

# Biography



**Willem le Roux** is an Executive Consultant at ENS and was previously Joint Head of the Mine and Occupational Health and Safety practice. He has successfully acted in several large and extensive litigation matters and some of the foremost chemical and metal corporations and mining houses, including one of the largest gold producing mining companies in the world, have enlisted his expertise for high-profile inquests, inquiries, litigation and prosecutions. Such matters include large seismic events and falls of ground, furnace explosions, slimes dam disasters and flammable gas explosions in mines on South Africa's West Rand, Rustenburg area and the Free State.

Willem is the author of *Mine Health and Safety Law*, Volumes 1 to 3, a loose-leaf publication of LexisNexis, first published in 2011. He is also the author of *Occupational Health and Safety Law*, Volumes 1 to 3, a loose-leaf publication of LexisNexis, first published in 2016.

Willem has received high professional ratings by international professionals rating agencies. In 2024, he received the highest rating of Senior Statesman from Chambers in respect of Mine Health and Safety.

# SECOND ANNUAL MINE DUST CONFERENCE 2025

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presented by

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A large, stylized graphic consisting of multiple overlapping, wavy lines in black and yellow, resembling a sound wave or a stylized 'e' shape, positioned on the right side of the page.

*ens.*

## legal implications of excessive exposure to dust and fume in the workplace: criminal, administrative and delictual liability

- **criminal liability** -
  - the Mine Health and Safety Act 29 of 1996 ("**MHSA**") plays various legal obligations on the employer and in certain cases on other persons, to ensure as far as reasonably practicable the health of employees. These provisions are referred to in, amongst others, Sections 2, 5, 6, 10 to 13, 54, 55, 60, 65 and 86 (read with Section 91)
- **administrative liability** -
  - Sections 55A and 55B of the MHSA read with Section 91(1B) make provision for the imposition of an administrative fine in the event of non-compliance with the MHSA or regulations
- **delictual liability** -
  - a natural and juristic person may be held liable for delictual damages (see the discussion below)

**NOTE:** The provisions of the MHSA and a discussion and explanation thereof are contained in WP Le Roux, **Mine Health and Safety Law**, Volume 1 (LexisNexis, loose-leaf publication, Service Issue 18, updated February 2025)



## Section 2 of the MHSa: employer to ensure safety

- Section 2(1) of the MHSa provides, amongst others, as follows:

*"The employer of every mine that is being worked must:*

*(a) ensure, as far as reasonably practicable, that the mine is designed, constructed and equipped:*

*(i) to provide conditions for safe operation and a healthy working environment;*

*(ii) ...*

*(b) ensure, as far as reasonably practicable, that the mine is commissioned, operated, maintained and decommissioned in such a way that employees can perform their work without endangering the health and safety of themselves or of any other person."*



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## Section 2 of the MHPA: employer to ensure safety (*continued*)

- the word "*healthy*" is defined in Section 102 as meaning "*free from illness or injury attributable to occupational causes*"
- the word "*health*" is defined in Section 102 as referring to "*occupational health at mines*". These words are defined as including "*occupational hygiene and occupational medicine*". "Occupational hygiene" are defined as meaning "*the anticipation, recognition, evaluation and control of conditions at the mine, that may cause illness or adverse health effects to persons*"
- the employer's obligations in terms of Section 2(1) to ensure, as far as reasonably practicable, that the mine is designed, constructed and equipped to provide conditions for a "*healthy environment*" is, therefore, very extensive, bearing in mind the above provisions and the definitions referred to



## Section 5 of the MHPA: employer to maintain healthy and safe mine environment

- Section 5 of the MHPA provides, amongst others, as follows:
  - "**5. Employer to maintain healthy and safe mine environment**
  - (1) As far as reasonably practicable, every employer must provide and maintain a working environment that is safe and without risk to the health of employees.
  - (2) As far as reasonably practicable, every employer must-
    - (a) identify the relevant hazards and assess the related risks to which persons who are not employees may be exposed; and
    - (b) ensure that persons who are not employees, but who may be directly affected by the activities at the mine, are not exposed to any hazards to their health and safety."
- the word "hazard" is defined in Section 102 as meaning "a source of or exposure to danger"
- the word "risk" is defined as meaning "the likelihood that occupational injury or harm to persons will occur"



