically designed, constructed and equipped with the following:

i) Adequate through ventilation;
ii) Adequate fire suppression equipment;
iii) Effective provisions to treat persons in the event of acid spillage; and
iv) Appropriate and adequate lighting.
Diesel refuelling facilities

8.10(11) The employer must take reasonably practicable measures to ensure that diesel refuelling facilities are ergonomically designed, constructed and equipped with the following:

i) Adequate through ventilation;
ii) Adequate fire suppression equipment;
iii) Effective provisions to cater for oil and diesel spillages; and
iv) Appropriate and adequate lighting.

(b) SANS 10089-2 (2007): The petroleum industry Part 2: Electrical and other installations in the distribution and marketing sector.
(c) SANS 10089-3 (2010): The petroleum industry Part 3: The installation, modification, and decommissioning of underground storage tanks, pumps/dispensers and pipe work at service stations and consumer installations.

Wheels, tyres and rims

8.10(12) The employer must take reasonably practicable measures to ensure that procedures are prepared and implemented to prevent persons from being injured as a result of the use, storage and handling of wheels, tyres and rims.

Access of persons to and from the trackless mobile machines

8.10(13) The employer must take reasonably practicable measures to ensure that trackless mobile machines are designed, constructed and maintained such that persons getting on and off, or working on them can do so safely.

Visibility of trackless mobile machines, skid mounted machinery and trailers to persons.

8.10(14) The employer must take reasonably practicable measures to ensure that trackless mobile machines, skid mounted machinery and trailers are visible to persons in their vicinity.

Unauthorised access to or operation of trackless mobile machines.

8.10(15) The employer must take reasonably practicable measures to ensure that unauthorised persons do not ride on or operate trackless mobile machines.
Isolation and lock-out of trackless mobile machines

8.10(16) The employer must take reasonably practicable measures to ensure that procedures are prepared and implemented for the safe isolation and lockout of trackless mobile machines.

Operating procedures

8.10(17) The employer must take reasonably practicable measures to ensure that procedures are prepared and implemented for the safe operation of trackless mobile machines.

Maintenance standards and procedures

8.10(18) The employer must take reasonably practicable measures to ensure that procedures and standards are prepared and implemented for maintaining trackless mobile machines in a safe operating condition.

Remote and remotely controlled trackless mobile machines

8.10(19) The employer must take reasonably practicable measures to ensure that remote control devices for trackless mobile machines using a wireless remote control device comply with:

(a) SANS 61000-4-2 (IEC 61000-4-2) Electrostatic immunity discharge test;
(b) SANS 61000-4-3 (IEC 61000-4-3) Radiated, radio frequency, electromagnetic field immunity test;
(c) SANS 61000-4-4 (IEC 61000-4-4) Electrical fast transient/burst immunity test;
(d) SANS 61000-4-5 (IEC 61000-4-5) Surge immunity test.
(e) SANS 61000-4-6 (IEC 61000-4-6) Immunity to conducted disturbances, induced by radio-frequency fields;
(f) SANS 61000-4-8 (IEC 61000-4-8) Power frequency magnetic field immunity test; and.
(g) SANS 61000-4-11 (IEC 61000-4-11) Voltage dips, short interruptions and voltage variations immunity test.

Trailers

9.10(20) The employer must take reasonably practicable measures to ensure that:

(a) the design and construction of any trailer is in accordance with specifications approved by a competent person, which specifications must take into account the intended use of the trailer;
(b) the design and construction of trailer coupling and uncoupling mechanisms is such that coupling and uncoupling can be done safely and that no inadvertent uncoupling of the trailer can take place; and
(c) procedures are prepared and implemented for the safe operation of trailers.
Towing and recovery of trackless mobile machines

8.10(21) The employer must take reasonably practicable measures to ensure that procedures are prepared and implemented for the safe recovery and towing of trackless mobile machines.

Roadway conditions

8.10(22) The employer must take reasonably practicable measures to ensure that the design, construction and maintenance of roadways are appropriate for the type and category of trackless mobile machine.

Selection, training, appointment and licensing of trackless mobile machine operators

8.10(23)(1) The employer must take reasonably practicable measures to ensure that procedures are prepared and implemented for the selection, training, appointment and licensing of trackless mobile machine operators, which procedures must include:

8.10(23)(1)(1) physical and psychological pre-selection criteria;
8.10(23)(1)(2) a training programme for trackless mobile machine operators, covering:

i) theoretical training in a training Centre;
ii) practical training; and
iii) on the job training.

8.10(23)(3) assessment of the trainee, on successful completion of the training programme, by a competent person;

8.10(23)(4) that only operators, assessed to be competent are authorised in writing by the responsible engineer to operate trackless mobile machines;

8.10(23)(5) that operators of trackless mobile machines are authorized in writing by their supervisor to operate trackless mobile machines. Such authorization must detail their duties, responsibilities, limitations and areas of operation.

8.10(23)(6) when an operator has not operated a trackless mobile machine for a period of two years, such operator is re-assessed to be competent by a competent person prior to being issued with a new license.

8.10(23)(7) that every operator of trackless mobile machines is issued with a license containing at least the following:

i) the trackless mobile machine types which the operator may operate;
ii) date of issue and expiry date; and
iii) the operator's company identification number.
Pre-use inspection procedures

8.10(24) The employer must take reasonably practicable measures to ensure that procedures are prepared and implemented for inspecting trackless mobile machines immediately prior to use, which procedures must include:

8.10(24)(1) that the operator of the trackless mobile machines physically inspects and ensures that the brakes, lights and any other defined safety features and devices are functioning as intended prior to setting such trackless mobile machines in motion;

8.10(24)(2) pre-use check lists that have to be completed by all operators of trackless mobile machines at the beginning of their shift. Such check lists must clearly identify all the components, features and functionalities to be inspected by the operator. For each component, feature or functionality, the check list must clearly indicate the pre-established criteria under which the trackless mobile machines may or may not be put in motion.

Reversing over the edge of a stockpile

8.10(25) The employer must take reasonably practicable measures to prevent any trackless mobile machine reversing over the edge of a stockpile or dump.

Inadvertent movement of the trackless mobile machine

8.10(26) The employer must take reasonably practicable measures to prevent inadvertent movement of any trackless mobile machine whilst parked.

Mandatory carrying of license

8.10(27) All operators of trackless mobile machines must have their originally issued license on their person whilst operating any trackless mobile machine.

 Certain regulations not applicable

8.10(28) Regulations 8.10.23 and 8.10.27 do not apply to trackless mobile machines licensed under the National Road Transportation Act 2000 and not used for primary mining activities.

REQUIREMENTS AND ACTION TO BE TAKEN WHEN FLAMABLE GAS IS ENCOUNTERED

Machine operator
- Immediately switch off the machine and lock out
- Remove all persons out of the working face
- Fence the face off
- Place a guard at the fence
- Report to the miner
- Isolate at the switches
Miner

• Confirm the presence of methane in the working face with at least two instruments
• If positive, switch off all power in a radius of 30 meters (adjacent faces)
• Stop all work within a radius of 30 meters and fence off the adjacent faces
• Test for gas in all the faces up to the return air exit
• Report the gas to control room and the shift boss
• Fill in a Fireman’s report
• Take the necessary people to clear the gas
• Clear the gas with adequate ventilation and spraying of water
• If the gas is cleared, remove the fences of the adjacent faces and resume work

Work may only resume in the face where methane has been detected, once a shift boss, mine overseer or a manager confirmed that no methane is present. The shift boss, mine overseer or manager must sign the Fireman’s report that the gas has been cleared

• Monitor for the presence gas every hour for the next 24 hours

REQUIREMENTS REGARDING FLEXIBLE TRAILING CABLES

The safe guarding of flexible trailing cables must be monitored in accordance with specified requirements and should be controlled as follows:

1. Excess cable should be stored in a designated area.
2. Trailing cable from switches should be suspended along the roof or sidewall to avoid being damaged.
3. Damaged / faulty trailing cables must be reported to the supervisor or relevant artisan for immediate attention and coiled at designated areas.

REQUIREMENTS REGARDING DUST CONTROL AT PRODUCTION MACHINES AND TRANSFER POINTS

Sources and prevention of coal dust are as follows:

Coal cutting/CM cutting

• Good ventilation
• Sharp picks set at correct gauge
• Water sprays/scrubber systems at CM fully operational
Drilling
- Good ventilation
- Sharp drill bits
- Use of dust collector

Blasting
- Good ventilation
- Water down after blasting
- Efficient use of explosives

Loading
- Good ventilation
- Water down whilst loading

Tipping / Transfer Points
- Good ventilation
- Water sprays

Dust samples are taken on a regular basis in all underground sections and in accordance with the DME directives. This includes the following:

- At the vicinity of all operating machines, in accordance to the codes of practice requirements. Will have a standard stipulating not more than 2mgrams/cubic metre (2mg/m³).
- Personal sampling, where employees carry the dust sampling pump over an eight hour shift anywhere in the section, quantities of dust not to exceed 2mgram/cubic metre (2mg/m³).

Dust poses a high risk to employees. Legal controls such as the following must be implemented:

- Dust sampling at regular intervals
- Stone dust and stone dust barriers
- Medical surveillance once per year
- Ventilation to meet with minimum legal requirements as per codes of practice

REQUIREMENTS REGARDING THE SUPPLY OF WATER

Provision of potable and palatable water
The employer must ensure that sufficient potable and palatable water, which comply with the requirements set out in Schedule 22.9(2)(c), is readily available to all employees and clearly identified as drinkable.
6. HEALTH AND SAFETY REPRESENTATIVES:

DESIGNATION OF AREAS OF RESPONSIBILITY

Section 25(1) of the Mine Health and Safety Act stipulates that every mine with 20 or more employees must have a health and safety representative for each shift and at each designated workplace on the mine.

The employer must have designated working places at the mine in accordance with a collective agreement concluded with the employee representatives. The designation must be such that:

- every working place at the mine is designated;
- no representative is responsible for more than 100 employees; and
- no representative is responsible for more than 50 employees in a working place if the designated working place includes separate working places.

QUALIFICATIONS OF A HEALTH AND SAFETY REPRESENTATIVE

Section 28(1) stipulates that the employee must have the following qualifications to be a health and safety representative:

He must be:

- employed in a full-time capacity in the designated workplace; and
- be acquainted with conditions and activities at the designated workplace.

To serve as a full-time health and safety representative, an employee must:

- be employed in a full-time capacity at the mine; and
- comply with any other qualifications which may be agreed to by a health and safety committee; or which may be prescribed.

RIGHTS AND POWERS OF REPRESENTATIVES

A health and safety representative may amongst other things do the following:

- Represent employees on all aspects of health and safety.
- Direct any employee to leave a working place which, with reasonable justification, appears to pose a danger to the employee’s health and safety.
- Assist any employee who has left a working place because of serious danger.
• Identify potential hazards and risks to health or safety.
• Make representations or recommendations to the manager or health and safety committee on any matter affecting the health and safety of employees.
• Inspect any relevant document which must be kept in terms of this Act.
• Attend any meeting of a health and safety committee.
• Request an inspector to conduct an investigation in terms of Section 60; or the Chief inspector to conduct an inquiry in terms of Section 65.
• Participate in consultations on health and safety or in any health and safety inspection with the manager or his representative or an inspector.
• Inspect working places with regard to the health and safety of employees.
• Participate in any internal health or safety audit.
• Investigate complaints by any employee relating to health and safety at work.
• Examine the causes of accidents and other dangerous occurrences in collaboration with management.
• Visit the site of an accident or dangerous occurrence at any reasonable time.
• Perform functions agreed to or prescribed by the health and safety committee.

Representatives may perform their functions and receive training during ordinary working hours.

The rights and powers of representatives are only in respect of the working place for which they are responsible. Note Section 25 (3) which provides that a health and safety representative or a member of a health and safety committee, does not incur any civil liability by reason of an act or omission performed as required by the Mine Health and Safety Act.

