

30 July 2008

CHAMBER OF MINES COMMENTS ON THE MINE HEALTH AND SAFETY AMENDMENT BILL, [B54-2008]

INTRODUCTION

The Chamber is grateful for the opportunity to submit comments to the Portfolio Committee on Minerals and Energy on the Mine Health and Safety Amendment Bill [B54-2008].

Our comments are in three parts.

Part A deals with some general comments on health and safety in the mining industry and on the Bill.

Part B deals with critical issues.

Part C deals with other important and substantive issues.

For ease of reference Parts B and C follow the order of the provisions as they appear in Bill [B54-2008].

PART A: GENERAL COMMENTS ON HEALTH AND SAFETY IN THE MINING INDUSTRY AND ON THE BILL

1. General comments on health and safety in the mining industry

The Chamber of Mines supports all initiatives that will improve the health and safety performance of the mining industry. There has already been a significant improvement in health and safety since the mid-1990s, and the number of fatalities has, for instance, declined by more than 50%. All stakeholders were hoping that the industry would be on track to achieve the 2013 health and safety milestones agreed to by government, industry and labour in 2003. Unfortunately, the trend of continuous improvement, especially with respect to safety, was interrupted in 2006 and even worsened in 2007, and this has resulted in all stakeholders reconsidering whether enough is being done to improve safety and health.

If the more than 20% improvement in safety performance for the first few months of 2008 can be continued during the whole of the year, a resumption of the trend of improvement in safety might very well be on hand. However, all efforts should be redoubled to ensure a step change improvement in health and safety, in order to achieve the agreed health and safety milestones by 2013. The Chamber is of the view that focused leadership action within many companies have already resulted in significant improvements. The Chamber is cooperating with government and labour on various initiatives to make further improvements. In addition, the Chamber has embarked on a programme of proactive action on health and safety and as part of this programme has launched the following initiatives:

a) Leadership: As far as leadership is concerned, the CEO's of Chamber member companies have decided that safety and health can only be improved in a significant and sustained way if there is visible leadership from the highest level of companies. To improve this leadership role, CEO's will be meeting from time to time, specifically to discuss health and safety issues. As part of this initiative, mining CEO's will be holding a CEO Roundtable, in order to develop a new path for improved health and safety. In parallel, global best practices on leadership are being gathered.

b) Adoption of Best practice: There are companies with world-class health and safety performance in the mining industry. There is hence a significant amount of information available on best practices on health and safety, including research results. However, this information is shared, but not always implemented or adopted by companies. To improve on this, the industry has developed a best practice adoption system that is being piloted this year. A substantial amount of resources has been committed to this piloting effort. Four adoption teams have, for instance, been formed, consisting of people seconded from companies, to encourage adoption of best practices in areas such as Noise, Dust, and Falls of ground.

c) Seismicity and rockburst study: The rockburst risk resulting from seismicity is a unique challenge for deep level mines in South Africa, and the Chamber has completed a study on seismicity, which was conducted by a panel of local and international experts. The study has made a number of recommendations on how we can better manage this risk and these are currently being studied by the various companies.

d) Occupational diseases among Ex-mineworkers: The industry has initiated a project to improve the access of ex-mineworkers in rural areas to compensation benefit medical examinations. The objectives of the project include improving access to health services for those ex-mineworkers suffering from occupational lung diseases, and to improve the service provided with respect to certification of occupational lung diseases and payment for occupational lung diseases in institutions administered by the Department of Health. The Chamber has allocated an amount of R42 million to this project.

Health and safety can only be improved through the joint action of all the parties. Co-operation is thus a vital priority, and this can be achieved at various levels, e.g. at top leadership level, in the Mine Health and Safety Council, and at mine level.

Legislation is a critical element of the programme of action to improve health and safety. Similarly, a strong and well resourced Inspectorate is required, which should not only assist mines in improving their health and safety performance and preventing accidents, but should efficiently act against serious transgressors of the law.

Two important principles of good legislation are, first, that the law should not have unintended consequences that undermine the objectives of the legislation and, secondly, the legislation should be practical and should not require actions that might simply not be possible for whatever reason. Some of the remarks below relate to these considerations.

