



**THE PRESIDENCY  
REPUBLIC OF SOUTH AFRICA**



**employment & labour**

Department:  
Employment and Labour  
REPUBLIC OF SOUTH AFRICA

**SOCIO-ECONOMIC IMPACT ASSESSMENT SYSTEM (SEIAS)**

**REVISED (2019): FINAL IMPACT ASSESSMENT TEMPLATE –PHASE 2**

**NAME OF THE PROPOSAL: Asbestos Abatement Regulations to replace the  
Asbestos Regulation, 2002 under the Occupational  
Health & Safety Act, 85 of 1993.**

1. Please DO NOT ALTER the template and questionnaire
2. Date must be clearly indicated
3. Draft SEIAS report should have a watermark word DRAFT indicating the version and should be accompanied by the supporting documents (draft proposal, M&E plan and pieces of research work)
4. FINAL report will be in PDF format and will be inclusive of the sign-off
5. FINAL report will have the approval stamp of the DMPE on the front cover and will include the signoff
6. Sign off forms are only valid for a period of six months.

## PART ONE: ANALYSIS FOR FINAL SEIAS REPORT

Please keep your answers as short as possible. Do not copy directly from any other document.

### 1. Conceptual Framework, Problem Statement, Aims and Theory of Change

#### 1.1. What socio-economic problem does the proposal aim to resolve?

South Africa was one of the countries that globally dominated the mining of asbestos in the late 1800s until 1970s (te WaterNaude, 2014 and Braun and Kisting, 2006). The existing Asbestos Regulation of 2001 (under the *Occupational Health and Safety Act, 85 of 1993*) was developed with the focus of regulating asbestos handling in the manufacturing and construction industries when South Africa was still producing asbestos containing material such as pipes, roof sheets, ceiling boards and floor tiles from asbestos mined in South Africa. This led to the exposure to asbestos of miners, factory workers, ship-dock workers and communities in and around asbestos mining areas and factories. According to te WaterNaude (2014), after asbestos mining peak in the 1970s, “asbestos was seen as the world’s second most important market-economy producer” which means that this product was in demand globally, necessitating its export and production demand. However, the peak died in 2002/3 when the mining of asbestos was finally stopped in South Africa.

Over and above asbestos being a mining product, its impact was felt in many levels, viz, occupational health (health of workers exposed to asbestos) and environmental health (exposure to asbestos as it became airborne- to the people living adjacent to the mines and other potential sources of asbestos). Braun and Kisting (2006) argue that Environmental exposure was heightened by contemporary sources such as rehabilitated or partially rehabilitated dumps, dried riverbeds, deteriorating housing material amongst other. They further hold that majority of people living around former mining areas used asbestos built hostels and houses as their home until today- which still expose them to asbestos.

While the mining of asbestos was ceased in 2002/3, exposure of people continued as they lived and worked on existing building and other built material containing asbestos thereby shifting the exposure of workers to asbestos from mining and manufacturing to activities where asbestos containing materials (roof sheets, ceiling boards and floor tiles) were removed from building. In 2008 the Department of Environment, Forestry and Fisheries promulgated the *Regulations for the Prohibition of the use, manufacturing, import and export of asbestos and asbestos containing materials. Annexure A*. With this legislation in place, the scope of the 2001 *Asbestos Regulations* becomes outdated and limited in its applicability.

The problem thus arises out of the occupation of buildings with asbestos material which were built during the 1950’s to 1990’s as the existing regulation is silent on how worker-activities on these buildings should be regulated to prevent exposure of workers to asbestos. As stated by Braun and Kisting, “What is striking to any contemporary visitor in the asbestos –mining

regions in Northern Cape, Limpopo and Mpumalanga, is the sheer number of people who suffer from asbestos related disease, many of whom did not work in mines". These are the people exposed to asbestos through building maintenance and similar activities which the 2001 Regulation is not covering.

It has been proven that asbestos is a fibre that, if inhaled, damage lungs, leading to respiratory disorder which in the long term result in death of the affected workers/employees (Braun and Kisting, 2006). The first documented death related to asbestos was in 1906 and in the early 1900s researchers began to notice a large number of early deaths and lung problems in asbestos mining areas. Braun and Kisting called this pandemic "the social production of an invisible epidemic" because it seemed invisible at the time that asbestos kills, to them, it was a deliberate invisibility as these authors believe that policy makers and business people were aware of the impact of asbestos on humans. "the invisibility of asbestos related disease in South Africa, however, involves more than suppression and manipulation of knowledge<sup>1</sup>".

According to Kazan-Allen (2020) and te WaterNaude, 2014, the invisible pandemic resulted in lawsuits against multinational companies that operated asbestos mines and manufacturing in South Africa in the 19<sup>th</sup> and 20<sup>th</sup> century. Specifically, in 1999 more than 7 000 claims were initiated in England against Cape PLC by South African claimants exposed to asbestos during mining and other activities in South Africa. te WaterNaude, 2014 holds that these claims received a settlement exceeding R400 million rands inclusive for environmental exposure and occupational health exposures such as lung diseases treatment and death compensation. During this time, legislation that regulated the exposure to asbestos during the mining and manufacturing phases was in place.