**DUTY TO COMPENSATE AND ASSIST A REPRESENTATIVE**

Section 31 (1) provides that the employer must pay every full-time health and safety representative appropriate remuneration, at least equal to what he earned immediately before being appointed as a full-time health and safety representative. The manager must provide health and safety representatives with

• facilities and assistance reasonably necessary to perform their functions;
• training that is reasonably required to enable them to perform their functions; and
• time off from work, without loss of remuneration, to attend any training course that is agreed or prescribed.
DUTY TO INFORM REPRESENTATIVES

*Section 32* provides that the employer must notify the health and safety representatives concerned and, if there is a health and safety committee, the employee co-chairperson of the committee

- in good time of inspections, investigations or inquiries of which an inspector has notified the manager; and
- as soon as practicable, of any accident, serious illness or health-threatening occurrence, or other dangerous event.

ESTABLISHMENT OF COMMITTEES

Every mine with 100 or more employees must have at least one health and safety committee. (*Section 25 (2)*)

COMMITTEE PROCEDURES

Employee and management representatives on a health and safety committee must each elect a chairperson. Unless otherwise agreed to by the committee, the two chairpersons must alternate as the presiding chairperson of the committee.

Unless otherwise agreed to by a health and safety committee the committee must meet at least once a month. The committee is entitled to set its own rules and proceedings for dealing with its agenda.

RIGHTS AND POWERS OF COMMITTEES

Committees have the right and the power to do the following:

- Represent employees on health and safety matters, and participate in the schedule provided for such issues (*Section 97(2)*);
- Request the Chief Inspector to review a Code of Practice;
- Agree on qualifications required of candidate Health and Safety Representatives;
- Request a formal investigation or inquiry from the Chief Inspector;
- Request the assistance of an expert for its proceedings.

DUTY TO SUPPORT COMMITTEE

The employer must provide the health and safety committee with the facilities and assistance reasonably necessary to perform its functions.

(*Refer to Schedule 1 to the Act which contains guidelines for determining the number of Full-Time Health and Safety Representatives.*)
APPOMTMENTS TO BE MADE

Chapter 3 of the Act provides for the following appointments to be made:

1. **Section 29 (4) - Health and Safety Representative**

   This provision is equally applicable to the appointment of full-time and part-time Health and Safety Representatives.

2. **Section 34 (4) - Health and Safety Committee member**

   This provision is applicable to the employee members who are selected from the workforce. The appointment of this person must be endorsed by an authorized Health and Safety Representative. **NB:** a maximum of two employees are allowed on the committee, where these employees are not also Health and Safety Representatives.

3. **Section 34 (6) - Health and Safety Committee member**

   This provision is applicable to the members who are selected from management to represent its interests on the committee.

   **NB:** the Act does not specifically state that a Health and Safety Representative must be appointed as a committee member as well. The closest indication thereto is an indirect reference to the membership of the Health and Safety Representative, in **Section 30 (1) (i)**, which furthermore provides that the Health and Safety Representative may attend the meeting of any committee which is prepared to listen to his representations.

4. **Section 35 (1) - Health and Safety Committee Chairperson**

   This provision requires that the members must select a chairperson from the membership. The provision furthermore clearly indicates that the preferable scenario is that in which there is a rotation between two chairpersons, one selected by the employees while the other is selected by the management members.

7. **LEGAL REQUIREMENT OF RISK ASSESSMENT**

   **Section 11 – The employer must assess and respond to risk.**

   1) **The Employer must**

   - identify health and safety hazards / risks;
   - assess the risks identified;
   - record the significant hazards identified, and their risk factor; and
   - make the records of the hazards and risks available to the employees.
2) **The Employer must determine the measures needed to**

- eliminate the risk;
- control the risk from where it would take place;
- minimize the risk;
- where the risk remains, provide the necessary protective equipment to employees; and
- set up a program for monitoring the risk.

3) **The Employer must set up a system for implementing the measures needed to** i) eliminate; ii) control; iii) minimize; iv) monitor the risk.

4) **The employer must periodically review**

- the risk assessment system;
- the occupational hygiene measurement system; and
- the medical surveillance system.

**THE ROLE OF THE EMPLOYER**

MHSA prescribes that employers are to ensure as far as is reasonably practicable that the requirements of the Act are implemented, and the risk assessment process is the cornerstone of such implementation of requirements.

The employer and manager should make an attempt to participate in the various exercises carried out in industry. It would obviously not be possible to participate in every exercise being undertaken.

Where such participation is possible, it should be scheduled to involve both the sophisticated exercises carried out on major plant and machinery, as well as the minor exercises e.g. a general workplace inspection.

It is furthermore important that the employer, and even more so, the manager, attempt to see the results of as many risk assessment exercises as possible. In this regard, the risk-assessment reports should include space for comments by the manager and they should carry his signature.

Many people already carry out Hazard-Identification and Risk-Assessment on a day-to-day basis. However, the Act and Regulations require that this process be systematic, that the results be recorded and that recommendations be implemented.
8. INCIDENT REPORTING - LEGAL REFERENCES

ACCIDENTS TO BE REPORTED

Chapter 23 – Mine Health and Safety Act Regulations

23.1. The employer must report to the Principal Inspector of Mines, in the manner prescribed in this chapter, any accident at the mine that results in the following:
   (a) The death of any employee
   (b) An injury, to any employee, likely to be fatal
   (c) Unconsciousness, incapacitation from heatstroke or heat exhaustion, oxygen deficiency, the inhalation of fumes or poisonous gas, or electric shock or electric burn accidents (all accidents which are not already reportable in terms of paragraph (d)
   (d) An injury which either incapacitates the injured employee from performing that employee's normal or a similar occupation for a period totalling 14 days or more, or which causes the injured employee to suffer the loss of a limb, or a part of a limb, or sustain a permanent disability
   (e) An injury, other than injuries referred to in paragraph (d), which incapacitates the injured employee preventing him from performing his normal or a similar occupation on the next calendar day.

23.2. (1) An accident referred to in paragraph (a), (b) or (c) of regulation 23.1 must be reported immediately by the quickest means available and must be confirmed without delay on Forms SAMRASS 1 and 2 prescribed in Chapter 21.

23.2. (2) An accident referred to in paragraph (d) of regulation 23.1 must, after the accident becomes reportable, be reported within three days on Forms SAMRASS 1 and 2 prescribed in Chapter 21.

23.2. (3) The Form SAMRASS 9 must be submitted on a monthly basis for all persons not having returned to work at the time of submitting SAMRASS 2 on a monthly basis.

23.2. (4) An accident referred to in paragraph (e) of regulation 23.1 must be reported without delay on a monthly basis, on Form SAMRASS 4 prescribed in Chapter 21.

23.3. (1) Where the death of an employee, referred to in regulation 23.1(a) is related to a rock burst or fall of ground, the duly completed Form SAMRASS 3, prescribed in Chapter 21, for such rock bursts or falls of ground, must be forwarded by the employer to the Principal Inspector of Mines within 14 days of such death.

23.3. (2) When an injury results in the death of the injured employee after the report in terms of regulation 23.1 (b), (c), (d) or (e) has been given or when a slight injury, which was not reportable, results in the death of the injured employee, or when general sepsis or tetanus develops as a result of an injury, the employer must immediately report it to the Principal Inspector of Mines and without delay submit amended Form SAMRASS 1 prescribed in Chapter 21.
23.3. (3) Where the injury of a person referred to in regulation 23 (1) or a dangerous occurrence referred to in regulation 23.4 (o), is related to the use of explosives, in addition to Form SAMRASS 1, the duly completed Form SAMRASS 5, prescribed in Chapter 21, must be forwarded by the employer to the Principal Inspector of Mines within 14 days of such occurrence.

23.3. (4) Where the injury of a person referred to in regulation 23 (1) or a dangerous occurrence referred to in regulation 23.4 (f) is related to fires, in addition to Form SAMRASS 1, the duly completed Form SAMRASS 6, prescribed in Chapter 21, must be forwarded by the employer to the Principal Inspector of Mines within 14 days of such occurrence.

23.3. (5) Where the injury of a person referred to in regulation 23 (1) or a dangerous occurrence referred to in regulation 23.4 (b) is related to a subsidence in a coal mine, in addition to Form SAMRASS 1, the duly completed Form SAMRASS 7, prescribed in Chapter 21, must be forwarded by the employer to the Principal Inspector of Mines within 14 days of such occurrence.

23.3. (6) Where the injury of a person referred to in regulation 23 (1) is related to heat stroke or heat exhaustion, in addition to Form SAMRASS 1, the duly completed Form SAMRASS 8, prescribed in Chapter 21, must be forwarded by the employer to the Principal Inspector of Mines within 14 days of such occurrence.

DANGEROUS OCCURRENCES TO BE REPORTED

23.4. The employer must report to the Principal Inspector of Mines in the manner prescribed in this Chapter any of the following dangerous occurrences at the mine:

(a) ROCK BURSTS AND FALLS OF GROUND

An extensive rock burst or fall of ground must be reported, when the following damage has been inflicted:

(i) At least 10 linear meters of working face has been severely damaged and choked and will require re-establishment and re-supporting, or be abandoned.

(ii) At least 25 square meters of working area has been severely damaged and choked rendering support units ineffectual and will have to be re-established and re-supported or be abandoned.

(iii) At least 10 linear meters of gully has been restricted with rock that has clearly been displaced recently from the hanging wall and gully sidewalls.

(iv) At least 10 linear meters continuous or 30 linear meters cumulative of access ways of tunnel or travelling way has been severely damaged and will require rehabilitation or be abandoned.
(iv) At least 10 square meters of roof or 5 cubic meters of rock has been displaced from the roof of the mining cavity or excavation.

(vi) At least 10 cubic meters of rock has been freshly displaced from pillars or tunnel sidewalls.

(b) CAVING
Any unplanned or uncontrolled caving, side wall or slope failure or subsidence in the ground or workings, causing damage to the surface, which may pose a significant risk to the safety of persons at a mine.

(c) FLOW OF BROKEN ROCK
Any unplanned or uncontrolled flow of broken rock, mud or slimes in the workings of a mine which may pose a significant risk to the safety of persons at a mine.

(d) BREAKDOWN OF MAIN VENTILATION FAN
Breakdown of any main ventilation fan.

(e) POWER FAILURE
Any power failure occurring in the underground workings of a mine, which poses a significant risk to the health, or safety of persons at a mine.

(f) FIRES AND EXPLOSIONS
Any ignition or explosion of gas or dust, or any fire related to mining activities or any indication or recrudescence of fire or spontaneous combustion at or in a mine.

(g) FLAMMABLE GAS
The presence of flammable gas exceeding one comma four parts per hundred by volume in the general atmosphere at a mine, or any portion of a mine when
(i) flammable gas is detected for the first time; or
(ii) it is the first time such flammable gas is again detected after not having been detected for a continuous period of three months.

(h) WINDING PLANTS
(i) Running out of control of winding-engine, winding drum or conveyance;
(ii) Fracture or failure of any essential part of the winding-engine, fracture or failure of any safety device used in connection with the winding equipment;
(iii) Fracture, failure or serious distortion of winding rope, fracture, failure or serious distortion of any connection between the winding rope and the drum or between the winding rope and the conveyance and any other load suspended from or attached to such rope; fracture or failure or serious distortion of any connection between conveyances or between a conveyance and any
suspended or attached load, fracture of guide rope or its connections, fracture of balance or tail rope or its connections;
(iv) Fracture or failure of winding or balance sheave; fracture or failure of any essential part of the headgear or other sheave support;
(v) Jamming or accidental overturning of conveyance; conveyance or its load fouling shaft equipment; jamming of crosshead;
(vi) Derailing of conveyance;
(vii) Conveyance, bridle, frame or crosshead accidentally leaving guides;
(viii) Fracture or failure of the braking system or of any critical parts thereof;
(ix) Failure to activate when required of any safety catches and/or arresting devices or activation of any safety catches and/or arresting devices when not required;
(x) Failure to activate when required of any over winding prevention device or activation of such device when not required;
(xi) Any over wind or over-run of the conveyance to an extent which may have endangered persons or may have caused damage to the winding equipment;
(xii) Failure of depth indicator.

