

STATE PRESIDENT'S OFFICE

No. 135.

28 January 1994

NO. 208 OF 1993: OCCUPATIONAL DISEASES IN MINES AND WORKS AMENDMENT ACT, 1993.

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

ACT

To amend the Occupational Diseases in Mines and Works Act, 1973, so as to do away with all provisions which differentiate between persons on the ground of their sex or population group; to define or further define certain expressions; to empower the director to authorize owners of mines and works to issue certificates of fitness on his behalf and subject to his directions; to do away with the office of medical adviser; to regulate differently the expression of a risk; to make the possession of a certificate of fitness by all persons performing risk work in controlled mines and works compulsory; to regulate differently the issuing of certificates of fitness; to repeal provisions which seek to preclude the jurisdiction of the courts; to further regulate the certification of compensatable diseases; to increase the number of members of the advisory committee; to change the basis on which interest on amounts indebted to the commissioner is levied; to provide for the actuarial valuation of the fund; to change the basis on which benefits are calculated; to do away with assistance in connection with training; to empower the Minister to amend the Act so as to increase benefits; and to extend the Minister's powers to make regulations; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.
(Assented to 14 January 1994.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:

Amendment of section 1 of Act 78 of 1973, as amended by section 1 of Act 27 of 1974, section 2 of Act 45 of 1975, section 1 of Act 30 of 1978 and section 7 of Act 89 of 1988

1. Section 1 of the Occupational Diseases in Mines and Works Act, 1973 (hereinafter referred to as the principal Act), is hereby amended

(a) by the deletion in subsection (1) of the definition of "adopted child";

(b) by the insertion in subsection (1) after the definition of "advisory committee" of the following definition: "'Amendment Act' means the Occupational Diseases in Mines and Works Amendment Act, 1993.".

(c) by the deletion in subsection (1) of the definition of "Black person";

(d) by the deletion in subsection (1) of the definitions of "child".
"Coloured person" and "Coloured female";

and
(e) by the deletion in subsection (1) of the definitions of "dependant"
"dependent child";

(f) By the insertion in subsection (1) after the definition of "Director
General" of the following definition;

" '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;";

(g) by the insertion in subsection (1) after the definition of "financial
year" of the following definition: " 'fixed date' means the date on
which the Amendment Act comes into operation;";

(h) by the deletion in subsection (1) of the definition of "medical
adviser";

(i) by the substitution in subsection (1) for the definition of "medical
practitioner" of the following definition: "' medical practitioner'
means a person who is registered as a medical practitioner under the
Medical, Dental and Pharmacy Act, 1928 (Act No. 13 of 1928)
Supplementary Health Service Professions Act, 1974 (Act No. 56 of
1974);

(j) by the substitution in subsection (1) for the definition of "mine" of
the following definition: "'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 Government

Mining

Engineer notifies the owner thereof in writing that such
excavations or places comprise two or more mines;";

- (k) by the substitution in subsection (1) for the definition of Minister" of the following definition: " 'Minister' means the Minister of for National Health and Population Development Welfare;";
- (l) by the deletion in subsection (1) of the definition of "Republic";
- (m) by the substitution in subsection (1) for the definition of "tuberculosis" of the following definition: " 'tuberculosis' means tuberculosis of the cardiorespiratory 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 and a person shall be deemed to be or to have been suffering from tuberculosis if evidence of active tuberculosis has been found in such person;";
- (n) by the deletion in subsection (1) of the definition of "White person";
- (o) by the substitution in subsection (1) for the definition of "works" of the following definition:

"'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 fine 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; 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;"; and

- (p) by the addition of the following subsection:

"(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.

Amendment of section 3 of Act 78 of 1973

2. Section 3 of the principal Act is hereby amended by the deletion of subsection (2).

Amendment of section 4 of Act 78 of 1973

3. Section 4 of the principal Act is hereby amended by the substitution for

subsection (2) of the following subsection:

"(2) The director may in writing authorize

- is
- (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 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, on behalf of the director and subject to his directions, any certificate of fitness."

Repeal of section 7 of Act 78 of 1973

- 4. Section 7 of the principal Act is hereby repealed.

Amendment of section 13 of Act 78 of 1973

- 5. Section 13 of the principal Act is hereby amended by the deletion of subsection (6).

Repeal of section 14 of Act 78 of 1973

- 6. Section 14 of the principal Act is hereby repealed.

Amendment of section 20 of Act 78 of 1973

- 7. Section 20 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) The risk committee shall express any risk which it determines as a percentage in accordance with a scale or in a manner prescribed."

