

South Africa

Occupational Diseases in Mines and Works Act, 1973

Act 78 of 1973

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Occupational Diseases in Mines and Works Act, 1973 (Act 78 of 1973)

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South Africa

Occupational Diseases in Mines and Works Act, 1973

Act 78 of 1973

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[Please note that the research on this work is ongoing. Amendment, commencement and repeal information may be missing.]

[Amended by [Occupational Diseases in Mines and Works Amendment Act, 1974 \(Act 27 of 1974\)](#) on 1 October 1973]

[Amended by [Occupational Diseases in Mines and Works Amendment Act, 1974 \(Act 67 of 1974\)](#) on 1 May 1974]

[Amended by [Occupational Diseases in Mines and Works Amendment Act, 1975 \(Act 45 of 1975\)](#) on 1 October 1974]

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[Amended by [Occupational Diseases in Mines and Works Amendment Act, 1977 \(Act 117 of 1977\)](#) on 1 October 1977]

[Amended by [Occupational Diseases in Mines and Works Amendment Act, 1978 \(Act 30 of 1978\)](#) on 22 March 1978]

[Amended by [Occupational Diseases in Mines and Works Amendment Act, 1979 \(Act 83 of 1979\)](#) on 1 October 1979]

[Amended by [Pension Laws Amendment Act, 1984 \(Act 123 of 1984\)](#) on 1 October 1984]

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[Amended by [Pension Laws Amendment Act, 1990 \(Act 117 of 1990\)](#) on 13 July 1990]

[Amended by [Occupational Diseases in Mines and Works Amendment Act, 1991 \(Act 137 of 1991\)](#) on 17 July 1991]

[Amended by [Occupational Diseases in Mines and Works Amendment Act, 1993 \(Act 208 of 1993\)](#) on 1 March 1994]

[Amended by [Occupational Diseases in Mines and Works](#)

[Amendment Act, 1993 \(Act 208 of 1993\)](#) on 1 September 1995]

[Amended by [Abolition of Restrictions on the Jurisdiction of Courts Act, 1996 \(Act 88 of 1996\)](#) on 22 November 1996]

[Amended by [Mine Health and Safety Act, 1996 \(Act 29 of 1996\)](#) on 15 January 1997]

[Amended by [Occupational Diseases in Mines and Works Amendment Act, 2002 \(Act 60 of 2002\)](#) on 22 January 2003]

[Amended by [Occupational Diseases in Mines and Works Act, 1973: Amendment of amounts to increase benefits \(Government Notice R1249 of 2009\)](#) on 1 August 2009]

[Amended by [Occupational Diseases in Mines and Works Act, 1973: Amendment of amounts to increase benefits \(Government Notice 227 of 2018\)](#) on 1 April 2018]

[Amended by [Occupational Diseases in Mines and Works Act, 1973: Amendment of amounts to increase benefits \(Government Notice 1385 of 2019\)](#) on 1 October 2019]

[Amended by [Occupational Diseases in Mines and Works Act, 1973: Amendment of amounts to increase benefits \(Government Notice 268 of 2021\)](#) on 1 April 2021]

[Amended by [Occupational Diseases in Mines and Works Act, 1973: Amendment of amounts to increase benefits \(Government Notice 1930 of 2022\)](#) on 1 April 2022]

[Amended by [Occupational Diseases in Mines and Works Act, 1973: Amendment of amounts to increase benefits \(Government Notice 1972 of 2022\)](#) on 1 April 2022]

[Amended by [Occupational Diseases in Mines and Works Act, 1973: Amendment of amounts to increase benefits \(Government Notice 3342 of 2023\)](#) on 1 April 2023]

[Please note: Section 17(2) of Act 102 of 1978 substituted for the word “Bantu” wherever it occurs in any law as a reference to a person or persons, the word “Black” or “Blacks” as the context in question may require. Section 17(3) of Act 102 of 1978 substituted for any compound word, or any expression, of which the word “Bantu” or any derivative thereof forms a part, wherever such compound word or expression occurs in any law, the corresponding compound

word, or the corresponding expression, of which the word "Black" or the corresponding derivative thereof forms a part.]

[The Act was amended by the substitution, wherever they occur, for the expression "secretary" of the expression "Director-General", and for the expression "Black affairs authority" of the expression "commissioner", by section 14 of Act 89 of 1988 and by the substitution for the expression "Government Mining Engineer" of the expression "Chief Inspector as contemplated in the Mine Health and Safety Act, 1996," by Act 29 of 1996.]

[Please note: The Act was amended, by section 4 of Act 60 of 2002, by the addition: after "he", wherever it appears, of "or she"; after "him", wherever it appears, of "or her"; and after "himself", wherever it appears, of "or herself".]

(English text signed by the State President.)

ACT

To consolidate and amend the law relating to the payment of compensation in respect of certain diseases contracted by persons employed in mines and works and matters incidental thereto.

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

1. Definitions

(1) In this Act, unless the context otherwise indicates—

“**adopted child**” [definition of “adopted child” deleted by section 1(a) of Act 208 of 1993]

“**advisory committee**” means the advisory committee established under section 59;

“**Amendment Act**” means the Occupational Diseases in Mines and Works Amendment Act, 1993;

[definition of “Amendment Act” inserted by section 1(b) of Act 208 of 1993]

“**Black affairs authority**” [definition of “Black affairs authority” deleted by section 7(c) of Act 89 of 1988]

“**Black person**” [definition of “Black person” deleted by section 1(c) of Act 208 of 1993]

“**benefit**” means money which has been awarded or which is required to be awarded or money which has been paid or which is required to be paid or the payment of money or a claim for the payment of money, as the context may require, to or in respect of a person or to or in respect of the dependants of a person, on the ground that such person was under the previous Act found to be suffering from pneumoconiosis or tuberculosis, or has under this Act been found to be suffering from a compensatable disease, but does not include money awarded under the previous Act or this Act to a person in the form of a special grant or in the form of assistance in connection with the training of any person;

“**bureau**” means the Medical Bureau for Occupational Diseases established under section 2;

“**cardio-respiratory organs**” means all or any one of the following organs, namely larynx, trachea, bronchial tree, lung parenchyma, pleurae, lymphatic system of the lungs, vascular system of the lungs, nerve supply of the lungs, diaphragm and nerve supply to diaphragm, heart, pericardium and large intrathoracic bloodvessel;

“**certificate of fitness**” means a certificate of fitness issued to a person under this Act pursuant to a medical examination of such person;

“**certification committee**” means the Medical Certification Committee for Occupational Diseases established under section 39;

“**child**” [definition of “child” deleted by section 1(d) of Act 208 of 1993]

“**Coloured person**” [definition of “Coloured person” deleted by section 1(d) of Act 208 of 1993]

“Coloured female” *[definition of “Coloured female” deleted by section 1(d) of Act 208 of 1993]*

“commissioner” means the Compensation Commissioner for Occupational Diseases appointed under section 54(a);

“compensatable disease” means—

- (a) pneumoconiosis;
- (b) the joint condition of pneumoconiosis and tuberculosis;
- (c) tuberculosis which, in the opinion of the certification committee, was contracted while the person concerned was performing risk work, or with which the person concerned was in the opinion of the certification committee already affected at any time within the twelve months immediately following the date on which that person performed such work for the last time;
- (d) permanent obstruction of the airways which, in the opinion of the certification committee, is attributable to the performance of risk work;

[paragraph (d) substituted by section 1(a) of Act 30 of 1978]

- (e) any other permanent disease of the cardiorespiratory organs which in the opinion of the certification committee is attributable to the performance of risk work; or
- (eA) progressive systemic sclerosis which, in the opinion of the certification committee, is attributable to the performance of risk work; or

[paragraph (eA) inserted by section 1 of Act 27 of 1974]

- (f) any other disease which the Minister, acting on the advice of a committee consisting of the director and not fewer than three other medical practitioners designated by the Minister, has, subject to the provisions of subsection (2), by notice in the *Gazette* declared to be a compensatable disease and which, in the opinion of the certification committee, is attributable to the performance of risk work at a mine or works;

[paragraph (f) substituted by section 2 of Act 45 of 1975]

“contractor” means a person who employs persons in connection with the performance of risk work at a controlled mine or a controlled works, which he or she has undertaken to perform on behalf of the owner of that mine or works;

“controlled mine” means a mine which is a controlled mine in terms of section 9 or which has been declared a controlled mine under section 10;

“controlled works” means a works which is a controlled works in terms of section 9 or which has been declared a controlled works under section 10;

“dependant” *[definition of “dependant” deleted by section 1(e) of Act 208 of 1993]*

“dependent child” *[definition of “dependent child” deleted by section 1(e) of Act 208 of 1993]*

“director” means the Director of the Medical Bureau for Occupational Diseases appointed under section 3(1)(a);

“Director-General” means the Director-General: National Health and Population Development;

[definition of “Director-General” inserted by section 7(a) of Act 89 of 1988]

“earnings” means—

- (a) in the case of a person who was performing risk work on the relevant date contemplated in section 49, the amount determined in accordance with the provisions of section 80A;

- (b) in the case of a person who was not performing risk work on the said date, the amount determined in accordance with the provisions of section 80B;

[definition of "earnings" inserted by section 1(f) of Act 208 of 1993]

"financial year" means the period from 1 April in any year to 31 March in the next ensuing year:

"fixed date" means the date on which the Amendment Act comes into operation;

[definition of "fixed date" inserted by section 1(g) of Act 208 of 1993]

"medical adviser"

[definition of "medical adviser" deleted by section 1(h) of Act 208 of 1993]

"medical practitioner" means a person who is registered as a medical practitioner under the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);

[definition of "medical practitioner" substituted by section 1(i) of Act 208 of 1993]

"mine" means—

- (a) any excavation in the earth, whether being worked or not, made for the purpose of searching for or winning a mineral; or
- (b) any other place where a mineral deposit is being worked and any quarry, including the mining area or other places at or near a mine on which buildings, constructions, mine dumps, dams, machinery or objects are situated and which are used or intended to be used for the following operations or any operation necessary or incidental thereto, namely—
- (i) the searching for or winning a mineral;
 - (ii) the crushing, reducing, dressing, concentration or smelting of a mineral;
 - (iii) the production of a product of commercial value, excluding a clay or earthenware product or cement, from a mineral; or
 - (iv) the extracting, concentration or refining of any constituent of a mineral:

Provided that if two or more such excavations or places are being worked in conjunction with one another, they shall be deemed to comprise one mine unless the Chief Inspector as contemplated in the Mine Health and Safety Act, 1996 notifies the owner thereof in writing that such excavations or places comprise two or more mines;

[definition of "mine" substituted by section 1(j) of Act 208 of 1993]

"Minister" means the Minister for National Health and Welfare;

[definition of "Minister" substituted by section 7(b) of Act 89 of 1988 and by section 1(k) of Act 208 of 1993]

"one-sum benefit" means a benefit other than a pension or monthly allowance awarded to a person or in respect of a person to any other person under the previous Act or this Act, but does not include a special grant or any assistance to a person in respect of the training of any person;

"owner" in relation to a mine or works, includes the lessee of the mine or works and any person who has the right, or has, by virtue of any law or any agreement with the owner of the mine or works, acquired the right, to exploit a mine for his or her own benefit or to operate a works for his or her own benefit; and if the question arises whether a person is, for the purposes of this Act, the owner of a mine or a works, the Minister shall make a decision on such question;

[definition of "owner" substituted by section 50 of Act 88 of 1996]

“pneumoconiosis” means a permanent lesion, excluding a calcified lesion, of the cardio-respiratory organs caused by the inhalation of dust in the course of the performance of risk work;

[definition of “pneumoconiosis” substituted by section 1(b) of Act 30 of 1978]

“prescribe” or **“prescribed”** means prescribe or prescribed by regulation;

“previous Act” means the Pneumoconiosis Compensation Act, 1962 (Act No. 64 of 1962), including the other laws repealed by section 136 and any laws relating to the payment of compensation to or in respect of persons in respect of miner’s phthisis or silicosis or pneumoconiosis or tuberculosis contracted in the employment of mines or as a result of employment at mines, which preceded the Pneumoconiosis Compensation Act, 1962;

“regulation” means a regulation in force under this Act;

“Republic” *[definition of “Republic” deleted by section 1(l) of Act 208 of 1993]*

“reviewing authority”, means the Medical Reviewing Authority for Occupational Diseases established under section 40;

“risk”, in relation to a mine or a works, means the risk of contracting a compensatable disease, to which persons who perform risk work in or at or in connection with that mine or works are exposed, or the risk determined by the risk committee under section 20 or 21 in respect of that mine or works, as the context may require;

“risk committee” means the Risk Committee for Mines and Works established under section 18;

“risk work” means any work declared or deemed to have been declared risk work under section 13;

“secretary” *[definition of “secretary” deleted by section 7(c) of Act 89 of 1988]*

“this Act” includes any regulation;

“tuberculosis” means tuberculosis of the cardio-respiratory organs of a person who has worked at least 200 shifts in circumstances amounting to a risk and where silica dust or any other injurious dust was present, or any sequelae, complication or manifestation thereof, but does not include inactive or calcified foci;

[definition of “tuberculosis” substituted by section 1(m) of Act 208 of 1993]

“White person” *[definition of “White person” deleted by section 1(n) of Act 208 of 1993]*

“works” means any place, not being a mine or part of a mine, where any of the following operations and any operation necessary therefor or incidental thereto are carried out and constitute the main operation at such place, namely—

- (a) the moving, transfer or handling of stone, rock, ore, coal or other minerals, including any loading operation at subsidiary sidings;
- (b) the crushing, screening, washing, classifying or concentration of any mineral;
- (c) the treating of any mineral, in the form obtained from a mine, for the production of coke or for the production of a base metal in any shape or form, including ingots, billets and rolled sections;
- (d) the working or treating of mine tailings deposits or mine dumps for the recovery of any valuable content thereof;
- (e) the extracting of any precious metal from any mineral or concentrate;
- (f) the refining of any precious metal;
- (g) the drying or calcining of any source material as defined in the Nuclear Energy Act, 1993 (Act No. 131 of 1993);

- (h) the making, repairing, reopening or closing of any subterranean tunnel;

[definition of "works" substituted by section 1(o) of Act 208 of 1993]

- (2) (a) The Minister shall, before declaring a disease to be a compensatable disease in terms of paragraph (f) of the definition of "compensatable disease" in subsection (1), consider such representations (if any) as may have been submitted to him or her by owners of controlled mines or controlled works or by any organization acting on behalf of such owners or on behalf of persons who perform risk work at such mines or works.
- (b) The Minister shall not declare any disease which is compensatable under the provisions of the Workmen's Compensation Act, 1941 (Act No. 30 of 1941), to be a compensatable disease as contemplated in the said paragraph (f), except after consultation with the Minister of Manpower.

[paragraph (b) amended by section 43 of Act 208 of 1993]

- (3) Any finding made or deemed to have been made by the certification committee in accordance with the provisions of—
- (a) section 44, before the commencement of the Amendment Act; and
- (b) section 80(4), 87(4), 88(2) or 106, before the repeal or substitution of those sections by the Amendment Act, shall for the purposes of this Act be regarded—
- (i) in the case of a finding contemplated in subsection (1) of the said section 44, or in the said section 80(4), 87(4), 88(2) or 106, as a finding that the person concerned is suffering from a compensatable disease in the first degree;
- (ii) in the case of a finding contemplated in subsection (2) of the said section 44, as a finding that the person concerned is suffering from a compensatable disease in the second degree.

[subsection (3) added by section 1(p) of Act 208 of 1993]

Chapter I

Bureau, director and Staff

2. Establishment of bureau

- (1) There shall be established a bureau, to be called the Medical Bureau for Occupational Diseases, for the performance under the supervision and control of the director of such functions as may be necessary for the purpose of giving effect to the provisions of this Act and such other functions as may from time to time be assigned to it by the Minister.
- (2) The Minister may make such rules as he or she may consider necessary or desirable for the effective performance of the functions of the bureau.

3. Appointment of director, medical officers, and other staff of bureau

- (1) The Minister shall appoint, subject to the laws governing the public service—
- (a) a Director of the Medical Bureau for Occupational Diseases, who shall be a medical practitioner and who shall exercise the powers and perform the functions conferred upon or assigned to him or her by this Act or by the Minister under this Act.
- (b) as many deputy directors of the bureau as the Minister may consider necessary, of whom at least one shall be a medical practitioner.

- (c) as many other officers, being medical practitioners, as the Minister may consider necessary for the performance of the medical examinations and other functions required to be performed by the bureau under this Act; and
 - (d) such other officers and persons as the Minister may consider necessary for the performance of the functions of the bureau.
- (2) *[subsection (2) deleted by section 2 of Act 208 of 1993]*
- (3) Whenever there is no director or the director is absent or for any other reason unable to perform his functions, the deputy-director appointed under subsection (1)(b) who is a medical practitioner, or, if there is more than one such deputy director, such one of them as the Minister shall designate, shall act in the stead of the director.

