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THE NATIONAL OCCUPATIONAL HEALTH AND SAFETY POLICY



PART ONE

INTRODUCTION AND OVERVIEW

“...Safety and health of workers is a part and parcel of human security..... Safe Work is not only sound economic policy, it is a basic human right...”

Kofi Annan, General Secretary of the United Nations^{1[1]}

“Safe work creates no obstacles to being competitive and successful. In fact, no country – and no company in the long run – has been able to jump to a high level of productivity without making sure that the work environment is safe.”

International Labour Organisation^{2[2]}

- 1.1 This document sets out South Africa’s national occupational health and safety (OHS) policy. This is the first time an OHS policy applying to all sectors of the economy has been articulated in South Africa. The Cabinet has resolved that the institutions and laws regulating the prevention of occupational accidents and disease and worker’s compensation must be integrated and consolidated under the direction of the Minister of Labour. This integration and consolidation must take place in terms of this policy. The policy proposes legislation to be enacted to create the integrated national OHS system in accordance with the Cabinet resolution. This policy applies to all agencies and government departments with responsibility for regulating OHS.^{3[3]}

^{1[1]} Speech delivered in New York on the occasion of Workers’ Memorial Day, 28 April 2002.

^{2[2]} Global Employment Agenda: Discussion Paper (ILO, Geneva) March 2002.

^{3[3]} A list of abbreviations is contained in Appendix 1

Policy objective

- 1.2 The primary objective of the policy is to reduce the number of work-related accidents and diseases in South Africa. This requires the adoption and implementation of a culture of prevention by government, employers and workers. The effective prevention of work-related accidents and ill-health will have enormous social and economic benefits. These include improvements in productivity and competitiveness and the quality of life of the working population. The effective management of many safety hazards will contribute to improved levels of public safety. The effective control at source in workplaces of hazardous substances will improve levels of public health and minimize environmental pollution.
- 1.3 The secondary objective of the policy is to provide equitable compensation benefits to those who are injured in work-related accidents or who contract occupational diseases. These compensation benefits include medical aid, financial compensation and access to rehabilitation services. The compensation system, in particular the contributions paid by employers, must be sensitive to an employer's OHS performance so as to act as an incentive for improved performance

Policy principles

- 1.4 The core principles informing the policy are -
- — *universal coverage* – OHS legislation must cover workers and employers in all sectors of the economy and in all forms of employment relationships;
 - — *universal application of core rights and duties* – the core rights and duties of employers and workers must be spelt out in legislation;

- *the prioritisation of prevention and the promotion of a culture of prevention* – all accidents and health incidents are preventable;
- *-appropriate and fair compensation and rehabilitation benefits* – the provision of meaningful, accessible and equitable compensation and rehabilitation to workers in all sectors of the economy and in all forms of employment relationships;
- *-application of the “polluter pays” principle* - employers bear the cost of accidents and disease in their workplaces, including the cost of medical treatment, compensation and rehabilitation.

The magnitude of the OHS problem in South Africa

- 1.5 Occupational accidents and disease impose an enormous cost on South Africa. A 1997 study prepared for the Department of Labour estimated the cost of occupational accidents and disease to be (in 1996 terms) R17 billion, equating to 3.5% of the national Gross Domestic Product (GDP). In 2003 terms, this amounts to R 30 billion. Costs to employers include property damage, lost production time, lost skills as well as the cost of engaging and retraining replacements.
- 1.6 Employers, particularly those having unskilled workforces, tended to view expenditure on OHS as a cost to be avoided if at all possible. Injured and sick workers were returned to the homelands or neighbouring territories with minimal (if any) compensation, to be replaced by others recruited through the labour bureau system. Compensation for injured workers, particularly those with permanent injuries that reduced their earning capacity, was inadequate and in many cases inequitable. Rehabilitation services were accessible to a small proportion of injured workers.

- 1.7 Costs to workers and their families include permanent disabling injuries, debilitating disease, loss of employment and loss of breadwinners. Earlier government policy documents such as the *White Paper on Social Welfare* (1996) and the *Green Paper on an Integrated National Disability Strategy* (1998) have noted that the burden of occupational accidents and disease has been shifted disproportionately from employers to workers and their families, particularly those in rural areas. There is no adequate statistical measure of these costs.
- 1.8 The absence of a consistent national reporting system means that there is no set of figures that reflects accurately the full extent of occupational accidents and disease. The most complete accident figures are compiled by the Compensation Commissioner. In the year ending February 1998, the most recent period for which finalised figures are available, 280 631 workplace accidents were reported to the compensation authorities. The majority of the injured are unskilled or semi-skilled workers. For these workers, a permanent disability may end any realistic prospect of employment. These figures only reflect accidents to employees engaged under contracts of service and exclude the growing number of self-employed workers and independent contractors. As a substantial proportion of employers are known to not report accidents to the compensation authorities, these figures are a significant underestimate of the full extent of work-related accidents.
- 1.9 Approximately 10 000 cases of occupational disease are reported annually to the country's two compensation authorities. Reported cases are only the tip of the iceberg of South Africa's occupational health problems. Recent research confirms that the country has a serious occupational health problem in many sectors. This is a result of inadequate management of occupational health risks in maintaining working

environments. These diseases can be eliminated (and have been in many societies) by implementing effective engineering practice.

- 1.10 The severity of the impact of occupational injuries and diseases on society will be exacerbated by HIV-AIDS. AIDS-related illnesses will increase the severity of the consequences of occupational accidents and disease, resulting in a greater loss of working time and personnel. The loss of human capital due to HIV infection will impact negatively on skills and training levels, thereby increasing the cost of OHS preventative measures.
- 1.11 The expected growth of the SMME sector will also exacerbate OHS problems as smaller firms have shown to have higher accident rates than larger firms in the same sector. The widespread use of non-standard employment and sub-contracting arrangements and the growth of the informal sector have also been linked to increased OHS problems.
- 1.12 The costs of inadequate management of OHS are not confined to the employers and workers. It impacts negatively on public safety, public health and on the environment. The causes of major public disasters, such as rail commuter accidents, have been shown to flow from inadequate safety management systems and unacceptable working conditions. The failure by employers to control at source hazardous substances used in working processes is a significant cause of environmental pollution.
- 1.13 The recent asbestos litigation is a high-profile and vivid reminder of the immense cost (borne primarily by workers and their communities) of the failure by employers to control a known occupational hazard. It also illustrates the consequences of regulatory failure by the state. More than 30 years elapsed between the discovery of the health consequences of

exposure asbestos and the first regulations on the topic in South Africa. That inaction has had devastating consequences.

The benefits of an OHS policy

1.14 An integrated OHS policy is essential for developing a stable and productive work environment. Since 1994, the laws regulating the labour market have been revised to promote healthier labour relations, appropriate working conditions, equity in the workplace and improved skills. Improved working conditions are necessary to ensure higher labour productivity, better quality work, healthier labour relations and compliance with quality standards.

1.15 The ~~1.14~~ economic gains associated with OHS improvements include:

- increased productivity and worker morale;
- a reduction of working time lost due to injury and disease;
- reduced equipment down-time, reduced damage to materials and machinery, and savings in the costs of recruiting and training replacement employees;
- a reduction in transaction costs such as insurance costs and legal fees.

1.16 —Adequate OHS policy and standards are required for South Africa's continued integration into the world economy. International investors who subscribe to world-class OHS standards are reluctant to invest in markets in which local firms are able to compete unfairly through reduced OHS standards. Increasingly, South African exporters – particularly those who

export to developed economies – are being required to comply with international quality management standards. These standards require world-class performance in areas such as OHS, environmental protection and product safety.