Substitution of section 23 of Act 78 of 1973

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

"Certificate of fitness

- who
- 23. (1) The director may, subject to the provisions of this Act, on application made in the prescribed manner by any person, contractor or owner of a controlled mine or a controlled works who intends to employ a person to perform risk work at a mine or works, 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 may deem necessary for the consideration of the application;
- (d) direct the person concerned to make himself available, at his own expense, or at the expense of the contractor or owner, at the bureau or a subbureau 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 presents himself 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 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."

Amendment of section 25 of Act 78 of 1973

9. Section 25 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

" (6) The decision of the director in regard to the renewal of a certificate of fitness shall be final, but where 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 is employed.".

Substitution of section 36 of Act 78 of 1973

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

"Cost of medical examinations

36. (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.".

Insertion of sections 36A, 36B and 36C in Act 78 of 1973

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

"Medical expenses

36A. (1) The owner of a controlled mine or a controlled works shall for a period of not more than two years from the date of the commencement

of a compensatable disease pay the reasonable cost incurred by or on behalf of a person in his service in respect of medical aid necessitated by such disease.

(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 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.

Medical aid provided by owners

36B. (1) If an owner of a controlled mine or a controlled works makes

which arrangements to provide to persons in his service medical aid 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 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 may deem equitable.

the (3) The commissioner may at any time withdraw the approval or amend conditions referred to in subsection (1)

(4) For the purposes of this section, section 36A(3) shall apply mutatis mutandis.

Arrangements regarding certain compensation

36C. 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."

Repeal of section 38 of Act 78 of 1973

12. Section 38 of the principal Act is hereby repealed.

Repeal of section 43 of Act 78 of 1973

13. Section 43 of the principal Act is hereby repealed.

Amendment of section 44 of Act 78 of 1973

14. Section 44 of the principal Act is hereby amended (a) by the substitution

for subsection (1) of the following subsection: "(1) For the purpose 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 is suffering from pneumoconiosis, whether or not it has impaired his cardio-respiratory functions, or which has permanently impaired such functions by 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 I (in this section

referred to as 'the definition'), if the certification committee has found that he is suffering from such a disease which has permanently impaired his cardiorespiratory functions by 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 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;

(d) in the case of a compensatable disease referred to in paragraph (f) of the definition, if the certification committee has found that he is suffering from such a disease which has permanently impaired his ability to perform his ordinary work by not more than 40 per cent."; and (b) by the addition to subsection (2) of the following paragraph:
(f) in the case of a compensatable disease referred to in paragraph (c) or (eA) of the definition, if the certification committee has

found

impaired

that he is suffering from such a disease which has permanently his ability to perform his ordinary work by more than 40 per cent."

Amendment of section 46 of Act 78 of 1973

15. Section 46 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words: "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 postmortem 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 prescribed standards (if any) determined under section 43 and to the provisions of section 44".

Repeal of section 53 of Act 78 of 1973

16. Section 53 of the principal Act is hereby repealed.

Repeal of section 57 of Act 78 of 1973

17. Section 57 of the principal Act is hereby repealed.

Amendment of section 59 of Act 78 of 1973

18. Section 59 of the principal Act is hereby amended

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

"(2) The advisory committee shall consist of the commissioner and four not more than 12 other members to be appointed by the Minister, of whom, subject to the provisions of subsection (3)

(a) two 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) two 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."; and

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

"(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, 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 three seven persons."

Amendment of section 62 of Act 78 of 1973, as amended by section 2 of Act 30 of 1978

19. Section 62 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection

" (1) The commissioner shall determine in respect of each controlled mine or controlled works, in such manner as he deems fit and with due regard to the risk of the mine or works in question as determined

under

section 20 or 21 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."

Amendment of section 63 of Act 78 of 1973, as amended by section 4 of Act 27 of 1974

20. Section 63 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: "(2) The amount so determined shall not exceed two cents per shift."

Substitution of section 64 of Act 78 of 1973

21. The following section is hereby substituted for section 64 of the principal Act:

"Interest on amount in arrear

64. An owner of a controlled mine or a controlled works shall pay interest to the commissioner, at a rate determined by the commissioner and approved by the Minister 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."

Insertion of section 77A in Act 78 of 1973

22. The following section is hereby inserted in the principal Act after section 77:

"Actuarial valuation and services

77A. (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.".

Substitution of heading to Chapter VI of Act 87 of 1973

23. The following heading is hereby substituted for the heading to Chapter VI in of the principal Act:

"COMPENSATION TO WHITE AND COLOURED PERSONS, AND GENERALLY".

Amendment of section 78 of Act 78 of 1973, as amended by section 9 of Act 89 of 1988

24. Section 78 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

"(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.".