## Section 6 of the MHSa: employer to ensure adequate supply of health and safety equipment

- Section 6 of the MHSa provides, amongst others, as follows:

### **"6. Employer to ensure adequate supply of health and safety equipment**

(1) Every employer must-

- (a) supply all necessary health and safety equipment and health and safety facilities to each employee; and
- (b) maintain, as far as reasonably practicable, that equipment and those facilities in a serviceable and hygienic condition.

(2) Every employer must ensure that sufficient quantities of all necessary personal protective equipment are available so that every employee who is required to use that equipment is able to do so.

(3) Every employer must take reasonable steps to ensure that all employees who are required to use personal protective equipment are instructed in the proper use, the limitations and the appropriate maintenance of that equipment."



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## Section 7 of the MHSA: employer to staff mine with due regard to health and safety

- Section 7 of the MHSA provides, amongst others, as follows:

### **"7. Employer to staff mine with due regard to health and safety**

- (1) *As far as reasonably practicable, every employer must-*
  - (a) *ensure that every employee complies with the requirements of this Act;*
  - (b) *institute the measures necessary to secure, maintain and enhance health and safety;*
  - (c) *provide persons appointed under subsections (2) and (4) with the means to comply with the requirements of this Act and with any instruction given by an inspector;*
  - (d) *consider an employee's training and capabilities in respect of health and safety before assigning a task to that employee; and*
  - (e) *ensure that work is performed under the general supervision of a person trained to understand the hazards associated with the work and who has the authority to ensure that the precautionary measures laid down by the employer are implemented.*
- (2) *The employer may appoint any person with qualifications as may be prescribed to perform any function of the employer in terms of this Act."*



## Section 10 of the MHSA: employer to provide health and safety training

- Section 10 of the MHSA provides, amongst others, as follows:

### **"10. Employer to provide health and safety training**

- (1) *As far as reasonably practicable, every employer must-*
  - (a) *provide employees with any information, instruction, training or supervision that is necessary to enable them to perform their work safely and without risk to health; and*
  - (b) *ensure that every employee becomes familiar with work-related hazards and risks and the measures that must be taken to eliminate, control and minimise those hazards and risks.*
- (2) *As far as reasonably practicable, every employer must ensure that every employee is properly trained-*
  - (a) *to deal with every risk to the employee's health or safety that-*
    - (i) *is associated with any work that the employee has to perform; and*
    - (ii) *has been recorded in terms of section 11;*
  - (b) *in the measures necessary to eliminate, control and minimise those risks to health or safety;*
  - (c) *in the procedures to be followed to perform that employee's work; and*
  - (d) *in relevant emergency procedures.*



## Section 10 of the MHSA: employer to provide health and safety training (continued)

- (3) *In respect of every employee, the provisions of subsection (2) must be complied with-*
- (a) *before that employee first starts work;*
  - (b) *at intervals determined by the employer after consulting the health and safety committee;*
  - (c) *before significant changes are introduced to procedures, mining and ventilation lay-outs, mining methods, plant or equipment and material; and*
  - (d) *before significant changes are made to the nature of that employee's occupation or work."*



*eng.*

## Section 11 of the MHSA: employer to assess and respond to risk

- Section 11 of the MHSA provides, amongst others, as follows:

### **"11. Employer to assess and respond to risk**

- (1) *Every employer must-*
  - (a) *identify the hazards to health or safety to which employees may be exposed while they are at work;*
  - (b) *assess the risks to health or safety to which employees may be exposed while they are at work;*
  - (c) *record the significant hazards identified and risks assessed; and*
  - (d) *make those records available for inspection by employees.*
- (2) *Every employer, after consulting the health and safety committee at the mine, must determine all measures, including changing the organisation of work and the design of safety systems of work, necessary to-*
  - (a) *eliminate any recorded risk;*
  - (b) *control the risk at source;*
  - (c) *minimize the risk; and*
  - (d) *in so far as the risk remains-*
    - (i) *provide for personal protective equipment; and*
    - (ii) *institute a programme to monitor the risk to which employees may be exposed.*



