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PART B

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OCCUPATIONAL SAFETY AND HEALTH ACT, 2001

(Act No. 9 of 2001)

I ASSENT
MSWATI III
King of Swaziland
23RD AUGUST 2001

AN ACT
entitled

An Act to provide for the safety and health of persons at work and at workplace and for the protection of persons other than persons at the workplace against hazards to safety and health arising out of or in connection with the activities of persons in the workplace and to provide for other matters incidental thereto.

ENACTED by the King and Parliament of Swaziland

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Short title and commencement.

1. This Act may be cited as the Occupational Safety and Health Act, 2001 and shall come into force on the date of publication in the Gazette.

Interpretation

2. In this Act unless the context otherwise requires-

"accident" includes any accident reportable under this Act or under the Workmen's Compensation Act, No. 7 of 1983;

"approved" means approved by the Commissioner;

"article" includes any solid, liquid, vapour, gas or any combination thereof;

"Chief Inspector" means Chief Inspector appointed under Section 4;

"Commissioner" means the Commissioner of Labour;

"construction work" means:

(a) any work carried out in connection with the erection, alteration, repair, painting repainting, maintenance, renovation or demolition of any building or structure;

(b) the construction, structural alteration, repair (including repainting) or demolition of any road, bridge, tunnel, inland navigation, viaduct, water works, reservoir, dam, aqueduct, sewage works, gas holder, pipeline for whatever purpose required, and includes any excavation work; and

(c) such other construction work as the Minister may prescribe by notice in the Gazette;

"danger" means anything which may cause injury or damage to persons or property;

"employee" means any person who is employed by or works for or assists an employer, in or at any workplace or any other premises subject to this Act;

"employer" means an occupier or a person who in connection with any workplace or other premises subject to this Act employs or

provides work for or permits any person in any matter whatsoever to assist him in the carrying out of his business in or about a workplace or other premises subject to this Act and includes any person or undertaking, contractor, corporation, company, public authority or body of persons who or which has entered into contract of employment with an employee, and includes

(a) an agent, representative, foreman, or manager of such a person, undertaking, corporation, public authority or body;

(b) in the case of a person-

(i) who has died, his executor

(ii) who has become of unsound mind, his Curator Bonis

(iii) who has become insolvent, the trustee of his insolvent estate

(iv) who is a company in liquidation, the liquidator of the company.

"fume" includes gas or vapour;

"hazard" means any source of exposure to danger ;

"health" means physical and mental being;

"industrial disease" includes any disease mentioned in the First Schedule under the Workmen's Compensation Act, No 7 of 1983;

"injury" includes both physical and health;

"inspector" means an person designated by the Minister under section 4;

"institution" includes any institution conducted for medical, mental, education, training, religious, charitable, reformatory or penal purposes, whether controlled or managed by the Government or any person;

"machinery" or "plant" means-

(a) any engine, motor or other prime mover which provides mechanical power;

(b) any boiler or other steam apparatus, any pressure vessel or portable gas container; and

(c) any appliance or combination of appliances used or intended to be used for generating, developing, receiving, storing, converting, transforming or transmitting any form of power or energy, or for lifting or conveying persons or goods;

"mechanical power" means energy or motion transmitted from an engine motor or other prime mover from steam, water, wind, electricity, the combustion of fuel or other source;

"medical practitioner" means a person who is registered as such under any law relating to registration of medical practitioners who may practice on his own account or under a principal including the Government;

"Minister" means the Minister responsible for Labour matters;

"occupier" means any person in actual occupation of a workplace or other premises or parts of premises which are subject to this Act and having the management or control of any activity or business conducted therein;

"owner" means the owner of the premises or a person for the time being who is receiving the rents or profits of the premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person ;

"premises" includes any land, structure, vehicle or vessel;

"risk" means the possibility that an injury or damage may occur ;

"user" in relation to machinery or plant means the owner of, or person benefitting from the use of such machinery or plant at any premises or place subject to this Act, and includes the person charged with the supervision of such machinery or plant;

"workplace" includes any premises or place where a person performs work in the course of that person's employment.

Application.

3. (1) This Act shall apply to any workplace, including premises owned or occupied by the Government.

(2) Save where otherwise expressly provided, the provisions of this Act shall be in addition to, The Factories, Machinery and Construction Works Act, 1972 and any other related legislation.

PART II: APPOINTMENT AND POWERS OF INSPECTORS

Designation of public officers as inspectors

4. (1) There shall be a Chief Inspector, appointed by the Government Agency responsible for the employment of public officers and the Chief Inspector shall:

(a) be in charge and responsible for the inspectorate activities under this Act; and

(b) perform the duties of an inspector.

(2) No person shall be appointed a Chief Inspector unless that person is at least a holder of B SC. Degree in Engineering or its equivalent, plus at least 2 years experience or a higher diploma plus at least ten years experience.

(3) The Minister may by notice in the Gazette designate any public officer as an inspector for the purpose this Act.

Provided that no person shall be designated as an inspector unless that person is at least a holder of a Higher Diploma in Engineering or its equivalent.

(4) The Commissioner shall issue a signed document to an inspector for the purposes of identification when an inspector is carrying out the duties of an inspector.

(5) An inspector shall produce the document referred to in subsection (4) on request by an owner, occupier, user or any other person at a workplace whilst carrying out the duties of an inspector.