4. Functions of director

- (1) The director shall be charged with the direction and control of all medical examinations provided for in this Act and may on such conditions as he or she may deem fit authorize or direct any medical practitioner to perform any such examination.
- (2) The director may in writing authorize—
- (a) any person appointed under section 3(1)(b), (c) or (d) to issue or sign any certificate or other document which in terms of this Act is required to be issued or signed by the director; and
 - (b) the owner of a controlled mine or a controlled works or a contractor, as the case may be, to issue or renew, through his officers authorized thereto by him or her, on behalf of the director and subject to his directions, any certificate of fitness.

[subsection (2) substituted by section 3 of Act 208 of 1993]

5. Powers of director to enter upon places, perform tests and carry out inspections or investigations

- (1) The director or any medical practitioner authorized thereto in writing by him or her, may—
- (a) enter upon any place where a person who works or has worked or intends to work at a controlled mine or a controlled works is being or is to be medically examined in accordance with any provision of this Act, or where any person who works or has worked at a controlled mine or a controlled works is being nursed or medically treated.
 - (b) attend any medical examination of such a person and with his consent examine him or her medically or cause him or her to be medically examined by any other medical practitioner; and
 - (c) inspect any instrument or appliance which is being or has been used in connection with any medical examination or treatment of such a person and demand for inspection any book or document in which any information relating to any such examination or treatment has been recorded and make copies of or extracts from it.
- (2) The director or any person authorized thereto in writing by him or her may—
- (a) enter upon any place where persons who work or have worked or intend to work at a mine or works are being or are to be radiologically examined, and at such place carry out such tests, measurements and observations as he or she may deem desirable.
 - (b) inspect, test, or view any instrument, appliance or machine used in connection with any such examination; and
 - (c) demand for inspection any X-ray photograph taken at such an examination.

- (3) If the director has reason to suspect that the owner of a mine or works or any person employed at a mine or works contravenes or fails to comply with any provision of this Act, the director or any person authorized thereto in writing by the director, may conduct, such investigation in connection with the matter as he or she may deem expedient or as the director may require.
- (4) At the request of any person affected by the exercise of a power under this section, the director or the medical practitioner authorized under subsection (1) or person authorized under subsection (2) or (3), as the case may be, shall produce a certificate of his appointment as director or, in the case of a medical practitioner or person so authorized, his written authority to the person making the request.

6. Powers of director to demand information

- (1) The director may require any person to submit to him or her, periodically or otherwise, and at such times as he or she may direct, any information available to such person which the director considers necessary for the effective performance of his functions, or to submit to him or her or his nominee any book or document in the possession or under the control of such person which contains or is suspected to contain any such information, and may examine and make copies of or take extracts from any such book or document.
- (2) Information called for under subsection (1) may be required to be given in the form of a sworn declaration by the person furnishing such information.
- (3) The director may, by notice in writing signed by him or her, require any person to appear before him or her at a time and place specified in the notice, to be interrogated or to produce any book or document referred to in subsection (1), and may administer an oath or affirmation to and question any person appearing before him or her, whether in pursuance of any such notice or otherwise.
- (4) Nothing in this section contained shall be construed as empowering the director to require any person to furnish any information or produce any book or document which that person is by law prohibited from disclosing or producing or which is privileged in terms of any law, and the legal rules relating to privilege as applicable to a witness summoned to give evidence or produce any book or document in civil proceedings in a court of law, shall apply in connection with the interrogation of any person required to appear as contemplated in this section, and in connection with the production of any book, document or information which he or she is to produce in terms of such a requirement.
- (5) The Director-General may, from moneys appropriated by Parliament for that purpose, compensate any person who has appeared in response to a notice under subsection (3), for any loss sustained or expenses incurred by him or her in connection with his appearance, if such person has produced all books and documents which he or she was obliged to produce and has satisfactorily answered all questions which he or she was bound to answer: Provided that the total amount paid by way of compensation to any such person shall not exceed the amount which would in like circumstances have been payable to him or her and been summoned to appear as a witness in a civil case before a magistrate's court.

7. ***

[section 7 repealed by section 4 of Act 208 of 1993]

8. Annual report by director

As soon as may be after the close of each financial year the director shall furnish the Minister with a report on the activities of the bureau, the certification committee and the reviewing authority.

Chapter II

Control in respect of mines and works, and determination of risk

9. Existing control to continue

Every mine or works which immediately before the commencement of this Act was a controlled mine or a controlled works under the previous Act, shall as from such commencement be a controlled mine or a controlled works for the purposes of this Act until such time as the mine or works in question is released from control under section 11.

10. Declaration as controlled mine or controlled works

- (1) Whenever it comes to the notice of the Minister that any persons are performing risk work at a mine or works which is not a controlled mine or a controlled works in terms of section 9 or, a notice under this subsection, he or she shall, subject to the provisions of subsection (3) of this section, by notice in the *Gazette* declare the mine or works in question to be a controlled mine or a controlled works as from a date to be specified in the notice, not being a date earlier than thirty days after the day on which the notice is published in the *Gazette*.
- (2)
 - (a) A notice under subsection (1) shall contain the name and address of the owner of the mine or works in question and a true description of that mine or works in order that such mine or works may be readily identified.
 - (b) A copy of such notice shall be served on the owner of the mine or works in question not less than thirty days before the date on which that mine or works will become a controlled mine or a controlled works.
- (3) A mine or works shall not under subsection (1) be declared to be a controlled mine or a controlled works so long as the Minister, after consultation with the Chief Inspector as contemplated in the Mine Health and Safety Act, 1996, is satisfied that on account of the limited scale or the temporary nature of the operations at the mine or works in question or on account of the fact that the number of persons performing risk work thereat is less than thirty, the declaration of that mine or works as a controlled mine, or a controlled works is not practicable or justified.
- (4) The commissioner shall maintain a register containing the name and a description of every controlled mine and every controlled works.

11. Cancellation of control

- (1) If the Minister is satisfied after consultation with the Chief Inspector as contemplated in the Mine Health and Safety Act, 1996—
 - (a) that operations at a controlled mine or a controlled works have ceased; or
 - (b) that persons employed at a controlled mine, or a controlled works no longer perform any risk work thereat; or
 - (c) that the number of persons who perform risk work at a controlled mine or a controlled works has decreased to less than thirty,he or she may, subject to the provisions of section 17(2), by notice in the *Gazette* declare that the mine or works in question shall cease to be a controlled mine or a controlled works as from a date to be specified in the notice, not being a date earlier than thirty days after the day on which the notice appears in the *Gazette*.
- (2) The provisions of section 10 (2) shall apply *mutatis mutandis* with reference to a notice under subsection (1) of this section.

12. *Ad hoc* application of provision of Act

- (1) The Minister may by notice in the *Gazette* and on such conditions as he or she may deem desirable, declare that, as from a date to be specified in the notice, not being a date earlier than thirty days after the day on which the notice is published in the *Gazette*—
 - (a) any provision of this Act specified in the notice, which is applicable with reference to a controlled mine or a controlled works, shall apply with reference to a mine or works so specified which is not a controlled mine or a controlled works.
 - (b) subject to the provisions of section 10(1), any provision of this Act specified in the notice, which is applicable with reference to persons employed at a controlled mine or a controlled works, shall apply with reference to persons performing risk work at a mine or works so specified which is not a controlled mine or a controlled works.
 - (c) risk work at a mine or works specified in the notice which is not a controlled mine or a controlled works, shall be deemed to be risk work at a controlled mine or a controlled works.
- (2) The provisions of section 10 (2) shall *mutatis mutandis* apply with reference to any notice under subsection (1) of this section.

13. Risk work

- (1) The Minister may by notice in the *Gazette* declare to be risk work any particular work or all work performed in or at or in connection with any mine or works or part of a mine or works, or at a particular place or under particular circumstances in or at or in connection with anyone or works.
- (2) The Minister shall under subsection (1) declare any such work as is referred to in that subsection to be risk work if he or she is satisfied, after consultation with the risk committee and after consideration of such representations (if any) as may have been made to him or her by the owner of the mine or works in question or by any organization acting on behalf of such owner or on behalf of persons employed at that mine or works, that any person performing the work in question is exposed to—
 - (a) dust of which the composition and concentration is such that it is in the opinion of the Minister harmful or potentially harmful; or
 - (b) gases, vapours or chemical substances, or factors or working conditions, which, in the opinion of the Minister, are harmful or potentially harmful.
- (3) In the exercise of his powers under this section the Minister may differentiate between mines and works or between mines and parts of a mine or between works and parts of a works or between different classes or groups of mines or works or between different occupations, trades, or kinds of work or between different classes or groups of persons, as he or she may consider necessary or desirable.
- (4) Any work performed at a mine referred to in section 9 at a place which immediately before the commencement of this Act was “dusty atmosphere” in terms of the definition of that expression in the previous Act, shall be deemed, until the Minister by notice in the *Gazette* declares otherwise, to have been declared risk work under this section.
- (5) For the purpose of determining whether a person is entitled to a benefit under this Act—
 - (a) work performed at a controlled mine or a controlled works before the date on which that mine or works became a controlled mine or a controlled works; or

- (b) work performed at a mine or works which, in the opinion of the Chief Inspector as contemplated in the Mine Health and Safety Act, 1996, would have been declared a controlled mine or a controlled works had it not closed down,

shall be deemed to be risk work performed at a controlled mine or a controlled works.

(6) *[subsection (6) deleted by section 5 of Act 208 of 1993]*

- (7) For the purpose of determining whether a person is entitled to a benefit in respect of tuberculosis, or for the purpose of determining the amounts which shall be levied from the owners of controlled mines or controlled works under this Act, a shift during which a person was required to perform risk work for a period of not less than fifteen minutes in the course of or in connection with the performance of his normal duties or in pursuance of an instruction issued by a person who has the authority to issue such an instruction, shall be deemed to be a shift during which risk work was performed at or in connection with a controlled mine or a controlled works and shall be so recorded by the owner of the mine or works in question.

[subsection (7) amended by section 43 of Act 208 of 1993]

14. ***

[section 14 repealed by section 6 of Act 208 of 1993]

15. **Prohibition of performance of risk work at controlled mine or works without certificate of fitness**

- (1) Save as provided in subsection (2), no person shall perform risk work at a controlled mine or a controlled works, unless he or she is in possession of a current certificate of fitness, or otherwise than in accordance with or subject to the terms of that certificate, and no owner of a controlled mine or a controlled works and no contractor shall permit any person to perform risk work at such mine or works, except in so far as that person is authorized to perform such work by virtue of such a certificate: Provided that an initial or other certificate of fitness or a special certificate issued under the provisions of the previous Act and which was valid immediately before the commencement of this Act, shall be deemed to be a current certificate of fitness under this Act until the validity thereof expires or until it is cancelled or is replaced by a certificate of fitness under this Act.

[subsection (1) amended by section 43 of Act 208 of 1993]

- (2) The Minister may, after consultation with the Chief Inspector as contemplated in the Mine Health and Safety Act, 1996 and the director, and subject to such conditions as the Minister may determine, exempt the owner of a controlled mine or a controlled works or a contractor from the provisions of subsection (1) in respect of a particular person or group of persons in his service or in respect of a particular occupation, if the Minister is satisfied that special circumstances exist which make such exemption desirable or that the work performed by such person or group of persons is of a temporary nature or of short duration or that the risk to which such person or group of persons is exposed is negligible, and the Minister may at any time cancel such an exemption.
- (3) The provisions of this section shall not be construed as prohibiting a person who is not in possession of a certificate as aforesaid, from performing at a mine or works which is not a controlled mine or a controlled works at the commencement of this Act, any work in which he or she is employed at that mine or works on the date on which it becomes a controlled mine or a controlled works, for a period not exceeding six months as from that date.

16. Register of persons performing risk work at controlled mine or works

- (1) The owner of a controlled mine or a controlled works shall keep a register in which shall be recorded—
 - (a) the name of every person employed by him or her in connection with risk work at such mine or works, and the number assigned to such person by the bureau;
[paragraph (a) amended by section 43 of Act 208 of 1993]
 - (b) the date of issue or renewal and the date of expiry of any certificate of fitness issued to such person;
 - (c) any restriction subject to which any such certificate may have been issued or renewed; and
 - (d) such other information as may be prescribed.
- (2) Every contractor shall keep a register in which shall be recorded, in respect of every person employed by him or her in connection with risk work at a controlled mine or a controlled works, the particulars mentioned in subsection (1), and shall upon completion of such work or when so requested by the owner of the mine or works in question, make such register or a copy thereof available to the said owner.
[subsection (2) amended by section 43 of Act 208 of 1993]
- (3) A register kept in terms of the provisions of subsection (1) or (2), shall be available for inspection by the director or by any other person appointed under section 3(1) who has been authorized in writing by the director to inspect it, and at the request of the director or such a person, a copy of such register shall be made available to the director or that person.

17. Closure of controlled mine or works or alienation of assets by owner

An owner of a controlled mine or a controlled works who owes the commissioner any amount under a provision of this Act, shall not discontinue the operations at his mine or works or sell or alienate his rights in connection with that mine or works unless—

- (a) such owner has given not less than thirty days' notice in writing to the commissioner of his intention to do so; and
 - (b) the commissioner has issued to such owner a certificate to the effect that all amounts which he or she is required to pay to the commissioner under the provisions of this Act have been fully paid or, as the case may be, that he or she has made arrangements which have been accepted by the commissioner, for the payment of any amount, due by him or her to the commissioner.
- (2) After the date on which the notice mentioned in subsection (1) was given to the commissioner, such owner shall not sell or alienate any asset which he or she has acquired or created for use in connection with the operation of his mine or works except with the approval in writing of the commissioner or until the commissioner has issued to such owner a certificate referred to in subsection (1)(b).
 - (3) The Minister shall not under section 11 release a controlled mine or a controlled works from control, unless he or she is satisfied that the owner of the mine or works in question has fully paid all amounts which he or she is required to pay to the commissioner under the provisions of this Act, or that he or she has made arrangements, which have been accepted by the commissioner, for the payment of any amount which is due by him or her to the commissioner.
 - (4) For the purposes of subsection (2), the Minister, acting on the advice of the Chief Inspector as contemplated in the Mine Health and Safety Act, 1996 shall make a decision, on any question as to

whether an asset which is or was held by an owner of a controlled mine or a controlled works was acquired or created for use in connection with the operation of that mine or works.

[subsection (4) substituted by section 51 of Act 88 of 1996]

18. Establishment and constitution of risk committee

- (1) There shall be established a committee, to be called the Risk Committee for Mines and Works, which shall exercise the powers and perform the functions conferred upon or assigned to it by this Act, and such other functions and duties as may from time to time be assigned to it by the Minister.
- (2)
 - (a) The risk committee shall, subject to the provisions of subsection (4), consist of the Chief Inspector as contemplated in the Mine Health and Safety Act, 1996, the director and not less than three or more than four other members to be appointed by the Minister, of whom one shall be a medical practitioner.
 - (b) In appointing members of the risk committee, the Minister shall consider such representations (if any) as may have been made to him or her by owners of controlled mines or controlled works or by any organization acting on behalf of such owners or on behalf of persons who perform risk work at controlled mines or controlled works.
- (3) The Minister may appoint in respect of any member of the risk committee appointed by him or her, an alternate or so many alternates as he or she may consider necessary
- (4) The Chief Inspector as contemplated in the Mine Health and Safety Act, 1996 shall *ex officio* be the chairman of the risk committee, and when there is no Chief Inspector as contemplated in the Mine Health and Safety Act, 1996 or Chief Inspector as contemplated in the Mine Health and Safety Act, 1996 is absent or is for any other reason unable to perform his functions as chairman of the risk committee, a Deputy Chief Inspector as contemplated in the Mine Health and Safety Act, 1996 designated by the Minister for that purpose shall act as chairman of the risk committee.
- (5)
 - (a) The quorum for & meeting of the risk committee shall be a majority of its members including the chairman.
 - (b) The Minister may make such rules as he or she may consider necessary or desirable for the proper functioning of the risk committee.
- (6) A member of the risk committee, and an alternate to such a member, who is not in the full-time service of the State, shall be appointed at such remuneration and on such other conditions of service and for such period not exceeding five years as the Minister may determine in consultation with the Minister of Finance.
- (7) If the Minister is of the opinion that a member of the risk committee who has been appointed by him or her, or an alternate to such a member, is not competent to serve as a member of the risk committee or as such an alternate, the Minister may by notice in writing terminate the appointment of the member or alternate concerned.

