



THE PRESIDENCY

REPUBLIC OF SOUTH AFRICA

DEPARTMENT OF PLANNING, MONITORING AND EVALUATION

SOCIO-ECONOMIC IMPACT ASSESSMENT SYSTEM (SEIAS)

FINAL IMPACT ASSESSMENT FOR OCCUPATIONAL HEALTH SAFETY (OHS)

Final impact assessment

The final impact assessment provides a more detailed assessment of the ultimately legislative proposal. In addition, it identifies (a) mechanisms for monitoring, evaluation and modification as required; and (b) a system for managing appeals that could emerge around the implementation process.

1 Problem statement/Theory of change

1. Summarise the proposal, identifying the problem to be addressed and the roots (causes) of the problem that will be addressed by the new rule.

Summary of the proposal:

The amendment of the Occupational Health and Safety (OHS) Act, 1993 started in 2010 and was necessitated by the Act that was out-dated and not in line with the current developments in the labour market. The Act was no longer addressing all occupational health matters due to changing labour market conditions affecting the workplaces, leading to the achievements of the old Act having some gaps. The gaps contributed to novel occupational health safety challenges, including new safety risks and these resulted in noncompliance and high number of occupational injury and disease cases reported. These challenges could only be addressed through amendments to the 1993 OHS Act. Specifically, the Occupational Health and Safety Amendment Bill intends to reduce the number of workplace fatalities and injuries, with the ultimate goal of preventing them from happening all together.

Problem and Root causes:

Problem	Root Causes
<ul style="list-style-type: none">▪ Increased number of workplace injuries and fatalities.	<ul style="list-style-type: none">▪ Non-compliance to occupational health and safety standards.▪ Inefficiency of the enforcement system due to inadequate capacity and resources to enforce OHS.▪ Inefficiency in the enforcement system due to out-dated OHS Act.▪ Low quantum in respect of the fines and/ or relaxed penalties.

	<ul style="list-style-type: none"> ▪ Increased number of atypical forms of employment contracts. ▪ Inadequate coordination of OHS matters between implementing departments.
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2. Describe the intended outcomes of the proposal:

The outcome will be “reduced number of workplace injuries and fatalities” through the implementation of the following measures:

- safety management system;
- improved risk assessments;
- improved enforcement mechanisms related to administrative fines;
- substantially increased penalties and offences fines;
- occupational health and safety representatives that will be required to be actively involved in inspections at the workplace, which is not the requirement currently);
- greater involvement of Advisory Council for Occupational Health and Safety (ACOHS) administratively in OHS.

3. Describe the groups that will benefit from the proposal, and the groups that will face a cost. These groups could be described by their roles in the economy or society. As a minimum, consider if there will be specific benefits or costs for the poorest households (earning R7000 a month or less); for black people, youth or women; for small and emerging enterprise; and/or for rural development.

a. Beneficiaries:

Groups that will benefit	How will they benefit?
Workers	<ul style="list-style-type: none"> • Workers will be safe from workplace injuries or diseases • Protection of workers from being prejudiced for refusal to work in an unsafe workplace and/or with unsafe equipment
Families of the workers	<ul style="list-style-type: none"> • Secured households income and well-being of family members when their working family members are safe from occupational injuries and diseases
Employers	<ul style="list-style-type: none"> • Production processes won't be interrupted due to workplace accidents • Improved reputation of businesses due to ethical OHS practices
Businesses	Increased production and opportunities due to less OHS incidents and this will result in increased sales

Groups that will benefit	How will they benefit?
Government and citizens	Less workplace incidents will result in uninterrupted production and service rendering which will lead to increased sales/trade by business. That can be converted to increase revenue for government when businesses pay more tax due to increased business earnings. When government and businesses earn more they invest in the economy and that will result in Economic growth which will benefit both government and citizens in different ways, e.g. government increased revenue will be spent on projects or infrastructure that will improve the lives of citizens in many ways.
The Public persons entering the workplace	Improved workplace safety
Compensation Fund	Less COIDA claims
DoH	Savings on medical services offered to sick and injured workers and public persons (due to reduced incidents in the workplace)
Health and Safety consultants	They will benefit because employers may opt to seek the assistance of experts offering services in OHS and who can assist them to comply with the Act. However, the department's inspectors will be mandated to assist employers and only where employers use experts as their own choice.

b. Cost Bearers

Groups that will bear the cost or lose	How will they incur the costs or lose?
DoL	Increased Resource required e.g. Human Resource, HR skills development and tools of trade.
Employers	Implementing safety measures which require: -Training employees about safety, -Ensuring employees have Personnel Protective Equipment (PPE), -Paying fines and penalties for non-compliance
Employers	Institutionalising the Health and Safety Management System
Employers	Employers will bear cost in sourcing services of experts in the OHS field.
Occupational medical	Reduced business due to reduced injuries.