Powers and duties of inspectors.

5. (1) An inspector may in the course of that inspector's duties -

(a) during normal working hours and without previous notice enter any workplace which the inspector has reasonable cause to believe is subject to this Act, and make any inspection and enquiry as the inspector deems necessary;

(b) require the production of any certificate, report, record, information or any other document required under this Act and examine and take a copy thereof;

(c) question the occupier, manager, or any other person, either alone or in the presence of any other person who the inspector thinks fit, or has reasonable cause to believe is or has been

working in that workplace regarding any matter relating to this Act;

(d) where necessary, require any person referred to in paragraph (c) to sign a declaration or statement as to the truth of the facts as stated by that person when questioned;

(e) take into a workplace an interpreter, an assistant, or a member of the Royal Swaziland Police as the inspector deems necessary.

(2) Where an inspector is petitioned or receives a complaint from any person including an employee, safety and health representative, safety and health committee member or employer relating to safety and health, the inspector shall immediately investigate the cause of the complaint and take the necessary action in terms of this Act.

(3) A person who obstructs, fails to cooperate or refuses to answer a question or query by the inspector or refuses or fails to produce a document or thing lawfully required by the inspector commits an offence.

(4) An inspector shall in the course of that inspector's duties -

(a) identify himself to and demand to be accompanied in his inspections by the employer or a representative of the employer and one or more safety and health representatives where such representatives exist in that workplace;

(b) immediately after an inspection, cause an inspection report to be sent to the employer and a copy sent to the safety and health representative or safety and health committee where one exists;

(5) An inspector shall not incur any civil liability by reason of the fact that the inspector failed to do anything which that inspector is required to do in terms of this Act.

Powers to take samples.

6. (1) An inspector may, at any time or at regular intervals after informing the occupier, or if the occupier is not readily available, a manager or any other responsible person in charge of the workplace to which this Act applies, for purposes of analysis, take samples of any material or substance used or intended to be used, which the inspector thinks is likely or which may on analysis prove to be likely to cause bodily injury to persons working at the workplace and such samples shall be divided into three relatively equal portions, sealed

and one given to the employer or representative of the employer, another to the representative of the employees and the third to be kept by the inspector.

(2) Any analysis may be carried out by an institution or qualified person approved by the Commissioner, the report of such analysis shall not be disclosed save for the purpose of securing compliance with this Act or in connection with any criminal prosecution under this Act or any other law.

Disclosure of information or source of complaints.

7 (1) Subject to subsection (2), no inspector or other person who in pursuance of powers conferred by this Act enters, or is admitted into any workplace, shall without the written permission of the occupier or owner disclose to any other person the details of any manufacturing, commercial or trade process which may come to his knowledge in the course of his duties.

(2) This section shall not apply to the use of such information for the purpose of securing due compliance with this Act or in connection with any criminal prosecution under this Act or any other law.

(3) Unless authorized by a complainant in writing, no inspector or other person carrying out duties under this Act shall divulge the source of any information or complaint regarding any alleged breach of this Act.

PART III: DUTIES OF EMPLOYER, SELF EMPLOYED, AND EMPLOYEE

General duties.

8. (1) No person, including an employer or employee or any other person, shall do anything that endangers or is likely to endanger the safety, health or welfare of that person or any other person.

(2) An employer occupying or using any premises and each worker performing any work thereon or therein and any user of machinery or plant thereon or therein shall at all times provide facilities as are reasonably required by an inspector to enable the inspector and that inspector's assistant (if any) to perform effectively their functions under this Act.

Duties of an employer.

9. (1) An employer or an occupier shall ensure the safety and health of all employees during employment by securing safe and healthy working conditions in that employer's or occupier's workplace.

(2) An employer shall as far as reasonably practicable ensure by effective supervision, that work is performed in a safe manner and without risks to health or exposure to danger.

(3) An employer shall ensure that there exist a systematic way of identifying, evaluating and controlling hazards at the workplace and such systematic ways are functional at all times.

(4) An employer shall provide free of charge adequate and appropriate personal protective appliances, equipment and clothing to an employee who is performing activities or processes which expose such an employee to wet, dusty or noisy conditions, extreme heat or extreme cold, or to any other poisonous, corrosive or injurious substance or material liable to affect the employee's safety and health or cause undue damage to the employee's clothing.

(5) An employer shall inform an employee of any known hazards or diseases which may exist in connection with that employee's work.

(6) An employer shall ensure that an employee receives the necessary training and instruction to perform the employee's work in such a way as to avoid any danger, or risk to danger, loss of health or injury.

(7) An employer shall inform a safety and health representative, or the safety and health committee, or an employee of any directive or instruction whether written or not written, given to that employer by the Commissioner or by an inspector in connection with the safety and health of that workplace or any directive or instruction so intended by the Commissioner or inspector to be communicated to the employees or their safety and health representatives or the safety and health committee.

(8) In a workplace where there is no safety and health representative or safety and health committee, the employer shall in compliance to subsection (7), communicate the directives directly to the affected employees.

(9) An employer shall conduct that employer's activities in such a manner that persons other than the employees are not exposed to hazards or dangers arising from that employer's activities.

(10) Where the hazard or danger does not originate from the activities of that employer's workplace, the employer shall take reasonably practicable steps to mitigate the effects of such hazard or danger and the person from whose workplace the hazard or danger originates shall pay for the expenses incurred in mitigating the effects of the hazards or danger to the person who mitigated it.