(i) LIFTS AND ELEVATORS
(i) Fracture or failure of any essential part of the driving or operating machinery, fracture or failure of any safety device used in connection with lifts or elevators.
(ii) Fracture or distortion of the lift or elevator rope, fracture or failure of attachments of such rope.
(iii) Fracture or failure of any sheave or of the shaft or shaft bearing of such sheave.
(iv) Jamming of car or counterpoise.
(v) Fracture or failure of braking system or of any critical parts thereof
(vi) Failure to activate when required of any safety catches and/or arresting devices or activation of any safety catches and/or arresting devices when not required.

(j) OBJECTS FALLING DOWN SHAFTS
Any object falling down the shaft or any other incident which necessitates the inspection of the shaft.

(k) EMERGENCY OR RESCUE PROCEDURES
(i) Any failure of breathing apparatus whilst deployed.
(ii) The use of emergency escape apparatus, procedures or rescue mechanisms, or the rescue from entrapment, associated with mining or related activities, of any employee.

(l) SELF PROPELLED MOBILE MACHINERY
Any self-propelled mobile machine running out of control which may pose significant risk to the safety of persons at a mine.
(m) **BOILERS AND PRESSURE VESSELS**
Fracture or failure of any part of a boiler or safety device of a boiler or pressure vessel which may have endangered persons.

(n) **CHAIRLIFTS**
  i) Fracture or failure of any part or safety device of a chairlift installation which may have endangered persons or may have caused damage to such chairlift installation.
  ii) Fracture or failure of any essential part of the driving machinery.
  iii) Fracture failure or serious distortion of any rope or chain forming part of a chairlift installation.

(o) **EXPLOSIVES**
  i) Any unauthorised or accidental ignition or detonation of explosives.
  ii) Any exposure of persons to blasting fumes which is not reportable in terms of regulation 23.1.
  iii) Any detonation of explosives which may pose a significant risk to the safety of persons.

23.5 A dangerous occurrence referred to in regulation 23.4 must be reported immediately by the quickest means available and must be confirmed without delay on Form SAMRASS 1 prescribed in Chapt 21.

23.6 Every employer must ensure that a system is in place whereby the employer is informed, as soon as is practicable after its occurrence, of any accident or dangerous occurrence, which is reportable in terms of this Chapter.

23.7 i) Every employer must keep and maintain a record in which the particulars of all accidents and dangerous occurrences, which are required to be reported in terms of this Chapter, must be recorded without delay.

  ii) The record contemplated in Regulation 23.7(i) in respect of all accidents or dangerous occurrences must be kept and maintained for two years from the time that the accident or dangerous occurrence becomes reportable.

**INCIDENT INVESTIGATION - LEGAL REFERENCES**

**Section 11 (5)**

5) **The Employer must investigate**
   - Every reportable accident;
   - Every serious illness of an employee; and/or
   - Every incident whereby health is threatened.
6) The Employer must consult with the Health and Safety Committee on this investigation.

5) The Employer must conduct the investigation in co-operation with the Health and Safety Representative responsible for the workplace where the incident took place.

5) The Employer must prepare a report that
   - identifies the direct and underlying causes;
   - identifies unsafe acts, conditions or procedures which may have contributed to the incident;
   - makes recommendations to prevent a re-occurrence of such an incident.

5) The Employer must provide the Health and Safety Committee or responsible Health and Safety Representative with a copy of this report.

6) The investigation may be carried out jointly with an investigation, which the Inspector may carry out.

If there is no Health and Safety Committee, the consultations on risk assessment/incident investigation must be held with the responsible Health and Safety Representative; and the employees

PLANNED TASK OBSERVATION - LEGAL REFERENCE

Section 10 – The employer must provide health and safety training

1. The Employer must as far as reasonably practicable ensure each employee is familiar with the risks related to his job and workplace, and what steps to take to prevent the risk.

2. The Employer must as far as is reasonably practicable ensure that:
   - every employee is trained in the risks related to his job function;
   - every employee is trained in risks identified in risk assessments which might apply to him;
   - every employee is trained in the steps to be taken to eliminate or minimize the risks applicable to him;
   - every employee is trained in the procedures he has to follow to carry out his job;
   - every employee is trained in the emergency procedures which would apply to his work situation.
EDUCATION AND TRAINING - LEGAL REFERENCES

Section 10 - Employer to provide health and safety training.

1) The Employer must, as far as is reasonably practicable
   - provide employees with training, information and supervision needed for them to perform their jobs safely; and
   - ensure each employee is familiar with the risks related to his job and workplace, and what steps to take to prevent the risk.

2) The Employer must, as far as is reasonably practicable, ensure that
   - every employee is trained in the risks related to his job function;
   - every employee is trained in risks identified in risk assessments which might apply to him;
   - every employee is trained in the steps to be taken to eliminate or minimize the risks applicable to him;
   - every employee is trained in the procedures he has to follow to carry out his job; and
   - every employee is trained in the emergency procedures which would apply to his work situation.

3) The training must be carried out
   - before the employee starts working
   - on a periodic basis thereafter
   - before major changes are introduced to a plant layout, machinery or work methods
   - before major changes are made to an employee’s job function.

OCCUPATIONAL HYGIENE - APPLICABLE PROVISIONS

Section 12 - Employer to conduct occupational hygiene measurements.

1) The Employer must employ a full or part-time person qualified in occupational hygiene techniques to measure exposure levels
   - if required to do so by a regulation or Gazette notice; and/or
   - if required to do so by the Section 11 risk assessment.

2) The occupational hygiene measurement system must
   - be applicable to the risks which the employees face; and/or
   - provide the employer with information to eliminate, control and minimize the risk/hazard.

3) The Employer must keep records of the hygiene measurements. These must be linked to an employee’s medical surveillance.
OCCUPATIONAL HYGIENE

MHSA generally requires the employer to ensure the workplace is healthy and safe to work in. In order for the employer to find out how to make his workplace healthy and safe, he needs to use a risk-assessment program that would inform him of the hazards.

Whereas the normal risk-assessment would look at safety hazards, the hygiene surveillance program focuses on what conditions in the workplace would make an employee ill - it is not about focusing on what injuries he could sustain.

Only in recent times have people realized that dangers in the workplace are not only related to safety, and under MHSA, hygiene is recognized as being as important as safety.

The employer must keep a record of all occupational measurements that can be linked, as far as is practicable, to each employee’s record of medical surveillance.

Although the Mine Health and Safety Act expressly include “health” in addition to “safety” as primary objectives, the focus on “hygiene” is as important as “health”: these two elements are deeply interrelated, and an effective surveillance program would have to focus on both elements. Generally, the hygiene hazards in a workplace would result in health exposure to an employee.

OCCUPATIONAL HEALTH: DEFINITIONS TO BE AWARE OF

“BIOLOGICAL MONITORING” - a planned program of periodic collection and analysis of body fluid, tissues, excreta or exhaled air in order to detect and quantify the exposure to, or absorption of, any substance or organism

“HEALTH HAZARD” - any physical, chemical or biological hazard to health, including anything declared to be a health hazard by the Minister

“HEALTH-THREATENING OCCURRENCE” - any occurrence that has or may have the potential to cause serious illness or damage to health

“HEALTHY” – when a person is free from illness or injury attributable to occupational causes

“MEDICAL SURVEILLANCE” - a planned program of periodic examination, which may include examinations, biological monitoring or medical tests, of employees by an occupational medical practitioner contemplated in section 13

“OCCUPATIONAL DISEASE” - any health disorder including an occupational disease as contemplated by the Occupational Diseases in Mines and Works Act, or by the Compensation for Occupational Injuries and Diseases Act

“OCCUPATIONAL HEALTH” - the prevention, diagnosis and treatment of illness, injury and adverse health effects associated with a particular type of work
OCCUPATIONAL HEALTH: APPLICABLE PROVISIONS

Section 13 – The employer must establish a system of medical surveillance.

1) Employer to establish and maintain system of medical surveillance:
   - if required to do so by a regulation or Gazette notice;
   - if required to do so by the Section 11 risk assessment.

2) The system must:
   - be applicable to the risks which the employees face;
   - provide the Employer with information to:
     i) eliminate, control and minimize the health risk/hazard;
     ii) prevent, detect and treat occupational diseases.
   - consist of an initial and routine medical examination.

3) The Employer must employ:
   - an occupational medical practitioner;
   - other practitioners qualified in occupational medicine.

4) The Employer must provide them with the resources they need to perform their jobs.

5) The Employer must keep a record of medical surveillance on each employee.

6) The Employer may employ a medical practitioner until an occupational medical practitioner can be employed.

7) The Occupational Medical Practitioner to take every reasonable measure to:
   - promote health and safety;
   - assist employees in occupational medicine issues.

   The Employer must conduct a Section 11 incident investigation if an employee is declared unfit for work.

8) The occupational medical practitioner must record an employee’s temporary unfitness to work, and inform both the employee and his employer.
9) **The Employer must keep records of:**

- an employees medical surveillance;
- occupational hygiene measurements (Section 12 (3))
- declared hazardous work (Section 14 (1)).

*Section 13* must be read in conjunction with Section 20 which provides an employee with the right to appeal to the Medical Inspector against the finding that he is medically unfit to perform any particular category of work. This is equally true of the findings contained in the medical exit certificate issued to the employee. Such an appeal by the employee concerned is, however, to be lodged within 30 days of the relevant decision or findings, and must state the grounds for the appeal.

Nothing however precludes the employer in question from obtaining an additional medical opinion from another medical practitioner, and paying for such an opinion, or from pursuing any other legal remedy.

---

### Section 14 - Record of hazardous work

1) **The Employer must keep a service record of employees who perform work requiring medical surveillance.**

2) **The Employer must provide the Medical Inspector with a copy of the records for an employee when:**
   - the employee stops working at the mine; and/or
   - required to do so by the Chief Inspector.

---

### Section 15 - Record of medical surveillance.

1) **The record must be kept confidential, and only be made available if**
   - permissible by the medical ethics;
   - required by law/court- order; and
   - the employee has consented in writing to release of his record.

2) **The person who has the duty of keeping records**
   - must keep them safe for 40 years, and ensure they are not destroyed.
The person vested with the responsibility of storing the records would have to consider the security of storage facilities. The ideal practice in this regard is the storage of data on microfilm, and the storage of microfilm in impenetrable, fireproof safes off-site of the mine.

**Section 16 - Annual medical reports.**

1) The occupational medical practitioner must compile an annual report on employees’ health based on the medical surveillance records. **NB**: He must not identify the employees.

2) The annual report must be given to the employer who, in turn, must give a copy of the report to
   - the mine owner;
   - the Health and Safety Committee or Health and Safety Representatives; and
   - the Medical Inspector.

No guidelines have been issued by the Department of Minerals and Energy as to the required format or content of such annual reports. The ideal format, however, would serve to provide a convenient document with easily read statistics for the benefit of the Mine Health and Safety Council, and could include the following:

- lists of the full and part-time medical staff, with their qualifications
- the health-risk-assessment elements carried out on employees
- statistics on abnormalities detected, and cases reported

**Section 17 - Exit certificate**

1) The Employer must arrange an exit certificate for each employee who stops working.

2) The exit medical examination must be held as close as possible to the time of stopping work.

3) The employee must go to the exit medical examination.

4) The Occupational Medical Practitioner must
   - produce an exit-certificate which records the results of medical surveillance on the employee, and whether the employee suffers from any occupational disease; and
   - add a copy of the exit certificates to the employee’s medial surveillance records.
Section 18 - Cost of examination.
All clinical examinations and medical tests are to be paid for by the Employer.