Overcoming institutional and policy fragmentation

- 1.17 Prior to 1994, the regulation of occupational health and safety (OHS) was marked by government indifference, employer neglect and a widespread disregard for the fundamental rights of workers and their communities. There was minimal investment in the government agencies charged with regulating OHS. They lacked the personnel, the resources and the skills to implement effective prevention strategies.
- 1.18 As of 1994, government agencies charged with regulating OHS lacked the personnel, the resources and the skills to implement effective prevention strategies. Developments since 1994 have not taken place in a co-ordinated framework and have exacerbated inconsistencies between different sectors. Responsibility for OHS remains severely fragmented with the result that there is a lack of co-ordination and integration of policy.
- 1.19 The development of an integrated national OHS policy and institutions is in line with international standards and practice. South Africa has recently ratified International Labour Organisation Convention 155 which requires the governments of ratifying countries, after consultation with organised business and labour, to develop and implement a national OHS policy. Internationally, a large number of countries have established a single authority with responsibility for determining an overall health and safety policy and harmonising standards.

1.20 The State's constitutional obligation to protect the environment (including the working environment) requires it to take reasonable legislative and other measures to secure sustainable development. The establishment of a national authority allows for a national OHS strategy to be adopted to prioritise major OHS problems and for resources to be utilised in the most beneficial manner.

Major OHS challenges

1.21 The rate of work-related accidents and diseases is unacceptably high, imposing a huge cost on South Africa and its people. An integrated OHS policy, system and institutional structure represents the most effective way of reducing this cost. The major challenges that are faced ~~by~~in implementing the policy and system are -

- Developing appropriate institutional arrangements to minimise overlaps, gaps and duplication;
- Establishing appropriate funding mechanisms for prevention agencies;
- Expanding occupational health services;
- Dealing with the consequences of the HIV epidemic on levels of work-related injury and disease;
- Servicing SMMEs and the informal sector and protecting workers in marginal employment and vulnerable workers;
- Improving OHS skills and human resources in the public and private sector;

- Developing a culture of prevention among employers and workers;
- Improving research capacity; and
- Developing a comprehensive reporting system and database for work-related accidents and disease.

Implementation

1.2.2 The policy sets out the institutional, financial and legislative requirements for its implementation -

- ***Appropriate and competent institutions*** – the development of an appropriate institutional structure **for an integrated national OHS system** including a policy-making and standard-setting national OHS authority, inspectorates (including specialist inspectorates in hazardous and technologically demanding sectors) and dedicated research and training institutions;
- ***Appropriate funding arrangements*** – the provision of adequate funding for OHS activities through a combination of financing through the fiscus, employer compensation contributions and employer (user) fees;
- ***Appropriate legislation*** - the development of comprehensive national prevention and compensation statutes and the development of strategies to promote, monitor and enforce compliance with those statutes.

PART TWO INSTITUTIONS

A. A NATIONAL OHS AUTHORITY

Problem statement

No institution has overall responsibility for the development and implementation of OHS policy in South Africa.

Policy objective

The effective implementation of a culture of prevention requires the establishment of a single national OHS Authority.

Discussion

- 2.1 No institution has overall responsibility for developing and implementing OHS policy in South Africa. The primary agency responsible for prevention of work-related accidents and diseases is the Chief Directorate: OHS in the Department of Labour which administers the Occupational Health and Safety Act, 1993. The Chief Directorate: OHS in the Department of Labour is responsible for regulating occupational health and safety for some 7,5 million workers employed in the formal sector. It covers all public (including environmental) health and safety workers employed in sectors without a specialist inspectorate. The Mine Health and Safety Inspectorate (MHSI) in the Department of Minerals and Energy which administers the Mine Health and Safety Act, 1996 is the country's largest specialist OHS inspectorate.

- 2.2 A number of specialist regulators with responsibility for OHS and public (including environmental) health and safety operate in terms of other statutes. The National Nuclear Regulator is responsible for the effective monitoring and control of all aspects of the nuclear hazard. A specialised rail safety regulator was established by legislation in 2002. A specialised regulator is justified for a hazardous sector such as rail transport and its establishment will increase the total level of resources devoted to OHS. However its operation outside of an integrated national OHS structure will exacerbate the fragmentation of responsibility [\[PB1\]](#).
- 2.3 There are two compensation authorities: The Compensation Commissioner, which forms part of the Department of Labour, administers the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993 (COIDA). The Compensation Commissioner for occupational Diseases in the Department of Health administers the Occupational Diseases in Mines and Works Act, 78 of 1973 (ODMWA) which provides compensation for mineworkers who contract occupational lung diseases. The significant disparities between these two systems are discussed later in this document. The Medical Bureau for Occupational Diseases (MBOD) in the Department of Health provides benefit examination for workers claiming compensation for occupational diseases.
- 2.4 The Department of Health, through its different agencies, conducts occupational health research and provides occupational health medical care [\[PB2\]](#). The National Institute for Occupational Health (NIOH) is responsible for supporting the provision of effective occupational health services in South Africa. The NIOH conducts research to enhance occupational health practice and seeks to build capacity through the training of practitioners. The NIOH has no policy-making or enforcement functions in respect of the regulation of occupational health. The NIOH is presently being integrated into the National Health Laboratory Service

(NHLS) and once this process is completed it will be located outside of the public service. The object of the NHLS is to provide cost-effective and efficient health laboratory services to the public and private sector, support health research and provide training for health science education. The appropriate location of the NIOH and its relationship with other OHS agencies will have to be determined during the implementation of this policy.

- 2.5 In the absence of a national authority, the different inspectorates have sought to co-ordinate their activities through memoranda of agreement in order to minimise duplication. These administrative arrangements permit an *ad hoc* co-ordination in accordance with the principles of co-operative governance without addressing the conflicting and, at times, contradictory obligations that the different Acts and regulations place upon the inspectorates and employers. These are not a substitute for establishing a national OHS Authority.
- 2.6 A consequence of the fragmentation of authority for OHS is the absence of a single national tripartite advisory body, which can serve as a forum for consultations on the full range of OHS issues. The mandate of the existing tripartite institutions (such as the Advisory Council for Occupational Health and Safety and the Mine Health and Safety Council) are confined to the terms of their enabling legislation. Two separate advisory bodies advise the Minister of Labour on prevention and compensation issues. Traditionally, the compensation and prevention policies have been developed in isolation from each other.
- 2.7 There is no consistent pattern for the administrative status of OHS agencies. The two principal OHS enforcement agencies (the Chief Directorate:OHS in the DOL and the MHSI) are located within public service. In contrast, regulators such as the National Nuclear Regulator

and the Rail Safety Regulator are constituted as organs of state within the public administration, but outside of the public service. Their legal status is equivalent to that of the S A Revenue Service.