Duties of a self-employed person.

10. Section 9 shall mutatis mutandis apply to a self -employed person and to that person's workplace.

Duties of an employee.

11. (1) An employee shall cooperate and follow instructions given by the employer, Commissioner, inspector or any other person lawfully authorized to give such instructions in keeping the working conditions safe and without risk to health and injury in the field of that activity.

(2) An employee shall, where any means, appliance, equipment or other safety device for securing safety and health is provided by the employer under the provisions of this Act for use and protection of an employee or property in any process, properly use same in accordance with the instructions given by the employer or any person mentioned in subsection (1).

(3) An employee, where a situation becomes unsafe or unhealthy, or an accident occurs and such a situation or accident comes to that employee's knowledge or attention, shall as soon as possible report such a situation or accident to the employer or supervisor who shall report it to the employer as soon as possible.

Duties of manufacturers, importers and users etc.

12. (1) A person who designs, manufactures, imports, or uses any article, substance, machinery or plant at a workplace, shall-

(a) ensure that the article, substance, machinery or plant is safe and without risks to health when properly maintained and used;

(b) provide the necessary information in connection with the proper use for which it is designed and for its proper maintenance; and

(c) ensure that it has been tested and the report of the test shall be made available to the employer, occupier or user.

(2) An employer, occupier or user shall, before an article, substance, machinery or plant is put to its use, ensure that it is safe and without risk to any person's health or life and it complies to any law respecting safety and health.

PART IV: SAFETY AND HEALTH STATEMENT, SAFETY AND HEALTH POLICY, SAFETY AND HEALTH COMMITTEES

Safety and health statement and Policy.

13. (1) An employer shall prepare (both in English and Siswati) a written policy concerning or relating to the protection of the safety and health of his employees at work, including the description of the organization and the arrangements for carrying out and reviewing that policy.

(2) In addition to subsection (1), the employer shall prepare a one page statement of the policy which shall be signed by the Chief Executive Officer or any other person in charge of the workplace and prominently displayed in the workplace where employees normally report for duty.

Election of safety and health representatives.

14. (1) In every workplace, subject to subsection (2) the employees shall elect at least one safety and health representative who shall after introduction to the employer assume the duties specified in section 15.

(2) In a workplace which comprises of departments, every department with five or more employees shall be entitled to at least one safety and health representative elected by the employees in that department. Whilst in case of a workplace where there are no departments, employees shall be entitled to at least one safety and health representative elected by the employees of that workplace.

(3) In compliance with subsection (2), any department with less than five employees, for the purposes of this section shall be caused by the employer to align or affiliate to another department.

(4) A person elected under this section to be a safety and health representative shall be familiar and conversant with the working conditions or activities of that department or operations of that workplace, as the case may be.

(5) An employer shall within three months of the commencement of this Act or from such time the provisions of subsections (1), (2)

and (3) are applicable ensure that the employees elect their safety and health representatives and further ensure that the safety and health representatives are functional in carrying out the duties imposed by section 15.

(6) A safety and health representative shall not incur any civil liability by reason only of the fact that the safety and health representative failed to do anything which that safety and health representative may or is required to do in terms of this Act.

Functions of the safety and health representatives.

15. (1) A safety and health representative shall perform the following functions in respect of a department or workplace to which that representative is appointed -

(a) identify potential hazards;

(b) in collaboration with the employer, investigate the cause of accidents at the workplace;

(c) inspect the workplace including plant, machinery, substance, with a view to ascertaining the safety and health of employees provided that the employer is informed about the purpose of the inspection;

(d) accompany an inspector whilst that inspector is carrying out the inspector's duties at the workplace;

(e) attend meetings of the safety and health committee to which that safety and health representative is a member;

(f) subject to paragraph (g), make recommendations to the employer in respect of safety and health matters affecting employees, through a safety and health committee; and

(g) where there is no safety and health committee, the safety and health representatives shall make recommendations directly to the employer in respect of any safety and health matters affecting the employees.

(2) The functions, duties and training of or by a safety and health representative shall be performed during ordinary working hours and any time reasonably spent by a safety and health representative or an employee in connection with the functions or duties of a safety and health representative shall be time spent by that representative or employee in carrying out duties as an employee of that workplace.

Appointment of safety and health committees.

16. (1) Subject to the provisions of this Act, in a workplace with twenty or more employees, the employer shall within three months after the commencement of this Act, or after commencing business or from such time the number of employees exceed twenty as the case may be set up at least one functioning safety and health committee (hereafter referred to as the committee).

(2) The committee shall have an equal number of representatives both from management and employees and management shall be responsible for the appointments of its representatives whilst the employees shall be responsible for the appointments of the employees representatives.

(3) In pursuance of subsection (2), an employer shall not appoint a representative who shall not have power to bind that employer or make appropriate decisions in the committee in respect of the operations of that workplace.

(4) In pursuance of the provisions of subsection (2), the employees shall appoint to the committee the employees representatives from persons who have or who are appointable under section 14(5).

(5) Where there is more than one committee in a workplace, a safety and health representative appointed under section 14(4) may be appointed to be a member in several committees in that workplace under this section.

Functions of safety and health committee.