Section 19 - Employee’s right to information.
The employee is entitled to a copy of the medical records or any part of it that relates to him.

MANUFACTURER’S LIABILITY - LEGAL REFERENCES

Section 21 - Manufacturer’s and Supplier’s Duty for Health and Safety

1) Any person involved in the manufacturing, importing, designing, supplying, or repairing of articles used at mines must ensure, as far as reasonably practicable that:
   - the article is safe i.e. not a danger to health/safety if properly used; and
   - the article complies with requirements of the Act.

2) Any person who erects/installs an article must ensure this is done safety and without risk to health.

3) Any person, who designs, manufactures, erects or installs any article must as far as reasonably practicable, incorporate ergonomic principles into the article.

4) The manufacturer, supplier, installer is relieved of his liability if the receiver of the article gives a written undertaking to ensure that:
   - the article will be safe and not a danger to health and safety when properly used; and
   - the article will comply with applicable legal requirements.

5) Any person who designs/constructs a building (even a temporary one) must ensure that it is safe and not a danger to health and safety.
THE MEANING OF SECTION 21

The “proper use” requirement of the article indicates a further duty on the manufacturer to supply the user with all such information, so as to ensure that the user is able to use the article in the proper manner. Such information relates to operating instructions, or the attributes of the article. **Section 21 (4)** furthermore, makes a direct reference to information to be supplied, relating to the risks involved with substances.

**Section 21 (2)** does, however, provide the manufacturer (as defined) with limited relief of the duty imposed by his Section, by providing for the manufacturer to contract out of liability. The effectiveness of such an undertaking will, however, be limited by a requirement of reasonableness. These conditions could, however, be incorporated into the mine’s agreement of sale. The buyer must be informed that he has assumed the risk, and provide the seller with such a written undertaking.

Moreover, the statutory provisions of Section 21 cannot be contracted out of by means of the “Voetstoots” clause, where the article is to be used at another mine, or at an industry (in which case, the similar statutory provisions of Section 10 of the Occupational Health and Safety Act would apply). It should be added that “supply” includes the giving away or donating of any article etc. All articles and substances must therefore be sold with the necessary information to ensure the safe and healthy use thereof.

HAZARDOUS SUBSTANCES

3) Any person who manufacturers, imports or supplies hazardous substances must ensure the substance is safe and not a health and safety risk, when

- Used,
- Handled,
- Processed,
- Stored, and/or
- Transported.

4) The following information must be provided concerning the substance:

- Proper usage.
- Potential risks to health and safety.
- Restrictions/controls to be applied in the usage and transport of the substance.
- Safety precautions to be applied.
- Emergency procedure to be followed in case of overexposure.
- Disposal of drums and waste.

Such information must comply with the provisions of the Hazardous Substances Act.
## ANNEXURE 2

### MANUFACTURER/SUPPLIER OF ARTICLE RELEASE

<table>
<thead>
<tr>
<th>Organization name:</th>
<th>Date:</th>
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| Manufacturer’s/Supplier’s name: | |
|----------------------------------| |
| ______________________________ | |

### Type of manufacturing supply

<table>
<thead>
<tr>
<th>Erection</th>
<th>Equipment</th>
<th>Tools</th>
<th>Fabrication</th>
<th>Modification</th>
<th>Installation</th>
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<tr>
<th>Hazardous substances</th>
<th>Chemical containers</th>
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### Description


I, ______________________________________ on behalf of ________________________ accept the article to be safe for use and free from risk for the health of persons when properly used in accordance with the following provided:

<table>
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<tr>
<th>Specifications</th>
<th>Spares list</th>
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<tr>
<th>Procedures</th>
<th>Test certificates</th>
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<tr>
<th>Maintenance manuals</th>
<th>Calibration certificates</th>
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<tr>
<th>Data sheets</th>
<th>Training manuals</th>
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</table>

Signed: __________________________ Date: __________________________

Comments: ________________________________________________________
SECOND-HAND BUYING OF ARTICLES

Undertaking in terms of Section 21 (2) of the Mine Health and Safety Act No. 29 of 1996

I, _______________________________ (the buyer), who have bought, the articles/equipment/substances as listed below, for my own use or on behalf of my company/employer, agree to take specific steps, sufficient to ensure that the articles/equipment or substances comply, as far as is reasonably practicable, with all said prescribed requirements in terms of the Act which might pertain to such article/equipment or substances and that the articles/equipment/substances will only be used when it/they pose no risks to the health and safety of any persons.

I/my employer, hereby agree(s) that the seller has given no guarantee that the articles/equipment or substances comply with any legislative requirements or any health and safety standards prescribed for the use of such articles / equipment or substances.

I understand by signing this undertaking that I have/my employer has assumed the responsibility for the safe/healthy use of the items listed below.

Articles/equipment or substances

1. __________________________________________________________
2. __________________________________________________________
3. __________________________________________________________
4. __________________________________________________________
5. __________________________________________________________
6. __________________________________________________________
7. __________________________________________________________
8. __________________________________________________________
9. __________________________________________________________
10. __________________________________________________________

BUYER’S SIGNATURE
Company represented
(if applicable)
(Being duly authorized)

Date: ____________________________

SELLER’S SIGNATURE
Company represented
(if applicable)
(Being duly authorized)

Date: ____________________________
INTRODUCTION TO THE REGULATIONS

The Minerals Act regulations deal with specific and detailed issues which are recognized as part of “mining”, whereas the Sections of the Acts deal with more general issues, and thus have more general wording. There are hundreds of regulations which contain thousands of instructions, and it would be difficult to provide a summary of each and every one in this manual. Also, not all of the regulations apply to each and every mine. Some of the regulations deal only with specific machinery and for conditions which might not exist at the mine.

In addition to the regulations derived from the Minerals Act, the Mine Health and Safety Act also includes regulations made under that Act.

The following pages contain a list of the regulations. For the sake of convenient differentiation, the regulations derived from the Minerals Act and the Mine Health and Safety Act are listed separately.

NB: The regulations refer often to “Principal Inspector”. This person is now known as the Principal Inspector of Mines, except for those regulations dealing with environmental matters - in such instances, the person is known as the Director: Mineral Development

NB: In terms of Section 103 of the Mine Health and Safety Act, the Occupational Health and Safety Act applies to any matter about which the MHS Act is silent. The mining environment supervisor / manager / owner must therefore ensure familiarity with that Act and its regulations as well (see summary below).

INDEX OF THE REGULATIONS


Chapter 1: Definitions
Chapter 2: Responsibility
Chapter 3: General Provisions
Chapter 4: Workmen
Chapter 5: Surface Protection, Prevention and Combating of Pollution
Chapter 6: Outlets, Ladder ways and Travelling Ways
Chapter 7: Protection in Workings
Chapter 8: Responsibility in Workings
Chapter 9: Explosives
Chapter 10: Ventilation, Gases and Dust
Chapter 11: Precautions against Fire
Chapter 12: Mine Surveying
Chapter 13: Underground Contract Work
Chapter 14: Statistical Returns
Chapter 15: Lighting, Safety Lamps and Contraband
Chapter 16: Winding
Chapter 17: Elevators
Chapter 18: Traction
Chapter 19: Scraper-winch Installations
Chapter 20: Machinery: Special Safety Measures
Chapter 21: Electricity
Chapter 22: Boilers
Chapter 23: Pressure Vessels, Compressors and Refrigeration Plants
Chapter 24: First Aid and Rescue Brigades
Chapter 26: Summoning of Witnesses
Chapter 27: Appeals
Chapter 28: Certificate of Competence
Chapter 29: Suspension and Cancellation of Certificates of Competency
Chapter 30: Underwater Mining and Protection
Chapter 31: Off-shore Installation
Chapter 32: Application Fees
Chapter 33: Sketch Plans
Chapter 34: Forms

Form 1: Application for Prospecting Permit
Form 2: Application for Mining Authorization
Form 3: Prospecting Permit
Form 4: Mining Permit
Form 5: Mining License
Form 6: Winding Plant Permit
Form 7: Elevator Permit
Form 8: Permit
Form 9: Boiler Permit
Form 10: Reportable Accidents:
Form 11: Reportable Accidents. Details of deceased/injured
Form 12: Reportable Accidents: Regulation 25.1.1 (e)
Form 13: Rock bursts and fall of ground Accidents.
Chapter 35: Safety Research

Schedule 1: Permitted Explosives
Schedule 2: Colors and Conventional Signs
Annexure: Declaration of work in National Interest.

MINE HEALTH AND SAFETY REGULATIONS - EXCERPTS
[Regulations made in terms of Act 29 of 1996]

REGULATIONS CHAPTER

1 Appointments and Administration
2 Duties and Responsibilities
3 Electricity
4 Explosives
5 Fires and Explosions
6 Health and Safety Representatives and Committees
7 Inspectorate of Mine Health and Safety
8 Machinery and Equipment
9 Mine Environmental Engineering and Occupational Hygiene
10 Miscellaneous and General Provisions
11 Occupational Medicine
12 Offshore Installations
13 Outlets, Ladder ways and Travelling Ways
14 Protection of the Surface and the Workings
15 Qualifications and Competencies
16 Rescue, First Aid and Emergency Preparedness and Response
17 Surveying, Mapping and Mine Plans
18 Tripartite Institutions
19 Underwater Mining
20 Definitions
21 Forms
22 Schedules
23 Reporting of Accidents and Dangerous Occurrences
13. STATUTORY COMPLIANCE: CRIMINAL AND CIVIL LIABILITY

GENERAL LEGAL LIABILITY

Not all offences are dealt with by the mining legislation, and in some instances, the manager may face liability as provided for in terms of common law. Therefore, a basic understanding of certain legal concepts is crucial for the manager. The following concepts are those that a manager would be exposed to on a daily basis.

CRIMINAL LIABILITY

A person who fails to comply with provisions of either a statute or common law duty would be prosecuted by the State in a court. The person would be known as the accused. If the accused is convicted, he could be sentenced to a fine or imprisonment, or both.

In summary, the important elements of criminal liability are:

- It is always the State versus a person (or company).
- The trial is about whether the accused is guilty of the charges against him.
- The purpose of the trial is to punish the guilty person.

Criminal liability comes from 2 sources:

- legislation (statutes) e.g. Mine Health and Safety Act
- common law e.g. murder, homicide

CIVIL LIABILITY

If the person’s negligence causes loss or injury to another person (third party) that other person could sue for compensation in a civil court. The third party is then known as the plaintiff and the “negligent” person becomes the defendant. The court may order that the defendant compensate the plaintiff. This is the basis of civil liability: no fines or imprisonment is involved. In these civil cases, the State is generally not involved.

In summary, the important elements of civil liability are:

- It is always one private person versus another.
- The trial is about whether the defendant is liable (for negligence).
- The purpose of the trial is compensation to the plaintiff.
- Civil liability essentially has one source i.e. common law. There are endless different types of civil common law liability, but the most important is Delict (i.e. where one person causes harm or damages to another)
VICARIOUS LIABILITY

This is an important legal concept which the supervisor must be aware of. This principle is sometimes known as the Master - Servant principle. In summary, this principle involves the following:

- The supervisor would have people under his control.
- The supervisor must use that power of control to ensure that his subordinates act as reasonable people.
- If the subordinate commits a wrongdoing, it is because the supervisor failed to exercise his control as a reasonable supervisor would.
- This failure of exercising control is as serious a wrongdoing as that committed by the subordinate, and on this basis the supervisor would be punished by being held responsible for the subordinate’s wrongdoing.

Vicarious Liability applies to both the civil and criminal law spheres. Thus:

- if an employee violates any provision of a statute, or commits a criminal common law offence, the supervisor could be held criminally liable; and/or
- if a third party suffered loss or damage due to the employee’s negligence, he could lodge a civil claim against the supervisor.

Generally, the principle of Vicarious Liability, as discussed above, would not apply in a statute, unless the statute specifically provides that it shall apply. This is the case with MHSA.