2. **General comments on the Amendment Bill**

a) Balance between preventative and punitive measures: The Bill signifies a significant shift away from a system that is finely balanced between preventative and punitive measures, to a system strongly emphasizing punitive measures. Unfortunately this is likely to have unintended consequences, which will undermine the objective of improving health and safety on mines. One unintended consequence of an overly punitive approach will be that certain employers may merely concentrate on complying with the letter of the law rather than implementing leading practice, whereas significant effort by all stakeholders should go into implementing leading practice. Another consequence is that there will be less transparency about the real and underlying causes of incidents, thereby reducing the possibility of preventing similar incidents in future. International best practice in fact shows that the emphasis should be more on preventative than punitive measures.

b) Determining the real causes of incidents: One way of possibly ensuring that employers and employees are open and transparent during investigations into incidents at a mine, is to ensure that any report regarding an investigation may not be used as evidence in any administrative, civil or criminal proceedings. This does not mean that the same evidence cannot be heard in criminal or civil proceedings – it only means that in criminal or civil proceedings such evidence would be subject to proper evidentiary rules such as the right to cross examine, which is not necessarily the case in investigations. If this protection is not provided during investigations, it will be a step backwards in determining the real causes of incidents, and so preventing similar future incidents.

c) Independent inspectorate: Employers understand why the Inspectorate wishes to become a juristic person, namely to ensure that the Inspectorate is able to recruit and retain more and good quality staff by paying salaries that are competitive to those in the private sector. The proper resourcing of the Inspectorate is the responsibility of the Government. The employers are already contributing very significantly to health and safety research in the Mine Health and Safety Council (MHSC), and cannot be expected to further increase their contributions to enable the Inspectorate to be semi-privatised. What is important is that the independent Inspectorate should have a proper oversight body. It would not make sense to create additional bodies for this purpose, and the MHSC as currently structured or in a restructured form, should be this oversight body. One aspect of restructuring that would be required, would be to appoint an independent (part-time) Chairperson for the MHSC. However, the MHSC should not be able to direct or interfere in the enforcement function of the Inspectorate.

d) Health and safety permits: The Inspectorate already has a very significant arsenal of weapons to ensure compliance with the law, such as giving instructions, stopping activities, vastly increased administrative fines, and criminal prosecution. In addition, one of the conditions of issuing a mining right in terms of the MPRDA, is that the applicant must have the ability to comply with the provisions of the Mine Health and Safety Act. It is thus unnecessary to provide the inspectorate with additional powers such as health and safety permits.

In particular, a permit system would require extensive capacity and resources commitments from the Inspectorate. Not only will a lot of the Inspectorate time be taken up by the Inspectorate having to go through all the risk assessments and proposed measures for addressing the risks in order to be able to issue permits, but the Inspectorate will also have to

be competent enough to assess whether the proposed measures to address the risks are appropriate and adequate. This will mean that Inspectors would end up spending much more time in their offices than doing inspections at mines. Furthermore, by granting permits, the Inspectorate would be endorsing the proposed measures of the mines to address identified risks, thereby effectively becoming at least jointly liable with employers should such measures prove to be inadequate, if not ultimately liable.

It should be clear that the system of health and safety permits would create another enormous layer of bureaucracy for a license to mine, in addition to the current provisions in the MHSA, the MPRDA and other statutes. Furthermore, ineffective management of a permit system, due to an insufficient number of persons administering and managing the system, will lead to delays with major concomitant losses to employers, employees and the country as a whole.

No indication is given as to the circumstances under which the health and safety permits would be required, what their functions would be, what the procedures would be for granting, amending, suspending or revoking them, etc. These might deal with very substantive rights, which should be dealt with in the Act. The failure to do so may lead to an unfair and unreasonable encroachment of rights, and might thus be unconstitutional.

These comments will be expanded upon under the relevant sections below.