19. Powers of chairman of risk committee to enter upon premises, conduct investigation or obtain information

- (1) The chairman of the risk committee or any person authorized thereto in writing by him or her may enter upon any place at a mine or works where any persons work or have worked or where it is intended to cause any persons to work, and carry out such observations, tests, experiments, measurements, investigations or surveys as he or she may consider necessary for the performance of the functions of the risk committee, and view any instrument, appliance or machinery used in connection with the operations at that mine or works or with which any observations, tests, experiments, measurements, investigations or surveys are carried out.
- (2) The chairman of the risk committee shall have the same powers as those conferred upon the director by sections 5(3) and 6, and the provisions of those sections relating to the exercise of such

powers by the director shall *mutatis mutandis* apply with reference to the exercise of such powers by the said chairman.

20. Determination of risk of controlled mine or works

- (1) As soon as possible after the commencement of this Act, the risk committee shall, in respect of every mine or works which is in terms of section 9 a controlled mine or a controlled works, determine the risk, of that mine or works: Provided that the pneumoconiosis risk which immediately before such commencement applied in respect of such a controlled mine under the previous Act, shall, for the purposes of this Act, be deemed to be the risk of that mine until the risk has been determined under this subsection.
- (2) As soon as possible after the date on which a mine or works becomes a controlled mine or a controlled works in terms of section 10, but not later than sixty days after that date, the risk committee shall determine the risk of that mine or works.
- (3) The risk committee shall determine the risk of any mine or works in accordance with the basis fixed by the Minister under subsection (5), or, if the Minister has not fixed any such basis, in such manner as the risk committee deems fit, and, in determining such risk, the risk committee shall consider such representations (if any) as may have been made to it by the owner of the mine or works in question or by any organization acting on behalf of persons performing risk work at that mine or works, and may—
 - (a) determine different risks in respect of separate mines or works or parts of mines or works or working places in or at mines or works or categories or kinds or groups of mines or works, or different categories or classes or groups of workers, or different occupations in or at or in connection with mines or works.
 - (b) take into consideration any factor which, in the opinion of the risk committee, may or is likely to affect the risk in any particular case or generally; and
 - (c) consult any person who in its opinion has special knowledge of any matter before the risk committee for consideration or on which the risk committee is required to make a decision.
- (4) The risk committee shall express any risk which it determines in accordance with a scale or in a manner prescribed.

[subsection (4) substituted by section 7 of Act 208 of 1993]

- (5)
 - (a) The Minister may, if he or she deems it expedient, determine the basis in accordance with which the risk of mines or works shall be determined by the risk committee.
 - (b) In determining such basis, the Minister shall consider such representations (if any) as may have been made to him or her by owners of controlled mines or controlled works or by any organization acting on behalf of such owners or on behalf of persons who perform risk work at controlled mines or controlled works.
 - (c) Any determination made by the Minister under paragraph (a) shall be published for general information in the *Gazette*.

21. Review and alteration or redetermination of risk

The risk committee may at any time, of its own motion or on application by the owner of a controlled mine or a controlled works or by any organization acting on behalf of such owner or on behalf of persons who perform risk work at such controlled mine or such controlled works, review its determination of the risk of the mine or works in question and confirm or alter that determination or set it aside and redetermine the risk in question.

22. Notice of determination, alteration or determination of risk

When the risk committee has determined the risk of a controlled mine or a controlled works under section 20 or has altered its determination of such risk or has set it aside and redetermined the risk under section 21, the chairman of the risk committee or any person authorized thereto by him or her, shall give notice thereof in writing to the director, the commissioner and the owner of the mine or works in question and, where the alteration or the setting aside resulted from a review on application by an organization acting on behalf of persons who perform risk work at such mine or works, to that organization.

Chapter III Certificates of fitness, and medical and other examinations

23. Certificate of fitness

- (1) The director may, subject to the provisions of this Act, on application made in the prescribed manner by any person, or a contractor or an owner of a controlled mine or a controlled works who intends to employ a person to perform risk work at a mine or works, who is not in possession of a valid certificate of fitness, issue to such person a certificate of fitness in the form determined by the director.
- (2) An application in terms of subsection (1) shall be accompanied by the prescribed fee, if any, and the prescribed medical report on the person concerned.
- (3) The director may—
 - (a) direct such person, contractor or owner to furnish such further information in respect of the application as the director deems necessary or expedient;
 - (b) cause the application to be investigated;
 - (c) obtain such further information as he or she may deem necessary for the consideration of the application;
 - (d) direct the person concerned to make himself or herself available, at his own expense, or at the expense of the contractor or owner, at the bureau or a sub-bureau or a place determined by the director, for such examinations as may be determined by the director.
- (4) A certificate of fitness issued under subsection (1) shall be valid for such period, not exceeding three years, from the date of its issue as the director may determine, either generally or in any particular case, and the director may, in his discretion, in respect of such certificate impose restrictions limiting the holder thereof—
 - (a) to work at a particular controlled mine or controlled works; or
 - (b) to work at a controlled mine or a controlled works of a particular kind or group or category; or
 - (c) to work in a particular occupation at a controlled mine or a controlled works; or
 - (d) to work for a fixed period or fixed periods in a particular controlled mine or controlled works, or in controlled mines or controlled works of a particular kind or group or category.
- (5)
 - (a) Where any person has on such an examination been found permanently or temporarily unfit for risk work at a controlled mine or a controlled works, the director shall cause the finding to be communicated in writing to such person, and to the contractor or owner concerned, if appropriate.
 - (b) A person who has been found temporarily unfit for such work, shall be entitled to a further medical examination free of charge if he or she presents himself or herself therefor within 90 days from a date determined by the director and communicated in writing to such person.

- (6) The director shall prescribe the standard of fitness for risk work at a controlled mine or a controlled works which shall be applied at the medical examination of a person examined for the first time with a view to the issue to him or her of a certificate of fitness, and for that purpose the director may—
- (a) prescribe different standards in respect of mines and works;
 - (b) prescribe different standards in respect of different groups, kinds or categories of mines and works;
 - (c) prescribe different standards in respect of different classes, groups or categories of persons or different occupations at controlled mines or controlled works.

[section 23 substituted by section 8 of Act 208 of 1993]

24. Medical examination of white or coloured person on mine or works becoming controlled mine or works

- (1) The director shall within six months after the date on which a mine or works becomes a controlled mine or a controlled works by virtue of a notice under section 10—
- (a) cause to be medically examined every person who on that date is employed in risk work at that mine or works and who is not in possession of a current certificate of fitness; and
[paragraph (a) amended by section 43 of Act 208 of 1993]
 - (b) subject to the provisions of subsection (3), cause a certificate of fitness to be issued to any such person who is found to be free from any compensatable disease or who is found to be suffering from a compensatable disease which does not disqualify him or her from obtaining a certificate of fitness, irrespective of whether or not such person complies with the standard of fitness determined under section 23(6).
[paragraph (b) amended by section 43 of Act 208 of 1993]
- (2) A certificate of fitness referred to in subsection (1)(b) may be issued subject to any restriction contemplated in section 23(4).
[subsection (2) amended by section 43 of Act 208 of 1993]
- (3) The director may refuse the issue of a certificate of fitness to any person referred to in subsection (1) if his health is in the opinion of the director such that he or she may in the performance, of his work endanger his own health or safety or the health or safety of other persons employed at the mine or works in question.
- (4) If, after a medical examination of any person under subsection (1), the issue to him or her of a certificate of fitness is refused, the director shall in writing inform such person of the reasons for the refusal.
- (5) The director shall as soon as possible after the person has in terms of subsection (1) been medically examined, in writing inform the owner of the mine or works in question of the finding at the examination.

25. Periodical medical examination for renewal of certificate of fitness

- (1) Every person who performs risk work at a controlled mine or a controlled works, shall be medically examined at such intervals as may be prescribed by the Minister.

[subsection (1) amended by section 43 of Act 208 of 1993]

- (2) Regulations made under subsection (1) may—
- (a) differentiate between controlled mines and controlled works, or between different groups, kinds or categories of controlled mines or controlled works, or between different working places at controlled mines or controlled works, or between different classes, groups, or categories of persons, or between different occupations at controlled mines or controlled works.
 - (b) prescribe the nature of the examination to be carried out at any such examination; and
 - (c) prescribe the period for which any person who has obtained a certificate of fitness for the first time, shall have performed risk work at a controlled mine or a controlled work in order to be entitled to the renewal of his certificate of fitness.
- (3) If a person referred to in subsection (1) is at an examination in terms of that subsection found to be free from any compensatable disease in the second degree within the meaning of section 44 (2), the director shall, subject to the provisions of subsections (4) and (5) of this section, cause the certificate of fitness of such person to be renewed for such period as the director may determine but not exceeding the prescribed period.
- (4) Any certificate of fitness may under subsection (3) of this section be renewed subject to any restriction contemplated in section 23(4).

[subsection (4) amended by section 43 of Act 208 of 1993]

- (5) The director may refuse the renewal of the certificate of fitness of a person referred to in subsection (1) and may cancel such certificate, if his health is in the opinion of the director such that he or she may in the performance of his work endanger his own health or safety or the health or safety of other persons employed at the mine or works in question.
- (6) Where the renewal of a certificate of fitness has been refused under this section, the director shall immediately cause the reasons for the refusal to be communicated in writing to the person concerned and a copy of such communication to be sent to the owner of the mine or works where that person is employed, or to the owner of the mine or works by whom he or she is employed.

[subsection (6) substituted by section 9 of Act 208 of 1993]

26. Interim examination of holder of certificate of fitness

- (1) Whenever the director has reason to suspect—
- (a) that the health of the holder of a certificate of fitness has deteriorated substantially since his last medical examination; or
 - (b) that the holder of a certificate of fitness is performing work which he or she is not in terms of that certificate permitted to perform; or
 - (c) that the holder of a certificate of fitness is not complying with a restriction subject to which his certificate has been issued or renewed; or
 - (d) that the health of the holder of a certificate of fitness is such that the performance by him or her of risk work at a controlled mine or controlled works is likely to endanger his own health or safety or the health or safety of other Workers,
- the director shall, by notice in writing to the holder concerned, declare his certificate of fitness to be cancelled, and direct him or her—
- (i) to surrender such certificate to a person and at a time and place specified in such notice; and
 - (ii) to report at a time and place so specified, in order to undergo a medical examination.
- (2) A copy of such notice shall forthwith be sent to the owner of the mine or works where the holder concerned is employed.

27. Procedure where presence of compensatable disease is suspected

- (1) The director shall within fourteen days after a medical examination of the holder of a certificate of fitness—
 - (a) who has not previously been found to be suffering from a compensatable disease and who is considered or suspected to be suffering from such a disease; or
 - (b) who has previously been found to be suffering from a compensatable disease and who is considered or suspected to be suffering from a more advanced degree of the disease in question,

submit to the certification committee a full report on the result of the examination.

- (2) Subject to the provisions of subsection (3), the director shall not issue a certificate of fitness to a person referred to in subsection (1) until the certification committee has determined whether or not he or she is suffering from a compensatable disease, and, if he or she is found or has previously been found to be suffering from a compensatable disease, the degree of that disease.

- (3) The director may issue to a person referred to in subsection (1)—
 - (a) who is not considered or suspected to be suffering from tuberculosis or any other infectious disease; or
 - (b) who is considered or suspected to be suffering from tuberculosis which in the opinion of the director is non-infectious and is not likely to become infectious; and

(c) who is considered to be fit to perform risk work at a controlled mine or a controlled works, a temporary certificate of fitness which shall be valid for a period not exceeding sixty days to be specified therein, in order to enable that person to continue working until the decision of the certification committee is made known.

- (4) If the certification committee finds the person concerned—
 - (a) to be free from a compensatable disease; or
 - (b) to be suffering from a compensatable disease which does not disqualify him or her from obtaining a certificate of fitness,

the director shall forthwith issue a certificate of fitness to that person.

- (5) A certificate of fitness may be issued under subsection (4) of this section subject to any restriction contemplated in section 23(4).

[subsection (5) amended by section 43 of Act 208 of 1993]

28. Procedure where a certificate of fitness has lapsed

- (1) The director shall on application by any person whose certificate of fitness has lapsed, issue to such person a fresh certificate of fitness if after examination it appears—
 - (a) that he or she is not suffering from a compensatable disease and that his health is such that he or she is fit to perform risk work at a controlled mine or a controlled works; or
 - (b) that he or she is suffering from a compensatable disease which does not disqualify him or her from obtaining a certificate of fitness and that his health otherwise is such that he or she is fit to perform risk work at a controlled mine or a controlled works.

- (2) The director may issue a certificate of fitness under this section subject to any restriction contemplated in section 23(4).

[subsection (2) amended by section 43 of Act 208 of 1993]

29. Limited certificate of fitness

- (1) On application by any person, including any such person in the service of the State, who is not in possession of a current certificate of fitness and whose work or duties require him or her from time to time to perform risk work, or be in or at places where risk work is performed, at any controlled mine or controlled works for periods not exceeding in the aggregate four hours on any one day, the director shall cause the applicant to be medically examined.

[subsection (1) amended by section 43 of Act 208 of 1993]

- (2) If after an examination in terms of subsection (1) of a person referred to in that subsection, he or she is found—
 - (a) not to be suffering from a compensatable disease, or to be suffering from a compensatable disease which does not disqualify him or her from obtaining a certificate of fitness; and
 - (b) to be fit to perform the work which he or she is from time to time required to perform, without endangering his own health or safety or the health or safety of other workers, the director shall issue to him or her a certificate of fitness which shall be valid for such period not exceeding one year as the director may determine, and which may be restricted in any manner the director deems fit.
- (3) The director may at any time by notice in writing to the holder of a certificate of fitness issued under subsection (2), cancel such certificate and require such holder to report at a time and place determined by the director and stated in flip notice, for the purpose of undergoing a medical examination.
- (4) The director shall cause a copy of a notice under subsection (3) to be sent forthwith to the owner of the mine or works in question and to the employer of the person concerned, or, if he or she is in the service of the State, to the head of the department in which he or she is employed.

30. Restriction on issue of certificate of fitness in certain cases

- (1) Subject to the provisions of section 27(3) and subsection (3) of this section, no certificate of fitness shall at any time be issued to any person—
 - (a) who according to a finding of the certification committee, is suffering from—
 - (i) tuberculosis; or
 - (ii) tuberculosis and pneumoconiosis; or
 - (iii) any compensatable disease in the second degree within the meaning of section 44; or
 - (b) who, in the opinion of the director, is suffering from an infectious disease and has not been completely cured of such disease.
- (2) A finding expressed under the provisions of the previous Act and by virtue of which a benefit was awarded to any person, shall for the purposes of subsection (1) be deemed—
 - (a) in the case of such a finding of pneumoconiosis which impaired the cardio-respiratory functions of the person concerned by not less than twenty per cent but by no more than fifty per cent, not to be a finding of a compensatable disease in the second degree;
 - (b) in the case of such a finding of pneumoconiosis which impaired the cardio-respiratory functions of the person concerned by more than fifty per cent, to be a finding of a compensatable disease in the second degree.
 - (c) in the case of such a finding of pneumoconiosis and tuberculosis, to be a finding of a compensatable disease in the second degree; and
 - (d) in the case of such a finding of tuberculosis, to be a finding of tuberculosis.

- (3) If the certification committee is satisfied that any person who has been found by that committee to be suffering from tuberculosis, has received treatment for tuberculosis and that the disease has been completely cured, the director may issue to such person a certificate of fitness restricting the holder thereof to the performance, at a controlled mine or a controlled works, of work of a nature or at a place or for a period or periods specified in the certificate.

[subsection (3) substituted by section 2 of Act 83 of 1979 and amended by section 43 of Act 208 of 1993]

- (4) The director—
- (a) may issue a certificate of fitness referred to in subsection (3) subject to such other restrictions as he or she may consider necessary in addition to the restrictions contemplated in that subsection;
 - (b) may at any time cancel such a certificate by written notice to the holder thereof.
 - (c) shall cause a copy of any notice under paragraph (b) to be sent without delay to the owner of any controlled mine or controlled works where the Said holder is employed.

31. Director may require certain person to undergo medical examination

- (1) The director may by notice in writing Require—
- (a) any person who performs any work other than risk work at a controlled mine or a controlled works; or
- [paragraph (a) amended by section 43 of Act 208 of 1993]*
- (b) any person who is employed at a mine or works which is not a controlled mine or, a controlled works, to report at a time and place, or from time to time at the times and places, determined by the director and specified in the notice, for the purpose of being medically examined.
- (2) A copy of any notice under subsection (1) shall be sent to the owner of the mine or works where the person to whom the notice is directed is employed.

