

**NATIONAL
OCCUPATIONAL HEALTH AND
SAFETY INTEGRATION BILL,
2003**

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Preamble

WHEREAS everyone has a right to a healthy and safe working environment;

WHEREAS the provision of occupational health and safety in the public sector is the responsibility of a number of different national and provincial departments and this has resulted in a fragmented system of occupational health and safety developing;

AND WHEREAS government is committed to developing and implementing an integrated occupational health and safety system and considers that the most effective way of doing this is by establishing an autonomous occupational health and safety authority;

NOW THEREFORE in order to develop an integrated occupational health and safety system and establish an authority to implement that system,

BE IT ENACTED AS FOLLOWS:

1. Definitions

In this Act unless the context indicates otherwise –

“**Authority**” means the National Occupational Health and Safety Authority established in section 2;

“**Board**” means the Board of the Authority referred to in Part 3;

“**Executive**” means the Executive of the Authority referred to in Part 4;

“**Minister**” means the Minister of Labour;

“**national policy**” means the integrated national policy on occupational health and safety issued by the Minister in terms of section 3;

“**occupational health and safety**” includes all activities connected to –

- (a) the promotion of health and safe work practices and working environments and conditions;

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- (b) the prevention of work-related accidents and diseases;
- (c) the provision of medical assistance to persons who are injured in work-related accidents or who contract work-related diseases;
- (d) the provision of medical aid, compensation, rehabilitation and other benefits to persons who are injured in work-related accidents or who contract work-related diseases, including the dependants of persons who die as a result of these causes.

“**this Act**” includes regulations made in terms of the Act.

2. Purpose of this Act

The purpose of this Act is to –

- (a) establish an integrated occupational health and safety policy for South Africa;
- (b) establish a National Occupational Health and Safety Authority responsible for implementing and administering the integrated national occupational health and safety system established by the national policy.

PART 1

Functions of Minister

3. Functions of the Minister

(1) The Minister, after consulting the Board, must –

- (a) publish a national integrated occupational health and safety policy;
- (b) direct the Authority as to the manner in which it is to perform its functions.

(2) The national policy issued by the Minister in terms of sub-section (1) is binding on all organs of state that have responsibility for any aspects of occupational health and safety.

- (3) The Minister must ensure that –
- (a) the implementation of the national policy is monitored;
 - (b) the efficacy of the national policy is evaluated at intervals, not exceeding three years;
 - (c) if appropriate, the national policy is revised in the light of the evaluation.

PART 2

Establishment and functions of Authority

4. Establishment of Authority

- (1) The National Occupational Health and Safety Authority is hereby established.
- (2) The Authority is an organ of state and a juristic person.
- (3) The Authority consists of
 - (a) a Board that advises the Minister on matters of occupational health and safety;
 - (b) an Executive, that performs its functions subject to the direction of the Minister.

5. Object of Authority

The object of the Authority is to implement and administer the integrated occupational health and safety system established by the national policy.

6. Transfer of functions to the Authority

- (1) The Minister may assign –

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- (a) to the Board the functions of an advisory institution established in terms of an Act listed in Schedule 1 to this Act;
- (b) to the Executive any powers and functions that may be performed by a government department or other organ of state or any official or employee of a government department or organ of state in terms of an Act listed in Schedule 1 to the Act or any regulation, notice or other document issued in terms of such an Act.
- (2) An assignment in terms of sub-section (1) requires, where appropriate, the concurrence of the Minister responsible for administering the Act concerned.
- (3) The Minister may not make an assignment in terms of sub-section 1(b) unless –
- (a) the Authority has prepared an implementation plan as to the manner in which it will perform the powers of exercise the functions that it is proposed to assign to the Authority;
- (b) the Minister is satisfied that the Authority has the capacity to exercise the powers or perform the functions that it is proposed to assign to the Authority.
- (4) An assignment or delegation in terms of this section may include the transfer of assets.

PART 3

The Board of the Authority

7. Composition of the Board

- (1) The Board of the Authority consists of -
- (a) the chief executive officer of the Authority who is the chairperson of the Board;
- (b) a representative of the Department of Labour designated by the Director-General of that Department;

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- (c) a representative of the Department of Minerals and Energy designated by the Director-General of that Department;
- (d) a representative of the Department of Health designated by the Director-General of that Department;
- 5 (e) four members selected by the Minister from nominations made by trade union federations;
- (f) four members selected by the Minister from nominations made by employer's organisations.
- (2) A Director-General of a department referred to in sub-sections (1)(b), (c) or (d) may
10 designate a second representative who may attend Board meetings when the representative designated in terms of sub-sections (1)(b), (c), or (d) is not available.

8. Terms of office

- (1) Members of the Board referred to in section 6(b), (c) or (d) hold office until they are replaced by another representative designated by the Director-General.
- 15 (2) Members of the Board referred to in section 6(e) and (f) –
- (a) hold office for a period of four years;
- (b) are eligible for reappointment.
- (3) A member referred to in section 6(e) or (f) may resign by giving at least three
20 month's written notice to the Minister, but the Minister may accept a shorter period in a specified case.