PART B: CRITICAL ISSUES

1. Clause 4: Employer investigations

Section 11(5)(e) is to be amended to provide that a copy of the employer's report must be submitted to the Principal Inspector of Mines. If there is a serious will to improve health and safety at mines, it is imperative that the real and underlying causes of incidents be determined during investigations in order to prevent similar incidents in future. This will only happen if persons can talk freely without fear of landing themselves or someone else in trouble. It is already difficult to get employees present at an accident to provide the most basic factual evidence surrounding an accident, because of fear of self-incrimination. As stated above under general comments, it is important that statements made at investigations be protected from outside use, including in inquests, disciplinary hearings, civil, criminal and all administrative proceedings and that outside parties should not have access to such proceedings. To provide for the reports about employer investigations to be submitted to the Principal Inspector without this type of protection, will create the perception (and real possibility) that the Inspectorate could determine if any punitive measures are required, thus undermining a critical purpose of the investigations, namely to find out what really happened in order to prevent similar occurrences.

It should be noted that the inclusion of such a provision will not prevent anyone from calling the persons that gave evidence during the investigation, to give evidence in new administrative, civil or criminal proceedings. However, such evidence will then be subject to proper evidentiary proceedings such as cross-examination, which is not the case as far as the report is concerned.

The Chamber thus has serious concerns about section 11(5)(e), but what is certainly imperative, is that it should be absolutely clear that such reports can not be used in any civil or criminal proceedings, as well as inquests, disciplinary proceedings, administrative fine proceedings and all other administrative proceedings.

Proposal: There should be a provision that the report can not be used in any civil or criminal proceedings, inquests, disciplinary proceedings, administrative fine proceedings and all other administrative proceedings.

2. **Clause 11: The Inspectorate becoming a juristic person**

Employers support the Inspectorate becoming a juristic person, subject to some very important conditions. Firstly, the employers will not support the relocation if it could substantially increase the already substantial financial contribution by employers to the MHSC. Secondly, because the Inspectorate will now fall outside the normal safeguards of government bureaucracy (with the exception of the PFMA), it is important that proper corporate governance be ensured. The implications of this are outlined below.

To ensure good corporate governance, the MHSC should be the oversight body of the Inspectorate. There is no reason why the MHSC cannot continue to advise the Minister, even if it has oversight responsibilities for the Inspectorate. If there are separate entities dealing with oversight and with advice, then two independent centres will develop, which would have a negative impact on an integrated approach to ensure improved health and safety at mines.

In order to avoid a potential conflict of interest between the regulatory authorities and the stakeholders on the MHSC, only duly authorised inspectorate officials should be able to make individual enforcement decisions. In other words, although the MHSC would be the oversight body of the Inspectorate, the MHSC will not be able to direct or interfere with the enforcement activities of the Inspectorate.

It is important that the exact relationship between the Inspectorate and the MHSC be cleared up before the Bill is finalised, in order to prevent uncertainties and potential conflict.

There might be various pros and cons with regard to moving away from the current principles in respect of the composition of the MHSC if it becomes an oversight body. Even though the Chamber is strongly of the view that the principle of tripartism should be retained, there is a need to build in a requirement that the persons who are **nominated** should have the necessary expertise in health and safety matters. The implications of having experts who are only **nominated** by their constituencies as opposed to having representatives **representing** their constituencies also needs to be further considered.

Furthermore, the MHSC should be chaired by an independent (part-time) Chairperson. Having an independent chairperson of the oversight body is an important principle of good corporate governance, as explained fully in the King report on corporate governance.

Another principle when an independent body is established, is that the involvement of stakeholders becomes much more critical. Therefore employers are of the view that the executive authority of the Inspectorate (i.e. the Chief Inspector) should be appointed by the

Minister after consultation with the MHSC. The Inspectorate should only be able to introduce new policies (which exclude individual enforcement decisions) in consultation with the MHSC.

Proposals:

- a) The MHSC should have oversight of the Inspectorate, but without directing or interfering with the enforcement activities of the Inspectorate.
- b) The MHSC should be chaired by an independent (part-time) Chairperson.
- c) The Chief Inspector should be appointed after consultation with the MHSC.
- d) The Inspectorate should introduce new policies in consultation with the MHSC.

The principles outlined above, are of such substantial nature that they should be incorporated into the Act itself, and should not be left for the Constitution of the MHSC. Obviously the proposed changes to legislation will also require amendments to the constitution of the MHSC.