The main socio-economic problem is that workers contract respiratory diseases in the process of working with asbestos materials in these building structures. This causes a burden to the industry and economy when workers are unable to work due to ill-health or unable to earn an income if they pass away. This further have implications for government as the Compensation Fund becomes liable financially to those claiming in accordance with the Compensation for Occupational Injuries and Diseases Act, 1993, while other workers (e.g. workers in the informal economy) exert the burden to public health and other public social security institutions responsible to help them, e.g. Unemployment Insurance Fund and Social Security Agency.

This Asbestos Abatement Regulation therefore provides legal responsibilities and guideline on handling of asbestos with the aim to ensure prevention of exposure of workers to asbestos fibres. This prevention will result in less if not zero cases of asbestos related occupational diseases reported in South Africa.

## 1.2. What are the main root causes of the problem identified above?

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<sup>1</sup> Braun and Kisting, 2006, P1386.

What socio-economic problem does the proposal aim to resolve	What are the main roots or causes of the problem
<p>Workers contracting respiratory diseases caused by their exposure to asbestos in working on existing asbestos building maintenance in the non-mining and manufacturing sectors.</p>	<ul style="list-style-type: none"> <li>▪ Currently, asbestos exposure occur due to asbestos materials in existing buildings and previously mined areas because asbestos is no longer mined, imported nor manufactured in South Africa.</li> <li>▪ Existing asbestos materials on products used in buildings in the 1950s to 1980s continues to expose people to asbestos as buildings were not demolished when asbestos was banned.</li> <li>▪ Unregulated handling of asbestos material by workers in industries other than mining and manufacturing industries.</li> <li>▪ Outdated 2001 Asbestos Regulations which are not in line with the current situation in South Africa where asbestos is no longer mined or where the import or manufacturing of asbestos containing material are prohibited.</li> </ul>

1.3. Summarise the **aims** of the proposal and **how** it will address the problem in no more than five sentences.

The proposed legislation aims to update the 2001 Asbestos Regulations, in order to be in line with the current use and presence of asbestos materials in the country. The alignment of regulations to current situation will enable employers and employees in the labour market to handle asbestos products in a controlled and safe way thereby minimizing chances of contracting asbestos related occupational diseases and related deaths.

1.4. Please describe how the problem identified could be addressed if this proposal is not adopted. At least one of the options should involve no legal or policy changes, but rather rely on changes in existing programmes or resource allocation.

<b>Option 1.</b>	Providing codes of good practice with guidelines on handling asbestos in these sectors that the current regulation exclude.
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## PART TWO: IMPACT ASSESSMENT

**2. Policy/Legislative alignment with other departments, behaviours, consultations with stakeholders, social/economic groups affected, assessment of costs and benefits and monitoring and evaluation.**

2.1. Are other government laws or regulations linked to this proposal? If so, who are the custodian departments? Add more rows if required.

<b>Government legislative prescripts</b>	<b>Custodian Department</b>	<b>Areas of Linkages</b>	<b>Areas of contradiction and how will the contradictions be resolved</b>
Occupational Health and Safety (OHS) Act 1993.	Employment and Labour	These regulations give effect to the OHS Act	Details required on how to handle and manage asbestos materials safely
Asbestos Regulation 2001	Employment and Labour		Out of date with current occurrence of asbestos in South Africa
Regulations for the Prohibition of the Use, Manufacturing, Import and Export of Asbestos and Asbestos-containing Materials, 2007	Department of Environment, Forestry and Fisheries	Prohibition of the use, manufacturing, import and export of asbestos and asbestos containing materials	None

2.2. Proposals inevitably seek to change behaviour in order to achieve a desired outcome. Describe (a) the behaviour that must be changed, and (b) the main mechanisms to bring about those changes. These mechanisms may include modifications in decision-making systems; changes in procedures; educational work; sanctions; and/or incentives.

a) What and whose behaviour does the proposal seek to change? How does the behaviour contribute to the socio-economic problem addressed?

The existing Regulation (Asbestos Regulation - 2001) is aimed at guiding behaviour towards handling asbestos by **workers and employees in non-mining and manufacturing sectors**. This regulation is irrelevant as the subsequent situation in South Africa shifted to **workers exposed to asbestos in the maintenance of old buildings made of asbestos and asbestos related materials**. The Asbestos Regulation - 2001 is therefore limited in ensuring protection of this group of employees and communities who may be exposed to asbestos products. If well regulated, this sector would benefit from a healthy workforce- it is very costly to all parties when employees become sick, as they lose work-time, wages as their health are compromised. Employers on the other hand will experience production loss, income and further

investments, which in-turn also affect the economy at large due to low GDP for example.

b) How does the proposal aim to bring about the desired change?

The proposed regulation will update the 2001 Asbestos Regulation and align it with the current use and presence of asbestos containing materials. At the time of the previous regulation (2001), South Africa was still mining and manufacturing asbestos containing building materials, thus the regulations addressed the asbestos exposure in those work environments. The proposed regulation will thus address the situation where asbestos is in place in buildings and exposure occurs during maintenance of such buildings.

Specifically, the proposed regulation will also change the approach to the removal of asbestos projects according to their magnitude - with regards to small, low risk asbestos removal, bigger volume, medium risk asbestos removal and big volume and /or high risk asbestos removal projects such as removal of asbestos lagging (raw asbestos).