9. Removal from Board

The Minister may remove a member referred to in section 6(e) or (f) from the Board if –

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(a) that person is absent from three consecutive Board meetings without the prior permission of the Board or the chairperson of the Board, except on good cause shown;

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(b) the Minister is of the view that that person is not a fit and proper person to be a member of the Board.

(2) The Minister may only remove a member from the Board in terms of sub-section (1)(b) after consultation with the trade union federations, if the person was appointed in terms of section 6(e), and after consultation with the employer's organisations if the person was appointed in terms of section 6(f).

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10. Vacancy on the Board

(1) A vacancy on the Board is filled -

(a) in the case of a representative designated in terms of section 6(a), (b), (c) or (d), or an alternative representative designated in terms of section 6(2), by the Director-General of the relevant Department;

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(b) in the case of a member appointed in terms of section 6(e) by the Minister after consultation with the trade union federations;

(c) in the case of a member appointed in terms of section 6(f) by the Minister after consultation with employer's organisations.

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(2) A person appointed to fill a vacancy holds office for the remaining portion of the term of the vacating member.

11. Conditions of appointment

(1) The conditions of appointment of members of the Board who are not in the employ of an organ of state, are determined by the Minister, after consultation with the Minister of Finance.

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- (2) The conditions of appointment may include remuneration and allowances payable by the Authority.
- (3) Members who are employed by an organ of state are not entitled to remuneration and allowances but must be reimbursed out of pocket expenses by the Authority.
- 5 (4) Members are appointed part-time.

12. Functions of the Board

In order to achieve the object of the Authority, the Board must –

- (a) advise the Minister on any matter concerning occupational health and safety including but not limited to –
- 10 (i) the integrated occupational health and safety policy that the Minister is required to issue in terms of section 3;
- (ii) the manner in which the Minister directs the Executive in the performance of its functions;
- 15 (iii) the development of draft national prevention and compensation legislation applicable to all sectors of the economy;
- (iv) the promotion of a culture of health and safety among employers, workers and other stakeholders;
- (b) oversee the manner in which the Executive performs its functions in terms of the Act;
- 20 (c) perform any function assigned to in terms of section 8 of this Act.
- (2) The Board must take account of South Africa's obligations in terms of international law, when performing its functions.

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13. Powers of the Board

The Board has all the powers necessary in order to enable it to fulfil its functions, including the power to –

- (a) conduct research or cause research to be conducted;
- 5 (b) request information from organs of state or private bodies;
- (c) establish sub-committees to deal with specific matters as and when required;
- (d) co-opt experts to serve on or advise sub-committees.

14. Operating procedures of Board

- (1) The Board must meet at least twice a year.
- 10 (2) The chairperson of the Board decides when and where the Board will meet, but a majority of Board members may request the chairperson in writing to convene a meeting at a time set out in the request.
- (3) If the chairperson is absent from a meeting, the Board may elect another member to preside at that meeting.
- 15 (4) The majority of the members of the Board constitute a quorum for a meeting of the Board.
- (5) Decisions of the Board require a supporting vote of a majority of members present at the meeting.
- (6) The Board must keep minutes of its proceedings and decisions.
- 20 (7) The Board may, by resolution, make rules to further regulate its proceedings.

PART 4***The Executive of the Authority***

15. Composition of the Executive

The Executive of the Authority consists of –

- (a) the Chief Executive Officer of the Authority;
- (b) staff appointed by the Chief Executive Officer in terms of section x;
- (c) staff seconded to the Executive.

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16. Functions and powers of Executive

The Executive must -

- (a) develop an implementation plan for the establishment of an integrated occupational health and safety system;
- (b) implement and administer the integrated occupational health and safety system established in terms of the national policy;
- (c) develop an integrated national occupational health and safety database and reporting system;
- (d) prepare for submission to the Cabinet draft national prevention and compensation legislation applicable to all sectors of the economy;
- (e) provide logistical and other support for the Board;
- (f) perform any function or exercise any power assigned to in terms of section 8 of this Act; and
- (g) promote a culture of health and safety among employers, workers and other stakeholders.

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- (2) The Executive must co-ordinate the performance of its functions with other organs of state that have responsibility for regulating or promoting any aspect of occupational health and safety, in accordance with the principles of co-operative governance contemplated in Chapter 3 of the Constitution of the Republic of South Africa.

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- (3) The Executive may do all that is necessary or expedient to perform its functions including –
- (a) conducting or commissioning relevant research;
 - (b) consulting with relevant stakeholders;
 - 5 (c) acquiring or disposing of any right in or to property, but ownership in immovable property may be acquired or disposed of only with the consent of the Minister;
 - (d) opening and operating banking accounts in the name of the Authority;
 - (e) investing any of the Authority's money, subject to section x;
 - 10 (f) insure the Authority against –
 - (i) any loss, damage or risk;
 - (ii) any liability it may incur in the application of this Act;
 - (g) perform legal acts, including acts in association with or on behalf of any other person or organ of state;
 - 15 (h) institute or defend any legal action.