Section 2

4) **nominating a CEO does not relieve the employer/Board of any liability in terms of this Act**

Section 4

4) **The appointment under subsection (1) does not relieve the employer of any duty imposed on employers by this Act or any other law**.

Section 3

2) **The appointment of a manager does not relieve the employer of any duty imposed on employers by this Act or any other law.**

Section 7

3) **The appointment under subsection (2) does not relieve the employer of any duty imposed on employers by this Act or any other law**.

5) **The appointment under subsection (4) does not relieve the manager of any duty imposed on employers by this Act or any other law**.
BURDEN OF PROOF

In a criminal case, the State must prove that the accused person is guilty *beyond reasonable doubt*. This is a fairly strict test to meet, (because of the potentially severe consequences to the accused).

Sometimes however, the State is helped by legal presumptions in its favour, which can be established merely by submitting documents. It is then up to the accused person (defendant) to prove his innocence by proving that the documents are not valid. MHSA provides for such presumptions in favour of the State.

<table>
<thead>
<tr>
<th>Section 95 - Proof of facts</th>
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<tbody>
<tr>
<td>• <em>Unless proven to be false, any person who alleges he is a mine employee is presumed to be so.</em></td>
</tr>
<tr>
<td>• <em>If it is proved that whatever was written in a logbook, checklist etc. is false, it will be presumed that the person who normally fills in the documents made the false entry.</em></td>
</tr>
<tr>
<td>• <em>Whatever is written in any document will be presumed to be a statement of the true facts.</em></td>
</tr>
</tbody>
</table>

In a civil case, the plaintiff must prove his case on a *balance of probabilities* i.e. he must show that his version of the matter is more believable than the defendant’s. This test is not as strict as that of a criminal case.

**STANDARD OF CARE - THE REASONABLE MAN TEST**

The purpose of any trial whether civil or criminal is determine whether the person facing the charges acted as a reasonable person, or whether this person was negligent, and must therefore be found guilty, or liable as the case may be. For this purpose, the courts would apply the *Reasonable Man Test*, which questions whether

- *the harm could have been foreseen or predicted*; or
- *steps were taken to prevent this foreseen or predicted harm.*

It is irrelevant what the “liable” person himself foresaw. The focus is on whether he conducted himself, as a reasonable person would have in his circumstances. MHSA also provides for this test to be used.
“reasonably practicable” means practicable having regard to;

1. the severity and scope of the hazard or risk concerned;

The history and case studies relating to a specific hazard or risk should be consulted as this will indicate the severity as well as the possible scope thereof.

2. the state of knowledge reasonably available concerning that hazard or risk and of any means of removing or mitigating that hazard or risk;

This implies that the employer will constantly have to keep abreast of general information regarding any possible hazard or risk in his specific industry.

3. the availability/suitability of means to remove or mitigate a hazard or risk;

Again, the employer should keep abreast of information regarding hazards or risks arising in the industry within which the company operates and the means generally accepted as solutions thereto.

4. the costs of removing or mitigating the risk in relation to the benefits deriving therefrom;

This is obviously contentious, as it is difficult to quantify the benefits derived from occupational health and safety measures. Each situation must be regarded in isolation, taking into account past experiences with regard to a specific hazard or risk materialising. Ideally, one should keep detailed records of all past injuries and/or occupational diseases together with a breakdown of costs.

Many accused persons rely on the so-called “norm of industry” argument, when confronted with the task of satisfying the courts with the Reasonable Man test. This approach has the following inherent dangers:

- It rests on the assumption that complying with the norm of industry is the same as acting reasonably, and in compliance with the law.
- The courts focus on, and judge the accused upon his particular circumstances, and not the general practice/circumstances of the entire industry.
SUMMONS AND CHARGE SHEET

A summons is a formal document instructing the defendant to appear at a certain court on a certain date. In a criminal trial, failure to do this is treated as contempt of court, which itself is a criminal offence, and can incur severe penalties. In a civil trial, failure to attend would result in judgement in default being awarded to the plaintiff. The defendant would automatically be liable to pay the full compensation sought by the plaintiff.

The charge sheet sets out the crimes or wrongdoings and the accused, or defendant as the case might be, is asked to plead guilty or not guilty to any, or to all the crimes or wrongdoings listed on the sheet. These two documents are served together to the defendant.

ADMISSION OF GUILT

The Summons may allow the defendant the option of paying a fine, and thereby avoid a court case. Although convenient, such a decision must be carefully considered as it carries serious implications.

INDEMNITIES

A company can make a person sign an indemnity whereby the company contracts itself out from being liable for loss, damage or injury if the signatory may suffer while on the mine premises. Regarding indemnities the following must be remembered:

1) Indemnities cannot apply to statutory liability i.e. the duties for the health and safety of persons, which are imposed by the Minerals Act and Regulations, and Mine Health and Safety Act can never be contracted out of.

2) Indemnities can only limit liability against possible civil actions, and even then only to a limited extent. The common law provides that one cannot use indemnities to contract out of possible liability caused by gross negligence or wilful misconduct towards the person (signing the indemnity).

3) Points (1) and (2) apply, no matter what the wording of the indemnity provides, or whether the person signed it or not.

Section 101 (2)

Except for Sections 26 and 33 agreements, no agreement may affect:

1. any provision of this Act
2. any condition, instruction or document issued in terms of this Act
3. any condition contained in any exemption
THE PURPOSE OF APPOINTMENTS

A person is appointed in terms of legislation for a purpose. To establish this purpose, one should consider the wording of the specific section or regulation that creates the appointment. If the wording is not clear, or very wide, then one should try to establish the intention behind the provision. This can be done by considering the following:

1. Objectives of the Acts
2. Provisions in the appropriate Act relating to the specific appointment.
3. General provisions in the appropriate Act that address situations or impose duties within the appointee’s ambit of responsibility.
4. Guidelines available in the form of codes of practice, safe work procedures, official directives, exemptions etc.

It is clear that each appointee has a primary objective to ensure, that as far as is reasonable, people are healthy and safe at the workplace regardless of whether it is a mine, works or other workplace. Against this objective, appointees must carry out the duties delegated to them by management.

It stands to reason then, that each statutory appointee must consider the appropriate Act and regulations. This is, however, not a complete guideline as the Acts make provision for self-regulation to some extent.

ESTABLISHING DUTIES IN TERMS OF THE MINING LEGISLATION

The duties imposed by the mine on statutory appointees may not necessarily all be contained in the specific Act, but nevertheless they remain legal duties. Also, the general body of duties may not be equally applicable to each individual appointee. It is up to the appointee to assess what is applicable to him.

In addition to the legislation there are various documents or guidelines which the employer and his appointees must be familiar with in order to be able to carry out their functions and to comply with the health and safety legislation.

Some of the documents may be required in terms of a specific regulation, while others may be developed in response to an instruction from the Inspector. The legislation is the minimum standard that would apply in the workplace. Many of the documents would supplement the legal standard. In this regard they become crucial, sometimes even legally binding documents themselves.

They serve as practical tools for the implementation of the Acts. In such cases, the relevant provisions of the Acts have already been interpreted and mechanisms devised to ensure that the duties imposed are carried out. (E.g. hot work permit systems, lock-out procedures etc.)
Health and safety standard (Section 102)

“... Means any standard irrespective of whether or not it has the force of law, which if applied for the purposes of this act will promote the attainment of an objective of this act.”

Section 91 (1) (c)

“Any person commits an offence who fails to comply with a ... instruction in terms of this act...”

THE DOCUMENTS TO BE AWARE OF:

1. Statutes

   - The Minerals Act and Regulations

   The Mine Health and Safety Act has effectively removed the topic of health and safety from the Minerals Act. Appointees need to understand that the Minerals Act is still in force.

   - The Mine Health and Safety Act

   The Mine Health and Safety Act was drafted with the intention of only addressing health and safety, due to the fact that health and safety previously addressed by the Minerals Act, was not addressed sufficiently.

   The Mine Health and Safety Act not only provides for more participation by the workforce regarding health and safety, but also incorporates various onerous duties upon the employer and management of a mine.

   Statutory appointees would be required to have a very good understanding of the basic requirements of the Act, as well as of the supporting procedures implemented to achieve compliance.

   - The OHS-Act and Regulations

   It can safely be assumed that the Act will not be applicable in its entirety. The first task, however, is to assess whether or not the OHS-Act is applicable to any areas forming part of the “mine”. The OHS-Act will also be applicable in instances where the Minister declares provisions of the OHS-Act to apply to a mine (Section 80 (1)).

   There may, in addition, be a number of other statutes that govern a specific situation. Generally, an appointee cannot be expected to be as well-versed on these other statutes as he is on the requirements of the Act in terms of which he has been appointed. He does, however, need to know of their existence so that he can assess particular situations.

Sometimes the above-mentioned Acts are silent on a specific subject and in such situations, the common law would apply. Common law is always applicable and will play a very important role in most appointees’ working lives. As an example, common law will indicate how an appointee should act under the following circumstances:

- when a person is fatally injured at the workplace
- when dealing with third parties such as contractors
- when requiring people to sign indemnities
- when entering into contracts with third parties
- when communicating with safety rule contraveners etc.

3. Codes of Practice

**Section 9 - Codes of practice**

1) The employer may prepare a Code on any issue affecting the health and safety of employees or other persons.

2) The employer must prepare a Code, if required to do so, by the Chief Inspector.

3) The Code must address the issues outlined by the Chief Inspector.

4) The employer must consult with the Health and Safety Committee when drafting any Code.

5) The employer must deliver a copy of the Code required by the Chief Inspector to him.

6) The Chief Inspector must review a Code used at the mine if requested to do so by
   - a registered union with members at the mine;
   - the Health and Safety Committee; and/or
   - a Health and Safety Representative.

7) The inspector may instruct the employer to review a Code if:
   - it does not comply with a guideline set out by the Chief Inspector or
   - it does not adequately protect the health and safety of employees.
A common practice among mines is to refer to the legally prescribed Codes (usually those in terms of the Minerals Act Regulations) as Codes of Practice. Documents developed internally are referred to by another name.

It must be mentioned that irrespective of what the in-house document is referred to, it serves to set a standard for enabling the mine to comply with the requirements of the mining legislation. As such, the document enjoys legal backing. Failure to adhere to the “in-house” document, especially if discovered by an Inspector, could lead to legal punishment as this would serve to highlight the failure of compliance quite clearly.

The term “code of practice” is essentially generic. Therefore, a mine is free to develop its own terminology. Conversely, referring to a document by another name does not detract from the fact that it is a “code of practice”, and that it is a legally binding document.

A Code of Practice is essentially a document which sets out the standards which must be reached, in a working place. It provides for the organization of work and the delegation of work responsibilities to various persons in a workplace area. They can deal with any issue. The setting of standards, however, has to provide for the following:

- **What** must be done?
- By **whom** must it be done?
- **Why** it must be done?
- **When** it must be done?

There are three basic sources of a Code of Practice:

2. **A Code Required in Terms of a Minerals Act Regulation**

   There are not many such Codes of Practice. Topics covered include the following:

   - belt conveyer systems
   - electrical apparatus
   - electrical wiring
   - fire-prevention
   - heat-stroke
   - pressure vessels
   - ventilation
3. **A Code Developed by a Mine’s Own Initiative**

- The employer may not draft the Code of Practice without consulting with the health and safety committee. This consultation must address the preparation, implementation and revision of any Code of Practice.

- Such a Code of Practice must be reviewed by the Chief Inspector if requested to do so by a registered trade union (trade union registered in terms of the Labour Relations Act) that has members at the mine, a health and safety committee or a health and safety representative at the mine.

- The employer may also be instructed by an inspector to review a Code of Practice if he is of the opinion that the Code does not comply with a guideline set by the Chief Inspector. In reviewing the Code, the employer would have to consult with the health and safety committee established for the mine.

4. **A Code Developed in Response to an Instruction from the Inspectorate**

- The Chief Inspector may require an employer to prepare and implement a Code of Practice on any matter affecting the health and safety of employees.

