

**REPUBLIC OF SOUTH AFRICA**

**MINE HEALTH AND SAFETY AMENDMENT BILL**

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

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**(MINISTER OF MINERAL AND PETROLEUM RESOURCES)**

**[B —2024]**

**GENERAL EXPLANATORY NOTE:**

[            ]        Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_            Words underlined with a solid line indicate insertions in existing enactments.

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**BILL**

**To amend the Mine Health and Safety Act, 1996, so as to streamline administrative processes and substitute obsolete provisions; to strengthen managerial responsibility and accountability; to provide for the further composition of the Council; provide for the repeal of the establishment of the Mining Qualifications Authority, to strengthen enforcement provisions and increase penalties; to amend and insert certain definitions; and to provide for matters connected therewith.**

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

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

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

“(d) if the *employer* is a body corporate or company, and employs more than 50 *employees*, publish and distribute the report referred to in paragraph

(c), in an appropriate form, to the body corporate's or company's members or shareholders **[or members]**.”.

**Amendment of section 2A of Act 29 of 1996, as inserted by section 2 of Act 72 of 1997 and amended by section 2 of Act 74 of 2008**

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

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

**“Appointment of chief executive officer **[charged with certain functions]**”;**

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

“(1) Every employer must appoint a chief executive officer who must **[take reasonable steps to]** ensure that the functions of the employer as contemplated in *this Act*, are properly performed.”;  
and

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

**“(3) If the employer is a company, the chief executive officer must be a member of the board of that company.”.**

**Amendment of section 3 of Act 29 of 1996, as amended by section 3 of Act 72 of 1997**

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

**Amendment of section 6 of Act 29 of 1996, as amended by section 6 of Act 72 of 1997**

4. Section 6 of the principal Act is hereby amended—

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

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

(b) by the addition after subsection (3) of the following subsection:

“(4) All personal protective equipment supplied in terms of this section must be suitable in terms of—

- (a) size and fit;
- (b) type of workplace hazards;
- (c) purpose;
- (d) nature of work to be undertaken; and
- (e) gender.”

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

5. Section 7 of the principal Act is hereby amended by the addition after subsection (5) of the following subsection:

“(6) Where an appointment as contemplated in subsections (2) and (4) is not made, the employer must ensure that the functions of the person who should have been appointed, are performed.”.

**Amendment of section 8 of Act 29 of 1996, as amended by section 8 of Act 72 of 1997**

6. Section 8 of the principal Act is hereby amended by the deletion in subsection (3) of the word “and” at the end of paragraph (a), the deletion of the full stop at the end of paragraph (b), the insertion after paragraph (b) of the expression “; and”, and the addition of the following paragraph:

“(c) ensure that employees are trained on the contents of the document.”.

**Amendment of section 9 of Act 29 of 1996, as amended by section 47 of Act 72 of 1997**

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

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

“(3) A code of practice required by the *Chief Inspector of Mines* in terms of subsection (2) must comply with guidelines issued by the *Chief Inspector of Mines*.”;

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

“(4) The *employer* must consult with the *health and safety committee* or if there is no health and safety committee at the

mine, with the health and safety representatives, on the preparation, implementation or revision of any code of practice.”; and

(c) by the addition after subsection (7) of the following subsection:

“(8) Every employer must comply with the requirements of the code of practice by such employer, prepared in terms of subsection (2) and (3).”.

**Amendment of section 10 of Act 29 of 1996, as amended by section 47 of Act 72 of 1997 and section 3 of Act 74 of 2008**

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

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

“(1) **[As far as *reasonably practicable, every*] Every employer must—”;**

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

“(2) **[As far as *reasonably practicable, every*] Every employer must ensure that every *employee* is **[properly] adequately** trained, having regard to the work to be performed and the *hazards* and *risks* associated with that work—”;**

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

“(4) The *employer* must keep and make readily available a record of all formal training **[provided] to the *inspector*** in respect of each *employee* in terms of subsection (2).”; and

(d) by the addition after subsection (5) of the following subsection:

“(6) The employer must consult with the health and safety committee or if there is no health and safety committee at the mine, the health and safety representatives in respect of the training provided in terms of this section.”.

**Amendment of section 11 of Act 29 of 1996, as amended by section 47 of Act 72 of 1997 and section 4 of Act 74 of 2008**

9. Section 11 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“(2) Every employer, after consulting the health and safety committee at the mine or if there is no health and safety committee at the mine, the health and safety representatives at the mine, must determine all measures, including changing the organisation of work and the design of safe systems of work, necessary to—”.

**Amendment of section 12 of Act 29 of 1996, as amended by section 47 of Act 72 of 1997**

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

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

**“Employer to provide mine environmental engineering and occupational hygiene management systems”;**

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

“(1) The *employer* of every *mine* must appoint—

(a) a person qualified in mine environmental control and *occupational hygiene*; and

(b) an additional person or persons appointed under section 12 (1)(a), if required to do so after assessing the risks in terms of section 11(1), and the *Chief Inspector of Mines* issues a written instruction to this effect.”;

(c) by the insertion after subsection (1) of the following subsections:

“(1A) A person appointed in terms of subsection (1) must have the qualifications as may be prescribed to be responsible for the *mine’s* environmental engineering and occupational hygiene management systems, and if more than one person is appointed, the *employer* must ensure that their functions do not overlap.

(1B) A person appointed in terms of subsection (1) must provide *mine* environmental engineering and occupational hygiene management systems, including, but not limited to, measuring and assessing levels of exposure to hazards, recommending and monitoring the effectiveness of control measures, and reporting thereon to the *employer*.