Substitution of section 79 of Act 78 of 1973, as amended by section 6 of Act 27 of 1974, section I of Act 67 of 1974 and section I of Act 105 of 1985

25. The following section is hereby substituted for section 79 of the principal Act:

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

79. (1) Any person, except a widow, who immediately before the commencement of this Act was entitled to a pension in respect of himself 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 cardiorespiratory 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 cardiorespiratory 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 cardiorespiratory 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 ~~onesum~~ 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 ~~onesum~~ 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 had so suffered, to his widow or dependants. an additional sum which shall be equal to the difference between the amounts contemplated in paragraph~~s~~(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 ~~onesum~~ benefit was not awarded in lieu of a monthly pension is suffering from pneumoconiosis which has impaired his cardiorespiratory 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 ~~onesum~~ benefit was not

awarded

in lieu of a pension, is suffering, from pneumoconiosis which has impaired his cardiorespiratory 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."

Substitution of section 80 of Act 78 of 1973, as amended by section 2 of Act 123 of 1984

26. The following section is hereby substituted for section 80 of the principal Act:

"Benefits payable after fixed date

80. (1) When a person is suffering from tuberculosis which does not render him 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

- to
- (b) the said person was affected at any time within 12 months immediately after the date on which he performed work referred in paragraph (a) for the last time, the commissioner may on application of that person made in the prescribed manner, award to him an amount which is equal to 75 per cent of his loss of earnings during the period in which he 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 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 oncesum 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 R2 000, and 'B' represents
- award
- (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 oncesum benefit in respect of a compensatable disease in the first degree, 1,607;
- (iii) who previously became entitled to a oncesum 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 oncesum 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 oncesum 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.
- (3) The benefit calculated in accordance with the provisions of subsection (2) shall be an amount of at least R7 000.
- (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 oncesum benefit which would have been payable to him in terms of subsection
- (2) as well as in terms of section 79(3) had he not died.
- (5) Any oncesum 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 oncesum benefit or any amount in terms of this

section a fraction of a rand shall be calculated to the next completed rand."

Insertion of sections 80A and 80B in Act 78 of 1973

27. The following sections are hereby inserted in the principal Act after section 80:

"Manner of calculating earnings of persons performing risk work

80A. (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

up

(a) the value of any food or quarters or both supplied by such owner to the said date;

(b) any over time 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 nonrecurrent 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

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 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 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) shall apply mutatis mutandis.

Manner of calculating earnings of persons no longer performing risk work

80B. 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 would probably have been earning had he still been performing risk work."

Substitution of section 81 of Act 78 of 1973, as substituted by section 4 of Act 45 of 1975

28. The following section is hereby substituted for section 81 of the principal Act:

"Unpaid benefits at death of beneficiary

81. (1) If a person who became entitled to a one sum benefit under section 79 or 80 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 and after consultation with the advisory committee, 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 and where there is no such person, the commissioner shall pay such benefit to the estate of the deceased."

Repeal of section 82 of Act 78 of 1973

29. Section 82 of the principal Act is hereby repealed.

Substitution of section 83 of Act 78 of 1973. as amended by section 6 of Act 45 of 1975

30. The following section is hereby substituted for section 83 of the

principal, Act:

"Benefits to widows of pensioners and widows entitled to pension

83.(1) If a person who was entitled to a pension under the previous Act and to whom a oncesum 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.".

Repeal of sections 84 up to and including 93 of Act 78 of 1973

31. Sections 84 up to and including 93 of the principal Act are hereby repealed.

Amendment of section 96 of Act 78 of 1973

32. Section 96 of the principal Act is hereby amended (a) by the substitution for subsection (2) of the following subsection:

"(2) When a right to a oncesum benefit to which the widow of a deceased White person or deceased Coloured 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 for if there is no such person, the commissioner shall pay the benefit in question or the unpaid balance thereof to the estate of the deceased."; and (b) by the deletion of the word "or" at the end of paragraph (c), and paragraph (d), of subsection (3).

Substitution of section 98 of Act 78 of 1973, as amended by section 8 of Act 45 of 1975 and section 4 of Act 30 of 1978

33. The following section is hereby substituted for section 98 of the principal Act:

"Cessation of pension to widow who remarries

98. 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.".

Amendment of section 101 of Act 78 of 1973, as amended by section 9 of Act 45 of 1975, section 11 of Act 89 of 1988 and section I of Act 137 of 1991

34. Section 101 of the principal Act is hereby amended by the deletion of subsection (4).

Repeal of section 102 of Act 78 of 1973

35. (1) Section 102 of the principal Act is hereby repealed. (2) Notwithstanding the repeal of the provisions of section 102 of the principal Act by subsection (1), the said provisions shall remain in

force in respect of any person to whom assistance in connection with education and training was rendered thereunder prior to the said repeal.