17. (1) The committee may -

(a) discuss matters affecting the health and safety of persons at a workplace or any section thereof for which the committee has been established;

(b) make recommendations to the employer or, where the recommendation fail to resolve the matter, to the Chief Inspector regarding any matter affecting the safety and health of persons at a workplace or any section thereof for which such committee has been established; and

(c) discuss any incident at a workplace or a section thereof in which or in consequence of which any person was injured, became ill or died, and may in writing report the incident to the

Chief Inspector, and may perform such other functions as may be prescribed.

(2) The committee shall keep a record of recommendations made to an employer in terms of paragraph (b) and any report made to the Chief Inspector in terms of paragraph (c) of sub-section (1).

(3) The committee shall hold meetings as often as may be necessary, but at least once in every three months, at a time and place determined by the committee.

(4) An inspector may by notice in writing, when the inspector is of the opinion that there is a safety and health issue to be addressed, direct members of the committee to hold a meeting within the time which shall be specified in the notice.

(5) Where more than 10 percent of the employees at a workplace have handed a written request to an inspector for the convening of a meeting, the inspector by written notice shall direct that such a meeting be held.

(6) The committee shall regulate its procedure including its quorum.

(7) For its proper functioning -

(a) the committee may co-opt one or more persons by reason of that person's or those persons particular knowledge of safety and health matters as an advisory member or as advisory members of the committee; and

(b) an advisory member shall not be entitled to vote on any matter during any meeting

(8) If an inspector is of the opinion that the number of safety and health committees established in accordance with section 16(2) for a workplace is inadequate, the Chief Inspector may in writing direct the employer to establish for such a workplace such number of safety and health committees as the Chief Inspector may determine.

(9) All the activities in connection with the functions of the safety and health committee shall be performed during ordinary hours, and any time reasonably spent by an employee in this regard shall be deemed to be time spent by that employee in carrying out that employee's duties.

(10) A safety and health committee or a member thereof shall not incur any civil liability by reason of the fact only that it or that member failed to do anything which it or that member may or is required to do in terms of this Act or any other related Act.

Employees not to be victimized.

18. (1) No employer shall dismiss an employee, or reduce his remuneration, alter his terms or conditions of employment to terms less favourable to that employee by reasons that -

(a) the employer suspects, believes, or knows as a fact that the employee has given information to any person charged with the administration of this Act or any other related Act or Regulations which that employee is required to give; or

(b) the employee has given evidence to a court of law or inquiry made by an inspector or has done anything in which the employee may or is required to do in terms of this Act or any other related Act or Regulations or has refused to do anything which that employee is prohibited from doing by this Act or any other related Act or Regulations.

(2) An employee shall have the right to remove himself or herself from danger when such an employee has reasonable justification to believe there is imminent and serious risk to the safety and health of that employee.

(3) Where the supervisor or employer is not present at the time of removal mentioned in subsection (2), the employee shall immediately after such removal, as is reasonably practicable, inform the supervisor or employer of the fear giving rise to such removal.

(4) The supervisor or employer shall investigate the situation and all the circumstances paying particular attention to the safety and health of the employees and if there is disagreement between an employee and the supervisor or employer, the matter shall immediately be referred by either party to the safety and health committee, where one exists and in the absence of that committee to an inspector.

Tripartite Advisory Technical Committee for occupational safety and health.

19. (1) The Minister shall set up a tripartite advisory technical committee of experts (herein after referred to as the Experts Committee) for occupational safety and health in an advisory capacity to the Labour Advisory Board.

(2) The Experts Committee shall -

(a) collect information on standards of occupational safety and health in all branches of economic activities and propose national standards;

(b) coordinate legislation in occupational safety and health at national level;

(c) recommend formulation and review of the national policy on occupational safety and health;

(d) advise the Labour Advisory Board which in turn shall advise the Minister on the formulation of standards and guidance notes for the purpose of assisting employers and employees to create and maintain an acceptable standard of occupational safety and health; and

(e) perform any other functions assigned to it by the Labour Advisory Board.

(3) The Experts Committee, in carrying out its functions, may conduct research as it deems necessary.

(4) The Experts Committee shall submit its advice and recommendations to the Labour Advisory Board as frequently as it or the Labour Advisory Board thinks necessary.

(5) The Experts Committee shall send a copy of its advice and recommendations submitted to the Labour Advisory Board to the Minister, and the Minister may on receipt of such copy require the Labour Advisory Board to act on such advice or recommendations.

(6) The chairman of the Experts Committee shall make an annual report which shall include the advice and recommendations given by the Experts Committee during the period of reporting, which report shall be presented to the Minister within two months after the end of that year.

Composition of the Experts Committee.

20. (1) The Experts Committee shall be composed of members from government, employers' and employees' organizations.

(2) The Minister shall, by notice in the Gazette, appoint for a term not exceeding three years members of the Experts Committee after consultation with the Labour Advisory Board, and the members shall include -

- (a) the Chief Inspector who shall be the chairman;
- (b) the occupational health specialist from the Department of Labour;
- (c) a senior labour officer from the Workmen's Compensation Division in the Department of Labour;
- (d) a representative from each of the following:
 - (i) Ministry responsible for health matters;
 - (ii) Geological Survey and Mines Department;
 - (iii) Environmental Authority;
 - (iv) Fire and Emergency Services Department;
 - (v) Ministry of Agriculture (Pesticides);
 - (vi) Ministry of Works and Transport;
 - (vii) Ministry of Housing and Urban Development;
- (e) two persons nominated by the employees' federations;

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- (f) two persons nominated by the employers' federations;
- (g) any other persons (not more than two persons) the Minister, in consultation with the Commissioner, may deem necessary to serve in the Experts Committee.