(1C) The *employer* must supply a person appointed in terms of subsection (1) with the means to perform their functions.”; and

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

“(2) Every **[system of]** mine environmental engineering and occupational hygiene [measurements] management system must—”.

**Amendment of section 13 of Act 29 of 1996, as amended by section 47 of Act 72 of 1997 and section 5 of Act 74 of 2008**

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

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

“(1) The *employer* must establish **[and]**, maintain and implement a system of *medical surveillance of employees* exposed to *health hazards—*”;

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

“(a) **[engage the]** appoint on a [part-time or full-time services of] part time or full time basis—”;

(c) by the addition in subsection (3)(a) after subparagraph (i) of the following subparagraph:

“(ii) in so far as it is necessary, other occupational health practitioners holding a valid registration with the Health Professions Council of South Africa or the South African Nursing Council.

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

“(4B) The information submitted in terms of subsection (4A) must include—

- (a) the name of a *occupational medical practitioner*;
- (b) his or her **[practice]** professional registration number; **[and]**
- (c) whether the occupational medical practitioner is **[engaged]** appointed on a full time or part time basis; and
- (d) the confirmation of the valid registration of any *occupational health practitioner* appointed in terms of subsection (3) with the Health Professions Council of South Africa or the South African Nursing Council."

**Amendment of section 14 of Act 29 of 1996, as amended by section 47 of Act 72 of 1997**

12. Section 14 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“(2) The *employer* must **[deliver to the *Medical Inspector* a copy of the relevant part of the *record kept*]** enter the information recorded in terms of subsection (1) into the *employee's* record of medical surveillance and deliver a copy of that record to the Medical Inspector—”.

**Amendment of section 17 of Act 29 of 1996, as amended by section 47 of Act 72 of 1997 and section 6 of Act 74 of 2008**

13. Section 17 of the principal Act is hereby amended by the insertion in subsection (4) of the expression “; and” at the end of paragraph (b), and the addition after paragraph (b) of the following paragraph:

“(c) immediately inform the *employee*, in writing, of the right to appeal to the *Medical Inspector* within 30 days against any decision or finding.”.

**Insertion of section 19A in Act 29 of 1996**

14. The following section is hereby inserted in the principal Act after section 19:

**“Findings of unfitness to work**

19A. The *employer* must, within seven days of any decision that an *employee* is unfit to perform any category of work, notify the *employee*, in writing, that he or she has been found unfit to perform work and that the *employee* has the right to lodge an appeal against the decision with the *Medical Inspector* within a period of 30 days after receiving notice of the decision.”.

**Amendment of section 20 of Act 29 of 1996, as amended by sections 11 and 47 of Act 72 of 1997 and section 7 of Act 74 of 2008**

15. Section 20 of the principal Act is hereby amended—  
(a) by the insertion after subsection (2) of the following subsections:

“(2A) The *Medical Inspector* must, within seven days after receiving an appeal as contemplated in subsection (1), confirm receipt of the appeal to the *employee* and notify the *employer*, in writing, of such appeal.

(2B) The employer must, within 10 working days after a decision declaring an employee unfit, submit, through the occupational medical practitioner, submit a report to the Medical Inspector in the prescribed form and manner detailing the reasons for declaring the employee unfit in terms of section 19A.”;

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

“(3) When the *Medical Inspector* receives an appeal **[under]** as contemplated in subsection (1), the *Medical Inspector* **[must]** may choose a suitably qualified independent **[medical health practitioner who is not employed by the employer of the employee, and arrange for that employee to be re-examined by that medical practitioner]** health professional for assessment, at the cost of the *Chief Inspector of Mines*.”;

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

“(4) The **[medical practitioner]** health professional referred to in subsection (3) must report to the *Medical Inspector*, who must then consider the appeal and—

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

(b) substitute any other decision or finding for that decision or finding, and notify the employer and employee of such decision or finding.”;

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

“(a) obtaining and paying for a medical opinion from any other **[medical practitioner]** health professional; or”;

(e) by the insertion after subsection (5) of the following subsection:

“(5A) A health professional consulted by an employee at own cost must provide reports of their findings to the Medical Inspector in line with subsection (4), subject to prior consent by the employee.”.

#### **Amendment of section 29 of Act 29 of 1996**

16. Section 29 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) At a *mine* referred to in section 25(1), the *employees* in a designated *working place* **[may] must** elect from among themselves *health and safety representatives*.”.

#### **Repeal of Section 41(3), 45 and 46 of Act 29 of 1996**

17. Sections 41(3), 45 and 46 of the Principal Act are hereby repealed.

#### **Amendment of section 42 of Act 29 of 1996, as amended by sections 18 and 47 of Act of 1997 and section 10 of Act 74 of 2008**

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

“(1) The *Council* consists of—

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

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

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

19. Section 47 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) **[(a) A juristic person to be known as the]** The Mine

Health and Safety Inspectorate is hereby established.

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

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

20. Section 49 of the principal Act is hereby amended

- (a) by the deletion in subsection (4) of paragraphs (f), (g), (k) and (l);
- (b) by the addition after subsection (6) of the following subsection:

“(7) The *Chief Inspector of Mines* may issue instructions or directives on any matter affecting the *health and safety* of—

(a) employees at the *mines*; or

(b) any persons who are not *employees*, but who may be directly affected by the activities at the *mines*.”.