This approach will amongst others allow for small (<10m<sup>2</sup>) removal projects with no addition of financial cost due to the appointment of a registered asbestos removal contractor to remove the material and the monitoring of exposure by an Approved Inspection Authority. These removal projects are conducted within restrictions of set limits for volume, type of material, time and method of removal – resulting in the expectance of negligible health risk.

The proposed regulation will require the development of a management plan for asbestos materials that were identified in buildings which can easily be achieved by the employer/ building owner themselves. This can be achieved by developing a site specific written plan that indicates the future activities to maintain and /or removal of asbestos containing materials with an appropriate time schedule.

### **2.3. Consultations**

a) Who has been consulted inside of government and outside of it? Please identify major functional groups (e.g. business; labour; specific government departments or provinces; etc.); you can provide a list of individual entities and individuals as an annexure if you want.

The proposed Asbestos Abatement regulations were published for public comments on 19 January 2018 for a 90 day period to allow for interested and affected parties to comment and provide inputs. The Department of Employment and Labour also embarked on hosting

workshops to present the Draft regulations in Johannesburg, Durban, Cape Town and Port Elizabeth during February, March and April 2018. A total of 342 delegates attended the four workshops and provided inputs on the draft regulations.

The draft regulations were also presented to the Multi-Stakeholder Committee on Chemicals Management (MCCM) hosted by the Department of Environmental Fisheries and Forestry on 21 February 2018. Members were also invited to provide comments and inputs. Government Departments represented at the MCCM were: Department of Water and Sanitation, Department of Health, Department of Transport, Department of Trade, Industry and Competition, Department of Agriculture, Land Reform and Rural Development and Department of Basic Education. NGO's and Industry Associations represented include CAIA, RPMASA, Groundworks and SAPEMA.

Stakeholders at both the workshops and MCCM agreed that the review of the 2001 Asbestos Regulations were overdue and that the draft aligns well with the current situation in South Africa as well as the Regulations for Prohibition of the Use, Manufacture, Import and Export of Asbestos and Asbestos Containing Material, published by Department of Environmental Affairs in 2008.

- Amendment was proposed to clarify “type 1 asbestos work” to include a time frame – this was done.
- A recommendation was made to incorporate a mandatory “banning” or phase –out time period for all asbestos materials to be removed. – This was not agree to because of the volume of asbestos still in place in South Africa and the exorbitant cost that a total ban would involve and the fact the landfill sites would not be able to accommodate the volume of asbestos waste in the case of a total phase-out.

The Occupational Health and Safety Act provides for a well-established dispute-settlement processes within the Department of Employment and Labour, which allow for a decision from the Labour Inspector of Department of Employment and Labour to be appealed. Section 35 of this Act also allows for application for exemptions. Section 40 of the Act further allows for both these processes to be expedited.

***Section 35 of the Occupational Health and Safety Act 85 of 1993 as amended:***

*35. Appeal against decision of inspector. - (1) Any person aggrieved by any decision taken by an inspector under a provision of this Act may appeal against such decision to the chief inspector, and the chief inspector shall, after he has considered the grounds of the appeal and the inspector's reasons for the decision, confirm, set aside or vary the decision or substitute for such decision any other decision which the inspector in the chief inspector's opinion ought to have taken.*

***Definition:*** "inspector" means a person designated under section 28;

***Section 28 of the Occupational Health and Safety Act 85 of 1993 as amended:*** 28. Designation of inspectors by Minister. - (1) The Minister may designate any person as an inspector to perform, subject to the control and directions of the chief inspector, any or all of the functions assigned to an inspector by this Act.

A complete reflection of all comments and inputs received during the 90-day public comment phase are provided in **Annexure B**.

**Consulted Government Departments, Agencies and Other Organs of State**

<b>Department's name</b>	<b>What do they see as main <u>benefits</u>, <u>Implementation/</u> <u>Compliance costs</u> and <u>risks</u>?</b>	<b>Do they <u>support</u> or <u>oppose</u> the proposal?</b>	<b>What <u>amendments</u> do they propose?</b>	<b>Have these amendments been <u>incorporated</u> in your proposal? If yes, under which section?</b>
Department of Health	Reduced health risk due to asbestos. Improved asbestos management nationwide.	Support	None	
Department of Basic Education	Improved safety at schools due to better asbestos management of asbestos in school buildings	Support	None	
Department of Environment, Fisheries and Forestry	Co-ordination with draft national asbestos management plan		Including of "Environmental asbestos" management	Yes, Regulations 20 and 21

**Consulted stakeholders outside government**

**Complete matrix of public comments received and considered - included in Annexure E.**

<b>Name of Stakeholder</b>	<b>What do they see as main <u>benefits</u>, <u>Implementation/</u> <u>Compliance costs</u> and <u>risks</u>?</b>	<b>Do they <u>support</u> or <u>oppose</u> the proposal?</b>	<b>What <u>amendments</u> do they propose?</b>	<b>Have these amendments been <u>incorporated</u> in your proposal?</b>
CAIA – Chemical and Allied Industry Association		Support		