(3). The Minister in consultation with the Minister responsible for Finance, may determine the payment of allowances and the members of the committee to which such allowances may be payable.

Quorum of the committee.

21. The quorum of the Experts Committee shall be half the members appointed to the Experts Committee, which present members shall include at least two members from employees' federations and two from employers' federations.

Procedure of the Experts committee.

22. (1) The Experts Committee shall regulate its procedures including voting, calling of meetings and nomination of a secretary.

(2) Notwithstanding the provisions of subsection (1) the Experts Committee shall hold at least one meeting in every three months of each calendar year.

PART V: REGULATION OF WORKPLACES

Premises becoming unsuitable for use as a workplace.

23. (1) If, in the opinion of an inspector, the whole or part of the premises constituting a workplace is no longer suitable for use as a workplace, the inspector may-

(a) by notice in writing to the occupier, setting forth in what respect the premises are in the inspector's opinion no longer suitable for use as a workplace, and the necessary steps or work that may be carried out to correct or rectify the matter at the workplace, require the occupier to take the necessary steps to correct the situation and make the structural alterations mentioned within the period specified in such notice;

(b) in the same notice mentioned in paragraph (a), require such occupier to submit to the inspector a statement setting forth the steps which such occupier proposes to take and, if structural alterations are proposed, the prescribed plans showing the structural alterations which such occupier proposes to make in order to render the premises suitable for use as a workplace; and

(c) by a second notice in writing to the occupier, require such occupier to comply with the requirements of the notice under paragraph (a) of the proposals or undertaking made under paragraph (b), with modification or without such modification as the inspector may approve within a period specified in such notice.

(2) An occupier who requires the time specified in the inspector's notice extended for a further specified period may in writing, stating the reasons necessitating the extension of time, apply to the inspector.

Provided that if the inspector refuses to grant an extension, the occupier may appeal to the Chief Inspector or Commissioner as the case may be.

(3) The Chief Inspector or the Commissioner as the case may be, shall together with the person who issued the notice, consider and decide on the application and advise the occupier accordingly.

(4) In the event the Commissioner or the Chief Inspector as the case may be, and the person who issued the notice, do not agree on the cause of action, the matter, may by either party be referred to the Minister for a decision.

(5) An occupier or any other person aggrieved by a decision, act, or omission under subsections 1, 2, 3 or 6 may appeal to the Minister.

(6) Notwithstanding the provisions of subsections (2), (3), (4) and (5), the inspector may issue a notice prohibiting an occupier, after the occupier has failed to comply within the specified period in the notice issued under subsection (1), from continuing with operations in that workplace until that workplace is approved by the inspector.

(7) The inspector shall, when considering the unsuitability of a workplace, take into account -

(a) the intention, purposes and objectives of this Act and the Factories, Machinery and Construction Works Act, 1972;

(b) the locality of the workplace;

(c) the effect of that workplace in relation to the nearby or neighbouring workplace;

(d) the type of work carried out in that workplace or the neighbouring workplace;

(e) the manner in which the work is carried out at the workplace or any other neighbouring workplace;

(f) the layout of equipment and machinery at that workplace; and

(g) any other thing or matter the inspector thinks is relevant for the purpose of this Act.

Improvement Notice.

24. (1) Where an inspector is of the opinion that a person is contravening or is likely to contravene any provisions of this Act or Regulations made under this Act, the inspector may issue that person with an improvement notice in accordance with Form "A" in the Third Schedule.

(2) A notice issued by the inspector under sub-section (1), shall amongst other things -

- (a) state the factors giving rise to the inspectors opinion;
- (b) specify the provision or provisions of the Act or Regulations being contravened or likely to be contravened;
- (c) order the person to remedy the contravention or to prevent the contravention within a specified time; and
- (d) state the possible measures the person may take to remedy the contravention or to prevent a likely contravention.

(3) This section shall not be construed as excusing a person from criminal prosecution and it shall not be construed as a requirement before criminal proceedings are instituted.

Prohibition Notice.

25. (1) Where an inspector is of the opinion that a person is undertaking or is about to undertake activities which involve or are likely to involve imminent risk of serious bodily injury or damage to property in contravention of the provisions of this Act or Regulations made under this Act, the inspector may issue that person with a prohibition notice in accordance with form " B" in the Third Schedule.

(2) In the notice under subsection (1), the inspector shall amongst other things -

- (a) state the factors giving rise to the inspector's opinion;
- (b) specify the provision or provisions of the Act or Regulations being contravened or likely to be contravened;
- (c) order the person to cease the activities forthwith and not to resume them until the risk or likely risk of bodily injury or damage to property has been removed; and
- (d) state the possible measures the person may take to prevent the imminent risk of bodily injury or damage to property.

(3) This section shall not be construed as excusing a person from criminal prosecution and it shall not be construed as a requirement before criminal proceedings are instituted.

Appeal against improvement or prohibition notice.

26. (1) A person who has been served with a notice under section 23(6), 24 or 25 may appeal to the Commissioner against the notice

or its contents within 28 days of its receipt and stating the grounds of the appeal in accordance to Form "C" in the Third Schedule.