**Repeal of sections 49A and 49B of Act 29 of 1996, as inserted by section 15 of Act 74 of 2008**

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

**Amendment of section 50, as amended by section 47 of Act 72 of 1997 and section 16 of Act 74 of 2008**

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

(a) by the substitution for subsection (7A) of the following subsection:

“(7A) An inspector may, in order to collect or secure evidence for purposes of an investigation in terms of section 60 or an inquiry in terms of section 65—

(a) impose a prohibition on the functioning of any site at a mine where—

(i) a person has died;

(ii) a serious injury or serious illness to a person has occurred;

or

(iii) a health threatening occurrence has occurred; and

(b) block, bar, barricade or cordon off the site in such a manner as the inspector may consider necessary.”; and

(b) by the insertion after subsection (7A) of the following subsections:

“(7B) An inspector may—

(a) impose the prohibition contemplated in subsection (7A) orally or in writing;

(b) revoke the prohibition if the *inspector* has reason to believe that—

(i) the necessary evidence has been collected or secured;

and

(ii) the investigation or inquiry will not be jeopardised by the further functioning of the site.

“(7C) If the prohibition is issued orally, the *inspector* must confirm it in writing and give it to a person contemplated in section 54(2) within 24 hours of the issuing of the prohibition.”.

**Amendment of section 54 of Act 29 of 1996, as amended by sections 23 and 47 of Act 72 of 1997 and section 17 of Act 74 of 2008**

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

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

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

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

**24.** Section 57 of the principal Act is hereby amended—

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

“(1) Any person adversely affected by a decision of an *inspector* or a decision of the *Principal Inspector of Mines*, except a decision contemplated in section 55B, may appeal **[against]** that decision to the *Chief Inspector of Mines*.”; and

(b) by the addition after subsection (3) of the following subsection:

“(4) Subject to section 7(2)(c) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), a person may not apply to the Labour Court for the review of an administrative decision in terms of this Act, except a decision contemplated in section 55B, until that person has exhausted the appeal process contemplated in this section.”.

**Amendment of section 72 of Act 29 of 1996 as amended by section 47 of Act 72 of 1997**

**25.** Section 72 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The *Chief Inspector of Mines* may submit a copy of the report to the appropriate **[Attorney-General]** Deputy Director of Public Prosecutions.”.

**Amendment of section 75 of Act 29 of 1996**

26. Section 75 of the principal Act is hereby amended by the substitution in subsection (1)(b) for subparagraph(i) of the following subparagraph:

“(i) published a draft of the proposed notice **[at least three months previously]**; and”.

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

27. Section 76 of the principal Act is hereby amended by the substitution in subsection 1 (b) for subparagraph (i) of the following subparagraph:

“(i) published a draft of the proposed notice **[at least three months previously]**; and”.

**Amendment of section 85 of Act 29 of 1996**

28. Section 85 of the principal Act is hereby amended—

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

**“Juvenile employment in [underground] mines prohibited”**; and

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

“(1) No person may cause or permit **[an employee]** any person under the age of 18 years to work **[underground]** at a *mine*.

(2) No **[employee]** person under the age of 18 years may work **[underground]** at a *mine*.

(3) Despite subsections (1) and (2), **[an employee]** any person under the age of 18 years, but over the age of 16 years, may **[work underground]** participate for a limited period in an internship programme at a mine as part of vocational education or training; Provided that the employer must provide additional safety measures to ensure the environment at a mine is appropriate and safe for such person.”.

**Substitution of section 86A of Act 29 of 1996, as inserted by section 26 of Act 74 of 2008**

29. The following section is hereby substituted for section 86A of the principal Act:

**“Criminal liability**

**86A.** (1) An employer commits an offence if the employer contravenes or fails to comply with a duty in terms of Chapter 2, which results

in—

- (a) a person’s death;
- (b) serious injury or serious illness to a person; or
- (c) health-threatening occurrence.

(2) An employer is committing an offence in terms of subsection (1) even if the act or omission fell within the scope of the authority

or employment of the *chief executive officer, manager, agent or employee* concerned, if the *employer*—

(a) conspired with the *chief executive officer, manager, agent or employee* concerned in the action or omission; or

(b) did not take all reasonable steps to prevent the act or omission, and thereby causing the death, injury, illness or occurrence, as the case may be.

(3) For the purposes of subsection (2)—

(a) the fact that the *employer* issued instructions prohibiting the act or omission is not in itself sufficient proof that all reasonable steps were taken to prevent the act or omission; and

(b) Whenever an *employee* does or omits to do any act which would be an offence in terms of this Act for the *employer* of such *employee*, unless it is proved that—

(i) in doing or omitting to do that act, the *employee* was acting without the connivance or permission of the *employer*;

(ii) it was not under any condition or in any circumstance within the scope of the authority of the *employee* to do or omit to do an act, whether lawful or unlawful, of the character of the act or omission charged; and

(iii) all reasonable steps were taken by the *employer* to prevent any act or omission of the kind in question.

the *employer* shall be presumed to have done or omitted to do that act, and shall be liable to be convicted and sentenced in respect thereof, and the fact that he issued instructions forbidding any act or omission

of the kind in question shall not, in itself, be accepted as sufficient proof that he took all reasonable steps to prevent the act or omission”.