MBA- Master Builders Association	Requirement of several risk assessment to be performed	Oppose	Risk assessment at different stages to be reconsidered. Repetition of risk assessment is cumbersome	No. Risk assessment is required for asbestos in place, as well as a separate risk assessment when asbestos is to be removed.
NIOH – National Institute for Occupational Health		Support		
Nershco – Private Company	Possible abuse of allowance for Type 1 Asbestos work.	Oppose	Type 1 asbestos work will be abused. Workers performing type one asbestos work would be exposed to unacceptable health risk.	Yes, Definition of type 1 asbestos work has been amended to include a specific time frame
SAIOH – Southern African Institute for Occupational Hygiene		Support		
Saioh – South African Institute of Occupational Safety and Health		Support		
SASOL		Support		
TRANSNET		Support		
UCT Family Medicine (University of Cape Town)		Support		
Western Cape Government		Support		
Individuals: C Coetzee, K Davies, C Bardenhorst, M Ginster, H Gaze, M Mapeka, T Madumaela, SW Ogunyeni, M Pullen, K Roets,	Impracticality of labelling of asbestos materials. Type 1 asbestos work open for abuse. OEL in line with sampling method. Update of sampling method. Training requirements broken into categories.	Support		

P Wepener, H Van Aswegen, F Shaik, J v Rensburg, R VD Merwe				

- b) Summarise and evaluate the main disagreements about the proposal arising out of discussions with stakeholders and experts inside and outside of government. Do not give details on each input, but rather group them into key points, indicating the main areas of contestation and the strength of support or opposition for each position
- Some uncertainty was raised about the implementation of “type 1 asbestos work”. This was mainly addressed by clarifying the definition and providing detail in the explanatory notes as stated below.
    - **Type 1 asbestos work** is intended to allow for the painting of asbestos cement products without any surface preparation beforehand. It is also to allow for small once-off removal of asbestos cement products less than 10 square meters (or equivalent piping). This type of work may not be repeated on the same premises or site within 6 months, but only after 6 months may another 10 square meter asbestos cement product be removed. This type of work may not be repeated by the same person or persons within 6 months.
    - Persons performing type 1 asbestos work do not need to register with the Chief Inspector.
    - Asbestos cement products include building materials that were manufactured using moulding and compression techniques or consisting of a hardened mixture of asbestos fibres, cement and water.
  - The provision of labels on asbestos containing materials was over complicated- this was addressed through provision of explanatory notes as follows:
    - All asbestos containing building materials must be legibly marked and labelled using the pictogram specified in **Annexure 1**. (This is an Annexure to the Draft Regulations) For example where a roof contains asbestos containing materials – the “asbestos label” should be placed at the access points to the roof such as the ceiling access panel or roof ladder.

#### 2.4. Assessment of costs and benefits to stakeholders inside and outside of government

Stakeholders	Inside or Outside Government	Cost	Benefit
Employers	Outside	Training of employees ± R500 per person	Reduction in health risk due to asbestos exposure

		Obtaining registration with the Department are free of cost	Monitoring and control of asbestos exposure
Building owners	Outside	Identifying asbestos in place and developing management plans the cost of laboratory analysis of one bulk sample is ± R600	Control of health risk to occupants due to asbestos exposure
Department of Public Works (Owners of government buildings)	Inside	Identifying asbestos in place and developing management plans the cost of laboratory analysis of one bulk sample is ± R600. Develop inventories of asbestos in place	Reduction in health risk due to asbestos exposure
Department of Employment and Labour	Inside	Cost of training Inspectors Cost of informing stakeholders	Controlling and monitoring risk to the workers

2.5. Describe the groups that will benefit from the proposal, and the groups that will face a cost. These groups could be described by their role in the economy or in society. Note: NO law or regulation will benefit everyone equally so do not claim that it will. Rather indicate which groups will be expected to bear some cost as well as which will benefit. Please be as precise as possible in identifying who will win and who will lose from your proposal. Think of the vulnerable groups (disabled, youth women, SMME), but not limited to other groups.

List of beneficiaries (groups that will benefit)	How will they benefit?
Workers exposed to asbestos	<ul style="list-style-type: none"> <li>▪ Improved health due to the prevention and control of occupational exposure to asbestos.</li> </ul>
Employers working on asbestos material handling	<ul style="list-style-type: none"> <li>▪ Staff retention and longer work life for employees.</li> <li>▪ Employers saving on work-days lost to medical treatment due to their better health.</li> <li>▪ Low training costs as staff retaining results in keeping skilled workers.</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Stable or increased production levels when Employees will be safe from workplace asbestos related diseases. Their moral will be increased.</li> <li>▪ Protection of employees from unsafe workplace.</li> </ul>
Families of the employees	<ul style="list-style-type: none"> <li>▪ Secured households income and well-being of family members.</li> </ul>
Compensation Fund	<ul style="list-style-type: none"> <li>▪ Less COIDA claims.</li> </ul>
Unemployment Insurance Fund	<ul style="list-style-type: none"> <li>▪ Less UIF claims.</li> </ul>
Department of Health	<ul style="list-style-type: none"> <li>▪ Savings on medical services offered to ill employees.</li> </ul>
Communities in “asbestos areas”	<ul style="list-style-type: none"> <li>▪ Improved health due the limiting air borne asbestos through management of asbestos.</li> </ul>