Groups that will bear the cost or lose	How will they incur the costs or lose?
practitioners	
Occupational medical practitioners (OMP)	There may be insufficient business for OMPs if there are fewer numbers of occupational injuries and diseases due to high compliance.

4. Describe the behaviour that must be changed, and the main mechanisms to achieve the necessary changes. These mechanisms may include modifications in decision-making systems; changes in procedures; educational work; sanctions; and/or incentives.
5. Identify the groups inside and outside of government whose behaviour will have to change to implement the proposal (add more lines if required).

This table below covers Number 4 and 5

Groups inside and outside government whose behaviour will have to change	Behaviour that must be changed	Main mechanisms to achieve the necessary changes.
Groups inside government		
DoL	<ul style="list-style-type: none"> • Inspectors are currently not issuing fines • Limited access to workplaces • Incapacity of the inspectorate on new standards. 	<ul style="list-style-type: none"> • Inspectors are given tools and delegated powers to issue fines and to enter workplaces for inspections (both unannounced and per appointment) • Inspectors given powers to seek SAPS back-up to gain access to workplaces. • Capacitate the inspectors on the latest ISO standards through training
Groups outside government		
Workers	Continue to work even when the workplace or equipment are not safe	The amendment makes provision for workers to stop working when they identify a risk and only resume work when the safety risk is mitigated
Employers/self employed	Some employers force workers to work in an unsafe environment/ conditions	The amendments are making a provision for stricter fines that will encourage employers not to prejudice

Groups inside and outside government whose behaviour will have to change	Behaviour that must be changed	Main mechanisms to achieve the necessary changes.
		workers for exercising their safety rights
	Malicious non-compliance by employers	The Acts is clear on the three models of inspection: (1) Advocacy, (2) Inspection/audits, (3) Enforcement, these will encourage compliance. In addition, the strict fines will be a deterrent as well
	Employer's focus was more on identifying risks.	Management systems to be developed, reviewed and implemented- CEO informed of risk areas, monitor the implementation of mitigations and review for safety
	OHS framework not clear	OHS framework now clearer Guidelines developed to assist in the implementation of the legislation.
Contractors/service providers	Contractors/service providers do not act responsibly towards clients and are not held accountable for injuries, fatalities and acquiring of diseases at the workplace.	Greater onus now clearly placed on the service providers/contractors in the amendments.

6. Report on consultations on the proposal with the affected government agencies, business and other groupings. What do they see as the main benefits, costs and risks? Do they support or oppose the proposal? What amendments do they propose, and have these amendments been incorporated in your proposal?

Affected stakeholders	What do they see as main <u>benefits, costs and risks</u>	Do they <u>support or oppose</u> the proposal	What <u>amendments</u> do they propose	Have these amendments been <u>incorporated</u> in your proposal

<p>Government Agencies (name them)</p> <ul style="list-style-type: none"> ▪ Compensation Fund ▪ Public works ▪ NEDLAC ▪ DEA ▪ DMR ▪ DAFF ▪ SAPS ▪ DTI, DPW, EDD, GCIS, Small Business Development ▪ Presentation done to Cluster at Union Buildings on the Bill at which various Government Departments were present and gave inputs. 	<p>Everyone concerned about additional costs.</p>	<p>Generally amendments were accepted by these stakeholders.</p>	<p>The Bill should maximize safety, heavy penalties that can deter non-compliance, explore ways of curbing additional cost to government.</p>	<p>Bill was sent out to various Government Departments prior to one on one engagements.</p> <p>All changes were made.</p>
<p>Business (name them)</p> <ul style="list-style-type: none"> ▪ BUSA ▪ Advisory Council for Occupational Health and Safety. 	<p>Business is particularly concerned about the component dealing with administrative fines.</p> <p>Everyone concerned about possible additional costs.</p>	<p>Administrative fines are the big bone of contention.</p>	<p>They were fully involved in the process and their comments have been written into the Bill during ACOHS and NEDLAC process.</p>	<p>All changes are presented to the Advisory Council for Occupational Health and Safety and only accepted if the ACOHS agrees.</p>
<p>Other groupings (name them)</p> <ul style="list-style-type: none"> ▪ COSATU ▪ FEDUSA ▪ NACTU ▪ Private Specialists <ul style="list-style-type: none"> ○ Mr C Nortje ○ Mr J Naidoo ○ Dr A Banyini 	<p>Labour is happy with the proposed Bill and sees it as having potential of benefitting the workers.</p>	<p>General agreement by labour unions.</p>	<p>They were fully involved in the process and their comments have been written into the Bill.</p>	<p>All changes were effected.</p>

NB: The OHS amendment Bill has not yet been put out for formal public comment.