3. Clause 12: Functions of the Chief Inspector

3.1 Health and Safety Permits

One of the new functions of the Chief Inspector as listed in subsection 4(d) is to grant, amend, suspend or revoke health and safety permits. It is absolutely critical to be aware of the fact that a permit system requires extensive capacity and resources commitments from the Inspectorate. Not only will a lot of Inspectorate time be taken up by the Inspectorate having to go through all the risk assessments and proposed measures for addressing the risks, the Inspectorate will also have to be competent enough to assess whether the proposed measures to address the risks are appropriate and adequate. This will mean that Inspectors would end up spending much more time in their offices than doing inspections at mines. Furthermore, by granting permits, the Inspectorate would be endorsing the proposed measures to address identified risks, thereby effectively becoming at least jointly liable with employers should such measures prove to be inadequate, if not ultimately liable.

The proposed health and safety permits should also be seen in the light of sections 11 and 9. Section 11 requires the employer to do a hazard identification and risk assessment and thereafter to implement measures to address all significant risks. Section 9 allows for the Chief Inspector to require any employer to prepare and implement a code of practice on any matter affecting the health or safety of employees and other persons. An employer can also be instructed at any time to review any code of practice within a specific period. To now introduce another system to deal with certain risks is not only a duplication of these provisions and unnecessary, it will also create additional administrative burdens for employers and the State.

It should further be clear that the system of health and safety permits would create another enormous layer of bureaucracy for a license to mine, in addition to the current provisions in the MHPA, the MPRDA and other statutes. Furthermore, ineffective management of a permit system, due to an insufficient number of persons administering and managing the system, will lead to delays with major concomitant losses to employers and the country as a whole. This system thus has the potential to negatively affect the international

competitiveness of the South African mining industry as it will introduce more red tape and have the potential of causing considerable delays.

If it is nevertheless decided to retain the provisions on health and safety permits, there should in the legislation be clear provisions as to the circumstances under which the health and safety permits would be required, what their functions would be, what the procedures would be for granting, amending, suspending or revoking them, etc. Such substantive rights cannot be prescribed by regulation, but should be dealt with in terms of the main Act. This is a fundamental principle of drafting legislation.

Proposal: The provision relating to health and safety permits should be deleted.

3.2 Other functions

3.2.1 A glaring omission is that the Bill does not deal with mandatory minimum competencies for inspectors. Coupled with this, employers further propose that the functions aimed at ensuring proper training for inspectors and that a sufficient number of trained inspectors are available should be made mandatory and not be discretionary.

3.2.2 Given the controversy recently regarding the use of section 54 powers by Inspectors, employers are of the view that it should be a mandatory function of the Chief Inspector, after consultation with the Council, to issue a guideline on the use by Inspectors of the powers conferred upon them under section 54.

Proposals:

The Act should specifically provide for the following:

- a) There should be mandatory minimum competencies for inspectors.
- b) It should be mandatory to have a guideline about the use of s54 powers.

4. Clauses 14 – 17: Administrative fines

4.1 The new proposed section 55A(5) provides that representations of an employer may not be used against it in any criminal or civil proceedings in respect of the same set of facts. Although this is the correct approach, if the intention is to encourage persons to disclose the truth, no person should be capable of being detrimentally affected in any proceedings.

Proposal: The clause should be amended to provide at least that representations made in terms of that section may not be used against any person or in any inquests, disciplinary, criminal, civil or administrative proceedings.

4.2 There is nothing in the Bill preventing employers from being subject to both a fine and prosecution in respect of the same contravention.

Proposal: The Act should be clear that employers cannot be subject to both an administrative fine process and a prosecution process in respect of the same offence.

4.3 Employers are also concerned about the following:

- ❖ There are no time limits within which the Inspectorate must make decisions. Strict time limits of 30 days are imposed for the employer to make written representations and to pay the fines, but no time limits are imposed on the Inspectorate. The Inspectorate should be subject to similar strict time limits.
- ❖ The maximum fine proposed by the Inspectorate of R1 million. Firstly, this is 5 times more than the current maximum and more than double of most of the maximum fines that can be imposed by a criminal court in terms of Table 1 of Schedule 8. Secondly, any such large fine, if imposed without circumspection, could have the potential to force the closure of small or marginal mines. To some extent, this can be addressed by proper guidelines, as proposed below.