- 2.8 Both compensation agencies are located within the public service. The Compensation Commissioner operates subject to public service employment policies, even though the full costs of administering the compensation system are derived from employer contributions. The costs of operating the Compensation Commissioner for Occupational Diseases are borne by the fiscus. The Report of the CICSS has commented that backlogs in resolving compensation claims has resulted in an inefficient compensation system and recommended that this be addressed within the framework of a comprehensive national OHS policy.
- 2.9 The location of the Chief Directorate: OHS in the DOL and the MHSI within the public service places severe constraints on their capacity. Both organisations are unable to attract or retain sufficient numbers of suitably qualified and experienced personnel. They are unable to offer remuneration that is comparable to that offered by the industries they regulate, consultancies or organs of state related areas. This is reflected in high turnover rates, high levels of vacancies and a lack of specialised skills. The Leon Commission proposed increasing the remuneration package of mine inspectors. The Cabinet accepted the proposal but it has not been implemented because of opposition by the Department of Public Service and Administration. The detrimental impact that their location within the public service has on the capacity of the Chief Directorate: OHS and the MHSI is examined in more detail in the following section.
- 2.10 The need for establishing a national OHS authority and legislative structure is clearly articulated in the *White Paper on Transformation of the Health System* (1997):-

“A new legislative framework making provision for improved co-ordination of the various components of occupational health and safety (OH&S) is required. The creation of a co-ordinating body along the lines of a health and safety agency with national and provincial components should result from this framework. Such bodies are common around the world, and there is need for one in South Africa. It will provide a forum for policy-making and standard-setting that is legitimate, credible and authoritative. It will also provide a setting within which a coherent policy framework for OH&S practices in South Africa can be developed...”

- 2.11 The recent *Review of the MHSI* endorses proposals to establish a National OHS Authority. The review refers to the issue of ‘agency capture’ which occurs where an inspectorate is effectively dominated by the interests and perceptions of the industry it is regulating to the extent that it is unable to perform this function adequately. The US Congress for instance, accepted this argument when it decided to transfer the responsibility for mine health and safety from the Department of Minerals and Energy to the Department of Labour in the 1960’s. The *Review* records the observation that many inspectors, particularly those who have had a long association with the mining industry, may be too sympathetic to the perceived difficulties of the mining industry. It suggests that the establishment of a national health and safety authority and the development of a national policy in terms of which specialist inspectorates will operate will serve to counter-balance the tendency for the perception of regulated industries to dominate the regulators.
- 2.12 A national authority can develop policies that apply to all agencies with responsibility for OHS and deal with cross-cutting issues that are common to the inspectorates, such as occupational health. Presently in South

Africa, each of the inspectorates is responsible for making its own policy and these are often inconsistent or contradictory.

2.13 The advantages of creating a national authority include -

- (a) gaps and overlaps in the regulatory structure can be minimised;
- (b) resources can be transferred between sectors of the economy as sectors either expand or contract;
- (c) scarce specialist skills in crucial areas such as occupational hygiene, occupational health or accident investigation can be made available across all economic sectors;
- (d) a national OHS strategy can be adopted to prioritise major OHS problems;
- (e) prevention and compensation policies and strategies can be developed in an integrated and complimentary manner.

Best practice

2.14 Internationally, there has been a marked trend towards establishing a single authority with responsibility for determining an overall health and safety policy and harmonising standards. The best-known institution of this type is the British Health and Safety Executive established by the 1974 Health and Safety at Work Act. Most Canadian and Australian jurisdictions, as well as Continental European and Scandinavian countries

have a single institution with ultimate responsibility for determining OHS policy. This trend is also reflected in Zimbabwe and Namibia.

- 2.15 In certain jurisdictions, a single institution has responsibility for both prevention and compensation. There is considerable evidence to indicate that a close institutional linkage between prevention and compensation agencies can improve prevention by integrating policy and decision-making on prevention and compensation, improving the quality of information available to target OHS problems, and by making compensation assessments responsive to employers' OHS performance. The financial sanctions that can be imposed through the compensation system have been shown to be one of the most significant incentives for improved employer OHS performance.
- 2.16 The establishment of a unified OHS structure does not entail that specialised inspectorates in hazardous sectors, such as mining, are abolished. The most effective unified systems retain specialist inspectorates in hazardous sectors (e.g. mining, construction or railways) or where a high degree of specialisation is required (e.g. nuclear regulators) as part of the unified structure. Likewise, such a system can operate in conjunction with a 'generalist' labour inspectorate responsible for monitoring compliance with administrative aspects of OHS. Integral organisations such as the Health & Safety Executive in the United Kingdom or the successful inspectorates found in the Canadian provinces or Australian states have an administrative autonomy that enables them to attract and retain competent personnel.

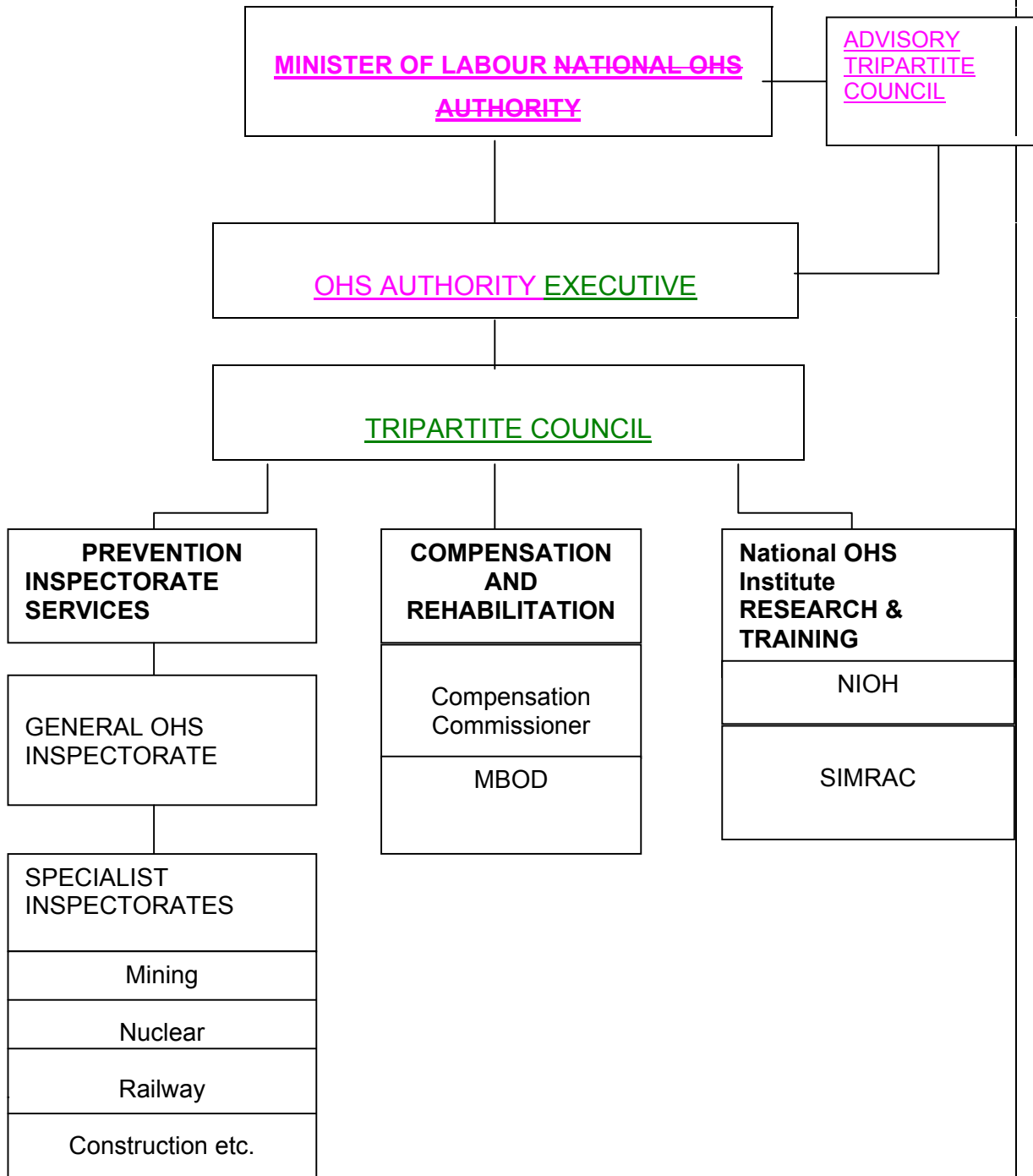
Implementation

National legislation should establish the national OHS authority as an organ of state located within the national public administration but outside of the public service. The primary function of the Authority is to implement the integrated national OHS system. The Authority would consist of:

- a national policy-making and standard-setting authority accountable to the Minister of Labour will have overall responsibility for OHS sectors in the economy;
- a national tripartite advisory body;
- OHS inspectorates (including specialist inspectorates in hazardous and technologically demanding sectors);
- dedicated research and training institutions.