32. Application for medical examination for compensatable disease

- (1) Any person who works or has worked at a mine or works, or any other person acting on behalf of such a person, may at any time apply to the director for a medical examination of such person for the purpose of determining whether such person is suffering from a compensatable disease, or, if he or she has previously been found to be suffering from such a disease, the degree of such disease.
- (2) Upon receipt of such application, the director shall, subject to the provisions of subsection (3)—
- (a) cause the person concerned to be medically examined as soon as possible.
 - (b) submit to the certification committee a detailed report on the condition of the health of that person; and
 - (c) cause such further examinations, tests, and observations to be carried out as the director may deem necessary or as the certification committee may require.
- (3) The director may refuse such application if the person concerned was medically examined under this Act within the period of 24 months immediately preceding the date on which such application is received, unless the application is supported in writing by a medical practitioner.

[subsection (3) substituted by section 1 of Act 60 of 2002]

33. Report by medical practitioner on person who has work at the mine or works

- (1) Whenever a medical practitioner in the Republic considers or suspects that any person medically examined or treated by him or her, who has to his knowledge worked at a mine or works, or who he or she believes on reasonable grounds to have so worked, is suffering from a compensatable disease, such practitioner shall forthwith communicate to the director his findings at the examination, and shall on demand by the director furnish such further information at his disposal in regard to the examination or the health of such person as the director may require.
- (2) The director may in writing direct a medical practitioner who has communicated his findings at the examination of any person to the director as contemplated in subsection (1), to perform, with the consent of the person concerned, a further medical examination of that person or such an examination of a nature determined by the director, and a medical practitioner so directed who has performed an examination in accordance with the direction, shall forthwith submit to the director a detailed report on the result of the examination.

34. Duties of medical practitioner in regard to post-mortem examination of service

- (1) The director may authorize or in writing direct any medical practitioner in the Republic to perform a post-mortem examination or other post-mortem service under this Act of a nature determined by the director, and a medical practitioner so authorized or directed who has performed a post-mortem examination or other post-mortem service in accordance with such authorization or direction, shall forthwith submit to the director a detailed report on the result of the examination or service performed by him or her.
- (2) A medical practitioner in the Republic who attended a deceased person at the time of or immediately before his death, or has opened the body of a deceased person, and who knows or has reason to believe that such person worked at a mine or works, shall remove the cardio-respiratory organs and any other prescribed organs or parts of the body of the deceased and shall send such organs and parts of the body to the prescribed place or, if no place has been prescribed, to the bureau or to any other place specified by the director, in accordance with the prescribed procedure or, if no procedure has been prescribed, in accordance with such instructions as may be issued by the director.
- (3) Notwithstanding anything contained in subsection (1) or (2), a medical practitioner shall not perform a post-mortem examination on any deceased person or remove his cardio-respiratory organs or any other organs or parts of his body, without the consent of his widow (if any) or an adult near relative of the deceased, if the widow or such a relative can readily be consulted.

35. Arrangement for post-mortem examination and services

The Minister may with the concurrence of the Minister of Finance enter into such agreement or make such other arrangements with any institution, hospital or organization as the Minister may consider necessary for the performance of any post-mortem examinations or post-mortem services required under this Act.

36. Cost of medical examinations

- (1) The cost of any medical examination under this Act, and the cost incurred to keep a person under observation in accordance with any provision of this Act, shall—
 - (a) in the case of a person who works at a mine or works, or whom the owner of a mine or works intends to employ, be borne by the owner of the mine or works; and
 - (b) in the case of any other person, be paid by the Director-General from moneys appropriated by Parliament for that purpose.

- (2) For the purposes of this section "mine or works" means a controlled mine or a controlled works or a mine or works in respect of which the Minister has under section 12 applied the provisions of this section.

[section 36 substituted by section 10 of Act 208 of 1993]

36A. Medical expenses

- (1) The owner of a controlled mine or a controlled works shall from the date of the commencement of a compensatable disease pay the legitimate and proven cost incurred by or on behalf of a person in his or her service, or who was in his or her service at the commencement of a compensatable disease, in respect of medical aid necessitated by such disease.

[subsection (1) substituted by section 2 of Act 60 of 2002]

- (2) If, in the opinion of the commissioner, further medical aid in addition to that referred to in subsection (1) will reduce the disease from which the person is suffering, he or she may pay the cost incurred in respect of such further aid or direct the owner concerned to pay it.
- (3) For the purposes of this section "owner" includes a labour broker who against payment provides a person to a client for the rendering of a service or the performance of work, and for which service or work such person is paid by the labour broker, or where a person is employed by a contractor, such contractor.

[section 36A inserted by section 11 of Act 208 of 1993]

36B. Medical aid provided by owners

- (1) If an owner of a controlled mine or a controlled works makes arrangements to provide to persons in his service medical aid which in the opinion of the commissioner is not less favourable to such persons than that provided for in this Act, the commissioner may, subject to such conditions as he or she may determine, approve such arrangements.
- (2) If the commissioner has approved the arrangements referred to in subsection (1)—
 - (a) the persons concerned shall be entitled to medical aid in accordance with the arrangements;
 - (b) the owner concerned shall not be required to provide or pay for medical aid except in accordance with the said arrangements;
 - (c) the commissioner may reimburse an owner so much as he or she may deem equitable.
- (3) The commissioner may at any time withdraw the approval or amend the conditions referred to in subsection (1).
- (4) For the purposes of this section, section 36A(3) shall apply *mutatis mutandis*.

[section 36B inserted by section 11 of Act 208 of 1993]

36C. Arrangements regarding certain compensation

The provisions of sections 36A and 36B shall have no effect on any arrangement in force on the fixed date between the State and the owners of controlled mines and controlled works in terms of which the State compensates such owners in respect of medical expenses incurred by such owners in respect of the treatment of persons in their service for tuberculosis.

[section 36C inserted by section 11 of Act 208 of 1993]

37. Medical practitioner and a person examined entitled to fee or cost under certain circumstances

- (1) If a medical practitioner who is not in the full-time service of the State or of an institution of which the maintenance costs are defrayed wholly from State funds or of an owner of a controlled mine or a controlled works—
- (a) has in terms of an authorization, request of direction by the director performed any medical or postmortem examination or other post-mortem service under this Act; or
 - (b) has removed the cardio-respiratory or other organs or parts of the body of a deceased person in terms of section 34(2) to the satisfaction of the director,
- he or she shall be entitled to payment, from moneys appropriated by Parliament for that purpose, of —
- (i) any cost reasonably and necessarily incurred by him or her in order to perform such examination or service; and
 - (ii) the fee determined by the Minister in consultation with the Minister of State Expenditure; or
[subparagraph (ii) amended by section 43 of Act 208 of 1993]
 - (iii) in the case of an examination or service performed elsewhere than in the Republic, the fee determined by agreement between the director and the medical practitioner concerned or the authority (if any) with which arrangements were made for the performance of the examination or service in question.
- (2) If any person—
- (a) who is in possession of a current certificate of fitness and who is employed at a controlled mine or a controlled works; or
 - (b) who is not in possession of a current certificate of fitness and who performs any work other than risk work at a controlled mine or controlled works or is employed at a mine or works on the date on which it becomes a controlled mine or a controlled works by virtue of a notice under section 10, necessarily incurs any costs, or necessarily absents himself or herself from the service of the owner of the mine or works in question, in order to have his certificate of fitness renewed or to obtain a certificate of fitness in terms of any requirement of this Act or to undergo a medical examination pursuant to a direction by the director—
 - (i) the director shall, subject to such conditions as the Minister may determine in consultation with the Minister of State Expenditure, repay the said costs to that person from moneys appropriated by Parliament for that purpose;
[subparagraph (i) amended by section 43 of Act 208 of 1993]
 - (ii) the said owner shall pay to that person his normal remuneration in respect of the period for which he or she so absents himself or herself from the owner's service but not exceeding three days.
- (3) Where an application under section 32 for the medical examination of any person has been granted, such person shall be entitled to repayment, from moneys appropriated by Parliament for that purpose, and in accordance with a scale prescribed by the Minister with the concurrence of the Minister of State Expenditure, of costs incurred by him or her in order to undergo such examination —
- (a) if he or she is found for the first time, on the ground of such examination, to be suffering from a compensatable disease; or

- (b) where he or she has previously been found to be suffering from a compensatable disease, if he or she is found for the first time, on the ground of such examination, to be suffering from a compensatable disease in the second degree, within the meaning of section 44(2); or
- (c) in any other case, if he or she has not received from the State a repayment of costs in respect of a medical examination which he or she underwent, during the year immediately preceding the day on which the said application reached the bureau, for the purpose of determining whether he or she is suffering from a compensatable disease.

[subsection (3) amended by section 2 of Act 27 of 1974 and by section 43 of Act 208 of 1993]

38. ***

[section 38 amended by Act 27 of 1974 and repealed by section 12 of Act 208 of 1993]

Chapter IV

Certification of compensatable diseases

39. Establishment and constitution of certificate committee

- (1) There shall be established a committee, to be called the Medical Certification Committee for Occupational Diseases, which shall exercise the powers and perform the functions conferred upon or assigned to it by this Act.
- (2) The certification committee shall consist of the director and not less than three or more than five other members to be appointed by the Minister, who shall be medical practitioners and of whom, subject to the provisions of subsection (4)—
 - (a) one shall be a medical practitioner whose name has been submitted to the Minister in terms of that subsection by the owners of controlled mines and controlled works or by an organization or organizations qualified, in the opinion of the Minister, to act on behalf of such owners; and
 - (b) one shall be a medical practitioner whose name has been so submitted by an organization or organizations qualified, in the opinion of the Minister, to act on behalf of persons who perform risk work at controlled mines or controlled works.
- (3) The director shall *ex officio* be the chairman of the certification committee.
- (4)
 - (a) When a member of the certification committee is to be appointed under paragraph (a) or (b) of subsection (2), the Minister shall cause a written communication to be sent to the owners or the organization or organizations referred to in the said paragraph (a) or, as the case may be, to the organization or organizations referred to in the said paragraph (b), containing a request for the submission to him or her, for the purposes of the paragraph in question and within a period stated in the communication not being less than forty-five days, of the names of not less than three medical practitioners.
 - (b) If such request is not complied with; the Minister may appoint any medical practitioner as a member of the certification committee in the place of the member contemplated in the paragraph in question or, at his discretion and provided the certification committee already consists of not less than three members apart from the director, refrain from making any appointment.
- (5) The Minister may appoint in respect of any member of the certification committee an alternate or so many alternates as he or she may consider necessary, who shall be a medical practitioner or medical practitioners and who, in the case of an alternate to a member appointed in terms of subsection (2)(a), or (b), shall be appointed in the same manner as such member.

- (6) (a) The chairman and a majority of the other members of the certification committee shall constitute a quorum at any meeting thereof.
- (b) The Minister may make such rules as he or she may consider necessary or desirable for the proper functioning of the certification committee.

40. Establishment and constitution of reviewing authority

- (1) There shall be established a body, to be called the Medical Reviewing Authority for Occupational Diseases, which shall exercise the powers and perform the functions conferred upon or assigned to it by this Act.
- (2) (a) The reviewing authority shall consist of not less than three or more than four members to be appointed by the Minister and who shall be medical practitioners.
- (b) In appointing the members of the reviewing authority, the Minister shall consider such representations (if any) as may have been made to him or her by owners of controlled mine or controlled works or by any organization acting on behalf of such owners or on behalf of persons who perform risk work at controlled mines or controlled works.
- (3) The Minister shall appoint a member of the reviewing authority as its chairman and shall designate another member to act as chairman when there is no chairman or the chairman is absent or is for any other reason unable to perform his functions.
- (4) A member of the certification committee or an alternate to such a member or a medical practitioner in the employ of the bureau shall not be eligible for appointment, as a member of the reviewing authority.
- (5) The Minister may appoint in respect of any member of the reviewing authority an alternate or so many alternates as he or she may consider necessary, who shall be a medical practitioner or medical practitioners.
- (6) (a) A majority of the members of the reviewing authority shall constitute a quorum at any meeting thereof.
- (b) The Minister may make such rules as he or she may consider necessary or desirable for the proper functioning of the reviewing authority.

41. Conditions of service of member of certification committee or reviewing authority

- (1) A member of the certification committee or of the reviewing authority, and an alternate to such a member, who is not in the full-time service of the State shall be appointed at such remuneration and on such other conditions of service and for such period not exceeding five years as the Minister may determine in consultation with the Minister of State Expenditure.

[subsection (1) amended by section 43 of Act 208 of 1993]

- (2) A member of the certification committee or of the reviewing authority, and an alternate to such a member shall vacate his office—
 - (a) if he or she becomes insolvent;
 - (b) if he or she becomes of unsound mind;
 - (c) if he or she is convicted of an offence and sentenced to imprisonment without the option of a fine; or
 - (d) in the case of a member, if he or she absents himself or herself from five consecutive meetings of the certification committee or of the reviewing authority, as the case may be, without the leave of the certification committee or reviewing authority, which shall not be granted for any continuous period exceeding one hundred and eighty days.

- (3) If the Minister is of the opinion that a member of the certification committee or of the reviewing authority or an alternate to such a member is not competent to serve as such a member or alternate, the Minister may by notice in writing remove the member or alternate concerned from office.

42. Powers of chairman of certification committee and reviewing authority

- (1) The chairman of the certification committee and the chairman of the reviewing authority shall each have the same powers as those conferred upon the director by sections 5(1) and 6, and the provisions of those sections relating to the exercise of such powers by the director shall *mutatis mutandis* apply with reference to the exercise of such powers by the chairman in question.
- (2) The chairman of the certification committee may by notice in writing direct any medical practitioner who has performed a medical examination of a person who works or has worked at a controlled mine or a controlled works, to submit to that committee a full report on such examination, or to appear before that committee at a time and place specified in the notice, in order to answer such relevant questions as may be put to him or her by the said chairman or any other member of that committee.
- (3) The chairman of the certification committee or the chairman of the reviewing authority may of his own motion or at the request of any person whose case is being dealt with by that committee or authority, as the case may be, by notice in writing direct such person to appear before that committee or authority at a time and place specified in the notice in order to answer such relevant questions as may be put to him or her by the chairman or any other member of that committee or authority, or in order to undergo a medical examination.

43. Standards for certification of compensatable diseases

- (1) The Minister may, if he or she deems it expedient, after consultation with the director and the medical adviser (if there is one), determine the standards to be applied in the certification of compensatable diseases in terms of this Act.
- (2) In determining such standards, the Minister shall consider such representations (if any) as may have been made to him or her by owners of controlled mines or controlled works or by any organization acting on behalf of such owners or on behalf of persons who perform risk work at controlled mines or controlled works.
- (3) Any determination made by the Minister under subsection (1) shall be published for general information in the *Gazette*.

44. Degrees of compensatable disease

- (1) For the purposes of this Act a person shall be deemed to be suffering from a compensatable disease in the first degree—
 - (a) in the case of pneumoconiosis, if the certification committee has found that he or she is suffering from pneumoconiosis, whether or not it has impaired his cardio-respiratory functions, and the certification committee has found a resultant permanent disability of more than 10 per cent but not more than 40 per cent;
 - (b) in the case of a compensatable disease referred to in paragraph (d) of the definition of "compensatable disease" in section 1 (in this section referred to as "the definition"), if the certification committee has found that he or she is suffering from such a disease and the certification committee has found a resultant permanent disability of more than 10 per cent but not more than 40 per cent;
 - (c) in the case of a compensatable disease referred to in paragraph (c), (e), (eA) or (f) of the definition, if the certification committee has found that he or she is suffering from such a

disease which has permanently impaired his ability to perform his ordinary work by more than 10 per cent but by not more than 40 per cent;

[subsection (1) substituted by section 14(a) of Act 208 of 1993]

- (2) For the purposes of this Act a person shall be deemed to be suffering from a compensatable disease in the second degree—
- (a) if the certification committee has found that he or she is suffering from more than one compensatable disease simultaneously which together have permanently impaired his ability to perform his ordinary work by more than forty percent, or that he or she is suffering from tuberculosis and another compensatable disease simultaneously;
 - (b) in the case of pneumoconiosis, if the certification committee has found that he or she is suffering from pneumoconiosis which has permanently impaired his cardio--respiratory functions by more than forty per cent;
 - (c) in the case of a compensatable disease referred to in paragraph (d) of the definition, if the certification committee has found that he or she is suffering from such a disease which has permanently impaired his cardio--respiratory functions by more than forty per cent;
 - (d) in the case of a compensatable disease referred to in paragraph (e) of the definition, if the certification committee has found that he or she is suffering from such a disease which has permanently impaired his ability to perform his ordinary work by more than forty per cent
 - (e) In the case of a compensatable disease referred to in paragraph (f) of the definition, if the certification committee has found that he or she is suffering from such a disease which has permanently impaired his ability to perform his ordinary work by more than forty per cent.
 - (f) in the case of a compensatable disease referred to in paragraph (c) or (eA) of the definition, if the certification committee has found that he or she is suffering from such a disease which has permanently impaired his ability to perform his ordinary work by more than 40 per cent.