(2) The Commissioner shall within seven days of receipt of the appeal hear and determine the matter taking into account the purposes of this act.

(3) An appeal under sub-section (1) shall not suspend the effect of the operation of the notice until decided otherwise.

Removal of nuisance near a workplace.

27. (1) Where at any premises near a workplace there exist a nuisance which does or is likely to affect, the safety or health of the persons, products, processes, or general operation in that workplace, the inspector shall issue a notice in writing requiring the occupier or owner of those premises to remove or stop the nuisance within the time which shall be specified in the notice.

(2) Where at any premises near a workplace there is a sanitary defect which does or is likely to affect, the safety and health of persons, products, processes, or general operations in that workplace, the inspector shall issue a notice in writing, requiring the occupier or owner to remove or remedy the defect within the time specified in the notice.

(3) An occupier or owner who has been issued with a notice by the inspector in terms of this section shall comply with the notice within the time specified in the notice.

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PART VI: NOTIFICATION AND INVESTIGATION OF OCCUPATIONAL ACCIDENTS AND DISEASES

Notification of occupational accidents.

28. (1) If any accident in a workplace causes loss of life or prevents any person from continuing that person's normal activities for three days or more, or causes an injury likely to cause a permanent defect, or a dangerous or harmful occurrence which shall or is likely to cause death, serious injury which may or may not cause a permanent defect, the occupier, employer or contractor, as the case may be, shall immediately and as expeditiously as possible notify the inspector thereof and not later than seven days deliver a report, written in the prescribed form in the First Schedule, to the inspector.

(2) All accidents whether minor or major related to employment to a workplace shall be recorded by the occupier, employer or contractor, as the case may be in a register kept for that purpose.

Machinery or equipment not to be removed or altered.

29. (1) No person shall, in case of an accident causing immediate death or serious injury, remove the machinery or equipment involved in the accident or alter or remove any other contributory causes to the accident without the permission of an inspector unless it is for the removal of the injured person.

(2) Where the removal or alteration is made as stated in subsection (1), or at a later time for the purpose of ascertaining the cause or causes of the accident, the scene of the accident shall be properly marked by a person who witnessed the accident or in charge, so that it can be easily indicated where the injured person and the machinery or equipment was positioned before, during (where possible) and after the accident.

Inquiries by inspectors into occupational accidents.

30. (1) If in or about a workplace, or in connection with the activities of a workplace, or in connection with machinery or equipment-

(a) any person is killed or injured as a result of an accident; or

(b) any other occurrence takes place which in the opinion of the inspector might have led to any person being killed or injured, the inspector may investigate and if the inspector deems it necessary hold an inquiry into such accident or occurrence.

(2) Any evidence or facts given at such investigation or inquiry shall be taken down in writing by the inspector and sent together with the inspector's report to the Minister and in the case of an accident causing or likely to cause loss of life or serious bodily injury, the inspector shall send copies of such evidence or facts and the report to the Attorney-General and Director of Public Prosecutions for their determination.

(3) Nothing in this section shall affect any law requiring and regulating inquests or other inquiries in case of death other than natural causes, and in every case of death caused by an accident referred to in subsection (1) there shall be held, in addition to any inquiry in terms of this section, an inquest or inquiry as is required by such law.

(4) The inspector shall not incur any civil liability by virtue of anything contained in the report mentioned in subsection (2).

Witnesses at inquiry.

31. (1) For the purpose of an inquiry referred to in section 30(1) the inspector may summon any person who in the inspector's opinion may be able to give material information concerning the subject of the inquiry or who the inspector suspects or believes has in his possession or custody or control any book, document or thing which has any bearing upon, or which the inspector deems requisite for the proper conduct of the inquiry, to appear before the inspector at a time and place specified in the summons to be questioned or to produce such book, document or thing.

(2) An inspector or any other person who is a commissioner of oaths may call and administer an oath to any person present at the inquiry who was or might have been summoned in terms of subsection (1) and may question or require that person to produce any book, document or thing in that person's possession or custody or control.

(3) If at any inquiry evidence has been given from which it can reasonably be inferred that any person has committed any offence in connection with any occurrence falling within the scope of the inquiry or responsible in any manner for such occurrence, such person may cross-examine any witness giving evidence at such inquiry and may require the inspector to summon any witness on that person's behalf either to give evidence or to produce any book, document or thing in his possession, custody or control which may have a bearing on the inquiry.

(4) Upon receiving any request under subsection (3) for the summoning of any person, the inspector shall, if the inspector considers that the evidence of such person is necessary or desirable, issue Summons after the party making the request deposits with the inspector a sum sufficient to cover the necessary expenses to be incurred by the witness, together with the costs of service of the Summons and the inspector shall decide on the issue of adjournment or non-adjournment of the proceedings.

(5) Any witness who, after having been sworn, gives a false answer to any question put to that person by the inspector or any other person or makes a false statement on any matter, knowing such answer or statement to be false, commits the offence of perjury.

(6) The inspector shall conduct any hearing, inquiry or questioning of any matter in public unless for good reasons the inspector decides otherwise.

(7) Any person called by an inspector in terms of sub-section (1) shall remain in attendance until excused by the inspector from further attendance and shall not refuse to be sworn as a witness and shall not fail to answer satisfactorily to the best of that person's knowledge or belief all questions lawfully put to that person, or to produce any book, document, or thing in that persons possession, custody or control when required to do so.