7. Describe possible disputes arising out of the proposal, and the system for settling and appealing them. How onerous will it likely be for members of the public to lodge a complaint and how burdensome and expeditious is the proposed dispute-settlement procedure?

Group	Possible Dispute	Mechanism to resolve the Dispute
Employer	Disagreement between the employer and the inspectorate	Appealing inspectorate decision, Application to the High Court
Department of Labour	Non-compliance to regulations or health and safety standards by the employer	Appeals process has been written into the legislation

2 Impact assessment

1. Describe the costs and benefits of implementing the proposal to the groups identified in point 6 above, using the following chart. Add more lines if required.

Group	Implementation costs	Cost of changing behaviour	Costs/benefits from achieving desired outcome	Comments
a. DoL/ Government	Capacitating inspectors: R2 – 3 million per year for three (3) years. (This includes travel and the other logistics)	Training on issuing of fines, ethics and etc.	Effective OHS enforcement which will result in high prevention of accidents and injuries at workplaces	Compensation benefits from safer and healthier workplaces. Families and communities benefit for healthier and safer work

Group	Implementation costs	Cost of changing behaviour	Costs/benefits from achieving desired outcome	Comments
				environments. Reduced use of the occupational medical practitioners.
b. DoL/ Government		Awareness campaigns R3 million year-on-year to conduct advocacy.	Reduced incidents.	Key to the success of the new Bill. Frustration of employers reduced or eliminated.
c. Employers/ Business	Institutionalising the case management systems, paying penalties on noncompliance, Buying equipments needed for safety.	Related to awareness raising Budget for campaigns and other awareness programmes Cost of non-compliance	Reduced to no incidents, Healthy and safe workers Increased production	

2. Describe the changes required in budgets and staffing in government in order to implement the proposal. Identify where additional resources would be required for implementation. It is assumed that existing staff are fully employed and cannot simply absorb extra work without relinquishing other tasks.

Area	Change	Resources
Budget	The following changes would need to	Budget from National

	<p>happen in order to ensure successful implementation.</p> <ul style="list-style-type: none"> ▪ Implement the communication strategy ▪ Recruitment for additional inspectors and training of inspectors. Currently DoL only has 120 OHS inspectors. ▪ Tools of trade ▪ IT support ▪ Workshops for employers and others ▪ Guide notes 	<p>Treasury. Compensation Fund to cover some positions for new inspectors</p> <p>At least R5 million over the next 3 years in order to promote the changes that will take place.</p>
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3. Describe how the proposal minimises implementation and compliance costs.

- The three-tier model of inspection would be able to minimize implementation cost to the department;
- Using internal staff for trainings and awareness campaigns,
- Using other departments that engage with companies in order to do the awareness campaigns e.g. DTI, DPW, EDD, GCIS, Small Business Development, etc.

4. Describe the main risks to the achievement of the desired ends of the legislation and/or to national aims that could arise from adoption of the proposal. Add more lines if required.

- a. Resistance by employers to allow inspectors in the workplace;
- b. Safety/ Security of inspectors to gain access to premises;
- c. Fraud/Corruption could deter compliance to this legislation;
- d. Competence levels of inspectors; and
- e. Abuse of the system of provision to stop working when workplace has risks.

3 Managing risk

1. Describe the measures taken to manage the identified risks. Add more rows if necessary.

Identified risk	Mitigation measures
a. Resistance by employers to allow inspectors in premises	<ul style="list-style-type: none"> • Use Nedlac , BUSA, and etc. to mobilise buy-in • Use of criminal procedure (SAPS) Inspectors must be culturally sensitive i.e. Muslim employers go to mosque on a Friday and the inspector must not insist on inspecting premises when the employer is about to leave.