[paragraph (f) added by section 14(b) of Act 208 of 1993]

45. Director to submit certain medical and post-mortem reports to certification committee

When the director has obtained or has received from any medical practitioner any report or communication on the medical or post-mortem examination in terms of this Act of any person—

- (a) who has not previously been found by the committee to be suffering from a compensatable disease and who is on the ground of such examination considered or suspected to be suffering from such a disease or to have been suffering from such a disease at the time of his death; or
- (b) who has previously been found by the committee to be suffering from a compensatable disease and who is on the ground of such medical examination considered or suspected to be suffering from a compensatable disease in a more advanced degree, the director shall as soon as practicable submit to the certification committee a full report on such examination, and, at the request of the said committee, cause such further examinations, tests or observation to be performed as that committee may require.

46. Certification committee to determine presence, nature and degree of compensatable disease

When the certification committee has received from the director a report in terms of section 45 or has obtained or received in terms of any other provision, of this Act a report on the medical or post-mortem examination of any such person as is referred to in that section, the certification committee shall

determine, in any manner it deems fit but with due regard to the standards (if any) determined under section 43 and to the provisions of section 44—

- (a) in the case of a person who has not previously been found by the committee to be suffering from a compensatable disease, whether he or she is suffering from such a disease or, as the case may be, was suffering from such a disease at the time of his death, and, if so, the nature and degree of the disease;
- (b) in the case of a person who has previously been found by the certification committee to be suffering from a compensatable disease, the degree of the disease.

47. Certification committee may reconsider and alter own finding

- (1) The certification committee may, when it has expressed a finding under the provisions of this Act, of its own motion or on application by the person to whom such finding relates, or on application by any other person acting on behalf of that person or any organization so acting, or, in the case of a deceased person, on application by the dependants of such person or by any other person acting on behalf of such dependants or any organization so acting, at any time reconsider and, subject to the provisions of subsection (2), alter such finding or rescind it and express a fresh finding in its place.
- (2) The certification committee may not alter or rescind any finding by virtue of which any benefit has been awarded to any person, irrespective of whether such finding was expressed before or after the commencement of this Act.
- (3) Where a finding is altered or is rescinded and a fresh finding is expressed in its place under subsection (1), such altered or fresh finding shall be deemed to have been expressed on the date on which the original finding was expressed.

48. Notice of finding of certification committee

- (1) Whenever the certification committee has expressed a finding in accordance with the provisions of this Act, the chairman or a person authorized thereto in writing by him or her, shall issue a certificate in the prescribed form setting out such finding and containing such information as may be necessary for the purposes of this Act, and shall within ten days as from the date on which the finding was expressed, cause copies of such certificate to be sent—
 - (a) to the commissioner.
 - (b) if the person to whom the certificate relates is still employed at a mine or works, to the owner of such mine or works.
 - (c) to the person to whom it relates, or if it relates to a deceased person, to the dependants, if any, of the deceased;
[paragraph (c) substituted by section 8(a) of Act 89 of 1988]
 - (d) *[paragraph (d) deleted by section 8(b) of Act 89 of 1988]*
 - (e) if it is a finding of tuberculosis, to the local authority in whose area the person is to whom the certificate relates.
- (2) The chairman of the certification committee shall keep a register of all the findings of that committee.

49. Effective date of finding of certification committee

- (1) A finding of the certification committee shall, save as is otherwise provided in this Act, be deemed to have been expressed—
 - (a) where it is based wholly or partly on a medical examination or two or more medical examinations of the person concerned, on the date on which such examination or the first of such examinations commenced.
 - (b) where it is based wholly or partly on a post-mortem examination, on the date on which the person concerned died.
 - (c) where it is based wholly or partly on a medical examination or two or more medical examinations of the person concerned carried out or commenced before the commencement of this Act, on the date on which such examination or the first of such examinations commenced.
- (2) Notwithstanding the repeal of the previous Act, a finding referred to in subsection (1)(c) shall be expressed in accordance with the provisions of the previous Act and shall be deemed to be a finding of the Miners' Certification Committee (within the meaning of the previous Act) expressed before the commencement of this Act.

50. Review of finding by reviewing authority

- (1) The reviewing authority may review any finding expressed by the certification committee if an application for such review is lodged with the reviewing authority by the person to whom the finding relates or by any other person acting on his behalf or any organization so acting, or, in the case of a deceased person, by the dependants of the deceased or by any person or organization acting on behalf of such dependants, within ninety days as from the date on which notice of the finding was given by the certification committee.
- (2) The reviewing authority may on such review confirm the finding in question or request the chairman of the certification committee to submit the case for review to a joint meeting of that committee and the reviewing authority.

51. Joint meeting of certification committee and reviewing authority

- (1) The chairman of the certification committee shall, within fourteen days after the receipt of a request under section 50(2), convene a joint meeting of the certification committee and the reviewing authority at which the chairman of the certification committee shall preside, and every member of the certification committee or the reviewing authority present thereat shall have a vote of any matter relating to the finding under review.
- (2) The Minister shall determine the quorum for a joint meeting of the certification committee and the reviewing authority and may make such rules as he or she deems necessary for the conduct of the business of such joint meeting.

52. Review by joint meeting

- (1) A joint meeting of the certification committee and the reviewing authority may confirm any finding under review by such meeting or rescind it and substitute for it such meeting's own finding.
- (2) Where a finding is rescinded as aforesaid, the finding substituted for it by the joint meeting shall be deemed to be a finding of the certification committee and to have been expressed on the date on which the rescinded finding was expressed.
- (3) The provisions of section 48 shall *mutatis mutandis* apply in respect of a finding substituted by such a joint meeting for a finding of the certification committee.

53. ***

[section 53 repealed by section 16 of Act 208 of 1993]

Chapter V

Commissioner, advisory committee and Compensation Fund

54. Appointment of commissioner and staff

The Minister shall appoint, subject to the laws governing the public service—

- (a) an officer to be styled the Compensation Commissioner for Occupational Diseases, who shall exercise the powers and perform the functions conferred upon or assigned to him or her by this Act or by the Minister under this Act.
- (b) an officer, to be styled the Deputy Compensation Commissioner for Occupational Diseases, to act in the place of the commissioner whenever there is no commissioner or the commissioner is absent or is for any other reason unable to perform his functions.
- (c) such other officers and persons as he or she may consider necessary, to assist the commissioner in the performance of the functions which in terms of this Act are required to be performed by him or her.

55. Powers of commissioner to enter upon premises and obtain information

- (1) The commissioner shall for the purpose of performing his functions have the same powers as those conferred on the director by sections 5(3) and 6, and the provisions of those sections relating to the exercise of such powers by the director shall *mutatis mutandis* and subject to the provisions of subsection (2) of this section apply with reference to the exercise of such powers by the commissioner.
- (2)
 - (a) Notwithstanding anything contained in section 6(4) or any law relating to income tax, the Director-General for Inland Revenue shall convey to the commissioner at his request any information required by the commissioner in connection with the application of any provision of this Act.
 - (b) The commissioner shall, except in the performance of his duties under this Act, preserve secrecy in regard to any information conveyed to him or her under paragraph (a).

56. Commissioner may delegate powers

The commissioner may in writing delegate to the deputy commissioner or any other officer on his staff or with the approval of the Minister, to any other person in the service of the State, any power conferred upon the commissioner by this Act, and may at any time vary or withdraw any such delegation.

57. ***

[section 57 repealed by section 17 of Act 208 of 1993]

58. Supreme court ruling

- (1) The commissioner may with the consent of the Minister state a special case for the ruling of the Transvaal Provincial Division of the Supreme Court of the Republic of South Africa on any question of law which has arisen in connection with any matter in which the commissioner has given or is required to give a decision under this Act.

- (2) Any person who has an interest in the decision in question, may appear in person or be represented by counsel at the hearing of any such case.
- (3) Where any such ruling has been given, the commissioner shall in any future instance act in conformity with that ruling, and if the ruling is in conflict with any decision already given by the commissioner, such decision shall be modified so as to bring it into conformity with the ruling: Provided that any person affected by such ruling, and (with the consent of the Minister) the commissioner, may without obtaining leave to do so, appeal against such ruling to the Appellate Division.
- (4) When a provincial or local division of the Supreme Court of the Republic of South Africa has given a decision or ruling which affects the administration of this Act, the Minister may submit that decision or ruling to the Appellate Division in order that it may determine the said question for the guidance of all courts.

59. Establishment and constitution of advisory committee

- (1) There shall be established an advisory committee which shall perform the functions assigned to it by or under this Act and such other functions as may from time to time be assigned to it by the Minister.
- (2) The advisory committee shall consist of the commissioner and not more than 12 other members to be appointed by the Minister, of whom, subject to the provisions of subsection (3)—
 - (a) half shall be persons whose names have been submitted to the Minister in terms of that subsection by the owners of controlled mines and controlled works or by an organization or organizations qualified, in the opinion of the Minister, to act on behalf of such owners; and
 - (b) half shall be persons whose names have been so submitted by an organization or organizations qualified, in the opinion of the Minister, to act on behalf of persons who perform risk work at controlled mines or controlled works.

[subsection (2) substituted by section 18(a) of Act 208 of 1993]

- (3) (a) When the members contemplated in paragraph (a) or (b) of subsection (2) are to be appointed, the Minister shall cause a written communication to be sent to the owners or the organization or organizations referred to in the said paragraph (a), or, as the case may be, to the organization or organizations referred to in the said paragraph (b), containing a request for the submission to him or her, for the purposes of the paragraph in question and within a period stated in the communication not being less than 45 days, of the names of not less than seven persons.

[paragraph (a) substituted by section 18(b) of Act 208 of 1993]

- (b) If such request is not complied with, the Minister may appoint any person as a member of the advisory committee in the place of a member contemplated in the paragraph in question.
- (4) The commissioner shall *ex officio* be the chairman of the advisory committee.
- (5) The Minister may appoint in respect of any member of the advisory committee who has been appointed by him or her, an alternate or so many alternates as he or she may consider necessary, in the same manner as that in which the member concerned has been appointed.
- (6) A member of the advisory committee, and an alternate to such a member, who is not in the full-time service of the State, shall be appointed at such remuneration and on such other conditions of service and for such period not exceeding five years, as the Minister may determine in consultation with the Minister of State Expenditure.

[subsection (6) amended by section 43 of Act 208 of 1993]

60. Consultation by commissioner

- (1) The commissioner may at his discretion consult the advisory committee and, with the approval of the Minister, any other person or organization on any matter which he or she is required to deal with, consider or decide in the exercise of his functions under this Act.
- (2) Where consultation by the commissioner under subsection (1) involves the payment of remuneration to any person or organization, such remuneration shall be paid from moneys appropriated by Parliament for that purpose, on a scale determined by the Minister in consultation with the Minister of State Expenditure.

[subsection (2) amended by section 43 of Act 208 of 1993]

61. Establishment and management of compensation fund

- (1) There is hereby established a fund to be called the Mines and Works Compensation Fund.
- (2) The compensation fund shall subject to the provisions of this Act be controlled and managed by the commissioner.
- (3) There shall be transferred to the compensation fund—
 - (a) all assets and moneys which immediately before the commencement of this Act were the property or stood to the credit of the General Council for Pneumoconiosis Compensation, or the Pneumoconiosis Compensation Fund, which existed under the previous Act; and
 - (b) all liabilities which immediately before such commencement were liabilities of the said council.
- (4) The commissioner shall receive all moneys payable to or for the benefit of the compensation fund in terms of this Act and shall credit to the compensation fund, in accordance with the provisions of this Act, all such moneys and all moneys which in terms of this Act are to be paid to and are received by the commissioner.
- (5) The commissioner shall deposit the moneys of the compensation fund in a bank approved by the Minister for that purpose, and no money so deposited shall be paid out by the commissioner otherwise than by means of an order signed by two persons approved by the Director-General in consultation with the Director-General to the Treasury, directing payment on behalf of the commissioner.

62. Amounts payable by owner of controlled mine or works

- (1) The commissioner shall determine in respect of each controlled mine or controlled works, in such manner and on such basis as may be prescribed, an amount payable by the owner of that mine or works to the commissioner, for the benefit of the compensation fund, in respect of each shift worked by any person at or in connection with that mine or works during which such person performed risk work, in order to enable the commissioner to pay to or in respect of every person who performs risk work at or in connection with that mine or works and who is after the commencement of this Act found to be suffering from a compensatable disease, such amounts as may or are likely to become payable under this Act.

[subsection (1) substituted by section 2 of Act 30 of 1978 and by section 19 of Act 208 of 1993]

- (2) The commissioner may determine different amounts in respect of—
 - (a) controlled mines and controlled works;
 - (b) different categories, groups or classes of controlled mines or controlled works.
 - (c) different categories, groups, or classes of persons.

- (d) different trades, occupations or work at or in connection with controlled mines or controlled works;
 - (e) different sections of controlled mines or controlled works, or different working places at controlled mines or controlled works;
 - (f) different compensatable diseases.
- (3) Whenever the commissioner has made a determination under subsection (1), he or she shall in writing notify the owner of the mine or works in question thereof, and in such notice the commissioner shall set out such details and information as he or she may consider adequate for the purpose of explaining the determination and specify the date as from which the determination takes effect.
- (4) The owner of a controlled mine or a controlled works shall pay to the commissioner, not later than the twentieth day of each month, the amounts which, by virtue of a determination under subsection (1), such owner owes in respect of persons who performed risk work at or in connection with his mine or works in the preceding month, and when any such payment is made the owner concerned shall furnish full details of the composition of the amount of his payment and, in the prescribed form, such other details as may be required by the commissioner: Provided that the commissioner may, on application by an owner of a controlled mine or a controlled works, authorize the owner concerned to pay any amounts which are due by that owner at longer intervals but not exceeding three-monthly intervals.
- (5) When the commissioner has under subsection (1) determined the amount which the owner of a controlled mine or a controlled works is to pay as contemplated in this section, the commissioner may, of his own motion or on application by that owner, and the commissioner shall when the risk of the mine or works in question has been altered by the risk committee under section 21, review and, if he or she deems it necessary, alter the amount so determined, and if the commissioner has altered such amount, he or she shall forthwith in writing notify the owner concerned.

63. Amounts payable by owner of controlled mine or works for research

- (1) The owner of a controlled mine or a controlled works shall pay to the commissioner for the benefit of the compensation fund, in respect of each shift worked by a person at or in connection with the mine or works in question during which such person performed risk work, such amount for purposes of research contemplated in section 120 as the Minister may determine.
- (2) The amount so determined shall not exceed two cents per shift.
- [subsection (2) substituted by section 4 of Act 27 of 1974 and by section 20 of Act 208 of 1993]*
- (3) The provisions of subsection (2) of section 62 shall *mutatis mutandis* apply in connection with the determination of an amount by the Minister under subsection (1) of this section, and the provisions of subsections (3) and (4) of the first-mentioned section shall *mutatis mutandis* apply with reference to any amount so determined.

64. Interest on amount in arrear

An owner of a controlled mine or a controlled works shall pay interest to the commissioner, at the standard interest rate determined in terms of section 26(1) of the Exchequer Act, 1975 (Act No. 66 of 1975), on any amount due to the commissioner under the provisions of section 62 or 63 which was not paid on the day on which it became payable, and such interest shall be calculated from the said day to the day preceding the day on which the amount in question is paid.

[section 64 substituted by section 21 of Act 208 of 1993]

65. Penalty for failure to pay amount due

- (1) The commissioner may impose on an owner of a controlled mine or a controlled works who fails to pay any amount which he or she is required to pay to the commissioner under section 62 or 63 in respect of any shift during which any person performed risk work at or in connection with such mine or works, a penalty not exceeding ten rand for each such shift in respect of which the amount has not been paid.
- (2) The commissioner shall credit any penalty recovered under subsection (1) to the Mines Account or the Works Account or the Research Account, as the case may be, and the provisions of section 64 shall *mutatis mutandis* apply with reference to any such penalty.

66. Recovery of amount due

Whenever any amount is due to the commissioner under any provision of this Act by an owner of a mine or works, the commissioner may take such steps as he or she deems fit or as the Minister has directed him or her to take to recover the amount due, and any such amount may be recovered together with interest thereon from the due date at a rate determined by the commissioner and approved by the Minister, and any costs incurred in connection with such recovery.