**Amendment of section 92 of Act 29 of 1996, as amended by section 38 of Act 72 of 1997 and section 28 of Act 74 of 2008**

**30.** Section 92 of the principal Act is hereby amended—

(a) by the insertion after subsection (6) of the following subsection:

“(6A) An employer who is convicted of an offence in terms of section 86 or 86A, may be sentenced to—

(a) a fine not exceeding 10% of the employer’s annual turnover, whichever amount is the greater.”; and

(b) by the addition after subsection (7) of the following subsection:

“(8) Notwithstanding the penalties in this Act, any employer convicted of an offence in terms of any section of this Act may be sentenced to a fine not exceeding 10% of the employer’s annual turnover in the preceding financial year as reflected in the last available financial statements, in the Republic, and the employer’s exports from the Republic, whichever is greater, or to imprisonment determined by a competent court, taking into consideration factors, including, but not limited to, the interest of justice, nature and extent of the offence, repeat offence or previous non-compliance.”.

**Amendment of section 98 of Act 29 of 1996, as amended by section 41 of Act 72 of 1997 and section 29 of Act 74 of 2008**

31. Section 98 of the principal Act is hereby amended by the substitution in subsection (1) at the end of paragraph (zP) for the full stop of the expression “; and”, and the addition after paragraph (zP) of the following paragraph:

“(zQ) the form and manner of reporting to the medical *inspector* on dismissals contemplated in section 20(2A).”

**Amendment of section 102 of Act 29 of 1996, as amended by section 43 of Act 72 of 1997, section 110 of Act 28 of 2002 and section 30 of Act 74 of 2008**

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

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

“ **‘board’** means a board of directors of a company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008);”

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

“ **‘company’** means a company as defined in section 1 of the Companies Act, 2008;”

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

“ **‘Department’** means the Department **[of Minerals and Energy]** responsible for mineral resources;”

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

“ **‘employee’** means any person who is employed by the *employer* or *owner* of a reconnaissance permission, prospecting right, mining right or mining permit, and who is entitled to receive remuneration, and includes

any employee working at or in a mine, including any person working for an independent contractor;”;

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

“ **‘employer’** means

(a) in relation to a mine—

(i) the holder of any prospecting right, retention permit, mining right, mining permit, exploration right or production right issued under the Mineral and Petroleum Resources Development Act;

(ii) if a right or permit referred to in subparagraph (i) does not exist, the person by whom or for whom the activities contemplated in paragraph (b) of the definition of ‘mine’ are undertaken, but excluding an independent contractor; or

(iii) if neither subparagraph (i) or (ii) is applicable, the last person who worked the mine or, where such last person no longer exists, that person’s successor in title; and

(b) in relation to a works, the person who is undertaking the activities contemplated in the definition of ‘works’, but excluding an independent contractor;”;

(f) by the insertion after the definition of “engine” of the following definition:

“ **‘formal training’** means any relevant training contemplated in section 10(2), which must be properly structured, documented and assessed, and is aimed at achieving adequate levels of safety and health;”;

(g) by the substitution for the definition of “inspector” of the following definition:

“ ‘**inspector**’ means an *officer* appointed in terms of section 49(1)(c) [**, a Medical Inspector and any Principal Inspector of Mines**];”;

(h) by the insertion after the definition “mine” of the following definition:

“ ‘**mine environmental engineer**’ means a competent person qualified in *mine* environmental control techniques, appointed in terms of section 12(1) of this Act;”;

(i) by the substitution for the definition of “mining area” of the following definition:

“ ‘**mining area**’ means—

(a) the area comprising the subject of any prospecting right, retention permit, mining right, mining permit, exploration right or production right issued or granted under the Mineral and Petroleum Resources Development Act;

(b) any land adjacent or non-adjacent to an area referred to in paragraph (a) on which mining related operations or operations incidental to mining are being undertaken by, on behalf of, or under the authorisation of, the owner, but excluding operations where the mineral is used in a manufacturing or beneficiation;

(c) any area connected to an area referred to in paragraph (a) or (b) by means of any road, railway line, power line, pipeline, cable way or conveyor belt, which area—

(i) is under the control of the holder of any prospecting right, retention permit, mining right, mining permit, exploration right or production right issued under the Mineral and Petroleum Resources Development Act; and

- (ii) such holder is entitled to use in connection with the operations performed or to be performed under such right or permit;
- (d) the land on which such road, railway line, power line, pipeline, cableway or conveyor belt is located; and
- (e) the buildings, structures, machinery, residue deposits, residue stockpiles or objects situated on or in such area or land contemplated in paragraphs (a) and (b);”;
- (j) by the substitution for the definition of “Minister” of the following definition:
- “ **‘Minister’** means the Minister **[of Minerals and Energy]** responsible for Mineral and Petroleum Resources”;
- (k) by the insertion after the definition of “occupational health” of the following definitions, respectively:
- “ **‘occupational health practitioner’** means a person who holds a qualification in *occupational health* recognised by the South African Nursing Council;
- ‘occupational hygiene officer’** means a competent person qualified in *occupational hygiene* techniques, appointed in terms of section 12(1);”;
- (l) by the substitution for the definition of “Principal Inspector of Mines” of the following definition:
- “ **‘Principal Inspector of Mines’** means **[the]** an officer appointed by the **[Chief Inspector of Mines]** Minister to be in charge of *health* and *safety* in any region established in terms of section 47(2);”;
- (m) by the deletion of the definition of “Public Finance Management Act”; and
- (n) by the insertion after the definition of “serious illness” of the following definition:

“ **‘South African Nursing Council’** means the South African Nursing Council referred to in section 2 of the Nursing Act, 2005 (Act No. 33 of 2005);”.

**Amendment of Schedule 4 to Act 29 of 1996, as amended by section 46 of Act 72 of 1997 and section 32 of Act 74 of 2008**

- 33.** Schedule 4 to the principal Act is hereby amended —
- (a) by the deletion of item 7; and
  - (b) by replacing all references in the Schedule to the “Mineral and Petroleum Resources Development Act” with references to the “Minerals Act, 1991.”.