The figure below gives a schematic representation of the structure ~~on~~of the integrated OHS authority system.

MODEL OF INTEGRATED OHS SYSTEM



B. HUMAN RESOURCES DEVELOPMENT

Problem statement

OHS agencies are understaffed and unable to attract or retain suitably skilled and experienced personnel. There are significant skills deficits in both the public and the private sector.

Policy objective

The effective reduction of occupational accidents and diseases requires the development of greatly increased human resources and skills level, both in enforcement agencies as well as within all levels of the workforce. The National OHS Authority must be structured so that it is able to attract and retain qualified and experienced personnel.

Discussion

- 2.17 The lack of sufficient skilled personnel to carry out prevention activities is a major problem facing the various agencies involved in OHS. A 1997 study commissioned by the Department of Labour concluded that, based on the approved complement of 138 OHS inspectors, the ratio of inspectors to the number of employees (excluding mining and other sectors with specialist inspectorates) employed in South Africa is one inspector for every 58274 workers. According to the Report, the ratio of inspectors to workers was considerably worse than that in many other developing countries for which information was available.
- 2.18 In 2000, the Department of Labour had 82 inspectors with OHS qualifications in its OHS inspectorate and a vacancy rate of 47% for these

positions. This translates into one qualified OHS inspector for every 90 000 workers in the formal sector, representing an annual expenditure on prevention of approximately 0,02 cents per worker covered by OHSA.

- 2.19 The responsibility for policy-setting, regulation-making and guidance of inspectors rests with a technical staff of 12 in the head office. This is extremely small by comparative standards. This shortage is reflected in a lack of standard-setting and policy-making activity.
- 2.20 The Report of the Committee of Inquiry into a Comprehensive System of Social Security has noted that understaffing with the Compensation Commissioner prevents steps being taken to follow up non-complying employers.
- 2.21 The recent survey of the MHSI has concluded that in comparative terms, the MHSI is severely under-resourced in terms of personnel and funding. In 2001, South Africa had a total mining work-force of 383 000 and the allocated budget represented an expenditure of R200 per worker on inspection services. The most comparable mining industry is that of the USA with a total working population of 351 000, a budgetary allocation of \$254 million amounting to an expenditure per worker of \$700.
- 2.22 As indicated previously, inspectorates within the public service have considerable difficulty in attracting or retaining suitably qualified and experienced inspectors. The most acute shortages are in respect of professionals with expertise in occupational health, engineering and law. The Department of Labour and the Mine Health and Safety Inspectorate both have high levels of vacancy rates and high turnover rates. These inspectorates compete for the same pool of skilled personnel with specialist inspectorates (such as the National Nuclear Regulator and the Rail Safety Regulator) which are outside the public service and can offer

more attractive remuneration packages. Inspectors employed by local government, receive more attractive packages than inspectors in the Department of Labour performing equivalent duties.

2.23 The Department has difficulty in recruiting suitably qualified technically skilled personnel, particularly personnel with engineering qualifications. The shortage of skilled personnel is most acute in the area of occupational hygiene and the NIOH has had difficulty in recruiting in this area.

2.24 The inability to recruit and retain technically skilled personnel has negative implications for developing a more representative inspectorate. The problem is most severe in the mining industry where blacks were barred by job reservation from acquiring the necessary training and qualifications until 1986. Both the Department of Labour and Mine Health and Safety Inspectorate have training programmes for inspectors from previously disadvantaged groups. However, a high proportion of inspectors who qualify in terms of these schemes leave the inspectorate soon after completing their training. As a result the mining inspectorate continues to rely disproportionately on retirees from the industry to fill positions requiring high levels of experience.

2.25 The Review of the Mine Health & Safety Inspectorate (2003) concludes that there are important human resources advantages for allowing the MHSI to operate autonomously of the public sector. These advantages include the ability to:

- Pay premiums for scarce skills, including those required to reach employment equity targets;
- Broad-band, which provides greater play flexibility for certain jobs and individuals within these jobs;

- Pay signing and retention bonuses;
- Link performance directly to reward;
- Implement human resources policies and procedures that directly support the organisational objectives e.g. the career ladder and a more effective recruitment and selection process, etc.

These advantages can be exploited through the proposed National OHS Authority.

- 2.26 There is a shortage of OHS skills in the private sector. In addition, there has been little investment in the training of elected health and safety representatives, which impacts negatively on OHS performance. Employers have largely been left to determine the content of the training. The mechanisms created by the Skills Development Act provide a basis for the development of OHS training through SETAs.
- 2.27 A number of reports have underlined the importance of developing an integrated policy to address human resources across the spectrum of OHS activities – both in the enforcement agencies and within the private sector.
- 2.28 The Department of Health's *White Paper on the Transformation of the Health System* (1997) outlines proposals for developing occupational health services and associated human resources at all levels of the public health care system. It notes that while employers are primarily responsible for providing and funding occupational health services, there is a poor level of occupational health service provision at the workplace. It outlines a role for the Health Department in providing services to

historically neglected sectors such as small and medium-sized enterprises, the public sector, the informal sectors and the unemployed through the district health system.

2.29 Nationally some 2100 Environmental Health Officers (EHOs) are employed by provincial and local government to perform environmental health services including the regulation of business premises with regard to food safety and hazardous substances. Local authorities are subsidised to provide these environmental health services by national government. The primary responsibility of EHOs is in the areas of public health and health promotion. Previous reports have noted that EHOs constitute a valuable national resource and could play an important role in promoting improved OHS practice, particularly among SMMEs.

Best practice

2.30 International experience indicates that OHS inspectorates require skilled personnel with experience in the sectors for which they are responsible and are respected by employers and employees in the sector. This requires the employment of persons with engineering, occupational hygiene and other skills.

Implementation

The national Occupational Health and Safety Authority must develop a programme for developing SA's skills base in OHS in both the public and private sectors.

C. RESEARCH AND STATISTICS

Problem statement

South Africa has neither comprehensive nationally synchronised OHS research strategy nor national reporting system for occupational accidents and ill-health.

Policy Objective

The effective ~~regulation of OHS~~ implementation of the integrated national OHS system requires:

- ☐ that the responsible agency has a research capacity at its disposal;*
- ☐ the compilation of accurate national statistics reflecting the full extent of occupational accidents and diseases.*

Discussion

2.28 There has been no consistent or rigorous OHS research strategy in South Africa. Prior to 1996, most research activity was concentrated on safety issues in the mining industry. As a result of the recommendations of the Leon Commission, the control and direction of OHS research in the mining industry was re-evaluated and restructured. SIMRAC, a permanent sub-committee of the Mine Health & Safety Council, is responsible for advising the Minister of Minerals & Energy on the direction of research. Research is financed by levies paid by employers based on accident rates and health risks. Presently, some R40 million is expended annually on the research programme.