67. Commissioner to keep certain separate accounts

The commissioner shall maintain separate accounts for the purposes of the compensation fund, to be called the State Account, the Mines Account, the Works Account and the Research Account, respectively, to which shall be credited the amounts, and to which shall be debited the payments provided for in the applicable provisions of this Act.

68. Commissioner to make certain adjustment between accounts

- (1) As soon as practicable after the commencement of this Act, the commissioner shall, in consultation with an actuary approved by the Minister for that purpose, determine the amounts which would have been payable, had the previous Act not been repealed, respectively out of the A-account and B-account which were established under the previous Act, in respect of every person who was found for the first time before the commencement of this Act to be suffering from pneumoconiosis or tuberculosis.
- (2) The commissioner shall credit the Mines Account and debit the State Account with the difference between the amounts which, immediately before the commencement of this Act, stood to the credit of the accounts referred to in subsection (1) and the amounts determined by him or her under that subsection.

69. States account

- (1) The commissioner shall credit to the State Account all the assets and moneys transferred to the compensation fund under section 61(3).
- (2) The Minister shall from time to time, in consultation with the Minister of State Expenditure, pay to the commissioner for the credit of the State Account, from moneys appropriated by Parliament for that purpose, such amounts as the Minister may deem necessary in order to enable the commissioner to meet the obligations payable from that account.

[subsection (2) amended by section 43 of Act 208 of 1993]

- (3) The commissioner shall debit the State Account with every payment under a provision of this Act
 - (a) to or in respect of any person who was found for the first time, before the commencement of this Act, to be suffering from pneumoconiosis or tuberculosis.

- (b) to or in respect of any person on the ground of a finding that he or she is or was suffering from a compensatable disease which he or she contracted as the result of work performed by him or her in the service of the State in or at or in connection with any mine or works.
 - (c) in respect of service rendered at a mine which ceased, before the commencement of this Act, to be a controlled mine in terms of the provisions of the previous Act.
- (4) Any credit balance in the State Account after all the obligations payable from it have been extinguished, shall be paid into the State Revenue Fund.

[subsection (4) amended by section 43 of Act 208 of 1993]

70. Mines account

- (1) The commissioner shall credit to the Mines Account all amounts paid to him or her by the owners of controlled mines in terms of the provisions of this Act, except any such amounts so paid as are referred to in section 73(1).
- (2) The commissioner shall, subject to the provisions of section 69(3)(b) and (c) and section 72, debit the Mines Account with every payment in terms of a provision of this Act to or in respect of any person who, after the commencement of this Act, was found for the first time to be suffering or to have suffered from a compensatable disease which, in the opinion of the certification committee, he or she contracted as a result of work at or in connection with a controlled mine.

71. Works account

- (1) The commissioner shall credit the Works Account with all amounts paid to him or her by the owners of controlled works in terms of the provisions of this Act, except any such amounts so paid as are referred to in section 73(1).
- (2) The commissioner shall, subject to the provisions of section 69(3)(b) and (c) and section 72, debit the Works Account with every payment in terms of a provision of this Act to or in respect of any person who, after the commencement of this Act, was found for the first time to be suffering or to have suffered from a compensatable disease which, in the opinion of the certification committee, he or she contracted as a result of work at or in connection with a controlled works.

72. Payments from state account, mines account or works account according to circumstances

- (1) Every payment in terms of a provision of this Act to or in respect of any person other than a person referred to in section 69(3)(b), on the ground of work performed at or in connection with a mine or works, not being a controlled mine or a controlled works, and in respect of which the Minister has under section 12 declared that it shall be deemed to be risk work at a controlled mine or a controlled works, shall be made—
 - (a) if no amounts were payable under section 62 by the owner of the mine or works in question in respect of such work, from the State Account.
 - (b) if any amounts were payable under section 62 by that owner in respect of such work, from the Mines Account or the Works Account, according to the circumstances.
- (2) Subject to the provisions of subsections (1) and (3) of this section and section 69(3)(b) and (c), any payments in terms of a provision of this Act to or in respect of a person who was employed at a controlled mine and at a controlled works and who, after the commencement of this Act, was found for the first time to be suffering or to have suffered from a compensatable disease, shall be paid partly from the Mines Account and partly from the Works Account in such proportion as the commissioner at his discretion may determine on the basis of the respective periods for which that person was employed as aforesaid.

- (3) If the commissioner is of the opinion that a person referred to in subsection (2) was employed mainly at a controlled mine or mainly at a controlled works, the commissioner may at his discretion debit the payments referred to in that subsection entirely against the Mines Account or the Works Account, according to the circumstances.

73. Research Account

- (1) The commissioner shall credit to the Research Account all amounts paid to him or her in terms of the provisions of section 63, and all amounts paid under section 64, 65 or 66 by way of interest, penalty, or cost in respect of any amount or the recovery of any amount which is to be credited to the Research Account.
- (2) The commissioner shall not pay any moneys from the Research Account except on a written direction by the Minister for the purposes of section 120.

74. Minister to make good certain losses in and payments from the compensation fund

The Minister shall pay, from moneys appropriated by Parliament for that purpose, to the commissioner for the credit of the relevant account of the compensation fund—

- (a) any amount which is due to the commissioner by an owner of a controlled mine or a controlled works under any provision of this Act and which the commissioner is unable to recover from that owner but excluding any interest due under section 64 or 66 or any penalty imposed under section 65.
- (b) any amount paid from the compensation fund to any person who was not entitled to receive such amount, and which the commissioner is unable to recover from such person;
- (c) any loss suffered by the compensation fund through the negligence, dishonesty or other act or omission of any person in the service of the State, or any person, institution, organization or authority who or which has acted on behalf of the commissioner in terms of any provision of this Act, and which the commissioner is unable to recover from the person, institution, organization or authority concerned;
- (d) any amount paid from the compensation fund under a provision of this Act to or in respect of a person who contracted a compensatable disease wholly or partly as a result of his duties at or in connection with mines or works while he or she was in the service of the State or while he or she performed a service on behalf of the State.
- (e) any amount paid from the compensation fund under a provision of this Act to or in respect of a person in connection with work performed at a mine or works which has ceased operations and at the time of such cessation was not a controlled mine or a controlled works.

[paragraph (e) substituted by section 5 of Act 27 of 1974]

75. Investment of moneys by commissioner

- (1) The commissioner shall invest with the Public Investment Commissioners any moneys in the State Account which are available for investment

[subsection (1) substituted by section 3(a) of Act 45 of 1975 and amended by section 43 of Act 208 of 1993]

- (2) The commissioner may after consultation with the advisory committee—
 - (a) invest any moneys in the Mines Account, the Works Account or the Research Account which are available for investment, in Government stock, Treasury bills, any stock guaranteed by the Government or any stock of a municipal or divisional council or public utility company,

or with any commercial bank, building society or other financial institution approved by the Minister in consultation with the Minister of State Expenditure;

[paragraph (a) substituted by section 3(b) of Act 45 of 1975 and amended by section 43 of Act 208 of 1993]

- (b) invest such moneys with the Public Investment Commissioners.

[paragraph (b) amended by section 43 of Act 208 of 1993]

- (3) Any profit or loss on realization of moneys deposited with the Public Investment Commissioners shall accrue to or be borne by the account from which the deposit was made.

[subsection (3) amended by section 43 of Act 208 of 1993]

- (4) Where the commissioner has lent any money on the security of a pledge or mortgage bond, he or she may, when enforcing his claim for repayment of the loan, with the approval of the advisory committee buy in the pledged or mortgaged property and thereafter sell that property.

76. Records and accounts of compensation fund

- (1) The commissioner shall keep full and true records of the transactions of the compensation fund, and shall cause the books and accounts relating to such transactions to be balanced as at the thirty-first day of March in each year and thereafter prepare a statement showing in all necessary detail the income and expenditure of the compensation fund during the preceding financial year, and a balance sheet showing the assets and liabilities of the compensation fund as at the end of that financial year.

- (2) The accounts and balance sheet of the commissioner shall be audited by the Auditor-General.

[subsection (2) amended by section 43 of Act 208 of 1993]

- (3) As soon as may be after the accounts and balance sheet for any financial year have been audited, the commissioner shall submit copies to the Minister and to the advisory committee.

77. Records and annual report of commissioner

- (1) The commissioner shall compile such statistical records as may be necessary to enable him or her to carry out his duties under this Act, and such other records as he or she may deem necessary or as the Minister may direct.

- (2) As soon as may be after the close of each financial year the commissioner shall furnish the Minister with a report on his activities which shall contain all the necessary information in connection with the compensation fund.

77A. Actuarial valuation and services

- (1) The compensation fund shall within three years from the fixed date be valued by an actuary appointed by the Minister, and thereafter the said fund shall be valued by such an actuary at such intervals, not exceeding three years, as the Minister may determine.
- (2) Notwithstanding the provisions of section 60, the cost of any actuarial valuation in terms of subsection (1) and, subject to the directions of the Minister, any actuarial services to give effect to any provision of this Act shall be paid from the compensation fund, the respective accounts mentioned in section 67 to be debited with such amounts of such costs as may be determined by the Minister after consultation with the advisory committee.
- (3) For the purposes of this section "actuary" means any Fellow of any institute, faculty, society or chapter of actuaries approved by the Minister of Finance.

[section 77A inserted by section 22 of Act 208 of 1993]

Chapter VI Compensation generally

[heading substituted by section 23 of Act 208 of 1993]

78. Application for and award of benefits

- (1) No right to a benefit to which a person became entitled under the previous Act, but which was not awarded to that person before the commencement of this Act, and no right to a benefit in respect of a compensatable disease under this Act, shall become effective until such benefit has been awarded by the commissioner.
- (2) No benefit shall be awarded by the commissioner except on an application made by or on behalf of the person concerned on a form provided for that purpose by the commissioner, which shall be accompanied by such information and documents as the commissioner may require: Provided that—
 - (a) no application shall be required in respect of a right to a pension which supersedes a pension awarded under the previous Act, and any such right shall take effect at the commencement of this Act; and
 - (b) the commissioner may in his discretion award any benefit even though application for it has not been made and give effect to the award from a date determined by him or her but not preceding the date upon which the beneficiary became entitled to the benefit.
- (3) *[subsection (3) deleted by section 9 of Act 89 of 1988]*
- (4) *[subsection (4) deleted by section 9 of Act 89 of 1988]*
- (5) Any application for a benefit in terms of this Act on account of a finding of the certification committee, given before the fixed date, shall be disposed of in terms of the provisions of this Act which were in force immediately prior to the fixed date and as if the Amendment Act was not enacted.

[subsection (5) substituted by section 24 of Act 208 of 1993]

79. Benefits to person (excluding widow) who received pension under previous Act

- (1) Any person, except a widow, who immediately before the commencement of this Act was entitled to a pension in respect of himself or herself and his dependants, if any, on account of a finding given before the commencement of the Amendment Act shall, as from the said commencement, be entitled to—
 - (a) in the case of a finding of pneumoconiosis which has impaired his cardio-respiratory functions by not more than 50 per cent, a monthly pension of R312;
 - (b) in the case of a finding of pneumoconiosis which has impaired his cardio-respiratory functions by more than 50 per cent but by not more than 75 per cent, a monthly pension of R504;
 - (c) in the case of a finding of pneumoconiosis which has impaired his cardio-respiratory functions by more than 75 per cent, or a finding of pneumoconiosis together with tuberculosis, a monthly pension of R725;
 - (d) in the case of a finding of tuberculosis, a monthly pension of R504.
- (2) Any person who has accepted a one-sum benefit in lieu of a monthly pension, and his dependants, shall not at any time have a further right or claim to a monthly pension under this Act.

- (3) When the certification committee has found that a person who accepted a one-sum benefit in lieu of a monthly pension is suffering from a compensatable disease in the second degree, the commissioner shall award to such person or, if the said committee has after his death found that he or she had so suffered, to his widow or dependants, an additional sum which shall be equal to the difference between the amounts contemplated in paragraphs (a) and (b)(i) of section 80(3).
- (4) When the certification committee has found that a person mentioned in subsection (1)(a) to whom a one-sum benefit was not awarded in lieu of a monthly pension, is suffering from pneumoconiosis which has impaired his cardio-respiratory functions by more than 50 per cent but by not more than 75 per cent, the commissioner shall award to that person a monthly pension of R504.
- (5) When the certification committee has found that a person mentioned in subsection 1(a) or (b) to whom a one-sum benefit was not awarded in lieu of a pension, is suffering from pneumoconiosis which has impaired his cardio-respiratory functions by more than 75 per cent, or that such person or a person mentioned in subsection (1)(d) is suffering from tuberculosis together with another compensatable disease, the commissioner shall award the person concerned a monthly pension of R725.

[section 79 amended by section 6(a) and (b) of Act 27 of 1974, by section 1(a), (b), (c) and (d) of Act 67 of 1974, by section 1 of Act 105 of 1985 and substituted by section 25 of Act 208 of 1993]

80. Benefits payable after fixed date

- (1) When a person is suffering from tuberculosis which does not render him or her permanently unfit to do his ordinary work or to ply his trade or skills, if any, and the certification committee finds after the fixed date that—
 - (a) the said tuberculosis was contracted while the person was performing risk work at or in connection with a controlled mine or controlled works; or
 - (b) the said person was affected at any time within 12 months immediately after the date on which he or she performed work referred to in paragraph (a) for the last time,

the commissioner may, on application of that person made in the prescribed manner, award to him or her an amount which is equal to 75 per cent of his loss of earnings during the period in which he or she has so suffered a loss of earnings, but not exceeding six months.

- (2) When the certification committee finds after the fixed date that a person is suffering from a compensatable disease which he or she contracted as a result of risk work at or in connection with a controlled mine or a controlled works, the commissioner shall award to such person a one-sum benefit calculated in accordance with the formula—

$(A \times 12) \times B$

in which formula 'A' represents the person's earnings, but not exceeding an amount of R4 870, and 'B' represents—

- (a) in the case of a person who is found for the first time to be suffering from a compensatable disease in the first degree, 1,31;
- (b) in the case of a person who is found for the first time to be suffering from a compensatable disease in the second degree and—
 - (i) who did not previously become entitled to any benefit in terms of this Act, 2,917;
 - (ii) who previously became entitled to a one-sum benefit in respect of a compensatable disease in the first degree, 1,607;
 - (iii) who previously became entitled to a one-sum benefit in respect of tuberculosis in terms of subsection (3) of this section before the substitution of the said section by the Amendment Act, 2,362;

- (iv) who previously became entitled to a one-sum benefit in respect of tuberculosis in terms of section 87(4) or 88(2) before the repeal of the said sections by the Amendment Act, 2,598; or
- (v) who previously became entitled to a one-sum benefit in respect of tuberculosis in terms of the previous Act or section 106(c) before the repeal of the said section by the Amendment Act, 2,81.

[subsection (2) amended by Government Notice R1249 of 2009, by Government Notice 227 of 2018, by Government Notice 1385 of 2019, by Government Notice 268 of 2021, by Government Notice 1930 of 2022, by Government Notice 1972 of 2022 and by Government Notice 3342 of 2023]

- (3) The benefit calculated in accordance with the provisions of subsection (2) shall be an amount of at least R54 298.

[subsection (3) amended by Government Notice R1249 of 2009, by Government Notice 227 of 2018, by Government Notice 1385 of 2019, by Government Notice 268 of 2021, by Government Notice 1930 of 2022, by Government Notice 1972 of 2022 and by Government Notice 3342 of 2023]

- (4) If a person who died after the fixed date was found to be suffering, at the time of his death, from a compensatable disease, there shall be payable to that person's dependants designated by the commissioner an amount which shall be equal to the one-sum benefit which would have been payable to him or her in terms of subsection (2) as well as in terms of section 79(3) had he or she not died.
- (5) Any one-sum benefit or any amount payable in terms of subsection (4) to the deceased's dependants shall be divided among them in such proportion as the commissioner may determine.
- (6) In awarding any one-sum benefit or any amount in terms of this section a fraction of a rand shall be calculated to the next completed rand.

[section 80 amended by section 2(1) of Act 123 of 1984 and substituted by section 26 of Act 208 of 1993]

80A. Manner of calculating earnings of persons performing risk work

- (1) In order to determine benefits, the commissioner shall calculate the earnings of a person in such manner as in his opinion is best to determine the monthly rate at which the person was being remunerated by the owner of a controlled mine or a controlled works at the date contemplated in section 49, which shall include—
 - (a) the value of any food or quarters or both supplied by such owner up to the said date;
 - (b) any overtime payment or other special remuneration in cash or in kind of a regular nature or for work ordinarily performed,
 but which shall exclude—
 - (i) payment for intermittent overtime;
 - (ii) payment for non-recurrent occasional services;
 - (iii) amounts paid by such owner to the person to cover any special expenses;
 - (iv) *ex gratia* payments whether by such owner or any other person.
- (2) If a person's remuneration is determined in accordance with a rate calculated upon work performed, his earnings shall be deemed to be his remuneration for similar work upon the same conditions of remuneration for as long a period as possible prior to the date contemplated in section 49 but not exceeding 12 months.
- (3) If by reason of the short duration of the service of a person with the owner of a controlled mine or a controlled works it is impracticable to calculate his earnings in such service, his earnings shall, if possible, be calculated on the basis of the amount which the person with similar work at the same

conditions of remuneration earned with another owner of a controlled mine or a controlled works during the 12 months immediately prior to the date contemplated in section 49, or on the basis of the amount which during the 12 months immediately prior to the said date was earned by other persons in the service of the first-mentioned owner with similar work and on the same conditions of remuneration, or would have been earned by the person during the previous 12 months had he or she been so employed.