## Section 11 of the MHSA: employer to assess and respond to risk (continued)

- (3) *Every employer must, as far as reasonably practicable, implement the measures determined necessary in terms of subsection (2) in the order in which the measures are listed in the paragraphs of that subsection.*
- (4) *Every employer must-*
  - (a) *periodically review the hazards identified and risks assessed, including the results of occupational hygiene measurements and medical surveillance, to determine whether further elimination, control and minimisation of risk is possible; and*
  - (b) *consult with the health and safety committee on the review.*
- (5) *Every employer must-*
  - (a) *conduct an investigation into every -*
    - (i) *accident that must be reported in terms of this Act;*
    - (ii) *serious illness; and*
    - (iii) *health-threatening occurrence;*
  - (b) *consult the health and safety committee on investigations in terms of this section;*
  - (c) *conduct an investigation in co-operation with the health and safety representative responsible for the working place in which the investigation takes place;*



## Section 11 of the MHSA: employer to assess and respond to risk (continued)

- (d) on completion of each investigation, prepare a report that-
  - (i) whenever possible, identifies the causes and the underlying causes of the accident, serious illness or health-threatening occurrence;
  - (ii) identifies any unsafe conditions, acts, or procedures that contributed in any manner to the accident, serious illness or health-threatening occurrence; and
  - (iii) makes recommendations to prevent a similar accident, serious illness or health-threatening occurrence; and
- (e) deliver a copy of the report referred to in paragraph (d) to the health and safety committee. If there is no health and safety committee the employer must deliver a copy of the report to the health and safety representative responsible for the working place."



*eng.*

## Section 11 of the MHPA: employer to assess and respond to risk (continued)

- it is important to note that in terms of Section 11(5)(a), the employer must conduct an investigation into every "serious illness and health-threatening occurrence"
- the words "serious illness" are defined as meaning "any illness resulting from occupational exposure that affects the health of a person to the extent that it incapacitates the affected person from resuming that person's normal or similar occupation for four days or more"
- the words "health-threatening occurrence" are defined as meaning "any occurrence that has or may have the potential to cause serious illness or damage to health"
- in terms of Section 11(5)(d), an investigation report must identify, amongst others, the causes and underlying causes of the serious illness or health-threatening occurrence
- the report must identify any conditions and acts or procedures that contributed in any manner to the serious illness or health-threatening occurrence
- the report must also contain recommendations to prevent a similar serious illness or health-threatening occurrence



## Section 12 of the MHSa: employer to conduct occupational hygiene measurements

- Section 12 of the MHSa provides, amongst others, as follows:

### **"12. Employer to conduct occupational hygiene measurements**

- (1) *The employer must engage the part-time or full-time services of a person qualified in occupational hygiene techniques to measure levels of exposure to hazards at the mine-*
  - (a) *if required to do so by regulation or a notice in the Gazette; or*
  - (b) *if, after assessing risks in terms of section 11(1), it is necessary to do so.*
- (2) *Every system of occupational hygiene measurements must-*
  - (a) *be appropriate, considering the hazards to which the employees are or may be exposed; and*
  - (b) *be designed so that it provides information that the employer can use in determining measures to eliminate, control and minimise the health risks and hazards to which employees are or may be exposed.*
- (3) *The employer must keep a record of all occupational hygiene measurements in terms of subsection (1) in a manner that can be linked as far as practicable to each employee's record of medical surveillance."*



## Section 13 of the MHSA: employer to establish system of medical surveillance

- Section 13 of the MHSA provides, amongst others, as follows:

### **"13. Employer to establish system of medical surveillance**

- (1) *The employer must establish and maintain a system of medical surveillance of employees exposed to health hazards-*
  - (a) *if required to do so by regulation or a notice in the Gazette; or*
  - (b) *if, after assessing risks in terms of section 11(1), it is necessary to do so.*
- (2) *Every system of medical surveillance must-*
  - (a) *be appropriate, considering the health hazards to which the employees are or may be exposed;*
  - (b) *be designed so that it provides information that the employer can use in determining measures to-*
    - (i) *eliminate, control and minimise the health risk and hazards to which employees are or may be exposed; or*
    - (ii) *prevent, detect and treat occupational diseases; and*
  - (c) *consist of an initial medical examination and other medical examinations at appropriate intervals.*

...



## Section 13 of the MHSa: employer to establish system of medical surveillance (*continued*)

- (5) *An occupational medical practitioner must take every measure that is reasonably practicable to-*
  - (a) *promote the health and safety of employees at the mine; and*
  - (b) *assist employees in matters related to occupational medicine.*
- (6) *If any employee is declared unfit to perform work as a result of an occupational disease, the employer must conduct an investigation in terms of section 11(5).*
- (7) *If an employee is temporarily unfit to perform work as a result of any occupational disease, but there is a reasonable expectation that the employee's health will improve so that the employee can return to work, the occupational medical practitioner must record that fact and notify both the employer and employee of it.*
- (8) *The employer must-*
  - (a) *retain the records referred to in sections 12(3), 13(3)(c) and 14(1) until the mine closes; and*
  - (b) *when the mine closes, deliver those records to the Medical Inspector."*



## Section 54 of the MHSA: inspector's power to deal with dangerous conditions

- Section 54(1) of the MHSA provides, amongst others, as follows:

### **"54. Inspector's power to deal with dangerous conditions**

- (1) *If an inspector has reason to believe that any occurrence, practice or condition at a mine endangers or may endanger the health or safety of any person at the mine, the inspector may give any instruction necessary to protect the health or safety of persons at the mine, including but not limited to an instruction that-*
- (a) *operations at the mine or a part of the mine be halted;*
  - (b) *the performance of any act or practice at the mine or a part of the mine be suspended or halted, and may place conditions on the performance of that act or practice;*
  - (c) *the employer must take the steps set out in the instruction, within the specified period, to rectify the occurrence, practice or condition; or*
  - (d) *all affected persons, other than those who are required to assist in taking steps referred to in paragraph (c), be moved to safety."*



## Section 55 of the MHSA: inspector's power to order compliance

- Section 55(1) of the MHSA provides, amongst others, as follows:

***"55. Inspectors' power to order compliance***

- (1) If an inspector has reason to believe that an employer has failed to comply with any provision of this Act, the inspector may instruct that employer in writing to take any steps that the inspector-*
- (a) considers necessary to comply with the provision; and*
  - (b) specifies in the instruction."*



## Section 60 of the MHSA: initiating investigations

- Section 60(2) of the MHSA provides, amongst others, as follows:

**"60. Initiating investigations**

(1) . . .

(2) At any time an inspector may investigate-

- (a) *any accident or occurrence at a mine that results in the serious injury or serious illness of any person;*
- (b) *any occurrence, practice or condition concerning health or safety of persons at one or more mines; or*
- (c) *any actual or suspected contravention of, or failure to comply with, any provision of this Act."*



## Section 65 of the MHSR: initiating inquiries

- Section 65(1) of the MHSR provides, amongst others, as follows:

**"65. Initiating inquiries**

(1) *Unless the provisions of section 63 have been invoked, the Chief Inspector of Mines must direct an inspector to conduct an inquiry into any accident or occurrence at a mine that results in the death of any person."*



*eng.*

## Section 86 of the MHSA: negligent act or omission

- Section 86 of the MHSA provides, amongst others, as follows:

**"86. Negligent act or omission**

- (1) *Any person who, by a negligent act or by a negligent omission, causes serious injury or serious illness to a person at a mine, commits an offence.*
- (2) *Any person, other than an employer or employee, who, by a negligent act or by a negligent omission, endangers the health or safety of a person at a mine, commits an offence.*
- (3) *...*"