2.29 Outside of the mining industry, there is no system of research levies. The Department of Labour has no capacity to conduct or commission OHS research. This severely compromises its capacity to perform a standard-setting function. The National Institute for Occupational Health conducts research to enhance occupational health capacity.

2.30 There is no overall national system for reporting accidents and incidents of ill-health. The different prevention agencies have different criteria for determining what accidents and occupational diseases must be reported. These criteria are not consistent with those employed by the Compensation Commissioner. In consequence, there are no reliable statistics that are indicative of the full extent of work-related injuries and disease. The Second Leon Commission of Inquiry into the Vaal Reef's mining disaster of 1996(?) recommended the adoption of a uniform reporting system, but this has not been implemented because there is no agency with the jurisdiction to develop it.

2.31 A national reporting system is an essential feature of an integrated OHS system. The national OHS Authority will be required to develop a national

reporting system, which builds on existing data-bases. It will allow for emerging problems to be identified and for decisions to be made about the allocation of resources. The introduction of the system will have to be accompanied by an awareness campaign advising employers, particularly SMMEs, of their reporting obligations.

Best practice

2.32 International practice indicates that inspectorates must have at their disposal a capacity to perform in-depth investigative work to service needs arising from day to day operations, such as accident investigations, as well as a capacity to perform long-range research to support standard-setting recommendations. This requires a dedicated research allocation in budgeting and long-term arrangements to secure research activity.

2.33 A protocol adopted in 2002 to the ILO's Occupational Health and Safety Convention 155 of 1981 requires ratifying countries to establish and periodically review requirements and procedures for the notification of occupational accidents, occupational diseases (including suspected cases) dangerous occurrences and commuting accidents. Countries ratifying the Protocol are required to annually publish OHS statistics that are representative of the country as a whole.

Implementation

The National OHS Authority must develop as a matter of priority–

- ☐ a program to make the most effective use of existing research capacity and develop additional research capacity**



a national reporting system for work-related accidents and diseases, that builds on existing data bases.

PART THREE

FINANCING

Problem statement

OHS prevention activities are inadequately funded. There is no consistent pattern of funding OHS activities

Policy objective

The effective integration of OHS competencies and legislation requires that appropriate and adequate funding arrangements ~~are in place~~ to fund OHS activities. These should include financing through the fiscus, employer compensation assessments and employer levies and fees.

Discussion

- 3.1 Presently, OHS prevention and compensation agencies are funded from a combination of State funding and employer levies. The budget of the largest inspectorates (the mines Inspectorate and the Chief Director: OHS in the Department of Labour) is paid from the fiscus. The full cost of the administration of COIDA is paid out of employer assessments while the State pays the costs of administering the compensation system under ODMWA for occupational lung diseases among mineworkers. Compensation payments under both systems are paid from employer contributions. A dedicated employer levy finances health and safety research in the mining industry through SIMRAC. There is no equivalent levy in other sectors of the economy.
- 3.2 The Table below sets out the funding arrangements (2001 figures) for the principal OHS agencies –

	AGENCY	SOURCE OF FUNDING	AMOUNT (2002 – 2003 figures)
1.	Chief Directorate : OHS (DOL)	National Budget	R24m (National Office) R28m (Inspection Services)
2.	Mine Health and Safety Inspectorate (DME)	National Budget	R80m
3.	National Centre for Occupational Health (NCOH)	National Budget	R19,867m
4.	Safety in Mines Research Advisory Council (SIMRAC)	Employer Levies	R40m
5.	National Nuclear Regulator	Employer Fees (92,5%) National Budget (7,5%)	R34m R7,28m
6.	Worker's Compensation Commissioner (DOL)	Employer Assessments	R337m (Administration costs)
7.	Compensation Commission for Occupational Diseases (Mining Industry) (DOH)	National Budget	R16.8m (Administration costs)

3.3 Key aspects of the financial arrangements for OHS are –

3.3.1 The total budget allocation for OHS prevention in sectors without a specialist inspectorate is R52 million. This funds prevention activities covering about 7,5 million workers in the formal sector.

- 3.3.2 The cost of administering compensation schemes (R355 million) is almost triple the total State funding of inspectorates in the public service with responsibility for preventing occupational accidents and diseases (R132 million).
 - 3.3.3 Financing of inspectorates through employer fees is limited to the specialist inspectorates (e.g. National Nuclear Regulator and the proposed Rail Safety Regulator).
 - 3.3.4 Total employer compensation contributions is in excess of R 2,7 billion.
 - 3.3.5 — Although the costs of operating the compensation system are paid from the Compensation Fund, the office of the Compensation Commissioner remains part of the public service.
- 3.4 The Director-General: Labour is empowered under COIDA to fund organisations that have the objective of preventing accidents or occupational diseases and promoting worker health and safety. Historically, this power was mainly used to subsidise the National Occupation of Safety Association (NOSA) established in 1951 as a joint venture between the Commissioner and the major employers' organisations. The highest subsidy paid to NOSA was R12.2 million in 1985. The subsidy given to NOSA during the 1980's amounted to 2% - 3% of the total assessments received by the Compensation Fund. Funding of NOSA ceased at the end of the 2001/2 financial year and minimal use is currently made of this power.

Best practice

- 3.5 Internationally, considerable use is made of compensation levies to subsidise prevention activities. In certain systems, the cost of the OHS inspectorate is paid from compensation funds. In many others, a significant portion of compensation funds is allocated to a range of the prevention activities including OHS education, training or research. In systems in which the general OHS inspectorate is funded in this manner, up to 5% of the Compensation Fund's revenue is allocated for this purpose.

Implementation

The Legislation establishing the national integrated OHS system must be enacted providing for the funding of OHS activities through the fiscus, from compensation assessments, and, where appropriate, dedicated levies applicable to employers in defined sectors of the economy.

PART FOUR PREVENTION

A. DEVELOPING A CULTURE OF PREVENTION

Problem statement

The majority of South African employers are complacent about OHS performance. Employers and workers accept many preventable injuries and diseases as unavoidable. Current legislation fails to encourage employers to adopt best practice or penalise those with unacceptable OHS records.

Policy Objective

To develop of an effective culture of prevention requires involving the active participation of governments, employers and employers' organisations, workers and trade unions.

Discussion

- 4.1 Government, business and labour under the auspices of NEDLAC have concluded an Occupational Health and Safety Accord. In terms of this document, the Social Partners commit themselves to work in partnership to realise the ideals of a healthy and safe working environment, the development of best practices in OHS and the elimination of accidents and fatalities in the workplace. The effective implementation and acceptance of a culture of prevention requires that the roles and responsibilities of the various stakeholders are clearly defined

Role of the state

- 4.2– The right to a healthy and safe working environment is not expressly referred to in the Constitution. However, the right emerges from both the right to fair labour practices and, perhaps most significantly, the right of individuals to an environment that is healthy and not harmful to their health. The provision of occupational health services falls under the right of access to health services and the workers' compensation system under the right of access to social security.
- 4.3 The State's obligation to protect the environment (including the working environment) requires it to take reasonable legislative and other measures to secure sustainable development. This requires the State, after consulting the social partners to develop, implement and enforce policies, legislation, regulations, codes of practices and guidelines setting health and safety standards.
- 4.4 The promotion of OHS involves applying the principles of sustainable development (articulated in the Constitution and spelled out in greater detail in the National Environmental Management Act) to the working environment. Our country's workforce is a resource that must be sustained through the appropriate application of prevention policies and strategies.
- 4.5 In 2003, South Africa ratified the International Labour Organization's Occupational Safety and Health Convention 155 of 1981. This requires ratifying states to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. This must be done in consultation with the most representative organisations of employers and trade unions. The national policy should indicate the respective functions and responsibilities of public authorities, employers, workers and others, and should recognise the

complimentary character of these responsibilities. It should be reviewed at regular intervals to identify major problems and identify effective methods for prioritising and dealing with these problems.