**Amendment of item 1 of Schedule 6 to Act 29 of 1996, as added by Government Notice No. R.1317 in Government Gazette 19352 of 10 October 1997, amended by Government Notice No. R.1575 in Government Gazette 24168 of 13 December 2002, and amended by section 34 of Act 74 of 2008**

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

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

**Amendment of item 5 of Schedule 6 to Act 29 of 1996, as added by Government Notice No. R.1317 in Government Gazette 19352 of 10 October 1997, amended by Government Notice No. R.1575 in Government Gazette 24168 of 13 December 2002, and amended by section 34 of Act 74 of 2008**

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

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

“(3) The Safety and Health in Mines Research Advisory Committee must advise the *Council* on—”; and

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

“(4) The Safety and Health in Mines Research Advisory Committee must prepare the programme for relevant *health* and *safety* research for the *Council* to consider. The programme must include—”.

**Amendment of item 8 of Schedule 6 to Act 29 of 1996, as added by Government Notice No. R.1317 in Government Gazette 19352 of 10 October 1997, amended by Government Notice No. R.1575 in Government Gazette 24168 of 13 December 2002, and amended by section 34 of Act 74 of 2008**

**36.** Item 8 of Schedule 6 to the principal Act is hereby amended —

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

“(1) The *Council* consists of—

- (a) five **[members]** persons representing *employers* in the mining industry;
- (b) five **[members]** persons representing *employees* in the mining industry;
- (c) four **[members]** persons representing departments of State; and
- (d) The *Chief Inspector of Mines*, who must chair the *Council*.

(2) Every *committee* consists of—

- (a) five **[members]** persons representing *employers* in the mining industry;
- (b) five **[members]** persons representing *employees* in the mining industry;
- (c) four **[members]** persons representing departments of State; and
- (d) an *officer* of the Mine Health and Safety Inspectorate who must chair the committee.”; and

(b) by the addition after subitem (4) of the following subitem:

“(5) Persons appointed in the *Council* and their alternatives must serve for a period of three years, which is renewable only once for another period of three years.”.

**Insertion of item 8A in Schedule 6 to Act 29 of 1996, as added by Government Notice No. R.1317 in Government *Gazette* 19352 of 10 October 1997, amended by Government Notice No. R.1575 in Government *Gazette* 24168 of 13 December 2002, and amended by section 34 of Act 74 of 2008**

37. The following item is hereby inserted in Schedule 6 to the principal Act after item 8:

**“Qualifications of Members**

**8A.** A member of the Council must—

- (a) be a fit and proper person to hold office;
- (b) possess appropriate skills, experience and relevant industry knowledge;
- (c) meet the diversity requirements relating to the composition of the Council; and
- (d) possess the ability to act in the public interest.”.

**Repeal of Schedule 7 of Act 29 of 1996**

38. Schedule 7 of the Principal Act is hereby repealed.

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

**39.** Schedule 8 to the principal Act is hereby amended by the substitution for

Table 1 of the following Table:

<u>"Number</u>	<b>Column 1 Section under which convicted</b>	<b>Column2 Maximum fine and term of imprisonment</b>
<u>1.</u>	2	R 4 000 000 or <b>[5]</b> five years imprisonment
<u>2.</u>	2A	R 4 000 000 or <b>[5]</b> five years imprisonment
<u>3.</u>	3	R 4 000 000 or <b>[5]</b> five years imprisonment
<u>4.</u>	5	R 4 000 000 or <b>[5]</b> five years imprisonment
<u>5.</u>	6	R 4 000 000 or <b>[5]</b> five years imprisonment
<u>6.</u>	7(1)	R 4 000 000 or <b>[5]</b> five years imprisonment
<u>7.</u>	10	R 4 000 000 or <b>[5]</b> five years imprisonment
<u>8.</u>	11	R 4 000 000 or <b>[5]</b> five years imprisonment
<u>9.</u>	11A	R 4 000 000 or five years imprisonment
<u>10.</u>	15	R 500 000 or five years imprisonment
<u>11.</u>	16	R 500 000 or five years imprisonment
<u>12.</u>	19A	R 1 000 000 or five years imprisonment
<u>13.</u>	21(1), (3) or (4)	R 500 000 or five years imprisonment
<u>14.</u>	22	R 200 000 or two years imprisonment
<u>15.</u>	23	R 200 000 or two years imprisonment
<u>16.</u>	24	R 500 000 or five years imprisonment
<u>17.</u>	52	R 200 000 or two years imprisonment
<u>18.</u>	53	R 200 000 or two years imprisonment
<u>19.</u>	62	R 200 000 or two years imprisonment
<u>20.</u>	66(3)	R 200 000 or two years imprisonment
<u>21.</u>	70	R 200 000 or two years imprisonment
<u>22.</u>	71	R 200 000 or two years imprisonment
<u>23.</u>	83	R 200 000 or two years imprisonment
<u>24.</u>	84	R 200 000 or two years imprisonment
<u>25.</u>	85	R 200 000 or two years imprisonment
<u>26.</u>	87, <b>[88,]</b> 89, 90	R 130 000 or six months imprisonment
<u>27.</u>	88	Individual offender R 800 000 or three years imprisonment  In case of a corporation as an offender R8 000 000

**Short title and commencement**

**40.** (1) This Act is called the Mine Health and Safety Amendment Act, 2024 and takes effect on a date to be determined by the President by proclamation in the *Gazette*.

