



Traffic Accommodation

OHS Act & Construction Regulations and Subsequent Obligations



Damning report into N3 highway traffic failure that killed twenty two

BUSINESS

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In the report, the department recommends the prosecution of ITB Civils, SANRAL, AB Barriers and Safety Consulting for various contraventions of both construction regulations and the Occupational Health and Safety Act.

No individuals have, however, been singled out for further legal steps to be taken against them.

OHSAct Sections

Client Responsibilities

- Section 8 - **General duties of employers to their employees**
- Section 9 - **General duties of employers and self-employed persons other than their employees**
- Section 10 - **General duties of manufacturers and others regarding articles and substances for use at work**
- Section 37(2) - **Acts or omissions by employees or mandataries**
- Section 44 - **Incorporation of health and safety standards in regulations**

Construction Regulations

Client/Contractor Responsibilities

- Regulation 5 - **Duties of client**
- Regulation 6 (2) **The designer of temporary works must ensure**
- Regulation 12 - **Temporary works**
- Regulation 7 - **Duties of principal contractor and contractor**

OHSAct Sections

Section 8 - **General duties of employers to their employees**

8(1) Every employer shall provide and maintain, as far as is reasonably practical, a working environment that is safe and without risk to the health & safety of his employees.

Section 9 - **General duties of employers and self-employed persons other than their employees**

9(1) Every employer shall conduct his undertaking in such a manner as to ensure, as far as reasonably practicable, that persons other than those in his employment who may be directly affected by his activities are not thereby exposed to hazards to their health or safety.

OHSAct Sections

Section 10 - **General duties of manufacturers and others regarding articles and substances for use at work**

10(1) Any person who **designs, manufactures**, imports, **sells or supplies**, any article for use at work shall ensure, as far as is reasonably practicable, that the article is safe and without risks to health when **properly used and that it complies with all prescribed requirements**.

10(2) Any person who **erects or installs** any article for **use at work** on or in any premises shall ensure, as far as is reasonably practicable, that nothing about the manner in which it **is erected or installed** makes it unsafe or creates a risk to health when properly used.

OHSAct Sections

Section 44 - **Incorporation of health and safety standards in regulations**

44(3) Any health and safety standard incorporated in the regulations under sub-section (1) shall for the purpose of this Act, in so far as it is not repugnant to any regulation made under section 43, be deemed to be a regulation, but not before the expiry of two months from the date of incorporation thereof.

- Applicable Standards – EN 1317
- SANS 51317
- Chapter 13

OHSAct Sections

Section 37(2) - Acts or omissions by employees or mandataries

- The Employer has to prove three things in order to rebut (counter) the presumption as contained in section 37 of the OHS Act. Failure to rebut any of the three 'hurdles' could 'activate' the presumption-in-law and the **employer could be held criminally liable for the wrongful acts or omissions of the mandatary.**
- **Firstly** the employer must prove that **permission was not given** to the mandatary to act or fail to act in a manner which has obviously resulted in the flouting of the law. Connivance with the mandatary to circumvent any provision of the Occupational Health and Safety Act is mentioned in the same breathe as being an element that would create criminal liability for the employer. (Section 37(1)(a)).
- **Secondly**, the employer must prove that the **mandatary was acting outside the scope of his or her authority** and that the conduct of the mandatary was not a condition laid down by the employer. (Section 37(1)(b)).
- **The last and most problematic** hurdle for an employer to scale is to **show it took reasonable steps to prevent the conduct of the mandatary.** To confuse matters even further, the legislator added that explicit instructions, designed to prevent any unlawful behaviour by a mandatary, would not automatically be regarded as being sufficient reasonable steps taken by the employer. (Section 37(1)(c)). I label this last 'hurdle' or 'leg' as problematic because the term 'reasonable steps' is very broad and open to interpretation. The Legislator may have realised the vagueness / broadness of this leg and states in section 37(2) of the Occupational Health and Safety Act – albeit in rather vague terms – that a Written Agreement concluded between the employer and the mandatary would be regarded as reasonable OHS behaviour by an employer vis-à-vis a mandatary.

Construction Regulations

Client/Contractor Responsibilities

- Regulation 5 - **Duties of client 1 -8**
- Regulation 6 (2) **The designer of temporary works must ensure**
- *6(2)(a)* all temporary works are adequately designed so that it will be capable of supporting all anticipated vertical and lateral loads that may be applied;
- Regulation 7 - **Duties of principal contractor and contractor**
 - (a)* provide and demonstrate to the client a suitable, sufficiently documented and coherent site specific health and safety plan, based on the client's documented health and safety specifications contemplated in regulation 5(1)(b), which plan must be applied from the date of commencement of and for the duration of the construction work and which must be reviewed and updated by the principal contractor as work progresses;

Construction Regulations

Client/Contractor Responsibilities

- Regulation 12 - **Temporary works 1-4**

(3) A contractor must ensure that—

- (a) all temporary works structures are adequately erected, supported, braced and maintained by a competent person so that they are capable of supporting all anticipated vertical and lateral loads that may be applied to them, and that no loads are imposed onto the structure that the structure is not designed to withstand;
- (b) all temporary works structures are done with close reference to the structural design drawings, and where any uncertainty exists the structural designer should be consulted;

- **SANS 10085**

Damning report into M1 highway bridge collapse that killed two

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QUESTIONS

A group of ten hands, each holding up a large, three-dimensional blue letter to form the word "QUESTIONS". The hands are wearing various colored sleeves, including dark grey, light blue, and white, suggesting a diverse group of people. The background is plain white.