List of cost bearers (groups that will bear the cost)	How will they incur / bear the cost
Employers	<ul style="list-style-type: none"> <li>▪ Institutionalising the new regulation systems: For a Construction company to register as a registered asbestos contractor they would need to meet particular training and medical requirements for employees and acquire equipment – the cost of obtaining this would be carried by the Contractor.</li> <li>▪ Employers will have to implement safety measures required.</li> <li>▪ Training employees about safety as per regulation.</li> <li>▪ Ensuring employees have Personnel Protective Equipment (PPE)</li> <li>▪ Pay fines and penalties for non-compliance</li> </ul>
Building owners/ occupiers	<ul style="list-style-type: none"> <li>▪ Cost could be incurred to identify asbestos in place and develop a management plan.</li> <li>▪ The cost of removing and disposing the asbestos would also be carried by the owners.</li> </ul>
Government- Compensation Fund, Social Security Agency and Public Hospitals	<ul style="list-style-type: none"> <li>▪ Compensation Fund will save on costs for compensating claims, for medical treatment and rehabilitation of affected workers</li> <li>▪ Workers will be employed for longer and not become prematurely dependant on social grant benefits</li> <li>▪ Burden to hospitals and clinics will be reduced when asbestos related diseases are</li> </ul>

	reduced or eliminated through this regulation.
Medical practitioners	<ul style="list-style-type: none"> <li>▪ Reduction in clients due to reduced asbestos related illnesses.</li> </ul>
Department of Employment and Labour.	<ul style="list-style-type: none"> <li>▪ Increased Resource required in the form of inspector skills development and other tools of trade</li> </ul>

2.6 Describe the costs and benefits of implementing the proposal to each of the groups identified above, using the following chart. Please do not leave out any of the groups mentioned, but you may add more groups if desirable. Quantify the costs and benefits as far as possible and appropriate. Add more lines to the chart if required.

*Note: "Implementation costs" refer to the burden of setting up new systems or other actions to comply with new legal requirements, for instance new registration or reporting requirements or by initiating changed behaviour. "Compliance costs" refers to on-going costs that may arise thereafter, for instance providing annual reports or other administrative actions. The costs and benefits from achieving the desired outcomes relate to whether the particular group is expected to gain or lose from the solution of the problem.*

*For instance, when the UIF was extended to domestic workers:*

- *The implementation costs were that employers and the UIF had to set up new systems to register domestic workers.*
- *The compliance costs were that employers had to pay regularly through the defined systems, and the UIF had to register the payments.*
- *To understand the inherent costs requires understanding the problem being resolved. In the case of UIF for domestic workers, the main problem is that retrenchment by employers imposes costs on domestic workers and their families and on the state. The costs and benefits from the desired outcome are therefore: (a) domestic workers benefit from payments if they are retrenched, but pay part of the cost through levies; (b) employers pay for levies but benefit from greater social cohesion and reduced resistance to retrenchment since workers have a cushion; and (c) the state benefits because it does not have to pay itself for a safety net for retrenched workers and their families.*

Group	Implementation costs	Compliance costs	Costs/benefits from achieving desired outcome	Comments
Workers exposed to asbestos	None- cost to be carried by employers	none	Improved health	
Employers of workers working with asbestos	Cost of meeting registration (Registered asbestos contactor) requirements. Cost of training workers, Cost of medical tests and Cost of equipment.	Cost of meeting registration requirements. Fines for non-compliance.	Improved workforce health, Qualifying to get jobs when they exist due to meeting required compliance	
Building owners/ occupiers	Cost of identifying asbestos containing materials, labelling it and managing it, Implementation of own management plan		Benefitted through improved measure of safeguarding against asbestos risks	

2.7 Cost to government: Describe changes that the proposal will require and identify where the affected agencies will need additional resources

- a) Budgets, has it been included in the relevant Medium Term Expenditure Framework (MTEF) and

Training cost for Department of Employment and Labour Inspectors are already included into the Departmental budget – no additional costs are expected. Due to the current situation regarding the COVID-19 pandemic, training will be conducted on virtual platforms (software already in place) thus eliminating travel cost to provide training to Inspectorate nationwide. Personal protective equipment that Inspectorate may need is already provided for in Provincial budgets –as inspections are already required, thus not new expenditure.

- b) Staffing and organisation in the government agencies that have to implement it (including the courts and police, where relevant). Has it been included in the relevant Human Resource Plan (HRP)

No new staffing requirement is expected as Provincial Offices and Labour Centres are already expected to preform inspections and assess plans of asbestos related work.

*Note: You MUST provide some estimate of the immediate fiscal and personnel implications of the proposal, although you can note where it might be offset by reduced costs in other areas or absorbed by existing budgets. It is assumed that existing staff are fully employed and cannot simply absorb extra work without relinquishing other tasks.*

2.8 Describe how the proposal minimises implementation and compliance costs for the affected groups both inside and outside of government.

**For groups outside of government (add more lines if required)**

<b>Group</b>	<b>Nature of cost (from question 2.6)</b>	<b>What has been done to minimise the cost?</b>
Employers	Training of employees Safeguarding employees	Costs are not new – these are already requirements in 2001 legislation. (training of one employee range between R500 and R700 per session/person)  Asbestos training can be incorporated into induction training practical. Training may be provided “In-house” where resources are available.
	Obtaining registration with the Department or subcontracting to a Registers Asbestos Contractor	No cost for registration with the Department.
Building owners	Identifying asbestos in place and developing management plans	The identifying of asbestos in place is not a new requirement. (the cost of laboratory analysis of one bulk sample is ± R600) Development of management plan can be conducted “in-house” with knowable persons. Guidance documents developed by Department of Employment and Labour.