- Reference needs to be made to the guidelines for Codes of Practice issued by the Chief Inspector.

- Consultation between the employer and health and safety committee needs to be entered into, regarding the preparation and implementation of the Code of Practice.

- A copy of the Code of Practice is to be forwarded to the Chief Inspector.

- The Chief Inspector must review such a Code of Practice if requested to do so by a registered trade union with members at the mine, the health and safety committee or a health and safety representative at the mine.

- The employer needs to review the Code of Practice, in the required manner, if instructed to do so by an inspector of mines.

Examples of such Codes would be:

⇒ transport systems
⇒ handling of explosives
⇒ prevention and fighting of fires
⇒ self-rescue procedures
⇒ any other safety/health matter required by the Regional Director.
4. Standard Procedures

The mining legislation is not prescriptive on the drafting of written Safe Work Procedures in general. Procedures, nevertheless, form the framework for most activities at the mine. These procedures may, or may not, have relevance to legislation. Some procedures, however, that refers to work to be done, incorporate safety and health aspects required in terms of legislation.

There are various classes of procedures. Some are plant specific, some are common and some have specific reference to Engineering. Some procedures, wittingly or unwittingly, incorporate Safe Work Procedures. Safe Work Procedures are the cornerstone of a safety program and form the basis of any safety-related training.

Once a Code of Practice has set standards for a particular workplace, Standard Procedures [(or Safe Work Procedures (SWP’s))] become crucial documents. These are very detailed instructions pertaining to how a particular job function must be carried out with a view to maintaining health and safety.

As a supplement to a Code of Practice, these deal with how something must be done (in order to achieve the standards laid down by the Code of Practice).

An effective SWP must be a product of Critical Task Analyses (CTI) or Planned Task Observations (PTO). These would identify the particular changes involved in a particular job function, while the SWP would be a response to the identified dangers.

Workplace circumstances, or machinery, involve continual changes. Consequently CTI’s or PTO’s must be continually carried out, as dangers which arise out of changed circumstances, or machinery, can always be detected. In like manner, SWP’s must also be subject to continual review and amendment if necessary.

5. Areas /Matrix of Responsibility

A lay-out and matrix should indicate the areas for which appointees are legally responsible, but it must be remembered that in some instances your duties and responsibilities may exceed the demarcated boundaries.

Health and Safety Policy

Section 8 – The employer must establish a health and safety policy:

1) The policy must
   • describe the organization of work;
   • exhibit concern for employees’ health and safety at work;
   • exhibit concern for the protection of persons who are not employees;
   • describe the procedure for reviewing the policy.
2) The employer must consult with the Health and Safety Committee on the drafting of the policy, and periodic reviews.

3) The employer must ensure that
   - the policy is prominently displayed in each workplace;
   - each Health and Safety Representative has a copy of the policy.

7. Official Directives

A Principal Inspector may give orders, suspension and instructions if he believes that any practice or condition constitutes a danger to the health and/or safety of any person. The Chief Inspector may, however, confirm or set aside the above but in the meantime it must be adhered to.

It must be stated that section 60 of the Minerals Act has been amended to criminalize contraventions which are not otherwise declared to be offences. If any condition, instruction, permission or exemption, granted by the Chief Inspector or Principal Inspector is ignored, the person in question will be guilty of an offence.

8. Management Directives

Management directives were issued in terms of Section 35 of the Minerals Act which forms part of the repealed Chapter 5. This Section authorizes the mine manager to lay down requirements for the repair and supply of any apparatus, machinery or safety-equipment in relation to the safe use or application thereof.

There is no direct replacement for Section 35: the manager’s discretion has been replaced by the requirements of Section 21. However, this does not mean that any such directives are automatically redundant, and to repair or supply equipment contrary to these requirements is still illegal.

9. Permits and Permissions

It is often said that for every rule there is an exception. In this regard, there may be provisions for rules which the mine has permission to comply with in a special manner. Furthermore, there may be general or specific directives that indicate how the specific Act should be interpreted and complied with.

In most cases the Principal Inspector of Mines will issue the permits and permissions. As an example, in terms of the Minerals Amendment Act, the Principal Inspector of Mines may issue permits for the use of prescribed machinery but they will be subject to such conditions and requirements, as he may deem necessary in the interest of safety and health.

The Mine Health and Safety Act now deal with this in Section 53A of the Minerals Act, but previous instructions issued shall remain in force, until specifically repealed or withdrawn. Appointees must ensure that they are familiar with the conditions and requirements.
The Minerals Act Regulations prescribes that certain permits shall be applied for and obtained. Examples of these would include the following:

- boiler permit, chairlift permit, elevator permit, winding plant permit, prospecting and mining permits

Work permits, as such, are not required in terms of the mining legislation, but nevertheless remain recommended as examples of a strict health and safety standard in place at the mine (in particular, these should be imposed on contractors). Examples of such “in-house” permits could include:

- hot work permits, roof work permits, work in confined spaces permits

10. Exemptions and Instructions

As with permits and permissions, in most cases, the permits and permissions will be issued by the Principal Inspector of Mines who may also issue conditions to be attached to the granting of the exemption (Regulation 3.21).

Section 60 of the Minerals Act and Section 91 of the Mine Health and Safety Act make it a criminal offence to disregard an instruction or condition/exemption where such disregard itself is otherwise not stated in the Act or Regulations as an offence.

PPE - LEGAL REFERENCES

The Employer must:

Section 6 - ensure adequate supply of health and safety equipment.

1) (a) The employer must supply the necessary health and safety facilities/equipment to each employee.
   
   (b) The employer must ensure that the facilities/equipment is in a serviceable and hygienic condition.

2) The employer must ensure that there is an adequate supply of equipment.

3) The employer must take reasonable measures to ensure that employees are properly trained in the use of the equipment, maintenance of the equipment, and its limitations.

ABOUT PERSONAL PROTECTIVE EQUIPMENT

Written records should be kept by responsible appointees on the issuing and training of employees on the use of personal protective equipment within the employer’s area of responsibility.
Section 24 - Employees not to pay for safety measures.

No-one may deduct the cost of any safety facility / equipment from an employee’s wages, or allow the employees to pay for the equipment / facility.

MHSA places a general duty on the employee to look after the PPE issued to him, and not to abuse it. As an example, safety shoes are only to be used for protecting the feet at the workplace. They must not, for example, be used for soccer matches over the weekends.

Although an employee is not expected to pay for his equipment, this does not mean he can abuse it, and then have it replaced free of charge:

- this would be violating his general duty as an employee to look after the clothing / equipment (Section 22 (c));
- the employee could be fined by the Inspector for violating Section 22 (c). This fine would effectively be the value of the re-issued equipment / clothing.

Note: “employee” means contractor employees as well. If their company does not provide them with the necessary equipment before they come on site, then this duty would fall on the Mine.

14. CONTRACTORS: THE LEGAL POSITION

Minerals Act Section 1 defines “employee” as:

“...any person employed or working at a mine or works, including an independent contractor.”

“...any person employed or working at a mine or works.”

Implicit in the above definitions is the fact that a contractor is automatically an “employee” of a mine (as can be noted, the Mine Health and Safety Act does not even make reference to a contractor as an organization in its own right).
However, contractors are “employees” and as such have the statutory duty to comply with the requirements of the mining legislation. A mine must thus have an effective contractor management system that would inter alia provide for effective training and monitoring of a contractor’s activities on site, so that this potential exposure is at all times minimized.

For senior personnel, ignorance of the law is no excuse. Employees (i.e. contractors), on the other hand, would be able to cite this excuse as a defence against their actions if it can be established that no training was provided to them.

It is thus important to have an effective contractor management system that would ensure such training, thereby removing the employees’ ability to utilize the defence of ignorance. As employees, they can be appointed under the mining legislation. This is especially recommended if the contractor is providing long term service i.e. there is enough time to train the contractor to be as “competent” a person as a normal mine employee.

**TENDER/PROCUREMENT OF CONTRACTORS**

There are no legal provisions dealing directly with the recruitment of contractors. There are, however, two issues to be aware of:

1) The Mine Health and Safety Act applies to “persons”, which would include prospective contractors who visit a site to examine a project. During such tendering visits, the liability owed by the mine would be towards contractors as “persons” rather than as “employees”.

2) An approved contractor’s list should be developed by a mine. Criteria for getting on to such a list should include a good record of quality work and compliance with the legislation. This would be a reasonable step taken to ensure that the contractor on site is likely to comply with the mining legislation.

**THE RECRUITED CONTRACTOR**

There are various potential legal issues which come into effect at this stage:

1. **Health records**

   The contractor must provide the following:
   
   - Proof of medical aid for its employees.
   - Exit medical certificates from previous clients (sometimes known as Red Tickets).
   - Full medical history of all contractor employees.
2. Training records

The contractor must provide the following:

- Proof of competency of senior contractor staff (e.g. certificates).
- Proof of registration of contractor’s trade.
- Proof of competence for those contractor employees who may work unsupervised.
- Licenses or certificates for those who will operate machinery.
- Proof of training in
  - hazardous substances and
  - PPE and safety equipment

3. References and administration records

The contractor must supply the following:

- Proof of quality work (CV’s, testimonials etc.).
- Return of assessment at WCC (and also a record of good standing at WCC).
- Proof of unemployment benefits subscriptions.
- Proof of employee wages - to ensure the employees are not underpaid.

TRAINING OF CONTRACTORS

The contractor and his employees must be trained on mine health and safety procedures, permits or exemptions that apply to their work on the mine in order to make them “competent”. The training of contractors and employees should include induction to “mine” as well as site specific training.

The contractor must be trained so that he also has a good knowledge of the mining Acts and regulations, (making them “competent”).

The training to be provided would depend on the service provided by the contractor e.g. a regular delivery service (approximately ½ hour) might require nothing more than awareness of the hazards of the roads in the mine.

To help determine training needs, contractors should be categorized. Such a classification could form part of the approved contractor’s list, discussed above, e.g.:

- short term (up to 2 months) - a 1 day session is usually adequate
- long term (2 months plus) - a week long session is the norm
- specialist (the training, here, would be more site specific orientated
Minerals Act Regulation 2.10 and Section 10 of the Mine Health and Safety Act clearly provide that no incompetent person must carry out any task on a mine. This is equally true of contractors and its/his employees.

In lieu of this, the general training program must provide the contractor employee with all the legal provisions applicable to his work on site. It would be unreasonable (and possibly unnecessary) to expect the training program to teach the contractor all the legal provisions.

Similarly, the site induction program must concentrate on, and clearly set out to the contractor employee all the particular site hazards he may encounter during his period of service, and within the area of the mine for which he has been mandated to work and move around in.

**APPOINTMENT OF CONTRACTORS**

Once the contractor and his employees have been trained, and effectively made “competent” (to work in a healthy and safe manner), the mine should appoint contractor personnel to be responsible for the supervision of the contractor employees on site. In this regard the common practice is to appoint the head of a contractor organisation as a Regulation 2.6.1 Site Manager. Similarly, contractor Site Supervisors are usually appointed in terms of Regulation 2.9.2

The appointees would have to meet the requirements stipulated in their letter of appointment, as read against a Manager’s overall responsibility. The appointment would have to be forwarded to the Principal Inspector, if the regulation by which the appointment is made, also makes it reportable.

If the contractor appointee fails to comply with terms of appointment, then he should be immediately issued with a written warning. Continuous non-compliance should lead to expulsion. Discipline, however, is a Labour Relations Act matter, and in this regard it is essential that the mine has a documented procedure providing for verbal and written warnings and that this is communicated to the contractor employees during the pre-employment training.