Proposals: The issues above need reconsideration.

It is imperative that all the administrative arrangements relating to administrative fines be included in the MHSA, particularly those relating to appeal procedures and the relationship between administrative fines and prosecutions.

5. **Clauses 17: Guidelines to be issued by the Chief Inspector**

The first unpublished version of the Bill contained basic procedural aspects relating to the imposition of a fine. However, this has been deleted in later versions. The Chamber proposes that the Act contains some basic procedures and considerations in respect of administrative fines, and that the more detailed aspects thereof be dealt with in guidelines. It is critical, especially in the light of the sharp increase in the fines, that there should not be unfettered and absolute discretion regarding the imposition of fines.

Proposals:

- (a) Basic procedures and considerations with regard to administrative fines should be contained in the Act, with the detail being dealt with in guidelines.
- (b) The power to issue guidelines on referrals for criminal prosecutions and the imposition of fines are of cardinal importance and should be re-inserted.

6. **Clause 22: Obligation to pay a fine that is subject to an appeal**

Employers are strongly opposed to the suggested amendment of section 59(2) to delete the provision that an appeal against the decision to impose a fine suspends the obligation to pay the fine. It is general practice that an appeal suspends the obligation to pay a fine. The Bill proposes hefty increases in fines, and a large fine could have major cash flow implications for smaller or marginal mines and it would be unfair to prejudice any mine until its guilt or innocence has finally been decided. Additionally, even if an appeal were successful, it could be some time before the moneys are refunded to the mine, again possibly affecting its viability or cash flow position. This proposed amendment to section 59 is again indicative of a move to more punitive measures, which is most unfortunate as it will have the unintended consequences as outlined above.

Proposal: The current provision that suspends the obligation to pay a fine when an appeal is lodged should not be deleted.

7. **Clause 24: Protection of evidence at inquiries**

The proposed amendment to section 71, to remove the option of protecting the use of evidence given at inquiries during the administrative fine system, is strongly opposed by employers. As indicated above, this is another example of a shift away from a preventative system to a punitive system. Additionally, it will be counterproductive in that persons will be constrained to say anything that might incriminate themselves or other persons, thereby defeating the fundamental object of an inquiry of finding the real causes of an incident. In fact, the protection should go further and should also cover inquests and administrative fine proceedings and all other administrative proceedings.

Proposal: The protection against the use of evidence given during inquiries should be retained, and should be extended to also cover inquests, administrative fine proceedings and all other administrative proceedings.

8. **Clause 26: Criminal liability of employers**

- 8.1 The amendments create the possibility that one set of actions of the employer could create an offence under more than one section, for example under section 11 and 86. A provision should therefore be inserted that any person may not be convicted of more than one offence or be subject to more than one administrative fine on the same set of facts.

Proposal: There should be a provision that any person may not be convicted of more than one offence or be subject to more than one administrative fine on the same set of facts.

- 8.2 The protection afforded in section 91(1C) to an employer who fails to comply with a standard in a code of practice currently relates to the system of administrative fines only, and should be extended to cover also criminal prosecutions. This provision was inserted to encourage employers to include in their Codes of Practice leading practice, but for them not to be punished where they did not meet such practice, provided their conduct still met the minimum requirements of the Inspectorate. If employers can now also be subject to criminal prosecution for most of the provisions of the MHSa (in terms of the amendment to section 91(1)), it might have the unintended consequence that employers might be criminally prosecuted if they do not comply with a standard in a code that meets the minimum requirements of the Inspectorate.

Proposal: The protection afforded in section 91(1C) to an employer who fails to comply with a standard in a code of practice if the standard exceeds the standard in a DME guideline, currently only relates to fines, and should be extended to include criminal prosecutions.

- 8.3 Currently failure to comply with any provision of Chapter 3 is excluded from criminal liability. This exclusion is now removed. (Chapter 3 deals with labour relations matters and health and safety committees.) At the time when the original Act was drafted, it was agreed between the tripartite stakeholders that there were other more appropriate mechanisms under the Labour Relations Act and other labour legislation to deal with non-compliance with the provisions of Chapter 3. This position has not changed. The removal of this exclusion is yet another example of the shift towards a more punitive approach, which will have negative unintended consequences.