(8) Any person who has been summoned under subsection (1) and (4) shall not fail without sufficient cause to attend at the time and place specified in the summons.

(9) Any person summoned to appear before an inspector may, if the inspector is satisfied that, that person has by reason of the appearance in obedience to the summons suffered any pecuniary loss or been put to any expense, be paid out of public funds any allowances, or the amount of such loss or expense, whichever is the less.

(10) No person shall willfully hinder or insult an inspector in the exercise of any of the powers conferred by this section or any other provision of this act.

Notification of occupational diseases.

32. (1) If any person who works or has worked in any workplace is certified by a medical practitioner to be suffering from an industrial or occupational disease which appears to be due to the nature of that person's employment or activity, the employer concerned shall notify an inspector thereof and in the prescribed form in the First Schedule unless the industrial or occupational disease has been or is being notified under the Workmen's Compensation Act No.7 of 1983.

(2) Notwithstanding the provisions of any other law, a medical practitioner required to make a report under this section shall do so within reasonable time and in any event not later than three months from the date of the examination of that employee or patient.

Investigation of occupational diseases.

33. (1) An inspector may investigate any industrial or occupational disease at a workplace whether reportable under any law or not, and for that purpose the inspector may require any person working

or who has worked at a workplace to be examined by a duly registered medical practitioner.

(2) Section 30 and 31 shall mutatis mutandis apply to such investigations and inquiries.

(3) A person required under subsection (1) to undergo medical examination shall comply with the inspector's order.

(4) Where the inspector requires that any person be examined under sub-section (1), the expenses thereof shall be borne by the employer.

(5) In addition to the provisions of section 30 and 31 the inspector shall, on receipt of the medical examination report, send a copy to the Workmen's Compensation Medical Board through the Commissioner for its action.

PART VII: PROCEDURE AND MISCELLANEOUS

Acts or omissions by managers, agents or employees.

34. (1) If any employer, manager, user, or agent, does or omits to do any act which it would be an offence under this Act for the occupier, employer or user to do or omit to do, unless it is proved that-

(a) such act or omission occurred without the connivance or permission of the occupier, employer or user;

(b) all reasonable steps were taken by the occupier, employer or user to prevent any act or omission of the kind in question; and

(c) it was not in any circumstances within the scope or authority or in the course of the employment of the manager, agent or employee to do or omit to do acts whether lawful or unlawful of the character of the act or omission charged, the occupier, employer or user, as the case may be, shall be presumed to have done or omitted to do such an act and be liable to be convicted and sentenced in respect thereof, and the fact that he issued instructions forbidding any act or omission of the kind in question shall not, of itself, be accepted as conclusive proof that he took all reasonable steps to prevent the act or omission.

(2) If any manager, agent or employee of any occupier, employer or user does or omits to do any act which it would be an offence for the occupier, employer or user to do or omit to do, he shall be liable

to be convicted and sentenced in respect thereof as if such a person was the occupier, employer or user.

(3) Any manager, agent or employee may be so convicted and sentenced in addition to the occupier, employer or user.

Presumptions and proof by affidavit, etc.

35. (1) If, in any proceedings under this Act, it is proved that any person was present on any premises used as a workplace, such person shall, until the contrary is proved, be presumed to be an employer, occupier, user or employee as the case may be.

(2) In any proceedings under this Act, any statement or entry contained in any book or document kept by the, employer, user or by the manager, agent or employee or found upon the premises concerned shall be admissible in evidence against that person as an admission of the facts set forth in that statement or entry, unless it is proved that the statement or entry was not made by such occupier, employer or user, or by any manager, agent or employee of such occupier, employer or user in the course of that person's work as manager, agent or employee.

(3) If in any proceedings under this Act it is proved that any untrue statement or entry is contained in any record kept by any person, that person shall be presumed, until the contrary is proved, to have intentionally and unlawfully falsified such record.

(4) In any proceedings under this Act an affidavit purporting to be made by an inspector in which it is stated that any person is or was the occupier or the user, shall, subject to subsection (5), on its mere production in those proceedings by any person, be prima facie proof of the fact stated therein.

(5) The officer presiding over the proceedings at which any such affidavit is adduced in evidence may cause the inspector to be summoned to give oral evidence in the proceedings in question or may cause written interrogatories to be submitted to him for reply and such interrogatories and any reply on oath thereto purporting to be a reply from the inspector, shall in like manner be admissible in evidence in such proceedings.

Appeal against decisions of inspectors.

36. (1) Subject to section 23 and 26, any person who is aggrieved by any requirement or decision of an inspector, within twenty eight (28) days after the date of such requirement or decision, may appeal in writing to the Commissioner.

(2) The Commissioner shall consider the appeal and either confirm the decision of the inspector or give such other decision as the Commissioner thinks the inspector ought to have given in terms of the Act.

(3) For the purpose of this section, the Commissioner's decision shall where necessary and applicable be deemed to be the decision of the inspector, given on the date on which the Commissioner gives such a decision.

(4) Any person, including the inspector, who is aggrieved by the decision of the Commissioner under this section may appeal in writing to the Minister who shall make a decision in accordance with the provisions of this Act.

Service of notice.