Insertion of section 105A in Act 78 of 1973

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

"Amendment of Act by Minister so as to increase benefits

105A. (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."

Repeal of Chapter VII of Act 78 of 1973

37. Chapter VII of the principal Act is hereby repealed.

Amendment of section 120 of Act 78 of 1973

38. Section 120 of the principal Act is hereby amended

(a) by the substitution in subsection (2) for the words preceding paragraph

(a) of the following words: "The Minister may in his discretion but subject to the provisions of subsection (3) from moneys in the Research Account and, in consultation with the Minister of Finance State Expenditure, from moneys appropriated by Parliament for that purpose"; and

(b) by the deletion of subsection (3).

Substitution of section 121 of Act 78 of 1973

39. The following section is hereby substituted for section 121 of the principal Act:

"Regulations

121. (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 in connection with the mine or works in question;

(d) the information, particulars, documents or reports to be submitted

controlled or made available by the owner of a controlled mine or a 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;

no (e) the medical examination of persons who were employed at or in connection with controlled mines or controlled works but who are longer in the service of an owner of such a mine or works, and the payment of the cost in connection with such examinations; 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;

any (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:

repatriation (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 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.

(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 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 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."

Amendment of section 126 of Act 78 of 1973

40. Section 126 of the principal Act is hereby amended by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs, respectively:

- (a) contravenes the provisions of section 14(1) or 15(1); or
- (b) by virtue of an authorization under section 14(2) or 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 authorization or exemption has been granted.,".

Repeal of section 132 of Act 78 of 1973

41. Section 132 of the principal Act is hereby repealed.

Repeal of section 135 of Act 78 of 1973

42. Section 135 of the principal Act is hereby repealed.

Amendment of provisions of Act 78 of 1973 in Schedule

43. The sections of the principal Act specified in the first column of the Schedule are hereby amended by the substitution for the expressions specified opposite thereto in the second column of the expressions specified opposite thereto in the third column.

Amendment of section 2 of Act 137 of 1991

44. Section 2 of the Occupational Diseases in Mines and Works Amendment Act, 1991, is hereby amended by the deletion of subsection (3).

Short title and commencement

45. (1) This Act shall be called the Occupational Diseases in Mines and Works Amendment Act, 1993, and shall, subject to the provisions of subsection

(2), come into operation on a date fixed by the State President by proclamation in the Gazette.

(2) In respect of a person who was lawfully performing risk work without a

the certificate of fitness by virtue of the provisions of section 38 of the principal Act, immediately prior to its repeal by section 12 of this Act, the provisions of this Act relating to Chapter III of the principal Act, as far as they are applicable and can be applied to such person, shall come into operation two years after the fixed date.

SCHEDULE

Number of section	Expression replaced	New expression
1(2)(b)	"Minister of Labour"	"Minister of Manpower"
13(7)	"Coloured female or a Black person"	"person"
15(1)	"White person and no Coloured person"	"person"
15(1)	"White person or Coloured person"	"person"
16(1)(a) and 16(2)	"White person or Coloured person"	"person"
24(1)(a)	"White person or Coloured person"	"person"
24(1)(b)	"23(5)"	"23(6)"
24(2)	"23(3)"	"23(4)"
25(1)	"White person or Coloured person"	"person"
25(4)	"23(3)"	"23(4)"
27(5)	"23(3)"	"23(4)"
28(2)	"23(3)"	"23(4)"
29(1)	"White person or Coloured person"	"person"
30(3)	"White male or Coloured male"	"person"
31(1)(a)	"White person or Coloured person"	"person"
37(1)(b)(ii), 37(2)(b)(i) and 37(3)	"Minister of Finance"	"Minister of State Expenditure"
41(1)	"Minister of Finance"	"Minister of State Expenditure"
59(6)	"Minister of Finance"	"Minister of State Expenditure"

60(2)	"Minister of Finance"	"Minister of State Expenditure"
69(2)	"Minister of Finance"	"Minister of State Expenditure"
69(4)	"Consolidated Revenue Fund"	"State Revenue Fund"
75(1)	"Public Debt Commissioners"	"Public Investment Commissioners"
75(2)(a)	"Minister of Finance"	"Minister of State Expenditure"
75(2)(b) and 75(3)	"Public Debt Commissioners"	"Public Investment Commissioners"
76(2)	"Controller and Auditor-General"	"Auditor-General"
96(1)	"White person or Coloured person"	"person"
124(3)(f)	"14(1) or 15(1)"	"15(1)"
131(1)	"104 or 113"	"104"