- (4) If a person has entered into contracts of service with two or more owners and has in terms of those contracts worked at one time for one owner of a controlled mine or a controlled works and at another time for another owner of a controlled mine or a controlled works, his earnings shall be calculated as if his earnings under all such contracts were earnings in the service of the owner for whom he or she was working at the date contemplated in section 49.
- (5) If in the opinion of the commissioner it is not practicable to calculate the earnings of a person in accordance with the preceding provisions, the commissioner may calculate those earnings in such manner as he or she may deem equitable, but with due regard to the principles laid down in those provisions.
- (6) This section shall not be construed as prohibiting the calculation of earnings on a weekly basis, but where earnings are so calculated the monthly earnings shall be calculated as equal to four and one-third times the amount of such weekly earnings.
- (7) For the purposes of this section, section 36A(3) shall apply *mutatis mutandis*.

[section 80A inserted by section 27 of Act 208 of 1993]

80B. Manner of calculating earnings of persons no longer performing risk work

If a person is no longer performing risk work at the time of the date contemplated in section 49, his earnings shall be calculated on the basis of the earnings that he or she would probably have been earning had he or she still been performing risk work.

[section 80B inserted by section 27 of Act 208 of 1993]

81. Unpaid benefits at death of beneficiary

- (1) If a person who became entitled to a one-sum benefit under this Act or the previous Act and to whom such benefit was not paid in full, has died, the commissioner may in his discretion award to his widow or to his dependent children, if any, a benefit which shall be equal to not more than the unpaid balance of such one-sum benefit.
- (2) If a benefit equal to such unpaid balance has not been awarded in terms of subsection (1), or if any portion of such unpaid balance has not been so awarded, the commissioner may, in his discretion, award a benefit equal to such unpaid balance, or such portion thereof, as the case may be, to any person or persons for whose maintenance the deceased, in the opinion of the commissioner, was responsible before his death.

[section 81 substituted by section 4 of Act 45 of 1975 and by section 28 of Act 208 of 1993]

82. ***

[section 82 amended by section 7 of Act 27 of 1974, by section 5(a), (b) and (c) of Act 45 of 1975, by section 3(1) of Act 123 of 1984, by section 2 of Act 105 of 1985 and repealed by section 29 of Act 208 of 1993]

83. Benefits to widows of pensioners and widows entitled to pension

- (1) If a person who was entitled to a pension under the previous Act and to whom a one-sum benefit was not awarded in lieu of such pension, has died, the commissioner shall award to his widow a one-sum benefit of R31 420.

- (2) If a widow was immediately before the commencement of this Act entitled to a pension under the previous Act, such widow shall, as from the fixed date, be entitled to a monthly pension of R401.

[section 83 amended by section 6 of Act 45 of 1975 and substituted by section 30 of Act 208 of 1993]

84. ***

[section 84 amended by section 2(a) and (b) of Act 67 of 1974 and repealed by section 31 of Act 208 of 1993]

85. ***

[section 85 repealed by section 31 of Act 208 of 1993]

86. ***

[section 86 amended by section 3(a), (b) and (c) of Act 67 of 1974 and repealed by section 31 of Act 208 of 1993]

87. ***

[section 87 amended by section 4(1) of Act 123 of 1984 and repealed by section 31 of Act 208 of 1993]

88. ***

[section 88 repealed by section 31 of Act 208 of 1993]

89. ***

[section 89 repealed by section 31 of Act 208 of 1993]

90. ***

[section 90 substituted by section 8 of Act 27 of 1974 and repealed by section 31 of Act 208 of 1993]

91. ***

[section 91 repealed by section 31 of Act 208 of 1993]

92. ***

[section 92 amended by section 4(a) and (b) of Act 67 of 1974 and repealed by section 31 of Act 208 of 1993]

93. ***

[section 93 repealed by section 31 of Act 208 of 1993]

94. Payment of, and interest on, benefits awarded

- (1) Subject to the provisions of subsection (2), the commissioner shall pay a one-sum benefit awarded under this Act, in a single payment.
- (2) The commissioner shall, at the request in writing of a beneficiary, pay a one-sum benefit referred to in subsection (1) or any portion thereof as elected by the beneficiary, in such monthly or three-monthly instalments as may be determined from time to time by the beneficiary in question.
- (3) The commissioner may pay any pension or any instalment of a one-sum benefit awarded under the previous Act or this Act—
- (a) to the beneficiary himself or herself; or

- (b) in part to the beneficiary and in part to his dependants; or
 - (c) in full to his dependants; or
 - (d) for the benefit of the beneficiary or his dependants, to any other person or any institution, organization, or Government Department; or
 - (e) in part to the beneficiary and in part, for the benefit of the beneficiary or his dependants in accordance with paragraph (d).
- (4) The commissioner shall add interest to any one-sum benefit or any other amount awarded under the previous Act or this Act, or to the balance of any such benefit or amount, as the case may be, at a rate determined from time to time by the commissioner after consultation with the advisory committee, as from the first day of the month following the month in which such benefit or amount was awarded until the last day of the month preceding the month in which such benefit or amount or the final instalment thereof was paid: Provided that no interest shall be paid on any amount which has remained in the possession of the commissioner for less than thirty days.

[section 94 amended by section 3 of Act 30 of 1978 and substituted by section 10 of Act 89 of 1988]

95. Gratuity payable on remarriage of widow entitled to pension

If a widow who is entitled to a pension under this Act, remarries, her pension shall lapse and the commissioner shall pay to her an amount equal—

- (a) in the case of a widow who received a pension for a period of at least six years, to thirty times the amount of her monthly pension;
- (b) in the case of a widow who received a pension for a period of less than six years but more than three years, to forty times the amount of her monthly pension; and
- (c) in the case of a widow who received a pension for a period not exceeding three years, to fifty times the amount of her monthly pension.

[section 95 substituted by section 7 of Act 45 of 1975]

96. Death of White or Coloured beneficiary

- (1) A right to any benefit under this Act to which any person became entitled, shall lapse on the death of the person concerned, except in so far as any part of the benefit was paid out to or for the benefit of such person.

[subsection (1) amended by section 43 of Act 208 of 1993]

- (2) When a right to a one-sum benefit to which the widow of a deceased person became entitled under any provision of the previous Act or this Act, has lapsed as aforesaid, the commissioner shall pay the benefit in question or the unpaid balance thereof to any person or persons for whose maintenance she was, in the opinion of the commissioner, responsible.

[subsection (2) substituted by section 32(a) of Act 208 of 1993]

- (3) When any person who was entitled to a pension under this Act has died the commissioner shall pay the full pension in respect of the month in which such person has died—

- (a) to the dependants of the deceased, if any; or
- (b) if there are no dependants, to any person or persons for whose maintenance the deceased was, in the opinion of the commissioner, responsible; or
- (c) if there is no such person, to any person who or organization which cared for or medically treated the deceased immediately before his death;

[paragraph (c) amended by section 32(b) of Act 208 of 1993]

- (d) if there is no such person or organization, to the estate of the deceased.

97. Pensioner becoming permanent inmate of State institution

When any person who is entitled to a pension under this Act has become a permanent inmate of any institution the cost of maintenance of which is paid in full or in part from State funds, the commissioner may discontinue payment of such pension or retain so much thereof as is not required to pay the cost of maintenance of the person concerned or of any person or persons for whose maintenance that, person is responsible.

98. Cessation of pension to widow who remarries

A pension awarded under the previous Act or this Act to the widow of a deceased person, shall cease, if she remarries, on the last day of the month in which she remarries.

[section 98 amended by section 8 of Act 45 of 1975, by section 4 of Act 30 of 1978 and substituted by section 33 of Act 208 of 1993]

99. Where diseases not due exclusively to work or risk, work at mine or works

- (1) No person shall be entitled to any benefit or other amount under this Act in respect of any compensatable disease which, in the opinion of the certification committee, is attributable exclusively to work other than work at a mine or works.

[subsection (1) substituted by section 5 of Act 30 of 1978]

- (2) When the certification committee has found that any person is, or that any deceased person was at the time of his death, suffering from a compensatable disease (including tuberculosis) attributable mainly to the performance at a mine or works of work other than risk work benefits shall be awarded to or in respect of such person as if the disease were attributable to the performance of risk work at a controlled mine or a controlled works.
- (3) When the certification committee has found that any person is suffering from a compensatable disease which, in the opinion of that committee, is attributable partly but not mainly to work at a mine or works, the commissioner may in his discretion award to or in respect of such person who is not in receipt of full benefits in respect of that disease under the Workmen's, Compensation Act, 1941 (Act No. 30 of 1941), or any other law, benefits not exceeding one-half of the benefits provided for in this Act.

100. No person entitled to benefits from more than one source in respect of same disease

- (1) No person shall be entitled to benefits, under this Act in respect of any disease for which he or she has received or is still receiving full benefits under the Workmen's Compensation Act, 1941 (Act No. 30 of 1941).
- (2) Notwithstanding anything in any other law contained, no person who has a claim to benefits under this Act in respect of a compensatable disease as defined in this Act, on the ground that such person is or was employed at a controlled mine or a controlled works, shall be entitled, in respect of such disease, to benefits under the Workmen's Compensation Act, 1941 (Act No. 30 of 1941), or any other law.

101. Special awards, and allowance in respect of permanent attendant

- (1) If a special award was made under the provisions of the previous Act to any person the commissioner may in his discretion continue payment of the award in question, for any such period or during any such periods as he or she may deem necessary, but subject to the provisions of subsections (2) and (3).

- (2) No special award shall be paid to any person who is in receipt of a pension or to whom a one-sum benefit was awarded after the commencement of this Act in respect of a compensatable disease other than tuberculosis.
- (3) A special award, except an award referred to in subsection (1), shall be paid—
 - (a) in the case of a female, after she has attained the age of sixty years; or
 - (b) in the case of a male, after he or she has attained the age of sixty-five years.

[subsection (3) amended by section 1 of Act 137 of 1991]
- (4) *[subsection (4) amended by section 9 of Act 45 of 1975, by section 11 of Act 89 of 1988 and deleted by section 34 of Act 208 of 1993]*
- (5) The commissioner may, subject to the provisions of subsection (3), discontinue or increase or decrease any special award made to any person under the previous Act or this Act.
- (6) If any person received an allowance in respect of a permanent attendant in terms of any provision of the previous Act immediately before the commencement of this Act, the commissioner may in his discretion and on such conditions as he or she may deem desirable, continue to pay such allowance, and decrease or cancel such allowance at any time.

102. ***

[section 102 amended by section 2(a) and (b) of Act 117 of 1977 and repealed by section 34 of Act 208 of 1993]

103. Commissioner may demand proof of continuance of right to benefit

The commissioner may require proof that a person to whom any benefit or other amount has been awarded under the previous Act or this Act, is still alive, or, in the case of a pension or monthly allowance, that the person, concerned has not ceased to be entitled to such pension or monthly allowance, and may, if such proof is not furnished to his satisfaction, discontinue payment of the pension or allowance until such proof is furnished.

104. Recovery by commissioner of amount wrongly paid

Any amount paid by the commissioner to or for the benefit of a person who was not entitled to the payment thereof, may be recovered by the commissioner either directly or by deducting it from any amount to which the person concerned is or becomes entitled under this Act.

105. Arrangements by commissioner for payment of benefits on his behalf

The commissioner may with the approval of the Minister make arrangements with any other Government Department or any other institution, organization, or authority to undertake the payment, on behalf of the commissioner, of benefits or other amounts awarded under the previous Act or this Act.

105A. Amendment of Act by Minister so as to increase benefits

- (1) The Minister may, after consultation with the advisory committee and, in the case of any benefit payable from the State Revenue Account, with the concurrence of the Minister of State Expenditure, by notice in the *Gazette* amend any amount appearing in sections 79, 80 and 83, so as to increase any benefit.
- (2) Any amendment contemplated in subsection (1) shall take effect on a date mentioned in the notice.

[section 105A inserted by section 36 of Act 208 of 1993]

Chapter VII

[chapter VII repealed by section 37 of Act 208 of 1993]

106. ***

[section 106 amended by section 10 of Act 45 of 1975 and repealed by section 37 of Act 208 of 1993]

107. ***

[section 107 repealed by section 37 of Act 208 of 1993]

108. ***

[section 108 repealed by section 12(1) of Act 89 of 1988]

109. ***

[section 109 repealed by section 12(1) of Act 89 of 1988]

110. ***

[section 110 repealed by section 12(1) of Act 89 of 1988]

111. ***

[section 111 repealed by section 12(1) of Act 89 of 1988]

112. ***

[section 112 amended by section 12(1) of Act 89 of 1988 and repealed by section 37 of Act 208 of 1993]

113. ***

[section 113 repealed by section 12(1) of Act 89 of 1988]

114. ***

[section 114 repealed by section 12(1) of Act 89 of 1988]

115. ***

[section 115 substituted by section 3 of Act 117 of 1977 and repealed by section 12(1) of Act 89 of 1988]

116. ***

[section 116 repealed by section 12(1) of Act 89 of 1988]

117. ***

[section 117 repealed by section 12(1) of Act 89 of 1988]

118. ***

[section 118 repealed by section 12(1) of Act 89 of 1988]

119. ***

[section 119 repealed by section 12(1) of Act 89 of 1988]

Chapter VIII General

120. Research and special medical treatment

- (1) The Minister may make such arrangements as he or she deems necessary or desirable for the proper investigation of all matters affecting the health of persons employed in or at mines or works and for the medical treatment of persons suffering from any compensatable disease.
- (2) The Minister may in his discretion from moneys in the Research Account and, in consultation with the Minister of State Expenditure, from moneys appropriated by Parliament for that purpose—
 - (a) on such conditions as the Minister deems fit, subsidize or pay wholly or partly the cost of maintenance and other expenses of any institution or organization having as its object the doing of research with a view to the protection of the health of persons employed in or at or in connection with mines or works, or the prevention or alleviation, of diseases to which such persons are exposed, or establish such an institution or organization.
 - (b) on such conditions and in such manner and in such amounts as the Minister deems fit, subsidize any person or group of persons whose object as the doing of research in connection with any disease or working conditions to which persons employed in or at or in connection with mines or works are exposed, or award to such person or group of persons a bursary or bursaries;
 - (c) on such conditions and in such manner as the Minister deems fit subsidize or pay wholly or partly the cost of maintenance of any institution or organization having as its object the medical treatment or the care, of persons suffering from compensatable diseases.
 - (d) on such conditions and in such manner as the Minister deems fit, establish, institutions for the medical treatment of persons suffering from compensatable diseases and pay the cost of maintenance in whole or in part and any other costs of any such institution;
 - (e) on such conditions and in such manner and on such scale as the Minister deems fit, pay the travelling or other costs incurred, by persons suffering from compensatable diseases in order to enable such persons to undergo medical treatment.