**For government agencies and institutions:**

<b>Agency/institution</b>	<b>Nature of cost (from question 2.6)</b>	<b>What has been done to minimise the cost?</b>
Government (Department of Employment and Labour)	No new expenditure	No new staff or financial expenses was incorporated in the the Draft regulations
Department of Public Works (Owner of government buildings)	Management of asbestos in place	Existing staff within the Department can manage the asbestos identified. Incorporation into existing maintenance programs

## 2.9 Managing Risk and Potential Dispute

- a) Describe the main risks to the achievement of the desired outcomes of the proposal and/or to national aims that could arise from implementation of the proposal. Add more lines if required.

*Note: It is inevitable that change will always come with risks. Risks may arise from (a) unanticipated costs; (b) opposition from stakeholders; and/or (c) ineffective implementation co-ordination between state agencies. Please consider each area of risk to identify potential challenges.*

- b) Describe measures taken to manage the identified risks. Add more rows if necessary.

*Mitigation measures means interventions designed to reduce the likelihood that the risk actually takes place.*

Identified risk	Mitigation measures
Time required to comply	The draft addressed the timeframe for new requirements such as the development of a management plan and labelling of asbestos materials by stipulation a implementation date 18 months from the date of promulgation
Limited knowledge to comply	<p>Explanatory notes to the Regulations have been developed. Also a documents addressing Frequently asked questions (FAQ) and answer along with several guideline documents have been developed and will be published on the Department of Employment and Labour's website and distributed to all stakeholders.</p> <p>Workshops / virtual workshops will be hosted by the Departments on the new Regulations once promulgated for all stakeholders.</p> <p>The Department will be available to make presentations on invitation relating to the Regulations.</p>



- c) What kinds of dispute might arise in the course of implementing the proposal, whether (a) between government departments and government agencies/parastatals, (b) between government agencies/parastatals and non-state actors, or (c) between non-state actors? Please provide as complete a list as possible. What dispute-resolution mechanisms are expected to resolve the disputes? Please include all of the possible areas of dispute identified above. Add more lines if required.

*Note: Disputes arising from regulations and legislation represent a risk to both government and non-state actors in terms of delays, capacity requirements and expenses. It is therefore important to anticipate the nature of disputes and, where possible, identify fast and low-cost mechanisms to address them.*

Disputes relating to the Regulations are not expected as the regulations were drafted in consultation with Organised Labour and Business. The draft was approved by the Minister's Advisory Council consisting of Government Departments, UIF as well as Organised Labour and Business. The Draft was published for public comments for 90 day and all inputs considered. The Draft Regulations was presented to Stakeholders at workshops and several different forum meetings explaining the reasoning behind requirements.

However, the Occupational Health and Safety Act 85 of 1993, through Section 35 make provision for the decision of an Inspector to be appealed. This option would be available to address any disputes on the enforcement of the draft regulations.

Nature of possible dispute (from sub-section above)	Stakeholders involved	Dispute-resolution mechanism
Application of regulations to a private household. The Banking sector for example can not use the regulations to enforce any requirements on a house seller where a home may contain asbestos.	Home owners (Without any employees)	The regulations are only applicable to employers and self employed persons. Only if a person is employed in that home, then the regulations will be applicable. The Department of Employment and Labour does not have jurisdiction over a home owner unless someone is employed in that home.
Training and quality requirements for technicians counting asbestos fibres	Laboratories counting asbestos fibres	Work with industry stakeholders to develop requirements for training, proficiency schemes and unit standards on training, qualifications, continued development and possible registration

Would it be possible to establish or use more efficient and lower-cost dispute-resolution mechanisms than those now foreseen? These mechanisms could include, for instance, internal appeals (e.g. to the Minister or a dedicated tribunal) or mediation of some kind.

Occupational Health and Safety Act 85 of 1993, through Section 35 makes provision for the decision of an Inspector to be appealed. There is NO cost for raising an appeal to the Department of Employment and Labour.

Nature of possible dispute	Proposed improvement in dispute-resolution mechanism
N/A	No cost applicable

## 2.10 Monitoring and Evaluation

- a) When is implementation expected to commence after the approval of the proposal?

Compliance to the Regulations requirements are expected to commence at the time of promulgation by the Minister of Employment and Labour, through publication in the Government Gazette as this draft only replaces an existing regulation from 2001. However, Regulation 6 and regulation 20 will come into effect 18 months after the promulgation of the Regulations, to allow employers to develop management plans and label identified asbestos materials. This is stipulated in regulation 27 (2) of the draft.

- b) Describe the mechanisms that you will apply to monitor the implementation of the proposal after being approved.

Through the draft regulations the duty for implementation is placed on every employer and self-employed person who may be exposed to asbestos.

The Department of Employment and Labour’s Inspection and Enforcement Branch (IES) has a national footprint. Through the IES Inspectorate the compliance of employers with the draft regulations will be inspected and enforced.

