

New guideline on medico-legal investigations of mine deaths

By [Kate Collier](#)

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A new [guideline](#) published by the chief inspector of mines aims to provide clarity on the process when the cause of a death on a mine is immediately unclear - due to natural causes or unrelated to mining activities, for example - and determining whether the mining-related activities may have contributed to the cause of death.



Kate Collier

Employers

The following principles, which are reinforced in the guideline are relevant to employers:

- timeous reporting of any death on a mine and the commencement of an investigation in terms of section 11(5) of the Mine Health and Safety Act (MHSA);
- proper barricading of the area where the accident occurred or deceased person was discovered and timeous recordal of names of witnesses and other relevant details. The employer should "note in writing the observations at the accident scene" as well as a need to take photographs of the undisturbed scene and to make a note of environmental conditions; and
- the need to bring the death to the attention of the occupational medical practitioner (OMP), or any medical practitioner as soon as possible, who must certify the death.

A simplified schematic of the roles and responsibilities in the event of a death at a mine is included in the guideline as annexure 1.

The medical practitioner (which may also be the OMP) is required to examine the body of the deceased person and to indicate if the likely cause of death was natural/unnatural causes. If a death is certified as natural, taking into account the factors listed in the Guideline, no further investigation is required.

In cases of uncertain or unnatural causes, a medical practitioner must submit the body of the deceased and all relevant information as soon as possible for a medico-legal examination. This must include annexure 4 to the guideline, the "Referral letter - mine related deaths".

Notably "no medical practitioner may perform a post mortem examination on the body of a deceased person unless it is specifically done in terms of the Inquests Act". This includes "the full involvement and consent of the Saps" unless in the case of a death as a result of natural causes with the consent of the next of kin or consent of the deceased before death. Attendance at the post mortem examination remains regulated by the provisions of section 3(5) of the Inquests Act.

The OMP must also arrange for the removal of cardiorespiratory organs in accordance with Occupational Diseases in Mines and Works Act and ensure that consent from the employee (prior to death) or relatives (after death) has been obtained.

Inspectors

Duties of the various role players from the mine health and safety inspectorate are also reinforced in the guideline. Inspectors are advised to take sworn statements from witnesses wherever possible during the Section 60 MHSA investigation. Any suspected irregularities outside of the scope of the MHSA must be reported to the South Africa Police Service (Saps). Inspectors are also advised to make arrangements and co-ordinate inspections in loco with the mine manager, union representatives and other experts to avoid delays and/or duplication. The mine health and safety Inspectorate must also:

- vigorously follow up recommendations and remedial actions from Section 64 and Section 72 MHSA reports;
- work with the Saps to ensure that all deaths are investigated and that there is no gap in these investigations due to a claim that a death is not related to mining;
- ensure that if the findings of the post mortem examination link the death to activities and conditions at the mine then these activities and conditions are considered during statutory investigations and inquiries under the MHSA; and
- assist the National Prosecuting Authority, Saps and magistrates in the inquest that may follow.

Notably, the medical inspectors can communicate with the OMP for required medical information, may request a copy of the post mortem examination report from the Saps and communicate with the forensic pathologist for relevant information. The post mortem report must be used for purposes of completing the section 60 MHSA investigation report.

The guideline confirms that if there is any uncertainty about whether an accident is mine related or not the matter must be referred to the chief inspector of mines for a ruling.

Post mortem results

Access to and confidentiality of the post mortem examination report is also addressed in the guideline and provides that:

- completed examination reports are to be handed to the Saps investigating officers;
- no copies of the completed relevant documentation/information relating to the post mortem examination may be divulged to any persons except government officials who may require this information to perform duties in terms of

specified legislation, such as the MHSA;

- all other request for completed reports must be referred to the Saps investigating officer or magistrate and that "... attorneys are not government officials and must obtain a copy via the magistrate";
- annexure 3 to the guideline provides further detail on the confidentiality of medico-legal post mortem findings and reports. The principle that no copies of the post mortem report may be divulged to any person except the Saps or the court is re-emphasised. After the report has been made available to the Saps or the court, "official bodies who may require this in terms of a stipulation of any Act, may obtain copies of the post mortem examination reports through the Saps investigation officers or regional magistrates"; and
- where forms are required to be completed - only information stating that a post mortem examination was held and the reference number should be supplied, rather than detail from the post mortem examination itself. That information, or a copy of the report, should then be requested from the Saps or magistrate.

ABOUT THE AUTHOR

Kate Collier is a partner at Webber Wentzel

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