(2) Different dates may be determined in respect of the coming into operation of different sections in the Mine Health and Safety Amendment Act, 2024.

## **MEMORANDUM ON THE OBJECTS OF THE MINE HEALTH AND SAFETY AMENDMENT BILL, 2024**

### **1. BACKGROUND**

1.1 The setting, monitoring and enforcement of health and safety standards within the South African mining industry are regulated under the Mine Health and Safety Act 1996 (Act No. 29 of 1996) (the “MHSA”). The Department of Mineral Resources (the “DMR”) has embarked on a process of reviewing and proposing amendments to the MHSA. The MHSA has been amended by the Mine Health and Safety Amendment Act, 1997 (Act No. 72 of 1997) and the Mine Health and Safety Amendment Act, 2008 (Act No. 74 of 2008), respectively. The MHSA promotes the objective of protecting the health and safety of persons at mines.

1.2 The MHSA is premised on the principle that the responsibility of for health and safety in mines lies with the employers (owners of the mines), hence the outcome-based approach, which focuses on outputs (results) rather than a rule driven and prescriptive approach of the previous regulatory system under the now repealed Minerals Act, 1991 (Act No. 50 of 1991).

1.3 The enforcement and ordering of compliance within the MHSA forms the core business of the Mine Health and Safety Inspectorate (the “MHSI”), a core branch within the DMRE. In enforcing the MHSA, the Chief Inspector of Mines and various other inspectors have wide statutory powers. Inspectors are empowered to enter any mine

at any time and conduct inspections for the purpose of monitoring or enforcing compliance. If dissatisfied with the conditions, they may order compliance and request that conditions be improved. It is further within their powers to recommend prosecution when an offence has been committed.

## **2. OBJECTS OF BILL**

2.1 The Mine Health and Safety Amendment Bill, 2023 (the “Bill”), seeks to further amend the MHSA so as to substitute, amend and add certain definitions and expressions to remove ambiguities, and to effect certain amendments necessary to ensure consistency with other laws, particularly the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002). It also seeks to amend and review the enforcement provisions, simplify the fine system and strengthen offences and penalties to ensure that they serve as deterrent for non-compliance.

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

## **3. SUMMARY OF BILL**

3.1 Occupational health and safety policy, prevention, research and enforcement arrangements within the mining industry in South Africa are regulated under the MHSA. The MHSA is administered by the DMRE through the MHSI.

3.2 The MHSA was published in the *Government Gazette* No. 17242 of June 1996, commenced on 15 January 1997 and has been in place for a period of over 10 years. Over the years, with the developments in the industry, some challenges and shortcomings relating to the enforcement of the MHSA had been identified.

3.3 The Bill is of high priority to the DMRE and Government in general, especially in light of the challenges relating to health and safety and the urgent need to improve health and safety standards in order to curb the high number of fatalities that the industry experiences from time to time. The amendment is essential to ensure the effective implementation, enforcement and improvement of health and safety standards at mines, thereby reducing fatality rates and occupational diseases.

3.4 The purpose of the Bill is therefore to address not only the provisions relating to offences and penalties, but to align the MHSA to other pieces of legislation enacted post 1996 and that impact on the implementation of the MHSA, such as the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) and the Companies Act, 2008 (Act No. 71 of 2008), to name a few.

## **3.5. DISCUSSION OF CLAUSES**

### **3.5.1 CLAUSE 1**

Clause 1 of the Bill amends section 2 of the MHSA by the substitution of the word “body corporate” with the word “company”, to align the MHSA with the Companies Act, 2008.

### **3.5.2 CLAUSE 2**

Clause 2 of the Bill amends section 2A of the MHSA to provide for the appointment of a Chief Executive Officer.

### **3.5.3 CLAUSE 3**

Clause 3 of the Bill amends section 3 of the MHSA to delete subsection (3), which provides that the employer must perform the function of the manager in terms of this Act if the manager is not appointed.

### **3.5.4 CLAUSE 4**

Clause 4 of the Bill amends section 6 of the MHSA to ensure that employers provide a variety of personal protective equipment for employees to accommodate all the staff, including women.

### **3.5.5 CLAUSE 5**

Clause 5 of the Bill amends section 7 of the MHSA to provide that the employer must ensure that if no manager or person is appointed to perform functions, the employer has a responsibility to perform those duties.

### **3.5.6 CLAUSE 6**

Clause 6 of the Bill proposes an amendment to section 8 of the MHSA to ensure that the employer prominently and conspicuously displays the document that contains information regarding the organisation of work and the protection of employees' health and safety.

### **3.5.7 CLAUSE 7**

Clause 7 of the Bill proposes an amendment to section 9 of the MHSA to ensure that the employer prepares and implements a code of good practice in respect of health and safety matters at a mine.

### **3.5.8 CLAUSE 8**

Clause 8 of the Bill amends section 10 of the MHSA in order to place an obligation on employers to prioritise the provision of health and safety training at mines.

### **3.5.9 CLAUSE 9**

Clause 9 of the Bill amends section 11 of the Act to ensure that a consultation process is followed by the employer prior to making a determination on the organisation of work and the design of safe systems of work.

### **3.5.10 CLAUSE 10**

Clause 10 of the Bill amends section 12 of the MHSA to place an obligation on the employer to provide mine environmental engineering and occupational hygiene services, and the amendment further expands on the appointment and functions of a person qualified in mine environmental control and occupational hygiene.