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## Section 91 of the MHSA: failure to comply with the MHSA

- Section 91(1) of the MHSA provides, amongst others, as follows:

### **"91. Failure to comply with this Act**

- (1) *Any person, including an employer, who contravenes, or fails to comply with, any-*
- (a) *provision of this Act;*
  - (b) *regulation; or*
  - (c) *condition, suspension, notice, order, instruction, prohibition, authorisation, permission, consent, exemption, certificate or document determined, given, issued, prescribed or granted by or under this Act by the Minister, Chief Inspector of Mines, inspector, any person authorised under section 49 (4) or any person to whom any power has been delegated or the performance of any duty has been assigned under section 96, commits an offence and is liable to a fine or imprisonment as may be prescribed.*



## Section 91 of the MHSA: failure to comply with the MHSA (*continued*)

- Section 91(1B) of the MHSA provides, amongst others, as follows:

*"(1B) Any employer is liable to a fine in terms of section 55B if the employer contravenes, or fails to comply with, any-*

*(a) provision of this Act;*

*(b) regulation; or*

*(c) condition, suspension, notice, order, instruction, prohibition, authorisation, permission, consent, exemption, certificate or document determined, given, issued, promulgated or granted by or under this Act by the Minister, Chief Inspector of Mines, inspector, any person authorised under section 49 (4) or any person to whom any power has been delegated or the performance of any duty has been assigned under section 96."*



## Section 92 of the MHPA: penalties

- Section 92(5) and (6) of the MHPA provides, amongst others, as follows:
  - "(5) Any person convicted of an offence in terms of any section mentioned in Column 1 of Table 1 of Schedule 8 may be sentenced to a fine or to imprisonment for a period not exceeding the period mentioned in Column 2 of that Table opposite the number of that section.*
  - (6) Any owner convicted of an offence in terms of section 86 . . . may be sentenced to-*
    - (a) . . .*
    - (b) a fine of three million rands or a period of imprisonment not exceeding five years or to both such fine or imprisonment."*
- the effect of Section 92(5) is that the maximum fine or imprisonment is R1million or five years imprisonment in respect of Sections 2, 5, 6, 7, 10 and 11



# Mine Health and Safety Regulations

- Regulation 9.2: occupational hygiene provides, amongst others, as follows:

## **"9.2 Occupational Hygiene**

**9.2 Occupational exposure to health hazards.** (1) *The employer must ensure that the occupational exposure to health hazards of employees is maintained below the limits set out in Schedule 22.9 (2) (a) and (b).*

**9.2 System of Occupational Hygiene Measurements.** (2) *The employer must establish and maintain a system of occupational hygiene measurements, as contemplated in section 12, of all working places where the following hazard limits prevail-*

- (a) *airborne pollutants*
- *particulates  $\geq 1/10$  of the occupational exposure limit;*
  - *gases and vapours  $\geq 1/2$  of the occupational exposure limit;*
- (b) *thermal stress*
- *heat  $> 25,0^{\circ}\text{C}$  wet bulb and/or  $> 32,0^{\circ}\text{C}$  dry bulb and/or  $> 32,0^{\circ}\text{C}$  mean radiant temperature;*
  - *cold  $< 10^{\circ}\text{C}$  equivalent chill temperature; and*
- (c) *noise*
- *$\geq 82\text{dBAeq}, 8\text{h}$ .*



## Mine Health and Safety Regulations (*continued*)

- 9.2 Report to Employer.** (3) *The competent person engaged by the employer in terms of section 12 (1) must, as part of the compliance with section 12 (2) (b), report to the employer on-*
- (a) *the occupational hygiene risk assessment, with specific reference to planning, design, implementation and management of occupational hygiene at the mine;*
  - (b) *the occupational hygiene hazards that may cause illness or adverse health effects to persons, assess the results in terms of the implementation of control systems and the management thereof, and recommend remedial actions to the employer.*