Identified risk	Mitigation measures
b. Safety of inspectors to gain access to premises	<ul style="list-style-type: none"> • Use services of SAPS; • Interact with bodies that operate in that specific industry periodically; • Sign agreements with the appropriate organisations.
c. Abuse of the system of provision to stop working when workplace has risks	<ul style="list-style-type: none"> • This relies on training and awareness to both workers and inspectors to capacitate them on taking those decisions rationally.
d. Corruption could deter compliance to this legislation	<ul style="list-style-type: none"> • Training of officials on ethical and professional conduct. • Anticorruption framework to be developed to guide procedures of capacity building and management of reported cases. • Whistle blowing procedures to be developed. • Continuous workshops on ethical behaviour. • The Amendments allow the health and safety representatives to have direct access to the inspectors, this will help where the employer fails to resolve issues. • The Amendments also allow the employees to leave an unhealthy and unsafe workplace in future and state that they should not be punished for that. These allow the parties to be cautious in resolving problems posing risks in the workplace.
e. Skills levels of inspectors	<ul style="list-style-type: none"> • Continuous training and workshops to appropriate levels.

2. Describe the mechanisms included in the proposal for monitoring implementation, evaluating the outcomes, and modifying the implementation process if required. Estimate the minimum amount of time it would take from the start of the implementation process to identify a major problem and remedy it.
 - Monitor the implementation of the recruitment and skills development plan (inspectors) through the development of a project plan of inspector appointments and capacity building.
 - The department will also have a plan to enhance IT systems of recording Incidents and the data analysis will be conducted frequently to identify problem areas during implementation and develop plans to resolve them.

4 Summary

1. Summarise the impact of the proposal on the main national priorities.

Priority	Impact
Social cohesion	The Amendments will ensure that all businesses comply equally with the OHS Bill regardless of the business owners or dominating workers groups, all workers from different races will be protected.
Security	Reduction of vulnerability in workers and communities because when workers are protected against injuries and diseases, in most cases the DoL noted that incidents that have massive impact occur in occupations that involve vulnerable workers and their communities. Low and unskilled workers are most vulnerable and they are the ones susceptible to OHS incidents and once they are affected their families and communities get affected as well since they were benefiting from the fact that these people are able to work and earn income.
Economic growth and investment	Employers with a healthy and safe workforce should show improved delivery of services. When workers are healthy they become more productive since they do not lose working time off work. There is therefore a direct return healthy work force in a company and that results in increased company earning and subsequent investment and consequently, all things

Priority	Impact
	considered, there should be increased economic growth.
Economic inclusion (employment creation and equity)	Business opportunities for specialised OHS service businesses Employment creation for the inspectors that will be recruited.
Environmental sustainability	The Bill will have indirect impact on the environmental sustainability because in ensuring that workers are safe, companies will be protecting them from environments hazards. Any work performed by an OHS inspector in say a chemical factory, can lead to harmful outcomes for the environment where an incident takes place causing huge spillages. Good health and safety can avoid this.

- Identify the social and economic groups that would benefit most and that would bear the most cost. Add more rows if required.

Main beneficiaries	Main cost bearers
1. Employees/Self employed	1. Employers
2. Any persons entering a place of work	2. The DoL
3. Department of Labour (Inspectorate & Compensation Fund)	
3. Department of Health	
4. Occupational medical practitioners	
5. Approved Inspection Authorities	
6. Any other service provider engaged in the health and safety industry	

- In conclusion, summarise what should be done to reduce the costs, maximise the benefits, and mitigate the risks associated with the legislation. Note supplementary

measures (such as educational campaigns or provision of financing) as well as amendments to the draft itself, if appropriate.

- a. One sure way to reduce costs is to ensure that workshops are rolled out to the provinces to ensure that the employers are clear on what is required of them and furthermore to ensure that they know where to go when they need help.
 - b. To write numerous articles and provide employers and employees/workers the opportunity to interact with the Department.
 - c. To conduct numerous interviews/discussion through different form of media, these will further allow the public to interact live with the DoL.
 - d. A guide note will be developed when the document is finalised which will ensure that all aspects that are raised as possible risks are dealt with in a simple but clear manner in order to ensure compliance.
 - e. Will use the Advisory Council members as a further vehicle to reach its constituencies.
 - f. Provincial stakeholder forums will be used as well to ensure that the Bill is adequately disseminated. The Department has a relatively broad stakeholder network that it will be able to “tap” into.
 - g. Social media structures to be used to ensure that the message is spread systematically over a period of time to allow for structured interaction and feed into the system for consideration.
4. Please identify areas where additional research would improve understanding of the costs, benefits and/or risks of the legislation.
 - Research will be needed to establish benchmark so that the department of Labour know the current situation before implementing the amendments in order to measure the difference that will be made by the amendments once they are implemented.
 5. For the purpose of building a SEIAS body of knowledge please complete the following:

5.1

Department of Labour

5.2

Name of the Official: T. Ramulongo

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5.3 How long did it take the department to complete this template?

2 Months.