**MACHINERY**

Section 21 of the Mine Health and Safety Act provides that any article brought to a mine:

- must be safe and not dangerous to use;
- must comply with the provisions of the mining legislation (mainly in the Minerals Act Regulations)

This applies to the machinery and equipment the contractor may wish to bring on site for the work his employees will perform. To comply with Section 21, the contractor must provide:

- licenses, COR’s for vehicles
• full maintenance records for equipment
• full registers / details for equipment
• full specifications about the machinery or equipment

In addition, the contractor employees must be specifically trained and experienced in the equipment they may be working with on a mine. Documentation proving this should be forwarded to the mine.

The mine must not allow the contractor to bring any sub-standard equipment on site, nor provide the contractor with the mine equipment as an alternative. In doing the latter, the mine would be taking on unnecessary liability i.e. where the contractor employee may injure or kill himself while using such loaned equipment.

Regarding hazardous substances, full details must be supplied with these, and must cover content specifications, exposure to the substance and disposal of containers. A good practice would be to insist on material data sheets following the format set out by Annexure 1 to the General Administrative Regulations under the Occupational Health and Safety Act (discussed in chapter 4 of this manual).

**ACCESS CONTROL**

A register containing full details of each contractor employee must be provided to security personnel at all access points. Contractor employees should ideally have cards with photographs which cannot easily be “lent out”. Some mines provide a blanket clearance for the card issued by the contractor itself - this serves to eliminate potential disputes over the cost of such cards.

A common source of disputes between a mine and a contractor is the responsibility for the costs of such cards. The legislation, does not give any indication in this regard. It merely provides that employees are not to be forced to pay for health and safety measures i.e. protective clothing and equipment. This obviously allows the argument that the cards are a matter of security rather than health and safety.

A common problem among mines is unscrupulous contractors who recruit “off the street” in order to ensure an adequate workforce (where the contractor’s own employees fail to arrive for work). Security measures must be implemented to prevent such sneaking in of unauthorized persons.

Security persons cannot be expected to check each person on an incoming shift, but a random spot check, e.g. every fifth person, would normally suffice as a reasonable attempt at preventing such sneaking in.

A mine should appoint a person specifically to manage the recruitment and monitoring of contractors. This should be a senior person (either Regulation 2.9.2 or 2.6.1 ranking).

A mine must be aware that contractors represent a permanent exposure i.e. it is not enough merely to train them properly. There must be a system of continual checking of a contractor for compliance, notwithstanding that contractor personnel have been appointed to carry out the same function.
SUB-CONTRACTORS

From a legal perspective there is no distinction between contractors and sub-contractors. Both are “employees” of the mine, and as such, equally represent a potential liability exposure for a mine.

The contractor must be compelled to inform a mine of any sub-contractors which it wishes to recruit for work on the mine.

15. POWERS AND FUNCTIONS OF THE INSPECTORATE

**Section 49 - Chief Inspectors Functions**

- Ensure compliance with the Act.
- Ensure Inspectors carry out their duties.
- Appoint Inspectors.
- Develop policies on health and safety for the mines.
- Issue guidelines on Codes of Practice.
- Gather information on health and safety, and advise the Minister on this.
- Develop an annual action plan for the Inspectorate.
- Develop annual reports on health and safety in the mines.
- Monitor / control environmental conditions that may affect a person’s health and safety.

In general, the Chief Inspector has administrative duties, and as such would not have too much direct contact with the mines. Exceptions to the above would include the following instances:

- ordering an Inspector to carry out an inquiry
- hearing appeals lodged by a mine against the verdict of an inspector

**Section 50 - Inspector’s Powers**

- Enter a mine without a warrant.
- Enter other places after getting a warrant from a magistrate.
- Question any person on the mine or other place.
- Collect or request any document, and make copies thereof.
- Question persons on the documents.
- Inspect any machine, task or workplace condition.
- Inspect medical surveillance arrangements.
- Instruct any person to appear before him for questioning.
- Remove any document, component or substance for analysis.
The inspector has often been regarded as the MHSA policeman. This is, to some extent, true as he checks that MHSA “law and order” is maintained at the workplace. He would use all the functions listed above to help him check a workplace.

The Inspector, however, is also supposed to give the employer and employee assistance in making sure the workplace is healthy and safe. As will be discussed, respect must be shown to this person.

Think of him as a teacher who will
- help you with your homework
- punish you if you do not do your homework

As regards the power to ask questions, the duty to co-operate must be borne-in mind. So too, however, must the fact that the Inspector’s purpose (i.e. checking for compliance) is a statutory matter, with potential statutory penalties. The legal right against self-incrimination must always be remembered in these circumstances.

Section 54 – Inspector’s power to deal with dangerous conditions
- Issue of instructions to halt operations at a mine.
- Issue of instructions to suspend any act / practice on the mine.
- Set out conditions / steps or time periods for the employer to carry out corrective action.
- Issue of instructions that persons be moved to safety.

As can be seen above, the Inspector is a powerful person. When he gives any instruction, as listed above, even the employer has to obey this. Very often, the Inspector would give the employer an instruction which the employer must carry out. If the employer is given such an instruction, he must obey it, even if he is not happy with the instruction. As will be discussed, disobedience to an Inspector is a criminal offence in terms of MHSA.

The instruction issued can be verbal or written, but must at least be given to the most senior person on the mine. A copy would then also have to be given to the employer.

The inspector must allow the employer opportunity to discuss the instruction before it is imposed, but if the Inspector believes the situation requires immediate action, he can overrule the employer’s right to discuss the instruction.
Section 55: Inspector’s power to order compliance

*If the Inspector believes there is a violation of the requirements of the Act he may issue an instruction*

- to ensure compliance
- setting out what must be done to ensure compliance.

The Inspector must set out a time period in which the corrective action must be carried out, although he may issue an extension on this time period.

DUTIES TOWARDS THE INSPECTOR

Section 52 - Assist Inspector and answer questions

1. When an Inspector visits a mine, the owner / employer and employees working there must provide the facilities the inspector requires.

2. Any person must answer any question which the inspector may pose, although the person need not give an answer if this incriminates him.

Section 53 - Produce documents required by Inspector

- Any person must produce any document which the Inspector may require.
- “Document” includes certificates, permits, authorisation, logbooks, checklists, etc.

Section 52 points out that the employer does not have to answer any question asked by the Inspector if the answer would incriminate him. This means that if the employer believes the answer would be admitting to the Inspector that he has disobeyed MHSA he may (politely) refuse to give the answer.

The employer must, therefore, always think carefully, before giving an answer. Where possible, he should organise to have legal representation present at all times. If the employer is in doubt about whether to answer, he should rather get the lawyer’s advice first.
Remember, any answer given is used as evidence by the Inspector. This evidence may further be used as reasons for prosecuting the employer or employer.

The Inspector would also make the employer take an oath to tell the truth. While he is doing this, he would remind the employer that he “is not obliged to answer any question which may incriminate him...”. When the employer has taken this oath, he must never lie to the Inspector, as this is a criminal offence both in terms of normal law and MHSA.

The danger of an investigation is that the findings of an Inspector are to a large extent based on presumptions. These presumptions are derived from the documents he has scrutinised.

In view of the above, it is essential that documents containing sensitive information have legal privilege reserved upon them (as part of the basic legal right against self-incrimination).

The employer must ensure that all employees responsible for completing documentation, such as formal incident notification reports to the department of Minerals and Energy, understand that only the most essential non-incriminatory information should be recorded.

Section 56 - Instructions to be posed at mine

- The employer must provide a copy of the instructions to the relevant Health and Safety representatives and committees.
- The employer must also ensure the instruction is clearly displayed, and that the instruction is communicated verbally to the affected person.

THE RIGHT OF APPEAL

Section 57 to 59 - Appeals

1) Any person may lodge an appeal against an instruction of the inspector which affects him. This person would have to lodge the appeal within 30 days with the Chief Inspector.

2) Any person may lodge an appeal against an instruction of the principal inspector which affects him. This person would have to lodge the appeal within 30 days with the Chief Inspector.

3) The Chief Inspector must, as soon as is possible, uphold the appeal and set aside the instruction, or uphold, or amend the instruction issued by the inspector.

4) If the person is unhappy with the Chief Inspector’s decision, he must lodge an appeal within 60 days with the Labour Court.
5) While an appeal, either to the chief Inspector or Labour Court, still has to be settled, the instruction stands, and must be complied with. The only exception to this rule is where the appeal is based on a fine imposed (Section 55), in which case the fine is suspended, pending the outcome of the appeal.

If the Inspector has given the employer an instruction which he is not happy about, he could arrange to appeal against this instruction. The employer should notify his employer.

The employer must clearly set out the reasons for the appeal. These could include what problems the instruction forces, and what better alternatives there are to the instruction.

The appeal would have to be reported within 30 days from when the Inspector gave the instruction, to the Principal Inspector. He could decide to dismiss or uphold the Inspector’s instruction. He would have to give reasons for his decision.

If the employer is unhappy with this decision, he may appeal within 30 days, from when the Principal Inspector gave the instruction, to the Chief Inspector. He could decide to dismiss or uphold the Principal Inspector’s instruction. He would have to give reasons for his decision.

If the employer is unhappy about the Chief Inspector’s decision, he must again contact his Health and Safety Representative to arrange another appeal, this time to the Labour Court. Again, this appeal must be lodged within 60 days from when the decision was given.

The Labour Court would review the Chief Inspector’s decision, and the Inspector’s instruction, and decide whether to dismiss or uphold the instruction.

Important to remember: While an appeal, either to the Principal or Chief Inspector or Labour Court, still has to be settled, the instruction stands, and must be complied with (Section 59.1)
INVESTIGATIONS

Section 60

i) At any time, the inspector may investigate
   - any practice concerning health and safety at a mine, and/or
   - any suspected or actual contravention of a requirement of the Act.

ii) The Inspector must carry out an investigation,
   - if instructed to by the Chief Inspector (this would apply in the situation of accidents or incidents resulting in injury serious illness or death of a person);
   - if required to by a union with registered members at the mine;
   - if requested to by a health and safety representative or committee, or by an employee.

Particularly important in the above is that there need not be any actual contravention in place - merely the suspicion thereof. The union or health and safety representative requesting the investigation merely has to have reasonable justification for doing so.

The general objective of an investigation is the search for the truth. This truth is intended to be used as examples to the mines in general i.e. that all may learn from one mine’s misfortune. Nevertheless, an investigation can lead directly to recommendations of a fine or prosecution, and this permanent threat obviously discourages full disclosure of the truth.

DUTIES DURING AN INVESTIGATION

Section 62 - Duty to answer questions

i) Any person questioned during an investigation must answer to the best of his ability, unless the answer might incriminate him.

ii) The above, however, would not apply where a confirmation against protection (Section 63 (3)) has been arranged.
Notwithstanding the provisions of \textit{Section 62}, above, any person enjoys a basic common law procedural right against self-incrimination. It is important that this right be borne-in mind and exercised at all times when dealing with the Inspector.

\textbf{ABOUT INVESTIGATIONS}

An incident investigation is held by the Inspector in order to find out the truth behind an incident. As previously discussed, sometimes the truth, which an employer knows, can be incriminating, and this should not be given to the Inspector. Investigations could involve the following:

1. \textit{individual questioning on site}

2. \textit{“informal” question and answer session}

It must be remembered that the investigation is about a statutory matter, and the information gathered by the Inspector could be used in determining whether a fine (provided for in terms of \textit{Sections 55A to H}) should be imposed, or whether recommendations of prosecution should be submitted to the Attorney General.

The investigation is usually held in order to determine whether an inquiry must be held. An inquiry, as will be discussed, is a more serious affair

\begin{center}
\textbf{Section 63 - Effectiveness of investigation}
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1) \textit{The Chief Inspector may arrange confirmation from the Attorney General that no prosecution will result from the investigation.}

2) \textit{Where such a certificate has been issued, no fine as contemplated in Section 55 may be imposed on the employer}

3) \textit{If such confirmation is granted, then all persons must answer all questions, even if the questions incriminate them.}

The \textit{Section 63} confirmation is problematic in that it offers protection against criminal liability, but not against civil liability.