Proposal: The exclusion of Chapter 3 from criminal liability in subsection 1B(a) should be retained as it would be more appropriate to deal with such issues in terms of the Labour Relations Act.

PART C: OTHER IMPORTANT AND SUBSTANTIVE ISSUES

1. Clause 2: Appointment of Chief Executive Officer

The proposed new subsection (6)(a) in terms of which the employer “may” appoint a Chief Executive Officer, can create confusion. If a CEO is not appointed, it will be unclear whether the existing section 2A(1) becomes irrelevant, which section provides that every Chief Executive Officer must take reasonable steps to ensure that the functions of the employer are properly performed. Since the Act has a definition of CEO, such person automatically assumes the said responsibility. A better approach would be for the new proposed subsection not to give the employer the discretion to appoint a Chief Executive Officer, but just to require the employer to inform the Chief Inspector of Mines in writing of who the CEO is for purposes of section 2A(1).

Regard must further be had to section 2A(3), which provides that if the employer is a body corporate, the functions of the chief executive officer may be performed by a member of the board of the body corporate designated by the board.

Proposal: Sub-section (6) should not give a discretion whether to appoint a CEO, but should require the employer to inform the Chief Inspector of (1) who the CEO is for purposes of section 2A(1), or, if a board member has been appointed to perform the functions of the Chief Executive Officer in terms of section 2A(3), who that board member is and of (2) any changes to these positions.

2. Clause 3: Records of training provided to employees

Employers support the principle of keeping record of training, but feel the proposed new section 10(3A) should be reworded because an obligation to keep a record of all training would create an onerous and impractical burden on employers. In many instances training on how to deal with risks are done at the workplace by supervisors, etc. and not in formal environments. Additionally, in some instances the supervisors providing the training are not literate. It would be almost impossible to always record all such training in writing. If there are good reasons for recording certain training activities, the section should be worded in such a way as to overcome the practical problems outlined above.

In addition, the requirement could be counterproductive. If an employer would fear adverse consequences if records were not kept, the logical consequence would be to err on the side of caution, i.e. not to do the training rather than be faced with an accusation of having contravened the Act.

Proposal: The employer should keep a record of all structured training (alternative: all formal training).

3. **Clause 4: Employer investigations**

The requirement in the new proposed section 11(5)(aA) that the employer investigation must commence within 10 days from the date of the event would be difficult to police and could in addition be problematic in practice in some instances.

Proposal: The provision will be difficult to police, but if retained, should allow for the 10 days to be capable of being extended by the inspectorate – in the proposed subsection (5A) the following wording is used: “or such longer period as the Principal Inspector may permit”.

4. **Clause 5: Occupational medical practitioner**

The proposal to delete s13(4), namely that the services of a medical practitioner may be engaged until the services of an occupational medical practitioner can be obtained, could be very impractical and problematical for small companies operating in very remote areas where there might not be occupational medical practitioners.

Proposal: Provision should be made for the inspectorate to allow, on good cause shown, a mine to engage the services of a medical practitioner until the services of an occupational medical practitioner can be obtained.

5. **Clause 6: Exit certificates**

The proposal to amend section 17(2) to require that the exit examination must be held before, or within 30 days after, termination of an employee’s employment may be impractical to comply with in some instances, e.g. where an employee has absconded.

Proposal: A proviso should be added to the effect that the holding of such exit examination is not required if it is made impossible for reasons beyond the control of the employer. Provision should further be made for the 30 day period to be extended by the inspectorate – in the proposed section 11(5A) the following wording is used: “or such longer period as the Principal Inspector may permit”.

6. **Clauses 7 and 8: Permanent committees of the MHSC**

The improvement in the wording of the clause as compared to the wording in the draft Bill is acknowledged. However, the wording still allows too much discretion to the MHSC, and there should be some certainty that at least these committees will be permanent committees of the Council.

Proposal: The wording should be changed to state: “A committee, ad hoc committee or subcommittee may when necessary be established, which committee must include -”.

7. **Clause 9: MHSC’s duty regarding research**

Employers are opposed to the amendment of section 43 to provide that the MHSC must annually advise the Minister on relevant health and safety research. With the Inspectorate possibly becoming a separate entity, it makes far more sense for the MHSC to have the final

say on what research is to be done, rather than the Minister, who will be somewhat removed from the activities of the Inspectorate.