Inspectors are appointed in accordance with **Section 28 of the Occupational Health and Safety Act 85 of 1993 as amended: 28. Designation of inspectors by the Minister. (1) The Minister may designate any person as an inspector to perform, subject to the control and directions of the chief inspector, any or all of the functions assigned to an inspector by this Act.**

The Provincial offices of the Department of Employment and Labour report on a monthly basis on the numbers of inspections conducted, the number of notices issued to employers and the number of prosecutions undertaken. The Provincial Offices will thus report on the compliance (implementation by employers) with the proposed regulation and steps taken to ensure compliance.

c) Who will be responsible for monitoring the implementation of this proposal?

The IES Branch of the Department of Employment and Labour will be responsible for monitoring of implementation by employers.

Practical monitoring can happen when the Department is notified of asbestos work, when inspections are conducted or complaints and incidents investigated. All these monitoring functions are conducted by Inspectors within the IES Branch of the Department of Employment and Labour.

d) What are the results and key indicators to be used to for monitoring? Complete the table below:

<b>Results</b>	<b>Indicators</b>	<b>Baseline</b>	<b>Target</b>	<b>Responsibility</b>
Impact: long term result (change emanating from the implementation of the proposal in the whole of society of parts of it) Eradication of asbestos related fatalities	Reduction asbestos related fatalities acquired from occupational exposure..	Current number of fatalities (this should be informed by the diagnostic research of the problem)	50% reduction of fatalities by 2035	Department of Employment and Labour & Industry
Outcome: medium term result (what beneficiaries achieve as a result of the implementation of the proposal)  Reduced adverse health effects on asbestos workers	Rate of respiratory cases reported on asbestos workers	Current number of fatalities (this should be informed by the diagnostic research of the problem)	30% less respiratory diseases reported on asbestos workers	Reduction of fatalities and adverse health effect due to asbestos Department of Employment and Labour and Industry
Outputs: direct results of the activities  Improved knowledge of the asbestos regulations by workers and employers	Number of trainings on asbestos regulations	0	3 National Workshops	Department of Employment and Labour, IES Branch
Outputs: direct results of the activities  Improved compliance to asbestos regulations by workers and employers	Number of inspections conducted to monitor compliance to asbestos regulations by employers	0	Inspection of 50% of all asbestos notifications received by the Department of Employment and Labour	Department of Employment and Labour, IES Branch

- e) When will this proposal be evaluated on its outcomes and what key evaluation questions will be asked? Below please find evaluation questions for your consideration:

The outcome of implementation will be monitored on a monthly, quarterly and yearly basis within the Department of Emolument and Labour. The legislation will contribute to the protection of human resources and human health.

The legislation will be monitored and the Advisory Council on Occupational Health and Safety to the Minister of Department of Employment and Labour may instruct to revision of the regulations if it sees fit. Alternatively when there are new developments or policy changes or improved technology available the legislation may be reviewed.

- i. *What was the quality of proposal design/content? (Assess relevance, equity, equality, human rights)*
- ii. *How well was the proposal implemented and adapted as needed? (Utilise the Monitoring and Evaluation plan to assess effectiveness and efficiency)*
- iii. *Did the proposal achieve its intended results (activities, outputs and outcome) as per the Monitoring and Evaluation plan?*
- iv. *What unintended results (positive and/or negative) did the implementation of the proposal produce?*
- v. *What were the barriers and enablers that made the difference between successful and failed proposal implementation and results*
- vi. *How valuable were the results of your proposal to the intended beneficiaries?*

- f) Please provide a comprehensive implementation plan

The plan will be finalised in the next financial year considering:

- **Timeframes:** The regulations will be implemented by employers once the regulations has been promulgated, except for regulations 6 and 20 (6 – *asbestos management plan* and 20 *labelling of asbestos containing materials*) these will be implemented 18 months after promulgations by the Minister of Department of Employment and Labour.

- **Stakeholder engagement:** Department of Employment and Labour will publish the regulations and provide Workshops to interested stakeholders within industry on the regulations to assist in implementation, within 6 months after promulgation. Once published industry associations will be made aware of the new requirements stipulated within the regulations. Industry associations will be requested to inform their members accordingly. Explanatory notes to the Regulations to provide additional assistance, will be placed on the Departmental webpage once published. And Guidance documents with technical detail will be made available through the webpage and associations to assist with the implementation of the legislation. All these additional documents and guidelines will be available at the time of promulgations by the Minister of Department of Employment and Labour.
- **Instruction and Training:** Before promulgation and immediately thereafter training will also be provide to the Departmental Inspectors to update them on enforcement of the legislation. Instruction will be provided to standardise inspections and enforcement of the draft regulations across South Africa.

g) Please identify areas where additional research would improve understanding of then costs, benefit and/or of the legislation.

Conduct investigations into:

- Exposure of maintenance workers and artisans to asbestos.
- Baseline for the number of asbestos related deaths due to occupational exposure in the non-mining sector.
- Cost of complete removal of ALL asbestos containing materials and final disposal to these materials in South Africa.

**For the purpose of building a SEIAS body of knowledge please complete the following:**

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## PART THREE: SUMMARY AND CONCLUSIONS

1. Briefly summarise the proposal in terms of (a) the problem being addressed and its main causes and (b) the measures proposed to resolve the problem.