PART 5

The chief executive officer of the Authority

17. Appointment of chief executive officer of the Authority

- 20 (1) The Minister must, after consulting the Board, appoint a suitably qualified person as the chief executive officer and the accounting authority of the Authority.
- (2) The chief executive officer is an employee of the Authority and is accountable to the Minister and to the Board.

- (3) The employment contract of the chief executive officer must be in writing and must incorporate, as appropriate, the provisions of sections 50, 51, 53, 54 and 55 of the Public Finance Management Act, 1999.
- (4) The chief executive officer holds office for an agreed term not exceeding five years, and may be reappointed upon expiry of that term of office.

18. Powers and duties of the chief executive officer

- (1) The chief executive officer is responsible for the efficient management of the Authority and must -
- (a) ensure that the functions of the Authority in terms of this Act are performed;
- (b) as accounting officer, ensure that the requirements placed on public entities by the Public Finance Management Act, 1999 (Act 1 of 1999) are met;
- (c) report to the Board on the functioning of the Executive;
- (d) complete a report on the activities of the Authority in each financial year and submit it to the Board and the Minister;
- (e) appoint staff, subject the Employment Equity Act, 1998 (Act No. 55 of 1998).
- (2) The chief executive officer may delegate any power or assign any duty to an employee of the Authority except the duty to chair meetings of the Board.
- (3) A delegation or assignment in terms of sub-section (2) does not prevent the chief executive officer from exercising the delegated power or performing the assigned duty.
- (4) The chief executive officer may withdraw or amend a delegation or assignment made by him or her.

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19. Performance agreement

- (1) A performance agreement must be concluded between the Minister and the chief executive officer within a reasonable time after the appointment of the chief executive officer.
- 5 (2) The performance agreement referred to in sub-section (1) must include—
- (a) performance objectives and targets that must be met, and the time frames within which those performance objectives and targets must be met;
- (b) standards and procedures for evaluating performance and intervals for evaluation; and
- 10 (c) the consequences of substandard performance.
- (3) The performance objectives and targets referred to in subsection (2)(a) must be practical and measurable.

20. Acting chief executive officer

- 15 (1) If the chief executive officer is unable to fulfil his or her functions, the Minister may appoint an acting chief executive officer who shall have all the powers and duties of the chief executive officer.

PART 6***Administration and staff matters*****21. Appointment of staff**

- 20 (1) The chief executive officer must —
- (a) with the concurrence of the Minister, determine a staff establishment for the Authority;
- (b) appoint persons in posts on the staff establishment.

- (2) Persons in the public service seconded to the Authority perform their duties subject to the control and discipline of the chief executive officer.

22. Terms and conditions of employment

- (1) Terms and conditions of employment of employees of the Authority are determined by the Minister, after consultation with the Board.

23. Services of non-employees

If the Authority contracts for the services of any person, other than an employee, to perform any specific act or function, the Authority may remunerate that person, and may reimburse that person for expenses.

24. Transfer of staff

- (1) The Labour Relations Act, 1995 (Act No. 66 of 1995) applies to any transfer of staff to the Authority from another organ of state.
- (2) A person who is a member of the Government Employees' Pension Fund mentioned in section 2 of the Government Employees' Pension Law, 1996 (Proclamation no. 21 of 1996), and who becomes an employee of the Authority, may remain a member of that Fund.

PART 7

Funds of the Authority

25. Financial accountability

- (1) The Authority is a public entity for the purposes of the Public Finance Management Act, and to that end must comply with the provisions of that Act.

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- (2) Despite section 49(2)(a) of the Public Finance Management Act, the chief executive officer is the accounting authority of the Authority.

26. Funding

- (1) The funds of the Authority consist of –

- 5 (a) money appropriated by Parliament on such terms and conditions as the Minister, with the concurrence of the Minister of Finance, may determine;
- (b) moneys allocated by the Director-General in terms of section 4(b) of the Compensation for Occupational Injuries and Diseases Act;
- 10 (c) with the consent of the Minister of Finance, any donations made to the Authority.

27. Investments

The Authority may invest any of its funds not immediately required –

- (a) subject to any investment policy that may be prescribed in terms of section 7 (4) of the Public Finance Management Act; and
- 15 (b) in such a manner as may be approved by the Minister.

28. Financial year

The Authority's financial year is from 1 April in any year to the 31 March of the following year except that in the year in which the Authority is established, the financial year will be from the date that the provision establishing the Authority comes into effect to the 31

20 March.

PART 9

General provisions

29. Liability of Authority

- 5 (1) The State Liability Act, 1957 (Act No. 20 of 1957), applies, with the necessary changes, in respect of the Authority, and in such application a reference in that Act to the Minister of a department concerned must be construed as a reference to the Chief Executive Officer of the Authority.
- (2) No person is liable for anything done or omitted in good faith when performing a function or exercising a power in terms of this Act.

30. Regulations

10 The Minister may make regulations not inconsistent with this Act concerning any matter which it is necessary to prescribe for the effective implementation of this Act.

31. Short title and commencement

- 15 (1) This Act shall be called the National Occupational Health and Safety Integration Bill, 2003.
- (2) This Act takes effect on a date to be determined by the President by proclamation in the Gazette. The President may determine different dates in respect of different provisions of this Act.