[subsection (2) amended by section 38(a) of Act 208 of 1993]

- (3) *[subsection (3) deleted by section 38(b) of Act 208 of 1993]*

121. Regulations

- (1) The Minister may make regulations relating to—
 - (a) the standards to be applied in the certification in terms of this Act of persons suffering from compensatable diseases;
 - (b) the employment of medical practitioners by owners of controlled mines or controlled works;

- (c) the particulars to be recorded by the owner of a controlled mine or a controlled works or by any contractor in connection with persons employed by him or her at or in connection with the mine or works in question;
 - (d) the information, particulars, documents or reports to be submitted or made available by the owner of a controlled mine or a controlled works with reference to any person in his service in connection with his mine or works, or in the service of any other person in connection with the mine or works of such owner, or with reference to any medical examination of such first-mentioned person;
 - (e) the medical examination of persons who were employed at or in connection with controlled mines or controlled works but who are no longer in the service of an owner of such a mine or works, and the payment of the cost in connection with such examinations;
 - (f) the accommodation and maintenance of any person by the owner of a controlled mine or a controlled works pending a finding by the certification committee or pending the award of compensation to the person concerned, and the payment of the cost of such accommodation and maintenance;
 - (g) the notice which the director or the owner of a controlled mine or a controlled works shall give of the result of any medical examination of a person under this Act, and the person to whom such notice shall be given;
 - (h) the repatriation or return of persons recruited by the owner of a controlled mine or a controlled works, or by a contractor or by any organization acting for or on behalf of such owner or contractor, for employment at or in connection with a controlled mine or a controlled works, and the payment of the cost of such repatriation or return;
 - (i) the medical examination of persons who are recruited outside the Republic for employment at or in connection with a controlled mine or a controlled works, and the payment of the cost of any such examination;
 - (j) the exercise of control over the payment of benefits;
 - (k) any matter which is to be or may be prescribed by regulation in terms of this Act;
 - (l) in general, any matter which the Minister may deem necessary or expedient to prescribe for achieving the objects of this Act, the generality of this paragraph not being limited by the preceding paragraphs of this subsection.
- (2) Any regulation prescribing or providing for the payment of any cost or expense from the State Revenue Fund shall be made with the concurrence of the Minister of State Expenditure.
- (3) Different regulations may be made in respect of different areas, or in respect of different mines or works or classes, groups or categories of mines or works, or in respect of different classes, groups or categories of persons, or in respect of different occupations or work or places at mines or works.
- (3) Different regulations may be made in respect of different areas, or in respect of different mines or works or classes, groups or categories of mines or works, or in respect of different classes, groups or categories of persons, or in respect of different occupations or work or places at mines or works.
- (4) Regulations made under subsection (1)(a) may, by reference thereto, prescribe any manner or method set out in a publication which in the opinion of the Minister is generally recognized as authoritative.
- (5) The Minister shall, not less than two months before making any regulation under this section, cause the text of the proposed regulation to be published in the *Gazette* together with a notice declaring his intention to make such regulation and inviting interested persons to furnish him or her with any comments or representations they may wish to make in regard to the proposed regulation.

- (6) The provisions of subsection (5) shall not apply in respect of a proposed regulation which, after the provisions of that subsection have been complied with, has been amended by the Minister in consequence of comments or representations received by him or her in pursuance of a notice published in terms of that subsection.
- (7) The regulations may prescribe penalties not exceeding a fine of R3 000 for a contravention of or failure to comply with any provision thereof.

[section 121 substituted by section 39 of Act 208 of 1993]

122. Minister to table annual reports

The Minister shall lay copies of any annual report furnished to him or her under section 8 or 77 upon the Table in the Senate and in the House of Assembly within fourteen days after its receipt, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.

123. Minister may delegate powers

- (1) The Minister may in his discretion and on such conditions as he or she may deem fit, delegate in writing to the Director-General or any other officer in the Department of Mines any power vested in him or her under this Act and may at any time cancel any such delegation.
- (2) A delegation under subsection (1) shall not divest the Minister of the power delegated, and he or she may at any time set aside any decision made on his behalf under such delegation: Provided that if any benefit or other amount has been awarded to any person by virtue of a decision made under such delegation, the Minister shall not set aside that decision with reference to that person.

124. Offences by persons generally

- (1) Any person who—
 - (a) knowingly makes a false statement or misrepresentation or conceals any fact of material importance with intent to obtain for himself or herself, or assist any other person to obtain, a certificate of fitness or any other document or advantage under this Act;
 - (b) forges, or alters with intent to deceive, any certificate of fitness or any other document for which provision was made in the previous Act or is made in this Act, or which was issued under the previous Act or this Act; or
 - (c) in exchange for services rendered in respect of assistance in claiming any benefit in terms of this Act, charges a fee or claims remuneration from a person who is claiming such benefit in terms of this Act which is in excess of 0,5% of the benefit awarded to such person or any amount stipulated by the Director-General,

shall be guilty of an offence and liable on conviction to any penalty which may in law be imposed on a conviction of fraud.

[subsection (1) substituted by section 3 of Act 60 of 2002]

- (2) Any person who in any sworn declaration under subsection (2) of section 6 or under that subsection as applied by section 19(2), 42(1) or 55(1) or in answering any question under oath or affirmation administered under subsection (3) of section 6 or under the last-mentioned subsection as so applied, makes a statement which he or she knows to be false, shall be guilty of an offence and liable on conviction to any penalty which may in law be imposed on a conviction of perjury.
- (3) Any person who—
 - (a) hinders or obstructs any other person as the exercise by such other person of a power conferred upon him or her by or under a provision of section 5 or 6 or by or under such provision as applied by section 19(2), 42(1) or 55(1); or

- (b) is in control of any place, or has in his possession or is in control of any book, document, appliance, instrument, machine or X-ray photograph contemplated in any provision of section 5 or 6, and who refuses or fails to afford any other person all reasonable facilities required by such other person in order to enable him or her to exercise with reference to such place, book, document, appliance, instrument, machine or X-ray photograph any power conferred upon him or her by or under the provision in question or by or under that provision applied as aforesaid; or
- (c) without reasonable excuse, fails to comply with any direction under subsection (1) or (3) of section 6 or under the relevant subsection applied as aforesaid, or under section 42(3); or
- (d) when appearing in compliance with a direction referred to in paragraph (c), refuses to answer to the best of his knowledge and belief any lawful question put to him or her, or refuses to be sworn or to affirm when required by a competent person to do so; or
- (e) in reply to a direction under subsection (1) of section 6 or under that subsection applied as aforesaid, furnishes (otherwise than in a sworn declaration) any information which is false, knowing it to be false; or
- (f) contravenes the provisions of section 15(1); or
[paragraph (f) amended by section 43 of Act 208 of 1993]
- (g) without reasonable excuse fails to comply with the requirements of a notice addressed to him or her under section 26(1), 29(3) or 30 (4); or
- (h) after having received a notice referred to in paragraph (g), performs risk work at a controlled mine or a controlled works without being in possession of a certificate of fitness thereafter issued to him or her under this Act,

shall be guilty of an offence and, subject, in the case of an offence contemplated in paragraph (f), to the provisions of section 126 (1) (a), liable on conviction to a fine not exceeding two hundred rand.

125. Offences by holder of certificate of fitness

A holder of a certificate of fitness issued to him or her under this Act or the previous Act, who—

- (a) at a controlled mine or a controlled works performs work which his certificate of fitness does not authorize him or her to perform; or
- (b) performs work at a controlled mine or a controlled works otherwise than in accordance and compliance with any restriction subject to which that certificate has been issued or renewed,

shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand.

126. Offences by owner, or person in control of, controlled mine or works, or contractor

- (1) An owner of a controlled mine or a controlled works, or person in control of such a mine or works or a part thereof, or contractor who—
 - (a) contravenes the provisions of section 15(1); or
[paragraph (a) substituted by section 40 of Act 208 of 1993]
 - (b) by virtue of an exemption under section 15(2) employs any person in risk work at a controlled mine or a controlled works and who fails to comply with any condition subject to which the exemption has been granted,

[paragraph (b) substituted by section 40 of Act 208 of 1993]

shall be guilty of an offence and liable on conviction to a fine not exceeding four hundred rand.

- (2) An owner of a controlled mine or a controlled works or contractor who—
- (a) knowingly permits the performance at a controlled mine or a controlled works, by a holder of a certificate of fitness in his service, of work which his certificate of fitness does not authorize him or her to perform; or
 - (b) knowingly permits the performance of any work by such a holder otherwise than in accordance and compliance with a condition subject to which his permit has been issued or renewed; or
 - (c) fails to keep a register in accordance with the provisions of section 16(1) or (2), as the case may be; or
 - (d) fails to afford the director or an authorized person referred to in section 16(3) all reasonable facilities and assistance to inspect any such register, or make a copy thereof available at the request of the director or such authorized person,
- shall be guilty of an offence and liable on conviction to a fine not exceeding four hundred rand.
- (3) An owner of a controlled mine or a controlled works who—
- (a) after having received a copy of a notice issued under section 26(1), 29(3) or 30(4), permits the performance of risk work by the person to whom the notice was addressed at such owner's mine or works before a fresh certificate has been issued to that person under this Act; or
 - (b) contravenes the provisions of section 17(1) or any provision of Chapter V,
- shall be guilty of an offence and liable on conviction—
- (i) in the case of the offence referred to in paragraph (a), to a fine not exceeding four hundred rand; and
 - (ii) in the case of an offence referred to in paragraph (b), to a fine not exceeding one thousand rand.

127. Offences by medical practitioner

- (1) A medical practitioner who without reasonable excuse fails to comply with any provision of section 33 or 34 or with any requirement or direction by the director thereunder or by the chairman of the certification committee under section 42(2), shall be guilty of an offence and liable on conviction to a fine not exceeding four hundred rand.
- (2) The provisions of section 124(3)(d) and (e) shall *mutatis mutandis* apply with reference to a medical practitioner who has been directed under section 42(2) to submit any report to the certification committee or to appear before that committee.

[subsection (2) amended by section 9 of Act 27 of 1974]

128. ***

[section 128 repealed by section 4 of Act 117 of 1990]

129. Notice, demand, direction or payment by registered post

Any notice, demand, direction or payment under this Act shall be deemed, unless the contrary is proved—

- (a) to have been properly given, served or made if the notice, demand, direction or amount in question was sent in a correctly addressed, registered envelope; and

- (b) to have been given, served or made at the time when the said envelope may be expected to have reached the address in question in normal circumstances.

[section 129 substituted by section 6 of Act 30 of 1978]

130. Exemption from certain taxes and duties

- (1) The income of the compensation fund under the provisions of this Act, shall be free from any form of taxation on income.
- (2) Notwithstanding anything in any other law contained, any benefit or other amount paid to any person under this Act on the ground of a finding expressed by the certification committee or by any similar authority under the previous Act, shall be free from any form of taxation on income.
- (3) Every document issued under this Act, and every affidavit or solemn or attested declaration which is intended for use under this Act, shall be free from stamp duty.

131. Benefits and service gratuity free from attachment

- (1) A right to a benefit to which any person is entitled under this Act, and a right to a gratuity under section 133, shall not be capable of being ceded by the holder thereof, and such a right or any money paid by the commissioner as such a benefit or gratuity to or for the benefit of the person entitled thereto, or any money paid by the commissioner to or for the benefit of any person as a special award or a special allowance under any provision of this Act, shall not be subject to attachment in execution of a judgment or order of a court of law, except at the instance of the commissioner acting under section 104, and if the estate of the holder of such a right or of a person to whom or for whose benefit such money has been paid, is sequestrated as insolvent, the said right or money shall not form part of his insolvent estate.

[subsection (1) amended by section 13 of Act 89 of 1988 and by section 43 of Act 208 of 1993]

- (2) If a person to whom or for whose benefit such a benefit (other than a monthly pension or allowance) or such a gratuity has been paid, has purchased any immovable or movable property, and the purchase price or not less than one quarter of the purchase price has been paid out of the benefit or gratuity, that property shall not be subject to attachment for a debt or a novation thereof which arose before the benefit or gratuity in question was paid to or for the benefit of the judgment debtor.

132. ***

[section 132 repealed by section 41 of Act 208 of 1993]

133. Service gratuity payable to certain persons

- (1) Any person—
 - (a) who from any date after 1 August 1946 continuously remained in the full-time service of the bureau or the council or the State and who has not contributed to the Public Service Pension Fund referred to in section 2(1) of the Government Service Pensions Act, 1965 (Act No. 62 of 1965), in respect of such service; and
 - (b) who immediately before the commencement of this Act was eligible for a gratuity referred to in section 135 of the previous Act, but to whom such gratuity had not been awarded before such date,

shall be eligible, in lieu of such gratuity, for a service gratuity which shall be equal to the salary (other than any temporary or personal allowance) which he or she received for the two months immediately preceding the date of termination of his service, multiplied by the number of years, including any fraction of a year, of his service and such service gratuity shall be increased by one

per cent for each year, including any fraction of a year, by which the period of his service exceeds ten years: Provided that if his service is terminated by retirement before he or she has attained the age of sixty years in terms of subsection (4) on account of permanent poor health or any permanent physical or mental defect, or he or she dies before he or she has attained the age of sixty years, a period of five years shall be added to his service.

[subsection (1) substituted by section 11(a) of Act 45 of 1975]

- (2) Any person—
- (a) who would have been eligible for a gratuity referred to in subsection (1) had he or she not at any date after 1st August 1946, resigned from the service referred to in subsection (1); and
 - (b) who before he or she so resigned, had been in such service for a period of not less than ten years and had not contributed to, the Public Service Pension Fund referred to in subsection (1); and
 - (c) who has returned to such service,

shall be eligible for a service gratuity which shall be equal to one-eighth of the salary (other than any temporary or personal allowance) which he or she after his return received for the twelve months immediately preceding the date of termination of his service, multiplied by the number of years, including any fraction of a year, of service before he or she resigned as contemplated in paragraph (a).

- (3) If the service of a person who is eligible for a service gratuity referred to in subsection (1) or (2), is terminated by death, such service gratuity shall, notwithstanding the provisions of subsection (4), be awarded—
- (a) to his widow; or
 - (b) if there is no widow, to his dependent children; or
 - (c) if there are no dependent children, to any person for whose maintenance he or she was responsible immediately before his death; or
 - (d) if there is no such person, to his estate.
- (4) If the service of a person who is eligible for a service gratuity referred to in subsection (1) or (2), is terminated before he or she has attained the age of sixty years, he or she shall not be awarded such service gratuity unless his service is terminated by retirement on account of permanent poor health or any permanent physical or mental defect, on the recommendation of two or more medical practitioners, and with the approval of the Minister, or he or she dies before he or she has attained the age of sixty years.

[subsection (4) substituted by section 11(b) of Act 45 of 1975]

- (5) A service gratuity referred to in subsection (1) or (2) which has been awarded to any person whose service has been terminated by his retirement, may, in the discretion of the commissioner, be paid in a single payment or in instalments, and if paid in instalments the commissioner shall add to the balance of such service gratuity interest calculated at a rate determined by the commissioner and approved by the Minister.
- (6) If any person to whom a service gratuity referred to in subsection (1) or (2) has been awarded and to whom it is being paid in instalments dies before such service gratuity has been paid in full, the commissioner shall pay the balance thereof—
- (a) to his widow; or
 - (b) if he or she has no widow, to his dependent children; or
 - (c) if he or she has no dependent children, to any person for whose maintenance he or she was responsible immediately before his death; or

- (d) if there is no such person, to his estate.
- (7) Any service gratuity awarded in terms of this section shall be paid out of the compensation fund and any payment by way of such gratuity shall be debited in equal proportions to the State Account and the Mines Account.
- (8) In subsection (1)—
- “bureau” includes the Miners’ Medical Bureau within the meaning of the previous Act;
- “council” means the General Council for Pneumoconiosis Compensation within the meaning of the previous Act.

134. State to bear cost of administration of Act

All expenditure incurred to give effect to any provision of this Act shall, except in so far as any such expenditure is in terms of this Act to be defrayed from another source, be defrayed by the Minister from moneys appropriated by Parliament for that purpose.

135. ***

[section 135 repealed by section 42 of Act 208 of 1993]

136. Repeal of laws

- (1) Subject to the provisions of subsection (2), the laws specified in the Schedule are hereby repealed to the extent set out in the third column thereof.
- (2) Any regulation, notice, prohibition, order, direction, approval or document made, given, imposed or issued and any other thing done in terms of a provision of any law repealed by subsection (1) shall, except in so far as may be otherwise required by this Act, be deemed to have been made, given, imposed, issued or done under the corresponding provision of this Act.

137. Short title and commencement

This Act shall be called the Occupational Diseases in Mines and Works Act, 1973 and shall come into operation on the first day of October, 1973.

Schedule

Laws repealed

No. and year of law	Title	Extent of repeal
Act No. 64 of 1962	Pneumoconiosis Compensation Act, 1962	The whole.
Act No. 77 of 1962	Finance Act, 1962	Section 6.
Act No. 50 of 1964	Pneumoconiosis Compensation Amendment Act, 1964	The whole.

No. and year of law	Title	Extent of repeal
Act No. 92 of 1965	Pneumoconiosis Compensation Amendment Act, 1965	The whole.
Act No. 103 of 1967	Finance Act, 1967	Section 8.
Act No. 83 of 1968	Pneumoconiosis Compensation Amendment Act, 1968	The whole.
Act No. 8 of 1970	Pneumoconiosis Compensation Amendment Act, 1970	The whole.
Act No. 91 of 1971	Finance Act, 1971	Section 8.
Act No. 88 of 1972	Finance Act, 1972	Section 6.
Act No. 95 of 1972	Pneumoconiosis Compensation Laws Amendment Act, 1972	The Whole.
Act No. 97 of 1972	Pension Laws Amendment Act, 1972	Section 11.