**9.2(4) - (6) . . .**



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## Mine Health and Safety Regulations (*continued*)

- 9.2 Report to Regional Principal Inspector.** (7) *The employer must submit to the regional principal inspector of mines, on forms 21.9 (2) (a); 21.9 (2) (b); 21.9 (2) (c) and 21.9 (2) (d), 21.9.2 (e) and 21.9.2 (f), prescribed in chapter 21, and within 60 days from the end of the relevant reporting period as indicated on each form, reports which contain information on the airborne pollutant, thermal stress and noise aspects of the system of occupational hygiene measurements, established and maintained in terms of regulation 9.2 (2).*
- 9.2 Respiratory Protective Equipment.** (8) *The employer must ensure that all respiratory protective equipment used at a mine, other than body-worn self-contained self rescuers, comply with the South African bureau of Standards Code of Practice, Homologation of Respiratory equipment SABS 0338.*
- 9.2(9) . . . "**



## Mine Health and Safety Regulations (*continued*)

- relevant to this presentation are asbestos, cement, copper, gypsum, iodine, iron oxide, dust and fume, lead, limestone, lithium, manganese, mica, nickel and silica
- see Regulation 22.9(2), which may be found in WP Le Roux, **Mine Health and Safety Law**, Volume 1 (LexisNexis, loose-leaf publication, Service Issue 18, updated February 2025) at REG-118 and further



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## Codes of Practice

- a large number of mandatory Codes of Practice ("**COP's**") relating to occupational hygiene have been required by the Chief Inspector of Mines in terms of Section 9(2) of the MHSA
- these COP's must comply with guidelines issued by the Chief Inspector
- the COP's are contained in WP Le Roux, **Mine Health and Safety Law**, Volume 3 (LexisNexis, loose-leaf publication, Service Issue 18, updated February 2025)



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# ORIGINAL THINKING

Occupational Diseases in Mines and Works Act 78 of 1973 ("**ODMWA**")



## Section 65 of ODMWA: Compensation for occupational diseases

- in terms of ODWMA, a person who suffers from a "*compensatable disease*" is entitled to compensation in terms of the Act
- the words "*compensatable disease*" are defined in Section 1 of ODMWA as meaning -
  - "(a) *pneumoconiosis*;
  - (b) *the joint condition of pneumoconiosis and tuberculosis*;
  - (c) *tuberculosis which, in the opinion of the Certification Committee, was contracted while the person concerned was performing risk work, or with which the person concerned was in the opinion of the Certification Committee already affected at any time within the twelve months immediately following the date on which that person performed such work for the last time*;
  - (d) *permanent obstruction of the airways which, in the opinion of the Certification Committee, is attributable to the inhalation of dust in the course of the performance of risk work*;
  - (e) *any other permanent disease of the cardio-respiratory organs which in the opinion of the Certification Committee is attributable to the performance of risk work*; or



## Section 65 of ODMWA: Compensation for occupational diseases (continued)

- (eA) progressive systemic sclerosis which, in the opinion of the Certification Committee, is attributable to the performance of risk work; or*
  - (f) any other disease which the Minister acting on the advice of a committee consisting of the director and not fewer than three other medical practitioners designated by the Minister, has, subject to the provisions of subsection (2), by notice in the Gazette declared to be a compensatable disease and which, in the opinion of the Certification Committee, is attributable to the performance of risk work at a mine or works".*
- ODMWA applies to controlled mines and controlled works
  - despite the fact that a person may have a claim for compensation against the Compensation Commissioner, such person, may institute a common law claim for delictual damages against the employer (see **Mankayi v AngloGold Ashanti Ltd** 2011 (3) SA 237 (CC) and the discussion in WP Le Roux, **Mine Health and Safety Law**, Volume 2 (LexisNexis, loose-leaf publication, Service Issue 18, updated February 2025), EXP 3-7)



## Section 36A of ODMWA: medical expenses

- Section 36A of ODMWA provides, amongst others, as follows:

**"36A. Medical expenses**

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



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Thank You | Questions

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