(a) Asbestos is a generic term for a naturally occurring fibrous silicate mineral that is widely distributed in rocks throughout the world. Asbestos fibres can cause serious health effects such as mesothelioma, lung cancer and asbestosis and is almost always fatal. The main causes of the problem currently in South Africa are asbestos containing material in place in existing buildings, and legislation not adjusted to new scope of application and use of asbestos in the country after the prohibition of mining and manufacturing asbestos.

Workers employed to removal or work on the asbestos in place is at a very real risk of developing very serious detrimental health effects over time. Due to the latent nature of asbestos related diseases the health effects can not be seen within a few months or even year but are almost always fatal.

(b) Through controlling or eliminating the release of asbestos fibres from asbestos containing materials into the air, the breathing in of asbestos fibres can be limited or prevented. The proposed legislation seeks to require employers who work with asbestos containing materials to eliminate and/or control the exposure to employees to the hazardous asbestos fibres as well as control the release of fibres to adjacent communities and the environment.

2. Identify the social groups that would benefit and those that would bear a cost, and describe how they would be affected. Add rows if required.

Groups	How they would be affected
<b>Beneficiaries</b>	
1. Employees/ asbestos workers	Improved health due to the prevention and control of occupational exposure to asbestos.
2. Communities	Improved health due to the limiting air borne asbestos through management of asbestos.
3. Employers	<ul style="list-style-type: none"> <li>▪ Institutionalising the new regulation systems: For a Construction company to register as a registered asbestos contractor Employers will have to implement safety measures required.</li> <li>▪ Training employees about safety as per regulation.</li> <li>▪ Ensuring employees have Personnel Protective Equipment (PPE)</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Pay fines and penalties for non-compliance</li> </ul>
<b>Cost bearers</b>	
1. Government	<p>Compensation Fund will save on costs for compensating claims, for medical treatment and rehabilitation of affected workers</p> <p>Workers will stay longer in the employment and not become premature social grant beneficiaries</p> <p>Burden to hospitals and clinics will be reduced when asbestos related diseases are reduced or eliminated through this regulation.</p>
2. Building owners	<p>Cost could be incurred to identify asbestos in place and develop a management plan.</p> <p>The cost of removing and disposing the asbestos would also be carried by the owners.</p>

3. What are the main risks from the proposal in terms of (a) undesired costs, (b) opposition by specified social groups, and (b) inadequate coordination between state agencies?

- (a) Undesired cost – The draft was developed with the objective of eliminating undesired cost of ill health of employees.
- (b) The draft was develop to address the concerns of communities faced with health risks associated with asbestos exposure
- (c) Coordination with Department of Public Works is required to ensure compliance of Government owned buildings. Coordination is also required Environmental Fisheries and Forestry and Department of Health on related legislation.

4. Summarise the cost to government in terms of (a) budgetary outlays and (b) institutional capacity.

Training cost for Department of Employment and Labour Inspectors are already included into the Departmental budget – no additional costs are expected. Personal protective equipment that Inspectorate may need is already provided for in Provincial budgets –as inspections are already required, thus not new expenditure.

No new staffing requirement is expected as Provincial Offices and Labour Centres are already expected to preform inspections and assess plans of asbestos related work.

5. Given the assessment of the costs, benefits and risks in the proposal, why should it be adopted?

The Draft regulations are not entirely new regulations but are to replace the 2001 Asbestos regulations with adjusted requirements that better suite the current situation in South Africa (Post mining and manufacturing) with regards to asbestos, asbestos containing materials and exposure to asbestos fibres. The old 2001 requirements are no longer appropriate or applicable.

6. Please provide two other options for resolving the problems identified if this proposal were not adopted.

<b>Option 1.</b>	Providing codes of good practice with guidelines on handling asbestos in these sectors that the current regulation exclude.
<b>Option 2.</b>	Continued enforcement of the current 2001 Asbestos Regulations

7. What measures are proposed to reduce the costs, maximise the benefits, and mitigate the risks associated with the legislation?

New cost for the Department of Employment and Labour are not foreseen as the Labour Inspectorate is already in place to perform inspections and enforcement.

Training requirements for Inspectors and external stakeholders are not new as this is always planned for in the budget for the IES Branch.

Industry will have more guidance on how that manage asbestos in place properly and protect the health of employees and communities. Government would have to meet the same requirements in buildings it own to meet health and safety requirements.

8. Is the proposal (mark one; answer all questions)

	Yes	No
a. Constitutional?	Yes	
b. Necessary to achieve the priorities of the state?	Yes	
c. As cost-effective as possible?	Yes	
d. Agreed and supported by the affected departments?	Yes	

9. Which of the National priorities would be most supported by this proposal?

Priorities 1, 2, 4, 5 and 7.

**PRIORITY 1:** Economic transformation and job creation

**PRIORITY 2:** Education, skills and health

**PRIORITY 3:** Consolidating the social wage through reliable and quality basic services

**PRIORITY 4:** Spatial integration, human settlements and local government

**PRIORITY 5:** Social cohesion and safe communities

**PRIORITY 6:** Building a capable, ethical and developmental state



**PRIORITY 7:** A better Africa and world.

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