- 4.6 Effective OHS regulation requires that tri-partite consultation occurs to produce standards, regulations and codes of practice that enjoy widespread legitimacy. However, it is the responsibility of the government to ensure that this process does not lead to political compromises giving rise to inappropriate standards.

Employer's responsibilities

- 4.7 The ultimate responsibility for providing a safe working environment lies with the employer. However, many employers are complacent about health and safety. They consider that they have complied with their legal duties if they have reduced hazards to what they consider to be an 'acceptable' level. Accidents that occur despite these precautions are regarded as unavoidable.
- 4.8 Legislation must define their responsibility with greater certainty and hold company boards and senior management accountable for OHS performance. Legislation must define the employer's duty of care and identify the steps that employers are required to take to identify, assess and control hazards in the workplace. The primary responsibility of employers must be to control hazards at source. Their legal duties must include a continuing obligation to improve OHS performance. Employers must implement best practice OHS precautions unless they can demonstrate that the cost of these is absolutely disproportionate to the residual risk. ILO studies demonstrate that the absence of employer health and safety

policies and management systems are the major cause of preventable accidents.

- 4.9 Employers who are guilty of sub-standard OHS performance on employees must bear the cost. This requires the application of the principle of the 'polluter pays' in the arena of OHS. This can only be addressed by an integrated OHS policy covering prevention, compensation and rehabilitation. This will significantly increase the incentive on employers to take the steps necessary to prevent occupational accidents and disease.

Worker's rights and duties

- 4.10 An effective culture of prevention requires that employees work safely. Their duties not to endanger their health and safety or that of others must be spelt out in legislation. At workplace level, workers must have the right to participate in OHS through elected health and safety representatives and committees to create greater transparency and accountability in employer decision-making. Effective worker participation can contribute significantly to improved OHS performance. This participation must occur within a structure in which legislation guarantees workers their basic rights: the right to know, the right to be trained and the right to withdraw from situations of danger. Legislation must entrench protection from victimisation or discrimination for exercising these rights. Presently, the majority of South African workers (i.e. those covered by OHSA) do not enjoy these rights in a manner that is consistent with international standards.

Implementation

OHS legislation and policy must clearly define the rights and duties of government, employers and workers in respect of preventing occupational accidents and diseases.

B. LEGISLATION

Problem statement

There are considerable disparities between the country's two principal laws dealing with prevention. The continuation of these disparities cannot be justified.

Policy objective

A single national OHS statute consistent with this policy applying to all sectors of the economy must be enacted.

Discussion

4.10 The two main laws that govern the prevention and control of workplace risks are the Occupational Health & Safety Act 85 of 1993 and the Mine Health & Safety Act 29 of 1996. Separate legislation also exists for merchant shipping, aviation, explosives, nuclear radiation and rail safety. In these areas, concerns of public and workplace health and safety are closely intertwined.

4.11 MHSA is the more modern and progressive statute and addresses many of the shortcomings of the OHSA Act. MHSA sets out the employer's core duty to identify, assess and manage risks in considerable detail. It fully entrenches the internationally accepted basic worker rights: the right to

know; to be trained; to participate and to withdraw from serious danger without prejudice. It is drafted in conformity with the post-apartheid legal order and gives full recognition to the role of trade unions in OHS. The enactment of the MHSa has enabled South Africa to ratify the Mine Safety and Health Convention 177 of 1995 of the International Labour Organisation (ILO). The continued disparity between MHSa and OHSa cannot be justified.

- 4.12 OHS legislation must apply consistently across all sectors. The differences cause considerable uncertainty; many employers operate under both Acts and there is considerable movement of personnel between the two jurisdictions.
- 4.13 The development of new OHS legislation must be informed by a detailed investigation and understanding of the successes and failures of the implementation of the OHSa, the MHSa and the other statutes that regulate OHS. The DME has recently completed a study of the implementation of MHSa.

Best practice

- 4.14 Internationally, there is general trend towards a single national OHS statute covering all sectors of the economy. This stems from the highly influential UK Health and Safety at Work Act of 1974. These statutes define the responsibilities of employer to provide a healthy and safe workplace, set out the rights and duties of workers, provide for worker participation and establish the enforcement powers of the inspectorate. More recent statutes have tended to define the employer' responsibility to provide a safe workplace in greater detail and to require employers to adopt safety management systems. These developments are a response to concerns about the capacity of this model of legislation to motivate employers and

other duty-holders sufficiently to improve OHS management and to sanction employers who fail to comply with minimum standards.

Implementation

The National OHS Authority must table for consultation a draft National OHS statute that is consistent with the principles in forming this policy.

Table B gives a schematic representation of a national OHS statute.

INTEGRATED LEGISLATIVE STRUCTURE

NATIONAL OHS ACT

EMPLOYERS' DUTIES

- To provide a health and safe workplace
- To establish a health and safety policy and management system
- To assess identify and manage risks
- To consult with elected worker representatives
- To provide training and competent supervision
- To inform workers concerning hazards
- To report accidents and incidents

WORKERS' RIGHTS & DUTIES

- To withdraw from serious danger
- To elect representatives
- To receive OHS training and information
- To work safely and not endanger others

WORKPLACE PARTICIPATION

- Workers to elect OHS representatives and committees

ENFORCEMENT

- Inspections
- Investigation and inquiries
- Improvement notices
- Administrative penalties
- Prosecution
- Closure

REGULATORY FRAMEWORK

- Regulations
- Guidelines
- Incorporation of OHS standards

4.17 National OHS legislation must operate in conjunction with other laws to promote and create incentives for improved OHS performance. Other areas in which positive inducements to improve OHS could be developed, include -

• corporate governance requirements on directors to assume responsibility for OHS performance. The second *King Report on Corporate Governance (2002)* recommends that safety, health and environmental (SHE) issues should be dealt with at board level and that the board should guide and approve the necessary policy, strategy and structure to manage SHE issues (at page 107);

- disclosure requirement on OHS in company reports;
- OHS performance as a requirement for public procurement and tendering.

C. **IMPLEMENTATION AND ENFORCEMENT OF LEGISLATION**

Problem statement

OHS legislation is inadequately enforced. This is primarily a result of the lack of policy-making capacity and enforcement resources within the inspectorates. In addition, existing legislation does not facilitate the institution of prosecutions

Policy objective

OHS legislation enacted in terms of the integrated OHS system must be effectively implemented and enforced if accidents and diseases are to be reduced.

Discussion

- 4.18 OHS legislation in South Africa is inadequately implemented and enforced. Reasons for the inadequate enforcement include the lack of capacity and resources of the inspectorates, a lack of policy and standard setting, inadequate investigations into accidents and legal, institutional and capacity problems associated with the institution of prosecutions. A considerable reduction in accidents and disease can be achieved through the improved enforcement of the existing laws and the development of strategies, coupled with any necessary amendments.
- 4.19 Many employers are complacent about health and safety. They consider that they have complied with their legal duties if they have reduced hazards to what they consider to be an 'acceptable' level. Accidents that occur despite these precautions are regarded as unavoidable.
- 4.20 The nature of the South African labour market indicates the importance of developing a culture of prevention among all employers and workers. While the services sector has grown, roughly half of the workforce is still employed in hazardous sectors such as mining, construction, transport, agriculture and manufacturing. A number of more recent changes in employment patterns increase the importance of OHS agencies servicing the informal sector and protecting workers in marginal employment.
- 4.21 The significant growth of the SMME sector poses significant challenges for OHS policy. Department of Labour inspections reveal that a high

proportion of small employers do not comply with labour legislation, including OHS laws. Overseas studies indicate that small businesses have significantly higher accident rates than larger businesses in the same sector. A high proportion of small employers do not have capacity to take preventative measures to prevent injury and particularly occupational disease. The National OHS Authority proposed in this policy will have to develop strategies to create an OHS culture among the SMMEs and to enable them to comply with OHS standards.