37. Service of notice to a person required to be served under this Act, shall be served in the same manner or as near as possible to the manner provided for service under the High Court Rules made under the High Court Act, 1954 or those found in the Second Schedule with the necessary changes and the duty to effect service shall lie on the inspector who may solicit the assistance of the Police.

Particulars in a charge.

38. In any charge of an offence under this Act against an occupier, employer or user it shall not be necessary -

(a) to set out the names of the persons in respect of whom the offence is alleged to have been committed, provided all other material particulars are properly set out; or

(b) to state the full names of the accused, provided the name of the ostensible occupier, employer or user, as the case may be, or the usual business name or style is stated.

Institution of Proceedings.

39. The Commissioner, inspector or any other official so delegated by the Commissioner or an aggrieved person may report to, and request the Director of Public Prosecutions to institute Court Proceedings against any person who is suspected to have or is contravening a provision of this Act and the Director of Public Prosecutions shall judiciously act upon the matter of complaint.

Offences and penalties.

40. (1) Any person who -

- (a) contravenes or fails to comply with a provision of this Act;
- (b) contravenes or fails to comply with a directive or notice issued under this Act;
- (c) hinders or obstructs an inspector or any other person in the performance of any functions or directive required to be performed under this Act;
- (d) refuses or fails to comply with a requirement or answer a question, to the best of that person's ability when so required by the inspector or any other person empowered so to do under this Act;
- (e) intentionally falsifies a statement, document, or a thing or gives a false or misleading information to an inspector or any other person entitled to receive a true statement, document or information;
- (f) acts as an inspector when that person is not an inspector;
- (g) refuses to be sworn or to make an affirmation as a witness after that person has been required to do so;
- (h) tempers with or misuses any safety equipment or thing installed or provided to any person, workplace or machinery by an employer, user, occupier or any other person;
- (i) fails to use any safety and health equipment or thing at a workplace or in the course of that person's employment or in connection with the use of plant, machinery, or thing which is provided to that person by an employer, user, occupier,
- (j) evades to be questioned or served with a notice or directive by the inspector;
- (k) intentionally or recklessly does or omits to do a thing at a workplace or in connection with the use of plant, machinery or thing which threatens the safety and health of any person; or
- (l) fails or refuses to provide safety and health equipment, policy or any other thing required under this Act or does anything contrary to the spirit or objectives of this Act,

commits an offence and is liable on conviction, to a fine not exceeding fifty thousand Emalangeni (E50,000.00) or to

imprisonment for a term not exceeding ten (10) years, or to both fine and imprisonment.

(2) Where death has occurred, a court hearing the matter shall not be restricted by the provisions of subsection (1) to impose a higher sentence.

(3) A conviction or acquittal resulting from a prosecution under this Act shall not be a bar or defence to a remedy that is available in any other law including the institution of civil proceedings.

Regulations.

41. (1) The Minister may make regulations as may be necessary to give effect to the provisions of this Act.

(2) Without derogating the powers conferred under subsection (1) the Minister may make regulations in respect of-

(a) health and safety of persons at a workplace or health and safety of persons in connection with the use of plant or machinery, or the protection of persons other than persons at a workplace against risks to health and safety arising from or connected with the activities of persons at a workplace;

(b) the measures to be taken by owners, occupiers and users of buildings intended or being used as workplace or places where equipment or machinery is used or stored to ensure the safety and health of workers;

(c) the design, manufacture, installation, operation, use, handling, alteration, repair, maintenance and conveyance of plant, machinery or safety and health equipment or other thing;

(d) The Manager protective clothing, safety devices and other protective article or equipment to be provided by employers, occupiers and users to employees wherever it is necessary to ensure the employees safety and health;

(e) the first aid equipment and contents thereof to be provided by employers, occupiers or users and the requirement for persons who use them;

(f) the accommodation of persons, facilities and conveyance of employees in, at, to and from the workplace;

(g) the medical examination of employees at a workplace;

(h) the returns, statistics, information and reports which shall be required to be furnished in relation to workplaces, machinery or employees and the time at which, the manner in which, and the persons to whom they shall be furnished, and the records which shall be kept;

(i) the measures to be taken to secure safety of machinery, including steam boilers, air receivers, other pressurized vessels, lifts, hoists and elevators, and the generation and use of electricity at or in a workplace;

(j) the fees which shall be payable for any inspection, examination or testing of plant, machinery or equipment and scrutiny of plans of buildings intended to be used as workplaces;

(k) the duties of contractors, sub-contractors in relation to occupiers, employers or users of plant, machinery or equipment in securing safety and health for employees and other persons affected by their activities;

(l) the measures to be taken to secure safety and health at construction works including planning, coordination of activities, construction and use of scaffolds, ladders, use of lifting machinery, excavation, demolition, roof-work, or provision of protective clothing and equipment to employees.

(3) The Minister may amend, by notice published in the Gazette any schedule to this Act.

(4) Any regulations made under this section may prescribe penalties, which penalties shall not exceed those prescribed by the Act.

(5) Notwithstanding anything contained in section 40 and 41, the Minister by notice in the Gazette, and subject to approval by both Houses of Parliament, may amend the fines provided in this Act but not the terms of imprisonment.

Transitional provision.

42. Any Act or regulations which relates to any matter falling under this Act and which is not inconsistent with this Act shall continue to be in force as if it was made under this Act.