### **3.5.11 CLAUSE 11**

Clause 11 of the Bill amends section 13 of the MHSA to allow an employer to conduct medical surveillance in conjunction with an Occupational Medical Practitioner. The proposed amendment further seeks to substitute the requirement of a practice number with a professional registration number for uniformity. The proposed amendment further seeks to ensure that the employer issues a certificate of fitness during initial and exit medical examinations.

**3.5.12 CLAUSE 12**

Clause 12 of the Bill amends section 14 of the MHSA to provide that the employer must enter the information recorded in the service record of an employee in terms of section 14(1) of the MHSA into the *employee's* record of medical surveillance and deliver a copy of that record to the Medical Inspector.

**3.5.13 CLAUSE 13**

Clause 13 of the Bill amends section 17 of the MHSA to provide that the employer must inform an employee of the right to appeal a termination of his or her employment at a mine as a result of the outcome of medical surveillance, and further provides the necessary timeframes in respect of the appeal process.

**3.5.14 CLAUSE 14**

Clause 14 of the Bill inserts a new section 19A into the MHSA to provide for the employer to immediately inform the employee of a finding of unfitness to work and the right to lodge an appeal against this decision.

**3.5.15 CLAUSE 15**

Clause 15 of the Bill amends section 20 of the MHSA to provide for an employee to lodge an appeal of a finding of unfitness to work with the Medical Inspector and for the processing of the appeal.

**3.5.16 CLAUSE 16**

Clause 16 of the Bill amends section 29 of the MHSA to make it mandatory for employees to elect a health and safety representative in a designated workplace.

**3.5.17 CLAUSE 17**

Clause 17 of the Bill repeals section 41 (3) which seeks to establish the Mining Qualification Authority, section 45 its members and section 46 which provides for its functions.

**3.5.18 CLAUSE 18**

Clause 18 amends section 42 of the MHSA to replace the word “members” with “persons” in the composition of the Mine Health and Safety Council, and to equate the number of representatives from departments of the state with the other representatives, to five persons.

**3.5.19 CLAUSE 19**

Clause 19 of the Bill amends section 47 of the MHSA by deleting provisions relating to the establishment of Mine Health and Safety Inspectorate (the Inspectorate) as juristic person. The juristic person was envisaged to improve the health and safety of mineworkers, reduce fatalities, injuries and occupational diseases through less red tape. Currently the function envisaged to establish the MHSI as a juristic person is being realised by the MHSI within the Department.

**3.5.20 CLAUSE 20**

Clause 20 of the Bill amends section 49 of the MHSA to further delete provisions relating to the establishment of Mine Health and Safety Inspectorate as juristic person, and to provide for the Chief inspector of Mines to issue instructions or directives on matters affecting the health and safety of employees at mines of persons who are not employees, but who may be directly affected by the activities of mines. Currently the function envisaged to establish the MHSI as a juristic person is being realised by the MHSI within the Department.

**3.5.21 CLAUSE 21**

Clause 21 of the Bill repeals sections 49A and 49B of the MHSA, which provide for the financial and judicial management of the Mine Health and Safety Inspectorate and Cooperative governance, respectively.

**3.5.22 CLAUSE 22**

Clause 22 of the Bill amends section 50 of the MHSA to enhance the powers of the inspector on investigations and inquiries to secure evidence collected on the site of the accident. Subsection (7A) is re-introduced after it was excluded in the Mine Health and Safety Amendment Act, 2008 (Act No. 74 of 2008), and a subsequent proposal was made to put it into operation by proclamation later.

**3.5.23 CLAUSE 23**

Clause 23 of the Bill amends section 54 of the MHSA. Section 54 is amended by substituting the expression “Chief Inspector of Mines” with the expression “Principal Inspector of Mines”, to clarify their respective roles.

**3.5.24 CLAUSE 24**

Clause 25 of the Bill amends section 57 of the MHSA to provide clarity in respect of the appeal process against administrative fine decisions.

**3.5.25 CLAUSES 25, 26 AND 27**

Clauses 26, 27 and 28 of the Bill amend sections 72, 75 and 76 of the MHSA, respectively, to provide for the Minister’s prerogative in consulting the Mine Health and Safety Council on these matters and to further dispense with the consultation where it would be detrimental to public safety.

**3.5.28 CLAUSE 28**

Clause 29 of the Bill amends section 85 to prohibit the employment at mines of persons who are under the age of 18 years.

**3.5.29 CLAUSE 29**

Clause 30 of the Bill substitutes the existing section 86A of the MHSA to provide clarity on an employer whose actions are regarded as a negligent act or omission. Section 86A is re-introduced after it was excluded from the amendments in the Mine Health and Safety Amendment Act, 2008, and a subsequent proposal was made to put it into operation by proclamation later.

### **3.5.30 CLAUSE 30**

Clause 30 of the Bill amends section 92 of the MHSA to strengthen the penalty provisions.

### **3.5.31 CLAUSE 31**

Clause 32 of the Bill amends section 98 of the MHSA to provide for the Minister, after consulting the Mine Health and Safety Council, to make regulations regarding the form and manner of reporting to the medical inspector on dismissals contemplated in section 20(2A) of the MSHA.

### **3.5.32 CLAUSE 32**

Clause 32 of the Bill amends section 102 of the MHSA by the insertion, addition and substitution of certain definitions to remove ambiguities and to provide legal certainty.

**3.5.33 CLAUSE 33**

Clause 33 of the Bill amends Schedule 4 to the MHSA to substitute references to “Minerals and Petroleum Resources Development Act” with references to the “Minerals Act, 1991”.