- 4.22 The problems associated with the OHS performance of small business apply with even greater force to the informal sector. Working with hazardous substances in the informal sector has significant public health and safety consequences – for instance, children may be exposed to hazardous substances such as lead.
- 4.23 The growth of non-standard forms of employment such as short-term contracts, part-time work, temporaries, casual and seasonal employment poses OHS challenges. Studies indicate substantially higher rates of injury among these categories of workers. A key reason for this is that these workers do not receive adequate training.
- 4.24 Employers now make extensive use of outsourcing, sub-contracting and independent contractors. These forms of employment are also associated with less favourable working conditions and higher accident rates. Independent contractors are excluded from compensation legislation.

Best practice

- 4.25 International best practice suggests that an effective OHS system requires that enforcement agencies adopt enforcement policies that appropriately balance the advisory and enforcement functions of inspectors. The

International Labour Organisation has described the State's role in the OHS arena as being "to lead and persuade and if necessary, enforce compliance."

- 4.26 The advisory function is particularly important in respect of small employers, many of whom lack the capacity to comply with OHS standards. International experience indicates that the advisory function is most effective where the inspectorate has prepared clear guidance documents. A number of OHS agencies (particularly the UK's Health & Safety Executive) adopt an "advocacy" role aimed at encouraging employers to comply voluntarily with OHS standards because this makes good business sense.
- 4.27 At the same time, inspectors must have an appropriate range of sanctions at their disposal to apply against those who break the law, particularly those who do so persistently. These powers include orders to stop hazardous practices or, in extreme cases, stop production, impose administrative sanctions and to institute prosecutions in appropriate cases. The bringing of high-profile prosecutions in the most severe cases resulting in severe penalties for defaulting employers has a salutary deterrent effect. International developments suggest that the facilitation of prosecutions as an effective deterrent requires the inclusion into the relevant laws of provisions that permit prosecutions to be brought where there has been the failure of a safety management system. There are presently no such provisions in South African law. This also requires a closer and co-ordinated working relationship between the inspectorates and the public authorities responsible for prosecutions.
- 4.28 The ILO has proposed that the development of an inspection enforcement policy should be guided by a set of principles which include the following –

- provide for uniformity of criteria for and standards of enforcement;
- provide for consistent implementation of legislation;
- provide equal protection for workers in similar situations;
- eliminate unfair advantage to employers (obtained by non-compliance);
- provide for a common and consistent approach to common problems;
- provide for logic and consistency in the selection of priorities;
- provide for consistency in the provision of resources;
- provide for the consistency of procedures;
- provide clear guidance to inspectors on the use of their discretion;
- be clear, transparent, coherent and manageable;
- provide for collaboration with the social partners; and
- encourage co-operation with other agencies and actors.”

Implementation

The National **Occupational** Health and Safety **Agency Authority** must develop an enforcement policy to guide the activities of the different OHS inspectorates **that form part of the integrated OHS system**. This

must appropriately delineate the promotion and advocacy functions on the one hand, and the enforcement functions, on the other.

PART FIVE COMPENSATION

Problem statement

There are major differences between the two statutes regulating worker's compensation. In addition, significant categories of workers are excluded from the right to compensation. These disparities and exclusions cannot be justified. There are unacceptable delays in the processing of claims.

Policy objective

Equitable and accessible compensation and rehabilitation benefits must be provided to workers in all sectors of the economy and in all forms of employment relationships. The compensation system must reflect the overall concern of the integrated OHS system of preventing occupational accidents and diseases.

Discussion

- 5.1 The two laws regulating the compensation of workers for occupational accidents and diseases are the Compensation for Occupational Injuries and Diseases Act 138 of 1993 (COIDA) and the Occupational Diseases in Mines and Works Act 78 of 1973 (ODMWA). COIDA provides a statutory “no fault” compensation system for employees who contract work-related illnesses or are injured or killed in occupational accidents. The ODMWA provides lump sum compensation for miners who contract occupational

lung diseases. While COIDA significantly improved access to benefits for occupational disease, its policy and orientation remains largely that of the Workmen's Compensation Act of 1941.

- 5.2 Workers' compensation schemes are based on a trade-off; workers acquire the right to compensation from a state compensation fund (regardless of fault) for injuries and ill health caused by work but forfeit the right to institute civil claims for damages against their employer. Employers are required to pay an assessment to the Compensation Fund and are insulated from the possibility of costly civil claims.
- 5.3 There are presently significant differences between COIDA and ODMWA. The most significant of these is that compensation under ODMWA is limited to lump-sum payments while COIDA provides for pension payments to workers with serious permanent disablement. Mineworkers falling under ODMWA are entitled to free benefit medical examinations to ascertain whether they have a compensable condition, while there is no equivalent entitlement under COIDA. COIDA guarantees minimum compensation payments while ODMWA does not.
- 5.4 The *Commission of Inquiry into a Comprehensive System of Social Security* ("Taylor Report") draws attention to the categories of workers who are excluded from the statutory compensation system: domestic workers, workers in the informal sector, self-employed workers and independent contractors (at page 113)
- 5.5 The creation of a single compensation system must both equalise benefits and ensure that there is effective access to benefits. Proposals for restructuring the health services have proposed that the development of a specialist occupational medicine capacity in the public health service would improve access for workers to compensation benefit examinations.

- 5.6 Historically, the inadequacies of the compensation system contributed to the absence of a preventative approach to OHS. Racial discrimination in the compensation of miners remained on the statute books until 1994. The low levels of compensation paid to miners and the resulting low assessment rates of employers contributed to the poor control of health hazards in the mining industry, as there was no financial incentive for employers to tackle dust problems in the mines at source. The compensation system can contribute significantly to the effective control and prevention of health and safety hazards if the priorities of compensation and prevention are jointly determined as part of an overall OHS policy and strategy. The establishment of a national OHS authority will allow for the entire body of OHS law and regulation (including both prevention and compensation) to be conceived as an integrated whole, which should be administered and enforced in a manner that best gives effect to prevention.
- 5.7 The Taylor Report criticises the failure of the compensation system to promote labour market reintegration for workers who are permanently disabled.

Best Practice

- 5.8 Internationally, it is accepted that a 'no fault' compensation system such as that found in COIDA is the most efficient method of compensating workers for occupational accidents and diseases. However, the benefits provided must be equitable and appropriate. Internationally, one of the most difficult issues facing a compensation system is providing equitable benefits to workers who have a reduced earning capacity as a result of a permanent impairment due to injury or disease.

- 5.9 Compensation benefits do not reflect the full cost of work-related injury and disease. No account is taken of the employee's loss of earning capacity and employment as a result of disability, and no payment is made for pain and suffering caused by the injury. This approach, which has remained unchanged for over 60 years, is particularly inequitable in its application to manual workers. COIDA and ODMWA do not give disabled workers a right to receive rehabilitation or to return to work after injury.
- 5.10 A 'no fault' compensation system may also have the effect of reducing the incentive for employers to adopt a proactive approach to prevention. Internationally, legislators have sought to combat this trend in a number of ways. In certain countries, employees retain the right to institute personal injury civil claims for work-related accidents and diseases. In others, the compensation authority is empowered to adjust the assessment rate of employers with unacceptable injury rates or impose penalty assessments on employer who negligently cause injury. Best practice indicates that the compensation payments can be an efficient vehicle for driving improved OHS performance.