Proposal: The Act should state that the Council should annually consider an overall programme for relevant health and safety research.

8. Clause 12: Functions of the Chief Inspector

- 8.1 Employers propose that all those functions of the Chief Inspector that do not relate to administrative measures or enforcement, should be performed only after consultation with the MHSC. This again relates to the important principle of the independent body having to involve the stakeholders.
- 8.2 Employers are of the view that the function of developing an implementation plan for the effective implementation of “this Act” (the proposed new section 49(1)(l)) is too impractical. It is impossible for the Inspectorate to develop such an implementation plan for the whole Act. The implementation plan should relate to the activities of the Inspectorate only.
- 8.3 Employers do not agree with the need for the Chief Inspector to commission or conduct research (new section 49(1)(n)). Should the Chief Inspector identify any need for research, he should propose it for consideration in the relevant permanent committee of the Council (as currently provided for in terms of regulation 5(1)(c), which requires SIMRAC, when preparing the overall research programme, to give due consideration to any research needs proposed to it by the Chief Inspector). As MHSC research is funded solely by employers (through a levy), any decision on the need for research should not be made without their involvement. It is further proposed that only an enabling provision be inserted to the effect that the Chief Inspector “may” propose research.

Proposals:

The Act should specifically provide for the following:

- a) The functions of the Chief Inspector that do not relate to administrative measures or enforcement, should be performed after consultation with the Council.
 - b) The development of an implementation plan should relate to the activities of the Inspectorate only, and not the effective implementation of the Act.
 - c) Research should be undertaken by the Council and not the Chief Inspector.
- 8.4 The requirement in subsection 4(e) that the Chief Inspector may require all mines or groups of mines to prepare and implement a health and safety management system for mines, should for the sake of being practical, be amended so that any mine or group of mines could be required to prepare and implement a health and safety management system in relation to the mine receiving the instruction.

To require all mines or groups of mines to prepare and implement a hazard management system for significant hazards mentioned under section 11 (subsection 4(f)) is superfluous because section 11 already requires the employer to implement a hazard management system for significant hazards identified in terms of that section.

Proposals:

- (a) Subsection 4(e) should state: “require all mines or groups of mines to prepare and implement a health and safety management system **in relation to the mine receiving the instruction**”
- (b) Subsection 4(f) is superfluous and should be deleted.

9. Clauses 21 and 22: Appeal to court against decision of Chief Inspector

Whereas the second unpublished draft of the Bill proposed that an appeal to the Labour Court be amended to be an appeal to the High Court, the published Bill merely refers to an “a court having jurisdiction”. This will be problematic, as it would be unclear which would be the correct court to appeal to. Appellants could be wasting time and money should a court decide that it was not the court having jurisdiction.

Proposal: In order to prevent confusion, it should be made clear that appeals should be to the High Court.

10. Clause 25: Right of Minister to enter mines

Clause 25 proposes an additional sub-section 76(3) to allow the Minister to enter any mine at any time “only for the purposes of health hazards”. The wording in the Bill makes no sense. Firstly, reference should also be made to safety issues. Secondly, the Minister would be visiting a mine presumably to acquaint herself with aspects relating to an incident or accident that took place. The wording in the draft Bill seemed more appropriate.

Proposal: Reconsider the wording to make sense.

11. Clause 26: Criminal liability of employers

The wording in sub-section (1) to provide that a person commits an offence and is liable “to a fine as may be prescribed” is wrong as the fines are still set out in Table 1 of Schedule 8 of the Bill. The reference to prescribing fines should therefore probably be deleted.

Proposal: The reference to “as may be prescribed” is incorrect and should be deleted.

12. Clause 37: Definition of occupational medical practitioner

Clause 5(a) of the Amendment Bill proposes the deletion of section 13(4). The reference in the definition of occupational medical practitioner to section 13(4) should thus be deleted.

Proposal: If section 13(4) is deleted, then delete “or a medical practitioner engage in accordance with section 13(4)”. However, in par 3 of Part B above it was proposed that this section be reworded and not deleted, in which case this definition should be retained as is.