The confirmation provides protection only against prosecution arising from an investigation. It does not apply in an inquest held in terms of other law for example, following the death of a person (\textit{Section 65 (4)}).
PROCEDURE AT AN INVESTIGATION

The employer would normally organise to have a lawyer present to represent the employer and his employees/appointees. It is important that each is clear about what he is going to say so that no one contradicts the other person. The lawyer would give advice.

1) Opening the investigation

The Inspector would give a general introduction, whereby he explains why he is holding the investigation (i.e. to find out the truth). He would also explain what he is going to do i.e. ask questions, and prepare a report, which he would send to the Chief Inspector. If the investigation is about a fatality, he would mention that he will send a report to the Attorney General.

2) Taking the oath

The employer would be called up and asked to take the oath. He would be asked to put his right hand on the bible while taking the oath. On religious grounds, he could refuse to put his hand on the bible. The Inspector would then ask him if he promises to tell the truth.

The employer is under oath until the Inspector excuses him, i.e. when there are no more questions to ask him. When the employer is under oath, he may only speak to the following persons:

- The Inspector
- The person asking him the questions (if this is not the Inspector)
- The lawyer giving him advice

As an example, during a question - and - answer investigation there may be a break for tea before all questions have been asked of the employer. The employer may not speak about the investigation or his information during the tea break because he is still under oath.

3) Handover of Documents (Exhibits)

If the employer has any documents to produce - usually this is a written statement - he would hand these over. The Inspector would record the document as an exhibit and it would become part of his report. The Inspector would ask questions. These would start with his personal details: age, residence, length of employment etc.

4) Questioning and Cross-Questioning

Sometimes the investigation is attended by several employees/witnesses. When the Inspector is finished with his questions, he may allow them to ask their own questions. This is cross-examining. Only persons who may be affected by the investigation may ask questions. The lawyer may ask the persons to explain why they have the right to ask questions (locus standi).
If the employer has been given this right i.e. he is not under oath, he must remember not to ask questions that could destroy the game plan set out by the lawyer. *Do not try to incriminate the other person under oath. He will do the same to you.*

5) **Excuse from Oath**

When there are no more questions, the employer will be excused from his oath. This does not mean he can leave the investigation immediately. The Inspector must also excuse him. Usually this would only happen when the investigation is complete.

6) **Completion of Investigation**

When he has completed his investigation, the Inspector will announce this. He will then read all the statements he has recorded from the questioning and cross questioning, and ask the parties concerned if they are satisfied with the contents. Even at this stage, a party, or legal representative is not precluded from requesting a “last-minute” amendment.

7) **Submission of Report**

The Inspector must then submit this report both to the Chief inspector and to the Attorney General. The Chief Inspector would use the report to decide whether an inquiry must be held. The Attorney General would use the report to decide whether to prosecute anyone, including the employer.

It is important to remember that even where the inspector suggests that prosecution is unlikely to follow, the Attorney General, or even the Chief Inspector may have different ideas on the matter.

**INQUIRIES**

**Section 65**

i) *The Chief Inspector must instruct an inspector to hold an inquiry if there has been an incident resulting in the death of a person at the mine.*

ii) *The Chief Inspector may instruct an inspector to hold an inquiry if*

   - an incident results in injury or serious illness of a person;
   - there is suspected or actual contravention of any provision of the Act;
   - there is a situation on the mine concerning health and safety;
   - the chief inspector has been requested to do so by a union, health and safety representative/committee or employee.

iii) *An inquiry will not be called for where protection against prosecution has been arranged in terms of Section 63.*
Again, as with investigations, particularly important in the above is that no actual contravention needs to have taken place. Merely the suspicion thereof is enough. The union or health and safety representative requesting the investigation merely has to have reasonable justification for doing so.

Unlike an investigation which focuses on the search for the truth behind an incident, an inquiry focuses on whether any person did not carry out their work responsibility as a reasonable person, and should therefore be fined or prosecuted.

**DUTIES AT AN INQUIRY**

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**Section 66 - Investigation may be converted into inquiry**

i) *The chief inspector may at any time, during an investigation, convert it to an inquiry.*

ii) *Any person summoned to an inquiry cannot refuse to testify on the basis that he had already given evidence at the investigation stage.*

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**Section 70 - Powers of persons presiding over inquiry**

*The person overseeing the inquiry may:*

- instruct / summon any person to appear;
- question the person under oath;
- instruct the person to bring any document, or carry out any act for the purposes of this inquiry.

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**Section 71 - Duties of summoned persons**

i) *Every person at an inquiry must answer any relevant question.*

ii) *The law regarding a witness privilege applies to an inquiry (i.e. refusal to answer incriminatory questions).*

iii) *The person presiding over the inquiry can arrange that the summoned person’s evidence would not be used to prosecute him except in cases of perjury (i.e. where the person lies during the inquiry).*

iv) *If such protection has been arranged, the person must then answer questions that could incriminate him.*

v) *As regards bringing any document or exhibit to an inquiry, the person must show good cause if he does not wish to this.*
An inquiry could be seen as a “trial” without the formal legal procedure. Nevertheless, it must also be treated with caution, mainly because the findings of an inquiry can lead to prosecution in a magistrate’s court. Also, many of the rules of court proceedings also apply at inquiries, i.e. lying in court is an offence.

**Section 90 - Failure to attend when summoned**

*A summoned person, who without just cause does the following, commits an offence:*

- fails to appear at the specified place and time
- fails to remain until excused from the injury
- fails to bring a requested document / article
- refuses to be sworn in
- fails to answer a question properly (where required to do so)
- gives false evidence.

**OFFENCES AND PENALTIES - LEGAL REFERENCES**

**Section 83 - No discrimination against employees who exercise rights.**

i)  *No person may discriminate an employee for:*

- exercising a right, or doing that which he is entitled to do in terms of the Act, or Chapter 3 collective agreement;
- refusing to do something where he is entitled to do so;
- refusing to do something which he is prohibited to do;
- standing for nomination / election as a health and safety representative.

“discriminate” means dismissing, or doing anything which disadvantages the employee (e.g. ridiculing him)

**Section 83 (2) (b) - “employee” includes an applicant for work who previously worked on another mine.**

Violation of this provision is not an offence in terms of this Act, but would be an offence in terms of the Labour Relations Act (See Section 91(2)).
Section 85 - Juvenile employment prohibited

No person under 17 may work underground, and no person may allow such a person to go underground. However, a person between 16 and 17 years may go underground as part of job training.

Section 86 - Negligent act or omission

1) Any person who commits a negligent act or omission which causes serious injury or illness to another person on the mine commits an offence.

2) Any person other than the employer or employee, who commits a negligent act or omission which causes serious injury or illness to another person on the mine commits an offence.

Section 91 - failure to comply with this Act

1) Any person, other than an employer, commits an offence if he contravenes or fails to comply with
   • any provision of this Act
   • any regulation made in terms of this Act
   • any condition, exemption, instruction etc. issued by the Inspectorate or person delegated the power to issue these by the Inspectorate

1A Committing any of the following is an offence in terms of this Act:

• Section 62 - failure to answer questions during investigation
• Section 63(3) - failure to answer all questions during investigation
• Section 71 - failure to respect duties at an inquiry
• Section 85 - employment of juveniles
• Section 86 - negligent acts or omissions in terms of this Act
• Section 88 - hindering administration of this Act
• Section 89 - falsifying documents
• Section 90 - failure to attend inquiry when summoned
Section 92

- Section 87 (breach of confidence) - fine/imprisonment by the court
- failure to attend an inquiry - magistrate’s court penalty imposed
- refusal to be sworn in at an inquiry - penalty in terms of the law on perjury
- an offence in terms of this Act for which no penalty is specified - fine or 6 month’s jail

MAXIMUM FINES OR PERIODS OF IMPRISONMENT THAT CAN BE IMPOSED FOR OFFENCES

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<td>Section under which convicted</td>
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<tr>
<td>88</td>
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Section 95 - Proof of facts

- Unless proven to be false, any person who alleges he is a mine employee is presumed to be so.
- If it is proved that whatever was written in a logbook, checklist etc. is false, it will be presumed that the person who normally fills in the documents made the false entry.
- Whatever is written in any document will be presumed to be a statement of the true facts.

Administrative Penalties

Section 91

1)B An employer can be fined as per Section 55 if he/it contravenes/fails to comply with
   - any provision of this Act;
   - any regulation made in terms of this Act;
   - any condition, exemption, instruction etc. issued by the Inspectorate or person delegated the power to issue these by the Inspectorate.

1)C An employer’s failure to comply with a standard in a Code of Practice is not an offence if
   - the standard exceeds the standard set out by the chief inspector’s guidelines;
   - the “offence” itself complies with the Chief Inspector’s standard.

2) A contravention of Chapter 3 or section 83 (no discrimination) is not an offence in terms of this Act.

3) A Section 4 employer representative commits an offence if he fails to take reasonable care in performing his functions.

4) A Chief Executive Officer commits an offence if he fails to take reasonable care in performing his functions.
Section 55 A - Inspector’s Powers to Recommend Fine

1. An Inspector who believes the employer has contravened the Act, may recommend to the Principal Inspector that a fine be imposed.

2. If the Inspector does not recommend such a fine, he must give written reasons for this, where
   - the contravention posed a serious risk to persons;
   - the contravention would have been the subject of prosecution in terms of this Act or common law;
   - the employer knowingly exposed persons/employees to the serious risk;
   - the employer previously failed to comply with any provision of this Act.

3. The inspector must provide a copy of his recommendation to the employer, health and safety representative and union.

Section 55 B - Principal Inspector may give further instructions

The Principal Inspector may return the matter to the Inspector (where the latter did not recommend a fine) and instruct him as to what fine must be imposed.

Section 55 C - Principal Inspector may refer matter to Attorney General

1. The Principal Inspector may refer the matter to an attorney general if it appears that the employer has committed an offence in terms of this Act or according to common law.

2. The Principal Inspector must inform the employer of any such referral.

3. If prosecution is considered against the employer, he may not be fined.

4. The employer may not be prosecuted unless the matter has been referred to the Attorney General.

5. If the employer is not prosecuted, his statements may not be used against him/it.
Section 55 D - Principal Inspector may impose fine

1. If the Principal Inspector does not pursue a matter that could be referred to the Attorney General (for prosecution) he must
   - disregard the recommendation, or
   - allow representations from the employer, health and safety representative/committee and trade union.

2. After hearing the representations, the Principal Inspector might
   - disregard the recommendation
   - impose a fine not exceeding R200 000.

3. The Principal Inspector must provide a written record of his decision to the employer health and safety representative/committee and trade union.

Section 55 E - Determination of Employers Liability

1. In determining whether an employer has failed to comply with any of the Acts provisions, the Principal Inspector must not be bound to only consider
   - whether the employer did what was “reasonably practicable”, or
   - whether the employer took what were “reasonable steps” in the circumstances.

2. A fine must be set aside if it is established on a balance of probabilities that
   - the employer had taken reasonable steps and
   - the employer was not personally at fault for any failure to comply with any provision listed in Section 91(1)B(a) or (b).
Section 55 G - Chief Inspector of Mines must issue guidelines

1. **The Chief Inspector must issue guidelines for the following:**
   - Referral of contraveners of this Act for prosecution.
   - Recommendation of fines by an Inspector.
   - Imposition of fines, (and amount).

2. **In considering the level of a fine,**
   - a **poor** health and safety system or record, and a **poor** compliance history would lead to an increase in the fine, and
   - a **good** health and safety system including a policy, and **good** health and safety or compliance history would result in a decrease in the fine.

3. **The fine would also be based on**
   - the type of mine,
   - the section of a mine involved, and/or
   - the nature of the work performed in the involved area.

Section 55 H - Use of Fines

*The fines would be paid into a fund set up by the Mine Health and Safety Council, for health and safety promotion. The Chief Inspector’s annual report (Section 49) must reflect the financial affairs of the fund.*