**3.5.34 CLAUSE 34**

Clause 34 of the Bill amends item 1 to Schedule 6 of the MHSA to amend the wording to reflect the establishment of the Mining Occupational Health Advisory Committee and the Safety and Health in Mines Research Advisory Committee (which replaces the Safety in Mines Research Advisory Committee) by section 41(1) and (2) of the MHSA.

**3.5.35 CLAUSE 35**

Clause 35 of the Bill amends item 5 of Schedule 6 to the MHSA to provide further for the Safety and Health in Mines Research Advisory Committee (which replaces the Safety in Mines Research Advisory Committee).

**3.5.36 CLAUSE 36**

Clause 36 of the Bill amends item 8 of the Schedule 6 to the MHSA to provide for the amended composition of the Mine Health and Safety Council and the term of office of its members.

**3.5.37 CLAUSE 37**

Clause 37 inserts a new item 8A into Schedule 6 to the MHSA to provide for the qualifications of the members of the Mine Health and Safety Council.

**3.5.38 CLAUSE 38**

Clause 38 repeals schedule 7 of the Principal Act.

**3.5.39 CLAUSE 39**

Clause 39 of the Bill amends Tables 1 and 2 of Schedule 8 to the MHSA, respectively by providing for additional penalties and

**3.5.40 CLAUSE 40**

Clause 40 provides for the short title and commencement of the Bill.

**4. DEPARTMENTS OR BODIES CONSULTED**

The amendment has been consulted with all stakeholders within the Department and the amendments were fully supported. Other Government Departments were also consulted during the publication process and orally for especially those affected departments. These include the following Departments, namely:

- Department of Forestry Fisheries and Environment
- National Treasury
- Economic Sector Employment and Infrastructure Cluster Departments
- Department of Labour and Employment
- Department of Education
- The Amendment Bill was also referred to NEDLAC
- The stakeholders within the mining and minerals sector including civil society organisation were consulted with regard to the proposed amendment of the MHSA. The consultation process took place on two occasions during the initial publishing of the Bill in 2012 and recently in 2022.

## **5. FINANCIAL IMPLICATIONS FOR STATE**

The Bill will not have any organisational and personnel implications for the Department and does not create any financial liabilities to the state.

## **6. PARLIAMENTARY PROCEDURE**

6.1 The Constitution regulates the manner in which legislation may be enacted by the legislature and thus prescribes the different procedures to be followed for such enactment. The national legislative process is governed by sections 73 to 77 of the Constitution. Furthermore, Schedules 4 and Schedule 5 to the Constitution list functional areas of concurrent national and provincial legislative competence and functional areas of exclusive provincial legislative competence, respectively. It must be emphasised that the tagging of Bills is dealt with either in terms of section 75 or

section 76 of the Constitution, and these sections set out the process that must be followed when a Bill is submitted for approval.

6.2. In terms of section 44(1)(a)(ii) of the Constitution, the national legislative authority has concurrent competence with a provincial legislative authority within a functional area listed in Schedule 4 because it may pass legislation with regard to any matter, including a matter within a functional area listed in Schedule 4, but excluding, a matter within a functional area listed in Schedule 5 of the Constitution (i.e. a functional area of exclusive provincial legislative competence).

6.3. Section 76(3) of the Constitution states that “[a] Bill must be dealt with in accordance with the procedure established by either subsection (1) or subsection (2) if it falls within a functional area listed in Schedule 4 ....”.

6.4. The test for tagging is not concerned with determining the sphere of government that has competence to legislate on a matter, nor the process concerned with preventing interference in the legislative competence of another sphere of government.<sup>1</sup> In ***Tongoane v Minister of Agriculture and Land Affairs*** 2010 (6) SA 214 (CC), the Constitutional Court ruled on the test to be used when tagging a Bill. The Court held in paragraph 70 that the “*test for determining how a Bill is to be tagged must be broader than that for determining legislative competence*”.<sup>2</sup> *Whether a Bill is*

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<sup>1</sup> *Tongoane and Others v Minister for Agriculture and Land Affairs and Others*, 2010(8) BCLR 741 (CC), at paragraph 60.

<sup>2</sup> At paragraph 70.

*a section 76 Bill is determined in two ways. First by the explicit list of legislative matters in section 76(3), and second by whether the provisions of a Bill in substantial measure fall within a concurrent legislative competence.*"<sup>3</sup> The Court held<sup>4</sup> that the tagging test focuses on all provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4, and not on whether any of its provisions are incidental to its substance.

6.5. We observed that the Bill does not provide for the amendment of the Constitution or money matters, as stated in section 77 of the Constitution and therefore we do not regard it necessary, for the purposes of this opinion, to discuss section 74 and section 77 of the Constitution.

6.6. We have considered all the provisions in the Bill in light of Schedules 4 and 5 to the Constitution. The Bill seeks to provide for amendments to provisions of the Act pertaining to the streamlining of administrative processes; strengthening of enforcement provisions; offences and penalties; certain definitions. The matters concerns the regulation of the mining industry, in particular pertaining to employment conditions. "Mining" or employment is not listed as a functional area of concurrent national and provincial legislative competence as contemplated in Schedule 4 to the Constitution, neither does it affect those matters in a substantial measure. It is our view that therefore this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution.

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<sup>3</sup> At paragraph 72.

<sup>4</sup> At paragraph 59.

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

6.8 Furthermore, the State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39 of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions pertaining to traditional or Khoi-San communities or pertaining to customary law or customs of traditional or Khoi-San communities, nor any matter referred to in section 154(2) of the Constitution.