Implementation

The efficacy and equity of the compensation requires thorough investigation and review. Areas where a need for evaluation has already been identified are -

- ❑ **The integration of the compensation system to create a single system applicable to all workers;**
- ❑ **The provision of equitable benefits, particularly to permanently disabled workers;⁴**
- ❑ **The use of the compensation system to prevent accidents and occupational disease by creating incentives or imposing sanctions;**
- ❑ **Facilitating compensation for work-related cases of contracting HIV/AIDS;**
- ❑ **Providing effective physical and vocational rehabilitation for permanently disabled workers;**
- ❑ **The role, if any, of civil claims;**
- ❑ **Providing effective compensation coverage for workers in employment in the informal sector, small businesses and in non-standard or vulnerable employment;**
- ❑ **Funding OHS prevention programmes through the compensation system;**
- ❑ **Providing workers with effective access to the compensation system;**
- ❑ **Creating linkages with the public health system and the broader national social security system; and**

⁴ The Report of the Road Accident Fund Commission, 2002, contains an extensive discussion of trends in the compensation of victims of road accidents in other jurisdictions.

- Improve employer compliance with obligations in terms of compensation legislation.

☒ The National OHS Authority should prepare draft legislation creating an integrated compensation system consistent with this policy.

PART SIX THE WAY FORWARD

A. ESTABLISHING THE NATIONAL OHS AUTHORITY

- 6.1 An integrated national OHS system is required to minimise the adverse impact of occupational accidents and disease on South Africa's society and economy and promote a culture of prevention. This approach is consistent with international practice, international labour standards and the Government's constitutional obligations. This policy spells out the essential features of that system.
- 6.2 A national authority ~~is~~ responsible for administering national legislation regulating OHS and worker's's' compensation in terms of the integrated OHS system will have to be established by legislation. The institutional restructuring required for implementing integration involves institutional design, the migration of responsibility and personnel between institutions, and the development of new systems and national legislation.
- 6.3 A National Occupational Health and Safety Authority Act must be enacted to ~~create the institutional arrangements necessary to create~~ implement a national integrated OHS system. This Act would establish a National Occupational Health and Safety Authority responsible for implementing ~~and establishing~~ an integrated national OHS system in accordance with

this policy. A draft Bill establishing the national OHS Authority is to be submitted to NEDLAC for consultation together with this Policy.

The National Health and Safety Authority

6.4 Composition

6.4 The Authority would consist of –

- an executive authority responsible for administering the integrated OHS system;
- –a tripartite advisory ~~board to that would~~ advise the Minister of Labour executive on the implementation on the integrated system.

6.5 The Executive would consist of dedicated personnel, including a CEO, as well as officials of the primary government institutions responsible for OHS (Labour, Mines and Energy, Health and Transport) who would be seconded to the Authority. One of the representatives will be designated Acting CEO or Chairperson of the Authority by the Minister of Labour after consultation with other Ministers. This should comprise of permanent staff rather than seconded staff to be able to deal with the following functions alternatively an Interim OHS Authority be created to manage transition period with secondees from government and social partners.

Functions

6.6 The initial functions of the Authority would be to implement the national policy by -

- developing a National Health and Safety Act;
- developing an implementation plan with milestones and time-lines for ~~establishing t~~the integrated national OHS system;
- commissioning and supervising research necessary to provide an empirical and comparative basis for further decision-making;
- developing a national OHS data base and reporting system;
- co-ordinating relations with agencies and departments with related or overlapping responsibilities, in accordance with the principles of co-operative governance. This function would be temporary if integration is effected as envisaged;
- developing a National Compensation Act.

6.7 The Minister of Labour would be empowered, after consultation with the other Ministers concerned, to delegate or assign additional powers or functions in terms of existing OHS laws to the Authority. This would include the responsibility for directing the activities of the different OHS inspectorates. This would allow for a progressive implementation of the integrated OHS system.

Accountability

6.8 The Authority would operate under the direction of the Minister of Labour. The Minister would consult with other Ministers who have responsibility for aspects of OHS during the initial period of operation of the Authority. The Director-General: Labour would act as accounting officer for the Authority

until the Authority is established as a public entity and CEO of the Authority becomes the Accounting Officer.

Stakeholder Participation

6.9 The integrated OHS system would be ~~developed and~~ implemented through a participative consultation process with the major stakeholders, organised labour and organised business. Consultation, prior to the establishment of a dedicated advisory body, would occur through the NEDLAC structures, in accordance with the NEDLAC Act.

Funding

6.10 The costs of establishing the Authority and its initial operation would be financed through the budget of the Department of Labour. In addition, the Director-General: Labour is empowered in terms of section 4(b) of the Compensation for Occupational Injuries and Diseases Act to fund activities aimed at promoting the health and safety of employees. This power could be used, for instance, to cover the costs of particular research projects commissioned by the Authority that meet the criteria of the Act. Long-term funding would have to be derived from a range of sources including the fiscus and employer levies.

B. IMPLEMENTATION PLAN AND MILESTONES

1. National OHS Policy

- Submission to Cabinet for approval;
 - Tabling in NEDLAC for consultation.
2. Legislation to establish National OHS Authority (“Authority”)
- ~~DOL to prepare draft, in consultation with DME and DOH;~~
 - Submission to Cabinet for approval;
 - Tabling in NEDLAC for consultation;
 - Submission to Cabinet for Approval and Tabling in Parliament.
3. Establishment of Authority (Executive and Advisory Body).
4. Authority to ~~develop integration and implementation~~ integrated system plan ~~to achieve in accordance with~~ the following milestones –
- Integration of compensation system;
 - Determination of implications of integration for inspectorates and agencies (regulators);
 - Alignment of regulators with integration plan (capacity, competencies, identification of regulatory gaps);
 - Criteria for implementing integration (e.g. performance, practice and policy, capacity, funding remuneration);
 - Development of organisational plan for regulator;
 - Determination and securing of funding arrangements;

- Drafting and enactment of National OHS Act (prevention);
- Drafting of National Compensation and Reintegration Act.

5. Establishment of Authority as National OHS Regulator.

6. Implementation of Operation Plan to bring Authority to full capacity.

This implementation plan may need to be refined and have a flow with distinct phases of the implementation which begins with the creation of the integrated system as envisaged in the policy and the bill. The body that will run with the ball is the Authority as enabled by the envisaged Act.

APPENDIX I**ABBREVIATIONS USED**

CICSS	Committee of Inquiry into a Comprehensive System of Social Security
COIDA	Compensation for Occupational Injuries and Diseases Act 130 of 1993
DME	Department of Minerals and Energy
EHO	Environmental Health Officer
ILO	International Labour Organisation
LRA	Labour Relations Act 66 of 1995
MHSA	Mining Health and Safety Act 29 of 1996
MHSI	Mine Health and Safety Inspectorate
MOSA	Machinery and Occupational Safety Act 6 of 1983
NIOH	National Institute for Occupational Health
NOSA	The National Occupational Safety Association
ODMWA	Occupational Diseases in Mines and Works Act 78 of 1973
OHS	Occupational Health and Safety
OHSA	Occupational Health and Safety Act 85 of 1993
SIMRAC	Safety in Mines Research Advisory Committee
SMME	Small Medium and Micro Enterprises

APPENDIX 2

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